

UDC 343.9+355.2



O. Tytarenko



O. Kriachko

CERTAIN RISKS OF MOBILIZATION DRAFT LAWS AND THEIR POSSIBLE IMPACT ON THE MILITARY SECURITY OF UKRAINE

The article analyzes the draft laws No. 10378, 10378-1, 10378-2, 10378-3, 10378-4 and No. 10449 registered in the Verkhovna Rada of Ukraine in December 202 – January 2024, aimed at improving the existing mechanisms of mobilization and increasing the military reserve for the defense forces. The registered mobilization bills identify certain risks that may negatively affect the state of military security and defense capability of the country in the future. The risks of expanding the possibilities of conscription during the mobilization of convicts, suspects, and those accused of committing criminal offenses, as well as the risks of demobilization, have been identified. Proposals for amendments and additions to the draft law No. 10449 of 30.01.2024, the Law of Ukraine "On Military Duty and Military Service", and the Criminal Code of Ukraine were formulated to minimize the impact of these risks on the state of military security of Ukraine.

Keywords: mobilization draft laws, improvement of mobilization mechanisms, ensuring military security, risks of mobilization of convicts.

Statement of the problem. Given the ongoing aggression of the Russian Federation against Ukraine and the introduction of the martial law regime on February 24, 2022, the issue of proper ensuring of both national security of Ukraine and its component – military security – is becoming more and more relevant [1].

The current legislation defines military security as the protection of state sovereignty, territorial integrity and democratic constitutional order and other vital national interests from military threats [2]. In this aspect, the issue of mobilization to maintain combat and mobilization readiness (capabilities) of the Armed Forces of Ukraine (AFU) and other military formations (National Guard of Ukraine, State Border Guard Service, Security Service of Ukraine, etc.) is of great importance [3]. As noted by the Commander-in-Chief of the Armed Forces of Ukraine, General V. Zaluzhnyi, one of the factors influencing the search for new forms of employment of defense forces is the enemy's significant advantage in mobilization human resources and the inability of state institutions in Ukraine to improve the state of manning the defense forces without taking unpopular measures [4].

In this regard, today there is a request from the Armed Forces and other defense forces of the country to resolve as soon as possible one of the

problems related to the formation of a human reserve to

perform the tasks of the defense forces. This requires revision of approaches to the existing mechanisms of mobilization in the country and amendments to the current legislation on mobilization.

For example, in December 2023 – January 2024 alone, six draft laws were registered in the Verkhovna Rada of Ukraine (VRU) to improve certain issues of mobilization, military registration and military service. However, publications that discuss the positive and negative consequences of the introduction of these draft laws do not cover all the problematic issues, including the risks of manning the AFU, NGU, SBGS and other military formations with persons who have an unspent (unexpunged) criminal record, are under investigation (served with a suspicion or are accused in criminal proceedings) or are serving sentences in penitentiary institutions (PIs).

Analysis of recent research and publications. Various aspects of regulatory and legal support for improving mobilization have been considered by domestic scholars in their works: V. Averyanov, A. Aleksandrova, O. Bandurka, V. Vaitzman, O. Honcharenko, V. Horbulin, O. Kuzmuk, E. Legeza, S. Poltorak, O. Romanova, M. Turkot, V. Shablysty and others [5, 6]. At the same time,

scientific developments on the study of modern prospects for improving this activity, which are reflected in a number of recent draft laws, are only being conducted by scientists and remain relevant to reduce the risks of negative impact on the state of mobilization readiness of the AFU, NGU, SBGSU and other military formations.

The purpose of the article is to highlight some of the risks of the latest mobilization bills (December 2023 – January 2024) that may affect Ukraine's military security.

Summary of the main material. According to the Constitution of Ukraine (Article 17), the protection of the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security are the most important functions of the state, the business of the entire Ukrainian people, and the protection of the Fatherland, independence and territorial integrity of Ukraine is the duty of the citizens of Ukraine (Article 65) [7]. In connection with the ongoing military aggression of the Russian Federation against Ukraine, the aggressor's increasing efforts to further seize the territory of our country, the issue of improving the mechanisms of mobilization measures to attract more people willing to defend the sovereignty and territorial integrity of Ukraine, as well as ensuring military registration of conscripts, persons liable for military service and reservists and improving certain issues of military service has become acute [8].

