

Ivan Pankevych

University of Zielona Góra, Poland

ORCID 0000-0003-2826-9610

i.pankevych@wpa.uz.zgora.pl

Iryna Sofinska

Lviv Polytechnic, Ukraine

ORCID 0000-0002-3853-7626

iryna.d.sofinska@lpnu.ua

The European Union accession – challenges and opportunities for Ukraine: (In)Justice, (Non)Freedom, and (In)Security

Key words: democracy, the rule of law, court, Accession Agreement, Ukraine, the European Union

Summary. The authors try to examine legal and political narratives regarding the pathway of Ukraine to the European Union. We feel the considerable support of Ukrainians (86% in favor of the European future). Also, we should trust our president, parliament, and government share the same values and desire the same destiny for our country. Therefore, they should fulfill urgent reforms necessary for every candidate country to join the European Union. The framework of successful reforms should include issues on guaranteeing the rule of law and respect for human rights and fundamental freedoms, protecting personal data, cooperating on migration, asylum, and border management, preventing and combating money laundering and terrorism financing, fighting against illicit drugs, and on precursors and psychotropic substances, combating and preventing criminal and illegal activities (corruption), etc.

Przystąpienie do Unii Europejskiej – wyzwania i szanse dla Ukrainy: (nie)sprawiedliwość, (nie)wolność i (nie)bezpieczeństwo

Słowa kluczowe: demokracja, praworządność, sąd, umowa akcesyjna, Ukraina, Unia Europejska

Streszczenie. Autorzy podejmują próbę analizy narracji prawnych i politycznych dotyczących drogi Ukrainy do Unii Europejskiej. Europejską przyszłość popiera większość Ukraińców (86%). Jednakże, musimy mieć pewność, że prezydent, parlament i rząd podzielają te same wartości i pragną tego samego losu dla naszego kraju. Powinny zatem przeprowadzić pilne reformy niezbędne każdemu krajowi kandydującemu do członkostwa w Unii Europejskiej. W ramach udanych reform muszą znaleźć się kwestie dotyczące zagwarantowania praworządności i poszanowania praw człowieka i podstawowych wolności, ochrony danych osobowych, współpracy w zakresie migracji, azylu i zarządzania granicami, zapobiegania i przeciwdziałania praniu pieniędzy i finansowaniu terroryzmu, zwalczania nielegalnego handlu narkotykami, prekursorami i substancjami psychotropowymi, zwalczania i zapobiegania działalności przestępczej i nielegalnej (korupcji) itp.

1. Introduction

The problem of democracy and the rule of law application in Ukraine appeared in a different political and legal environment from that present in the European Union Member States (specifically after 1989). Ukraine's present underlying problems regarding ensuring democracy and the rule of law are due to the significant extended period of statelessness (notwithstanding multiple attempts, specifically during 1917-1920) and, in fact, the total destruction of the national elite, which the most massive took place in XX century.

The constitutional process in Ukraine at the start-up stage of democratic transformations differed from those in other European post-communist countries and was finalized in 1996. Since attaining independence in 1991, Ukraine appeared at crossroads related to the choice of integration¹. In the situation of permanent conflict between the head of state (President of Ukraine) and the Ukrainian parliament (the Supreme Council of Ukraine) before the adoption of the Constitution of Ukraine 1996², there was an essential ideological conflict between the pro-government Communist majority in the parliament and the democratic opposition. As a result, MPs had different civilization views regarding the direction of further state development: democratic opposition pushed to the European Union, and in contrast, Communists pulled back to Russia. This dispute in civilization's attitude to state development strategy was inherited from the USSR and lasted until 2014. It finally forcibly ended only in 2022 due to the law's entry into force "On the condemnation of the communist and national socialist (Nazi) totalitarian regimes in Ukraine and the prohibition of propaganda of their symbols"³: the communist totalitarian regime of 1917-1991 in Ukraine is recognized as a criminal organization pursuing a policy of state terror (numerous human rights cases of abuse, including massacres, executions, deaths, deportations, torture, the use of forced labor and other forms of mass physical terror, ethnic persecution, national, religious, political, class, social, and other motives, inflicting moral and physical suffering when using psychiatric measures for political purposes, violating freedom of conscience, thought, expression, freedom of the press and lack of political pluralism, etc.). The Law was adopted by parliament in 2015 but postponed because

¹ *Ukraine: 30 years on the European path* / Yu. Yakymenko [and others]; Ukrainian Center for Economic and Political Research named after Oleksandr Razumkov, Kyiv: Zapovit Publishing House, 2021, p. 281-305.

