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LEGAL SUPPORT FOR THE ASSOCIATION OF UKRAINE WITH THE EUROPEAN UNION

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***The aim** of this article is to conduct a comprehensive theoretical study of the legal framework for the Association between Ukraine and the European Union. This aim necessitated the following tasks: to define the theoretical and legal foundations of the association between Ukraine and the European Union; describe the main stages of the formation and development of cooperation between Ukraine and the EU as a prerequisite for association; examine the types of association in EU contractual practice; reveal the legal nature and general characteristics of the legal provisions of the Association Agreement between Ukraine and the EU. **Research methods:** in the course of researching the topic, a historical approach was used to reflect the implementation of international law norms in Ukrainian legislation; a systematic approach was used to clarify the internal essence and nature of the object of research, to study its details and dependence on various factors; logical generalization was used to justify the need to highlight conclusions as a result of the research. Of particular importance in the study was the special scientific method, in particular: the method of interpretation of legal norms used to study the provisions of the Association Agreement between Ukraine and the EU and the content of Ukraine's national legislation. **Results:** the article examines the legal basis for Ukraine's association with the European Union. Analysing the establishment and development of cooperation between Ukraine and the EU in the context of association through the prism of legal grounds and key stages, it is noted that in the early stages, the parties developed relations on a general contractual basis. Political negotiations took place in the format of annual meetings and ongoing consultations between authorised representatives of the parties on the basis of the Partnership and Cooperation Agreement. The initial stage of establishing relations was characterised by low activity in law-making or significant legal changes on the path to Ukraine's integration into the EU. We attribute this to the EU's reluctance to expand its borders towards the countries of the former Soviet Union, which were not yet sufficiently democratic, and to the unfavourable performance of the Ukrainian economy. **Discussion:** the article focuses on the legal nature and general characteristics of the legal provisions of the Association Agreement between Ukraine and the EU.*

***Key words:** European Union; legal foundations of the Association; legal support.*

Statement of the problem and its relevance.

The relevance of the study lies in the current trend towards integration processes, which over the past decades have necessitated comprehensive measures to ensure the legal framework for Ukraine's association with the European Union.

After the proclamation and consolidation in early 2019 in the Constitution of Ukraine of the irreversibility of the state's strategic course towards

full membership in the European Union, the importance and role of European cooperation in our country has increased, accompanied by the current process of legal support. Today, this process is an integral part and a key prerequisite for the successful advancement of our country into the European civilisational space. Therefore, further improvement and optimisation of the regulatory and legal framework to bring it into line with European legal

standards will contribute to the development of Ukraine.

The above trends are closely interrelated with the process of implementing Ukraine's international legal obligations, which is being actively pursued in the current conditions and requires the implementation of many comprehensive legislative reforms in almost all areas of Ukrainian law.

The legal framework for Ukraine's association with the European Union through the adaptation of Ukrainian legislation to EU law is dictated by the objective requirement to regulate both international and domestic relations. The level of approximation of national legislation to EU law and its compliance with European standards and requirements determines not only the effectiveness of cooperation between Ukraine and its European partners, but also the development of our state as a democratic, socially oriented and law-based country. This issue is the subject of much debate among researchers and is therefore currently relevant [2].

Analysis of research and publications on the issue. General theoretical issues of legal support for the Ukraine-EU Association Agreement have been examined in the works of scholars such as T. Anakina, I. Berezovska, V. Butkevich, Yu. Voloshyn, V. Geytsa, O. Zadorozhniy, A. Yermolaev, N. Mushak, T. Sereda, O. Streltsova, M. Mykievich, Ya. Chernopyshchuk, Yu. Shchokin, N. Shmygol, and others [4; 5; 7].

O. Streltsova is convinced that Ukraine's independence and the adoption of the Constitution provide numerous examples of the ratification and implementation of international law norms into the national legal field, which have been organically integrated into it without violating the 'letter and spirit' of the latter.

