



## LEGAL BASES OF THE EU-UKRAINE JUDICIAL COOPERATION

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### Summary

This article is devoted to the research of legal bases of judicial cooperation between Ukraine and the European Union. It outlines the basic regulations governing legal relationships in the field of judicial cooperation, peculiarities of their application and main directions of bilateral collaboration in this area. Special attention is given to the application of the Association agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part. The author also determines the ways of improving legal regulations of further judicial cooperation with the European Union.

**Key words:** EU-Ukraine judicial cooperation, rule of law, Association agreement, International Criminal Court, Rome Statute, Eurojust.

### Аннотация

Данная статья посвящена исследованию правовых основ судебного сотрудничества между Украиной и Европейским Союзом. В ней проанализированы основные нормативно-правовые акты, регулирующие правоотношения в области судебного сотрудничества, особенности их применения и основные направления дальнейшего двустороннего сотрудничества в этой области. Особое внимание уделяется применению Соглашения об ассоциации между Европейским союзом и его государствами-членами, с одной стороны, и Украиной, с другой стороны. Также автор определяет пути совершенствования правового регулирования дальнейшего судебного сотрудничества с Европейским Союзом.

**Ключевые слова:** судебное сотрудничество Украины с Европейским Союзом, верховенство права, Соглашение об ассоциации, Международный уголовный суд, Римский статут, Евроюст.

**Introduction.** Relations between Ukraine and the European Union (hereinafter – the EU), including as it relates to judicial cooperation, have moved to a new level upon signing the Association agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (hereinafter – the Association Agreement) in 2014. Under Article 486 of the Association Agreement and the Council Decisions № 2014/295/EU, № 2014/668/EU and № 2014/691/EU, Article 14 “The rule of law and respect for human rights and fundamental freedoms” of Title III “Justice, freedom and security” together with other norms have applied on a provisional basis since 1 November 2014 [1]. This Article provides that cooperation will be aimed at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption in particular [2]. Having analyzed this provision we can conclude that both sides pay special attention to the particular importance of bilateral cooperation towards improving the efficiency of the judiciary. So, the research of the legal basis of judicial collaboration between Ukraine and the EU is necessary for full understanding of the essence of such cooperation, determining its problem areas and identifying priorities for improving regulations governing

main directions of bilateral judicial cooperation.

**Relevance of the topic.** One of the Copenhagen criteria which any country wishing to become an EU member must conform to, requires that such country has to achieve stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities [3]. The fact that the EU gives a considerable attention to the situation of the judiciary, public perception of it, and to the rights of citizens to a fair trial (the experience of Croatia, Turkey, Montenegro, Albania and Macedonia) [4, 193-198] results from the experience of the evaluation of the level of fulfilling the political criteria by candidate countries, conducted by the EU and mentioned above. Back in 1998 Ukraine declared the line towards European integration and is constantly taking steps to strengthen cooperation with the EU in order to attain its membership. Hence, the analysis of the legal bases of the EU-Ukraine judicial cooperation is necessary for the effective application of the gained experience in future.

**The goals of the article** are: to determine the legal bases of judicial cooperation between Ukraine and the EU; to analyze the main dimensions of such cooperation; to define the challenges, major achievements and

priorities of legal regulation of the EU-Ukraine judicial cooperation.

Legal bases of judicial cooperation between Ukraine and the EU have been studied by V.I. Muravyov, Y.M. Kostyuchenko, Z.M. Makaruha, K.V. Smirnova, O.V. Dovzhuk. The works of I.V. Nazarov, A.G. Alekseev, A.A. Puh-tetska, O.D. Svyatotskiy, P.O. Gvozdyk, Irmantas Yarukatis were dedicated to the research of the European bases of judiciary organization and functioning. The first group of scientists studied the framework of judicial cooperation within the legal analysis of the third component of the area of “freedom, security and justice”, so their studies are general and do not reveal the peculiarities of legal regulation of specific dimensions of bilateral collaboration. The second group of scientists in their works touched upon European standards for the organization and functioning of the judicial system as a whole, while the issue of such standards implementation in the judicial system of Ukraine in the light of cooperation with the EU still remains unexplored. Consequently, such state of things confirms the expediency of a more parochial consideration of the EU-Ukraine cooperation in the light of this article’s goals.

