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## **FUNDAMENTAL RIGHTS IN THE CONTEXT OF THE UKRAINIAN ACCESSION TO THE EUROPEAN UNION**

### **ABSTRACT**

The article is an attempt to present the legal context of the Ukrainian accession to the European Union, underlining the obligation of executing and protecting fundamental rights being one of the most important values of the organizations. Fundamental rights, along with the whole aspect of European law, are unique on the global scale, as none of the regional organizations has built so far, such complex and deep system of right and obligations for its citizens. To become a full member of the EU, a candidate state must fulfil many criteria, among which are economic rates, political standards, and last but not least, legal aspects of functioning the democratic state of law. Difficult situation of the Ukrainian government, divided territory after the Russian illegal annexation of Crimea and separatist republics in the Eastern Ukraine are not making easier the accession either. However, the article focuses on the legal, while not political implementation of the European legal values into the Ukrainian state.

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***Keywords:** Ukraine, European Union, accession, accession process, fundamental rights.*

### **INTRODUCTION**

The purpose of this article is to show the functioning of and compliance with the legal instruments of protection of fundamental rights in Ukraine in the context of accession to the European Union. This topic is highly important not only for the EU member states, Ukraine itself<sup>2</sup>, but also for any other candidates, just like Bosnia and Herzegovina is. Another argument in favour of the need for examining and constantly observing respect for fundamental rights behind the eastern border of the European Union is the constant state of war that has been lasting for over five years now. Here we ought to note both legal and humanitarian obligations by other democratic European states to ensure and then maintain a stable political, economic and social situation in Ukraine, in the face of an armed conflict with the

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<sup>2</sup> Case law in Ukraine, as well as the Ukrainian legislative evolution are far beyond the scope of this paper and will not be presented or analysed.

Russian Federation since February 2014. It should be remembered that the so-called “Crimean crisis”, being pro-Russian protests followed by self-proclaimed detachment of the three oblasts from Ukraine constituting separatist republics<sup>3</sup>, contrary to norms of both internal law and international law, were a consequence of pro-European demonstrations starting in November 2013. Such wave of the largest protests had been organized in order to stand against the government in Ukraine, being openly pro-Russian, and at the same time strongly against the western values represented by the EU. Expectations of the Ukrainian society to finally complete negotiations on the association agreement with the European Union transformed in weeks of demonstrations at the Independence Square in Kiev has been called “Euromaidan”.

This social background is needed to understand better the hard situation of Ukraine, which is still not able to fulfil the legal obligations to become an EU member. The Ukrainian society, along with its current authorities, is striving to recognize Ukraine as an equal partner for the 28 European Union members, when it comes to both international trade contacts and aligning Ukrainian legislation with the legal frameworks of European legislation. The article is therefore an attempt to present the legal context<sup>4</sup> of the Ukrainian accession to the European Union, underlining the obligation of executing and protecting fundamental rights being one of the most important values of the organizations. Fundamental rights, along with the whole aspect of European law, are unique on the global scale, as none of the regional organizations has built so far, such complex and deep system of right and obligations for its citizens. Finally, it is important and indeed necessary to find an answer whether there has been any progress in the efforts of Ukraine, which in previous decades had serious problems with respecting fundamental rights.

## **1. Fundamental rights in and outside of the Union**

Fundamental rights are the highest value of the European Union, being a legal entity of the feature of the intergovernmental international, in accordance with International law<sup>5</sup>. They create a kind of the formal foundation, a legal basis

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<sup>3</sup> At the beginning there were three of them: the Donetsk People’s Republic, the Luhansk People’s Republic and the Kharkov People’s Republic, but the latter was taken over by the Russian special forces and it has finally failed. It was in fact similar case as the Odessa People’s Republic, whose territory was eventually illegally annexed to Russia.

<sup>4</sup> Within the legal context it is also necessary to make some broader descriptions, therefore this part of the article might be of the historical approach. The author intentionally uses this methodology next to the latest laws analysis.

