

## ON THE QUESTION OF THE LEGAL ASPECT OF THE STAY OF UNITS OF THE ARMED FORCES OF ANOTHER STATE ON THE TERRITORY OF UKRAINE

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**Abstract:** The article proposes the results of a study of the problem of legislative regulation of the presence of foreign state military formations on the territory of Ukraine as a factor that can have a significant impact on the state of national security. The issues of legal grounds for making a decision on granting a permit for such stay, the procedure for admission of units of armed forces of other states to the territory of Ukraine, conditions of stay in Ukraine for units of other states armed forces, the procedure for monitoring their activities during stay in Ukraine are considered. The analysis of separate legislative norms regulating the issues of foreign military presence on the territory of Ukraine is carried out, and recommendations on the measures to be taken to eliminate the identified shortcomings in the formation and implementation of state policy in this area are formulated.

**Keywords:** Armed forces, Constitution of Ukraine, Foreign military bases, Independence, Legal regulation, Multinational exercises, Sovereignty, Territorial integrity.

### 1 Introduction

Sovereignty and independence of the state, enshrined in Article 1 of the Constitution of Ukraine, have always occupied and will occupy a prominent place among the fundamental principles of the state system of Ukraine. At the same time, the legal essence and content of sovereignty, as a constitutive feature of any civilized state, provide undisputed supremacy, completeness, integrity, inalienability and independence of power within the state border, as well as equality and independence of the state in relations with other actors of international legal relations [12].

In parts one and three of Article 2 of the Constitution of Ukraine, it is written that the sovereignty of Ukraine extends to its entire territory, which within the existing border is integral and inviolable. According to the first part of Article 17 of the Basic Law of Ukraine, the protection of the sovereignty and territorial integrity of Ukraine is the most important function of the state, as well as the affair of the entire Ukrainian people. In view of this, part seven of this article stipulates among the guarantees of sovereignty that the location of foreign military bases on the territory of Ukraine is not allowed.

### 2 Materials and Methods

The theoretical basis of the work consisted of the works of domestic and foreign scientists who studied the problems of military bases on the territory of foreign countries, including V. Antipenko, O. Babikov, S. Bilotsky, M. Buromensky, L. Volova, I. Gorodysky, V. Denisov, A. Dmitriev, O. Zadorozhniy, N. Zelinska, B. Klymenko, B. Koretsky, M. Lazarev, V. Lysyk, O. Merezko, Y. Nogovitsyna, A. Prilipko, K. Savchuk, V. Skibitsky, V. Steshenko, B. Tarasyuk, L. Chekalenko, V. Chornovil, and others [2, 4, 5, 6, 8, 9].

However, as the events that led to the illegal annexation of Crimea by the Russian Federation in 2014 have shown, these problems remain inexhaustible and require further scientific research.

The purpose of this publication is to unveiling the results of a study on the legal aspects of the presence of units of the armed forces of another state on the territory of Ukraine.

### 3 Results

The issue of the stay of foreign military bases on the territory of Ukraine is referred to by the domestic legislator as those that are regulated exclusively by the Constitution and laws of Ukraine.

In addition, it seems extremely important that the above constitutional provisions of the third part of Article 8 of the Basic Law of Ukraine are referred to the norms of direct action, which means an imperative prohibition on the location of foreign military bases in Ukraine.

However, the norms of the national legislation of Ukraine allow temporary stay of units of the armed forces of other states on the territory of Ukraine. At the same time, according to paragraph 2 of the second part of Article 92 of the Constitution of Ukraine, the admission and stay of units of the armed forces of foreign states on the territory of Ukraine is established only by the laws of Ukraine. Therefore, the approval of such a decision by paragraph 23 of Article 85 of the Constitution of Ukraine is referred to the exclusive powers of the Verkhovna Rada of Ukraine [7].

The Law of Ukraine "On the Procedure for Admission and Conditions of Stay of Units of Armed Forces of Other States on the Territory of Ukraine" is basic in the normative and legal regulation of this issue [2]. This Law, in particular, establishes the following:

- The procedure for admission of units of the armed forces of other states to the territory of Ukraine;
- Conditions of staying in Ukraine for units of the armed forces of other states;
- The procedure for exercising control over their activities during their stay on the territory of Ukraine.

