

ON THE ECONOMIC SUPPORT OF THE STATE'S DEFENCE CAPABILITY: PROBLEM STATEMENT

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Abstract. The state's defence capability is achieved through a number of different measures. Among them are economic measures. Economic measures are aimed at building economic potential in the defence sector. This potential does not exist separately from the economy of the state as a whole. It is determined by the state of the national economy. The growth and development of the national economy will make it possible to accumulate the necessary economic potential in the defence sector. The *purpose of the article* is to outline some ways to ensure the economic security of the state's defence capability. *Methodology.* In the course of preparing this work, the provisions of the Constitution of Ukraine, the Tax Code of Ukraine, the Criminal Code of Ukraine, other legislative acts of Ukraine, draft laws of Ukraine were studied, the publication analysed explanatory notes to the draft laws of Ukraine and conclusions of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine on the draft laws. Legislative acts and other documents were analysed using the dogmatic method. Changes in legislative approaches to which income should not be subject to military tax were studied using the historical method. The economic support of the state's defence capability was considered as a system of measures taken by the state. And this system is a component of a higher level system, namely, the system of all measures taken by the state to ensure its defence capability. The study of these two systems was carried out using the systematic method. Taxation is one of the measures to ensure economic support for the state's defence capability. Ukraine introduced a military tax back in 2014. Over time, approaches to who and under what conditions should not pay this tax have changed. The logic behind these changes was that persons who participate in the defence of the homeland in a form other than financial should be exempt from paying the military fee for the duration of such participation. The decision to refuse to collect the military fee from some Ukrainian citizens is based on the principle of social justice. In this case, it means that some Ukrainian citizens fulfil their constitutional duty to defend the homeland twice. On the contrary, other Ukrainian citizens may not fulfil their duty to defend the homeland in any form. The defence of the homeland, independence and territorial integrity of Ukraine is the duty of all Ukrainian citizens. The fulfilment of this duty may consist not only in the armed defence of the homeland, but also in the economic support of Ukraine's defence capability. The state could provide an opportunity for Ukrainian citizens to participate in ensuring the defence capability of the state in an economic way, but there should be mechanisms to prevent abuse.

Key words: state defence capability, economic potential, military duty, payment of taxes, homeland defence, travelling abroad, martial law conditions.

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1. Introduction

Arguably, the first thing that is associated with the *defence capability* of a state is the effective operation of its Armed Forces and other military formations established in accordance with the law. Thus, it is the Armed Forces of Ukraine that are responsible for the defence of Ukraine, protection of its sovereignty, territorial integrity and inviolability (Constitution

of Ukraine, 1996: part two, Article 17). Therefore, it would be quite logical to link Ukraine's defence capability primarily to the ability of the Armed Forces of Ukraine to fulfil the above tasks, including the task of defending Ukraine. However, in reality, *defence capability* is a much broader concept than the *ability of the Armed Forces to perform their tasks*, including the defence of the state, in a quality manner.

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The Law of Ukraine "On Defence of Ukraine" defines the *defence of Ukraine* as "a system of political, economic, social, military, scientific, technical, informational, legal, organisational and other measures of the state to prepare for armed defence and its protection in the event of armed aggression or armed conflict" (The Law of Ukraine "On Defence of Ukraine", 1991: Article 1, paragraph 2). The implementation of state measures to prepare for armed defence is entrusted not only to the Armed Forces of Ukraine and other military formations formed in accordance with the laws of Ukraine. Thus, political, economic, social, etc. measures of the state to prepare for armed defence are carried out by *other subjects*. And these measures are *not implemented independently* (political measures separately from economic ones, the first and second ones separately from social ones, etc.), but as a *system of measures*. Taken together, these measures ensure the effective achievement of the result of protecting the state.

