

# International Expertise in Administrative Legal Support of National Security in Ukraine

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## Abstract

**Background/Objectives:** This article deals with research of international expertise in administrative legal support of national security aiming at its complex and comprehensive analysis. **Methods:** Methods of restructuring ideas and theories, system and structural and functional, formal legal analysis and forecasting were applied throughout this research to the very phenomena of national security and activity of subjects shaping and maintaining such phenomenon, based on the methodological position. Their application logics relies on an attempt to integrate methodological approaches of various disciplines into the research of national security, and support forms and methods. **Findings:** This article concludes that the national security is a complex phenomenon and thus a system of interacting components. This system comprises a certain set of concepts and provisions, social and political and legal institutions and establishments, certain means, methods and forms that prevent or ensure an adequate response to any arising dangers and threats. Comparative legal analysis of international expertise in Western European countries and the USA allowed determining new lines of improvement of the administrative legal regulation in the following areas: counteraction of extremist activity; counteraction of illegal migration; combating human trafficking. This article suggests dividing national security into the following types: foreign policy threats to national security, public security, economic security, foreign economic security, military security, information security, environmental and demographic security. National security doctrine in any country is the original conceptual model of stating and resolving a common integrated set of standardized tasks and problems associated with providing protection of national interests. **Applications/Improvements:** Academic novelty of this research is in an attempt of fundamental theoretical analysis of the phenomenon of 'national security' as a governmental legal phenomenon with strengthening perspectives in Ukraine, establishing equilibrium of public and personal interests, providing sound protection of individual rights and legal interests.

**Keywords:** Administrative Legal Support, International Expertise, National Security

## 1. Introduction

The interest of the international community in security challenges is rising, which is associated with permanent crisis phenomena of the end of the 20th century and the beginning of the 21st century, and with their acuity raising a direct question about the fate of the whole humankind. Intentional legal basics of national security are intrinsically connected to the international legal norms for all countries to observe, regardless of their diplomatic relations status. Becoming of Ukrainian national identity is accompanied by a sudden intensification of dangerous military instability, domestically and internationally.

Ukraine currently does not have the required potential to absolutely protect its democratic winnings and national identity against all possible threats and crises<sup>1</sup>. The government is not always ready to provide consistent protection against possible wars and conflicts, promptly identify and estimate development of new and earlier threats. All the above requires theoretic insights into means and ways of national security support in Ukraine, relying on international legal tools.

Challenges of legal support of national security are being worked out rather actively in recent research by many researchers, Hertig and Ray<sup>2</sup> considered legal aspects and control over national security, Kerodal, Freilich and

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Chermak<sup>3</sup> studied the challenge of national security and counter-terrorism in the US, Weber<sup>4</sup> devoted his efforts to administrative legal support of national security in case of a potential war, Diaz<sup>5</sup> discussed administrative support of the security against governmental and private partnerships, Raff<sup>6</sup> studied legal support of the security of former socialism systems, Caron with co-authors<sup>7</sup> analyzed international security perspectives in the 21st century, Coglianesi<sup>8</sup> investigated administrative legal issues in the US and beyond, Palmer<sup>9</sup> studied the issues of national security under financial crisis, and many researchers are still in search of the optimum model of national security support.

Contemporary scientists consider administrative legal support of national security in close interrelation to constitutional legal, criminal legal, criminal procedural and other field-specific types of national security support. However, merely fragmented attention is paid to administrative legal support of national security in such research.

Therefore, despite vast amount of versatile research devoted to common issues of national security support and types of such security, including legal research in adjacent knowledge areas related to this challenge, no complex research of administrative legal support of national security was done. We believe the fact that the impact of administrative legal regulation on national security support and its efficiency is still not explored in Ukraine is determining.

Current research is directly associated with primary lines of scientific support of implementation of the Strategy of national security of Ukraine<sup>10</sup>, Ukrainian Laws "On the Basics of National Security of Ukraine"<sup>11</sup>. On the democratic civil control of Military institution and governmental law enforcement agencies<sup>12</sup>, Concept of administrative reform<sup>13</sup> and Development strategy of internal affairs bodies of Ukraine<sup>14</sup>.