**Basic material.** The Association Agreement is the fundamental legislative instrument governing the



bases of the EU-Ukraine judicial cooperation for today. Unlike the previous basic document – Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine – it contains a separate Title “Justice, Freedom and Security”. At the same time, as it has been already mentioned, among the provisions of this title governing the judicial issues, only Article 14 “The rule of law and respect for human rights and fundamental freedoms” applies on a provisional basis in so far as it covers the matters within the EU competence (either exclusive or shared).

Thus, this article states that the sides apply special attention to the consolidation of the rule of law, through cooperation aimed at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality, and combating corruption in particular. At the same time, we cannot define the concrete dimensions of further collaboration, for example, regarding strengthening the judiciary and improving its efficiency, on the assumption of this provision. Thus, this task can be realized by increasing courts funding, improving judges’ remuneration and the salary of employees, changing the entire structure of the judicial system or a part of it, changing the order and conditions of appointment and dismissal of judges, continuing professional development of judges, optimization of judicial administration and the system of career progression of judges, the development of their self-government. Some of these elements, for example, are also the main components ensuring independence of the judiciary (financial issues, self-government).

Since the specific dimensions of judicial cooperation under Article 14 of the Association Agreement are not determined, the Ukrainian party defines them on its own through the analysis of existing European standards considering the recommendations of the Venice Commission to draft legislation in this area, as well as adopting aid and using the tools of the EU Project “Support to Justice Sector Reforms in Ukraine”. Most provisions of Venice Commission conclusions have been taken into account while approving the

constitutional amendments regarding the judiciary of Ukraine and passing the Law “On Judicial System and the Status of Judges” of 2 June 2016. Also, up to date, the experts of the EU Project “Support to Justice Sector Reforms in Ukraine” are actively cooperating with the High Qualification Commission of Judges of Ukraine on providing assistance in conducting the competition for occupying a position of judge in Supreme Court. In general, the main ways on strengthening the judiciary, improving its efficiency and independence are set out in the Strategy of Reforming the Judicial System, Judicial Procedure and Related Legal Institutions for Years 2015-2020, approved by the Edict of the President of Ukraine of 20 May 2015 № 276/2015 (hereinafter – the Strategy for 2015–2020 years). Priority areas of work for the implementation of this strategy are listed in a separate Action Plan, adopted by Judicial Reform Council. This Plan specifies the main goals of the Ukrainian judiciary reforming in line with each title of the Strategy for 2015–2020 years as well as specific list of measures to be taken by the end of 2016, 2018 and 2020 [5].

Consequently, the priority dimensions of further cooperation regarding strengthening the judiciary, its efficiency and independence for each time period till 2020 can be determined from the perspective of a legal analysis of the Strategy for 2015-2020 years and Action Plan for its implementation.

The application of a single norm of the Association Agreement, which, in addition, determines general objectives of judicial cooperation, is not sufficient to activate a more extensive cooperation with the EU, particularly in those areas identified as priority concerns into the Agreement.

The main objectives of judicial cooperation in civil and criminal cases are determined in Article 24 of the Association Agreement, which does not apply today. However, despite this, Ukraine has been actively taking measures to implement its provisions.

Thus, under Article 24 of the Association Agreement, the parties agree to further develop judicial cooperation in civil and criminal matters, making full use of the relevant

international and bilateral instruments. Regarding judicial cooperation in criminal matters the parties agreed to strengthen cooperation on mutual legal assistance. This would include, where appropriate, accession to and implementation of the Rome Statute of the International Criminal Court of 1998 and closer cooperation with Eurojust [2].