It is clear that all areas of domestic legislation, without exception, require legal support for the association between Ukraine and the EU, but, in our opinion, constitutional law is of primary importance. At the same time, certain elements of scientific novelty of the results obtained are revealed in a comprehensive approach to the analysis of the legal support of the association between Ukraine and the EU. The theoretical and legal foundations of the association, the political and legal grounds,

problems and prospects of this phenomenon have been identified.

Among foreign scholars who developed and supported the issue of other countries' association with the European Union, whose works and ideas were used in writing this study, the following international lawyers should be mentioned first: M. Gerdegen, Z. Klepatsky, A. Peters, A. Tatam, and others.

Presentation of the main research material. After Ukraine gained independence and recognition from EU countries, it was logical and natural to make a European choice and take the appropriate course. Ukraine's European choice was a natural geographical and economic consequence of the country's independence in 1991, which laid the foundation for the dynamic development of relations. The root cause of this was a collective realisation that the prosperity, stability and preservation of both Ukraine and the EU could be significantly enhanced by a close partnership.

The European Union is a unique association that has well-developed external communication relations with states or groups of states at the regional level, as well as with international organisations of various kinds of activity on a global scale. The above-mentioned relations are often expressed between various actors of international law and the EU in the form of creating and ensuring the activities of joint associations. As of today, the European Union maintains associative relations with more than 100 countries around the world.

In international law doctrine, the term 'association' is often used to denote a strong and lasting connection between entities.

The concept of association is derived from the Latin 'associatio' - connection, link. Its definition explains a voluntary contractual association of states, organisations, institutions, other legal entities or individuals to carry out or achieve joint activities and agreed objectives in the form of an alliance, partnership or union [6, p. 157].

Historically, Association Agreements occupy a unique place in the EU's system of international treaties, as the legal nature of these treaties has a number of historical features. these Association Agreements are among the oldest and most widespread types of international agreements, which

have played an important role in the functioning of today's intergovernmental association – the European Union. The significant number of treaties and the wide variety of their contractual norms testify to the existence of a special institution in the practice of establishing the EU's external contractual relations – Association Agreements.

Association as an organisational and legal form of relations between the EU and subjects of international law began to be used immediately after the creation of the European Economic Community. Of course, with the transformation from the creation of the latter to the emergence of the modern European Union, and the corresponding change in the founding treaties, this form has evolved.

O. Streltsova believes that 'Article 217 of the Treaty on the Functioning of the EU is of a framework nature and is intended only to create the legal basis for the conclusion of relevant association agreements, the specific content of which is determined in each case separately, depending on the objectives and tasks of such agreements' [7].

The vagueness of the definitions in Article 217 of the Treaty on the Functioning of the EU has led to the formation of completely different approaches to the scientific and research qualification of the legal nature of the institution of association with the EU. For example, scholars such as M. Biriukov and M. Mikievich conclude that association is a form of incomplete participation in the EU [5, p. 72]. A number of other researchers, including V. Muravyov, Yu. Shchokin and I. Berezovska, believe that there is no such thing as associate membership within the EU. Association should be understood as a form of close partnership with third countries. To support this position, researchers point to the following facts: the limited participation of an associated entity in an international organisation on an equal footing with its founding members and the possibility of participating in voting only in specific bodies specified in the agreement [6, p. 469].

Also, a special type of association in treaty practice is that an economic basis must be established between the EU and the third country. This is usually based on opening up access for the movement of goods from the third country to the EU internal market, which takes place on the relevant legal

grounds. Such legal grounds may currently manifest themselves in the introduction of a special regime for free trade on both sides, the creation of a free trade area or the establishment of a single customs union.

Alongside the above-mentioned economic component, there is also a mandatory political basis. First of all, this basis includes the establishment of a framework for political dialogue between the parties through respect for the rule of law, human rights and fundamental democratic freedoms, which are based on EU principles.