## 2. Concept Headings

This research aims at complex and comprehensive analysis of the international expertise in administrative legal support of national security. This research states a hypothesis that legal regulation of national security regulation is done by a set of branches of law and they may be considered the integral subject matter of legal regulation of national security within a new complex

branch of law; therefore, a drastic new approach to shaping and developing the concept of administrative legal support of national security in Ukraine must be developed.

International legal systems of different levels, both international and regional, were chosen as the subject matter of this research under globalization conditions. This process opened new opportunities for application of the system method and auxiliary methods, like structural and functional analysis. The following methods were used for this research:

- method of collection and study of singularities;
- method of generalization;
- method of scientific abstraction; and
- method of learning regularities.

Law interpretation methods to determine the essence of legal norms, legislative will that is reflected in regulations; specific sociological methods (observation, analysis of written sources, questioners, interviews) were used at the stage of collection and study of singularities.

Theoretical analysis was done with the help of abstraction methods, systemic analysis from abstract to certain. Logical semantical analysis was also applied, in combination with the above methods, which allowed for detailed exploring of sources of law.

Prognostic method allowed for giving a scientifically justified prognosis about further development of the scientifically-based system of administrative legal means of support of national security.

Basic conclusions were made on the basis of comparative analysis of legislation of Western Europe and the USA.

## 3. Results

The concept of national security appeared in the US after the World War II and was ultimately accepted after the National Security Act was passed in 1947 in the US. Meanwhile, challenges of national security globally permeate almost all areas of social relations and are in need of complex regulation. The experts are right about the fundamental dilemma of this matter to be conceptual difficulties in understanding the subject matter of legal regulation of the area of national security<sup>15</sup>. The concept of subject matter of legal regulation is one of the key categories of the theory of law. Legal regulation means, in

contemporary theory of law, a system of legal means to put order to social relations in harmony with goals and tasks of a legal state, while the subject matter of legal regulation is a certain side, part, or broad uniform area of the single overall field of legal regulation, a circle of social interests that is regulated by this regulatory establishment<sup>16</sup>.

Based on the subject matter of legal regulation, one can distinguish between blocks of uniform social relations, for which separate complex branches of law are developed to regulate such blocks. It appears that an approach of this kind may be also applied to legal regulation of the national security field. This field harbors a number of areas of social relations, where a variety of legal relations that are the same in their target but differ in type specifics exist, which may be the subject matter of legal relation of national security field. The earliest mentions of the concept of social security date back to 1790 and were made at the Yale<sup>17</sup>.

Historically, the concept of national security comprised political, military and economic fields. Let us discuss each type of the national security separately; thus, political security means the state of protection of political life of any country, and it relies on the country having a possibility of conducting independent domestic and foreign policy and resolve government order-related matters<sup>4</sup>. Political life of the country and its interaction with the outer world is the object of political security. Military security means a capability of protecting the sovereignty, territory integrity and population against any foreign military threats. Military security involves several aspects, such as state borders, armed forces, military education, military science and military industry<sup>18</sup>. The sovereignty and territory integrity are the object of military security. Numerous legal acts – treaties have been concluded internationally to restrain nuclear arms race spatially. These include the Antarctic Treaty<sup>19</sup>, the Nuclear Non-Proliferation Treaty<sup>20</sup>, the Outer Space Treaty<sup>21</sup>, Seabed Arms Control Treaty<sup>22</sup>, Treaty of Tlatelolco<sup>23</sup>, Treaty of Rarotonga-D1<sup>24</sup>, Partial Test Ban Treaty<sup>25</sup>, Comprehensive Nuclear-Test-Ban Treaty<sup>26</sup>, Convention on the Prohibition of Military or Any Other Hostile Use of Environmental Modification Techniques<sup>27</sup>, *Strategic Arms Reduction Treaty*<sup>28</sup>, etc.

A Committee on Economic Security was first created in 1934 in the US, and it has stabilization of the social situation in the country as its primary function. The concept of national security became an official underlying

principle of foreign policy in the US in 1947, when Harry Truman signed the National Security Act on July 26, 1947. Bill Clinton established a National Economic Committee, while he was the US President, to develop and implement measures to maintain national economic security<sup>29</sup>.

