

УДК 330.341.1

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LEGAL FOUNDATIONS OF COOPERATION BETWEEN
UKRAINE AND THE EUROPEAN UNION

The formation of legal framework of cooperation between Ukraine and the EU in the 1990s as one of the main elements of formation of state policy of Ukraine towards European integration is being analyzed in this paper. It is relevant to analyze this subject nowadays in order to understand the nature of cooperation between the parties, because the actual topic of contemporary cooperation between the EU and Ukraine is signing new enhanced agreement. After analyzing provisions of legal acts and researches of Ukrainian scientists the conclusion is made about the nature of cooperation between Ukraine and the EU before the end of the period of formation of Ukraine's state policy towards European integration and prospects of Ukraine's membership in the EU based on the established legal norms of cooperation between two parties. It is stressed that the provisions of the Agreement on Partnership and Cooperation with the European Union did not contain the prospects of Ukraine's membership in the EU and were primarily directed on the development of trade relations and political dialogue between the parties.

Moreover, aspirations for EU membership were declared by Ukraine and were recognized by the EU only after the ratification of the PCA, i.e. in the late 1990's with the approval of the Strategy of Ukraine's integration into the European Union on the 11th of June, 1998 by the President of Ukraine. Therefore, the enhanced agreement between Ukraine and the EU, as oppose to the PCA, will provide new legal mechanism of bilateral cooperation between the parties, which will enable to develop further relations in various spheres and be more in line with Ukraine's strategy to become member of the EU.

Keywords: legal and agreement mechanism, European integration, formation of public policy, cooperation, agreement, Ukraine, European Union.

Палагнюк Ю. В. Правові засади співпраці України та Європейського Союзу

Особливості формування правового механізму співробітництва України з ЄС аналізуються у цій статті. Робиться висновок про характер співробітництва між Україною та ЄС до за-вершення періоду формування державної політики України на європейську інтеграцію та про перспективи членства в ЄС відповідно до встановлених правових норм співпраці двох сторін.

Ключові слова: договірно-правовий механізм, європейська інтеграція, формування державної політики, співробітництво, угода, Україна, Європейський Союз.

Палагнюк Ю. В. Правовые основы сотрудничества Украины и Европейского Союза

Особенности формирования правового механизма сотрудничества Украины с ЕС анализируются в этой статье. Делается вывод о характере сотрудничества между Украиной и ЕС до конца периода формирования государственной политики Украины на европейскую интеграцию и про перспективы членства в ЕС в соответствии с установленными правовыми нормами сотрудничества двух сторон.

Ключевые слова: договорно-правовой механизм, европейская интеграция, формирование государственной политики, сотрудничество, соглашение, Украина, Европейский Союз.

Introduction

Nowadays the actual topic of cooperation between the EU and Ukraine is signing new agreement between Ukraine and the EU. That is why it is relevant to analyze the formation of legal framework of Ukraine's cooperation with the EU in the 1990s to understand the nature of cooperation between Ukraine and the EU before the end of the period of formation of state policy of Ukraine towards European integration.

Analysis of recent research

Analysis of the formation of contractual and legal relations between Ukraine and the European Union was made in the works of local scientists in Law: Y. Kostyuchenko, A. Laba, M. Mykiyevych, V. Muravyova, N. Sur, and others, as well as in Political Science, such as O. Kovalyova and V. Kopyuka, R. Filonenko etc.

Statement of research objectives

The purpose of this paper is to analyze the formation of legal framework of cooperation between Ukraine and the EU as one of the main elements of formation of state policy of Ukraine towards Euro-pean integration.

Results

The national identity of Ukraine as a European country was declared on the 5th of December, 1991 in the Appeal of the Verkhovna Rada of Ukraine “To the parliaments and peoples of the world” due to confirmation of the “Act of independence of Ukraine” by the people of Ukraine on referendum [1, p. 1]. The aim of already independent Ukrainian state was in developing cooperation with the EU and receiving EU membership status in the future. It received legislative confirmation in the Resolution of the Verkhovna Rada of Ukraine “On the basic directions of foreign policy of Ukraine” from the 2nd of July, 1993. The Resolution stated that “the prospective objective of Ukrainian foreign policy is Ukraine’s membership in the European Communi-ties ... In order to maintain stable relations with the European Communities Ukraine shall conclude with them the Agreement on Partnership and Coopera-tion, implementation of which will be the first step in moving towards an associate, and later – a full membership in the organization” [8]. Furthermore, the Law of Ukraine “On the principles of national security of Ukraine” from the 19th of June, 2003 in the fifth paragraph of Article 8 (as amended by the Law N 2411-VI, “On the principles of domestic and foreign policy of Ukraine” from the 1st of July, 2010) is about “acquiring membership in the Euro-pean Union while maintaining good neighborly re-lations and strategic partnership with Russia, other countries of the Commonwealth of Independent States and with other nations of the world” [9].