In order to "legislatively improve the procedures for mobilization, improve military registration of conscripts, persons liable for military service and reservists, social protection of servicemen, as well as certain issues of military service to improve the quality of recruitment during manning combat units to repel armed aggression against Ukraine", the government has developed a basic draft law "On Amendments to Certain Legislative Acts of Ukraine on Improving the However, on January 30, 2024, the Cabinet of Ministers registered an alternative draft law No. 10449 with the Verkhovna Rada, which should not have contained most of the controversial points set out in the previous version.

These two draft laws propose to amend the current legislation, which, in particular, provide for (to name just a few changes): improving the procedure for military registration of conscripts, persons liable for military service and reservists; changing the conscription age from 27 to 25 years; involving local governments, local state administrations, civil-military and military administrations, enterprises, institutions and organizations in active participation in mobilization

activities; clarifying the powers of the Ministry of Defense of Ukraine, the General We will pay special attention to the last novelty. At the same time, it should be noted that the two governmental draft laws, despite their external similarities, have certain differences, and the latter (draft law No. 10449) is an updated version of draft law No. 10378. Although the experts' opinion on this matter is somewhat different [11].

It is worth noting that from December 2023 to January 2024, a total of six draft laws were registered in the VRU, including draft laws No. 10378 and No. 10449, which are the main ones (from one subject of legislative initiative – the Cabinet of Ministers of Ukraine), and others are alternative ones (from individual MPs) [8, 12–16].

Our comparative analysis of the provisions of the alternative draft laws and the study of the conclusions of the Main Scientific and Expert Department of the Verkhovna Rada of Ukraine allowed us to determine the following: 1) most of the registered draft laws are almost identical in content to draft laws No. 10378 and No. 10449; 2) some controversial issues (unpopular decisions/innovations) remain for discussion, in particular maintaining a mandatory register of conscripts; introduction of the obligation of conscripts, persons liable for military service, reservists to constantly update their data in this register; introduction of restrictive measures against conscripts, persons liable for military service who evade military service during mobilization; grounds for postponement of mobilization; possibility of mobilization of employees of certain law enforcement agencies; mobilization of convicts; discharge from military service of servicemen who are undergoing However, the implementation of the latter two novelties contains risks that may affect the state's defense capability and military security. This issue must be coordinated with the General Staff of the Armed Forces of Ukraine.

Regarding the expediency of mobilizing convicted persons and persons under investigation during the pre-trial investigation and trial, attention should be paid to the basic requirements for manning the AFU and other military formations enshrined in the Law of Ukraine "On Military Duty and Military Service" (Law No. 2232-XII) [17]. Thus, part 2 of Article 4 stipulates that the AFU and other military formations may not be manned by persons who have been convicted of a criminal offense against the foundations of national security of Ukraine under Article 111-1 of the Criminal Code of Ukraine (CC), unless such conviction is

not expunged or removed in accordance with the procedure established by law. Thus, only one type of criminal offense is enshrined, which restricts access to military service for such persons. However, a comprehensive analysis of the provisions of this Law in terms of restrictions on the conscription of persons who "have problems with the law" establishes somewhat different requirements that are not consistent with the provisions of part 2 of Article 4 of Law No. 2232-XII. Thus, Art. 37 of this Law states that citizens of Ukraine who: have been previously sentenced to imprisonment for committing a grave or especially grave crime (it does not specify that in this case the conviction must be lifted or cancelled); are sent to serve their sentence in penitentiary institutions or subjected to compulsory medical measures. Thus, Article 37, in contrast to Article 4 of Law No. 2232-XII, expands the circle of persons who cannot actually be called up for mobilization, as they are excluded from the military register altogether. Further, if a person has not been sentenced to imprisonment for a grave or especially grave crime and has not been sent to serve his or her sentence in a penal institution or has been convicted and released from serving a sentence on probation, then this person cannot be removed from the military register and therefore may be called up for mobilization. However, the types of criminal offenses in this case should be specified by the legislator, taking into account the provisions of Article 4 of Law No. 2232-XII. For example, a person was convicted of simple robbery (Part 1 of Article 186 of the CC), but was released from serving a sentence with probation (Part 1 of Article 75 of the CC), or persons who committed criminal offenses under Part 1 of Article 109, Part 1 of Article 110 of the CC (criminal offenses against the foundations of national security), for which criminal law does not exclude the possibility of applying the provisions of Part 1 of Article 75 of the CC [18]. Such persons may in fact be mobilized, but the question immediately arises: what use are they at the front? There is a risk that this contingent will be prone to commit looting or other military criminal offenses in the combat zone. Thus, a suspended sentence is not a ground for deferral from mobilization, although this circumstance is not directly stated in Article 23 of the Law of Ukraine "On Mobilization Preparation and Mobilization" [19], and therefore this category of persons includes those who are excluded from military registration. In draft laws No. 10449, 10378 (withdrawn from consideration), 10378-1, 10378-3, the subjects of

