NATIONAL SECURITY: DOCTRINAL APPROACHES

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The article examines the evolution of scientific approaches to understanding national security in Western and Ukrainian legal doctrine. It is substantiated that classical Western concepts of national security formed the basis for expanding the security discourse beyond purely military threats, but for a long time ignored the issue of regulatory regulation of national security.

It is proven that Ukrainian legal doctrine considers national security mainly through the prism of the constitutional order, the principle of popular sovereignty and the guarantee of human and citizen rights and freedoms. Particular attention is paid to the role of institutions of constitutional and legal responsibility, the electoral process and mechanisms for protecting political rights in ensuring national security. It is established that violations of democratic procedures, in particular when forming public authorities, create systemic threats not only to individual human and citizen rights, but also to the stability of the constitutional legal order in general.

It is substantiated that national security has a collective dimension, which is manifested in the need for special legal guarantees for indigenous peoples and national minorities as a condition for preventing internal destabilization. It is concluded that national security should be considered as a multidimensional constitutional and legal category, the effective implementation of which is possible only if there is a combination of clear normative certainty, effective mechanisms of responsibility and adherence to the principle of the rule of law.

Keywords: rule of law, hybrid war, national security, constitutional security, legal doctrine, human and civil rights, state, society, constitutional and legal responsibility, democratic procedures, indigenous people, national minority.

Problem statement

The relevance of the study of doctrinal approaches to national security is due to fundamental transformations of the content and legal nature of this category in modern conditions. For a long time, national security was considered mainly through the prism of a military threat and the protection of state sovereignty, however, at the end of the 20th and the beginning of the 21st centuries, its conceptual boundaries in scientific doctrine significantly expanded, which led to the emergence of multidimensional, interdisciplinary and human-centric approaches.

Hybrid wars, full-scale armed aggression of the Russian Federation against Ukraine, energy and food instability, mass migration processes, pandemics have called into question the traditional narrow interpretations of national security as exclusively the «sphere of military defense». In these conditions, the doctrinal understanding of national security as a complex political and legal phenomenon that encompasses the protection of constitutional values, the constitutional order, the rights and freedoms of man and citizen, democratic institutions and social stability is of particular importance.

For legal science, the relevance of the topic is enhanced by the need to harmonize doctrinal approaches with positive law, in particular with the provisions of the basic laws of states, legislation on national security, which develops the norms of the constitutions of states, and international

legal obligations of countries. Without a deep analysis of scientific concepts of national security, neither proper norm-setting, nor effective law enforcement, nor the formation of an effective state policy in the field of national security, based on the principles of the rule of law, is impossible.

Thus, the study of doctrinal approaches to national security is not only theoretically significant, but also practically necessary for rethinking the legal foundations of the functioning of the state in the face of modern threats.

The purpose of this article is to analyze the main doctrinal approaches to national security, to highlight their characteristic features.

Presentation of the main material

In classical Western doctrine, one of the first fundamental approaches to understanding national security was formulated by Arnold Wolfers, who defined security as the absence of threats to acquired values and the absence of fear of their loss. In the work "National Security as an Ambiguous Symbol", the author showed that the concept of national security is "plastic", and its content depends on the values that the state considers to be priorities [1]. This approach laid the foundation for further doctrinal discussions on the normative uncertainty of the category of national security and the risks of abuse in lawmaking.

The further development of the doctrine is associated with the works of Barry Buzan, who in the work "People, States and Fear" proposed a sectoral approach to security, distinguishing military, political, economic, social and environmental components [2]. The significance of this concept for legal science is that it allows us to substantiate the legal legitimacy of expanding the scope of national security beyond defense and including human rights, issues of social stability and institutional stability of the state.

A significant contribution to the doctrinal rethinking of the category of security was made by David A. Baldwin, who in his article "The Concept of Security" emphasized the need for clarity in the use of this concept and proposed to assess security through the questions "for whom", "from what threats", "at what cost" and "by what means" [3]. The scientist emphasizes that security is not an absolute value, but requires legal balancing with other constitutional values, primarily with human rights and freedoms.

The human-centric vector of the development of the doctrine of national security was conceptualized in the works of Richard Ullman, who justified the need to abandon a purely military interpretation of threats and include socio-economic and humanitarian factors in the security discourse ("Redefining Security") [4]. This approach is of particular importance for modern constitutional law, since it allows integrating the protection of human rights into the content of national security, rather than opposing these categories.

In European legal doctrine, the "human security" approach, enshrined in the reports of the United Nations Development Program, has become widely used, where security is considered as freedom from fear and freedom from want [5]. Although this approach is interdisciplinary in nature, it has significantly influenced the legal understanding of national security, in particular in terms of substantiating the positive obligations of the state to protect the person.

