



IMPLEMENTATION OF THE PRINCIPLE OF MUTUAL BENEFIT IN THE PROCESS OF UKRAINE'S INTEGRATION INTO THE EUROPEAN UNION

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Summary

The article discusses the application of the principle of mutual benefit in the European Union and the possibility of its implementation in to the relations between the European Union and Ukraine, and explores the place of the principle of mutual benefit in the European legal tradition. Also notes the declaration and application of the principle of mutual benefit in the legislation of Ukraine and its foreign policy, analyzes the benefits and possible difficulties in Ukraine and the European Union itself in the way of further integration of our country into the European Union.

Key words: principle of mutual benefit, law of European Union, law of Ukraine, European Union, Euro integration.

Аннотация

В статье рассматривается применение принципа взаимной выгоды в Европейском Союзе и возможности его реализации в отношениях Европейского Союза и Украины, исследуется место принципа взаимной выгоды в европейской правовой традиции. Также отмечается декларирование и применение принципа взаимной выгоды в законодательстве Украины и в ее внешней политике, анализируются выгоды и возможные трудности Украины и самого Европейского Союза на пути дальнейшей интеграции нашего государства в Европейский Союз.

Ключевые слова: принцип взаимной выгоды, право Европейского Союза, право Украины, Европейский Союз, евроинтеграция.

Accession. Motives of the benefit or the advantage belong to “eternal” natural causes of human activity, embodying into two opposite types of behavior. The first one aimed directly at gaining personal benefit without considering the interests of others is inevitably implemented through loss or reduction of benefits of other people. The second one consists in reaping the benefit through exchange or cooperation, which is based on the criterion of mutual benefit. The first motive is quintessentially antisocial, although it dominates throughout the entire era of “exploitation of man by man” and reflects the immaturity of social relations, which T. Hobbes has defined as a “war of all against all”. Establishment and maintenance of long-term and stable social relations of any level, by which the states are just beginning to be guided at the present stage, are based on the second motif – mutual benefit. According to this study the practice of its compliance by states is an actual problem today.

Methods and Materials. In writing the article was used as part of special scientific methods – Induction and deduction, within the framework of general logical method – analysis, synthesis and generalization. The study examined the work of D. Curry

and P. Juillard, A.O. Chetverikova, L. Hoffman, B. Khaladji, international acts and Ukrainian legislation.

The purpose of the article is to define the place and role of the principle of mutual benefit in the EU law and the law of Ukraine and investigate the possibility of Ukraine's integration into the EU on the basis of mutual benefit.

Main results of research. The principle of mutual benefit is known to European law from the earliest times, as a general principle of the law. As practice of the activity of Chancery Courts in England shows, they adopted court decisions, applying the following general principles of law: “no violated right should remain without protection”, “any damage caused requires compensation”, “right to file an action based on failure to get an expected benefit by one of the parties to concluded contract”. The leading role of common law, including therein formulated general principles of law, in creating the legal basis of modern international economic order is mentioned by K. Zweigert and H. Kötz, D. Carreau and P. Juillard, J.H. Berman and others.

At the beginning of the 20th century, the initiator of fixing the principle of mutual benefit in international law was the Soviet Union, which interpreted

it in a broad sense as a departure from legal equality for the benefit of actual equality [1, p. 57]. After adoption of the UN Charter and beginning a work of this international organization, the principle of mutual benefit has firmly entrenched in international legal use and has gradually turned into one of the foundations of international economic cooperation among states, which was partly implemented in the GATT 47, and later, fully – in the World Trade Organization (WTO). In practice of international cooperation, it has been interpreted in a narrow sense as reaping the direct benefits from cooperation, and in a broad sense – as granting the preferences to less developed country.

Today the principle of mutual benefit in international economic relations is indisputably the main and most general principle of the law, on which a whole international economic cooperation is built. As noted by D. Carreau and P. Juillard, the modern international economic order is based on three basic principles: “freedom of trade and payments”, “equality” and “mutuality of benefits” [2, p. 350].

