

# **ASSOCIATION AGREEMENT: DRIVING INTEGRATIONAL CHANGES**

**Vol. III**

**Monograph**

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The collective monograph is devoted to the actual issues concerning the implementation of the Association Agreement between Ukraine and the member states of the European Union. In particular, the monograph examines the theoretical and practical aspects of various spheres of joint activities, as a commitment to economic development in Ukraine.

Created for scholars, research workers, postgraduates and students of higher education institutions, as well as for all those interested in the implementation of the Association Agreement.

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PART I

**GENERAL PRINCIPLES,  
ACTIVITY OF PUBLIC  
AUTHORITIES**

*Association agreement: driving integrational changes*

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## **Public administration in the field of national security provision in European integration conditions (conceptual background)**

Until recently, the issue of national security was not very relevant to Ukraine. Thus, only in 1996 the Constitution of Ukraine was adopted, in Art. 17 of which it is proclaimed: “Protection of the sovereignty and territorial integrity of Ukraine, ensuring its economic and information security are the most important functions of the state, the task of the whole Ukrainian people. Ensuring of state security and protecting the state border of Ukraine are vested in the relevant military formations and law enforcement agencies of the state, the organization and order of activities of which are determined by law”, and in Art. 16 attention is paid to environmental safety; in section 2, national security is designated as a legitimate aim of restricting human rights [7]. It should be noted that in accordance with paragraph 17 of Part 1 of Art. 92 of the constitution the basics of the national security are solely determined by law. We can add that within the domestic system of law there is a division of legal acts by legal force into laws and by-laws. However, the Law of Ukraine “On Fundamentals of National Security of Ukraine” was adopted only on June 19, 2003. Until that time, the specified sphere was regulated by the Concept (bases of the state policy) of national security of Ukraine, approved by the resolution of the Verkhovna Rada of Ukraine on January 16, 1997, that is by the by-law, which, moreover, only defined the principles of regulation of the national security sphere, recommending to “The President of Ukraine, the Cabinet of Ministers of Ukraine, the Verkhovna Rada of Ukraine Commission on Defense and State Security together with other specialized committees to accelerate the development and submission of draft laws on national security of Ukraine, on the National Security and Defense Council of Ukraine, on foreign intelligence, as well as general and state programs in the field and other legislative acts deriving from the provisions of the Concept” [15] (which cannot be considered positive, given the need to adhere to the principles of the rule of law and legitimacy, because public authorities can only act within the powers defined by law).

The issue of ensuring national security actualized for the Ukrainian society in 2014, following annexation of the Autonomous Republic of Crimea and hostilities on the territory of the Donetsk and Luhansk regions, was updated. Although the Law on National Security of Ukraine was adopted only on June 21, 2018, which has already improved the legal regulation of public relations in the field of national security, provision taking into account the

circumstances. The explanatory note to the draft law emphasizes the shortcomings of the legislation in force at the time: “The Law of Ukraine “On the Basics of National Security of Ukraine” does not clearly defines the sphere of national security.

Various negative factors for the development of the society and the state are identified as threats to national security, despite the fact that their overcoming cannot be ensured by the activities of the security sector agencies. Also, fixing at the legislative level of the list of threats to the national security of Ukraine and of measures to respond to them does not correspond to the practices of the member states of the European Union and NATO, complicates the determination of priorities of the state policy in the field of national security and timely response to changes in the security situation” [11].

It should be emphasized that the adoption of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their Member States, on the other hand enhances actuality of the issue of public administration in the field of national security provision, according to which the purposes of this association, in particular, are to enhance cooperation in the fields of justice, freedom and security in order to ensure the rule of law and respect for human rights and fundamental freedoms.

According to the international document mentioned above, the parties “should deepen their dialogue and cooperation and promote gradual convergence in the field of the foreign and security policy, including the Common Security and Defense Policy”, and “intensify joint efforts to promote stability, security and democratic development in a common neighborhood and, in particular, cooperation with the aim to peacefully settle regional conflicts” [18].

Thus, for the issue of public administration improvement in the field of national security provision the adoption is of utmost importance for Ukraine and must be solved given the need to take into account both national interests and international obligations, which requires analysis and the abilities to implement best practices in the security field, in particular, within the European states.