The state's measures to prepare for armed defence include economic ones. This is further emphasised in the definition of the *state's defence capability*. State defence capability is "the ability of the state to defend itself in the event of armed aggression or armed conflict. It consists of material and spiritual elements and is a combination of military, economic, social, moral and political potential in the field of defence and appropriate conditions for its implementation" (The Law of Ukraine "On Defence of Ukraine", 1991: Article 1, paragraph 5). Therefore, one of the components of the state's ability to defend itself in the event of armed aggression or armed conflict is the *economic potential in the defence sector and the appropriate conditions for its implementation*.

In the context of defence in the event of armed aggression or armed conflict, the state's economy will function differently than in peacetime. During the defence of the state in the event of armed aggression or armed conflict, the economic potential in the defence sector will be *realised*. At the same time, Ukraine's defence is based on the readiness and ability of the national economy to switch from peacetime to martial law, if necessary (The Law of Ukraine "On Defence of Ukraine", 1991: part one, Article 2). It is noteworthy that one of the components of the state's defence capability is, as noted, the economic potential in the *defence sector* and the appropriate conditions for its implementation. At the same time, Ukraine's defence is based on the readiness and ability of the *national economy* (*the national economy as a whole*) to switch from peacetime to martial law, if necessary.

Economic potential in the defence sector is probably a narrower concept than the potential of the national economy. On the other hand, it is no coincidence that Ukraine's defence is based on the

readiness and ability to switch from peacetime to martial law of the national economy *as a whole*, and not just one sector (or several sectors) of the national economy. This means that *the economic potential in the defence sector and the appropriate conditions for its realisation are determined by the state of the national economy as a whole*.

The purpose of the study is to outline some ways to ensure Ukraine's defence capability economically. To achieve this goal, the following objectives were set: to analyse the importance of tax revenues for ensuring the state's defence capability; to investigate how and why approaches to taxation of citizens' income by military fees have changed; to consider the possibility of involving a wider range of people in the economic support of the state's defence capability.

Methodology. The article analyses the relevant provisions of the Constitution of Ukraine, the Tax Code of Ukraine, the Criminal Code of Ukraine, the Law of Ukraine "On Defence of Ukraine", and certain other laws, as well as explanatory notes to draft laws of Ukraine and conclusions of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine on draft laws of Ukraine. The study of these documents was carried out using the *dogmatic method*. The formation of legislation on military duty was studied using the *historical method*. Using this method, the authors analyse how approaches to taxation of citizens' income by the military fee have changed and what the changes were related to. The economic support of the state's defence capability was considered as a system of economic measures taken by the state and aimed at ensuring its (the state's) defence capability. The economic measures were studied in connection with other measures necessary to ensure the defence capability of the state. For this purpose, a *systematic method* was used.

2. Importance of Tax Revenues, Payers of Military Tax

The *defence capability of the state* is achieved not only by preserving military property, ensuring the presence of servicemen at the place of service, conscription for military service during mobilisation, etc., but also, as noted above, by the economic potential in the defence sector and the appropriate conditions for its realisation. At the same time, the components of economic potential (in terms of ensuring the state's defence capability) can be understood broadly: from the existing capabilities for the production of military products, the developed scientific and technical base to, for example, the financial capabilities of the state, which are based on *tax revenues*.

Tax revenues form the basis that determines the state's ability to, inter alia, "provide funding for

measures to improve the state's defence capability". This circumstance was cited as decisive in the justification for the introduction of the military fee (The Explanatory Note to the Draft Law of Ukraine "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine" of July 30, 2014 (b): 3). However, later it was established that temporarily, for the period of the anti-terrorist operation, income in the form of financial support for law enforcement officers, military personnel and other persons for the period of their direct participation in the anti-terrorist operation is not subject to military duty. (The Law of Ukraine "On Amendments to the Tax Code of Ukraine on Peculiarities of Taxation of Military Remuneration of Servicemen and Other Persons Directly Participating in the Anti-Terrorist Operation", 2015). The explanatory note to the draft law stated that the material support of law enforcement officers, military personnel and other persons directly involved in the anti-terrorist operation "does not correspond to their invaluable contribution to achieving peace in the East of Ukraine", and "the mandatory payment of tax and military duty by such citizens significantly weakens the already insufficient financial situation of them and their families" (The Explanatory Note to the Draft Law of Ukraine "On Amendments to the Tax Code of Ukraine on Peculiarities of Taxation and Collection of Military Duty on Remuneration of Military Personnel and Other Persons Directly Participating in the Anti-Terrorist Operation", 2015: 1–2).