<sup>5</sup> We have to remember that before the Treaty of Lisbon (amending the three existing communities, signed on 13 December 2007), the EU was not having any legal personality therefore it could not have been perceived or even called as an IGO.

for other rights protected by the European judicial order: “Fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms and as they result from the constitutional traditions common to the Member States, shall constitute general principles of the Union’s law”<sup>6</sup>.

It should be emphasized at the beginning that fundamental rights represent a unique catalogue of values characteristic of the community of states across Europe. This set of standards is unprecedented on a global scale. The European Union, following the example of another regional organization - the Council of Europe - has codified the catalogue of rights for its citizens and persons residing within the territory of the member states. *Human rights* are their counterpart in the international law doctrine. Nevertheless, belonging to a specific minority or separated group of people (e.g. children’s rights, women’s rights, immigrants’ rights, etc.) entitles them to exercise some of the highly marked off entitlements. Importantly, the term “human rights” does not appear *expressis verbis* in any international agreement, this having no legal and binding definition but rather being understood as the highest possible legal reference *per se*. While fundamental rights are intended for everyone, regardless of social group or nationality. In addition, the concept of “fundamental rights” is typical to the doctrine of European law, while not to Public international law. On the basis of international law, the formula “human rights” is used to each of the regional orders. That is why fundamental rights so to speak form a legal and structural basis for human rights. It is also impossible to look for a coherent definition of fundamental rights, which is an undoubted consequence of their heterogeneous concept. Such broad concept should be seen as an advantage while not as a disadvantage, as it is indeed very capacious, for the better of the European citizens and residents.

The European Union has formally recognized the norms guaranteed by the Charter of Fundamental Rights (CFR) from 7 December 2000<sup>7</sup>. Its formal contestation is being presented in Art 6 of the Treaty on European Union: “The Union recognizes the rights, freedoms and principles set out in the Charter of Fundamental Rights (...) which shall have the same legal value as the Treaties.”<sup>8</sup> The equalization of the legal force of the provisions coming from the CFR with the Treaty law<sup>9</sup> means that fundamental rights have been explicitly included in the catalogue of values represented by the European Union. Therefore, the

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<sup>6</sup> Compare Art. 6 passage 3 of the Treaty on European Union (Official Journal of the EU C 326/01, Volume 55, 26 October 2012).

<sup>7</sup> Charter of Fundamental Rights of the European Union from 7 December 2000 (Official Journal of the EU C 326/02, Volume 55, 26 October 2012).

<sup>8</sup> Art. 6 passage 1 of the Treaty on European Union.

<sup>9</sup> Both Treaty on European Union and the Treaty on the Functioning of the European Union (Official Journal of the EU C 326/01, Volume 55, 26 October 2012).

collection of these unique entitlements gained protection guaranteed by not only European treaty law, but also the whole legitimacy in the legislative process, as well as judiciary of the EU and those of member states. It should be here made clear that fundamental rights have also become the legal basis for the case law of the Court of Justice of the European Union.<sup>10</sup> In addition, EU institutions have been legally obliged to respect and promote these rights in the legislative process, though issuing their decisions, recommendations and other documents.

Fundamental rights are guaranteed by European law, which translates into a legal obligation to enforce them in the internal law of the 28 members. Any kind of violation of fundamental rights is perceived as a gross violation of EU law as such, which in turn is tantamount to the formal possibility of issuing a complaint by the European Commission or another member state<sup>11</sup>. These rights are also protected in Europe by another multilateral document prepared by the Council of Europe<sup>12</sup> in 1950 - Convention for the Protection of Human Rights and Fundamental Freedoms (hereafter called as the Convention)<sup>13</sup>. By granting the European Union legal personality under the Treaty on European Union,<sup>14</sup> this organization has become a full subject of international law, which could finally become a party to any international treaty. After ratifying the Convention, as its member, the EU has assumed the obligations to respect the rights contained therein.