Taken together, the above scientific studies indicate the evolution of doctrinal approaches to national security from a narrow understanding to a complex legal category closely related to constitutional values and international human rights standards. This is precisely what determines the need for further legal analysis of national security as a multidimensional phenomenon.

In Ukrainian scientific doctrine after 2014, and especially after 2022, the Ukrainian doctrine of national security has undergone a significant rethinking towards its substantive expansion.

The analysis of the scientific works of O. P. Vasylchenko, L. M. Deshko, O. S. Lotyuk, Y. M. Bysagy and G. Nechyporuk indicates the formation of a human-centric approach to national security in the Ukrainian constitutional doctrine, within which security is considered not only as a state of state security, but as a legally regulated system of guaranteeing the constitutional order, human rights and legitimacy of public power.

In the article by O. P. Vasylchenko, L. M. Deshko, O. S. Lotyuk "The correlation between constitutional and legal and political responsibility of subjects of the electoral process" [6], national security is not directly declared as a subject of re-

search, but doctrinally it is understood through the category of stability and legitimacy of the electoral process. The authors proceed from the fact that elections are not only a form of exercising political rights, but a constitutionally significant mechanism for reproducing public power, on which the stability of the state directly depends. The key to the doctrine of national security is the conclusion about the insufficiency of political responsibility as a guarantee of protection of electoral procedures. Substantiating the priority of constitutional and legal responsibility, the authors actually reveal its security function, since it is the legally defined sanctions and procedures for responding to violations of electoral legislation that prevent the delegitimization of power and internal destabilization of the state. In this aspect, the electoral process appears as an object of constitutional security, and responsibility as its instrument.

In the article by L. M. Deshko, O. P. Vasylchenko, O. S. Lotyuk "Lustration as a type of constitutional and legal responsibility and compensation for moral damage caused as a result of a violation of the right of an individual to participate in the management of state affairs: the practice of the ECHR in cases against Ukraine" [7], national security is analyzed by scientists directly through the institution of power purification. The authors consider lustration as a legal mechanism designed to protect the constitutional order from threats associated with past abuse of power, but emphasize its dual nature: on the one hand, as an instrument of security, and on the other, as a form of interference with the right of an individual to participate in the management of state affairs. Using the practice of the ECHR, the authors reach a doctrinally significant conclusion: national security cannot serve as a universal justification for the violation of constitutional rights, and measures aimed at ensuring it must comply with the principles of proportionality and legal certainty. Thus, in this work, national security is conceptualized as a legal category limited by human rights, and not as a political expediency.

In the article by Y. M. Bysaga, L. M. Deshko, and G. Nechyporuk "International Security, National Security, Constitutional Security: Theoretical and Legal Approaches" [8], the authors propose a clear doctrinal distinction between these categories. National security is defined as an internal legal regime protecting fundamental constitutional values, while constitutional security is its core, aimed at preserving the supremacy of the Constitution, the principle of popular sovereignty, and human rights. The doctrinal novelty of this approach lies in the rejection of a militarized or purely political understanding of security and the transition to a model in which legal institutions play a key role. Let us emphasize: the authors argue that it is the constitutional certainty of the boundaries of the state's security powers that acts as a safeguard against the arbitrary expansion of the category of «national security» and its use as a universal justification for restricting human rights and freedoms. In this context, national security is conceptualized not as an autonomous sphere of public power, but as a legally limited category derived from constitutional values дand the principle of the rule of law.

The ideas of constitutional security acquire applied significance in the article by Deshko L., Vasylchenko O., Lotiuk O. "Crimea an Tatar National-Territorial Autonomy: Regulatory and Legal Guarantees of the Rights and Freedoms for the Indigenous Peoples of Ukraine" [9]. In this thorough study, the authors demonstrate that ensuring the rights of indigenous peoples and their institutional participation in public administration is a component of national security, not a threat to it. The autonomy of the Crimean Tatar people is considered as a legal mechanism of integration that strengthens territorial integrity and prevents conflicts. This approach directly contradicts statist security models and forms a human-centric doctrine of national security, in which the rights of indigenous peoples act as a factor in the stability of the state.

The same logic is traced in the theses of L. M. Deshko "Legal and organizational principles of power cleansing in Ukraine and EU member states" [10], where power cleansing is considered as a tool for Ukraine's integration into the EU legal space. The author emphasizes that the effectiveness of lustration as a security measure directly depends on its compliance with European human rights standards. Thus, national security is understood not in isolation, but in connection with international and regional legal security.