During the preparation for signing and ratifi-cation of the Agreement on Partnership and Coop-eration with the European Union (hereinafter – the PCA), the Ukrainian side was creating legal basis of such cooperation. The following Decrees of the President of Ukraine were issued as “On Interde-partmental Committee of Ukraine on the European Communities” (28th of August, 1993), “On mea-sures to improve cooperation between Ukraine and the European Union” (7th of February, 1995), “On measures for improvement of the mechanism of interaction with the European Union and its execu-tive bodies” (21st of April, 1997).

Eventually, “with the purpose of implementing the strategic course of Ukraine towards integration

in the European Union, provision of Ukraine’s en-try into the European political, economic and legal space, improvement of the mechanism of Ukraine’s cooperation with the European Communities (Eu-ropean Union) and to ensure the implementation of the Agreement on Partnership and Cooperation, signed between Ukraine and the European Union on the 16th of June, 1994” [6], the President of

Ukraine issued the Decree “On the implementa-tion of the Agreement on Partnership and Coopera-tion between Ukraine and the European Commu-nities (European Union) and the improvement of the mechanism of cooperation with the European Communities (European Union)” from the 24th of February, 1998.

The PCA was the basic document that defined the legal mechanism of bilateral cooperation be-tween Ukraine and the EU. Although it was signed between Ukraine and the European Union on the 16th of June, 1994, the PCA entered into force only on the 1st of March, 1998 after it had been ratified by the parliaments of all EU member states.

The PCA established a partnership between the Community and its member states on the one hand, and Ukraine – on the other. The objectives of this partnership were identified as to “provide an appropriate framework for the political dialogue between the Parties allowing the development of close political relations; to promote development of trade, investment and harmonious economic re-lations between the Parties and, thus, the accelera-tion of their sustainable development; to provide a basis for mutually advantageous economic, social, financial, civil, scientific, technological and cul-tural cooperation; to support Ukraine’s efforts to consolidate its democracy, to develop its economy and to complete the transition to market economy”

– (Article 1 of the Agreement).

According to N. Sur, Ph.D. in Law, certain provisions of the PCA contained commitments of our country, aimed at creating legal framework to regulate the cooperation with the EU. This scientist stressed that “integration processes can not be done mechanically; they need improvement, coordina-tion and harmonization of the national legislation of Ukraine to the norms and standards of the Euro-pean Union, thus creating a legal and institutional framework for cooperation between our country and the EU” [11, p. 7] in her Ph.D. thesis “Legal integration of Ukraine into the European Union: a theoretical and legal research”. At the same time, Doctor of Legal Sciences M. Mykiyevych ob-served that the PCA, “as well as other agreements

to which the Community is a party, constitute an integral part of its law, as well as its overall legal system ... Requirements of compatibility and uniformity of application of such agreements throughout the Community result from this” [4, p. 31-32].

Analyzing the nature of the Agreement, Ukrainian Doctors of Legal Sciences M. Mykiyevych and V. Muravyov put the PCA to the category of “mixed agreements” [4, p. 31, 5, p. 13]. So “in accordance with the Union law, it has the character of a bilateral agreement since these are agreements regarding trade and cooperation or an association agreement concluded between the Community and its member states, on the one part, and the third country – on the other. Since Community law has derived from the international legal system, it has to be incorporated into the national legal system of each member state”. [4, p. 31] Actually, because the PCA is categorized as a “mixed agreement”, the

EU member states can also conclude agreements on the implementation of the PCA [5, p. 13].