Of course, the establishment of an association in the above-mentioned economic and political components also introduces a legal framework. This framework is designed to unify regulatory mechanisms in order to prevent the creation of unjustified threats to the internal market through the economic component and the creation of conditions for political instability through the political component. To this end, the association agreements include provisions on the mandatory implementation of certain EU legal acts, which is known as the European Union *acquis*.

The term 'European Union *acquis*' is commonly understood to refer to the collective achievements of the European Union. The specific list of regulatory acts that the other party to the association agreement must implement in order to harmonise national legislation directly depends on the specific objectives of the agreement [6].

It is also important that the vast majority of association agreements do not encourage partner countries to work in EU institutions, but stimulate the emergence of only a certain organisational mechanism in the agreements, which is the creation of collective cooperation bodies. The main institutional body operating within the framework of an association agreement, in accordance with the name and format of each specific agreement, is the Association Council or Joint Council. Such Councils are formed on an equal footing, with representatives of the European Commission and the Council of the EU on one side and senior officials of the third country's government on the other. The main objectives of such a Council are to implement a specific agreement and to resolve any issues that may arise.

Association agreements do not provide for the creation of joint judicial institutions. In accordance with the division of powers within the EU, the competence to give an opinion on the preliminary verification of the provisions of the Association Agreement for compliance with the founding treaties of the European Community falls within the legal jurisdiction of the Court of Justice of the EU. In addition, this judicial body may also rule on the interpretation of acts of joint institutions within the framework of the Association Agreement.

Analyzing the above information, we conclude that, in legal terms, there are no associated states and there never have been. This is because states that have associated relations with the EU do not actually participate in the founding treaties of this intergovernmental regional entity. The legal basis for such association and future cooperation is an international agreement between the EU and the relevant third country.

In addition, associated states have no powers in the institutions of the Union.

The rapid increase in the total number of member states to 28 – the EU – and the conclusion of a completely new treaty, the Lisbon Treaty, led to the transformation of the historical types of EU Association Agreements and institutional mechanisms [3].

Therefore, summarising all of the above, we come to the logical conclusion that Association Agreements occupy a separate place in the system of EU international treaties. Since the legal nature of these treaties has a number of historical features, these Association Agreements are among the oldest and most widespread types of international agreements, which have played an important role in the functioning of today's intergovernmental association – the European Union. The significant number of treaties and the wide variety of their contractual norms testify to the existence of a special institution in the practice of establishing the EU's contractual external relations: Association Agreements.

Association as an organizational and legal form of the EU's relations with subjects of international law began to be used immediately after the creation of the European Economic Community. Of course, with the transformation from the creation of the latter to the emergence of the modern European Un-

ion, and the corresponding change in the founding treaties, this form has evolved [3].

It should also be noted that after the parties approved the latest version of the Association Agreement with Ukraine, the EU launched a new process of developing similar association agreements with partner countries in the European region. These agreements cover a wide range of issues of mutual interest to the parties. In addition, for the first time, they will provide a basis for offering close partnership based on the so-called 'conditionality principle'. This principle is interpreted as 'the possibility for a country to move on to new stages of integration provided that it has fulfilled the previous tasks'. In other words, it should be noted that the Association Agreement is a special bilateral agreement that goes beyond the standard provisions and framework of association agreements that the EU has concluded with other countries in Central and Eastern Europe, etc.

In terms of the legal characteristics of the Association Agreement between Ukraine and the EU, it is a bilateral international treaty [1]. Secondly, from the point of view of EU treaty practice, such agreements are considered mixed. This means that the international treaty contains provisions on the division of competences between the EU and its Member States, and the subject matter of the agreement falls not only under the exclusive competence of the EU, but also under the partial competence of its Member States. Such international agreements are also signed by the EU together with its Member States [6, pp. 520-527].