The exemption from military taxation of income in the form of financial support for law enforcement officers, military personnel and other persons for the period of their direct participation in the anti-terrorist operation was aimed at improving the financial situation of these persons and their families. On the one hand, such a refusal could lead to a decrease in budget revenues. Indeed, the opinion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine on the draft law under consideration emphasised: "The introduction of the legislative proposal may lead to a decrease in revenues to the state budget from the military fee." (The Conclusion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine on the Draft Law of Ukraine "On Amendments to the Tax Code of Ukraine on Peculiarities of Taxation and Collection of Military Duty on Salaries of Military Personnel and Other Persons Directly Participating in the Anti-Terrorist Operation", 2015: 1) On the other hand, the reduction of the tax burden on these individuals was intended to increase their real incomes. The increase in real income, in turn, would have been an additional (economic) incentive for law enforcement officers, military

personnel and others to perform their tasks to the best of their ability while directly participating in the anti-terrorist operation. Therefore, in the explanatory note, the forecast of socio-economic and other consequences of the adoption of the Law was formulated as follows: "The adoption of the draft law will encourage law enforcement officers, military personnel and other persons participating in the anti-terrorist operation in the East of Ukraine to properly perform the tasks assigned to them by the state and will improve the financial situation of these persons and their families." (The Conclusion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine on the Draft Law of Ukraine "On Amendments to the Tax Code of Ukraine on Peculiarities of Taxation and Collection of Military Duty on Salaries of Military Personnel and Other Persons Directly Participating in the Anti-Terrorist Operation", 2015: 3–4)

The Law of Ukraine "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine" (2014), which established the military duty, provided that the duty was to be established temporarily, until January 1, 2015. However, a few months later (at the end of 2014), the Law of Ukraine "On Amendments to the Tax Code of Ukraine and Certain Legislative Acts of Ukraine on Tax Reform" (2014) defined the period for which the military fee was established in a different way, namely: "until the decision of the Verkhovna Rada of Ukraine on the completion of the reform of the Armed Forces of Ukraine comes into force". This legislative decision meant that the state continued to need additional financial resources to ensure its defence capability. This was also stated in the Explanatory Note to the Draft Law of Ukraine "On Amendments to the Tax Code of Ukraine and Certain Laws of Ukraine on Tax Reform" (2014): "...in order to ensure the financing of measures to increase the defence capability of the state, it is planned to extend the military fee until the decision of the Verkhovna Rada of Ukraine on the completion of the reform of the Armed Forces of Ukraine comes into force and to expand the tax base to all income subject to personal income tax." (The Explanatory Note to the Draft Law of Ukraine "On Amendments to the Tax Code of Ukraine and Certain Laws of Ukraine on Tax Reform", 2014a: 5) The need for additional financial resources to ensure Ukraine's defence capability remains undoubtedly present.

In June 2022, the Law of Ukraine "On Amendments to the Tax Code of Ukraine on Peculiarities of Taxation of Military Pay of Servicemen and Other Persons Directly Participating in Military Operations under Martial Law" (2022) was adopted. This Law recognised the income in the form of financial support of military personnel and other persons

directly involved in hostilities under martial law as not subject to military duty. There are many similarities between this legislative decision and the 2015 legislative decision on the abolition of military taxation of income in the form of cash allowances for certain persons. The reasons for the decision in 2022 in the Explanatory Note to the Draft Law of Ukraine "On Amendments to the Tax Code of Ukraine on Peculiarities of Taxation of Military Pay of Servicemen and Other Persons Directly Participating in Military Operations under Martial Law" (2022) were defined almost in the same way as in 2015. However, in 2022, an argument that was not mentioned in 2015 was also cited as a justification: "...the above-mentioned citizens are payers of... the military fee... Although in essence, the military fee was introduced to provide for, among other things, those military personnel and other persons directly involved in hostilities, and their payment of the military fee is unfair." (The Explanatory Note to the Draft Law of Ukraine "On Amendments to the Tax Code of Ukraine on Peculiarities of Taxation of Military Pay of Servicemen and Other Persons Directly Participating in Military Operations under Martial Law", 2022: 1)