Article 1 of the Law of Ukraine "On the Procedure for Admission and Conditions of Stay of Units of Armed Forces of Other States on the Territory of Ukraine" states that a unit of armed forces of another state is sent to Ukraine for a specific purpose specified by an international treaty of Ukraine.

According to Article 3 of this Law, the purpose of units of the armed forces of other states on the territory of Ukraine may be as follows:

- Participation in joint military exercises with other units of the Armed Forces of Ukraine and other military formations formed in accordance with the laws of Ukraine and other measures to improve combat training, exchange of experience under agreements (treaties) on international military cooperation, including training of joint military units created within the framework of military cooperation under international agreements of Ukraine;
- Transit movement of units of the armed forces of other states through the territory of Ukraine. In this case, the terms of movement of these units through the territory of Ukraine may not exceed 10 days, unless otherwise provided by an international agreement of Ukraine;
- Providing Ukraine, at its request, with military assistance in repelling (stopping, termination) of armed aggression by a third country (third countries);
- Providing Ukraine, at its request, with assistance in eliminating the consequences of emergencies caused by natural and man-made consequences;
- Servicing of military units temporarily stationed on the territory of Ukraine in accordance with international agreements of Ukraine;
- Providing Ukraine, at its request, with assistance in the form of an international peace and security operation on its territory based on a UN and/or EU decision.

Thus, the Law of Ukraine “On the Procedure for Admission and Conditions of Stay of Units of Other States Armed Forces the Territory of Ukraine” connects the admission to the territory of Ukraine of units of armed forces of other, i.e., foreign, states, with their implementation of a number of temporary measures on Ukrainian territory. At the same time, part one of Article 5 of this Law establishes a list of necessary conditions to be met by an international agreement of Ukraine on the procedure for admission and conditions of stay on the territory of Ukraine of units of the armed forces of other states.

According to the Law, the conditions of stay of units of the armed forces of other states on the territory of Ukraine are as follows:

- Temporality;
- Compliance of such stay with the national interests of Ukraine;
- Absence of obstructing the development of Ukraine's relations with third countries and the strengthening of international collective security due to this state;
- Observance of the laws of Ukraine by units of the armed forces of other states, persons of military and civilian personnel who are members of them, as well as members of their families, refraining from any political activity in Ukraine, as well as from other activities incompatible with its national interests;
- Non-use of units of the armed forces of other states contrary to the military-political and other interests of Ukraine, the requirements of the UN Charter on actions to maintain peace and security, and other norms of international law.

The correct and uniform interpretation of these legislative requirements, as well as their exact practical application seem to be extremely important for creating appropriate conditions for ensuring the national security of Ukraine. Therefore, the decision on admission of other states armed forces to the territory of Ukraine should be made only in compliance with all the conditions specified in part one of Article 5 of the Law of Ukraine “On admission and conditions of stay of units of other states armed forces in the territory of Ukraine”. In view of this, it seems expedient to conduct an analysis of the implementation in practice of the conditions of stay of units of other states armed forces determined by the legislation of Ukraine.

1. The temporary nature of staying of units of the armed forces of other states on the territory of Ukraine means a clear definition and limited time to achieve the goal of such a stay.

It should be noted that the legislation of Ukraine does not contain a definition of “temporary”, which creates significant problems in the application of the rules on the presence on the territory of Ukraine of units of the armed forces of other states. The authors of the Academic Explanatory Dictionary of the Ukrainian Language suggest to understand by temporary the one that lasts, exists, or acts for some time; opposite to constant [2]

This definition seems too concise and brief, but even in such a truncated form, it allows distinguishing the defining feature of the category of “temporary”. As well as permanent, temporary lasts in time. However, this time is limited.

In our opinion, the restriction of the time spent on the territory of Ukraine by units of the armed forces of other states is targeted. Such a restriction should be aimed at ensuring national security, namely state and territorial unity, the integrity of the country, the stability of its political regime and state system.