The conditions of national security are somewhat different in the European Union. Thus, researchers pointed out that the expression ‘economic security’ has two meanings in the EU.<sup>2</sup> The first meaning is associated with the position of the EU in the global economic system, and, therefore, various links to resources displaying economic goals of the EU are posted on its official site. The other meaning is associated with the EU integrating into the global economy. Historically, European countries hold less resources and able-bodied population, as compared to other developed countries, like the US. OSCE (Organization for Security and Cooperation in Europe), the largest global regional organization dealing with security, is the largest official organization dealing with complex security-related issues in Europe. It involves 56 countries located in North America, Europe and Central Asia<sup>30</sup>.

However, based on our comparative analysis of international legislation, we may distinguish between a number of legal relations, which are the same in their target but differ in type specifics exist, e.g. legal relations of protection of national and public security that are recognized in Constitutions of European countries: authors of the Bill of rights yet pursued the goal to establish a principle of integrity of the person, their home, i.e. public security, in their Fourth Amendment (1791)<sup>6</sup>. ‘The Supreme Court worked upon a concept, which results in Amendment IV providing constitutional protection of not only private property itself (inviolability of property is guaranteed by a vast number of other constitutional provisions), but rather private life of citizens against governmental intervention into all areas of private life, which are combined into the idea of privacy in the American jurisprudence<sup>31</sup>. At the same time, nobody can be deprived of life, freedom and material benefits, unless ordered by the court decision. As it is highlighted in Section 1 to the Fourteenth Amendment, no state shall make or enforce any law which shall abridge the privileges of citizens of the United States<sup>8</sup>.

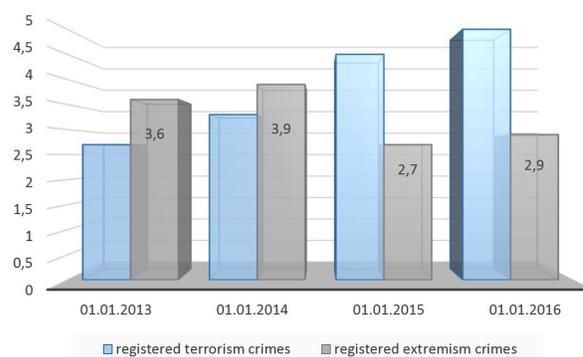
The underlying concept, which has been incorporated into the Federal Tort Claims Act (section of the Legislative Reorganization Act of 1946), is expressed in the following

way: 'Subject to the provisions of this title, the United States shall be liable in respect of such claims to the same claimants, in the same manner and to the same extent as a private individual under like circumstances.' However, as long as application of this provision is the right of a state, but not the Federal right, the decision on holding the United States liable is made in accordance with establishment of rights in the state, where the tort was committed<sup>9</sup>. In particular, the USA shall be responsible for illegal actions of investigation and law enforcement officers associated with physical violence, offensive action, illegal custody, illegal arrest, abusive use of procedural laws harmful to the wronged, or malicious official prosecution. The government ensures security of an individual and the whole society by fulfilling its social and other functions. Fulfillment of functions of the party ensuring individual security determines social nature of the government, who shall provide for interests of all social strata to be satisfied by means of law<sup>32</sup>. Thus, public security is a component of national security that is expressed as protection of an individual, society and nation, primarily against common domestic threats.

An Initiative Team of researchers of computer security was established in 1967 under the umbrella of the National Standards Committee, which involved representatives of universities, hardware manufacturers, research centers and other institutions. The Rainbow Series - a series of standards and requirements to hardware, software and personnel of the so-called automatic data processing systems, which were computer networks belonging to such governmental structures of the US as NASA, Department of Defense, National Standards Committee, Department of Labor, Department of Environmental Conservation, Bureau of Arms Control, National Science Foundation, Federal Reserve System and National Military Command Center, was the result of consolidated efforts of industry and science experts, broad theoretical mathematics research (theory of information) and a great expertise of the real industry.<sup>5</sup> The National Computer Security Center was also created to deal with such matters. Legal relations in information security support take a special place in the system of national security.

Today's international terrorism became a factor that destabilizes the situation severely not only in isolated regions, but in the whole world as well: over 1 000 groups and organizations that use terrorism methods in their

activity are counted in more than 70 countries (see Figure 1).



**Figure 1.** Statistics of terrorism crimes growth in Western Europe.

World's concern about the spread of terrorism and extremism activity expresses itself in the attempt to join forces in a combat against the common foe, including awareness of the essence and causes, developing conceptual anti-terrorist documents, with the terrorism becoming transnational<sup>3</sup>. A variety of international treaties comprises anti-terrorist provisions. These include the Charter of the UN, international conventions on international terrorism, materials of the International Law Commission, regulations adopted by the European Union, OSCE, North Atlantic Community, agreements between the EU and NATO; therefore, we must distinguish between legal anti-terrorism relations within the framework of regulating national security.