It should be noted that in this paper we do not focus on such crucial components of ensuring the national security of Ukraine as corruption counteraction. It is a well-known fact that within the European states the state of corruption in Ukraine is the highest, which is confirmed by different ratings of the state of corruption. Corruption itself is a determining factor that the potentially strong in economic position the Ukrainian state is at the lowest levels in the ratings of population, economic well-being, states being attractive for foreign investment, etc. among European countries. This study focuses on the defining, conceptual provisions that are ideological in nature and should have legislative implications (recall that “public authorities and

local authorities, their officials are obliged to act only on the basis, within the powers and in the way provided by the Constitution and laws of Ukraine ”).

We can add that the problems of ensuring national security is urgent not only for Ukraine but also for other states, given the number of factors, among which, as A. Nashinets-Naumova correctly points out, the following should be mentioned:

- growing manifestations of the exhaustion of natural and energy resources;
- critical state of the environment (nature);
- population growth on the planet;
- increasing the number of armed conflicts in different regions of the planet;
- threats to international and national security caused by globalization, terrorism, drug smuggling, and illegal arms trafficking;
- changing views on the role, place and capabilities of the sovereign state in ensuring national security [8, p. 35].

Public administration in the field of national security will be effective if it is carried out on the following principles.

First, it is important to understand clearly what national security is. O. Andreeva, examining the issue of national security of Ukraine in the context of national identity, notes that the cognition of national security “must begin with a serious gnoseological, epistemological and methodological analysis of the status and place of the category “national security” in contemporary political science” [2, p. 12]. Partially agreeing with this, let us emphasize the importance of understanding the very category of “national security”.

As we mentioned above, the Law of Ukraine “On the Basics of National Security of Ukraine” did not contain a clear understanding of this concept, and accordingly, the activities for ensuring national security could not be effective. The lack of a clear vector of activity does not allow us to set the tasks correctly and to perform them, to anticipate the challenges and to adequately respond to them.

It should be noted that the effective Law of Ukraine “On National Security of Ukraine” does not solve the problem of clear definition of the concept of “national security of Ukraine”. Although in Art. 1 of this law there is its definition: “protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats” [16].

Such a conclusion allows us to make a systematic analysis of Art. 1 of the abovementioned Law. Thus, when comparing the definitions of national security and national security, they are the same in scope. The question as to the expediency of introducing a new concept of “national security” arises, if there is a concept of “state security”.

Analyzing the definition of the concept “threat to Ukraine's national security”, we can conclude that national security identifies with national

interests and the preservation of Ukraine's national values. National ones, but not state. Therefore, the issue of the correlation between state and national security is important. For example, in accordance with the provisions of the Constitution of Ukraine, “the state promotes the consolidation and development of the Ukrainian nation, its historical consciousness, traditions and culture ...” (Article 11); “Ukraine takes care of meeting the national and cultural and linguistic needs of Ukrainians living beyond the borders of the country” (Article 12) [7].

In addition, the Law of Ukraine “On Foreign Ukrainians” was adopted in Ukraine, which states in the preamble: “The Ukrainian state promotes the development of national consciousness of Ukrainians living outside Ukraine, strengthening ties with their homeland and returning them to Ukraine” [13].

Talking about the correlation between the state and national security, it should be emphasized that the decisive in understanding the content of these concepts is the understanding of security, since the adjectives “national” and “state” characterize just security.

In addition, both national security and state security (if differentiated) are specific phenomena that belong to the generic concept of “security”. In this context, one cannot but mention the scientific paper of the domestic scientist V. Pasichnyk “Philosophical Category of Security as a Basis of a New Paradigm of Public Administration of National Security” in which the author emphasizes the expediency of such an approach to understanding the content of national security. According to V. Pasichnyk, it is wrong to restrict the understanding of security as the state of protection against threats. “This approach does not take into account that the concept of 'security' can be interpreted more broadly as a category of philosophical, and therefore – a category of theory of state policy and state administration [9]. The author argues that “security as a philosophical category presupposes the protection of being of a person, family, nation, humanity, their essence, conditions of existence, life in general. It is through the prism of being that true values and interests are understood. Security in this sense implies a combination of a statistical approach as to the interpretation of security with apophatic, activity and normative approaches” [9].

According to V. Pasichnyk, security should be understood as “the state of protection of being, values and interests of the subject (object) of security against threats and dangers, under which optimal conditions of his life, development and self-realization are ensured” [9].

