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Namiasenko Olga,

PhD in Law, Associate Professor of the Legal Regulation
of Economics Department,

Kyiv National Economic University named after Vadym Hetman¹

IMPACT OF THE EU-UKRAINE ASSOCIATION AGREEMENT ON JUDICIAL REFORM IN UKRAINE: GENERAL ASPECTS

The article investigates general questions of the latest stage of judicial reform in Ukraine, which was launched in 2014. It's analyzed the constitutional and legislative changes in the judiciary of Ukraine in the context of the requirements of the Association Agreement between Ukraine and the EU and international standards. It's also devoted to the investigation of the general provisions of the Association Agreement between Ukraine and the EU in the field of justice.

Keywords: Association Agreement between Ukraine and the European Union, judicial system, judiciary, judicial reform, constitutional judicial reform, justice.

В статті досліджено загальні питання новітнього етапу судової реформи в Україні, який було розпочато в 2014 році. Аналізуються конституційні та законодавчі зміни в судовій владі України в контексті вимог Угоди про асоціацію України з ЄС і міжнародних стандартів. Статтю також присвячено дослідженню загальних положень Угоди про асоціацію України з ЄС у сфері юстиції.

Ключові слова: Угода про асоціацію між Україною та ЄС, судова система, судова влада, судова реформа, конституційна судова реформа, юстиція.

Formulation of the problem. The signing of the Association Agreement (AA) between Ukraine and the European Union has confirmed our country's course on the European integration and assumes reforming in various fields. The eurointegration policy of Ukraine, that formerly has been one of its foreign policy directions, today is being transformed into domestic policy. Thus it is to be formed and exemplified with taking into account the obligations under the AA. The adaptation of the national legislation to the EU

¹Намясенко Ольга Кузьмівна, канд. юрид. наук, доцент кафедри правового регулювання економіки, ДВНЗ «КНЕУ імені Вадима Гетьмана».

legislation in spheres, directions and volume that are stipulated by the AA stands as a basic task for Ukraine.

Execution of the AA requires the implementation of more than 350 acts of the EU legislation and taking into account the acts of the so-called «soft law» in the development of normative legal acts of Ukraine, program documents and more. Deep and comprehensive free trade area should be established within 10 years from the entry into force of the AA. In general, to a free trade area began to operate, Ukraine must implement approximately 200 regulatory legal acts of the EU, international agreements and standards [1; c. 18, 34].

By signing the AA Ukraine agreed to recognize and promote the EU Member States' common values, such as democracy, respect for human rights and fundamental freedoms and the rule of law, which are also key elements of the Agreement. Achievement of these values requires reforming of Ukraine judicial system as a whole as well as related institutions such as prosecutors, law enforcement and advocacy.

Analysis research. The issue of modern judicial reform implementation in Ukraine, including in the context of the AA is certainly relevant and studied by many scientists, politicians, public authorities and legal practitioners, in particular such as: V. Barbara, N. Kuznetsova, E. Kubko, B. Lvov, R. Maidanyk, L. Moskvich, Y. Romanyuk, O. Filatov etc. General and special questions of the acceptance, implementation and realization of the AA is the subject of research O. Sushko, A. Bocha, M. Kuzio, R. Petrov, V. Povoroznyk, R. Khorolskyi, D. Chernikov, K. Fedorenko, O. Zelinska, V. Movchan etc.

The purpose and objectives. The aim of this paper is to study the basic principles and provisions of the AA that will determine the further course of our country's development, including matters of justice and security, analysis of the main directions of the judicial reform in Ukraine, the beginning of which was due to the signing of this document.

Statement of the material. 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, signed on June 27, 2014. According to R. Petrov's statement it is a prototype of the new external EU agreements with states-participants in the European Neighborhoods policy — Association Agreements between the EU and neighboring countries. Such coming agreements will be focused more on adaptation of the EU democratic values, cooperation in the fields of

justice and home affairs, the fight against corruption and issues of regional security, because the EU wants to see post-Soviet countries by such where the effective functioning democratic institutions and working mechanisms to combat illegal immigration to Europe. However, R. Petrov says, that objectives of these Association Agreements will not be identical, but differ according to the level of relations between the EU and each of its specific neighbor and match the goals agreed together PD and PA. [3; p. 4-5].