An additional dimension of the problem is revealed in the article by O. P. Vasylchenko,

L. M. Deshko "Military occupation regime, human rights, elections and referendums: the experience of Ukraine" [11], where the authors analyze the security challenges of implementing democracy in conditions of armed conflict. In this work, national security is considered through the prism of permissible restrictions on democratic procedures, while emphasizing that even under conditions of occupation, the state is obliged to adhere to minimum standards of human rights protection. This allows the authors to formulate an important doctrinal conclusion: temporary restrictions on forms of democracy do not mean the rejection of constitutional security as a system of values. Taken together, the analyzed works form a modern Ukrainian doctrinal approach to national security as a multidimensional legal category that encompasses the protection of the constitutional order, the legitimacy of public authority, human rights, the rights of indigenous peoples, and democratic procedures. National security in these studies appears not as a priority of the state over the individual, but as a balance between the protection of statehood and the guarantee of constitutional rights, which corresponds to the European tradition of constitutionalism.

Conclusions

The analysis conducted allows us to conclude that the concept of national security in modern legal science does not have a unified content and is characterized by multidimensionality, due to different methodological approaches to the relationship between the state, society and the individual. The classical Western doctrine, presented in the works of A. Wolfers, R. Ullman, D. Baldwin and B. Buzan, formed a conceptual basis for moving away from a narrow, militarized understanding of security as exclusively the protection of the state from external threats. In these works, national security appears as a dynamic category, the content of which depends on the values that are recognized as subject to protection, as well as on the subject in relation to which security policy is carried out.

Ukrainian legal doctrine is formed mainly within the framework of the constitutional-legal paradigm, in which national security is considered as an element of the constitutional system and a function of the state aimed at ensuring sovereignty, territorial integrity, democratic rule of law and human rights and freedoms. The works of Y. Bysaga, L. Deshko, and G. Nechyporuk substantiate the concept of the trinity of international, national, and constitutional security, which allows national security to be considered not in isolation, but in connection with the state's international legal obligations and internal constitutional mechanisms for their implementation.

Of particular importance for the development of the doctrine of national security are studies devoted to constitutional-legal responsibility, the electoral process, lustration, and the rights of indigenous peoples. The works of O. Vasylchenko, L. Deshko and O. Lotyuk prove that the violation of democratic procedures, in particular in the field of elections and referendums, poses not only a threat to individual political rights, but also a systemic threat to the national and constitutional security of the state. The use of institutions of constitutional and legal responsibility, including lustration mechanisms, is considered as a tool for restoring the disturbed security balance in a democratic society.

An important element of modern doctrine is the awareness of the collective dimension of national security, which is also manifested in the protection of the rights of indigenous peoples and national minorities. Studies devoted to the Crimean Tatar national and territorial autonomy convincingly demonstrate that the institutional provision of the rights of indigenous peoples is not only a form of implementing the principle of equality, but also a factor in strengthening national security, since it prevents internal conflicts and destabilization of the constitutional order.

Thus, national security in modern legal doctrine should be considered as a complex legal category that combines the protection of the constitutional order, democratic procedures and human rights. Its effective provision is impossible without regulatory certainty, effective mechanisms of constitutional and legal responsibility and the integration of security approaches into the public administration system in accordance with European standards of the rule of law.

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Кудрявцева О.

НАЦІОНАЛЬНА БЕЗПЕКА: ДОКТРИНАЛЬНІ ПІДХОДИ

У статті досліджено еволюцію наукових підходів до розуміння національної безпеки в західній та українській правовій доктрині. Обґрунтовано, що класичні західні концепції національної безпеки сформували підвалини для розширення безпекового дискурсу за межі суто військових загроз, однак тривалий час залишали поза увагою питання нормативно-правового регулювання національної безпеки.

Доведено, що українська правова доктрина розглядає національну безпеку переважно крізь призму конституційного ладу, принципу народного суверенітету та гарантування прав і свобод людини і громадянина. Особливу увагу приділено ролі інститутів конституційно-правової відповідальності, виборчого процесу та механізмів захисту політичних прав у забезпеченні національної безпеки. Встановлено, що порушення демократичних процедур, зокрема при формуванні органів публічної влади, створює системні загрози не лише окремим правам людини і громадянина, а й стабільності конституційного правопорядку загалом.

Обґрунтовано, що національна безпека має колективний вимір, який проявляється в необхідності спеціальних правових гарантій для корінних народів і національних меншин як умови запобігання внутрішній дестабілізації. Зроблено висновок, що національна безпека повинна розглядатися як багатовимірна конституційно-правова категорія, ефективна реалізація якої можлива лише за умови поєднання чіткої нормативної визначеності, дієвих механізмів відповідальності та дотримання принципу верховенства права.

Ключові слова: верховенство права, гібридна війна, національна безпека, конституційна безпека, юридична доктрина, права людини і громадянина, держава, суспільство, конституційно-правова відповідальність, демократичні процедури, корінний народ, національна меншина.