In addition, the Law of Ukraine “On the Procedure for Admission and Conditions of Stay of Units of Other States Armed Forces on the Territory of Ukraine” links the admission to the territory of Ukraine of units of armed forces of other, i.e., foreign, states with the implementation of a number of temporary measures on Ukrainian territory.

The Law of Ukraine “On Approval of the Decision of the President of Ukraine on Admission of Units of Other States Armed Forces to Ukraine in 2017 for Participation in Multinational Exercise” seems to be an example of compliance with the condition of temporary stay of units of armed forces of other states on the territory of Ukraine.

Having adopted this Law, the Parliament allowed the holding of multinational exercises with the participation of units of the Armed Forces of Ukraine on the territory of Ukraine and their participation in multinational exercises outside Ukraine for 2017. This document also defines the procedure for admission of units of the armed forces of other states to the territory of Ukraine that year to participate in such exercises.

According to the approved plan, in January-December 2017, up to 3,000 troops with armaments and military equipment, up to 6 aircraft and helicopters of the United States, other NATO member states and member states of the Partnership for Peace were admitted for up to 365 days were allowed to enter the territory of Ukraine to participate in multinational exercises such as the Ukrainian-American exercises “Sea Breeze-2017” and “Rapid Trident-2017”, with the involvement of other parties in the framework of military cooperation [10].

It should be added that the holding of multinational military exercises was planned to support at the appropriate level the defense capabilities of the Ukrainian state, the combat capability of the Armed Forces of Ukraine, and other military formations. Such exercises are conducted taking into account the obligations of Ukraine in accordance with international agreements in the military sphere.

The Verkhovna Rada of Ukraine also supported the proposal of the President of Ukraine to admit units of other states to the territory of Ukraine to participate in multinational exercises to be held in 2018.

Units of the Armed Forces of Ukraine and other military formations of Ukraine will be involved in six multinational exercises. It is planned to involve more than 14 thousand servicemen of Ukraine in these exercises. About 8,000 foreign participants are expected to be involved from our partners.

According to the plan for military exercises this year, the parliament approved the admission of units of the US armed forces and other NATO member states in the framework of military cooperation.

According to the plan, up to 3,000 servicemen with weapons and military equipment, up to 6 planes and helicopters for up to 365 days in January-December 2018 will be admitted as part of a multinational training of armed forces units.

Also the admission of units of NATO member states and member states of the “Partnership for Peace” in the number of up to 2,000 servicemen with weapons and military equipment, up to 20 aircraft and helicopters is approved for up to 16 days in June-November 2018 under the Ukrainian-American training “Rapid Trident – 2018”.

In addition, the Rada approved the admission of other military forces to participate in the Ukrainian-American exercises “Sea Breeze – 2018” for up to 25 days in June-October 2018. Also, foreign soldiers are allowed to participate in the exercises “Light Avalanche – 2018”, “Clear Sky – 2018”; Ukrainian-Romanian exercise “Riverian – 2018” [11].

#### 4 Discussion

Thus, all of the above gives grounds to suggest that the temporary stay of units of the armed forces of other states on the territory of Ukraine should be understood as clearly defined and limited in time staying of units of the armed forces of other states on the territory of Ukraine. At the same time, the restriction of the stay on the territory of Ukraine of units of the armed forces of other states should not contradict other

obligations of the state, adopted in accordance with international law. Otherwise, the measures taken may be ineffective and violate international law.

2. Another condition for the stay on the territory of Ukraine of units of the armed forces of other states is the compliance of the stay on the territory of Ukraine of units of the armed forces of other states to the national interests of Ukraine. This requirement seems to be insufficiently formulated. This conclusion can be reached on the basis of a careful analysis of the legislation of Ukraine and subsequent judgments.

Article 1 of the Law of Ukraine "On the Fundamentals of National Security of Ukraine" defines national interests as vital material, intellectual, and spiritual values of the Ukrainian people as the bearer of sovereignty and the only source of power in Ukraine, determining the needs of society and the state and its progressive development.