² Constitution of Ukraine, June 28, 1996 (https://www.constituteproject.org/constitution/Ukraine_2019?lang=en)

³ On the condemnation of the communist and national socialist (Nazi) totalitarian regimes in Ukraine and the prohibition of propaganda of their symbols, Law № 317-VIII on April 9, 2015 p. (<https://zakon.rada.gov.ua/laws/show/317-19#Text>).

of a court's claims (decision on constitutionality in 2019)⁴. After the presidential and early parliamentary elections in 2019 (resulting in a pro-presidential majority in the parliament and new government, acted only six months, resigned just as COVID-19 happened in March 2020), the political discourse turned again from the European vector to Russia (this decrease in parliamentary efficiency is better depicted in the table regarding the AA 2014 implementation results). This case on pro-Russian influence on Ukrainian state strategy and policy was finally and successfully closed only after the Russian invasion in February 2022 (everything of communist background or pro-Russian has no place in modern Ukraine).

Ukraine started to join the European Union following the signing of the European Union–Ukraine Association Agreement in 2014 after a series of planned actions from 1993–1994 or 2004–2005⁵. Surviving in 2004 ('Orange Revolution') and 2013–2014 (Revolution of Dignity or EuroMaidan), Ukraine chose the path of European integration, which was reaffirmed by the signing and ratification of the Association Agreement in 2014⁶. The European choice opened many new opportunities for sustainable development of Ukraine but also exposed many problems and challenges to overcome on the route to the European Union. In particular, following Art. 85, par. 5 of the Constitution of Ukraine 1996, "determining the principles of internal and foreign policy, the realization of the strategic course of the state on acquiring full-fledged membership of Ukraine in the European Union" belong to the powers of the Supreme Council of Ukraine⁷. The European identity of Ukrainians is enshrined in the Constitution of Ukraine 1996. Specifically, it is mentioned in its preamble, amended on February 7, 2019:

*'...caring for the strengthening of civil harmony on Ukrainian soil, and confirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine...'*⁸.

Ukraine receives rights, freedoms, and duties by signing the 2014 Association Agreement between the European Union and Its Member States, of one part, and Ukraine, of the other (further the AA 2014). The rule of law is prescribed in the

⁴ On the constitutional submission of 46 People's Deputies of Ukraine regarding the conformity with the Constitution of Ukraine (constitutionality) of the Law of Ukraine «On the Condemnation of the Communist and National Socialist (Nazi) Totalitarian Regimes in Ukraine and the Prohibition of Propaganda of Their Symbols», Decision of the Constitutional Court of Ukraine No. 9-p/2019 of July 16, 2019 (<https://ccu.gov.ua/docs/2802>).

⁵ *Ukraine: 30 years...*

⁶ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, Official Journal, L 161, 29.5.2014, p. 3–2137.

⁷ Constitution of Ukraine, June 28, 1996 (https://www.constituteproject.org/constitution/Ukraine_2019?lang=en).

⁸ Constitution of Ukraine, June 28, 1996 (https://www.constituteproject.org/constitution/Ukraine_2019?lang=en).

AA 2014, primarily in the chapter related to “Justice, freedom, security, and human rights” under the full responsibility of the Ministry of Justice of Ukraine. In the preamble to the AA 2014 is declared that the visible underneath of Ukrainian integration into the European Union

‘...is based on common values, namely respect for democratic principles, the rule of law, good governance, human rights, and fundamental freedoms, including the rights of persons belonging to national minorities, non-discrimination of persons belonging to minorities, and respect for diversity, human dignity, and commitment to the principles of a free market economy, which would facilitate the participation of Ukraine in European policies...’⁹.

Finally, “the common values on which the European Union¹⁰ is built – namely democracy, respect for human rights and fundamental freedoms, and the rule of law – are also essential elements” of the AA 2014. The principle of the rule of law can be secured and implemented only under democratic conditions. In contrast, democracy becomes a reality only if the norm of law is upheld and respected by all. Moreover, this interconnection can be justified from a political and legal (constitutional) view. Among fundamental legal sources of common values (respect for human rights, democracy, good governance, and the rule of law) are the 1948 UN Universal Declaration of Human Rights and the 1950 European Convention on Human Rights and Fundamental Freedoms. Respect for the principle of the rule of law shall constitute essential elements of the AA 2014 and form the basis of the domestic and external policies promoting 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 (Art. 2, AA 2014)¹¹.