Association Agreement between Ukraine and the European Union covers various aspects of bilateral cooperation, such as:

1. The rapprochement between Ukraine and the EU on the basis of shared values and strengthened (increased) participation of Ukraine in the European Union programs.

2. Cross-border cooperation in the field of foreign and security policy, in particular — in conflict prevention and in the military sphere.

3. Bringing Ukraine closer to European standards in the field of law and home affairs by promoting the rule of law, democracy and human rights in Ukraine and supporting the fight against corruption, establishing effective work of justice and improving data protection.

4. Strengthening cooperation in the economy through a deep and comprehensive free trade area between the EU and Ukraine and setting up sectoral cooperation in more than 30 areas, including — in agriculture, industry, energy supply or consumer protection.

5. Establishing new cooperation formats, providing financial assistance, creating a platform of civil society [2; p. 2].

The main elements of the Ukraine-EU Association Agreement, which are considered as fundamentals of internal and external policies both of Ukraine and the other Parties are recognition and respect for democratic principles, human rights and fundamental freedoms and respect for the rule of law (Article 2 of the Agreement). These general principles are the basis for cooperation on internal reforms (Article 6 of the Agreement), the objectives of the political dialogue (para. 2 of Article 4 of the Agreement) and others.

Separately also stipulates that within the framework of cooperation in the field of justice, freedom and security the Parties shall give special importance to the rule of law and strengthening of institutions at all levels in the field of management in general and law enforcement and judicial authorities in particular; cooperation in the field of justice, freedom and security will be based on the principle of

respect for human rights and fundamental freedoms (Article 14 of the Agreement).

Strengthening cooperation in the field of justice, freedom and security to ensure the rule of law and respect for human rights and fundamental freedoms stated among purposes of the Association, provided for in Article 1 of the AA [4].

Thus, the special place among these areas of cooperation between Ukraine and the EU belongs directly proclaimed the efficiency of justice that provides for judicial reform. The beginning for this should be common values and standards in the field of law, which are currently operating in the European Union.

These rules are the foundation, the basis for judicial reform in Ukraine, whose main tasks under the AA are strengthening the judiciary, improving its efficiency, guarantee its independence and impartiality and the fight against corruption (Article 14 of the Agreement).

The need for radical change in the existing judicial system is long overdue. At the present stage of Ukraine development, namely the reform of the judiciary and law enforcement reform are among of the most important tasks for Ukraine. Developing an independent and fair justice is a key process in the formation of legal and democratic state and therefore a precondition of any legal, economic and social reforms. Judicial and law enforcement system reform is essential within the context liberalization of the enterprise foundation regime to protect the property rights of both domestic entrepreneurs and their foreign partners [1; p. 28].

It has repeatedly stressed in the scientific literature that during the “independence time” in Ukraine the judiciary is in the process of «permanent reformation». Among the reasons of the inability to bring this process to valuable and effective results it is mentioned: the lack of a strategic, forward-looking vision, understanding of what model of the judiciary is to be the best for Ukraine; lack of sufficient translational thoughtful, consistent steps to strategy develop. The fact that also has the great importance is that the problems in the Ukraine judiciary resolved situationally, as they arised, often according to the will of the political forces, because each judicial reform was the result of the upcoming presidential elections etc. [5; p. 8].

But afterword the current stage of judicial reform is noticeable not only with the presidential election. In the Strategy for Sustainable Development «Ukraine — 2020», approved by the Decree of the President of Ukraine on 12 January 2015, the judicial reform has been

proclaimed among the priorities of the signing of the AA [6]. The Strategy of Reforming the Judicial System, Judiciary and Related Legal Institutions on 2015-2020, approved by the Decree of the President of Ukraine from May 20, 2015, has determined that judicial reform includes both amendments to legislation and constitutional changes [7].

Among the first normative legal acts that have made changes to the basic principles of the judicial system, attitude toward courts and judges have become the Law of Ukraine «On Renewing Belief to Judiciary in Ukraine» dated April 8, 2014 [8] and the Law of Ukraine «On Ensuring the Right to a Fair Trial» dated February 12, 2015 [9]. The own strategic plans of the judiciary and the judicial system development on 2015-2020 was created and approved by the organs of judge self-government also. A special place occupies a bill to amend the Constitution of Ukraine in part of justice and corresponding conclusions of the Venice Commission.