As can be seen, the legislator attributed to the national interests the vital values of the Ukrainian people of a material and intangible nature. It is, obviously, first of all, about universal, social, and group values.

Universal values include values that take precedence over all others, because they are the basis of human existence and are perceived as axiomatic. Among these, there are life, freedom, dignity, justice, and more.

Group values reflect the mood of the collective. They are common to a group of people within certain organizational entities.

Social values are values that are preventive for a particular society. Further in the definition, it is about the defining needs of society and the state, the implementation of which guarantees the state sovereignty of Ukraine and its progressive development.

Thus, the international agreement of Ukraine on the procedure for admission and conditions of stay on the territory of Ukraine of units of the armed forces of other states must have provisions that indicate specific important material, intellectual, and spiritual values of the Ukrainian people, as well as defining needs of society and the state, implementation of which guarantees sovereignty of Ukraine and its progressive development.

However, the lack of a legally fixed definition of "vital values of the Ukrainian people (material, intellectual and spiritual)", "defining needs of society and the state" created the preconditions for their arbitrary and unequal interpretation, which eventually led to the annexation of Crimea by the Russian Federation in 2014 and subsequent occupation of Donetsk and Luhansk regions, which continues to this day.

One of the decisive stages in the development of the Russian Black Sea Fleet and the subsequent annexation of Crimea seems to have been the signing on April 1, 2010 in Kharkiv of the Agreement between Ukraine and the Russian Federation on the Russian Black Sea Fleet's stay in Ukraine in exchange for a reduction of gas prices [13]. According to Article 1 of this agreement, the stay of the Russian Black Sea Fleet in Sevastopol was extended from 2017 to 2042 with an automatic extension for 5 years, if either party does not object, and the rent fee is set [5]. The Parties also extended the Agreement between Ukraine and the Russian Federation on the status and conditions of the Russian Black Sea Fleet on the territory of Ukraine of May 28, 1997, the Agreement between Ukraine and the Russian Federation on the parameters of the Black Sea Fleet of May 28, 1997, and the Agreement between the Government of Ukraine and the Government of the Russian Federation on mutual settlements related to the division of the Black Sea Fleet and the stay of the Black Sea Fleet in the territory of Ukraine from May 28, 1997 for twenty-five years from May 28, 2017, followed by automatic extension for subsequent five-year periods, if neither Party shall notify the other Party in writing of its termination no later than one year before the expiry date [13].

Interpreting the concept of "determining needs of society and the state" at his own discretion, at that time the Chairman of The Verkhovna Rada of Ukraine V. Lytvyn noted that Ukraine receives as rent for the stay of the Black Sea Fleet of the Russian Federation on its territory only \$97 million 700 thousand in year. According to him, this amount is needed to repay the gas debt to the Russian Federation, which at that time amounted to \$2 billion 300 million. After signing and ratifying the agreement to extend the Black Sea Fleet's stay in Ukraine, it was to receive \$35-40 billion for ten years [3].

As time has shown, the signing of the Kharkiv agreements in April 2010 was a huge mistake of Ukraine in diplomatic relations with the Russian Federation, which became possible due to brutal violations of constitutional norms and legislation by the then leadership and, in essence, is a betrayal of geopolitical interests of the country "for the sake of a "ghostly concession in the price of Russian gas".

Thus, obtaining temporary material benefits over time cost Ukraine the Crimean peninsula. After all, namely the Black Sea Fleet of the Russian Federation played a significant role in the annexation of part of the territory of Ukraine.

3. Absence of hinder the development of Ukraine's relations with third states and the strengthening of international collective security due to the presence of units of the armed forces of other states on the territory of Ukraine.

This condition of the presence of units of the armed forces of other states on the territory of Ukraine corresponds to the principles of collective security of different states, which, in turn, is based on such basic principles as the following:

- Indivisibility of security, when aggression against one State Party is considered aggression against other States Parties;
- All States Parties are equally responsible for maintaining security;
- Non-interference in internal affairs and taking into account the interests of all participants in the collective security system;
- Member states guarantee collective defense;
- Decisions on fundamental issues of collective security are made on the basis of consensus.