2. Ukraine and European Union: retrospective and perspective actions

Relations between Ukraine and the European Union officially began in December 1991, when the Minister of Foreign Affairs of the EU-chairing Netherlands, Hans van der Broek, recognized the independence of Ukraine on behalf of the European Union¹². Ukraine and the EU attempted to increase close mutual relationships, going beyond mere bilateral cooperation to gradual economic integration and

⁹ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, Official Journal, L 161, 29.5.2014, p. 3–2137.

¹⁰ Following Art. 2 of the TEU, *«The [European] Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.»*

¹¹ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, Official Journal, L 161, 29.5.2014, p. 3–2137.

¹² *Ukraine: 30 years...*

deepening political collaboration (for example, via European Neighbourhood Policy and Eastern Partnership framework). The Partnership and Cooperation Agreement, an essential framework of necessary and urgent reforms to be done by the Ukrainian president, parliament, and government in short and middle perspective, was signed in 1994; however, it entered into force only in 1998. Official negotiations on an EU-Ukraine Association Agreement began in 2008; it should succeed the Partnership and Cooperation Agreement. Several negotiating Rounds have been organized in Brussels and Kyiv, as well as EU-Ukraine summits (already 23 summits during 1997-2021).

Interrelations between Ukraine and the EU are not linear; they contain achievements and problems, pauses and contradictions, essential (vital) agreements, and dramatic events (Eastern Partnership Summit in Vilnius in November 2013 followed by Revolution of Dignity 2013-2014). On September 16, 2014, the parliament approved the draft law on ratifying the Association Agreement between Ukraine and the European Union, signed correctly the same day by Petro Poroshenko, President of Ukraine (2014-2019). 2020 was set up as a target year for an EU membership application; however, presidential and early parliamentary elections challenged this vision. Since May 2019 implementation of the AA 2014 by the parliament has significantly decreased (we see it in the following table).

Factual relations between Ukraine and the EU can be divided into two stages:

1. *Cooperation and partnership* (1991-2014). In these times, a systematic political dialogue is being established, a complex of partnership relations is being created in various spheres, contractual and legal foundations of cooperation were built.
2. *Political association and economic integration* (since 2014 and till now). This period is marked by the acquisition of a new quality of the Ukraine-EU partnership within the framework of the Association Agreement, the final confirmation of the irreversibility of Ukraine's European integration course, defined in the Constitution of Ukraine 1996 (amended in early 2019), and joint resistance to Russian aggression (since 2014, intensified because of Russian invasion in 2022)¹³.

Two days after Russian troops crossed the border into Ukraine on February 24, 2022, the president of Ukraine signed the membership application to join the European Union. During her visit to Kyiv on April 8, 2022, the President of the European Commission, Ursula von der Leyen, handed over a questionnaire on Ukraine's compliance with the Copenhagen criteria (a necessary stage for acquiring the status of a candidate to join the European Union). Just in ten days, on

¹³ *Ukraine: 30 years...*

April 18, 2022, Kyiv submitted the first part of the questionnaire to the European Commission, and on May 9, the second part of the questionnaire.

On June 23, 2022, following the facilitated and accelerated procedure, Ukraine obtained the status of a candidate for membership in the European Union. A few weeks before this decision, such success seemed illusory and unlikely for Kyiv, while it received some ambiguous signals from various capitals of European Union Member States. The joint statement of the presidents of eight European Union Member States (Bulgaria, Czechia, Estonia, Latvia, Lithuania, Poland, Slovakia and Slovenia) in February 2022 and joint visit of the presidents of France and Romania, the Italian prime minister, and the German chancellor to Kyiv shortly before that (in June 2022), and their frank pro-Ukrainian position (and open support for Ukraine's application to the EU) played a decisive role in reaching a consensus of all 27 European Union Member States. It probably prevented a possible veto by a few skeptical European Union Member States. Skepticism is quite understandable - ongoing war, Russian aggression intensified in 2022, and an aggressor still occupies part of Ukraine's territory. Ukraine has objective problems with reforming and fighting against corruption. Within the EU itself are enough Eurosceptics who doubt the expediency expansion of the EU and the possibility of Ukraine becoming a full-fledged country of the European community.