This state of security is ensured through the activities as to implementation of a number of parameters and norms. Depending on the subjects, the following types of security should be distinguished: personal, state, national, collective, and human. We cannot but agree with V. Pasichnyk that the philosophical approach to understanding security implies a change in the paradigm of national security, which envisages not only “the protection of national values and interests from threats and dangers in any particular social



spheres, and the protection of the existence of the nation and its components (an individual, society and the state) in general, the struggle with not the consequences, but with the deep causes of threats and dangers to the existence of the nation” [9].

At the same time, it should be remembered that the components of security are cultural life, mentality, social and historical existence, conditions of existence.

Examining the relationship between state security and national security, A. Chuvakov concluded that these concepts have the same essence, denoting the state of the state, which ensures the sustainable development of an individual, the state and society, as well as the protection of national interests against threats both external and internal. Accordingly, the concepts of “state interests” and “national interests” are identical. Although the author notes that the concept of “national interests” “more accurately and substantially reflects the essence of the phenomenon under consideration” [19, p. 195].

But we cannot fully agree with the A. Chuvakov's statement. Determining the balance between state security and national security we should distinguish between the state and the nation. The theories of nation and national state have already been formed while the period of a new era. At the same time, as G. Kasyanov rightly points out, the existence of a national consciousness is crucial for recognizing the existence of a nation: “that there is one subjective sign that is decisive for the existence of a nation, a sign being of which clearly indicates the facts of the real existence of a particular, concrete nation as such, the nation in the modern sense of the word. Different researchers call it differently: “collective solidarity”, “sense of community”, “daily plebiscite”, “national consciousness”, etc., that is, the matter is about the self-awareness of a certain community, which is expressed in the term “nation” [19, p. 55].

A. Saveliev links the emergence of the concept of national state with the West in the period of New times, in particular, with the reaction to the final fall of the Holy Roman Empire and the emergence of sovereign rulers and nationalism, when the state was forced to respond to new security threats, secure trade within the conditionally determined boundaries [17].

It is the concept of nations that lies in the modern theory of the emergence of states through the realization of the right of nations to self-determination. Modern states can be both mono-national and multinational. And if, within a multinational state, one of the nations claims the right to self-determination, it can be considered as a whole within the framework of international law. At the same time, if a national minority within a state with one title nation claims the right to self-determination, it will be contrary to international law (as well as domestic law).

For example, we can mention the Åland Islands. Like the Ukrainian nation, having exercised its right to self-determination and created the state, Ukraine (so part of the Ukrainian nation cannot proclaim the creation of

another state. This right has already been exercised. It should not but mention that the preamble to the Constitution of Ukraine states that the Verkhovna Rada of Ukraine, acting on behalf of the Ukrainian people, adopts the Constitution “based on the centuries-old history of the Ukrainian state-making and on the basis of the right of self-determination exercised by the Ukrainian nation”) and the Finnish Swedes living in the Allan Islands cannot create a new Sweden.

I. Ilyin correctly stated that the state is not an institution that serves the needs of “others”, it should be considered as a corporation, the legal entity that functions for the sake of those it consists of [5, p. 140]. Any state will first and foremost consider national interests. Even in conjunction with other states, creating joint institutions, the state takes into account national interests in one way or another. In this context, it should be noted that according to the Constitution of Ukraine, “Conclusion of international treaties that contradict the Constitution of Ukraine is possible only after the corresponding amendments to the Constitution of Ukraine” [7].

Sufficiently significant in this context is V. Afanasyev's thesis that “the national state is the embodiment of the idea of the state as an organizational form of the historical existence of a particular people, a common form of common life of people, a form of society that has a distinct character in every nation and does not change during its historical being. The national state arises at a certain stage in the historical development of the people, when the latter reaches a high level of self-awareness and begins to distinguish itself from other peoples [3, p. 36].

In this context, one should not but mention A. Yatsko's words that in modern scientific papers in the post-soviet space, the state is considered at best as the subject of geopolitics. Which cannot be considered correct, since the subject of geopolitics is first and foremost a carrier of certain individual interests. The state cannot act as such person because it is not something self-sufficient. The state is only a form of social and political organization of a particular ethnic group or a body of ethnic groups, a means of achieving the goals that confront the ethnic group (or a group of ethnic groups united by the general government) and derive from its interests. A. Yatsko emphasizes: “The logical line “National needs - national interests - national goals” ends with the element “national security”. In politics, the terms “national goals” and “national security” are used synonymously. For example, in the US national strategy, national security is formulated “as the most specific expression of the set of major national goals and is the sphere of joint activities of military and foreign policy” [20].