All the principles of the EU law can be conditionally divided into two groups: those that act directly at the supranational level of law, i. e. at the level of the EU law, and those that act



in respect of national legal systems [3, p. 4]. Clarifying and extending such division of principles, let's divide the first group into following subgroups:

- 1) general principles of law derived from the nature of EU law;
- 2) principles of international law;
- 3) principles of protection of basic human rights.

The first subgroup includes principles of equality, solidarity, justice and non-discrimination.

Among the main EU values mentioned in art. 2 of the Treaty on the European Union (TEU), there are listed: equality, freedom, democracy, pluralism, non-discrimination, justice and solidarity. Article 3 emphasizes the fundamental tasks of the EU, which are the promotion to peace, security, sustainable development of the planet, solidarity and mutual respect of nations, free and fair trade, eradication of poverty and protection of human rights, including the protection of child rights, and mandatory observance and development of international law, particularly, observance of principles of the UN Charter. Article 4 again emphasizes the equality of EU member states and their mutual respect to each other [4].

We find evidence that above mentioned principles are the basis of EU law also in other treaties on establishing the EU: the Charter of Fundamental Rights of the European Union and the Treaty on the Functioning of the European Union, signed as part of the Lisbon Treaty.

Chapter 3 of the Charter of Fundamental Rights of the EU is dedicated to equality and non-discrimination. It states that discrimination on any grounds is unacceptable in the EU, including nationality-based discrimination. Chapter 4 of this Charter emphasizes the principles of solidarity and justice as the basis of the EU functioning [5].

Treaty on the Functioning of the EU in its preamble makes reference to the principles of the UN Charter and recognizes their observance as its purpose. In the first and second parts of the Treaty, the principles of equality, solidarity and non-discrimination are recognized basic for functioning of the EU [6].

In turn, both Soviet and Western scientists emphasized the unity of equality and mutual benefit. In particular, they believed that a general precondition for mutual cooperation is the equality of parties [7, p. 78]. Equality is considered as a precondition for achieving the mutual benefit, and mutual benefit – as a specific expression of the equality [8, p. 105].

The principle of solidarity is also directly associated with the principle of mutual benefit, as is its embodiment in a broad sense. Relations between states should be not only equal, but mutually beneficial, i. e. should be actually consistent with the concept of equality [8, p. 106]. This means that the provision of preferential treatment to developing countries, as a manifestation of solidarity, is also a reflection of the principle of mutual benefit. Examples of international legal agreements, where it is considered in a broad interpretation, are “Declaration on the Establishment of a New International Economic Order” of 1974, “Program of Action on the Establishment of a New International Economic Order” of 1974, the Charter of Economic Rights and Duties of States of 1974 and others.

The principle of non-discrimination is also meaningfully associated with the principle of mutual benefit. In this case the principle of non-discrimination directs states to the optimal result of collaboration – the achievement of real mutual benefits for all participants [9, p. 50].

So, although the principle of mutual benefit is not expressly mentioned in basic Treaties on the EU, it is closely associated with the above-mentioned principles of equality, solidarity and non-discrimination, and therefore, can be considered to be one of the foundations of the EU.

The second subgroup includes ten basic principles of international law defined in the UN Charter, the Declaration of Principles and the Helsinki Final Act of the Conference on Security and Cooperation in Europe, which have the highest legal force “jus cogens”. Among them there are those principles that are directly related to the construction of international economic relations and associated with the principles of international economic

law, including with the principle of mutual benefit, namely the principle of sovereign equality of states; the principle of cooperation; the principle of good-faith fulfillment of international obligations; the principle of prohibition of the threat or use of force.

The third subgroup includes legal provisions of human rights protection as defined in the European Convention on Human Rights and the Treaty on European Union.