For Kyiv, the path to join the EU is now determined. The main task, however, is only essentially slightly different from those of the last six years: the implementation of the Association Agreement with the EU, which was signed in 2014 and entered into force in 2016. By its content, the Association Agreement is already a 'road map' for European integration. For Ukraine, as for Moldova and Georgia, implementing their Association Agreements remains the 'royal road' to the EU¹⁴. We must fulfill this road map, not lose a candidate's status, and later move on to substantive and meaningful negotiations on Ukraine's membership in the EU. The first «deadline» for the Ukrainian government, parliament, president, and society is the end of 2022 (we must demonstrate progress in crucial reforms).

Following the Association Implementation Report on Ukraine 2021, presented in Brussels on July 22, 2022, 'Ukraine continued to prioritize association and further integration with the EU based on the AA 2014 and has taken necessary steps in its implementation'¹⁵. We made it step by step: our every step, no matter how little, because of COVID-19 and Russian aggression, is better than none. Despite

¹⁴ A. Umland, *The implementation of the association agreement remains the royal road for Ukraine to the EU*, July 1, 2022 (<https://nv.ua/ukr/opinion/ukrajina-yes-shcho-daye-status-kandidata-no-vini-ukrajini-50253633.html>).

¹⁵ Association Implementation Report on Ukraine 2021: Joint Staff Working Document, Brussels, July 22, 2022: 1, 8-10. (<https://www.eeas.europa.eu/sites/default/files/documents/Association%20Implementation%20Report%20on%20Ukraine%20-%20Joint%20staff%20working%20document.pdf>).

crisis and war, we retain our confidence in democracy, the rule of law, good governance, and sustainable development. Therefore, in this article, we tackle merely the results of the AA 2014 implementation by Ukraine (success, delays, challenges, and problems) regarding on justice, freedom, and security.

3. The Rule of Law: European standard to be fulfilled by Ukraine

Art. 14 of the AA 2014 is dedicated solemnly to the rule of law and respect for human rights and fundamental freedoms. It is mentioned that to cooperate on justice, freedom, and security, the Parties, shall attach particular importance to the consolidation of the rule of law and the reinforcement of institutions at all levels in the areas of administration in general and law enforcement and the administration of justice in particular. In particular, cooperation will aim to strengthen the judiciary, improve its efficiency, safeguard its independence and impartiality, and combat corruption. Respect for human rights and fundamental freedoms will guide all cooperation on justice, freedom, and security¹⁶.

Regarding the above mentioned Title III of the AA 2014 on “Justice, freedom and security” (Articles 14–24), we should mention 89% progress during 2014–2020¹⁷. In 2014 we started with two goals following the expressed initiatives: to amend existing and adopt new legislation and to realize it adopted (amended).

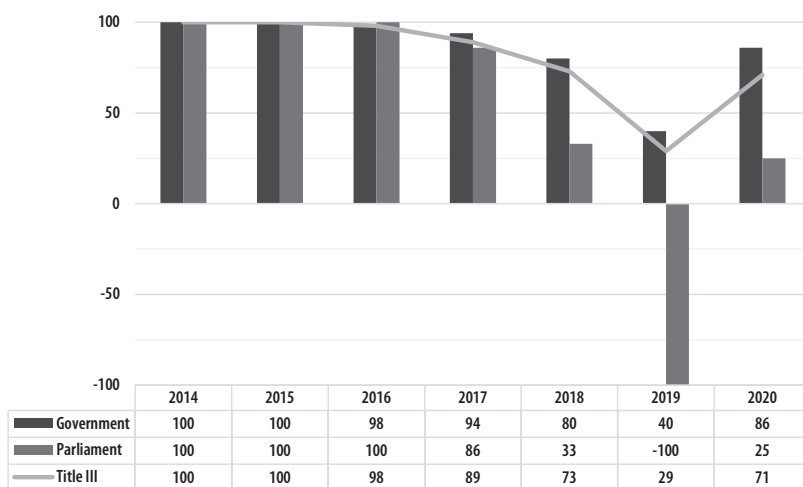


Figure 1. Chart of implementation results of the AA 2014

¹⁶ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, Official Journal, L 161, 29.05.2014, p. 3–2137.

¹⁷ More details here: <https://pulse.kmu.gov.ua/ua/current-progress>.

We observe data in the table which correspond to the aspirations of Ukrainians after the Revolution of Dignity 2013–2014 to follow the European pathway resulting in the signing and ratifying of the AA 2014¹⁸. Both governments during 2014–2019 were less populist but professional, highly skilled, and motivated to join the European Union following essential (not ‘cosmetic’) updating of Ukrainian legislation and establishing (creating of none that existed before) institutions to ensure democracy, the rule of law, freedom, and security.