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It is important to stress the legal obligation as the European Union requires absolute respect for fundamental rights not only from its 28 members. This also applies to any country aspiring to enter into its structures. However, one cannot not forget about the parallel need to comply with, as well as to promote this catalogue of rights. The same requirement is given for “old” members, but also the candidate countries, including Ukraine. Here we touch upon *the Copenhagen Criteria*. This set of political declarations in the form of unspecified (so-called general clauses) guidelines includes, among others, respect for human rights, minority rights, the rule of law, and the functioning of legal institutions assuring and protecting the abovementioned rights, as well as guaranteeing democratic way of governance. These political obligations that candidates for EU has to fulfil were established at the European Council summit in the capital of Denmark on June 21-22, 1993. It was finally decided to establish such criteria due to

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<sup>10</sup> Not to be mistaken with the Court of Justice, informally known as European Court of Justice. The Court of Justice of the European Union comprises of three courts: The Court of Justice, the General Court and specialised courts.

<sup>11</sup> Art. 258 and 259 of the Treaty on the Functioning of the European Union.

<sup>12</sup> The membership in the Council of European and the European Union does not overlap.

<sup>13</sup> Convention for the Protection of Human Rights and Fundamental Freedoms from 4 November 1950, amended by the Protocol 3, 5 and 8, and finally complemented by the Protocol 2.

<sup>14</sup> Art. 47 of the Treaty on European Union.

transparency of the accession process, as well as transparency in bringing national legal orders closer to the European system's standards. From 1993, the European Council had a clear and fair pattern in relation to the countries from Central and Eastern Europe. It was also at the Copenhagen Summit where a decision to expand the "old" European Union with new members was made. The criteria were then reflected in the provisions of the Charter of Fundamental Rights.<sup>15</sup> Therefore, it does show the importance of the rights protected by the EU, which initially emerged its most important values in a political decision, while the next step was to bind them legally. Establishing, signing and ratifying an international agreement (CFR) proved to be a legal basis in order to protect each member state, citizens, residents, and candidate states and their citizens.

The European Union, as a regional supranational organization, has taken the role of a guarantor, but also a promoter of its core values. Fundamental rights are associated with the democratic nature of functioning of the EU institutions, as well as the direct impact of European law on individuals. The latter feature is unique in the world, because the law established by this IGO affects not only the member states, but also their citizens.<sup>16</sup> It is the EU bodies that, through legislation and the jurisprudence of the Court of Justice of the European Union, cover a wide catalogue of fundamental rights. However, it should be clearly emphasized that the hierarchy of protected values has changed significantly in the legal history of this organization. Initially though, economic values were subject to legal protection. The beginning of European integration was, after all, the economic agreement of states within the European Coal and Steel Community of 1952.<sup>17</sup> After gradually achieving his economic goals, the parties then turned to social rights, including human and civil rights.

Similarly, the association agreement between Ukraine and the European Union initialled by its signatories in March 2012<sup>18</sup> raised first the issues of political

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<sup>15</sup> S. Łodziński, *Instytucjonalizacja praw językowych osób należących do mniejszości narodowych*, in: *Pomiędzy i wewnątrz: Instytucje, organizacje i ich działania*, M. Pawlak, Ł. Srokowski, IPSiR UW, Warsaw 2014, p. 102-103.

<sup>16</sup> Art. 20 of the Treaty on the Functioning of the European Union: "1. Citizenship of the Union is hereby established. Every person holding the nationality of a Member State shall be a citizen of the Union. Citizenship of the Union shall be additional to and not replace national citizenship. 2. Citizens of the Union shall enjoy the rights and be subject to the duties provided for in the Treaties. (...)"

<sup>17</sup> Treaty establishing the European Coal and Steel Community (the Treaty of Paris) was signed on 18 April 1951 came into force on 23 July 1952 and expired after the agreed 50 years on 23 July 2002.

<sup>18</sup> At the 15th European Union - Ukraine Summit on 19 December 2011 in Warsaw, the text of the association agreement was adopted, which was subsequently initialled on March 30, 2012. However, due to political changes in Kiev, negotiations on accession were interrupted and the content of the association agreement was changed.

cooperation, while not the legal harmonisation of orders. Here however, further provisions on creation of a free trade area were conditionally postponed. Clauses relating to the future creation of a free trade area between Kiev and Brussels have been submitted only on the first and last pages of the agreement's text. It was therefore a clear signal that most of the assumptions of the association agreement will be clarified at a later date. According to media, this was made due to pressure from Russia, which wanted to secure its economy, strongly associated with Ukraine<sup>19</sup>. Originally, there was no focus on human rights, or any values explicitly violated in public and private life in Ukraine.<sup>20</sup> Undeniably, this was due to the failure of the Kiev government to meet requirements such as the release of former Ukrainian Prime Minister Yulia Tymoshenko from detention in 2005 and 2007, as well as not to hold democratic elections.