Thirdly, the Association Agreement is a basic agreement with a broad and comprehensive scope of application. In other words, the agreement covers the entire range of legal relations between Ukraine and the EU. The comprehensive nature of the Association Agreement means not only maximum coverage of the areas of cooperation between the parties, but also the definition of specific, concrete objectives. For example, through the achievement of Ukraine's economic integration into the EU internal market by establishing a deep and comprehensive free trade area. However, the implementation of this provision requires a significant concentration of efforts, primarily on the part of Ukraine.

Fourth, the Association Agreement is a document that establishes general principles and defines the basic principles on the basis of which the parties interact, and it regulates the relations between the parties in many areas of cooperation. However, it should be remembered that, according to Article 479 (5), the parties have the right to sign certain sectoral agreements to clarify and develop the provisions of the Association Agreement. The Association Agreement itself stipulates that the above-mentioned sectoral agreements are an integral part of bilateral relations and form part of the overall institutional framework for cooperation. In our opinion, these provisions of the Agreement are intended to promote the creation of a harmonised legal framework for relations between Ukraine and the EU, which will be implemented both on the basis of the Association Agreement itself and through existing and planned international agreements signed between its participants in certain areas of cooperation.

Fifth, in accordance with Article 481 of the Association Agreement, it is concluded for an indefinite period, i.e. it is a permanent agreement. However, in accordance with Article 481(1), the Agreement further stipulates that five years after the Agreement enters into force, or at another time by mutual agreement of the parties, a review of the implementation of the Agreement's objectives may take place [1].

Sixth, when analysing the provisions of the Agreement, it becomes clear that the Agreement is not just an international cooperation agreement. This Agreement is designed to define new formats of cooperation and partnership between Ukraine and the EU, in accordance with the principles of 'political association and economic integration'. According to Polish scholar K. Karski, the Association Agreement between the EU and Ukraine is the best of the existing forms of cooperation between the Union and a state that is not a member of the Union [4, pp. 17-18].

Seventh, the Association Agreement between Ukraine and the EU does not contain any clear provisions that would give Ukraine a clear prospect of EU membership, but at the same time, the Agreement does not rule it out. In the text of the Agreement, we saw a list of cross-references regarding

the possibility of Ukraine's future European membership. In confirmation of the above, we can note that the preamble states that 'the Union recognises Ukraine's European aspirations and welcomes its European choice'. It also states that Ukraine, as a European country, shares a common history and common values with the Member States of the Union and can support them. And according to Article 49 (1) of the EU Treaty: 'Any European state that respects the values of the Union and undertakes to implement them may apply for membership of the EU' [3, p. 306].

In our opinion, the similarity of the above provisions is obvious. In addition, a number of provisions of the Association Agreement generally repeat the wording of the Copenhagen criteria for EU accession. For example, the preamble to the Agreement establishes political criteria such as ensuring the integrity of institutions that guarantee the protection of democracy, the rule of law and human rights. Furthermore, in accordance with Article 6 of the Association Agreement, the above provisions are established as an integral basis for political dialogue. In accordance with Article 14 of the Association Agreement between Ukraine and the EU, provisions on cooperation in the field of freedom, security and justice are enshrined. In accordance with Article 1(2) A, the economic stage provides for the creation of a deep and comprehensive free trade area, which in turn may be a legal means for Ukraine to make a final transition to a functioning market economy.

Conclusions. Thus, analyzing the establishment and development of cooperation between Ukraine and the EU in the context of association through the prism of legal grounds and main stages, we see that in the early stages, the parties developed relations on a general contractual basis. The structure of political negotiations took place in the format of annual meetings and ongoing consultations between authorised representatives of the parties. We characterize the early period of relations as one of low activity in law-making or significant legal changes on the path to Ukraine's associate membership in the EU. We attribute this to the EU's unwillingness to expand its borders towards the countries of the former Soviet Union, which in turn have not yet

become fully democratic, and to the unfavourable indicators of Ukraine's economy.