the legislative initiative further expand the boundaries for registering persons for military service. In particular, the following category of persons is added: persons who arrived after serving their sentence from penitentiary institutions (without specifying the types of criminal offenses by severity, etc.) In January 2024, representatives of the Ministry of Justice of Ukraine expressed a position on the possibility of allowing convicts for certain types of crimes to voluntarily join the ranks of the Armed Forces and other military formations to take direct part in hostilities [20]. This position is embodied in two government draft laws No. 10378 and 10449, but with partial specification of the types of criminal offenses. Thus, in the draft law No. 10449, as well as in other alternative draft laws (No. 10378, 10378-1, 10378-2, 10378-3), the amendments proposed to Art. 39 of the Law of Ukraine "On Military Duty and Military Service", in the future will allow for the possibility of conscription for military service under mobilization, for a special period at the request of convicted persons released from serving a sentence on probation, except for those convicted of crimes against the foundations of national security of Ukraine, as well as crimes under Articles 402–406, 408–411, 426–433, 437–442 of the Criminal Code. However, this approach again contradicts the general provision of Article 4 of Law No. 2232-XII on manning the AFU and other military formations, which also needs to be amended.

However, this is not the only option proposed for mobilization of convicts. The subjects of the legislative initiative put forward proposals to provide for the release of a separate category of convicts from serving their sentences as a result of amnesty. We are talking about the draft law "On Amnesty in 2024 in connection with the military aggression of the Russian Federation to participate in the defense of the sovereignty and state integrity of Ukraine" (initiated by O. O. Honcharenko) No. 10419 of 19.01.2024 [21].

We have made approximate calculations of what the reserve for mobilization at the expense of convicts could be (taking into account the proposals of the draft laws to Article 39 of Law No. 2232-XII and draft law No. 10419). According to court statistics as of 01.01.2024 (Form 7) [22], the number of convicts in Ukraine in 2023 amounted to 49,679 people (including 10,8 % women), of whom 1007 persons were convicted of particularly serious crimes (2,02 %), and the number of persons convicted of crimes that do not allow the application of the provisions of Bill No. 10419 of 19.01.2024

was 12,483 (25,1 %). Thus, the probable share of persons who, under certain conditions (expressed desire, fitness for military service for health reasons), may be mobilized is approximately 31,852 persons.

At the same time, according to the State Penitentiary Service of Ukraine, as of January 1, 2023, 42,726 convicts were held in penitentiary institutions and pre-trial detention centers [23]. However, there is hardly any point in hoping for a massive expression of convicts' desire to go to war.

According to the current legislation, taking into account the latest amendments to the Criminal Procedure Code of Ukraine (CPC), from 2022, it is possible to mobilize persons who are suspects or accused and in respect of whom a preventive measure has been established (Article 616 of the CPC) [24, 25]. This provision does not apply to persons suspected of committing crimes against the foundations of national security of Ukraine, as well as crimes under Articles 115, 146–147, 152–156, 186, 187, 189, 255, 255-1, 257, 258–262, 305–321, 330, 335–337, 401–414, 426–433, 436, 437–442 of the Criminal Code. An analysis of the statistical information of the Office of the Prosecutor General of Ukraine for 2023 on persons who committed criminal offenses showed the following: 108,271 persons were notified of suspicion; 97,951 persons were identified as having committed criminal offenses, of whom 13,103 (13,4 %) were women; 3,062 (3,1 %) were identified as having committed particularly serious criminal offenses; only 8,403 (8,6 %) persons were held in custody as a preventive measure [26]. At the same time, the number of persons not covered by the provisions of Art. 616 of the CPC in 2023 amounted to 43,533 (44,4 % of the identified persons), of whom 3,047 (7 %) were women. Therefore, the probable share of persons to whom Article 616 of the CPC may be applied and who, under certain conditions (in particular, expressed desire, fitness for military service for health reasons) may be mobilized, may reach 41,315 persons (excluding women), i.e. approximately 6–7 brigades (if we take the number of 5000 to 7000 persons).