As it has already been indicated, there is a formal relation between compliance with fundamental rights and the possibility of joining the structures of the European Union. First of all, respect for human rights is one of the basic legal conditions for accession to this organization. This is stated in Art. 21 of the Treaty on European Union. It is worth emphasizing here that, in addition to the Union, the Council of Europe has also taken on the role of promoter of fundamental rights. Its statute<sup>21</sup> contains a provision on the organization's goals, which must be achieved precisely through the observance and development of human rights. In addition, as is often forgotten, the formal condition for accession to the Council of Europe is the adoption of the previously recalled Convention for the Protection of Human Rights and Fundamental Freedoms.<sup>22</sup> Similarly, the axiological scope of the EU, listed in Art. 2 of the Treaty of European Union, includes common values for the member states. These norms are important mainly because they formulate a legally protected base for the functioning, development and further expansion of the organization.

Political and legal conditions of joining those two international organizations have been deliberately cited here. This is irrefutable proof of the elevation of fundamental rights in the modern world and regulations in widely accepted international law. The European Union, which already has own legal personality,

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<sup>19</sup> K. Strzępka, "Umowa stowarzyszeniowa UE-Ukraina wchodzi w pełni w życie", *Gazeta Prawna* 1.09.2017; K. Nieczypor "Krzysztof Nieczypor: sytuacja Ukrainy jest zależna od decydentów Zachodu" for *Polskie Radio 24* 04.06.2019; K. Nieczypor "Ukraina i UE ratyfikują umowę. Rosja jest jednak dość skuteczna i to niepokojący sygnał" for *Polskie Radio 24* 15.09.2014.

<sup>20</sup> Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (Official Journal of the EU L 161, Volume 57, 29 May 2014).

<sup>21</sup> Statute of the Council of Europe from 5 May 1949.

<sup>22</sup> The doctrinal thesis is often formulated according to which the protection of fundamental rights in member states of the Council of Europe is an assessment of the legislative activities of individual states.



has gained a legal basis for accession to the Convention, which was highlighted in a separate article of the treaty.<sup>23</sup> Although all member states have ratified the Convention, the EU by acceding to it, had increased even more the scope of protection of individuals, as well as imposed on itself a separate responsibility in the field of fundamental rights.

## 2. Ukrainian legal culture in the accession context

The European Union has imposed on itself the role of promoter of democracy along with the rule of law in Ukraine for almost two decades. Officials of the EU institutions are very aware of their momentous impact on the political transformation and changes in the Kiev government<sup>24</sup>. The pro-EU orientation of the Ukrainian society, as well as the authorities representing it, is also a response to the growing demands of the Russian minority, which is openly against Ukraine's integration with the Union. This was clearly demonstrated by the events of the last few years, including calling for and then unlawful annexation of areas inhabited by the Russian-speaking population to the territory of the Russian Federation, or ultimately the territory separation against internal law.

The first manifestation of implementation of the European legal culture, of which the fundamental rights are undoubtedly an important aspect, are the provisions of the Association Agreement between Ukraine with the European Union.<sup>25</sup> Additionally, the government in Kyiv entered into the Council of Europe on 9 November 1995, also through ratifying the norms of the Convention two years after. Next, in the Constitution of Ukraine from 1996,<sup>26</sup> in its preamble, there is a phrase that expresses legal efforts of “caring of providing of rights and freedoms”, as well as “aiming to develop and fasten the democratic, social, legal state.” In accordance with the message from the legislator: “A man, its life and health, honour and dignity, inviolability and safety, confess in Ukraine by the greatest social value”,<sup>27</sup> while “Rights and freedoms of man and their guarantees determine maintenance and orientation of activity of the state. The state is responsible to the man for the activity. Assertion and providing of rights

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<sup>23</sup> Art. 6 of the Treaty on European Union.

