



PERSPECTIVES OF MILITARY COOPERATION BETWEEN UKRAINE AND THE EUROPEAN UNION IN THE CONTEXT OF STATE SOVEREIGNTY

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Summary

The article deals with the complex investigation of the content of the draft Association Agreement between Ukraine and the European Union in the context of military collaboration proceeding from the theory of International Law. A special attention is focused on the issues of its influence on the military aspects of the state sovereignty of Ukraine. The author comes to the conclusion that the deepening of cooperation with the EU under this international agreement does not lead to limitation of the state sovereignty of Ukraine in military sphere.

Key words: military cooperation, association agreement, EU-Ukraine relations, state sovereignty.

Аннотация

Статья посвящена комплексному исследованию содержания проекта Соглашения об ассоциации Украины и Европейского Союза в контексте военного сотрудничества, исходя из теории международного права. Особое внимание уделяется вопросу его влияния на государственный суверенитет Украины в военной сфере. Автор приходит к выводу, что углубление сотрудничества с ЕС по данному международному соглашению не приведет к ограничению государственного суверенитета Украины в военной сфере.

Ключевые слова: военное сотрудничество, соглашение об ассоциации, отношения Украина-ЕС, государственный суверенитет.

Statement of the problem.

Ukraine as a non-aligned European state realizes its open external policy and aims to cooperate with all existing states on the basis of the general recognized principles of international law. According to part 2 of art. 11 of the Law of Ukraine «On the fundamental principles of the domestic and foreign policy of Ukraine» of 01.07.2010 [1] one of the fundamental principles of Ukraine's external policy is integration of Ukraine into the European political, economical, humanitarian and legal environment to acquire membership in the European Union, as well as priority of participation in improvement and development of the European system of collective security, continuation of constructive partnership with military-political blocs in all areas of mutual interest. Thus, military partnership with the European Union, which has a great experience in this sphere, is the main direction of Ukraine's current diplomacy.

Since 1993 membership in the European Union has been recognized on the level of legislation as a priority of Ukraine's foreign policy [2]. Invariability of Ukraine's European choice is determined by its being part of the community of European nations civilizationally. In political dimension, cooperation with the European Union generally strengthens democracy in our political system and its institutions,

contributes to the modernization of the economics and development of legislation on the basis of European values. In military sphere, European integration should raise the level of Ukraine's defence capacity and strengthen the security of the state and its citizens as it is based on the principle of relinquishing use of force and threats to use force against the territorial integrity or political independence of any state, which contributes to stability in relations between European countries.

At the present time, EU-Ukraine relations are based on the Partnership and Cooperation Agreement of July 14, 1994 between the European Communities and their Member States, of the one part, and Ukraine, of the other part [3] (hereinafter – PCA), which is a basic bilateral international treaty, as well as many other international agreements, in particular, the Agreement on Establishing a General Framework for the Participation of Ukraine in the European Union Crisis Management Operations of June 13, 2005, Agreement on the Security Procedures for the Exchange of Classified Information of 2005, Agreement renewing the Agreement on Cooperation in Science and Technology of 2003 etc.

Importance of the issue. At the present stage of the international cooperation between Ukraine and the European Union, an urgent issue is the negotiation process of signing the

Association Agreement between the European Union and its member states, of the one part, and Ukraine, of the other part, [4] (hereinafter – Association Agreement) – a new fundamental international treaty that is to replace the PCA and deepen the cooperation between the parties. A special attention of the treaty is focused on the military cooperation between the parties. The draft text of the Association Agreement with the text of the Treaty on Deep and Comprehensive Free Trade Area, which is its integral part, was negotiated in 2007-2011 and initialled in 2012. The signing of the Treaty was scheduled to take place at the Vilnius EU-Ukraine Summit in November 2013. After that, the Treaty needs Ukraine, the European Union and its 28 member states to express consent as to its obligatory nature in accordance with their legislative requirements, which has no requirements as to time limits. However on 21st of November, 2013, the Cabinet of Ministers of Ukraine took a decision to suspend preparations to sign the Association Agreement and at the same time did not refuse to sign it in the future. The position of the EU on this matter was declared by Štefan Füle, Commissioner for Enlargement and European Neighbourhood Policy: «The Association Agreement, including DCFTA, is our offer to Ukraine and its people. This offer is still on the table. The



European Union remains ready to sign it, as soon as Ukrainian authorities are ready, and prove their commitment by deeds» [5].

