Legal base of Ukraine's European integration policy

Asaturov Sergey
asaturov555@ukr.net
PhD, docent.
Department of international relations and social sciences,
National University of Life and Environmental Sciences of Ukraine
Kyiv, 03041, Ukraine, General Rodimtsev St., 19

Martynov Andrei
martynov.andriy15@gmail.com
Dr., Habil (History), Professor
Department of international relation and foreign polity of Ukraine,
Institute of History of Ukraine,
National Academy of Sciences of Ukraine
Kyiv, 01001, M. Hrushevski St., 4

ABSTRACT

The purpose of the article is to analyze trends in the development of legal support for Ukraine's European integration. In essence, the Association Agreement with Ukraine differs from the Association Agreements signed by the European Union in the early 1990s with Central European countries preparing to join the EU, or with the Middle East, North Africa and Latin America countries, which do not have any chances of joining the EU. The coordination of the issues of European integration of Ukraine depends on the effectiveness of the mechanisms of functioning of legal institutions of society as an apparatus organized by society and responsible for the formation, observance and implementation of legal relations of legal entities.

The legal order of the European Union does not provide for a special accession procedure. In June 1993, the Copenhagen membership criteria were developed, covering the candidate country's ability to have a functioning liberal democratic political system, to introduce European law into national law, and to have the economy capable of competing in the EU Common Market. Therefore, the issue of recognizing Ukraine as a candidate for EU membership has a broad geopolitical context. Ukraine is working with the European Commission to agree on the procedure for negotiating accession to the European Union. The European Union has different strategies for negotiating the accession of new countries.

KEYWORDS: legal conditions of European integration, European Union, Association Agreement, Ukraine.

Received: 20/08/2022
Revised : 18/09/2022
Accepted: 20/09/2022

Introduction. The hot stage of the large-scale Russian war against Ukraine after February 24, 2022 highlighted the problem of legal support for Ukraine's European integration. The European Union is in crisis after the withdrawal of Great Britain. The readiness to accept new member states is questionable. The European Union needs to adapt its institutions and improve its legal norms to ensure the acceptance of the countries of the Western Balkans, Ukraine and Moldova. On February 28, 2022, the President of Ukraine V. Zelensky applied for membership in the European Union with a request for a special adoption procedure. On June 23, 2022, the European Council recognized Ukraine as a candidate for accession to the European Union, subject to the fight against corruption and judicial reform **(**European Council, 2022**).** The problem of Ukraine's legal adaptation to accession to the European Union is decisive.

Analysis of the main research problems. On September 1, 2017, the Association Agreement between Ukraine and the European Union entered into force (Association Agreement, 2014, p. 1). As O. Dorogih, mentions, after the entry into force of the Association Agreement by 2025, it was planned to implement 426 legal acts of the European Union into national legislation **(**Dorohykh, p**.** 3**).** The adviser to the first president of the European Council, Herman van Rompuy, Luuk van Middelaar highlighted the process of finding the optimal model for reforming the European Union, especially after the withdrawal of Great Britain from the EU **(**Middelaar, 2017, p 4**).**

Objectively, law is a social phenomenon that is formed in the process of historical development. Law arises from the needs of regulating public relations, giving them certainty and regulation. Abstract law was considered as a form of existence of higher justice and expediency, taking into account in its specific manifestation the nature of a particular historical epoch, the level of development of socio-cultural principles, national and regional features of socio-historical development. In the modern sense, law means, firstly, a specific system of universally binding social norms, which are protected by the power of state power, through which provides legal regulation of social relations, and secondly, a certain imperative over the state and law, and protects justice and order, thirdly, the law is also considered a set of social regulators that exist in the form of laws and customs. Although social relations, which are the subject of sociology and legal sciences, coincide in many respects, they still differ significantly. Thus, legal science is primarily interested in the legal form of relevant social relations, the content of rights and responsibilities of their subjects, while sociology at its level of scientific analysis always focuses on the study of social genesis, social place and social functions of a social phenomenon **(**Yakovlev, 1999, p**.** 14**).** At the same time, as a branch sociological discipline, it widely uses sociological methodological tools. In a broad sense of the subject field, the sociology of law examines the real effect of legal acts and certain legal norms in the context of all existing social regulation, including customs, morals, group values and orientations, public opinion. Legal aspects are present in the study of such sociological phenomena as family, property, politics, economics, etc. These factors, in fact, determine the need for such a scientific field as the sociology of law. The subject of the philosophy of law in Hegel's view is law in its relation to law **(**Hegel, 1990, p**.** 90**).**