<sup>24</sup> I. Solonenko, “External democracy promotion in Ukraine: the role of the European Union”, *Democratization*, Volume 16, Issue 4, 2009; Special Issue: Democracy Promotion before and after the ‘Colour Revolutions’.

<sup>25</sup> Association Agreement... ; Council Decision of 17 March 2014 on the signing, on behalf of the European Union, and provisional application of the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part, as regards the Preamble, Article 1, and Titles I, II and VII thereof (Official Journal of the EU L 161, Volume 57, 29 May 2014).

<sup>26</sup> Constitution of Ukraine from 28 June 1996 (VVRU 1996, No 30, item. 141).

<sup>27</sup> Art. 3 of the Constitution of Ukraine.

and freedoms of man is the main duty of the state.”<sup>28</sup> The other passages of Art. 3 contain a provision establishing the state’s responsibility towards the individual. Pursuant to the Constitution, the fundamental protection of human rights and freedoms is the main duty of the state. The second section of the act is entitled “Rights, freedoms and duties of man and citizen”, which shows that across number of protected norms, fundamental rights have been given a prominent place. In forty-eight articles of the mentioned editorial unit of the Constitution, fundamental rights of persons were described regarding to anyone residing in Ukraine, and therefore not only its citizens.<sup>29</sup>

The legal and formal conditions of the possible Ukraine’s accession to the EU are therefore met. However, is this reflected in practice? From a comparative point of view, it seems reasonable to refer to the Council of Europe’s report on the state of compliance with the principles contained in the Convention,<sup>30</sup> and then to contrast it with the results of the Council of Europe Commissioner for Human Rights protocol of 2006,<sup>31</sup> before the political crisis in Ukraine.

Most rulings of the European Court of Human Rights, the body established under the provisions of the Convention, has showed a grand violation of Art. 2 - the right to life, as well as Art. 3 - matters related to inhuman and degrading treatment or punishment. The next group of judgments includes rights to a fair trial and its settlement within a reasonable period of time (Art. 5), right to privacy (Art. 8) and freedom of assembly (Art. 11). The Commissioner’s report from 2006<sup>32</sup> pointed out the need to improve penitentiary conditions. Bad, inhuman conditions of prisoners in prisons, criminal camps or detention centres made the basic problem of the judicial and penitentiary system in Ukraine and were also widely heard on the international arena due to the undemocratic “political prisoners.” As an argument, the Council official cited the fact that the condition of closed centres had a significant impact on prisoners, which entailed access to their fundamental rights, such as right to dignity.<sup>33</sup>

<sup>28</sup> *Ibidem*.

<sup>29</sup> Like even Art. 23 or Art. 28, which talk respectively about the free development of personality and the right to respect dignity.

<sup>30</sup> European Court of Human Rights, *Press country profile; Ukraine*, report from July 2019 and January 2015.

<sup>31</sup> Report by the Commissioner for Human Rights Mr Thomas Hammarberg on his Visit to Ukraine 10 – 17 December 2006, Strasbourg, 26 September 2007.

<sup>32</sup> There has been a political crisis in Ukraine for two years, since 2004, so-called “Orange Revolution”, anti-government speeches at the turn of 2004 and 2005. On how these manifestations influenced functioning the state, mainly its economy and international trade, see: M. Terterov, *Ukraine Since the Orange Revolution: A Business and Investment Review*, Blue Ibex Ltd., London 2006.

<sup>33</sup> Compare: J. Siekiera, *Godność człowieka w Europejskiej Konwencji Praw Człowieka i Karcie Praw Podstawowych w kontekście akcesu Ukrainy do Unii Europejskiej*, in: Людина в силовому полі влади та ідеологій B. Syvanych (ed), UCU, Lviv 2012.