Ukraine's path to the EU is long and thorny. Ukraine has started it being in the USSR. In the Declaration “On the State Sovereignty of Ukraine” of 1990, it was stated that the Ukrainian SSR is directly involved in the pan-European process and European structures [10].

Since the declaration of independence in 1991, Ukraine in the Resolution of the Verkhovna Rada “On the Key Directions of the Foreign Policy of Ukraine” of 1993 has declared expansion of participation in the European regional cooperation as one of the lines of regional integration [11]. This Resolution, which remained in force in Ukraine till 2010, has defined the principle of mutual benefit as the basis for cooperation of our country with other subjects of international law: “Ukraine builds its bilateral and multilateral relations with other states and international organizations based on the principles of voluntariness, mutual respect, equality, mutual benefit, non-interference in internal affairs” [11].

Currently effective Law of Ukraine “On the Principles of Domestic and Foreign Policy” of 2010 also defines the principle of mutual benefit as the basis of international cooperation. This once again argues for the fact that Ukraine, as a young independent state, is focused on complying with the general principle of law, which is common for all civilized nations, and on supporting the effective cooperation with other subjects of international law.

In p. 3 art. 2 of the Law of Ukraine “On the Principles of Domestic and Foreign Policy”, mutually beneficial cooperation between states is defined as one of the principles of the foreign policy of Ukraine [12]. This document states that support of the development of trade-economic, scientific-technical and investment cooperation between



Ukraine and foreign countries on the basis of mutual benefit is a priority in international activities of our country [12]. Among principles of the foreign policy of Ukraine, the ensuring of its integration into European political, economic and legal space in order to obtain membership in the European Union [12] is recognized as primary, indicating the great importance of European integration for Ukraine and intention of our state to cooperate with European countries based on the principle of mutual benefit.

In 2008, after long preparation, Ukraine has become a member of the World Trade Organization, having agreed with the rules defining the principles of its activity. The principle of mutual benefit is the basis for cooperation between states within WTO [13]. The Charter of this organization states that the parties to this Treaty wish to promote its tasks by entering into bilateral and mutually beneficial arrangements directed to the substantial reduction of tariffs and other trade barriers and to the removal of discriminatory treatment in international trade relations [14]. WTO legal system provides a balance between the rights and benefits, resulting from membership, and the obligations, which this membership imposes. Undoubtedly, this step of Ukraine once again proved its desire of mutually beneficial economic cooperation.

It is worth noting that Ukraine's policy concerning directions of regional integration has not always been consistent. Being between two various cultural, political, economic "centers", i. e. between the European Union (EU) and the Commonwealth of Independent States (CIS), Ukraine from time to time decided between one direction or another, which adversely affected the international image of our country.

This controversial policy had economic reasons. The structure of foreign trade turnover of Ukraine shows that CIS countries are our main economic partners, so about 40% of turnover are accounted for them. Thus, in 2013, this figure for the CIS was at the level of 37,3%, while for the EU – 29,2% [15, p. 188]. However, it is important that the EU's share in Ukraine's trade turnover tends to increase, which means a gradual reorientation of Ukrainian economy

to the cooperation with the EU as a major partner. It should be emphasized that cooperation between Ukraine and the EU is enough intensive now, because Ukraine has signed more than 200 agreements only with the EU as a separate entity [16]. One of the latest is "Loan Agreement between Ukraine as a Borrower, the National Bank of Ukraine as an Agent of the Borrower and the European Union as a Creditor" signed on May 13, 2014, on providing Ukraine with EU loan in the amount of 1 billion Euros, which is evidence of the fact that European Union understands the principle of mutual benefit in a broad sense and complies with it in relations with Ukraine [16]. In the same 2014 was signed a political and economic part of the Association Agreement between Ukraine and the EU.