The presidential and early parliamentary elections in 2019 resulted in forming of a pro-presidential majority in the parliament (not interested in continuing to frame pro-European legislation) and the appointment of a new government that acted only for half a year (that Prime Minister resigned as COVID-19 happened in March 2020). Members of Parliament elected the current Prime Minister of Ukraine on March 4, 2020. Since his election, the government of Ukraine has been restarting efficient work related to the implementation of AA 2014 (not only in the sphere of justice, freedom, and security but with a total success of 92 % of planned actions assigned to the executive branch)¹⁹.

In 2014, we started with the adoption of new legislation related to combating the legalization of money laundering (received by criminal means), the financing of terrorism, and the financing of the proliferation of weapons of mass destruction. Secondly, Ukraine decided to be ready for drug-related challenges and access the Expanded Partial Agreement of the Council of Europe on establishing a group for cooperation in the fight against drug abuse and their illegal trafficking (Pompidou Group of the Council of Europe). The law on accession was drafted and initiated; however, it was adopted by MPs only in 2021.

Thirdly, MPs adopted new anti-corruption legislation in time (it substantially boosted the fight against corruption), subsequently establishing new institutions (National Anti-Corruption Bureau, Specialized Anti-Corruption Prosecutor’s Office, State Bureau of Investigation, and National Agency for Prevention of Corruption) during 2015–2016. After 2019, we noted the severe interest of the president and pro-presidential majority in the parliament to stop (at least delay) those reforms and intervene in the functional activity of those institutions (permanent conflicts, no updating relevant legislation, intervention in selection process of their leading staff, etc.)²⁰.

¹⁸ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, Official Journal, L 161, 29.5.2014, p. 3–2137.

¹⁹ More details here: <https://pulse.kmu.gov.ua/ua/current-progress>.

²⁰ Association Implementation Report on Ukraine 2021: Joint Staff Working Document, Brussels, July 22, 2022: 1, 8–10. (<https://www.eeas.europa.eu/sites/default/files/documents/Association%20Implementation%20Report%20on%20Ukraine%20-%20Joint%20staff%20working%20document.pdf>).

An essential goal of the cooperation is establishing the rule of law and strengthening relevant institutions related to law enforcement and justice, strengthening the judicial system, and improving its efficiency, guaranteeing its independence and impartiality. One of the elements of cooperation is ensuring the appropriate level of personal data protection following the best European and international standards (Art. 15 of the AA 2014)²¹. Forth action in 2014 was forming a strategy for complex reform of internal affairs bodies and introducing new police and police patrol. Many successful advances have been made in establishing the National Police and Police Patrol. A competition-based selection of policemen and policewomen was introduced, and the police became a service formed from ordinary citizens and for them. However, this reform was not carried out in the investigation units and the criminal investigation service. The recertification failed and didn't give the desired results. The recertification was only partially effective, and the trust in the police did not return. It was necessary to start a second recertification process to resolve the ongoing problem; however, it was delayed.

The MPs amended the Constitution of Ukraine 1996 following the promises to keep because of the AA 2014. They adopted laws «On the Judicial System and the Status of Judges», «On the Supreme Council of Justice», and the procedural codes were amended substantially. In 2016, judges' selection, evaluation, promotion, and dismissal became the exclusive competence of the judicial bodies – the Higher Judicial Qualification Commission and the Higher Council of Justice. However, the activity of both agencies did not produce the desired results. In 2019, the mandate of the first agency was terminated, and the second one, whose mandate was to lead, also failed to succeed. During the reform period, the local and appellate courts experienced high vacancies (about one-third of the judiciary). No competitive selection process for the local and appellate courts has been completed. «New» appellate courts were formed not by competition but because of the transfer of judges of liquidated appellate courts to them. The problem is not solved and still exists. To improve the situation with the judiciary, it is necessary, as already mentioned by the Venice Commission, to complete the reform of the lower courts. In 2017, the Supreme Court of Ukraine began functioning, replacing the previous Supreme Court and the higher specialized courts. Unfortunately, the competition in the selection process was not entirely transparent. The qualification evaluation of the judicial corps of the lower courts was scheduled for 2018 but failed (postponed). In 2019, the president tried to intervene; he proposed to reduce its size (cast of judges), but this decision was appealed to the Constitutional Court of Ukraine

²¹ Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part, Official Journal, L 161, 29.5.2014, p. 3-2137.