As for the prospects of Ukraine’s membership in the EU, then even though the PCA defined legal principles and forms of cooperation between Ukraine and the EU, however, as it is emphasized by the Doctor of Legal Sciences M. Mykiyevych,

“the peculiarity of it is that there is no reference to European integration in the Agreement, which is generally the characteristics of partnership agreements” [4, p. 32]. However, the Agreement included far-reaching mutually beneficial commitments of both sides, based on their “desire to establish strong relationships built on existing historical relations between them” [4, p. 32]. Doctor of Political Sciences V. Kopyka gives similar to M. Mykiyevych’s characteristics of the PCA. He notes that the PCA is a “regular modernized form of standard trade agreements, which lie at a rather low level of contractual relations between the EU and third countries and do not include establishment of any preferences” [2, p. 15]. In his opinion, “universal nature of the PCA, lack of a differentiated approach to the New Independent States (hereinafter

– NIS) and willingness of the EU to shift the emphasis more to the question of political cooperation in the PCA leaving economic cooperation in the background, indicated secondary importance of relations with the NIS for the EU” [2, p. 15]. Moreover, given the unpreparedness and minor successes of the NIS countries in conducting internal post-socialist reforms, V. Kopyka believes that at that time the EU did not consider future prospects of relations including with Ukraine nor in practi-

cal, nor in theoretical terms [2, p. 15]. Doctor of Political Sciences A. Kovalyova noted the absence of a differentiated approach from EU political institutions to the partner countries. She emphasized that the EU concluded agreements on partnership and cooperation with such countries, the prospect of membership of which was uncertain or not proclaimed as the priority of the development. This scientist proposed to evaluate this form of the EU’s relations with countries in the context of the EU’s common foreign policy towards post-Soviet countries. Cooperation with countries, according to the EU, was complicated because of high degree of political risk due to the unstable political and economic situation in the countries of the former Soviet Union. The PCA were concluded with most of the new states that emerged in territory of the former Soviet Union with the exception of the states in the Baltic region. But only Ukraine, Moldova and Georgia declared intention to join the European Union. Thus, the “political content of the PCA is limited primarily to the fact that the Agreement does not contain provisions regarding the prospects of the associated relations with the EU” [1, p. 13], in the opinion of A. Kovalyova. Thus, it is clear that the provisions of the PCA according to the nature of partnership agreements did not contain the prospects of Ukraine’s membership in the EU or even gradual deeper integration of Ukraine into the EU.

Other characteristics of Ukrainian scholars about the content of the PCA should also not be avoided. According to the Doctor of Legal Sciences V. Muravyov, the PCA contains a relatively small number of clearly defined obligations for subsequent implementation, while framework nature of agreement envisages the implementation of its provisions by concluding other international agreements by the parties involved [5, p. 13]. It is pertinent also to pay attention to the fact that the legal framework of cooperation between Ukraine and the EU was not limited to the PCA, but also included other documents that were adopted after the PCA entered into force: concluded international agreements with the ECSC and Euratom, the EU acts for the implementation of the Common Strategy and more.

It should also be borne in mind that the legal conditions for the application of the EU law in the legal order of Ukraine in general were created by the Constitution of Ukraine, adopted on the 28th of June, 1996 and by other acts of law. It is also needed to note that the international treaties, ratified by Ukraine, are part of the national legislation and

binding. The relevant provisions are enshrined in the Article 9 of the Constitution of Ukraine. However, the analysis of the legislation of Ukraine by Doctor of Legal Sciences V. Muravyov indicates that it does not give a clear answer to the question of the status of provisions of international treaties in the internal legal order of Ukraine. Accordingly, this also applies to the PCA. Furthermore, he draws attention to the fact that acts of international organizations are mentioned neither in the Constitution of

Ukraine, nor in other legislative acts of our country. However, their importance in the legal regulation of international cooperation in economic affairs is constantly growing. Also the practice of application of norms of international law by national judicial institutions is not well developed in Ukraine due to the lack of an appropriate mechanism. Hence, as summarized by V. Muravyov, creation of the legal framework for the integration of Ukraine into the EU requires, among other things, solutions at the national level of the problem of choosing means of implementation of our country's international obligations [5, p. 13].

It is important also to pay attention to the EU Common Strategy on Ukraine of 1999, which recorded the recognition of Ukraine's European aspirations. This document can be considered as the EU's response to the "Strategy of Ukraine's integration into the European Union", approved on the 11th of June, 1998 by the Decree of the President of Ukraine.

The Strategy of Ukraine's integration into the European Union identified the main directions of the integration process of Ukraine: 1) adaptation of Ukraine's legislation to the EU legal system, guarantee of human rights; 2) economic integration and development of trade relations between Ukraine and the EU; 3) integration of Ukraine into the EU in the context of general European security; 4) political consolidation and strengthening of democracy; 5) adaptation of social policy of Ukraine to the EU standards; 6) cultural and educational, scientific and technical integration; 7) regional integration of Ukraine; 8) industrial cooperation; 9) cooperation in the field of environmental protection [7].

