

## ГОСПОДАРСЬКЕ ПРАВО ТА ПРОЦЕС

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**AS TO THE PRINCIPLES OF ECONOMIC SECURITY OF UKRAINE  
(FORMULATION OF THE PROBLEM)**

The article based on the analysis of theoretical and practical questions of economic security of Ukraine in the context of singling out a number of principles, the main approaches as to their implementation of international legal acts with Ukraine, in the acts of the internal law of Ukraine, there is offered the ways of formation the state policy in the economic security of Ukraine sphere.

**Key words:** *principles, economic security of Ukraine, economic and legal means, state policy.*

Стаття присвячена аналізу теоретичних і практичних питань забезпечення економічної безпеки України в контексті виокремлення низки принципів, на яких базується забезпечення економічної безпеки; розкрито їх зміст, основні підходи щодо їх реалізації в міжнародно-правових актах за участю України, в актах внутрішнього законодавства України; запропоновано шляхи формування державної політики у сфері забезпечення економічної безпеки України, що базуються на досліджуваних принципах.

**Ключові слова:** *принципи, економічна безпека України, господарсько-правові засоби, державна політика.*

Статья посвящена анализу теоретических и практических вопросов обеспечения экономической безопасности Украины в контексте выделения ряда принципов, на которых базируется обеспечение экономической безопасности; раскрыты их суть, основные подходы, касающиеся их реализации в международно-правовых актах, участником которых является Украина, в актах внутреннего законодательства Украины; предложены пути формирования государственной политики в сфере обеспечения экономической безопасности Украины, которые базируются на исследованных принципах.

**Ключевые слова:** *принципы, экономическая безопасность Украины, хозяйственно-правовые средства, государственная политика.*

The economic security of a state is a separate and only from the key direction of Strategy of national security of Ukraine, approved by Decree of the President of Ukraine from 26.05.2015 № 287/2015 (next – Strategy 2015) [1].

The analysis of this normative document gives us the possibility to singled out a number of principles on which are based the reforms that necessary for stable and sustainable economic development. These also are:

– rule of law;



- equality of citizens before the law;
- honesty and transparency in government;
- prioritizing the protection of national interests of Ukraine.

Instead, in article 5 of Ukraine Degree “About foundations of national security of Ukraine” from 19.06.2003, № 964-IV [2] is noticed a number of principles which on based national security and which discord with those within Strategy 2015:

- priority rights and freedoms of man and citizen;
- rule of law;
- priority contractual (peaceful) means of conflict solving;
- timeliness and adequacy of measures to protect the national interests of actual and potential threats;
- clear separation of authority and cooperation of state authorities in provision of national security.

In this law is noted that the choice of specific means and ways to provide the national security of Ukraine conditioned by necessity in time to take an action that adequate to the nature and scale of threats to national interests [2].

So, discovering the content of each of the principles on our opinion it’s necessary to start actually from the most significant in the context of economic security means from the principle of priority protection of the economic interests on the national level. The fact is that the interests of the state are the interests of the majority of society, this is overall welfare of the nation and balanced regional development. All that noted above is the priority of the state, that’s why the public dominate over private because of the existence of the social contract and the government in a democratic state should follow this agreement. And, therefore, all values that are defined in the Fundamental Law of the state, as well as all civilized values that are seen in the developed world should be the starting point for national interests. From this positions saying about the priority of national interests, a common social good is above the individual good, which is wholly justified in the evolutionary development of humanity.

The principle of the rule of law is the original and decisive in all spheres of legal regulation in a democratic state. The main purpose of this principle is to ensure the freedoms and rights of individuals (and physical and legal), moreover above all, in their relations with the state. Therefore, the goal of the rule of law – is not just formal order providing which envisioned by laws and other regulations acts defined by the state and the establishment of the rule of law, which limits the absolutism of the state, especially executive authority putting it under the control of society by creating appropriate legal mechanisms for this. In other words, even perfect, in terms of legal technique, the law is not always a panacea for the rule of law. Here from follows the first and generally almost indisputable conclusion: an independent meaning that different from the rule of law, principle the rule of law becomes when the right is seen as a phenomenon that is not contained exclusively in laws and other regulation acts [3].

Another important principle – the principle of priority of contractual (peaceful) means in solving conflict situations in different spheres concerning economic security must be realized in our opinion in view on the rule of law principle that was noted above. The sphere of international conflicts in the economic sphere should be regulated based on international regulation acts. Sphere of the conflicts at the macro level (the level of entities) should be regulated by acts of internal legislation of the state, which usually involves:

- solution conflicts (disputes) in judicial order;
- prejudicial settlement of disputes, the possibilities of the sides go to peaceful agreements during the consideration the court proceeding or the execution of judicial decisions.