European integration in the modern understanding is a phenomenon of the 20th century. During this period, researchers J. Monnet, P.-A. Spaak, K. Adenauer and others noted that "Europeanism" for the Europeans is the most constructive idea of the century, and logic requires of them to join efforts, experience, energy and skills in common interests [17, p. 10]. According to L. Hoffman, the rapid development of integration processes in the European region is explained by regional enlargement of the EU to the Eastern Europe [18, p. 27–28].

Formation and development of the European Union is a complex, multistage process, in which the member states have to solve thorny economic, social, political and legal issues, search and find adequate responses to challenges of the time.

After the last wave of enlargement the EU includes 27 Member States, but now the enlargement process is not stopped, because there are intentions to provide the EU membership to the Western Balkan countries in the near future. However, some of the EU Member States are very reserved towards the future enlargement, until the organization can solve a number of internal problems.

Escalation of internal European conflicts has become especially notable after the accession of countries of Central and Eastern Europe (CEE) to the European Union. Only from May,

2004 till January, 2007, the number of the EU Member States has increased from 15 to 27, and their cumulative population is almost half a billion men. In connection with this, the current European Union has a fair amount of problems that increases in proportion to its size. First of all, this concerns the adaptation period of new Member States, the substantial internal improvement for foundations of the EU activity, the increase in economic efficiency under conditions of the global economic crisis and others [19, p. 21].

One of the problems caused by the deepening of European integration processes is the limitation of the sovereignty of the EU Member States.

So the problem of reforming the European Union continues to be relevant. The last stage of this process today is the signing and ratification of the Lisbon Treaty, which has taken effect dated 1 December 2009, by Member States. This Treaty is designed to help in settling of crisis that has begun in 2005, after France and the Netherlands have voted against the European Constitution in their national referendums. The Treaty of Lisbon has amended the EU law that directly influences on the accession of Ukraine [15, p. 189].

In accordance with the EU law, let's determine how beneficial for Ukraine and the EU could be a membership of our country in the European Union.

Firstly, the EU introduces posts of *the President and the High Representative for Common Foreign and Security Policy* with administrative powers, for the purpose of unitary representation and unanimity of the EU opinions in the international arena. At the same time, each Member State can block any foreign policy moves of the European Union according to the procedure of decision-making in foreign policy.

Such an indicator is beneficial for our country, provided that Ukraine takes hypothetical participation in the EU: this year, for example, Poland has used the veto right, having blocked the negotiation process between the EU and Russia, due to the export bans of Polish meat to the Russian Federation.

But this factor can become a barrier in the course of making a decision on Ukraine's membership in the EU, because the European Union can get



an additional problem in foreign policy with our country, taking into account the number of problems in Ukrainian-Romanian and Ukrainian-Russian relations, especially, in the energy sector. And the power industry for the EU is an important issue.

Secondly, *voting by a qualified majority* (it necessary to have 55% of Member States representing at least 65% of the EU population for decision-making) begins in 2014, taking into account the “Ioannina compromise”, which allows any group of the EU Member States (at least four) to require a new discussion of official document texts up to 2017.

Ukraine’s accession to the European Union would significantly affect the decision making process with Ukrainian almost 9% of the total population of the European Union.

Most of the new EU Member States are from the former socialist camp and have similar problems with the accession to the EU, but the number of citizens in these countries is mostly small. Ten former socialist countries with a population of 102,52 million people (21,2% of the EU population) represent 37% of all the EU Member States.

It is clear that, after 2014, the old Member States of the EU, especially, France, Germany, Italy, Spain, Great Britain will make all the decisions almost in their sole discretion, despite the approaches to these decisions from other new Member States. It is not surprising that Poland demanded to postpone the implementation deadline of voting system by a qualifying majority at the EU summit in June, 2007. She succeeded to use a veto and defer the beginning of its validity almost to 2017.

Factor of large number of the Ukraine’s population should be favorable for our country, if it accedes to the EU, and unfavorable for the old Member States, because the probability of blocking decisions by new Member States increases.