In general, Art. 616 of the CPC creates a "loophole" for evading criminal liability for a certain category of persons accused (suspected), for example, of committing corruption criminal offenses, certain criminal offenses against property, life and health of a person, public order [27]. This raises the question of the sincerity of such person's desire to defend the homeland, as well as where they

will serve and perform combat missions. In this aspect, some legal practitioners propose a balanced approach to the application of the provisions of Art. 616, Part 1 of Art. 335 of the CPC, and also consider the possibility of supplementing Part 2 of Art. 49 of the CC with such a ground for suspending the statute of limitations for criminal liability as the call of the accused for military service under mobilization for a special period [27]. This approach, in our opinion, is quite reasonable and deserves attention.

The next issue that needs to be carefully studied concerns dismissal from military service due to the expiration of the term of service (if the serviceman has not expressed a desire to continue military service) in case of continuous service during martial law for 36 months. Most draft laws propose to amend Article 26 of Law No. 2232-XII. Implementation of this provision in conditions of temporal uncertainty of the duration of military aggression by the Russian Federation may lead to a significant decrease in the state of the country's defense capability. Therefore, it seems reasonable to introduce a process of systematic rotation of the AFU and other military formations through temporary demobilization, which can last from 1 to 2 years, as well as to introduce appropriate waves of such demobilization for different categories of servicemen (conscripts, mobilized, contractors, reservists) [28].

Conclusions

Despite the normatively limited scope of the study and taking into account all of the above, it is possible to draw a number of conclusions. Thus, for the most part, the mobilization draft laws are relevant and aimed at improving mobilization processes and resolving the issue of demobilization. However, an analysis of certain provisions of the proposed draft laws has revealed risks that could negatively affect the state of military security and defense capability in particular. One of these risks is an insufficiently substantiated approach to expanding the opportunities for mobilization of convicts and persons under investigation, which could be used as a way for the latter to evade serving their sentence or being prosecuted. It may also affect the quality of preparation of such persons for military service and create additional preconditions for the spread of military (war) criminal offenses. It should be noted that this will not lead to the creation of units like the Russian PMC Wagner (which recruited convicted of serious and especially serious

crimes) or Storm-Z (penal military units), as this will discredit the defense forces.

In order to eliminate the existing gaps in both the current legislation and the draft law No. 10419 regarding the mobilization of convicts and persons suspected or accused of committing criminal offenses, it is proposed to amend Articles 4 and 39 of Law No. 2232-XII (in terms of clarifying the types of criminal offenses that make it impossible to man the defense forces with a certain category of convicts, suspects and accused), as well as Article 49 of the Criminal Code.

Another risk in the mobilization draft laws is the issue of "indefinite" demobilization. Therefore, the possibility of introducing a process of systematic rotation of the Armed Forces and other military formations through temporary demobilization in the context of temporal uncertainty of the duration of military aggression by the Russian Federation is emphasized.

In general, taking into account these risks in the process of finalizing the mobilization bills will contribute to the quality of mobilization and will affect the preparation of qualified replacements for demobilized servicemen.

Prospects for further research include identifying possible risks to military security from the implementation of other mobilization bills and the adoption of the draft law "On Amnesty in 2024," as well as formulating reasonable proposals for amendments to them.

References

1. *Ukaz Prezidenta Ukrainy "Pro vvedennia voiennoho stanu" № 64/2022* [Decree of the President of Ukraine "On the introduction of martial law" activity no. 64/2022]. (2022, February 24). Retrieved from: <http://surl.li/bqxpq> (accessed 12 January 2024) [in Ukrainian].

2. *Zakon Ukrainy "Pro natsionalnu bezpeku Ukrainy" № 2469-VIII* [Law of Ukraine about the national security of Ukraine activity no. 2469-VIII]. (2018, June 21). Retrieved from: <http://surl.li/tcsi> (accessed 12 January 2024) [in Ukrainian].

3. *Ukaz Prezidenta Ukrainy "Pro zahalnu mobilizatsiiu" № 65/2022* [Decree of the President of Ukraine "On general mobilization" activity no. 65/2022]. (2022, February 24). Retrieved from: <http://surl.li/rqggb> (accessed 19 January 2024) [in Ukrainian].