This provision of the Explanatory Note (2022) should apparently be understood to mean that some citizens (military personnel and other persons directly involved in hostilities) pay for the funds used to supply, in particular, themselves, and this is *unfair*. But this thesis could be expanded. Servicemen and other persons directly involved in hostilities fulfil their duty to defend Ukraine twice: by personally participating in hostilities and by paying the funds necessary for the implementation of measures for the defence of Ukraine. And it is precisely the double duty to defend Ukraine that can be perceived as an unfair treatment of servicemen and other persons directly involved in hostilities. The issues raised are not simple. One of the aspects of this problem is the *failure to observe the principle of justice* in conditions when some citizens of Ukraine fulfil their duty to defend Ukraine twice, while other citizens, for various reasons, do not actually fulfil this duty or fulfil it to a much lesser extent.

3. Additional Opportunities for Economic Support of Defence Capability

The principle of social justice is one of the principles underpinning the tax legislation of Ukraine, along with such principles as, inter alia, equality of all taxpayers before the law, prohibition of any form of tax discrimination and fiscal sufficiency (Article 4.1 of the Tax Code of Ukraine) (2010). The Tax Code of Ukraine defines social justice as "the establishment of taxes and fees in accordance

with the ability of taxpayers to pay". However, *social justice* can be considered not only as one of the principles underlying the tax legislation of Ukraine, but also as one of the principles on which the citizens of Ukraine should base their constitutional duty to protect Ukraine.

Defence of the homeland, independence and territorial integrity of Ukraine, and respect for its state symbols are the duties of Ukrainian citizens (Article 65(1) of the Constitution of Ukraine). The Constitution of Ukraine makes no exceptions for anyone: these duties are the duties of all Ukrainian citizens. This means that every citizen of Ukraine must fulfil the duty to defend the Motherland, independence and territorial integrity of Ukraine.

Article 65(2) of the Constitution of Ukraine states that citizens perform military service in accordance with the law. However, this does not mean that the defence of the homeland, independence and territorial integrity of Ukraine is entrusted only to those citizens of Ukraine who are required by law to perform military service (who are fit for military service and do not have grounds for exemption from conscription). Thus, the first version of the Law of Ukraine "On General Military Duty and Military Service" (1992) established the following: "The defence of the country against armed aggression is one of the most important functions of the state and is the business of the entire people of Ukraine. The defence of Ukraine is a constitutional duty of every citizen." (Article 1, paragraph 1)

If to assume that the defence of the homeland, independence and territorial integrity of Ukraine does not concern all citizens, but only some (those who may potentially perform military service), then one would have to admit that the duty to respect the state symbols of Ukraine does not apply to all citizens of Ukraine either. This is undoubtedly not the case.

The duty to defend the homeland, independence and territorial integrity of Ukraine cannot be equated with the armed defence of the homeland. And there are no grounds to assert that all citizens of Ukraine have to perform the duty of *armed* defence of the homeland. In fact, the Constitution of Ukraine defines the defence of the homeland as the duty of Ukrainian citizens, not the *armed* defence of the homeland. And the fulfilment of the duty to protect the homeland, independence and territorial integrity of Ukraine may include, in particular, the economic support of the state's defence capability. At the same time, the economic support of the state's defence capability provided by some citizens of Ukraine allows, among other things, to ensure that other citizens of Ukraine fulfil their duty to protect the homeland, independence and territorial integrity of Ukraine in the form of military service.