Rights and fundamental freedoms occur 20 times in the accession treaty, which indicates their great importance in the association process. The agreement between Ukraine and the EU was created and signed by new “pro-Western” authorities, Prime Minister Arseniy Yatsenyuk and President Petro Poroshenko on March 21, 2014. The second part of the document relates in turn to trade and was signed on June 27 of the same year. It should be emphasized that Ukraine by ratifying the association agreement with the EU has increased the scope of individual protection provided for by internal law but has also imposed additional international legal responsibility in this field. In the beginning Art.2 of the chapter 1 of the agreement, Ukraine refers to its affiliation to international treaties that protect human rights and fundamental freedoms, such as the Helsinki Final Act of 1975 by the Organization for Security and Co-operation in Europe, the Universal Declaration of Human Rights of the United Nations of 1948, and the aforementioned European Convention for the Protection of Human Rights and Fundamental Freedoms. The norms resulting from these international agreements should shape Ukraine’s internal and external relations, also in the context of the expected and wanted accession to the European Union. Importantly, among the main goals of the Kyiv-Brussels political dialogue is the increased respect for freedom and fundamental rights.<sup>34</sup>

### 3. Perspectives for Ukraine to join the European Union

As it was presented in the previous part of this article, the condition *sine qua non* for Ukraine’s accession to the European Union is respect for values expressed as legally binding norms. The country has been a member of the Council of Europe for several years, and therefore supports the main goal of this international organization, being the protection of fundamental rights of humans and citizens. In addition, the Constitution of Ukraine contains provisions securing the democratic political system - a guarantee of protection of fundamental rights throughout the entire Ukrainian territory. This is an important aspect of Ukraine’s accession to the European structures, where the protection of fundamental rights is presented as the highest determinant of legal order.

Importantly, the Ukrainian society strongly supports the legal reforms of own state, adapting its system to reception, and then to the thorough and full implementation of European law. This social support is manifested by functioning of a large number of non-governmental organizations, as well as the emergence of new civil society organizations, so-called CSO, whose primary goal is to promote Ukraine’s accession to the European Union. Ukrainians are aware of the fact that the quick and effective, and thus final and multisectoral, way out

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<sup>34</sup> Title II: Political Dialogue and Reform, Political Association, Cooperation and Convergence in the Field of Foreign and Security Policy, Art. 4, passage 2, letter e of the Association Agreement...

of the political crisis in their homeland depends on external help.<sup>35</sup> Hence, such huge support of European integration (70% by 2019)<sup>36</sup> along with the awareness of the need for changes in internal legislation often stem from the activities of numerous NGOs. Those CSO were the ones which took on the task of influencing Ukrainian society and informing about the actual benefits of accession to the European Union and, *a contrario*, about any losses in the event of termination of the association negotiations. Another argument in the public debate is the lack of any real alternative for Ukraine if it does not join the EU.<sup>37</sup>

The financial assistance that the European Union has paid to the Ukrainian government should be highlighted too. The goal of the two partners is, sometimes forgotten, not only association at the political level, but also economic integration for the sake of both parties. However, everything must be set within the legal limits, while not stay upon the political declaration level. Hence, a number of additional arrangements were made in order to ensure full implementation of the association agreement's provisions. The most vital document of such rank was European Union-Ukraine Association Agenda from 2013,<sup>38</sup> as well as the officially recognise as part of the association treaty European Union-Ukraine Deep and Comprehensive Free Trade Area (DCFTA) from 2014.<sup>39</sup> DCFTA was provisionally applied already in the beginning of 2016, as this document mutually opened Ukrainian and European markets for goods and services based on predictable and enforceable trade rules.

The European Commission decided on an additional aid package in loans and targeted grants from the EU budget for Ukraine in March 2014. The amount of which was set at over EUR 15 billion. The aid was to be spent on four main goals: 1) helping to stabilize the unfavourable and dynamic financial situation, 2) political transformation (the fight against corruption was and still is a priority here), 3) political and economic support for the legislative reforms, and 4) multisectoral

<sup>35</sup> Interview made by the author with Dr. Igor Medvid from the Ukrainian Catholic University, Lviv 22.04.2016.

<sup>36</sup> "Ukraine's accession to EU supported by almost 70 percent of Ukrainians" *Kyiv Post*, July 9, 2019.