4. Zaluzhnyi V. (2024) *Shchodo suchasnoho dyzainu viiskovykh operatsii u rosiisko-ukrainskikh viini: v borotbi za initsiatyvu* [Regarding the

modern design of military operations in the Russian-Ukrainian war: in the struggle for the initiative]. Retrieved from: <http://surl.li/qbhls> (accessed 1 February 2024) [in Ukrainian].

5. Turkot M. S. (2015). *Mobilizatsiina diialnist yak zasib zabezpechennia voiennoi bezpeky Ukrainy* [Mobilization activity as a means of ensuring Ukraine's military security]. *Yurydychnyi naukovyi elektronnyi zhurnal*, no. 2, pp. 200–202. Retrieved from: <http://surl.li/rqggh> (accessed 1 January 2024) [in Ukrainian].

6. Romanova O. M. (2023). *Yurydychni aspekty mobilizatsii v Ukraini* [Legal aspects of mobilization in Ukraine]. *Chasopys Kyivskoho universytetu prava*, no. 1, pp. 73–78. DOI: <https://doi.org/10.36695/2219-5521.1.2023.15> [in Ukrainian].

7. *Konstytutsiia Ukrainy* [Constitution of Ukraine]. (1996, June 28). Retrieved from: <http://surl.li/gdyl> (accessed 19 January 2024) [in Ukrainian].

8. *Proekt Zakonu pro vnesennia zmin do deiakyykh zakonodavchykh aktiv Ukrainy shchodo udoskonalennia okremykh pytan mobilizatsii, viiskovoho obliku ta prokhodzhennia viiskovoi sluzhby № 10378* [Draft Law on Amendments to Certain Legislative Acts of Ukraine on Improvement of Certain Issues of Mobilization, Military Registration and Military Service activity no. 10378]. (2023, December 25). Retrieved from: <http://surl.li/opryu> (accessed 26 December 2023) [in Ukrainian].

9. Boiarchuk T. (2024) *"Porushuie normy ukrainskoi Konstytutsii", – ombudsmen pro mobilizatsiinyi zakon* ["It violates the norms of the Ukrainian Constitution", – the ombudsman about the mobilization law]. Retrieved from: <http://surl.li/rqgic> (accessed 17 January 2024).

10. *V Ukraini zaproponuvaly mobilizovuvaty uviaznenykh: u Radi rozpovily pro ideiu* [In Ukraine, it was proposed to mobilize prisoners the Verkhovna Rada of Ukraine talked about the idea]. Retrieved from: <http://surl.li/rqgim> (accessed 28 December 2023) [in Ukrainian].

11. Vuiets P., Taranenko V. (2024). *Zakon pro mobilizatsiiu. Druha versiia krashche?* [Law on mobilization. Is the second version better?]. Retrieved from: <http://surl.li/rqgir> (accessed 1 February 2024) [in Ukrainian].

12. *Proekt Zakonu pro vnesennia zmin do deiakyykh zakonodavchykh aktiv Ukrainy shchodo udoskonalennia okremykh pytan mobilizatsii, viiskovoho obliku ta prokhodzhennia viiskovoi sluzhby № 10378-I* [Draft Law on Amendments to Certain Legislative Acts of Ukraine on Improvement of

Certain Issues of Mobilization, Military Registration and Military Service activity no. 10378-1]. (2023, December 28). Retrieved from: <http://surl.li/rqgiw> (accessed 28 December 2023) [in Ukrainian].

13. *Proekt Zakonu pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo udoskonalennia okremykh pytan mobilizatsii, viiskovoho obliku ta prokhodzhennia viiskovoi sluzhby, vrakhovuiuchy zdorovyi hluzd ta realni perspektyvy zmitsnennia oboronzdatnosti, zberezhenia hromadian i krainy № 10378-2* [Draft Law on Amendments to Certain Legislative Acts of Ukraine on Improving Certain Issues of Mobilization, Military Registration and Military Service, Taking into Account Common Sense and Real Prospects of Strengthening Defense Capability, Protecting Citizens and the Country activity no. 10378-2]. (2023, December 29). Retrieved from: <http://surl.li/rqgml> (accessed 29 December 2023) [in Ukrainian].