Status of investigation. As the EU is seeking an increasingly close relationship with Ukraine that goes beyond ordinary bilateral cooperation through developing relations of political association and integration, various aspects of EU-Ukraine cooperation are traditionally of high interest in the legal doctrine. In Ukrainian legal literature, the problems of cooperation between Ukraine and the European Union have become the object of research of such scholars as Y.M. Kostuchenko, L.A. Luts, M.M. Mykievich, V.I. Muraviov, U.V. Movchan, R.A. Petrov, O.Y. Tragniuk, U.O. Voloshin, I.V. Yakoviuk and others. The fundamental theoretical works of the EU relations with the third countries are provided by Russian and Western European professors: K. Arnul, G. de Búrca, T.K. Hartley, M. Herdegen, L.M. Entin, S.U. Kushkin etc. However, as the Association Agreement is a new experience in the foreign policy of Ukraine as well the European Union, and its text was made public relatively a short time ago, its contents have been little researched in the doctrine of the European Law. It is necessary to note that only several Ukrainian scientists have examined separate issues of this international treaty. They are I.A. Berezovska, U.S. Hobbi, I.A. Kravchuk, V.I. Muraviov, E.U. Perelygin, N.M. Rylach, O.V. Streltsova, I.V. Vlyalko. At the same time, neither Ukrainian nor foreign scholars have analyzed the peculiarities of military cooperation between Ukraine and the EU under the Association Agreement and the effect of the latter on Ukraine's sovereignty yet.

Aim and assignment of the article.

The aim of this article is to carry out a complex research into the contents of the draft Association Agreement with the European Union in the context of military cooperation, proceeding from the theory of the International Law. It is also necessary to determine whether this international agreement can lead to limitation of the state sovereignty of Ukraine in military sphere.

Main material. Starting a legal analysis of the Association Agreement we should take into account that art.

2 declares that «promotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence, as well as countering the proliferation of weapons of mass destruction, related materials and their means of delivery also constitute essential elements of this Agreement». The Constitution of Ukraine of 1996 fully corresponds with these principles and states that «all foreign political activity of Ukraine is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial co-operation with members of the international community, according to generally acknowledged principles and norms of the international law» (art. 18).

Proceeding from theory of the international law, the Association Agreement is a bilateral international public treaty which determines the conditions of cooperation between Ukraine and the EU and its 28 member states in a wide range of legal relations, the majority of which are economically directed. At the same time, in distinction from other fields of cooperation, defence and security matters are the first to be determined in the Association Agreement. It proves that this sphere is extremely important for both parties. In particular, the rights and obligations of Ukraine and the EU in military sphere are systematized in Chapter II of the Agreement («Political Dialogue and Reform, Political Association, Cooperation and Convergence in the field of Foreign and Security Policy», art. 4-13). Separate articles of the Agreement also complete this list (art. 143, 472) as well as those dealing with the institutional framework (art. 460-470).

In distinction from PCA, the Association Agreement considerably widens and deepens relations between the parties in military sphere. As it is determined in art. 4 of the Agreement, «political dialogue on all areas of mutual interest [including military sphere] shall be further developed and strengthened between the Parties. This will promote gradual convergence on foreign and security matters with the aim of Ukraine's deeper involvement into the European security area». The aims of political dialogue concerning military cooperation are the following: «to deepen political association and increase political

and security policy convergence and effectiveness; to promote international stability and security based on effective multilateralism; to strengthen cooperation and dialogue between the Parties on international security and crisis management, notably in order to address global and regional challenges and key threats; to foster result-oriented and practical cooperation between the Parties for achieving peace, security and stability on the European continent; to develop dialogue and to deepen cooperation between the Parties in the field of security and defence; to promote the principles of independence, sovereignty, territorial integrity and inviolability of borders».