In this context, the sociology of law examines the real effect of legal acts and certain legal norms in combination with all social regulation, including customs, morals, group values, public opinion. Particular attention is paid to the main social functions of law – regulatory, educational, planning and forecasting **(**Ionin, 2000, p**.** 12**).** In the context of the legal support of European integration, law can be considered as an element of social engineering **(**Ospanov, 2002, p**.** 23**).** The issue of legal support of Ukraine's European integration can be considered from the point of view of sociology of law as an official branch of branch sociology**.** Sociology of law in terms of European integration examines the nature, patterns of origin, functioning and development of the legal existence of society in the social aspect **(**Kulgar, 1981, p**.** 45**).**

According to J. Carbonier, sociology of law is a branch of sociology, while legal sociology is considered as a branch of sociology of law. At the same time, legal sociology from his point of view is designed to address the issue of social orientation of the **legal institution of society as the main tool for organizing and implementing legal relations of people in their daily activities (Carbonier, 1986, p. 10).**

The purpose of the present paper is to analyze the trends in the development of legal support for Ukraine's European integration.

Presenting main material. The Association Agreement consists of a preamble, seven parts, 43 annexes and 3 protocols. In particular, the preamble enshrines the principles of association, in particular the protection of human rights and fundamental freedoms, respect for the rule of law, respect for sovereignty and territorial integrity, inviolability of borders and independence. Section "Political Dialogue and Reforms, Political Association, Cooperation and Convergence in Foreign Affairs and Security Policy". Formats of political dialogue are defined: summits, meetings at the ministerial and other levels. Among the key areas of political cooperation are regional security, conflict prevention, disarmament and arms control, and the fight against terrorism. The part of the agreement "Justice, Freedom and Security" defines the areas of cooperation in these areas. An important goal of cooperation is to ensure the rule of law and the independence of the judiciary. Cooperation in preventing illegal migration is also envisaged. Some articles are devoted to creating appropriate conditions for workers who work legally abroad. It is planned to deepen cooperation in order to prevent money laundering and terrorist financing. The Deep and Comprehensive Free Trade Area is an integral part of the Association Agreement and provides for the liberalization of trade in both goods and services, the liberalization of capital movements and, to some extent, labor. Part of the Economic and Sectoral Cooperation Agreement contains provisions on harmonization of Ukrainian and European legislation, relevant institutional reform in Ukraine (energy, including nuclear, transport, environmental protection, industrial policy and entrepreneurship, agriculture, taxation, statistics, financial services) , tourism, audiovisual policy, space research, health care, scientific and technical cooperation, culture, education). Part of the agreement "Financial Cooperation" outlines the mechanism for receiving financial assistance to Ukraine, the procedure for monitoring and evaluating the effectiveness and use of funds. According to the section of the agreement "Institutional, general and final provisions" it is envisaged to introduce new formats and levels of cooperation between Ukraine and the European Union after the final entry into force of the

Association Agreement. In particular, an Association Council and Committee, a Parliamentary Association Committee, should be established. A Civil Society Platform will be established to instruct the implementation of the civil society agreement. In order to ensure the proper implementation of the Agreement, a mechanism should be put in place to monitor and resolve disputes that may arise during the implementation of the Agreement. Due to the unlimited term of the Agreement, it is possible to revise it, including the objectives within five years of its entry into force, as well as at any time by mutual agreement of the Parties.