Thirdly, the role of *national parliaments* grows. Legislative proposals of the EU (“green books”, “white papers”, communications and legislative programs) will be sent to national parliaments for their detailed study, and

only then they will be submitted for adoption in the EU.

Ukraine, in the parliament of which there is no political majority with a clear ideology, is an additional factor for slowing down of the EU legislative process already extended by the new treaty.

Fourthly, *the number of Members of the European Parliament (MEPs)* should drop from 785 to 750, since 2009, i. e. after the elections to the European Parliament. The number of MEPs is determined by the ratio of the population in Member States.

Ukraine ranks № 5 by population after Germany (82,54 million people), France (59,9 million people), Great Britain (59,33 million people) and Italy (57,48 million people). Our state could get about 65 seats in the European Parliament, while today, Poland has 51 seats, and European leaders have respectively: Germany – 96 seats, France – 74 seats and the Great Britain and Italy – 73 each.

Of course, Ukraine would not have the possibility to determine decisions of the Parliament, but it would affect their decisions significantly. This indicator is rather an additional factor for reflections in the EU, whether Ukraine should join the EU or it should not join, especially taking into account the state of Ukrainian society’s democratization, the internal political crisis and recent events.

Fifthly, *the European Group* obtains the status of an official body of the EU, which will be conferred with powers to coordinate economic policies of Member States of the Euro area. On the one hand, Ukraine is still far from solving this issue, and on the other hand, in the new Ukraine – EU Agreement, our country wants to spell out the economic integration, which should be implemented in the free trade zone.

However, here are other problems. In particular, in the area of economic relations with the nearest neighbors. Members of European Parliament have repeatedly drawn attention of Ukrainian authorities to the fact that some provisions of the Single Economic Space (SES) Agreement may, if implemented, to hinder the intention of creating a free trade zone between Ukraine and the EU. And in this situation, Ukraine should

decide between two alternatives: the EU or the SES, because, in 2013, the EU share in total exports of Ukraine was 29,2%, and the SES share – 38,8%, as well as the EU share in total imports of Ukraine was 35,2%, and the SES share – 33,9%.

Sixthly, three additional posts of Advocates-General will be created in *the European Court*. One of them, at the request of Poland, will be hold by the Polish representative. This has created a precedent that can automatically move to Ukraine, provided that it is a member of the EU.

Seventhly, *the Charter of Fundamental Rights*, which enters into force in all the EU Member States, except the Great Britain and Poland, determines the bindingness to uphold human rights. Ukraine has here a number of serious shortcomings concerning equality before the law, intellectual property protection, and fight against corruption.

Eighthly, concerning *the immigration control*, the draft agreement states that the EU is developing a policy aimed at “ensuring the control of persons and effective surveillance over crossing of external borders”. Considering the above-mentioned, now it is of more benefit to the European Union to have Ukraine-neighbor, than Ukraine-member, because Ukraine as a neighbor can become a great filter for migration flows from the East that threaten the internal situation in the EU Member States.

Thus, big countries, the old EU members, insure themselves against negative consequences of further enlargement of the European Community by the institutional reform aimed at maintenance of the EU activity in the enlarged form, and by the new procedure of decision-making. At the same time, requirements and meticulous attitude to the new EU candidates will grow, as exemplified by the protracted negotiation process with Turkey.

Under these circumstances, Ukraine by following an irreversible way in deepening of European integration, shall direct its efforts to the preparation of homework on the implementation of domestic reforms, which, if they don’t result in the immediate membership in the EU, would significantly improve the activity of our country and will



bring it to the European standards [20, p. 110].

Another internal European contradictions are *the EU Member States' different views of rates and borders of organization enlargement*, which are based on their different interests. Proponents of future enlargement of the European Union are new Member States (Poland), among opponents there are old Member States (Austria, France). In this case, each country, when considering the international policy issues (enlargement), should have own interests at heart, rather than interests of the entire Union [21, p. 123]. Thus, the EU enlargement increases pragmatic tendencies within its borders due to the need to settle and accommodate more interests. Increase in the tendency to pragmatism leads to a potential reduction of consensus opportunities within the organization.