(already in conflict with the president)²². Also, in 2017, new versions of the (civil, criminal, and administrative) procedural codes entered into force.

In 2014, a new Law «On Prosecutor's Office» was adopted, according to which the bodies of self-government of prosecutors and qualification-disciplinary commission of prosecutors were introduced. However, these authorities did not insist on cleaning up the prosecution service. In 2019, on the initiative of the President, the Law «On Prosecutor's Office» was amended. The activities of the Procurators' Qualification and Disciplinary Commission have been suspended. Many of the issues previously determined by the Law were referred to the Attorney-General for regulation. Selection, vetting, and disciplinary powers have been transferred to the personnel commissions established by the Attorney-General. Evaluation of employees of the Prosecutor's Office and regional prosecutor's offices was scheduled for 2017 but was postponed. Later, at the beginning of 2021, the evaluation was completed at all levels. Compared to the number of regional and local prosecutors, only 4 064 were selected (the total number of participants was 6 000). It helped clear a certain number of unscrupulous employees. At the same time, the institutional capacity of the Public Prosecutor's Office to be independent remains insufficient, as the purely political influence and 'manual' appointing and removing the Attorney-General remains (we witnessed this already a few times in 2020, 2022).

The most epic fail for the newly elected president and pro-presidential majority in the parliament was the non-ratification of the Rome Statute of the International Criminal Court, scheduled for 2019. Ratification is a crucial issue for Ukraine: it is prescribed in Articles 8 and 24 of the AA 2014²³.

Ukraine signed the Rome Statute on January 20, 2000, but has not yet ratified it; consequently, it is not enforced. The Constitution of Ukraine (Article 85, paragraph 32) stipulates that the Verkhovna Rada of Ukraine agrees to be bound by international treaties of Ukraine. The parliament carries out the ratification of international treaties by adopting the law on ratification, an integral part of which is the text of an international treaty (Art. 9(1) (1) of Law of on International Treaties of Ukraine)²⁴. After signing the document, the state policy of Ukraine changed because of the increasing influence of pro-Russian influence (in fact, gas price blackmail). It was President, who had previously authorized the signing of the Rome

²² K. Eckhardt, 'Forming the Constitutional Judiciary in Ukraine - The Problem of Appointing Judges', *Przegląd Prawa Konstytucyjnego*, 2021, Nr 6 (64), pp. 119-129. doi:10.15804/ppk.2021.06.09.

²³ Association Implementation Report on Ukraine 2021: Joint Staff Working Document, Brussels, July 22, 2022: 1, 8-10. (<https://www.eeas.europa.eu/sites/default/files/documents/Association%20Implementation%20Report%20on%20Ukraine%20-%20Joint%20staff%20working%20document.pdf>).

²⁴ M. Gnatovsky, 'Ukraine and the International Criminal Court: a Constitutional Matter', *Vox Ukraine*, 12 January 2016 (URL:<https://voxukraine.org/en/ukraine-and-the-international-criminal-court-a-constitutional-matter-en/>).

Statute, now has remarked on its constitutionality (Art. 151(1) of Constitution of Ukraine, Art. 13(2) and 41 of Law on Constitutional Court of Ukraine)²⁵. Leonid Kuchma, the President of Ukraine (1994–2005), appealed to the Constitutional Court of Ukraine to provide an opinion on the compliance of the Rome Statute of the International Criminal Court with the Constitution of Ukraine (so-called the *Rome Statute* case). In its opinion in *Rome Statute* case, the Constitutional Court of Ukraine, in fact, declared legally null and void the vast majority of presidential arguments on the unconstitutionality of the Rome Statute²⁶.

The Opinion of the Constitutional Court of Ukraine in *Rome Statute* case of July 11, 2001, declared that «the International Criminal Court may not be assigned to extraordinary and special courts, the establishment of which is not allowed following part five of Art. 125 of the Constitution of Ukraine (1996)». The tenth paragraph of the preamble and Article 1 of the Rome Statute are inconsistent with the provisions of parts one and three of Article 124 of the Constitution of Ukraine (1996). Therefore, Ukraine's accession to the Rome Statute following part two of Article 9 of the Constitution of Ukraine (1996) is possible only after appropriate constitution-amending.