Overall, the Strategy was approved with the "purpose of implementing strategic course of Ukraine towards integration into the EU, providing comprehensive integration of Ukraine into the European political, economic and legal space and creating preconditions for Ukraine's membership in the EU" [7]. Doctor of Political Sciences A. Kovalyova noted that the ideas of Ukrainian po-

litical scientists about place and role of Ukraine in modern Europe formed the basis for the Strategy of Ukraine's integration into the European Union" [1, p. 1]. As stated in the Strategy, the national interests of our country require identification of Ukraine as an influential European state and as a full member of the EU. Moreover, receiving the associate membership status in the EU by Ukraine was determined as the main foreign policy priority of Ukraine in the medium dimension. Moreover, this process should have been correlated in time with full membership in the EU of candidate countries that share border with Ukraine [7]. However, as it is known, the task of receiving the associate membership status in the EU by Ukraine in the medium term during the accession to the EU of other countries of Central and

Eastern Europe in 2004 and 2007 was not met.

It should be noted that Doctor of Political Sciences A. Kovalyova in her postdoctoral dissertation on the topic "The Ukrainian policy towards European integration processes", defended in 2004, considered approval of the Strategy for Ukraine's integration into the EU by the President of Ukraine to be the moment of the "official proclamation of European integration as the priority of state development" [1, p. 15] and the completion of "the prolonged, given the dynamism of social and political changes in the

1990s, period of multi-vector foreign policy" [1, p. 18]. Agreeing with the opinion of this researcher, we also consider the approval of the Strategy as the end of the period of formation of state policy of Ukraine towards European integration.

So, the process of integration of Ukraine into the EU, which started with the acquisition of our country's independence, according to N. Sur, Ph.D. in Law, led to the need of creating appropriate legal requirements for its implementation in domestic legal order of Ukraine. It was launched by the PCA between EU and Ukraine [11, p. 7]. Nevertheless Doctor of Legal Sciences V. Muravyov argued in the result of his analysis of the legal framework of cooperation between Ukraine and the EU that the core of partnership between the two parties at that time was just trading relations [5, p. 13].

After all it is appropriate to draw attention to the periods of formation of international legal cooperation between Ukraine and the EU, which was proposed by Ukrainian scientist A. Laba in her Ph.D. dissertation in Law on the topic "The law of the European Union and the law of Ukraine: theoretical and legal problems of relationship and harmonization (1991 - 2004 years)". She identified three stages of international legal coopera-

tion between Ukraine and the EU in the 1990s. In her view, the first stage – from the independence of Ukraine in 1991 to the entry into force of the Interim Agreement on trade and trade-related issues in 1996 – was characterized by the fact that relations between Ukraine and the EU were regulated by the provisions of the Agreement on trade and cooperation between the European Economic Community and Euratom and the Soviet Union, concluded in 1989. The second stage is based on the PCA between Ukraine and the EU, concluded in 1994 and entered into force in 1998. Moreover, this researcher points out that Ukraine was the first newly independent state, which had signed such an agreement with the EU. However, its prolonged ratification by the EU member states led to the fact that the Agreement entered into force only in 1998. This was the reason why during the second stage the cooperation between Ukraine and the EU was focused mainly on the development of economic and trade relations without practical appeal to the problems of integration of legal system of Ukraine to the EU law. The third stage began after the PCA had entered into force. It is characterized by the expansion of cooperation between the parties on a broad range of relationships, including the scope of the convergence of legal systems [3, p. 17].

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Conclusions

The basic document, which defined the legal mechanism of bilateral cooperation between Ukraine and the EU, was the Agreement on Partnership and Cooperation between Ukraine and the EU (the APC). It was signed in 1994, ratified by the Verkhovna Rada of Ukraine also in 1994, but came into force for the period of 10 years only in 1998 after its ratification by the parliaments of all EU member states.

The gradual realization of the Agreement has allowed a visible progress in relations between Ukraine and the EU in terms of economic integration of Ukraine into the EU. At the same time the PCA provisions did not contain the prospects of Ukraine's membership in the EU and were primarily directed on the development of trade relations and political dialogue between the parties. In fact, aspirations for EU membership were declared by Ukraine and were recognized by the EU after the ratification of the PCA, i.e. in the late 1990's with the approval of the Strategy of Ukraine's integration into the European Union on the 11th of June, 1998 by the President of Ukraine. Thus it might be concluded that the enhanced agreement between Ukraine and the EU, as oppose to the PCA, will provide new legal mechanism of bilateral cooperation between the parties, which will enable to develop further relations in various spheres and be more in line with Ukraine's strategy to become member of the EU.

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