Migration problems came to the front in Europe for the last decade, at the national legislative level in European countries, it is required to provide for the establishment of the control at the external and internal borders of the European countries<sup>33</sup>. Migration movements became so intensive recently, that leading analysts consider changes associated with such movements to be a real problem; therefore, administrative legal regulation to that matter must be improved.

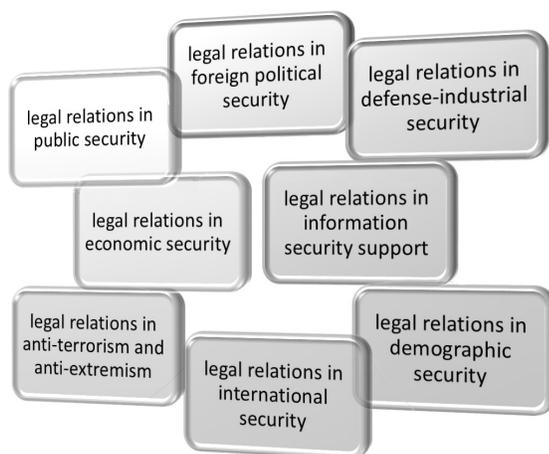
Central and Western European countries and new EU members are mostly countries of origin, transit and destination of human trafficking. Women are sold to work as prostitutes and for other jobs in sex industry; children are mostly sold for begging business, and males, who constitute a small portion of overall trafficking victims,

are sold for shadow economy jobs 19. The geographic closeness of such countries to the EU members determined their role before joining the EU, i.e. they were and, obviously, still are countries of transit for victims from the CIS, Romania, Bulgaria and Ukraine, who are delivered to 15 initial EU members.

Thus and so, the comparative analysis of international expertise allows for determining areas of improvement of administrative legal regulation of national safety in the following fields: counteraction of extremist activity; counteraction of illegal migration; combating human trafficking.

According to several researchers, the concept of national security must comprise international security as world order, creating favorable international conditions for free development of countries and other parties to the international law, as well<sup>7</sup>. Sources of law of international security include universal treaties (the UN Charter, disarmament treaties), regional treaties (charters of regional security organizations, establishment of trust measures and creation of nuclear-free areas) and bilateral agreements (on peace and friendship, on disarmament, etc.). The Charter of the UN is the principal source regulating international legal ways and means of keeping peace (section I, VI, VII). The purpose of the United Nations is to maintain international peace and security, and to that end to take effective collective measures (Article 1).

Therefore, legal regulation of national security may distinguish between eight areas of social relations, where legal relations that are the same in their target but differ in type specifics are in effect (see Figure 2):



**Figure 2.** Types of legal relations in legal regulation of national security.

Speaking of method of regulation of such relations, we believe that the solution lies within legal regulation trends that are in progress in the contemporary administrative law. A combination of private legal and public legal methods of regulation in various legislative areas become more common in the today's conditions. This trend may be determined, in the context of development of the system of law, as blurring the lines between the private and legal law, and, in the context of legislative system, as escalation of complex normative regulation of social relations. This process is determined by complication of social relations and is not just much-needed but also the only one capable of making the system of law more dynamic, thus bringing it close to real social relations and filling the existing gaps.

Currently, legal regulation of the above legal relations is done by a set of branches of law; however, such branches of law may be considered the sole subject matter of legal regulation of national security within the framework of a new complex branch of law, and such approach is now a relevant practical task.

Speaking directly of the problem in question, one should mention that the institute of administrative legal regimes in national security is more common vs. any other aspect of social and political life. Some of them penetrate the whole field of national security, while focusing merely on the specifics of its individual components and parties capable of ensuring such security, while the others cover exclusive governmental structures. For the purpose of national security, it is worth focusing on certain special measures and means with their application accompanied by the regimen organization, which holds developed legislative and sub-legislative normative regulation.