In late November 2015, Petro Poroshenko, the President of Ukraine (2014–2019), submitted a draft law to the Verkhovna Rada of Ukraine on amending the Constitution of Ukraine (1996) to permit the ratification of the Rome Statute. On January 12, 2016, the Constitutional Court of Ukraine started its hearing on the draft law. On January 30, 2016, it issued the Opinion (without any reservations), where it declared the draft law to be compatible with the procedural provisions of Articles 157 and 158 of the Constitution of Ukraine (1996)²⁷.

To eliminate the final obstacles to the further ratification of the Rome Statute determined by the Constitutional Court of Ukraine, the Law of Ukraine № 1401-VIII «On Amendments to the Constitution of Ukraine (concerning justice)» was adopted by the parliament on June 2, 2016. Art. 124 (6) of the Constitution of Ukraine is set out in a new wording, where it is declared that 'Ukraine may recognize the jurisdiction of the International Criminal Court under the conditions determined by the Rome Statute of the International Criminal Court'. However,

²⁵ M. Selivon, 'Problems of the constitutionality of the Rome Statute of the International Criminal Court', *Ukrainian Review of International Law*, No 4. 2003. pp. 20–25; V. Skomorokha, 'Rome Statute of the International Criminal Court: issues of constitutionality', *Ukrainian Review of International Law*, No 4. 2003. pp. 26–35.

²⁶ On Conformity of the Constitution of Ukraine to the Rome Statute of the International Criminal Court (the Rome Statute case), Opinion of the Constitutional Court of Ukraine 3-v/2001 of July 11, 2001 (URL:<https://Constitutional Court of Ukraine.gov.ua/en/docs/295>).

²⁷ On Conformity of the Constitution of Ukraine to the Rome Statute of the International Criminal Court (the Rome Statute case), Opinion of the Constitutional Court of Ukraine 3-v/2001 of July 11, 2001 (URL:<https://Constitutional Court of Ukraine.gov.ua/en/docs/295>).

the ratification of the Rome Statute has been delayed for three years. Due to the Final and Transitional Provisions of this Law, Art. 124(6) of the Constitution of Ukraine shall enter into force three years after the day following its publication (starting from July 1, 2019). Finally, on June 30, 2019, abovementioned Art. 124(6) of the amended Constitution of Ukraine 1996, which provides for the possibility of ratification of the Rome Statute, entered into legal force; however, till now, the issue of ratification remains open²⁸.

To finalize Rome Statute's ratification, Ukraine needs to bring its domestic (national) legislation (including the Criminal Code) in line with the provisions of the Statute. The draft law № 2689 of December 27, 2019, was aimed to do this and was adopted by the parliament on May 20, 2021²⁹. On June 7, 2021, it was sent to the President of Ukraine to obtain a signature. However, the President did not sign it (for one and half years now) nor vetoed it (therefore, it has not entered into force)³⁰. Even now, after Ukraine filed two lawsuits against Russia in the International Criminal Court (2014 and 2022) regarding committing international crimes (genocide, crimes against humanity, war crimes, and crimes of aggression), the President V. Zelensky did not sign the draft law on ratification of the Rome Statute (even after the ICC judges issued on March 17, 2023, arrest warrants against two top Russian officials in the context of Ukraine's ongoing war).

4. Conclusion

Regardless of when this Russian aggression against Ukraine ends, we should not only think beyond its immediate effects but be grateful to our national defense forces and partners, who supported us financially, provided necessary defensive military gear, and will be ready to launch the revitalization of Ukraine in a post-war world.

1. From the middle-term perspective, the primary regional dimension regarding national security is connected to forced migration: this relates to the 3.5 million people who were forced to relocate abroad (the EU allows thousands of people to enter neighboring member-states on the periphery of the EU like Poland, Slovakia, Hungary, and Romania without major formalities). Some continued their travel into the EU while relocating to Germany, France, Italy, Portugal, Spain, Sweden, and the United Kingdom and crossing the Atlantic.

²⁸ T. Korotky, B. Nedilko, 'Ukraine and the International Criminal Court: twenty complex questions and simple answers', *Law Newspaper*, 16 (722), August 26, 2020.

²⁹ M. Hultai, 'Problems of implementation of the Rome Statute of the International Criminal Court into national legislation through the prism of the experience of foreign states and Ukraine', *Scientific Papers of the Legislation Institute of the Verkhovna Rada of Ukraine*, 5/2021, pp. 137-139. doi:10.32886/10.32886/instzak.2021.05.15.

³⁰ S. Zakirova, 'The Rome Statute for Ukraine: ratification cannot be postponed', *Public Opinion on Lawmaking*, 2021. 1(206). pp. 4-13.