14. *Proekt Zakonu pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo okremykh pytan mobilizatsii, prokhodzhennia viiskovoi sluzhby ta zvilnennia z viiskovoi sluzhby, vedennia viiskovoho obliku № 10378-3* [Draft Law on Amendments to Certain Legislative Acts of Ukraine on Certain Issues of Mobilization, Completion of Military Service and Discharge from Military Service, Maintenance of Military Records activity no. 10378-3]. (2024, January 8). Retrieved from: <http://surl.li/rqgmw> (accessed 10 January 2024) [in Ukrainian].

15. *Proekt Zakonu pro vnesennia zmin do deiakykh zakonodavchykh aktiv, yaki rehuliuut poriadok mobilizatsii, zdiisnennia mobilizatsiinoi roboty ta prokhodzhennia navchannia viiskovozoboviazanyy № 10378-4* [Draft Law on Amendments to Certain Legislative Acts Regulating the Procedure for Mobilization, Mobilization Work, and Training of Conscripts activity no. 10378-4]. (2024, January 8). Retrieved from: <http://surl.li/rqgnk> (accessed 10 January 2024) [in Ukrainian].

16. *Proekt Zakonu pro vnesennia zmin do deiakykh zakonodavchykh aktiv Ukrainy shchodo okremykh pytan prokhodzhennia viiskovoi sluzhby, mobilizatsii ta viiskovoho obliku № 10449* [Draft Law on amendments to various legislative acts of Ukraine for the purpose of strengthening military service, mobilization and military service activity no. 10449]. (2024, January 30). Retrieved from: <http://surl.li/pzreh> (accessed 31 January 2024) [in Ukrainian].

17. *Zakon Ukrainy "Pro viiskovyi oboviazok i viiskovu sluzhbu" № 2232-XII* [Law of Ukraine about military harness and military service activity no. 2232-XII]. (1992, March 25). Retrieved from:

<http://surl.li/ppuk> (accessed 1 February 2024) [in Ukrainian].

18. *Kryminalnyi kodeks Ukrainy* [Criminal Code of Ukraine]. (2001, April 5). Retrieved from: <http://surl.li/hwcs> (accessed 1 February 2024) [in Ukrainian].

19. *Zakon Ukrainy "Pro mobilizatsiinu pidhotovku ta mobilizatsiiu" № 3543-XII* [Law of Ukraine about mobilization preparation and mobilization activity no. 3543-XII]. (1993, October 21). Retrieved from: <http://surl.li/bzvtr> (accessed 1 February 2024) [in Ukrainian].

20. *Miniust poiasnyv, chy mozhut mobilizuvaty kolyshnykh viazniv* [The Ministry of Justice explained whether former prisoners can be mobilized]. Retrieved from: <http://surl.li/rqgpk> (accessed 18 January 2024) [in Ukrainian].

21. *Proekt Zakonu pro amnistiiu u 2024 rotsi u zviazku z viiskovoiu ahresiieiu Rosiiskoi Federatsii dlia uchasti u zakhysti suverenitetu i derzhavnoi tsilisnosti Ukrainy № 10419* [Draft Law on Amnesty in 2024 in connection with the military aggression of the Russian Federation to protect the sovereignty and sovereignty of Ukraine activity no. 10419]. (2024, January 19). Retrieved from: <http://surl.li/rqgpr> (accessed 24 January 2024) [in Ukrainian].

22. *Zvit pro sklad zasudzhennykh za 2023 rik (Forma 7 Derzhavnoi sudovoi administratsii Ukrainy)* [Report on the composition of convicts for 2023 (Form 7 of the State Judicial Administration of Ukraine)]. *Ofitsiyni sait sudovoi vlady Ukrainy*. Retrieved from: <http://surl.li/mxnme> (accessed 5 January 2024) [in Ukrainian].

23. *Zahalna kharakterystyka Derzhavnoi kryminalno-vykonavchoi sluzhby Ukrainy* [General characteristics of the State Criminal Enforcement Service of Ukraine]. Retrieved from: <http://surl.li/pznqu> (accessed 1 January 2024) [in Ukrainian].

24. *Kryminalnyi protsesualnyi kodeks Ukrainy* [Criminal Procedure Code of Ukraine] (2012, April 13). Retrieved from: <http://surl.li/navm> (accessed 1 February 2024) [in Ukrainian].

25. Kudriavtsev O. (2023) *Kryminalne sudochynstvo: transformatsii voiennoho chasu* [Criminal Justice: Wartime Transformations]. *Yurydychna hazeta online*, no. 9–10 (767–768). Retrieved from: <http://surl.li/rqgqx> (accessed 1 January 2024) [in Ukrainian].