## 4. Discussion

Administrative political area, where Ukrainian national security support activity takes place is the most important area of governmental control. The area in question is mostly saturated by power and authoritative powers of the parties to national security support, i.e. governmental bodies and officials<sup>34</sup>. At the same time, parties to national security support mostly include, in accordance with Article 4 of the Law of Ukraine On National Security, structures that are authorities of national security support (see Figure 3):



**Figure 3.** National security support authorities in Ukraine.

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The question about the scope of relations to be included in the system of national security support of Ukraine is disputed; some researchers include control of security, defense, internal affairs, justice and foreign affairs here.<sup>1</sup> Overall, this list usually covers all standard components of administrative political field. The system of national security support itself is based on the provisions of the Law of Ukraine On National Security. Let us analyze common provisions of this act. It is stated in the Preamble that the act defines the fundamentals and interests of Ukrainian national state security policy, while guaranteeing society and the individual citizen protection from both internal and external threats. The provisions of this Law also regulate the system of security, its functions, establish the procedure of organization and funding security support authorities, and control and supervision of their activity within the law, including qualified make-up and governmental control for national security support<sup>35</sup>.

According to Article 1 of Law of Ukraine On National Security, the meaning of national security is defined. National Security is the safeguarding of vital interests pertaining to the citizen and State of Ukraine that insure the sustainable development of society; through

the timely detection, prevention and neutralization of implicit and explicit threats to national interests in law enforcement, fight against corruption, border activity and defense, migration policy, health, education and science, R&D, and innovative policy, cultural evolution of the population, freedom of speech and information security, social pension security policy, housing and utilities infrastructure, financial service market, protection of ownership rights, stock markets and securities, fiscal budgetary and customs policy, trade and entrepreneurial activity, bank service market, investment policy, auditing activity, monetary and currency-related policy, protection of information, licensing, industry and agriculture, transport and communications, information technologies, energy production and saving, functioning of natural monopolies, utilization of underground, ground and water resources, minerals, environmental protection and other areas of governmental control, in case of any negative trends towards establishment of potential or real threats to the national interests.

With view to the above, rights of citizens, legal entities and the government to security; information resources (documents, arrays of documents, including public and confidential information, and details of state secrets) are the primary objects of national security support. In other words, the object of national security support are the same as objects of national security specified in Article 3 of the Law of Ukraine On National Security, in particular a person and citizen and his/her constitutional human rights and freedoms; society and its spiritual, moral, ethical, cultural, historical, intellectual and material values, information media and environment as well as its natural resources; the state and its constitutionally ordered system, sovereignty, territorial integrity and inviolability<sup>36</sup>.

Some researchers believe that in the current development conditions of the Ukrainian country, the above list should be supplemented, for example, by control in economic and defense-industrial security<sup>37</sup>, establishment of anti-terrorist department as a part of national security may be considered justified. At the same time, the question about referring to the fiscal service as a governmental authority dealing with national security is still under discussion. Some researchers state that the fiscal service fulfills its functions in the area of governmental economy control<sup>38</sup>. However, expanding of competence of the fiscal bodies in view of adoption of the Revenue Code of Ukraine, gives us all reasons to further

consider them rather not as a law enforcement body but primarily as one of the primary governmental structures aiming at ensuring economic security, which, in its turn, is an element of the overall national security support system.

Specific is the fact that in accordance with the current security legislation, the government is determined as the primary party to ensure national security, and it fulfills such its functions via legislative, executive and judicial bodies. According to Article 17 of the Constitution of Ukraine, protecting the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security, shall be the most important function of the State. The defence of Ukraine and protection of its sovereignty, territorial integrity and inviolability shall be entrusted to the Armed Forces of Ukraine. Ensuring the security of the State and protecting the State borders of Ukraine shall be entrusted to respective military formations and law enforcement bodies of the State, whose organisation and operational procedure shall be determined by law. The Armed Forces of Ukraine and other military formations shall not be used by anyone to restrict the rights and freedoms of citizens or with the intent to overthrow the constitutional order, subvert the public authorities or obstruct their activity. Ukraine shall guarantee care and protection to its citizens staying abroad (Articles 25, 26).