<sup>37</sup> P. Laufer, *Raport o stanie kultury i NGO w Ukrainie*, Fundacja Open Culture, Lublin 2012; "Poroshenko: Ukraine, Moldova have no alternative to European integration", *Kyiv Post*, Nov. 20, 2014; S. Steward, *NGO Development in Ukraine since the Orange Revolution*, in: *Ukraine on its Way to Europe: Interim Results of the Orange Revolution*, J. Besters-Dilger (ed.), Peter Lang, Frankfurt a. M. 2009.

<sup>38</sup> European Union-Ukraine Association Agenda to prepare and facilitate the implementation of the Association Agreement, Luxembourg, draft from 24 June 2013.

<sup>39</sup> European Union-Ukraine Deep and Comprehensive Free Trade Area, draft from 27 June 2014; the latest statistics and data prediction for transactions between the EU and Ukraine can be found on the European Commission website: <http://ec.europa.eu/trade/policy/countries-and-regions/countries/ukraine/> (September 8<sup>th</sup> 2019).

development of the whole country, which could reach the minimal level of prosperity like in the EU member states.<sup>40</sup> Some additional money directed at the humanitarian aid in regard to the armed conflict after 2015 were sent to Kyiv too.<sup>41</sup> Last but not least, the visa liberation in mid-2017 was a clear signal for the Ukrainian citizens to slowly but surely become invited to the European family. The overwhelming majority of Ukrainian workers and students go to Poland, due to the close distance from home, relatively similar conservative culture based on religious values, already established connections by the previously visiting acquaintances and Polish language, easier to adapt by them.<sup>42</sup>

However, war in Ukraine<sup>43</sup> forces a slightly different perspective by both sides of the association agreement. This tough situation affects not only the talks at the political or economic level, but also establishment of legal norms or stages in the accession process. There is also a widely seen and commented slowdown in the integration process coming from both Brussels and Kiev. Acting with more reserve pace and putting soft law methods above hard law, that is binding and enforceable commitments, also gives a question mark. Ukraine's accession to the Union is not and cannot be perceived as a panacea for all its problems<sup>44</sup>. While politicians use the argument of the death of Euromaidan participants "for the Union", which appears to be unacceptable. It is also observed an arguing reluctance of the government in Kiev to halt protectionist barriers for goods from outside Ukraine, as well as only virtual changes in legislation related to greater attention and protection of fundamental rights, including human dignity, transparency of public finances and combating corruption.<sup>45</sup>

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<sup>40</sup> Delegation of the European Union to Ukraine available at the European External Action Service website: [https://eeas.europa.eu/delegations/ukraine\\_en](https://eeas.europa.eu/delegations/ukraine_en) FR (September 8<sup>th</sup> 2019). Compare the previously cited report by the Human Rights Commissioner from 2006, in which he has indicated the biggest problems of the Ukrainian society and the government in Kyiv.

<sup>41</sup> *EU-airlift to Ukraine: Europe increases its humanitarian aid*, Brussels, 26 January 2015, available at the European Commission website: [http://europa.eu/rapid/press-release\\_IP-15-3662\\_en.htm?locale=FR](http://europa.eu/rapid/press-release_IP-15-3662_en.htm?locale=FR) (September 8<sup>th</sup>, 2019).

<sup>42</sup> At the Polish market there are over 4,5% of Ukrainian employers and this number is growing. The larger cities amount up to even 10% of Ukrainian physical workers Observation of the author based on the official statistics. Compare: official report by the National Bank of Poland: Narodowy Bank Polski, *Obywatele Ukrainy pracujący w Polsce*, Warsaw 2018; "Przez polski rynek pracy „przewija się” ok. 1,2 mln Ukraińców", *Business Insider Polska*, 11.03.2019;

<sup>43</sup> This term is not consistent with the definition adopted by International humanitarian law of armed conflict, which understands war as an armed attack, during which the provisions of the 1949 Geneva Conventions are respected. However, the situation in Ukraine since February 2014 cannot qualify this legal situation as such.

<sup>44</sup> L. Galichina, "Yes" or "No" to Ukraine's Accession to the EU?" *Vox Ukraine*, August 8, 2019.