Based on the above, we can **conclude as follows**: the European Union declares that the observance of general principles of the law, including the principle of mutual benefit and principles of international law, with which the EU is closely associated in its internal and external relations. Integration of Ukraine into the EU is a long way, however, our state, passing it, is guided by the principle of mutual benefit, which is enshrined in national legislation, thus emphasizing its great importance as a basis of international cooperation. Today, the integration of Ukraine into the EU has been slow because of internal contradictions of European and domestic problems of our country, but this integration is based on the principle of mutual benefit.

References:

1. Mikichurova O.V. League of Nations and the principle of mutual benefit / O.V. Mikichurova // *Current Problems of International Relations*. – K., 2013. – № 112. – P. 56–64.
2. Carreau D. *International Economic Law* / D. Carreau, P. Juillard. – M. : International Relations, 2001. – 608 p.
3. Adaptation of Ukrainian legislation to European standards (principles of the EU law) / ed. S.G. Bilorusov. – H., 2009. – P. 4.
4. Treaty on the European Union, 1992 [Electronic resource]. – Access mode : http://zakon4.rada.gov.ua/laws/show/994_029.
5. The Charter of Fundamental Rights of the European Union [Electronic resource]. – Access mode : http://zakon4.rada.gov.ua/laws/show/994_524.
6. Chetverikov A.O. Treaty on the Functioning of the EU / A.O. Chetverikov [Electronic resource]. – Access mode : <http://eulaw.ru/treaties/tfeu>.
7. Voitovich S.A. Principles of International Legal Regulation of Interstate Economic Relations, learning guide / S.A. Voitovich. – K., 1988. – 127 p.
8. Minassian N.M. Equality of States as a principle of international law / N.M. Minassian // *Yearbook of the International Law (1966–1967)*. – M., 1968. – P. 105.
9. Kucher B.I. *International Economic law and order* / B.I. Kucher. – K., 1988. – 226 p.
10. Declaration of State Sovereignty of Ukraine [Electronic resource]. – Access mode : <http://zakon4.rada.gov.ua/laws/show/55-12>.
11. Resolution of the Parliament of the main directions of the foreign policy of Ukraine [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/3360-12>.
12. Law of Ukraine On the Foundations of Domestic and Foreign Policy [Electronic resource]. – Access mode : <http://zakon2.rada.gov.ua/laws/show/2411-17>.
13. Mikichurova O.V. The principle of mutual benefit in the GATT (WTO) / O.V. Mikichurova // *Center publications*. – K., 2013. – P. 116–120.
14. Agreement Establishing the World Trade Organization, 1994. [Electronic resource]. – Access mode : http://zakon4.rada.gov.ua/laws/show/995_342.
15. Zadorownij O.V. Ukrainian revolution esteem, aggression RF and international law / O.V. Zadorownij. – K. : K.I.S., 2014. – 1016 p.
16. International EU documents [Electronic resource]. – Access mode : <http://zakon4.rada.gov.ua/laws/main/c720>.
17. EU enlargement to the East: Prerequisites, Problems, Consequences / Institute of World Economy and Intern. relationship. – M. : Nauka, 2003. – 344 p.
18. Hoffman L. Ukraine toward Europe / L. Hoffman, F. Möllers. – K. : Publishing House “Phoenix”, 2001. – 343 p.
19. Khaladzhi V. European swallow / V. Khaladzhi // *Foreign Affairs*. – 2008. – March. – P. 21–22.
20. The new EU treaty: factors promoting and inhibition European integration of Ukraine // UCIPR. – 2007. – 29 October. – № 35/507. – P. 110.
21. The policy of European integration: a manual / ed. V.H. Voronkova. – K. : WA “Professional”, 2007. – 512 p.