Thus, the foremost documents on introduction in Ukraine of modern judicial reform are as follows:

1) Association Agreement between Ukraine and the European Union from June 27, 2014;

2) The Strategy for Sustainable Development «Ukraine — 2020», approved by the Decree of the President of Ukraine from January 12, 2015 № 5/2015;

3) The Strategy of Reforming the Judicial System, Judiciary and Related Legal Institutions on 2015-2020, approved by the Decree of the President of Ukraine from May 20, 2015 № 276/2015;

4) The Strategy of the Judiciary Development in Ukraine on 2015 — 2020, approved by the Judicial Council from December 11, 2014 [10];

5) The draft Law of Ukraine «On making alteration to Constitution of Ukraine (in relation to a justice)» from November 25, 2015 № 3524 [11];

6) The intermediate conclusion of the Venice Commission on the draft amendments to the Constitution of Ukraine in judgment from July 24, 2015 (CDL — PI (2015) 016) [12];

7) The final conclusion of the Venice Commission on the draft amendments to the Constitution of Ukraine of Justice from October 24, 2015 (CDL — AD (2015) 027) [13];

8) The Action Plan to Implement the Programme of the Cabinet of Ministers of Ukraine and the Strategy for Sustainable Development «Ukraine — 2020» in 2015, approved by the Cabinet of Ministers of Ukraine dated March 4, 2015, № 213-p, pp. 84-86 [14] and other.

Analysis of these documents allows to determine three conventional areas of reform of the judiciary:

- general principles concerning changes in the functioning of the judiciary in Ukraine;
- changes in the judicial system of Ukraine;
- changes in the functioning of the courts and in the exercise of justice.

Consider in more details specific areas of reform. The general principles on changes in the functioning of the judiciary in Ukraine include those basic positions that envisaged by the AA in particular Article 14: strengthening the judiciary, improving its efficiency, guarantee its independence and impartiality and the fight against corruption. If the principles of independence and impartiality of the judiciary in Ukraine proclaimed and enshrined at the constitutional and legislative levels for a long time, the concept of improving efficiency and strengthening of the judiciary is quite new in our country. But its modern development these principles have acquired in connection with the approach of Ukrainian justice system with international standards.

The 1st European Conference of Judges on «Early settlement of disputes and the role of judges», held at the Council of Europe on 24 and 25 November 2003, revealed that no matter how interesting and useful alternative measures such as mediation or conciliation may be, confidence in the judicial institution remains an essential feature of democratic societies[15].

Considering that the rights of access to justice and to a fair hearing as guaranteed under Article 6 of the European Convention on Human Rights [16], is an essential feature of any democratic society, the Committee of Ministers of the Council of Europe has recommended that member states should have particular regard to the matters enumerated in the following principles: A. Information to the public B. Simplification C. Acceleration D. Cost of justice E. Special procedures [17].

The Committee of Ministers of the Council of Europe on November, 17, 2010 adopted recommendation and its explanatory memorandum, addressed to the CE Member States on judges: independence, efficiency and responsibilities [18]. The recommendations are divided in several topics; independence — both internally and externally, councils for the judiciary, the relation between independence, efficiency and resources, the status of the judge, the duties and responsibilities of judges and judicial ethics.

The Magna Carta of Judges [19], adopted by the Consultative Council of European Judges of the Council of Europe, highlights all the fundamental principles relating to judges and judicial systems. It reiterates *inter alia* the fundamental criteria of the rule of law, the independence of the judiciary, access to justice, and the principles of ethics and responsibility in a national and international context.

The modern phase of judicial reform in Ukraine is aggravated also by corruption problems and necessity of fight against them. In an explanatory message to the draft Law «On making alteration to Constitution of Ukraine (in relation to a justice)» it is marked, that judicial reform is one of the most expected in society, since a fair, impartial and unprejudiced court is the important guarantee of effective fight against a corruption, entering Ukraine of investments, providing rights and freedoms for each person and constructions of the state guided by supremacy of law [11].