Ukraine signed the Rome Statute in January 2000 but has not ratified it because in July 2001 the Constitutional Court of Ukraine concluded that the provision of the Rome Statute stating that “the International Criminal Court ... shall be complementary to national criminal jurisdictions” does not correspond to the Constitution of Ukraine. This problem was remedied by amending Article 124 of the Constitution of Ukraine. As a result, paragraph six of this Article lies down that Ukraine may recognize the jurisdiction of the International Criminal Court under the conditions of the Rome Statute [6]. However, under paragraph 1 Title II of the Law of Ukraine On Introducing Amendments to the Constitution of Ukraine (on justice), these changes will take force only on 30 June 2019. Thus, lawmakers postponed the ratification of the Rome Statute for another three years.

Ukrainian scientist M. Hnatovskyy considers that such actions indicate deviation from the political and legal commitments of Ukraine, including those laid down in the Association Agreement. On the other hand, he points out a number of legislative inconsistencies that make it impossible to carry out certain procedures stipulated by the Rome Statute. This means inability to use organizational and procedural rights, granted to the States ratified the Statute; lack of a national legal mechanism of suspects extradition; inconsistency of the Criminal Code of Ukraine with the Rome Statute and so on [7]. It is appropriate to agree with his conclusion that the reasons for such postponement, while amending the Constitution of Ukraine, should have been at least noted in the explanatory note to the appropriate law, which was not done.

At the same time, Ukraine is taking active measures to implement



the provisions of the Association Agreement for the development of closer cooperation with Eurojust. Thus, on 27 June 2016 in Brussels there was signed the Agreement on Cooperation between Eurojust and Ukraine (hereinafter – the Agreement between Eurojust and Ukraine) and on 8 February 2017 – the Law of Ukraine on its ratification was adopted. After this Agreement entry into force, Ukraine and Eurojust will cooperate in the areas specified in Articles 6, 7 and 27b of the Council Decision of 28 February 2002 (including all amendments; hereinafter – the Decision on Eurojust) [8].

Articles 6, 7 of the Decision on Eurojust stipulate that this body performs its tasks through one or more concerned national members or the College. Using appropriate mechanisms Eurojust may request the competent authorities (in Ukraine it is the Prosecutor General) to initiate the investigation or prosecution of specific acts as well as create joint investigation teams.

Article 27b of the Decision on Eurojust is of special importance to Ukraine, as it lays down the right of Eurojust (after having concluded the appropriate agreements with third countries) to coordinate the execution of requests for judicial cooperation issued by a third State, where these requests are part of the same investigation and require execution in at least two Member States [9]. It should be noted that the judicial authorities in accordance with the Agreement between Ukraine and Eurojust are not only courts of general jurisdiction but also public prosecutors of all levels and bodies of pre-trial investigation.

On the basis of the foregoing, Ukraine takes all measures to implement the Association Agreement in so far as its provisions relate to judicial cooperation despite the fact that some of such provisions do not apply for now (it is currently expected a completion of ratification procedures in the Netherlands).

Issues of judicial cooperation between Ukraine and the EU in addition to the Association Agreement are regulated by the EU-Ukraine Action Plan on Freedom, Security and Justice of 18 June 2007 (hereinafter – Action Plan 2007).

Among different directions of bilateral cooperation under this Plan we must distinguish those related directly to the most important issues of justice realization. These are:

1) encourage Ukraine's efforts to ensure impartiality, independence and competence of judges; implement the strategy on judicial reform entitled Concept for the improvement of the judiciary in order to ensure fair trial in Ukraine in line with European standards;

2) review the appointment system for the Constitutional Court in line with the recommendations of the Council of Europe's Venice Commission;

3) support Ukraine's efforts to establish a system of administrative courts;

4) increase the capacity of the court system to deal with its workload and strengthen administrative capacity;

5) introduce special training for judges and candidate judges; improve the recruitment system and career of judges, consider development of a Judicial Code of ethics; establish an independent commission to handle disciplinary proceedings for judges;

6) support the functioning of a national Ukraine electronic database of all court decisions [10].