With regard to the classification of types of association in EU treaty practice, in our work we emphasise that the classification of treaties by type of association is primarily determined by the purpose for which they were created. Therefore, the following types of association are currently available in contractual practice with the EU:

1. Association formed with European countries, which in turn is divided into:

1) association with neighbouring European countries;

2) association with other European countries.

2. Association formed with non-European countries, which in turn is divided into:

1) association with neighbouring non-European countries;

2) association with countries in other regions of the world, which in turn also combines two separate associations:

a) association with developed countries;

b) association with developing countries.

The Association Agreement between Ukraine and the EU is one of the largest international treaties concluded by the EU on the one hand and any third country on the other. This agreement is also special because, in addition to the usual provisions governing the interaction of partners in the areas of free trade, political dialogue, economic issues, etc., the Association Agreement also includes, so to speak, 'unusual' vectors of partnership, such as certain aspects of conducting a common foreign and security policy, developing enhanced cooperation in the areas of security and justice, energy, etc. We also conclude that certain formulations of the Association Agreement generally duplicate the content of the Copenhagen criteria for EU accession. For example, the preamble to the Agreement establishes political criteria such as ensuring the stability of institutions that guarantee the protection of democracy, the rule of law and human rights. In addition, according to Article 6 of the Association Agreement, the above provisions are defined as an integral basis for political dialogue. According to Article 14 of the Association Agreement between Ukraine and the EU, provisions on cooperation in the field of freedom, security and justice are en-

shrined. In accordance with Article 1(2) A, the economic stage provides for the creation of a deep and comprehensive free trade area, which in turn could be a legal means for Ukraine's final transition to a market economy.

Література

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ПРАВОВЕ ЗАБЕЗПЕЧЕННЯ АСОЦІАЦІЇ УКРАЇНИ З ЄВРОПЕЙСЬКИМ СОЮЗОМ

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Метою даної статті є проведення комплексного теоретичного дослідження правових засад асоціації між Україною та Європейським Союзом. Ця мета зумовила необхідність виконання таких завдань: визначити теоретичні та правові засади асоціації між Україною та Європейським Союзом; описати основні етапи формування та розвитку співпраці між Україною та ЄС як передумови асоціації; дослідити види асоціації в договірній практиці ЄС. **Методи дослідження:** в процесі дослідження теми роботи використовувались історичний підхід щодо відображення імплементації норм міжнародного права в законодавство України; системний підхід щодо з'ясування внутрішньої суті та природи об'єкта дослідження, вивчення його деталізації та залежності від різноманітних факторів; логічне узагальнення щодо обґрунтування необхідності виділення висновків у результаті проведеного дослідження. Особливого значення у дослідженні набув спеціально-науковий метод, зокрема: метод тлумачення юридичних норм, використаний для дослідження положень Угоди про асоціацію між Україною та ЄС та змісту національного законодавства України. **Результати:** у статті розглядаються правові засади асоціації України з Європейським Союзом. Аналізуючи становлення та розвиток співпраці між Україною та ЄС у контексті асоціації крізь призму правових підстав та ключових етапів, зауважено, що на початкових етапах сторони розвивали відносини на загальних договірних засадах. Політичні переговори відбувалися у форматі щорічних зустрічей та постійних консультацій між уповноваженими представниками сторін на основі Угоди про партнерство та співробітництво. Початковий етап встановлення відносин характеризувався низькою активністю у законотворчості або значними правовими змінами на шляху інтеграції України до ЄС. Ми пов'язуємо це з небажанням ЄС розширювати свої кордони в бік країн колишнього Радянського Союзу, які ще не були достатньо демократичними, та з несприятливими показниками української економіки. **Обговорення:** у статті зосереджено увагу на правовій природі та загальних характеристиках правових положень Угоди про асоціацію між Україною та ЄС.

Ключові слова: Європейський Союз; правові засади асоціації; правове забезпечення.

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