It should be noted that the Association Agreement with Ukraine differs in content from the Association Agreements signed by the European Union in the early 1990s with Central European countries preparing to join the EU, or with the Middle East, North Africa and Latin America, who have no chance of joining the EU. The agreement on the issues of European integration of Ukraine depends on the effectiveness of the mechanisms of functioning of the legal institution of society as an apparatus organized by society and responsible for the formation, observance and implementation of legal relations of legal entities **(**Carbonier, 1986, p**.** 86**).**

According to N. Luhmann, the sociology of law studies legal and social phenomena, and the theory of law studies the general social essence of law. N. Luhmann considers the problem of sociology of law as an incentive for constant self-reproduction of the legal system. The dominant is a positive understanding of law as a system of universally binding norms. However, the imperative norm of justice as a form of social consciousness is due to certain class differences and interests of people **(**Luhmann,1994**).** Thus, historical experience shows that natural law can be formalized in law**.** Positive law is legitimized by tradition and the real practical life of legal and social institutions **(**Kazimirchuk, 1995, p**.** 34**).**

Plato sought absolute social justice, and his student Aristotle had already clearly formulated a key historical dilemma: the rule of law or the power of the people. The further history of the development of legal relations can be seen as a permanent search for the optimal relationship between law, law and social actors whose relationship they are called to regulate. It should be noted that the code of the Byzantine Emperor Justinian includes such important provisions as laws must be clear to everyone **(**Bartoshek, 1989**).**

Finally, legal norms are formed on the basis of existing actual social relations, they reflect the latter in a unique form, transformed in accordance with the will of the legislator, as well as taking into account existing trends in social development, needs and challenges facing society and state. The complex relationship between legal norms and the actual state of social relations is at the heart of the problem of social efficiency of the legal system, its institutions and norms. In this context, there is a feedback loop between the law and the social relations it seeks to regulate. So if a certain legal norm does not work in real life, then it does not take into account the relevant social needs. The social conditionality of law is related to the analysis of ways of forming legal norms. The law-making process at each of its stages is an activity that is legal in form and socio-political in content. It is in the process of this activity that specific manifestations of the laws of law formation, its social conditionality, its connection with the objective features of historical reality and the subjective ideas of legislators are observed.

The social norm imperatively imposes certain requirements on social behavior. Freedom is seen as the expression of the will of the subject as far as possible. Free action is about being willing to take responsibility for its results. Legal culture is perceived as a quality implementation of the law. It should also be about a legitimate way of life in society. Eventually, the essence of man changes with the development of society. Transformation of the social environment stimulates a change in the mechanisms of human adaptation. Legal socialization is a prerequisite for citizens to realize their civic role, place in the social hierarchy of society. Legal regulation is seen as an imperative social norm, which is sanctioned by the government, able to enforce it, based on a system of social control. However, quite often moral, secular, professional codes of honor require different behavior than codes of law. The key point is the dissemination and assimilation of laws. Most of them write briefly and incomprehensibly.

During the Middle Ages, entire sectors of social life were almost unregulated. Canon law was taught only in church schools. Secular law was not the subject of teaching. The judge was anyone in power. Most judges were unwritten, which did not promote written law. The development of customary law was accompanied by a change in legal structure. Because it was difficult to establish the genealogical connections of ordinary people, it became customary for court subjects to determine the law to which they intended to submit. Depending on the type of activity a person moved from one legal zone to another. Christian justice has long coexisted with foolish customs (the law of the first wedding night).

The latent pagan spirit of civil Roman law troubled church leaders. The rationality of legal procedures was in the interests of merchants and served to enhance the prestige of monarchs. The formation of grand principalities and centralized feudal kingdoms contributed to the revival of legislation and the spread of unified legislation to large areas. The concept of the rule of law is based on the principle of recognition of people's sovereignty, ie the people as the highest bearer of power and recognition of natural rights of the individual. If a person has the right to property, he has ownership of his rights. K. Marx considered law as an existing being of free will. Law is a freedom conditioned by equality **(**Marx, 1990, p**. 84).** In turn, E**.** Durkheim saw the historical roots of the origin of legal norms in morality and solidarity. Instead, G. Mosca considered the legal protection and political organization of society to be signs of civilization. Therefore, the law in the legal sense can be defined as a set of recognized in a given society and provided with official protection standards of equality, justice, which regulate social competition and the process of coordination of free will in their interaction with each other.