The identified cooperation activities include many different measures and activities to be taken in order to achieve the defined objectives. Taking into consideration the large amount of these measures, it would be appropriate to briefly analyze the major achievements in these areas, identify problematic aspects and subsequently prioritize improving the legal regulation of cooperation.

One of the main areas of collaboration under the Action Plan 2007 is implementation of the Concept for the improvement of the judiciary in order to ensure fair trial in Ukraine in line with European standards (approved by the Edict of the President of Ukraine of 10 May 2006) (hereinafter – the Concept for judiciary improvement). It should be noted that before 2015 (before the adoption of the Strategy for 2015–2020 years) this document contained the widest range of specific tasks of work on improving the justice system of Ukraine in the light of European

integration. The Concept for judiciary improvement covers a large range of activities aimed at strengthening the rule of law in Ukraine, including the areas defined in the Action Plan 2007.

One of the priorities identified in the Concept for judiciary improvement and the Action Plan 2007 is to improve access to justice. Thus, in compliance with this provision Ukraine provides functioning of the information web portal "Judiciary of Ukraine", the system of "Electronic court", Unified State Register of Court Decisions, developing the restorative justice. Besides, Ukraine completed establishing the system of administrative courts, adopted the Code of Judicial Ethics, updated legislation on improving the procedures of nomination, training and disciplinary responsibility of judges, abolished military courts, enshrined the rate of judges' remuneration at legislative level, which is one of the conditions to ensure judges' independence.

It is necessarily followed that in general Ukraine has fulfilled the tasks provided by the Action Plan 2007 and the Concept for judiciary improvement. However, many provisions were not implemented to the full extent and some of them weren't realized at all.

The areas of focus which were not fully realized include the work on providing access to justice, particularly in relation to expanding the number of "e-Justice" services. Also Ukraine didn't finish the work on implementation of such form of the restorative justice as mediation, as by this time the Law "On mediation" has not been adopted (the draft was registered on 27 March 2015) as well as no appropriate changes to the procedural codes have been made.

The work on improving the procedures of nomination, training and disciplinary responsibility of judges is in progress. The cooperation in this direction is constantly improving and the legal bases of these goals achievement so far is the new Constitution of Ukraine (with regard to justice) and the Law of Ukraine "On Judicial System and the Status of Judges" of 2 June 2016 (both acts entered into force on 30 September 2016).

Provisions of the Concept for judiciary improvement in the matter of establishing liability of trial participants



for unfair usage of procedural rights (for example, intentional delaying tactic) remain unrealized.

Also Ukraine didn't execute the requirement of the Action Plan 2007 on updating legislation on the Constitutional Court of Ukraine in the light of the Venice Commission conclusion. Thus, the new draft law of Ukraine On the Constitutional Court of Ukraine was registered in the parliament on 17 November 2016 and is currently pending.

**Conclusions.** Now it can be seen that the main bilateral documents regulating judicial cooperation between Ukraine and the EU are the Association Agreement and the Action Plan 2007. Specific directions and measures of judicial cooperation are detailed in the national documents of Ukraine – the Concept for judiciary improvement and the Strategy for 2015-2020 years. However, it's worth remarking that due to the fact of enacting the Association Agreement and the new Strategy for 2015-2020 years, the provisions of the Action Plan 2007 as well as of the Concept for judiciary improvement have become to a certain extent outdated. Under these circumstances it would be appropriate to adopt a new document, such as the Action Plan 2007, fixing in it the provisions on the necessity of Ukraine for full implementation of the Strategy for 2015-2020 years, which essentially is the renovation of the previous Concept. Despite the fact that the implementation of this Strategy is provided by the separate national Action Plan, approved by the Judicial Reform Council, which is an advisory body to the President of Ukraine, both documents are unilateral, unlike the Action Plan of 2007. The adoption of the revised Action Plan could demonstrate bilateral approval of those cooperation areas, which are laid down in the Strategy for 2015-2020 years, at the highest level.