<sup>45</sup> The author's observations during her travels to Ukraine (in the years 2010-2016), including the seminar at the Ukrainian Catholic University in Lviv "Людина в силовому полі влади та

## CONCLUSION

In conclusion, there should be given an answer whether compliance with and promotion of fundamental rights in the Ukraine's accession process to the European Union is *in plus* for Kiev. After all, this is the main indicator for Brussels to suspend or drag the association process, of course, apart from violating fundamental human and citizen rights in the current geopolitical situation in the Eastern Ukraine.

Significant economic and social progress has been observed in Ukraine in the first two decades of the 21<sup>st</sup> century. This also applies to the growing public awareness of respect for fundamental rights as the main indicator of belonging to the Western European community. Naturally, this belonging is also understood in the category of legal culture, where individual citizens, social groups, along with local and governmental authorities are gradually understanding and adopting European democratic values. Undoubtedly, the level of respecting fundamental rights is not the same as in the member states. As foreign observers point out, corruption, disregard for human dignity and lack of transparency in political life are still Ukraine's biggest problems. These allegations stand in the way of Ukraine to fully associate with democratic rule of law states belonging to the European Union. Unification of the internal order with European legislation, ratification of international treaties protecting fundamental rights are the basic condition for applying for accession, only the beginning for the true and desired transformation. However, the lack of respect for values resulting from legal norms adopted in both public and private life has already resulted in suspension of the association process in Brussels. The third decade of the 21<sup>st</sup> century, with its devastating war with Russia and supported by them separatists, appears to be like a break in the association process. The government in Kiev seems to forget that the unique catalogue of fundamental rights of the EU does not only effectively sound but does have a strong power to influence individuals. As the example, good or bad, always comes from the top, Ukrainian politicians and decision makers should understand and then promote among its society full implementation of instruments protecting human rights, being a guarantee of political integration with the EU.

Without a doubt, the European Union, as a supranational regional organization, has assumed the role of a guarantor and promoter of fundamental rights. By joining it, Ukraine, through ratifying the treaties, as well as the Charter of Fundamental Rights, will impose further obligations on observance and development of fundamental rights across its nation. Implementation of fundamental right will then already take place under international law European

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ідеологій” 27-28.04.2012; M. Muszyński, „Komu się opłaca integracja Ukrainy z UE?”, *Forbes.pl*, 22.10.2013; J. Wilczak, „Dwie strony medalu”, *Polityka*, 16.09.2014.

law, being its component), not anymore on the internal level. Here, because the norms of the treaty law, will constitute the foundation for further, deeper political and economic integration. Not the other way around. The economic welfare, high economic rates, so desired by Ukrainians, along with finally becoming part of the Western European community, is being achieved precisely through adoption of the common catalogue of fundamental rights.

## **TEMELJNA PRAVA U KONTEKSTU PRISTUPA UKRAJINE EVROPSKOJ UNIJI**

### **SAŽETAK**

Rad je pokušaj predstavljanja pravnog konteksta ukrajinskog pristupanja Evropskoj uniji, ističući obavezu izvršavanja i zaštite temeljnih prava kao jednu od najvažnijih vrijednosti organizacija. Temeljna prava, zajedno s čitavim aspektom evropskog prava, jedinstvena su na globalnoj razini jer niti jedna regionalna organizacija dosad nije izgradila tako složeni dubok sistem prava i obaveza za svoje građane. Da bi postala punopravna članica EU, država kandidatkinja mora ispuniti mnoge kriterije, među kojima su ekonomske stope, politički standardi, konačno, zadnji, ali ne manje važni, pravni aspekti funkcioniranja demokratske pravne države. Teško stanje ukrajinske vlade, podijeljeni teritorij na konruske ilegalne aneksije Krima i separatističkih republika u Istočnoj Ukrajini ne olakšavaju ni pristupanje. Međutim, rad se fokusira na pravnu, a ne političku provedbu evropskih pravnih vrijednosti u ukrajinskoj državi.

**Ključne riječi:** Ukrajina, Evropska unija, pristupanje, pristupni proces, temeljna prava.