According to art. 10 of the Association Agreement «the Parties shall enhance practical cooperation in conflict prevention and crisis management, in particular with a view to increased participation of Ukraine in EU-led civilian and military crisis management operations as well as relevant exercises and training activities, including those in the framework of the Common Security and Defence Policy. Cooperation in this field will be based on modalities and arrangements between the EU and Ukraine on consultation and cooperation on crisis management. The Parties shall explore the potential of military and technological cooperation. Ukraine and the European Defence Agency will establish close contacts to discuss military capability improvement, including technological issues».

As it has been mentioned above a number of art. of the Association Agreement fix the numerous rights and obligations of the parties in military sphere. Some of them are quite close to those which relate to the member states of the EU. Thus, deep cooperation between the parties in accordance with the Agreement should enhance their interaction and to a certain extent prepare Ukraine for obtaining membership in the European Union.

The deep cooperation between the parties under the Association Agreement raises a lot of practical issues. Among the key questions, the most important one is whether there is a potential threat to the state sovereignty of Ukraine in case of so close interaction and whether Ukraine is able to protect its state interests if they mismatch with the general strategy of the EU concerning security priorities and



measures for their implementation? To make a well-grounded conclusion, we should investigate some aspects.

First of all it is necessary to stress, that as for Ukraine, the Association Agreement lays on Ukraine no obligations to acquire membership in the EU and no duties of a member state on this sphere. It is emphasized in the preamble: «This Agreement shall not prejudice and leaves open future developments in EU-Ukraine relations». Thus according to this Agreement, Ukraine shall not enter into commitments of an EU member state in the field of common security and defence policy.

The Association Agreement does not contain clear-cut obligations of the parties in military sphere. Nor does it determine their precise line of behaviour in the process of cooperation in imperative manner. The obligations of the parties in the field of security and defence can be determined as «soft-law» obligations [6]. Provisions of the Agreement do not stipulate any specific legal obligations to be carried out by the parties. Thus, the parties have a wide range of means for their realization with due regard to the specifics of their national interests and internal security policy priorities. For example, according to part 1 of art. 7 of the Agreement, «the Parties shall intensify their dialogue and cooperation and promote gradual convergence in the area of foreign and security policy, including the Common Security and Defence Policy (CSDP), and shall address in particular issues of conflict prevention and crisis management, regional stability, disarmament, non-proliferation, arms control and arms export control as well as enhanced mutually beneficial dialogue in the field of space. Cooperation will be based on common values and mutual interests, and shall aim at increasing policy convergence and effectiveness, and promoting joint policy planning. To this end, the Parties shall make use of bilateral, international and regional fora». So it is not clearly apprehensible what these provisions mean and what the parties are to do to carry them out.

General non-specific obligations are also in part 1 of art. 11 of the Agreement under which «the Parties agree to cooperate and to contribute to countering the proliferation of weapons of mass destruction, related materials and their

means of delivery through full compliance with and national implementation of their existing obligations under international disarmament and non-proliferation treaties and agreements and other relevant international obligations». Besides this, art. 12 only states in general terms that «the Parties shall develop further cooperation on disarmament, including in the reduction of their stockpiles of redundant small arms, and light weapons as well as dealing with the impact on the population and the environment caused by abandoned and unexploded ordnance. Cooperation on disarmament shall also include arms controls, arms export controls and the fight against illicit trafficking of arms, including small arms and light weapons. The Parties shall promote universal adherence and compliance with relevant international instruments and shall aim to ensure their effectiveness, including through implementation of the relevant United Nations Security Council Resolutions».