As mentioned above, the exemption from military taxation of the remuneration of a number of persons directly involved in hostilities under martial law is justified by the fact that these persons contribute to the defence capability of the state in a form other than financial. This decision puts military service by some people and the payment of the military fee by others on a par. This circumstance is important from the point of view that it raises the issue of participation of a wider range of persons in ensuring the defence capability of the state: persons who are not involved in the defence of the state and do not pay military fees, taxes, or otherwise participate in the economic life of the state.

A person may not pay the military fee for various reasons. Thus, there are no grounds to dismiss the facts of military fee *evasion*, i.e., the commission of offences. Nevertheless, from the point of view of *economic support* of the state's defence capability, no less important are situations when the military fee is not paid by a person who does not receive income (in particular, wages). The employee could lose his job because of the hostilities. As a result, there is no object of taxation by the military fee. Searching for a job under martial law is difficult, but it is not always possible for a person to go abroad to find a job. This refers to persons liable for military service who do not have grounds for exemption from military service during mobilisation. On the one hand, such a person may potentially be called up for military service during mobilisation, and therefore must be in Ukraine. On the other hand, for certain reasons, a person may not be called up for military service during mobilisation. Despite this, they cannot go abroad and find a job there.

Separate consideration should be given to situations where a person liable for military service evades conscription during mobilisation. Such evasion is an offence under Article 336 of the Criminal Code of Ukraine (2001). The reasons for evasion can be any (fear of death or serious injury, unwillingness to change the established way of life, poor health, which, however, does not exclude the fact that a person is fit for military service, and so forth). Evasion from military service during mobilisation is punishable by imprisonment for a term of three to five years. If a person is convicted of the said offence and sentenced to imprisonment, which is actually carried out, he/she will not perform military service, but the issue of paying the military fee will remain *open*. The state, on the other hand, will certainly bear the costs of *ensuring that such convicts serve their sentences*. The modelled scenario is not the best from the point of view of ensuring the defence capability of the state. At the same time, a citizen who evaded military service during mobilisation would probably not evade participation

in other forms of ensuring the state's defence capability.

The situation under consideration is just one example of an individual's ability to participate in ensuring the defence capability of the state being *significantly limited*. Other similar examples are situations when a serviceman is sentenced to imprisonment for a certain period of time, which will actually be served, for committing a military criminal offence. In some cases, *this is the only punishment that can be imposed*. This refers, in particular, to the offence provided for in part five of Article 407 of the Criminal Code of Ukraine (2001), namely, unauthorised abandonment of a military unit or place of service committed under martial law or in a combat situation. This offence is punishable by imprisonment for a term of five to ten years. At the same time, there is no possibility to impose a lighter sentence (than that provided for by law) or to release the offender from serving a sentence with probation (Articles 69 and 75 of the Criminal Code of Ukraine, respectively). A person who may have combat experience and good military training will not be able to participate in ensuring the defence capability of the state in such a form as military service. However, the participation of a convicted serviceman in ensuring the defence capability of the state in other forms (in the form of paying military fees, taxes, etc.) is *unlikely to be significant*.

The Conclusion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine on the Draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Mobilisation Preparation and Mobilisation' and the Law of Ukraine 'On the Procedure for Departure from and Entry into Ukraine of Citizens of Ukraine'" (2022) states the following: "to date, the issue of crossing the state border during martial law is regulated by a subordinate legal act – the Resolution of the Cabinet of Ministers of Ukraine "On Approval of the Rules for Crossing the State Border by Citizens of Ukraine" of 27 January 1995 No. 57". Continued with: "In this context, it is noteworthy that the list of categories of citizens who are allowed to cross the state border during martial law is constantly being amended and expanded by the Cabinet of Ministers of Ukraine. Obviously, this is due to the issues of ensuring the economy of the state and the growing unemployment in the country due to the restriction of travel for those who have periodically worked abroad." (The Conclusion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine on the Draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Mobilisation Preparation and Mobilisation' and the Law of Ukraine 'On the Procedure for Departure from and Entry into Ukraine of Citizens of Ukraine'", 2022: 5)