Thus and so and based on the above, one may conclude that the system of ensuring national safety in Ukraine has a lot of components of regimen nature, inter-crossing and regulating each other in terms of law. Based on the above analysis, the whole national security support system is based on governmental functions, and it is fulfilled directly through the administrative legal area and governmental authorities that comprise such system and act strictly within the Ukrainian legislation. Experts point out that national security authorities are the primary parties administrative legal support of national security in the EU, and this experience may be applied in Ukraine. The national security body may be defined in the following way: an organization that is created in accordance with the established procedure and form, stipulated by regulations, and is a part of the government machine, has its own structure, scope of activity within a certain territory, competency to be fulfilled in the established form and using established methods, including any specific methods, is staffed with citizens that satisfy the requirements to the service, has the right to act on behalf of the state, and carry out

activity aiming at fulfilling the most important function of a contemporary state, i.e. ensuring national security in economic, social and cultural and administrative political areas of governmental control<sup>39</sup>.

## 5. Conclusion

The interstate integration within the framework of the European Union allows us to develop new forms and methods of national security support in Ukraine that correspond to modern requirements, and the solution appears to be within the legal regulation trends that are developed in the administrative law. A combination of private legal and public legal methods of regulation in various legislative areas become more common in the today's conditions. This trend may be determined, in the context of development of the system of law, as blurring the lines between the private and legal law, and, in the context of legislative system, as escalation of complex normative regulation of social relations. This process is determined by complication of social relations and is not just much-needed but also the only one capable of making the system of law more dynamic, thus bringing it close to real social relations and filling the existing gaps.

Overall, social relations that are the subject matter of legal regulation of national security may be classified as follows:

- foreign - relations associated with direct fulfillment by the parties to governmental control of control activity, i.e. their tasks, functions and authorities in the area of security;
- internal or in-house - control relations within the parties to governmental control and bodies of legislative and judicial and other governmental authorities, associated with arrangement of their activity;
- relations associated with security-related proceedings; and
- relations between governmental executive bodies and local executive bodies.

With view to the contemporary factors, dividing national security into the following types: foreign policy threats to national security, public security, economic security, foreign economic security, military security, information security, environmental and demographic security and defining such types as the subject matter of legal regulation of national security are suggested.

Currently, legal regulation of national security is done by a set of branches of law and they should be considered internationally the integral subject matter of legal regulation of national security within a new complex branch of law. In Ukraine, this approach is reasonable for adopting legislative acts on national security, as long as this complex of social relations is need of its own legislative regulation.

This research provides a completely new approach to forming and developing the concept of administrative legal support of national security in Ukraine, and a number of specific, but still important problems must be solved for such development, along with the theoretical task associated with the definition of the subject matter of legal regulation of national security.

- Existing threats to national security of Ukraine must be assessed, and a set of adequate responses must be worked out to engage certain forces and means. Provision of their extensive activity should imply comprehensive legal regulation of such areas as training and staffing of force structures, legal and social status of representatives of such structures, armors, and material support etc.; we are referring to establishment of a modern system of legal regulation of national security in Ukraine.
- Modern Ukrainian legislation on national security does not stipulate any legal basis for adjusting the social economic and social politic course, in case such course leads to an abrupt decline in national security, breach of constitutional rights and freedoms of the man, citizens etc. Moreover, it does not establish any clear criteria of responsibility of officers of federal executive bodies for their failure to predict, identify and prevent any potential or real threats, leading to multiple victims. One should think over ways of eliminating such serious deficiencies of the current legislation.

National security authorities are the primary parties to administrative legal support of national security in the EU. A national security is an organization that is created in accordance with the established procedure and form, stipulated by regulations, and is a part of the government machine, has its own structure, scope of activity within a certain territory, competency to be fulfilled in the established form sand using established methods, including any specific methods, is staffed with

citizens that satisfy the requirements to the service, has the right to act on behalf of the state, and carry out activity aiming at fulfilling the most important function of a contemporary state, i.e. ensuring national security in economic, social and cultural and administrative political areas of governmental control. A single governmental agency to control national security and be fully and solely responsible for planning and implementing national security measures in Ukraine must be established, including establishment of a national center of prompt analysis and response to any threats to national security of Ukraine.

Comparative legal analysis of international expertise in Western European countries and the USA allowed to determine new lines of improvement of the administrative legal regulation in the following areas:

- counteraction of extremist activity;
- counteraction of illegal migration; and combating human trafficking.

This article concludes that national security is a complex phenomenon and, thus, comprises a system of inter-related elements. This system comprises a certain set of concepts and provisions, social and political and legal institutions and establishments, certain means, methods and forms that prevent or ensure an adequate response to any arising dangers and threats.

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