Despite the significant widening and deepening of the relations between the parties in military sphere, a considerable number of the provisions in the Agreement clearly indicate that Ukraine remains free in developing its own policy in many areas. Thus, the Association Agreement envisages a number of provisions to protect Ukraine's national interests in military sphere. In particular, according to art. 472 («Measures related to essential security interests») «nothing in this Agreement shall prevent a Party from taking any measures: which it considers necessary to prevent the disclosure of information contrary to its essential security interests; which relate to the production of, or trade in, arms, munitions or war materials or to research, development or production indispensable for defence purposes, provided that such measures do not impair the conditions of competition in respect of products not intended for specifically military purposes; which it considers essential to its own security, in the event of serious internal disturbances affecting the maintenance of law and order, in time of war or serious international tension constituting threat of war, or in order to carry out obligations it has accepted for the purpose of maintaining peace and international security».

Furthermore art. 143 of the Association Agreement («Security

exceptions») emphasizes that «nothing in this Agreement shall be construed in such a way as: to require any Party to furnish any information, the disclosure of which it considers contrary to its essential security interests; or to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests: connected with the production of or trade in arms, munitions or war material; relating to economic activities carried out directly or indirectly for the purpose of provisioning a military establishment; relating to fissionable and fusionable materials or the materials from which they are derived; or taken in time of war or other emergency in international relations; or to prevent any Party from taking any action in pursuance of obligations it has accepted for the purpose of maintaining international peace and security».

(a) The framework of military cooperation (as well as other spheres of political dialogue) is determined in art. 5 and itemized in art. 460-470 of the Treaty. It is stated that the Parties shall hold regular political dialogue meetings at Summit level which is the highest form of cooperation. At ministerial level, political dialogue shall take place within the Association Council referred to in art. 460 of this Agreement and within the framework of regular meetings between representatives of the Parties at Foreign Minister level by mutual agreement.

One of the most important features of the institutional model of cooperation under the Association Agreement is the exclusive power of the Association Council to make decisions binding for the Parties (part 1 of the art. 463 of the Agreement). It may also delegate this power to the Association Committee (part 2 of the art. 465 of the Agreement). It is necessary to stress that common institutions under the PCA are not empowered to make any binding decisions. They may only give recommendations to the parties. Thus, the level of freedom of action of the parties in military sphere is very limited under the Association Agreement.

At the same time the institutional model of cooperation under the Association Agreement takes into consideration the political interests of both parties during decision making. The Agreement clearly determines that either the Association Council or the Association Committee



«shall be composed of representatives of members of the Council of the European Union and representatives of the European Commission, on the one hand, and of representatives of the Government of Ukraine, on the other» (part 1 of the art. 462 and part 2 of the art. 464 of the Agreement). Thus, the institution cannot consist of the representatives of one party.

The Association Council as an institution which supervises and monitors the application and implementation of this Agreement shall have only these powers and no right to carry out actions not determined in the Agreement. As the Agreement has to be ratified by the Parliament of Ukraine, the Association Council shall have only those powers which are approved by the Verkhovna Rada. In this sense, the activities of the Association Council are not unique, they are similar to the activities of many other institutions supervising and monitoring international treaties ratified by the Parliament of Ukraine. The next important provisions are in part 1 of art. 463 of the Agreement under which the Association Council shall adopt its decisions and recommendations by agreement between the Parties. A similar provision is in part 3 of art. 465 on the Association Committee. Thus, no decision can be passed without the consent of Ukraine.

The Agreement doesn't detail the procedure of decision making of the Association Council and the Association Committee. However, the association agreements with other third states, including those that have the status of applicants and candidates, do not specify it either [7-13]. Article 462 of the Agreement states in general terms that the Association Council shall establish its own rules of procedure in which apparently the particularities of the organizational structure and decision making will be determined. The same applies to the Association Committee.

In this connection it is necessary to pay attention to the regulations dealing with functioning of common institutions under the association agreements. Thus, under Decision № 1/2010 of the EU-Montenegro Stabilisation and Association Council of 14.10.2010 adopting its Rules of Procedure [14] the Stabilisation and Association Council consists of ministers of both parties and adopt its decisions by common

agreement of the parties (art. 2). Similar provisions are in the Decision of the EU-Serbia Stabilisation and Association Council of 22 July, 2013 adopting its rules of procedure [15] (art. 10).

