



UDC 341.218.2

## IMPLEMENTATION OF THE INSTITUTE OF RECOGNITION IN UKRAINE'S FOREIGN POLICY

**Ilova KHMELEVA,**

Postgraduate Student at Institute of International Relations  
of Taras Shevchenko National University of Kyiv

### SUMMARY

The article is devoted to the institute of recognition in international law and its importance for Ukraine's foreign policy. Inter alia, the article provides for the analysis of recognition of Ukraine as an independent state; Ukraine's practice of granting recognition; non-recognition of Ukraine's government by the Russian Federation in 2014; realization of the institute of recognition in the context of aggression of the Russian Federation. The article states that recognition of such entities as the so-called Republic of Crimea or "people's republics" is an internationally wrongful act. In addition, the article analyses Ukraine's policy of qualifying the status of these entities.

**Key words:** international law, recognition, institute of recognition, Ukraine, foreign policy, statehood, aggression, international relations.

### МЕСТО ИНСТИТУТА ПРИЗНАНИЯ ВО ВНЕШНЕЙ ПОЛИТИКЕ УКРАИНЫ

**Илона ХМЕЛЕВА,**

аспирант Института международных отношений  
Киевского национального университета имени Тараса Шевченко

### АННОТАЦИЯ

Статья посвящена институту признания в международном праве и его значению для внешней политики Украины. В частности, в статье представлен анализ признания Украины в качестве независимого государства; практики Украины относительно предоставления признания; непризнания правительства Украины Российской Федерацией в 2014 году; реализации института признания в контексте агрессии Российской Федерации. В статье утверждается, что признание таких образований, как так называемая Республика Крым или «народные республики», является международным противоправным деянием. Кроме того, в статье анализируется политика Украины в отношении квалификации статуса этих образований.

**Ключевые слова:** международное право, признание, институт признания, Украина, внешняя политика, государственность, агрессия, международные отношения.

### REZUMAT

Articolul este dedicat instituției de recunoaștere în dreptul internațional și importanței acesteia pentru politica externă a Ucrainei. În special, articolul prezintă o analiză a recunoașterii Ucrainei ca stat independent; Practica Ucrainei de acordare a recunoașterii; nerecunoașterea Guvernului Ucrainei de către Federația Rusă în 2014; punerea în aplicare a instituției de recunoaștere în contextul agresiunii Federației Ruse. Articolul susține că recunoașterea unor astfel de entități, cum ar fi așa-numita Republică a Crimeei sau "republicile poporului", este un act ilicit la nivel internațional. În plus, articolul analizează politica Ucrainei cu privire la calificarea statutului acestor entități.

**Cuvinte cheie:** drept internațional, recunoaștere, recunoaștere, Ucraina, politică externă, statalitate, agresiune, relații internaționale.

**Introduction.** The institute of recognition has an important and significant role for the international law and international relations. At the same time, lack of the consistent practice of recognition, significant influence of the political factor and differences in the doctrine of international law create the need for a detailed study of this phenomenon and for development of common approaches thereto. The prevention of consideration of international legal issues due to political and social relevance is still an urgent problem. Although new theoretical approaches to recognition ensure the adaptability of this institute to modern in-

ternational relations, it remains important to ensure that new doctrinal decisions are consistent with the fundamental principles of international law science.

Given the importance of the said institute for the protection of national interests of Ukraine, it is crucial to analyse main forms of its implementation in Ukraine's foreign policy.

**Purpose of the article** is to provide for the overall characteristic of the realization of the institute of recognition in the international relations of Ukraine.

**Materials and methods.** The theoretical basis of research is the work of international

lawyers, such as: I. Brownlie, D. Feldman, T. Grant, H. Lauterpacht V. Mitsik, M. Shaw, O. Zadorozhnyi and other scientists. The methodological basis of the research is determined by its purpose and objectives; a wide range of general theoretical and special-scientific methods is used.