26. *Yedynyi zvit pro osib, yaki vchynyly kryminalni pravoporushennia sichen – hruden 2023 rik (Forma 2)* [Unified report on persons who committed criminal offenses January – December 2023 (Form 2)]. *Ofis Heneralnoho prokurora*

Ukrainy. Retrieved from: <http://surl.li/gjzvs> (accessed 1 January 2024) [in Ukrainian].

27. Hlotov M. (2023) *Mobilizatsiia yak pidstava dlia zupynennia sudovoho provadzhennia. Chastyna 2.* [Mobilization as a basis for stopping court proceedings. Part 2]. Retrieved from: <http://surl.li/rqgrg> (accessed 1 February 2024) [in Ukrainian].

28. *Elektronna petytsiia Prezydentu Ukrainy "Mobilizovani. Strokovyky. Kontraktnyky. Systemna rotatsiia shliakhom tymchasovoi demobilizatsii.*

Armiia ne povynna stavaty viaznytseiu, a viiskovi – uviaznenymy" № 22/210078-ep [Electronic petition to the President of Ukraine "Mobilized. Term workers Contract workers. Systemic rotation through temporary demobilization. The army should not become a prison, and the military should not become prisoners" activity no. 22/210078-ep]. (2023, November 8). Retrieved from: <http://surl.li/rqgrm> (accessed 4 January 2024) [in Ukrainian].

The article was submitted to the editorial office on 11.02.2024

УДК 343.9+355.2

О. О. Титаренко, О. І. Крячко

ОКРЕМІ РИЗИКИ МОБІЛІЗАЦІЙНИХ ЗАКОНОПРОЄКТІВ ТА ЇХ МОЖЛИВИЙ ВПЛИВ НА ЗАБЕЗПЕЧЕННЯ ВОЄННОЇ БЕЗПЕКИ УКРАЇНИ

Проаналізовано зареєстровані у Верховній Раді України впродовж грудня 2023 р. – січня 2024 р. законопроекти № 10378, 10378-1, 10378-2, 10378-3, 10378-4 та № 10449, спрямовані на вдосконалення наявних механізмів мобілізації шляхом внесення змін і доповнень до чинного законодавства, зокрема законів України «Про мобілізаційну підготовку та мобілізацію» та «Про військовий обов'язок і військову службу», а також збільшення військового резерву для сил оборони України. У зареєстрованих мобілізаційних законопроектах установлено окремі ризики, які надалі можуть негативно вплинути на стан забезпечення воєнної безпеки й обороноздатності країни.

Визначено, що згадані мобілізаційні законопроекти передбачають механізм збільшення обсягів мобілізації переважно шляхом зниження призовного віку з 27 до 25 років, а також мобілізації засуджених, підозрюваних, обвинувачених за вчинення кримінальних правопорушень, за їхнім бажанням. Це може призвести до зниження якості комплектування Збройних Сил України, Національної гвардії України та інших військових формувань, які беруть участь у відбитті збройної агресії російської федерації.

Установлено невідповідність окремих пропозицій законопроектів до статей 4, 37, 39 Закону України «Про військовий обов'язок і військову службу» і ст. 23 Закону України «Про мобілізаційну підготовку та мобілізацію». Підтримується позиція щодо запровадження процесу системної ротації у Збройних Силах України та інших військових формуваннях шляхом тимчасової демобілізації, а не повної демобілізації військовослужбовців, які прослужили безперервно впродовж 36 місяців протягом воєнного стану.

Сформовано пропозиції щодо внесення змін і доповнень до законопроекту № 10449 від 30.01.2024 р., Закону України «Про військовий обов'язок і військову службу», Кримінального кодексу України, аби мінімізувати вплив зазначених ризиків на стан воєнної безпеки України.

Ключові слова: мобілізаційні законопроекти, удосконалення механізмів мобілізації, забезпечення воєнної безпеки, ризики мобілізації засуджених.

Tytarenko Oleksii – Doctor of Juridical Sciences, Associate Professor, Researcher at the Research Laboratory for Troop Training of the Kyiv Institute of the National Guard of Ukraine
<https://orcid.org/0000-0002-3271-9402>

Kriachko Oleksandr – Head of the Research Laboratory for Troop Training of the Kyiv Institute of the National Guard of Ukraine
[https:// orcid.org/0009-0009-8595-6901](https://orcid.org/0009-0009-8595-6901)