Thus, the institutional framework under the Association Agreement between Ukraine and the EU is based on the principle of parity. It allows to take into account political interests of both parties during the decision making. This procedure provides valuable guarantees both for Ukraine and the EU and makes it impossible to pass a decision that is contrary to the position of one of the parties.

Conclusions. Legal analysis of the draft Association Agreement between the European Union and its member states, of the one part, and Ukraine, of the other part, allows to make a conclusion that the deepening of cooperation with the EU under the Agreement shall not lead to limitation of the state sovereignty of Ukraine in military sphere. This conclusion is based on the following findings: 1) Ukraine shall not enter into commitments of the EU member state in the field of common security and defence policy; 2) Ukraine shall have only «soft-law» obligations in military sphere; it is entitled to have a wide range of means for their realization with due regard for the specifics of its national interests and internal security policy priorities; 3) articles 143 and 472 of the Agreement guarantee that Ukraine has the right to uphold its own position and protect its own strategic interests in military sphere while coordinating its defence policy with that of the EU; 4) the institutional framework under the Association Agreement is based on the principle of parity which allows to take into account political interests of both parties during decision making and makes it impossible to pass a decision that is contrary to the position of one of the parties.

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ГЕНЕЗИС ФОРМИРОВАНИЯ ОРГАНИЗОВАННОЙ ПРЕСТУПНОСТИ И ЕЕ ТРАНСНАЦИОНАЛЬНЫХ ФОРМ В НЕЗАВИСИМОЙ УКРАИНЕ (ИСТОРИКО-ПРАВОВЫЕ АСПЕКТЫ)

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Summary

On the basis of concrete historical approach in the article it is made an analysis of the causes, basic stages, the characteristic features of the development and forms of organized crime, its transnational manifestations in the process of formation and development of the independence of Ukraine. On the basis of the analysis of statistical data in different periods of formation and development of the modern history of Ukrainian statehood it is observed the evolution of native organized crime – from its overall criminal crime to the most dangerous forms of organized economic crime, its transformation into international criminal structures.

The author specificities the need for greater efforts towards the enhancement of law enforcement cooperation in combating transnational forms of organized crime.

Key words: overall criminal crime, organized crime, economic crime, transnational crime, international cooperation, law enforcement authorities.

Аннотация

В статье на основе конкретно-исторического подхода осуществлен анализ причин возникновения, основных этапов, характерных особенностей развития и форм организованной преступности, ее транснациональных проявлений в процессе становления и развития государственности независимой Украины. На основе анализа статистических данных в разные периоды становления и развития современной истории украинской государственности исследована эволюция отечественной организованной преступности, от ее общеуголовных до наиболее опасных организованных форм экономической направленности, их преобразование в международные криминальные структуры. Автором акцентировано внимание на необходимости концентрации усилий в процессе углубления взаимодействия правоохранительных органов в борьбе с транснациональными формами организованной преступности.

Ключевые слова: общеуголовная преступность, организованная преступность, экономическая преступность, транснациональная преступность, международное сотрудничество, правоохранительные органы.

Постановка проблемы. Украина, став независимой, провозгласила своим приоритетом построение нового демократического общества со всей полнотой свободы действий, в том числе и в сфере экономических, политических, социальных и других отношений. Были разрушены или подорваны прежние государственные институты власти, в результате провозглашенной свободы действий активизировались практически неуправляемые процессы в развитии государственного управления, повлекшие за собой хаотические процессы в экономике, финансовой и социальных сферах.

При такой неуправляемости в обществе началась незаконная приватизация и другие мошеннические акции первичного накопления капитала. В настоящее время уже происходит про-

цесс перераспределения собственности путем рейдерства, легализации теневых капиталов незаконным путем и т.п.

Таким образом, на современном этапе развития нашего государства объективные и субъективные факторы закономерно породили значительные масштабы организованной преступности, в том числе и в ее наиболее опасном проявлении, каковым является транснациональная организованная преступность.

Актуальность темы. Основы научного понимания феномена организованной преступности, присущих ей наиболее существенных и характерных признаков, определения приоритетных путей и направлений борьбы с этим социально опасным явлением были предметом научных исследований отечественных и зарубежных авторов.