The law does not apply if it is not adapted to the prevailing morality and serves the interests of influential social forces. The current imperialism of human rights is essentially a forceful option for introducing the values of another culture into the social environment of societies that are still in the early stages of their own socio-historical development. Legal culture largely depends on traditions. Legislation is essentially a set of legal norms created by the state to regulate public relations. Unlike law, which is philosophically objective, legislation is a subjective category. In fact, it is a way in which the legislator implements the regulatory functions of the state.

Thus, in terms of changing the types of legal culture and methods of legislative activity, it is advisable to keep in mind the correlation between legal and political cycles of social development. And

this relationship is equivalent to law and politics. After all, it is a certain political regime that determines the imperatives for the application of legal norms and creates general conditions for legislative activity. In this regard, it should also be borne in mind that the chronology of the development of socio-political cycles in each society has, so to speak, a very multipolar specificity. In particular, the specific analysis should take into account the influence of factors of national history, the level of development of productive forces and social relations, socio-cultural local characteristics and challenges of the current stage of global historical development. Therefore, specific cycles of development of specific societies (in our case, political and legal development) a priori can not have clear boundaries of its beginning and end.

On February 28, 2022, the Ukrainian leadership appealed to the European Union for the immediate accession of Ukraine under a new special procedure. The legal order of the European Union does not provide for a special accession procedure. In June 1993, the Copenhagen membership criteria were developed, covering the candidate country's ability to have a functioning liberal democratic political system, to introduce European law into national law, and to have an economy capable of competing in the EU Common Market. The high level of these requirements for EU membership has led to a long period of preparation for the accession of post-communist Eastern European countries. The Baltic states (Estonia, Latvia, Lithuania), the Visegrad countries (Poland, the Czech Republic, Slovakia, Hungary) and the Balkan country Slovenia joined the EU only in 2004. Another Balkan country, Croatia, joined the EU in 2013. Candidates for EU membership are the rest of the Balkans: Serbia, Bosnia and Herzegovina, the Republic of Northern Macedonia, Kosovo, and Montenegro. At present, none of these countries is 100% ready to complete the EU accession negotiations, given the Copenhagen criteria. In the EU itself, there has been a split between supporters of Ukraine's rapid accession, who signed declarations in support of Ukraine's European perspective before the war, and skeptics. Poland, Estonia, Latvia, and Lithuania are in favor of an accelerated procedure for Ukraine's accession to the EU, because during the Russian aggression, Ukraine has consistently defended European values at the cost of its citizens' lives. Instead, French Minister for European Affairs Clement Bonn noted that Ukraine's accession is not possible due to lowering the level of requirements and criteria for EU membership. On the other hand, granting the status of a candidate for EU membership is the same "anchor" that does not allow deviating from the chosen course. The European Union is not ready to fully accept the countries of the Western Balkans. Ukraine is perceived by skeptics in the EU in terms of territory, population and problems as an additional problem, rather than an opportunity for a new quality of European integration. Of course, the issue of the special procedure for Ukraine's accession to the EU is actively used by Russian propaganda. Ukraine's refusal to join the EU quickly could benefit Russian propaganda, which exploits the narratives of "the fallacy of Ukraine's European choice and the inevitability of a rational alliance with Russia." An alternative to Ukraine's rapid accession to the EU is not being considered by the Kremlin, but in that case it could also speculate on "the inevitability of the collapse of the European Union due to overburdening Ukraine's problems". Ukraine suits Russia in the geopolitical "gray zone", as it leaves the possibility of continuing the aggressive policy against Ukraine and the European Union.