**Results.** In order to describe the importance of the institute of recognition in the foreign policy of Ukraine, it is necessary to explain the following aspects:

- 1) recognition of Ukraine as an independent state;
- 2) Ukraine's practice of granting recognition;



3) non-recognition of Ukraine's government by the Russian Federation after the Revolution of Dignity in 2014;

4) realization of the institute of recognition in the context of aggression of the Russian Federation against Ukraine (inter alia, recognition by the Russian Federation of the so-called Republic of Crimea as an independent state and acts of recognition during the aggression of the Russian Federation in the East of Ukraine).

Recognition of Ukraine as an independent state. This aspect has a predominantly historical significance and consists of two parts: recognition of the Ukrainian state at the beginning of the 20th century and the process of recognition of Ukraine after the proclamation of independence.

The institute of recognition was of great importance for Ukraine from the very beginning of the proclamation of independence. In addition, although Ukraine was quickly recognized by the majority of the states, the "Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union" (that provided for the conditions for recognition of the respective states, including Ukraine, by the EU) [1], have a specific place in the process of recognition of Ukraine. Although these requirements did not violate the principles of democracy and were not excessive, the practice of conditional recognition is not optimal.

It should be noted that the Ukrainian state became a recipient of recognition in the twentieth century. It is important to stipulate that the legally established recognition of the Ukrainian state indicates a progressive way of its development. In particular, O. Zadorozhnyi made a conclusion that "Ukraine achieved all signs of its full statehood not after the adoption of the Third Universal of the Central Rada dated 07.11.1917 (which created the Ukrainian People's Republic), but even before the adoption of the said normative legal act. This fact is proved not only by the presence of formal characteristics of statehood (first of all, the functioning of the authorities that extend their competence to a certain territory), but also by legally established recognition of the statehood of Ukraine by the authorities of Russia, the states of the Quadruple Alliance (Germany, Austria-Hungary, Turkey, Bulgaria) and a number of other states" [2, p. 449].

Ukraine's practice of granting recognition. It should be noted that the realization of recognition in the practice of Ukraine is quite controversial and often associated with political motives. In addition, compliance

with the international legal framework takes place mainly when it is in line with the protection of certain national interests. However, it is indisputable that full compliance with the norms of international law will not harm the interests of Ukraine and it will only strengthen Ukraine's international position. There are such problematic issues:

1) lack of common approaches to the recognition and neglect of the principles of international law;

2) violation of national recognition procedures;

3) absence in Ukraine of a unified and stable policy regarding unrecognized entities.

The importance of developing common approaches to recognition can be demonstrated on the example of the situation with Kosovo. Given that the compliance of the recognition of the Republic of Kosovo with the principles of international law is questionable, and fears about a possible chain reaction in Europe are not unfounded, Ukraine's position, namely refraining from recognition, has a certain legal basis. At the same time, it is impossible to ignore the Advisory Opinion of the International Court of Justice dated 22 July 2010 [3], wherein the Court found that the declaration of independence of the Republic of Kosovo was in line with international law. Moreover, in 2007 then Minister for Foreign Affairs of Ukraine A. Yatsenyuk repeatedly declared the possibility of recognition of the Republic of Kosovo by Ukraine under certain conditions. Taking into account the fact that the Ukrainian Constitution [4] unequivocally relates this issue to the President's competence, such official statements by the Minister were not appropriate.

Another example is that on 1 September 2011 Ukraine recognized the National Transitional Council of Libya as the only legitimate representative of the Libyan people in the international arena. The decision of Ukraine to recognize the National Council had a political rationale and was not likely to be an independent position.

Recognition always leads to a number of legal consequences, and although the practice of different states may vary, the practice of each individual state must be consistent. It is therefore advisable for Ukraine to determine the basic principles of interaction with unrecognized entities.

It should be noted that Ukraine's practice led to the emergence of a new kind of recognition – recognition (or non-recognition) of the representative body of the state

(the parliament). This novella was used by the Verkhovna Rada of Ukraine against the State Duma of the Federal Assembly of the Russian Federation of the seventh convocation. Recognition of parliaments is a new kind of recognition, which has three groups of consequences: the status of decisions of the relevant body, the effectiveness of international cooperation and the ability to perform classical functions (such as public appointments).