It is obvious in this sense that Russia's military presence on Ukrainian territory and Ukraine's membership in NATO are incompatible, as such a presence is contrary to the principle of collective defense of Allies. Thus, the process of Ukraine's membership in NATO requires the development of a number of specific mechanisms that would ensure the withdrawal of the Russian Black Sea Fleet from the territory of Ukraine, which includes the Autonomous Republic of Crimea, now occupied territory. Such mechanisms should be implemented both at the international level and at the level of bilateral interstate relations.

4. Observance of the laws of Ukraine by units of the armed forces of other states, persons of military and civilian personnel who are part of them, as well as members of their families, refraining from any political activity in Ukraine, as well as from other activities incompatible with its national interests.

International practice shows that the vast majority of agreements on foreign military presence are aimed at ensuring joint defense measures. In this case, a state that provides its territory for foreign troops has the right to extend exclusive jurisdiction to servicemen and civilian personnel of these troops in respect of crimes related to the security of this country. At the same time, a country that sends its troops to another state undertakes to protect it from aggression by third countries, as well as to adhere to the following principles:

- Respect for the sovereignty, independence, territorial integrity and national interests of the country in which these troops will be stationed;

- Compliance with the national legislation of the state in whose territory it deploys its troops;
- Non-interference in internal affairs and refraining from political activity in a country that provides its territory for the deployment of foreign troops.

In addition, military and civilian personnel are not entitled to claim citizenship and permanent residence in the country in which this contingent of troops is located.

The state providing its territory shall exercise control over the mass distribution of printed publications and other mass media belonging to a foreign military contingent, as well as over its commercial and economic activities.

It should be noted that non-compliance with the agreements by the Russian military has become commonplace since the beginning of their stay in Ukraine. An example of this is the recorded repeated violations of the order of movement of troops of the Black Sea Fleet of the Russian Federation on the territory of Ukraine. Thus, in 2005, an unauthorized landing of personnel and military equipment was made from the landing ship of the Black Sea Fleet of the Russian Federation "M. Filchenkov" in the area of Cape Opuk.

Another clear example of non-compliance with the agreements on the order of stay of the Black Sea Fleet in Ukraine is the illegal seizure of property, such as navigation and hydrographic facilities lighthouses in the area from Cape Tarkhankut to Cape Ayu-dag while the court ruled on them belonging to Ukraine.

During all previous years, numerous other violations of the legislation of Ukraine and the concluded agreements from the side of the military formations of the Black Sea Fleet of the Russian Federation were recorded. In particular, it concerns the obstruction of the proper legal registration of leased land plots and infrastructure facilities, as well as the exercise of control over their condition by the authorized state bodies of Ukraine; non-payment of taxes by economic entities of the Black Sea Fleet of the Russian Federation; creating threats to the environmental security of Ukraine, conducting activities not related to the performance of the main functions of the fleet (including conducting information and advocacy work among the local population), etc.

5. The most glaring in terms of socially dangerous consequences were the annexation of Crimea, in which the Russian Black Sea Fleet played a key role, and the subsequent occupation of certain areas of Donetsk and Luhansk regions. This violated another important condition for the presence of units of the armed forces of other states on the territory of Ukraine, defined by the legislation of Ukraine, namely, non-use of units of the armed forces of other states contrary to Ukraine's military-political and other interests, as well as norms of international law.

It is considered necessary to pay special attention to the fact that the measures taken by the representatives of the then authorities of Ukraine did not have a significant impact on the situation. This increased offenders' sense of impunity and permissiveness, and encouraged even more defiant behavior. Thus, the former Chairman of the Verkhovna Rada of Ukraine V. Lytvyn, based on his own considerations, came to the conclusion that there are no foreign military bases in Ukraine at all. He motivated this conclusion by the fact that Article 17 of the Constitution of Ukraine prohibits the deployment of foreign military bases on the territory of our state. Instead, the current paragraph 14 of the Transitional Provisions of the Basic Law of Ukraine allowed the temporary stay of foreign troops on military bases of Ukraine on the basis of relevant agreements. Therefore, according to the ex-speaker of the Verkhovna Rada of Ukraine, it is necessary to distinguish between the terms "location of foreign military bases" and "temporary stay of foreign troops on Ukrainian military bases". In his opinion, this is the same as if, in accordance with national legislation, we cannot allow a foreigner to build a house in Ukraine, but we can lease a house to him on mutually beneficial terms.