Improving fundamentals of realization of justice is also related with the consolidation of the new provisions in the Constitution of Ukraine concerning the administration of justice by a judge in accordance with the rule of law. The rule of law (unlike the principle of legality which is typical for our country) is the base principle for the European Union. The rule of law principle is referred in AA in the articles 1, 2, 14 etc. For the Ukrainian legislation and in general for the Ukrainian legal doctrine, as noted by N. Kuznetsova, the rule of law principle is not new, but it is necessary to deeply analyze the content and scope of application of the general principles of law that apply in the European legal system, particularly in the EU [5; p. 22].

The purpose of the Draft Law of Ukraine «On making alteration to Constitution of Ukraine (in relation to a justice)» is defined also in optimization the judicial system.

The result of the judicial reform is a necessity of solving main problems in judicial system of Ukraine — determining the amount of the Supreme Court of Ukraine powers, the priority of implementation in Ukraine three links or four links of the judiciary, advisability of existence high specialized courts, including the Supreme Commercial Court of Ukraine and Supreme Administrative court of Ukraine, issues regarding the specialization of courts and more. The questions of specialization are related foremost to the polemic in relation to the necessity of existence of commercial courts and appropriateness of their liquidation.

In scientific discussions the marked questions are debatable. Thus, J. Romaniuk on this occasion said that «one of basic lacks of the Ukrainian model of the judicial system there is that Supreme Court of Ukraine is a

fourth link of courts and carries out not that other, as the poorly hidden «repeated» cassation. There is no way to remove this defect without passing to the system of courts in three levels» [5; p. 12].

The Venice Commission, for example, has repeatedly recommended to abolish higher specialized courts. So, in the intermediate conclusion on the draft amendments to the Constitution of Ukraine in part of justice from July, 24, 2015 the Venice Commission noted that the Supreme Court of Ukraine is the highest court in the judicial system of Ukraine.

Despite this situation the system of the specialized courts is kept with their corresponding higher courts. It is necessary to unify the system of courts of general jurisdiction and transform high specialized courts in divisions of the Supreme Court of Ukraine. It would have helped to ensure the unity of judicial practice, uniform application of the law to avoid conflicts between the courts and reducing bureaucracy. Also, it could shorten the duration of the trial, to be reasonable under Article 6 of the European Convention on Human Rights [12].

In intermediate and also in final Conclusion № 803/2015 from October, 24, 2015 on the draft amendments to the Constitution of Ukraine in the justice The Venice Commission agreed that under the law can operate higher specialized courts that will further implement the merger of the Supreme Court of Ukraine and higher specialized courts by issuing an appropriate law [12, 13].

Stressing on the need to return the full status of the highest judicial body to the Supreme Court of Ukraine, the Venice Commission not expressly denies specialization of courts. However, the existence of specialized courts, especially commercial, is now perhaps the most actual. The draft Law of Ukraine № 1497 «On Amendments to the Law of Ukraine» On the Judicial System and Status of Judges» and other legislative acts on improving the basics of organization and functioning of the judiciary in accordance with the European standards» it is suggested to liquidate the system of commercial justice in Ukraine, transferring its functions to the courts, which currently decide civil, criminal cases and cases of administrative offenses. The liquidation of commercial courts is motivated by the complexity of the judicial system and the necessity of fight against a corruption, leading to the efficiency of justice in Ukraine and public confidence in the judiciary [20].

This issue requires a separate detailed research. But it is difficult not to agree with the head of the Supreme Commercial Court of Ukraine Boris Lvov, that a question of trust to the courts is a problem

and is necessary to be decided, but it does not depend on specialization of courts [21].

Conclusions. Thus, reformation of the judicial system is one of tasks in the context of obligations of Ukraine on Association Agreement. Among the most important elements of reform there must be a decision of problem of unity of judicial practice and distribution of jurisdiction of separate courts by a way of return of the judicial system to three links, or coordination of plenary powers of Supreme Court of Ukraine and higher specialized courts. The guarantee of independence is also an increase of role and, accordingly, responsibility of Supreme Court of Ukraine. In terms of access to the EU internal market through a deep and comprehensive free trade area requires it is necessary to keep specialization and accept rethinking of the status of commercial courts and bring them to the same commercial (economic) courts that operate in EU member states.

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НАМЯСЕНКО О. ВПЛИВ УГОДИ ПРО АСОЦІАЦІЮ З ЄС НА СУДОВУ РЕФОРМУ В УКРАЇНІ: ЗАГАЛЬНІ АСПЕКТИ

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