

суперечить законодавству та не несе загрозу державній безпеці, що потрібно детально прописати в Законі України «Про запобігання корупції». Необхідно активно висвітлювати в ЗМІ основні підсумки діяльності спеціалізованих державних органів та недержавних організацій, які беруть активну участь у протидії корупції. Створити структуровану систему фінансування антикорупційних заходів, що проводяться інститутами громадянського суспільства.

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THE EU-UKRAINE ASSOCIATION AGREEMENT AS AN INSTRUMENT OF HUMAN RIGHTS PROTECTION

The academic discussion about the EU as a normative power introduced by Ian Manners [2, 182] or a civilian power by Francois Duchkne [3, 6] explain the role of the EU as a strong political and economic actor promoting the rule of law, democracy and human rights. It is, however, interesting to see if the EU has a set of instruments that will influence not only the promotion of the human rights but also their protection on a practical level. The task of the EU in the area of human rights protection is hampered by the case of the territories outside the control of the national government. It means that most likely the EU will not be able to apply its instruments directly as accessing such territories may be opposed by the national government in order to prevent the cooperation with the self-proclaimed separatist authorities. The

similar problem occurred in Georgia when European aid faced a strict conditionality from Georgian government. The EU projects could take place only if they will not lead to establishing contacts between Abkhaz regime and international community or to the consolidation of the regime influencing its *de facto* status [1, 270].

The EU-Ukraine relations were enhanced by establishing Eastern Partnership Policy (EaP) within the framework of the European Neighbourhood Policy (ENP) in 2009. The cooperation within the platform meant that the members of the EaP shall be committed «to the principles of international law and fundamental values - democracy, the rule of law, human rights and fundamental freedoms» [10]. It should be noted that the EU being a political and economic superpower in the region doesn't have the direct instruments for human rights protection. The EU however, uses a strong financial and political incentive for the partnership countries to strengthen the mechanism of human rights protection.

The EU-Ukraine cooperation deepened after Ukraine signed the Association Agreement (AA) with the EU in 2014. The implementation of the AA is complicated by the on-going conflict and the annexation of Crimea. However, EU showed its strong support and readiness to assist Ukraine in the reform process and state building.

The text of the agreement in art. 2 refers to the obligation of the state to respect human rights and lists the human rights instruments including Helsinki Final Act, Charter of Paris for a New Europe, UN Universal Declaration of Human Rights, ECHR and as it is stated in the article «other relevant human rights instruments» [11]. The role of such human rights clause raises questions about its enforceability. Taking into account the situation of high level of human rights violations in Eastern Ukraine from both Ukrainian and separatist authorities can this clause be used as a leverage to put pressure on Ukraine to follow its obligations in the area of human rights? There are both sceptical and optimistic answers to this question in academia. Firstly, it is argued that this clause doesn't have a legal power but rather a political one [5, 53] to secure the EU's position in case of serious breach of human rights. Secondly, this clause is seen as the platform for a potential dialogue in the area of human rights engaging civil society in their monitoring [4, 147].

Nevertheless, the same author argues that the human rights clause is present in the AA as an instrument for triggering *rebus sic stantibus* doctrine in the case of grave violations [5, 56]. It is also pointed out by Bartels that in the context of human rights clause the state is obliged to respect human rights, however, according to the author «the essential elements clause imposes positive obligations on the parties» [4, 148]. The important aspect is whether in the situation of Ukraine when the national authorities lost the control over some territories and grave violations of human rights are almost unavoidable the EU could refer to the human rights clause.

However, another author Szilagyi draws the parallel to the already existent AA agreements with Georgia and Moldova where the similar situation have occurred. The main difference is that, unlike the AA with Ukraine, their AA's contain the territorial clause specifying the condition of application of the AA on the breakaway territory only after it will reintegrate with a parent state [5, 57]. Alternatively, the EU-

Ukraine AA was signed before Ukraine has lost control over some territories and therefore this question became a part of the agenda of EU-Ukraine Association Council but is not explicitly addressed in the text [5, 57].

Since the AA agreement was signed the EU-Ukraine Association Council already held seven meetings. At the last meeting in February 2021, the reform progress in Ukraine was discussed including the area of human rights and the protection of minority rights in Ukraine. Moreover, the EU has reiterated its statement of the condemnation of the deteriorating situation with human rights in Crimea and Eastern Ukraine, repeating that it supports territorial integrity and sovereignty and ready to assist Ukraine. The EU position on sanctions against Russia was underlined by the statement that they can only be lifted if the conditions of Minsk agreements will be fulfilled [8]. In the course of previous meetings the issues of freedom of movement and effective provisions of social benefits were discussed in the context of the draft law «On the occupied by Russian Federation territories of Ukraine». The EU joined the position of the civil society and the international community, which could put leverage on the Ukrainian authorities to reconsider the discriminatory provisions provided by the draft [7].

Parliamentary Association Committee (PAC) along with the Sub-Committee on Human Rights hold meetings for public hearings and discussions including the human rights and humanitarian situation in Ukraine. Every meeting of the Parliamentary Association Committee results in the set of recommendations for the Ukrainian government. Among them PAC underlines the importance of protection of internally displaced persons, the importance of the inclusive approach to the citizens of uncontrolled territories, expresses concerns about payment of pensions, access to social services, education, healthcare and other human rights [12]. The problem of human rights protection is also raised within the context of Association Implementation Report on Ukraine. In the last report in 2020 it was underlined that «Human rights and fundamental freedoms continue to be severely curtailed by armed groups in non-government controlled areas (NGCA) of eastern Ukraine, including through targeted killings, arbitrary and incommunicado detention, sexual and gender-based violence, torture and arbitrary violation of property rights» [6, 5].

The EU has a Special Representative for Human Rights who at the 34th session of the United Nations Human Rights Council made a statement that: «The EU continues to give high priority to a safe environment for human rights NGOs and human rights defenders and to oppose the imposition of unjustified restrictions on their activities» [9]. This statement even though has a political character may have an important role for the EU's further assistance to Ukraine in order to expand the access of the civil society on the uncontrolled territories and improve the protection of human rights or to strengthen their capacity.

It can be concluded that despite the nature of the EU is different from the international and regional organisations whose aim is directly connected to the human rights promotion or protection, the EU has a political and financial toolbox to indirectly enhance the human rights protection. Starting from the Council of the

European Union who had regularly prolonged sanctions against Russia and finishing with small long term or short term projects and financial instruments.

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