Thus, the terms “nation” and “state” refer to different phenomena. However, it must be agreed that they have a lot in common.

Therefore, recognizing that national security is multidimensional, and involves a variety of threatened areas, we must also recognize that a significant number of agents and resources are needed to be involved to

overcome these threats. This, in turn, leads to the need for coordinated mutual cooperation of institutions in the field of national security, which can only be effective if there is a common understanding of the concept of “national security”.

Therefore, there is an urgent need for a clear definition of national security and its components. The methodological basis for such a definition should be the distinction between national security and state security. It is advisable to consider national security as the ability not only of the state but also of the public to strengthen and protect national interests, the security of every member of the Ukrainian society, and other constitutional values.

Secondly, public administration in the field of national security provision must take into account not only the internal sphere but also the external sphere, which are closely interconnected.

Public administration in the field of national security provision in the external aspect should be based on taking into account the state of international security, its tendencies, existing threats, etc. Today, one of the crucial areas of strengthening national security for Ukraine is to become a member of the North Atlantic Treaty Organization and the European Union. At the same time, it should be emphasized that the fulfillment of these tasks will not solve all the problems of national security and will not remove all threats to national security.

In this context, it is worth mentioning The National Security Concept of the Republic of Latvia, which clearly states “European Union work in the security and defence field has a supplementary role to the collective defence measures of the North Atlantic Treaty Organisation. As the so-called hybrid threat is growing, the more attention must be directed towards strengthening fields that are not within the competencies of the Common Security and Defence Policy, for example, border security, security of information and cyberspace, energy security, etc.” [1].

It should be noted that at The National Security Concept of the Republic of Latvia Ukraine is also mentioned: «Latvia has to favour further involvement of other international organisations, such as the United Nations Organisation, Organisation for Security and Cooperation in Europe, and Council of Europe, in stabilisation of the international security situation by searching for solutions to the crisis in Ukraine, increasing its stability, territorial integrity, as well as developing democracy and European values» [1].

Latvia points to the importance of Ukraine's national security for it. The public administration bodies in the field of provision of national security of Ukraine cannot ignore this strategic position. If Ukraine wants to emerge as a democratic, law-based state, where human rights, democracy, the rule of law are recognized as fundamental values, it needs to cooperate with the Member States of the European Union. That very values identified are the basis for building a strong civil society that is aware of Ukraine's national interests

understands the importance of civilizational choices and is able to adequately respond to threats and challenges to national security.

“The vast majority of the Ukrainian society supports the course of full membership of Ukraine in the EU and NATO, recognizing that this is a key guarantee of building up a democratic law-based state and ensuring its security. The broad public support in Ukraine for European and Euro-Atlantic choices is conditioned by Ukraine's European civilizational identity, its close and lasting relations with members of the European and Euro-Atlantic communities, which are based on common civilizational values.” – is indicated in the Explanatory Note to the Draft Law of Ukraine of February 7, 2019 “On Amendments to the Constitution of Ukraine (Regarding the Strategic Course of the State for Acquiring Full Membership of Ukraine in the European Union and the North Atlantic Treaty Organization” [10].

Thus, one cannot but agree with the words of domestic scientists Yu. Vedernikov and A. Kuchuk, who note that “only by clearly, systematically and consistently defending national interests, ensuring national security, the state can be a subject of modern world processes without becoming the object of manipulation and, as a consequence, the raw material appendage” [4, p. 8]. A powerful state that is providing a national interest is capable of effectively respond to both internal and external challenges to national security.

The European Union (unlike Russia) sees Ukraine as a democratic, law-based state with a legitimate government capable of counteracting external threats to national security in general, and territorial integrity in particular.

The public administration bodies in the field of provision of national security of Ukraine must clearly understand national interests, make decisions, taking into account the state of regional (European) and international security.

The same is emphasized in Art. 2 of the Law of Ukraine “On the Principles of Domestic and Foreign Policy”: “The principles of domestic and foreign policy are based on the absolute observance of the Constitution of Ukraine, the protection of human and citizen rights and freedoms in Ukraine and the guarantee of the rights and freedoms proclaimed by the Constitution of Ukraine, on generally recognized principles and norms of international law, ensuring the social orientation of the Ukrainian economy and sustainable social and economic development of Ukraine, strengthening the democratic foundations of public and state life, ensuring the rule of law, economic and political independence of the state, protecting its national interests, strengthening of Ukraine as a full and authoritative member of the world community” [14].