The especially important task while implementing the Association Agreement is to improve the legal regulation of cooperation with the International Criminal Court. Ukraine must make changes to the Criminal and Criminal Procedural Codes regarding the definition of crimes against humanity, the types of war crimes,

detailing the mechanism of suspects' extradition to the International Criminal Court to achieve this goal. Beyond that, we should also take additional measures to complete the work on the Law On mediation and adopt the new Law On the Constitutional Court of Ukraine.

#### References:

1. Вербальна нота Генерального Секретаріату Ради Європейського Союзу SGS14/12029 [Електронний ресурс]. – Режим доступу : [http://zakon2.rada.gov.ua/laws/show/994\\_b50/paran2#n2](http://zakon2.rada.gov.ua/laws/show/994_b50/paran2#n2).

2. Угода про асоціацію між Україною, з однієї сторони, та Європейським Союзом, Європейським співтовариством з атомної енергії і їхніми державами-членами, з іншої сторони від 27 червня 2014 року [Електронний ресурс]. – Режим доступу : [http://zakon2.rada.gov.ua/laws/show/984\\_011](http://zakon2.rada.gov.ua/laws/show/984_011).

3. Presidency Conclusions, Copenhagen European Council – 21-22 June 1993 [Electronic resource] – Access mode : [http://www.europarl.europa.eu/enlargement/ec/pdf/cop\\_en.pdf](http://www.europarl.europa.eu/enlargement/ec/pdf/cop_en.pdf).

4. Назаров І.В. Вимоги Європейського Союзу до судових систем країн-кандидатів у члени ЄС та особливості їх виконання / І.В. Назаров // Проблеми законності. – 2011. – № 114. – С. 192–199.

5. План дій щодо реалізації положень Стратегії реформування судуострою, судочинства та суміжних правових інститутів на 2015–2020 роки [Електронний ресурс]. – Режим доступу : <http://jrc.org.ua/plan>.

6. Конституція України від 28 червня 1996 року [Електронний ресурс]. – Режим доступу : <http://zakon2.rada.gov.ua/laws/w/254%D0%BA/96%D0%B2%D1%80/print1474897804599233/>

7. Гнатівський М. Україна та Міжнародний кримінальний суд: конституційний аспект / Микола Гнатівський // Українське право. – 2016. – [Електронний ресурс]. – Режим доступу: [http://ukrainepravo.com/international\\_law/public\\_international\\_law/ukrayinata-mizhnarodnyu-kryminalnyu-sud-konstytutsiynyy-aspekt/](http://ukrainepravo.com/international_law/public_international_law/ukrayinata-mizhnarodnyu-kryminalnyu-sud-konstytutsiynyy-aspekt/).

8. Agreement on cooperation between Eurojust and Ukraine [Electronic resource]. – Access mode : [http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/agreements/Agreement%20on%20cooperation%20between%20Eurojust%20and%20Ukraine%20\(2016\)/Eurojust-Ukraine-2016-06-27-EN.pdf](http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/agreements/Agreement%20on%20cooperation%20between%20Eurojust%20and%20Ukraine%20(2016)/Eurojust-Ukraine-2016-06-27-EN.pdf).

9. Council Decision on the strengthening of Eurojust and amending Decision 2002/187/JHA [Electronic resource]. – Access mode : <http://www.eurojust.europa.eu/doclibrary/Eurojust-framework/ejdecision/Consolidated%20version%20of%20the%20Eurojust%20Council%20Decision/Eurojust-Council-Decision-2009Consolidated-EN.pdf>.

10. План дій Україна – ЄС у сфері юстиції, свободи та безпеки від 18 червня 2007 року [Електронний ресурс]. – Режим доступу : [http://zakon2.rada.gov.ua/laws/show/994\\_956](http://zakon2.rada.gov.ua/laws/show/994_956).