The main legal basis of the procedure of granting recognition in Ukraine is Article 106 of the Constitution [4], which prescribes: "The President of Ukraine adopts decisions on the recognition of foreign states". This provision has a number of drawbacks, and there are the ways to amend the Constitution:

1) removing a sentence concerning the body, which can grant recognition (international experience proves that this issue does not belong to the level of constitutional regulation; it is enough to determine who represents the state on the international arena);

2) giving appropriate powers to the parliament or government (because this is not a presidential function, especially in the parliamentary-presidential form of government);

3) introducing editorial changes to Article 106 (because the word "foreign" is meaningfully superfluous; moreover, if the details of the procedure of recognition are specified at the constitutional level, other possible recipients of recognition should be mentioned).

Non-recognition of Ukraine's government by the Russian Federation in 2014. The act of non-recognition on the part of the Russian Federation was entirely politically motivated and aimed at two basic positions: justification of interference in the internal affairs of an independent state and evasion of the negotiation and consultation procedure. Both goals in no way correspond to contemporary international law. Moreover, non-recognition of the government, regardless of the fact whether it conforms to the principles of international law, does not affect the legal personality of the state. Therefore, respect for its independence, sovereignty, territorial integrity is protected by international law, and the non-recognition of government cannot be used to avoid international legal responsibility.

Recognition by the Russian Federation of the so-called Republic of Crimea as an independent state. The institute of recognition



became crucial for Ukraine in 2014 due to the aggression of the Russian Federation, which began with the occupation and annexation of the Crimea and continued in the East of Ukraine. The wrongfulness and illegality of the act of recognition by the Russian Federation of the so-called Republic of Crimea as an independent state cannot be impugned. Thus, this act of recognition may not have any consequences either for international law or for domestic law; and the treaty between the Russian Federation and Crimea dated 18 March 2014 should not be considered to be effective and in force. Moreover, the abovementioned act of recognition violated peremptory norms of international law (inter alia, principles of territorial integrity and inviolability of borders), so it must cause the responsibility of Russia.

Draft articles on Responsibility of States for Internationally Wrongful Acts envisage that no State shall recognize as lawful a situation created by a serious breach of an obligation arising under a peremptory norm of general international law, nor render aid or assistance in maintaining that situation [5]. Under the Definition of Aggression prescribed by the United Nations General Assembly Resolution 3314 “no territorial acquisition or special advantage resulting from aggression is or shall be recognized as lawful” [6]. Thus states mustn’t recognize Crimea or the consequences of the recognition, granted by the Russian Federation.

Ukraine can refer to the wrongfulness of the act of recognition of Crimea as an additional argument for bringing Russia to responsible and for proving the illegality of occupation and annexation of a part of the Ukrainian territory. Ukraine should declare these points as part of its own foreign policy doctrine and thus strengthen its position in the international arena. The institute of recognition can help Ukraine to restore full effective control over Crimea.

Acts of recognition during the aggression of the Russian Federation in the East of Ukraine. A similar situation is with the so-called “people’s republics” in the East of Ukraine, which appeared because of the international armed conflict between the Russian Federation and Ukraine. According to the Resolution 3314 (XXIX) adopted by the UN General Assembly “the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to the acts listed above, or its substantial involvement therein” can

be qualified as an act of aggression [6]. That is why the situation in the East of Ukraine can be defined as an act of aggression, and so-called “people’s republics” cannot be recognized, as they are occupational administration. The term “hybrid war” should not be used to provide the legal qualification of these actions, as these events are classical aggression. In the East of Ukraine military occupation by the Russian Federation takes place. The occupying power should be held accountable in accordance with the provisions of the Geneva Convention.

The so-called “people’s republics” (“DPR” and “LPR”) not only arose as a result of the aggression of the Russian Federation but are also terrorist organizations. Thus, their recognition can be considered an internationally wrongful act, and Ukraine should refrain from any actions on the legitimization of these entities or their representatives.

At the same time, the lack of recognition of independence of the so-called “people’s republics”, or their recognition by the Verkhovna Rada of Ukraine and other states and international organizations as terroristic organizations does not mean that the representatives of this entities cannot be involved into the peace talks [7, p. 58].