Commenting on the Kharkiv agreements, Mr. V. Lytvyn was also extremely critical of the position of those politicians who considered the signing of these agreements to be ignoring and betraying the national interests of Ukraine. At the same time, he categorically ruled out the existence of a military threat to Ukraine due to the extension of the Russian Black Sea Fleet's base in Ukraine [3].

The position of the judiciary of Ukraine on the issue of the presence of the Black Sea Fleet of the Russian Federation on the territory of Ukraine seems no less impressive. It is, first of all, about the Constitutional Court of Ukraine, which should have said its weighty word in this case, but did everything possible to evade this mission.

Thus, on December 26, 2000, the Constitutional Court of Ukraine rendered Resolution №65-u/2000 in case №2-66/2000 refusing to open constitutional proceedings in the case on the constitutional petition of 50 deputies of Ukraine on the constitutionality of the Law of Ukraine "On ratification of the Agreement between Ukraine and the Russian Federation on the status and conditions of the Black Sea Fleet of the Russian Federation on the territory of Ukraine, the Agreement between Ukraine and the Russian Federation on the parameters of the Black Sea Fleet and the Agreement between the Government of Ukraine and the Government of the Russian Federation Of the Black Sea Fleet and the stay of the Black Sea Fleet of the Russian Federation on the territory of Ukraine".

This decision of the Constitutional Court of Ukraine is motivated by the fact that the authors of the constitutional petition substantiate the unconstitutionality of the Law on Ratification of Agreements on the Black Sea Fleet by referring to the fact that a number of provisions of these Agreements do not comply with the Constitution of Ukraine (Articles 8, 9, 13, part seven of Article 17, Articles 18, 58, item 14 of the Transitional Provisions of the Constitution of Ukraine). However, the analysis of the case file in this part led to the conclusion that the issues raised in the constitutional petition do not concern the Law on Ratification itself, but the text of international treaties ratified by it, i.e., issues to which other entities have the right to apply (the first part of Article 151 of the Constitution of Ukraine).

On April 20, 2010, the Constitutional Court of Ukraine issued Resolution No.27-u/2010 in case No.2-27/2010 refusing to open constitutional proceedings in the case on the constitutional petition of 50 people's deputies of Ukraine regarding the official interpretation of the provisions of paragraph 14 of Section XV "Transitional Provisions" Of the Constitution of Ukraine in systematic connection with part seven of Article 17 of the Basic Law of Ukraine.

The subject of the right to a constitutional petition applied to the Constitutional Court of Ukraine with a request to give an official interpretation of the provisions of paragraph 14 of Section XV "Transitional Provisions" of the Constitution of Ukraine in systematic connection with part seven of Article 17 of the Basic Law of Ukraine. The authors of the petition people's deputies of Ukraine asked the Constitutional Court of Ukraine to answer the question "whether the provisions of paragraph seven of Article 17 of the Basic Law of the state apply to the provisions of paragraph 14 of section XV "Transitional Provisions" of the Constitution of Ukraine, according to which temporary stay of foreign military formations is possible on lease in the manner prescribed by international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine, temporarily, i.e., unconditionally one term defined in the international treaty of Ukraine concluded on the basis of this paragraph and cannot be extended in time".

According to the deputies of Ukraine who appealed to the Constitutional Court of Ukraine, the provisions of Section XV "Transitional Provisions" of the Constitution of Ukraine apply "to a specific case, i.e., once", and after the expiration of Section XV "Transitional Provisions" of the Constitution of Ukraine should be applied only those provisions of the Basic Law of Ukraine which are contained in its main part and have a basic character" [12].