In this context, it is important to note that in accordance with the Law of Ukraine of February 7, 2019 February “On Amendments to the Constitution of Ukraine (concerning the strategic course of the state for the acquisition of full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization”) the preamble to the Constitution of

Ukraine was amended as follows provision “taking care of strengthening civic consent on the land of Ukraine and affirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course countries” [12].

And Art. 18 of the Constitution of Ukraine stipulates that “Ukraine's foreign policy is aimed at securing its national interests and security by maintaining peaceful and mutually beneficial cooperation with members of the international community in accordance with generally recognized principles and rules of international law” [7].

Thus, in the conditions of Russia's armed aggression against Ukraine, the issue of national security provision needs special attention. The concept of national security, as well as the restart of the public administration system in the field of national security of Ukraine, need considerable rethinking (2014 showed the errancy of the previous national security provision strategy and the total inefficiency of the public administration system in this area).

O. Andreeva notes that “the formation of a new Ukrainian national identity as an important component of the Ukrainian transformation project and a factor of security, the recognition of the postulate of the inequality of historical time for different peoples and different states is closely connected with the postulate about no choice scenario of building a “nation-state” for modern Ukraine and the formation of the nation as the bearer and the subject of this idea, as well as the institutional practices that correlate with this idea” [3, p. 12-13]. It is hard to disagree with these words, they confirm our thesis on the interrelation of internal and external aspects of national security and define one of the conceptual foundations of the effectiveness of public administration in the field of national security of Ukraine, namely a clear and unambiguous awareness by the public authorities of the content of both national security and national interests.

National security is a complex and multifaceted phenomenon that requires the coordinated activities of a number of bodies and institutions, the interaction of which must be based on a clear awareness and equal understanding of the essence and content of national security and national interests. A different understanding of national interests is a factor that undermines the effectiveness of public administration in the field of national security of Ukraine.

In this context, we cannot but mention once again O. Andreeva's words that “today Ukraine is at a crucial stage of choosing its national security system, as there are no reliable means for protecting its sovereignty in conditions where there is a real threat to its territorial integrity that in the ultimatum form has already been formulated by the State Duma of Russia and is constantly emphasized by representatives of the executive power of Russia. In such a situation, Ukraine will have to seek protection from the European Union and NATO.” [3, p. 13-14] It should be noted that O. Andreeva came to this conclusion a few years before Russia's armed



aggression against Ukraine in 2014. This is an additional factor in the inefficiency of the administration system in the field of national security provision.

Therefore, it is quite understandable conclusion that the vector for European integration and Ukraine's participation in the processes of Euro-Atlantic integration is quite natural and best suits the national interests of Ukraine.

National security should be understood as a joint activities of public authorities and the public in the preservation and protection of national interests, the safety of residents, and other constitutional values. The Ukrainian state should take care of meeting the national and cultural and linguistic needs of those Ukrainians living abroad.

Public administration of provision of national security of Ukraine in the internal and external spheres is interconnected and interdependent. Only by effectively providing national security within its borders can it be fully and effectively respond to external threats to national security, uphold national interests at the regional and international levels. At the same time, the external activity of the state cannot harm the national security of Ukraine encroach on its constitutional order. Signing of international treaties that contradict the Basic Law of Ukraine is possible only after the change of this law.

Until 2014, Ukraine was mainly regarded Russia as a strategic partner, however, aggression from Russia caused a radical change of priorities in the foreign and domestic national security of Ukraine, became a factor in the search for new means of national security provision, consolidation at the constitutional level of conscious choice of the European vector of development, irreversibility of European and Euro-Atlantic course of Ukraine.

It is within the limits of Western civilization that Ukraine will be able to realize itself as a democratic, law-based state, in which a person and his rights are recognized as the fundamental value, the rule of law is realized, which fully corresponds to its national interests, reflected in the Constitution.

Integration into the European Union and the North Atlantic Treaty Organization for the Ukrainian people will be an important means of ensuring Ukraine's national security.

Therefore, within the framework of globalization and euro integration processes, public administration in the field of provision of national security of Ukraine should proceed from the principle of interdependence of internal and external aspects of national security, necessity of taking into account and possibility of implementation of international experience in this sphere, first of all European states.

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