The policy of Ukraine, unfortunately, is not logical and consistent. For example, Ukraine’s application to the International Court of Justice has the following statement: “In eastern Ukraine, the Russian Federation has instigated and sustained an armed insurrection against the authority of the Ukrainian state, including by systematically supplying illegal armed groups with heavy weaponry, money, personnel, training, and other support” [8]. The Cambridge Dictionary provides the following definition for the word “insurrection”: “an insurrection - an organized attempt by a group of people to defeat their government and take control of their country, usually by violence: armed insurrection” [9]. Therefore, Ukraine uses wrong terminology in its own application, which creates an erroneous impression that the so-called “D/LPR” appeared because of uprising or rebellion, not because of the Russian aggression.

Thus, the institute of recognition is important for the protection of Ukraine’s national interests. At the same time, the armed conflict in the East of Ukraine demonstrates inconsistency of the state policy of Ukraine regarding the qualification of the relevant events.

**Conclusion.** Summarizing the importance of the institute of recognition in the

foreign policy of Ukraine, the following conclusions may be made:

1. The institute of recognition is of great importance for international law.

2. Ukraine, as an independent state, quickly and easily gained universal recognition; moreover, the Ukrainian state was recognized at the beginning of the 20th century.

3. Ukraine’s practice leads to the expansion of a number of recipients of recognition (the emergence of a new kind of recognition – recognition of parliaments).

4. The act of recognition is procedurally regulated at the level of national law; such regulation is often inconsistent or incomplete. It is important to improve the constitutional regulation of the issue of recognition in Ukraine; some constitutional amendments are necessary.

5. The implementation of the institute of recognition by Ukraine often depends on political factors; the inconsistency in the practice of Ukraine exists both at material and at procedural level.

6. Non-recognition of Ukraine’s government by the Russian Federation in 2014 did not have any legal basis.

7. The institute of recognition is crucial for protection of the national interests of Ukraine in the conditions of aggression of the Russian Federation.

8. Some acts of recognition can be qualified as internationally wrongful acts, for example the recognition of the so-called Republic of Crimea and “people’s republics” in the East of Ukraine.

9. Ukraine’s policy as to so-called “D/LPR” (especially, concerning the definition of their status) is not effective.

#### References:

1. Declaration on the ‘Guidelines on the Recognition of New States in Eastern Europe and in the Soviet Union’ (16 December 1991) [Electronic resource]. – URL : <https://www.dipublico.org/100636/declaration-on-the-guidelines-on-the-recognition-of-new-states-in-eastern-europe-and-in-the-soviet-union-16-december-1991> (Last accessed: 07.01.2018).

2. Задорожній О.В. Генеза міжнародної правосуб’єктності України : монографія [Текст] / О.В. Задорожній ; Укр. асоц. міжнар. права, Київ. нац. ун-т ім. Т. Шевченка, Ін-т міжнар. відносин. – Київ : К.І.С., 2014. – 687 с.

3. Accordance with International Law of the Unilateral Declaration of



Independence in Respect of Kosovo [Text]. – Advisory Opinion, I.C.J. Reports 2010, p. 403.

4. Конституція України [Електронний ресурс]. – Режим доступу : <http://zakon2.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80> (Дата звернення: 07.01.2018).

5. Ответственность государств за международно-противоправные деяния: Доклад Комиссии международного права [Электронный ресурс]. – Режим доступа : [http://www.un.org/ru/documents/decl\\_conv/conventions/pdf/responsibility.pdf](http://www.un.org/ru/documents/decl_conv/conventions/pdf/responsibility.pdf) (Дата обращения: 07.01.2018).

6. Определение агрессии [Электронный ресурс]. – Режим доступа : [http://www.un.org/ru/documents/decl\\_conv/conventions/aggression.shtml](http://www.un.org/ru/documents/decl_conv/conventions/aggression.shtml) (Дата обращения: 07.01.2018).

7. Мицик В.В. Визнання в міжнародному праві: сучасна теорія та практика [Текст] / В.В. Мицик // Міжнародний правопорядок: сучасні проблеми та їх вирішення. Зб. матеріалів конференції «Міжнародний правопорядок: сучасні проблеми та їх розв'язання». – Львів : СПОЛІОМ, 2015. – 316 с. – С. 50–59.

8. Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine v. Russian Federation) [Electronic resource]. – URL : <http://www.icj-cij.org/files/case-related/166/19314.pdf> (Last accessed: 07.01.2018).

9. Meaning of “insurrection” in the English Dictionary [Electronic resource] // Cambridge University Press. – URL : <http://dictionary.cambridge.org/dictionary/english/insurrection> (Last accessed: 07.01.2018).

#### ИНФОРМАЦИЯ ОБ АВТОРЕ

**Хмелева Илона Евгеньевна** – аспирант Института международных отношений Киевского национального университета имени Тараса Шевченко;

#### INFORMATION ABOUT THE AUTHOR

**Khmeleva Iлона Evgenyevna** – Postgraduate Student at Institute of International Relations of Taras Shevchenko National University of Kyiv;

[ilonakhmeleva@gmail.com](mailto:ilonakhmeleva@gmail.com)

УДК 349.4 (477)

## ПРАВОВАЯ РЕГЛАМЕНТАЦИЯ ВЕДЕНИЯ ОРГАНИЧЕСКОГО ЗЕМЛЕДЕЛИЯ В УКРАИНЕ

**Римма ЦИЛЮРИК,**

аспирант кафедры земельного и аграрного права  
Национального юридического университета имени Ярослава Мудрого

#### АННОТАЦИЯ

В статье проанализирован комплекс нормативно-правовых актов, регламентирующих особенности ведения органического земледелия в Украине, в частности легальное определение понятий органического производства, органического растениеводства, органического земледелия. Выделены категории субъектов, имеющих полномочия пользования землями для ведения органического земледелия. Выделены основные объекты правоотношений в сфере органического земледелия.

**Ключевые слова:** органическое земледелие, органическое растениеводство, органическое производство, оценка соответствия, сертификат соответствия, сельскохозяйственные угодья.

#### LEGAL REGULATION OF ORGANIC AGRICULTURE IN UKRAINE

**Rymma TSYLIURYK,**

Postgraduate Student at the Department of Land and Agricultural Law  
of the Yaroslav Mudryi National Law University

#### SUMMARY

In the article is analyzed a complex of normatively-legal acts, regulating the features of conduct of organic agriculture in Ukraine, in particular, legal determination of concepts of organic production, organic plant-grower, organic agriculture. Categories are distinguished of subjects, having plenary powers of the use earth for the conduct of organic agriculture. The basic objects of legal relationships are distinguished in the field of organic agriculture.

**Key words:** organic agriculture, organic plant-grower, organic production, estimation of accordance, certificate of accordance, agricultural lands.

#### REZUMAT

Articolul analizează un set de acte normative legale care reglementează particularitățile agriculturii ecologice în Ucraina, în special definiția legală a conceptelor de producție ecologică, producția de culturi ecologice, agricultura ecologică. Categoriile de subiecți care au autoritatea de a utiliza terenuri pentru desfășurarea agriculturii ecologice sunt separate. Obiectivele principale ale relațiilor juridice în domeniul agriculturii ecologice sunt evidențiate.

**Cuvinte cheie:** agricultura ecologică, producția vegetală ecologică, producția ecologică, evaluarea conformității, certificatul de conformitate, terenurile agricole.

**Постановка проблемы.** Проблема производства экологически чистой и высококачественной продукции земледелия в Украине сегодня чрезвычайно актуальна. Как известно, последние десятилетия площадь деградированных и низкоплодородных почв постоянно увеличивается. Одним из направлений разрешения данной проблемы является развитие органической сельскохозяйственной продукции как результат современной системы организации сельского хозяйства. Реализация этого направления, с одной стороны,

позволит выращивать высококачественную и безопасную продукцию земледелия, а с другой – минимизировать отрицательное влияние агротехнологий на окружающую среду.

Несмотря на то, что отдельные представители экономической, сельскохозяйственной и правовой науки (В. Якубив, В. Каминский, В. Артиш. О. Дудар, В. Кысиль, Д. Поддубная, П. Кулинич, Т. Курман, Т. Оверковская, В. Уркевич и др.) уже проводили общую характеристику органического производства и рассматривали отдельные аспекты