The European Union set a precedent for the admission of a state to an unresolved territorial conflict when it accepted the Greek part of Cyprus on 1 May 2004. Outside the EU, only the Turkish Republic of Northern Cyprus remains recognized by Turkey. This problem remains unresolved and is hampering constructive negotiations on Turkey's accession to the European Union. Therefore, the issue

of recognizing Ukraine as a candidate for EU membership has a broad geopolitical context. Turkey has been recognized as a candidate and began accession talks in the spring of 2005. Since then, negotiations have been repeatedly interrupted and have not yet been completed. The Ukrainian case differs from the Turkish one in that Ukraine and Ukrainians are not perceived in the EU as representatives of another civilization. Defenders of Ukraine from Russian aggression have united the European Union at the level of ordinary millions of Europeans. On June 24, 2022, the European Council recognized Ukraine as a candidate for accession to the European Union. This is an important political factor in strengthening Ukraine's position in the war against Russia. The European Union cannot afford for Russia to win militarily and politically in Ukraine. After the end of the war, the EU will be the main contractor for Ukraine's economic recovery.

Conclusions. Ukraine is working with the European Commission to agree on the procedure for negotiating accession to the European Union. The European Union has different strategies for negotiating the accession of new countries. Accession talks with Austria, Sweden and Finland were record-breaking. They began in 1994 and ended with the accession of these countries to the EU on January 1, 1995. Specific negotiations on the accession of the Baltic States and the Visegrad Four to the EU began in 1998 and were successfully concluded on 1 May 2004. Instead, negotiations on Turkey's accession to the EU began in February 2005 and are still pending. The strategy as well as the tactics of negotiations must be rationally constructive. It is advisable to identify a range of issues in the negotiations (corruption, judicial reform), so as not to lose the high pace of negotiations and see the ultimate goal. Ukraine will stop the war in the European Union forever.

Further research may focus on clarifying the procedures for implementing European legal norms into the national legislation of Ukraine. An important problem for further research is to highlight the problems of the ability of the European Union to adapt to the expansion to the East of Europe.

References

Association Agreement between the European Union and its Member States, of the one part, and Ukraine,

of the other part. Document 22014A0529(01). 2014. https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:22014A0529(01)

Bartoshek, M. (1989). *Roman law. Notions, terms, definitions*. Tansl. from Czech. (Rimskoe pravo. Poniatia, terminy, opredelenia. Perevod s cheshskogo) Moscow: Legal literature.

Carbonier, J. (1986). *Sociology of law*. (Yuridichskaia sociologia). Moscow.

Dorohikh, O. (2020). Legal basis of the Ukraine's European integration. *Modern problems of the*

development of law and economics in an innovative society: Sciences. papers on the materials of the International Scientific and Practical Conference: March 20, 2020. Veliko Tarnovo, Bulgaria: Access press, 2020, p. 54-63. https://ndipzir.org.ua/wp-content/uploads/2020/05/Tezy_Bolgaria_03.20/Tezy_Bolgaria_03.20_10.pdf

European Council conclusions on Ukraine, the membership applications of Ukraine, the Republic of Moldova and Georgia, Western Balkans and external relations, 23 June 2022. https://www.consilium.europa.eu/en/press/press-releases/2022/06/23/european-council-conclusions-on-ukraine-the-membership-applications-of-ukraine-the-republic-of-moldova-and-georgia-western-balkans-and-external-relations-23-june-2022/

Hegel, G. (1990). *Philosophy of law*. (Filosophia prava). Moscow.

Ionin, L. (2000). *Sociology of culture*. (Sociologia kultury). Moscow.

Kazimirchuk, V. (1995). *Contemporary sociology of law*. (Sovremennaya soziologia prava). Moscow.

Kulgar, K. (1981). *Basics of sociology of law*. (Osnovy sociologii prava). Moscow.

Luhmann, N. (1994). *Political planning. Essays on the sociology of politics and administration*. (Politische Planung. Aufsätze zur Sociologie von Politik und Verwaltung). Hamburg.

Marx, K. (1990). *The Economic and Philosophic Manuscripts of 1844*. (Ekonomichesko-filosofskie rukopisi 1844 goda). Moscow.

Middelaar, L. van. (2017). *Alarms and Excursions. Improvising Politics on the European Stage*. Brussels.

Ospanov, S. (2002). *Sociology of law*. (Sociologia prava). Almaty.

Yakovlev, A. (1999). *Theoretical problems of sociology of law*. (Teoreticheskie problemy sociologii prava). Moscow.