However, in the opinion of the Main Department, "a more logical solution to the issue (namely, the issue of allowing certain categories of citizens to leave Ukraine during martial law – *the authors*)... would be to allow temporary departure of certain categories of persons during the legal regime of martial law, if these persons have employment agreements (contracts) (or other documents of title confirming the need to leave) and a written obligation to return within a certain time, provided that the Armed Forces of Ukraine have no plan to call them up" (The Conclusion of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine on the Draft Law of Ukraine "On Amendments to the Law of Ukraine 'On Mobilisation Preparation and Mobilisation' and the Law of Ukraine 'On the Procedure for Departure from and Entry into Ukraine of Citizens of Ukraine'", 2022: 6).

Taking into account the above considerations, it is possible to identify the following circumstances that should be taken into account when determining the forms of economic support for the state's defence capability:

- The economic provision of the state's defence capability should be coordinated with other measures to ensure defence capability, in particular, with the conscription of Ukrainian citizens for military service during mobilisation. The solution of the problem of economic support of the state's defence capability cannot lead to the disruption (or complicate the implementation) of other measures to ensure defence capability. All these measures should complement each other, and together they should ensure Ukraine's defence capability to the best of their potential.
- The economic support of the state's defence capability could be based on creating opportunities for citizens to financially support the implementation of measures for the defence of Ukraine. Financial support includes, for example, the payment of military fees. It can also include voluntary contributions to support Ukraine's defence measures. Financial support may also take other forms. These forms require a separate analysis.
- An individual will only be able to pay the military fee or otherwise financially support the defence of Ukraine if he/she has the appropriate income. If a citizen is unable to receive such income in Ukraine, he/she could be granted permission to travel abroad. Furthermore, there must be a legal mechanism to ensure that travelling abroad will actually allow a citizen of Ukraine to economically support the implementation of measures to ensure the defence capability of the state, and will not be used to avoid being called up for military service during mobilisation.
- Evasion from military service during mobilisation and any other criminal offences should be punished by an adequate response from the state. And this reaction may consist in sentencing a person to imprisonment for

a certain period of time, which will be carried out in reality. However, when choosing the form of such a response, it should be borne in mind that (whenever possible) the punishment should not exclude the convicted person from participating in the defence of the state.

4. Conclusions

The state's defence capability is achieved through the availability of, among other things, economic potential in the field of defence and appropriate conditions for its implementation. In this case, economic support of the state's defence capability is not carried out separately, in isolation from other measures, but in combination with them.

One of the economic measures aimed at ensuring the state's defence capability is the collection of taxes and military duty. In some cases, the income of citizens is not subject to military duty. From the very beginning, this decision was justified by the need to improve the financial situation of these citizens of Ukraine. However, this step can also be explained by the fact that some Ukrainian citizens participate in the defence of the state in a form other than financial (directly participating in hostilities). If such citizens pay the military fee, they will be performing their duty to defend the homeland, independence and territorial integrity of Ukraine twice. Other citizens of Ukraine, on the other hand, may not participate in hostilities and at the same time not pay taxes and military fees, although the duty to defend the Fatherland, independence and territorial integrity of Ukraine is the duty of all citizens of Ukraine. It would be fair for those citizens who do not take part in hostilities to at least contribute economically to Ukraine's defence capability.

In order for a citizen of Ukraine to be able to economically support the implementation of measures for the defence of the state, he or she must have the appropriate income. A person who has lost their job and cannot find a new one, and who is prohibited from travelling outside Ukraine under martial law, is effectively deprived of the opportunity to participate in the economic support of the state's defence capability. The same can be said of a person sentenced to a custodial sentence, which will be served in reality. Such persons will be significantly limited in their ability to ensure Ukraine's defence capability. Nevertheless, it cannot be ruled out that all of these persons could effectively support the implementation of measures to defend Ukraine economically. Therefore, there should be mechanisms that allow a wider range of people to participate in the economic support of Ukraine's defence capability, in particular, in the form of paying taxes and military fees. At the same time, these mechanisms should include safeguards against their abuse.

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