Over half of those internationally displaced people from Ukraine are willing to return home (mainly because of unemployment, language barrier, etc.). Ursula von der Leyen, in her speech “State of the Union”³¹, addressed to the European Parliament on September 14, 2022, did not give any details about whether the EU plans to encourage somehow Ukrainians who fled from Ukraine because of Russian aggression and ended up in the EU (found temporary shelter) to return home to Ukraine (at least if they still have one). On the contrary, in another part of her speech, she spoke in detail about her intentions to encourage foreign specialists to stay in the EU.

2. The most efficient path from a middle-term perspective is related to the European integration of Ukraine, its transition from the EU candidate country to the status of full membership. For Ukraine, the aim is to be granted an access to the EU after fulfilling all the requirements (primarily combatting corruption and developing democracy, the rule of law, and human rights protection). Essential requirements are described in the Association Agreement between Ukraine and the European Union 2014 (implemented for 89%). We should ensure the sustainable development of Ukraine as a democratic country primarily because of permanent transborder cooperation with the EU Member States on the periphery (especially Poland) in education, research, trade, and innovations.
3. On average, 8 years pass from obtaining candidate status to joining the EU (Finland joined the EU the fastest after receiving the candidate status - in 3 years, Turkey took the longest - since 1999, and it continues until now). But we must not look ahead but clearly understand the purpose and motivation of the chosen path to the EU (86% of support among Ukrainian citizens, i.e., 92% of support in the West, 86% in Central, 84% in the South, 79% in East Ukraine, and 90% in Kyiv in October 2022). Because it is not membership in the EU that creates a good standard of living in the country, guarantees democracy and the rule of law, or keeps the rights and freedoms of citizens, but the results of successfully implemented (fixed) reforms. The framework of successful reforms should include issues on guaranteeing the rule of law and respect for human rights and fundamental freedoms, protecting personal data, cooperating on migration, asylum, and border management, preventing and combating money laundering and terrorism financing, fighting against illicit drugs, and on precursors and psychotropic substances, combating and preventing criminal and illegal activities (corruption), etc. Too much is at stake to be lost; justice must be served, and people should feel free and secure.

³¹ 2022 State of the Union Address by President von der Leyen, September 14, 2022 (URL: https://ec.europa.eu/commission/presscorner/detail/ov/speech_22_5493).

References

- Eckhardt K., *Forming the Constitutional Judiciary in Ukraine – The Problem of Appointing Judges*, “Przegląd Prawa Konstytucyjnego” 2021, no. 6(64), pp. 119-129, doi:10.15804/ppk.2021.06.09.
- Gnatovsky M., *Ukraine and the International Criminal Court: a Constitutional Matter*, “Vox Ukraine” 2016, 12 January, <https://voxukraine.org/en/ukraine-and-the-international-criminal-court-a-constitutional-matter-en/>.
- Hultai M., *Problems of implementation of the Rome Statute of the International Criminal Court into national legislation through the prism of the experience of foreign states and Ukraine*, “Scientific Papers of the Legislation Institute of the Verkhovna Rada of Ukraine” 2021, no. 5, doi:10.32886/10.32886/instzak.2021.05.15 (in Ukrainian).
- Korotky T., Nedilko B., *Ukraine and the International Criminal Court: twenty complex questions and simple answers*, “Law Newspaper” 2020, no. 16(722), August 26 (in Ukrainian).
- Selivon M., *Problems of the constitutionality of the Rome Statute of the International Criminal Court*, “Ukrainian Review of International Law” 2003, no. 4, pp. 20-25 (in Ukrainian).
- Skomorokha V., *Rome Statute of the International Criminal Court: issues of constitutionality*, “Ukrainian Review of International Law” 2003, no. 4, pp. 26-35 (in Ukrainian).
- Ukraine: 30 years on the European path*, Yu. Yakymenko [and others], Ukrainian Center for Economic and Political Research named after Oleksandr Razumkov, Kyiv: Zapovit Publishing House (in Ukrainian).
- Umland A., *The implementation of the association agreement remains the royal road for Ukraine to the EU 2022*, <https://nv.ua/ukr/opinion/ukrajina-yes-shcho-daye-status-kandidata-novini-ukrajini-50253633.html> (in Ukrainian).
- Zakirova S., *The Rome Statute for Ukraine: ratification cannot be postponed*, “Public Opinion on Lawmaking” 2021, no. 1(206), pp. 4-13 (in Ukrainian).