The Constitutional Court of Ukraine ruled that the people's deputies of Ukraine did not apply for an official interpretation of the provisions of the Constitution of Ukraine, but for the practical application of the Basic Law of Ukraine in the future, which is in fact a law enforcement consultation. According to the judges of the Constitutional Court of Ukraine, the official interpretation and application of legal norms are different types of legal activity. Providing consultations or explanations on the application of legal norms to a specific case, search and analysis of such norms for the purpose of their application is a law-enforcement activity and does not belong to the powers of the Constitutional Court of Ukraine.

In view of this, the Constitutional Court of Ukraine refused to initiate proceedings because the issues raised in the constitutional petition are not within the jurisdiction of the Constitutional Court of Ukraine, which is grounds for refusing to initiate constitutional proceedings in accordance with Article 45 §3 of the Law of Ukraine "On the Constitutional Court of Ukraine".

On February 10, 2010, President Yushchenko addressed the Constitutional Court of Ukraine with a constitutional petition requesting a formal interpretation of the provisions of paragraph 14 of Section XV "Transitional Provisions" of the Constitution of Ukraine in systematic connection with part seven of Article 17 of the Basic Law of Ukraine. This raised the question: "whether in terms of the provisions of part seven of Article 17 of the Basic Law of the state the provision of paragraph 14 of section XV "Transitional Provisions" of the Constitution of Ukraine applies, according to which the use of existing military bases in Ukraine for temporary stay of foreign troops is possible on lease, defined by international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine, temporarily, i.e., unconditionally one term, which is defined in the international treaty of Ukraine concluded on the basis of this paragraph, and cannot be extended in time".

The submission emphasized that the Basic Law of Ukraine provides for the possibility of exclusively temporary use of existing military bases on the territory of Ukraine for the stay of foreign military formations (paragraph 14 of Section XV "Transitional Provisions").

On April 20, 2010, the Constitutional Court of Ukraine issued Resolution No.26-u/2010 in case №2-26/2010 refusing to open constitutional proceedings in the case on the constitutional petition of the President of Ukraine on the official interpretation of the provisions of paragraph 14 of Section XV "Transitional Provisions" of the Constitution of Ukraine in systematic connection with part seven of Article 17 of the Basic Law of Ukraine.

The court concluded that in fact the head of state had raised the issue not of an official interpretation of the provisions of the Constitution of Ukraine, but of their application in the future, i.e., the provision of advice on law enforcement. According to the judges of the Constitutional Court of Ukraine, providing consultations or clarifications on the application of legal norms to a particular case, search and analysis of such norms for their application in a particular case is law enforcement activity and does not belong to the powers of the Constitutional Court of Ukraine of March 31, 2010 No. 15-u/2010).

Thus, the Constitutional Court of Ukraine has never started considering the case in its essence, but limited itself to issuing a ruling on the refusal on formal grounds to open constitutional proceedings in the cases on the said constitutional submissions.

## 5 Conclusion

In view of all the above, we consider it appropriate to draw the following conclusions.

1. Foreign military bases have always been and remain one of the most effective levers of influence on the foreign policy relations of states. Deployment of military bases is carried out,

primarily in politically and economically unstable regions, in order to stabilize the situation in troubled territories, to achieve peace and law and order in international relations. However, the main condition for achieving a positive result from a foreign military presence is strict observation of international law and strict compliance with obligations under relevant international treaties.

Violation of agreements on the location of foreign military bases and their conditions of stay, as seen in the example of Ukraine, can lead to armed conflicts that affect peace and stability in a particular region and the world as a whole.

Thus, although military bases are capable of performing defense and security functions, they can also act as a factor of negative impact on the state of national security, as well as a tool for illegal expansion of geopolitical space for aggressor countries.

2. The location of foreign military formations on the territory of Ukraine is an extremely important factor influencing the state of national security. Throughout the process of establishing Ukraine as an independent state, the issue of the Black Sea Fleet of the Russian Federation was problematic for the development and formation of interstate relations. This issue has gone through a certain evolutionary path from the division between Ukraine and the Russian Federation of the Black Sea Fleet of the former USSR to determining the conditions of temporary stay of the Black Sea Fleet of the Russian Federation on the territory of Ukraine.