Regarding the latter, we can agree with the position of A. Y. Sanchenko [4] who confirms that looking at the great attention and the work of scientists, professional civic organizations and public authorities regarding research and the formation of the institute of mediation this mean of resolving conflicts (disputes) may be approved soon at the legislative level. In addition at this moment there is a project of Law of Ukraine “About mediation” from 17.12.2010 № 7481 [5] that previsions the creation of legal conditions of mediation, the previous judicial, a fast and effective way of resolving disputes



in which the sides will have equal opportunities and rights, and mediators will act as intermediaries and facilitate cultural partnerships that arise including in economic disputes. The principle of adequacy of activities to protect national interests against real and potential threats in the context of economic security is that public authorities according to their competence are granted the right to prompt adequate measures according to actions that threaten the provision of economic security at different levels. Separately should also pay attention to the fact that the principle of timeliness and adequacy of measures to protect the national interests of actual and potential threats is extremely actual factor in the process of building relationships within the WTO, where Ukraine takes part. Non-discrimination policy and open markets as a commitment within the organization does not mean that the state is in danger of expansion of more developed economies. The fact that quite often in the scientific community there is a speculative discussion about the inexpediency of Ukraine's participation in the WTO because of the impressionability of its economy and the lack of protecting means their own interests that would not disagree with WTO law. However, the very essence of this organization is just for stimulation economic growth of country through intensification of economic relations at the global or regional level, and therefore the principle of adequacy of the protecting means of themselves interests fully meets the standards and norms of behavior of members.

The methods of implementation of this principle as to economic security define also in p. 1, Art. 389 of the Economic Code of Ukraine which notes that the state has the responsibility to implement the protection of legitimate interests and rights of subjects who engage in external economic activities in Ukraine and abroad [6]. As aptly remarked V.K. Mamutov specified protection the state carries out in accordance with international law and if subjects who engage in external economic activities have needs in ensure given protection they should contact the diplomatic or consular offices, government which are protect abroad the state's interests [7]. In p. 2 art. 389 Commercial Code of Ukraine [6] noted also that in answer to the unfriendly and/or discriminatory actions from the other countries, economic groupings and customs unions, which are limited to the legitimate interests and rights of subjects of external economic activities of Ukraine, the state do take the necessary measures. The reaction of the state in this case is that in getting information about limiting realization of the legitimate interests and rights of these subjects of external economic activities of Ukraine, state regulation of external economic activities according to their competence provided by law on the use of adequate response to these activities. And if certain actions affect the injury or danger of causing the state and/or subjects of external economic activities, the negative results of these actions can be reimbursed [8].

In addition, the Law of Ukraine "About external economic activity" from 16.04.1991 № 959-XII provided that responses to the unfriendly and/or discriminatory actions of other countries, economic groupings and customs unions include [№ 7481]:

- using of a total ban (complete embargo) on trade;
- using partial bans (partial embargo) on trade;
- deprivation of MFN or preferential special regimes;
- introduction of special duties'
- introduce licensing regime external economic operations;
- installation quotas;
- other measures provided by international contracts and laws of Ukraine.

However, it should be noted that approaches to the implementation of the principle of adequacy in the legislation of Ukraine the most thoroughly defined only in relation to software component of economic security as the external economic security.

The principle of good faith fulfillment of international obligations that undertaken by the state about ensuring economic security presupposes respect of the state to international obligations in the economic sphere. It is quite understandable, because if the government will not follow existing international obligations, it means there is no way to implement these obligations. This principle has a clear consolidation of Section X of the Final Act of the Conference about Security and Cooperation in Europe from the 1st of August, 1975. This document notes that the Member States they will implement in good faith the obligations under international law, as those obligations are based on universally recognized norms and principles of international law and obligations that based on rele-



vant international agreements or other agreements participants of which they are [9]. It should also be noted that the said principle is enshrined in part 1, art 15 of the Law of Ukraine “About international contracts” from 29.06.2004 № umber 1906-IV. This law in particular provides that Ukraine adheres faithfully of international contracts participants of which it is and carries out its obligations as to norms of the international law [10]. Another important principle of ensuring the economic security of the state is the principle of clear divisions of authority and coordinated interaction of public authorities in the implementation of processes of national security, which finds its consolidation in the Commercial Code of Ukraine [6], other Laws, that regulate the provision of all basic kinds of economic security and its components, namely in the Law of Ukraine “About external economic activity” from 16.04.1991 № 959-XII [8], in the Law of Ukraine “About banks and bank activity”, [11], in the Law of Ukraine “About insurance”, [12], in the Budget Code of Ukraine [13], etc.

Thereby, there analyzed principles of economic security as outgoing principles of state policy in the field of national security, in our opinion only determine the scope of the existing state-management tools in this sphere. Regarding the content of the particular mechanisms and ways to achieve economic security, there should be discharged main place for instruction, and in particular the methodological tools of economic law, because it means economic and legal regulation and ensured stable development of economic relations.

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