This issue became especially acute when the Russian Federation linked the signing and ratification of the basic Treaty of Friendship, Cooperation, and Partnership between Ukraine and the Russian Federation of May 31, 1997 with the conclusion and ratification of agreements on the division of the USSR Black Sea Fleet.

The issue of compliance with the legislation of Ukraine and the concluded bilateral agreements by the military formations of the Russian Black Sea Fleet has always been problematic. The influence of the Ukrainian authorities on this situation was insufficient, which increased the offenders' sense of impunity and permissiveness.

3. The stay of foreign military bases on the territory of Ukraine is regulated exclusively by the Constitution and laws of Ukraine. In accordance with part seven of Article 17 of the Basic Law of Ukraine, the location of foreign military bases is not allowed on the territory of Ukraine. However, paragraph 2 of the second part of Article 92 of the Constitution of Ukraine provides that the admission and stay of units of the armed forces of foreign states on the territory of Ukraine is established only by the laws of Ukraine.

The Law of Ukraine of February 22, 2000 "On the Procedure for Admission and Conditions of Stay of Units of Armed Forces of Other States on the Territory of Ukraine" establishes the procedure for admission of units of armed forces of other states to the territory of Ukraine, conditions of stay of units of armed forces of other states in Ukraine, as well as carrying out control of their activities.

The results of a study conducted taking into account the Russian aggression against Ukraine, in the implementation of which the location of the Russian Black Sea Fleet in our country played an important role, give grounds to conclude that these laws need significant rethinking and proper refinement.

4. The imperfection of legislative provisions and norms of international treaties, which regulate certain issues of foreign military presence on the territory of Ukraine, together with arbitrary interpretation of relevant constitutional and legal provisions had a very negative impact on Ukraine's national security, which in turn led to significant negative consequences Ukraine's loss of part of the territory (the Crimean peninsula and the ongoing armed conflict in the east).

The development of Ukrainian-Russian relations was negatively affected by the lack of proper political will of the previous leadership of our state and the openly wait-and-see attitude of the judiciary, in particular the Constitutional Court of Ukraine. Russia's military presence on Ukrainian territory and Ukraine's membership in NATO are incompatible, as such a presence is contrary to the principle of collective defense of Allies. Thus, the process of Ukraine's membership in NATO requires the development of a number of specific mechanisms that would ensure the withdrawal of the Russian Black Sea Fleet from the Autonomous Republic of Crimea, which is currently the occupied territory of Ukraine. Such mechanisms should be implemented both at the international level and at the level of bilateral interstate relations.

5. In view of all the above, the President of Ukraine considers it expedient to apply to the Constitutional Court of Ukraine with a constitutional petition in accordance with part two of Article 147, paragraph 2 of part one of Article 150 of the Constitution of Ukraine, Articles 13, 39, 41 and 93 of the Law of Ukraine "On the Constitutional Court of Ukraine regarding the official interpretation of the norm of paragraph 14 of Section XV "Transitional Provisions" of the Constitution of Ukraine in its systemic relationship with part seven of Article 17 of the Basic Law of Ukraine.

The basis for such a constitutional submission will be the need to clarify and officially interpret the norm of paragraph 14 of Section XV "Transitional Provisions" of the Constitution of Ukraine in its systematic relationship with part seven of Article 17 of the Basic Law of Ukraine, which will create conditions for their uniform further application.

6. Given the need to improve the legislation of Ukraine in the context of significant changes in the security environment, the President of Ukraine should consider preparing and submitting to the Verkhovna Rada of Ukraine a new version of the Law of Ukraine "On the procedure for admission and conditions of units of armed forces of other states".

In order to develop the provisions of the relevant draft law, it is expedient to create a working group, which should include leading experts in the field of national security, constitutional and international law.

#### Literature:

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**Primary Paper Section: A**

**Secondary Paper Section: AD, AG**