DEVELOPING UKRAINE’S HUMAN RIGHTS PROTECTION SYSTEM IN ACCORDANCE WITH EU-UA ASSOCIATION AGREEMENT

PROBLEM STATEMENT.

The respect for human rights is one of the crucial attributes of a democratic society which gives every individual an ability to grow, to improve and to succeed. From the very beginning of the Treaty of European Union (hereafter – “EU”), respect to human rights, as well as human dignity, freedom and equality remain the core values of the European Union.[1] This was also one of the main reasons for the Euromaidan and the following Revolution of dignity – Ukrainians demand for human rights protection in Ukraine. Title 3 “Justice, Freedom And Security” in the EU-Ukraine Association Agreement[2] serves as a reflection and guidelines for implementation of these values into reality. Notwithstanding all stated above, the topic remains undeveloped among the majority of Ukrainian scientists.

THE PURPOSE OF THE ARTICLE.

As human rights cover the majority of (if not all) relations between an individual and a state, the complex system of institutions and legislative acts has to be constructed based on the rule of law and balance among the different state powers. Articles 14-26 in EU-Ukraine Association Agreement contain only general notions and do not provide any detailed guidelines, contrary to that, the Association Agenda document of March 2015 is far more explicit on these issues [3]. It addresses the main challenges to the rule of law and human rights protection: judiciary system reform, fight against corruption, implementation of international standards in different spheres of law. Among these issues, my essay will also cover obstacles that were caused by the armed conflict and suggest future steps in establishment of free and democratic European society.

THE MAIN MATERIAL.

1. Judicial reform

The Association Agreement in Article 14 prescribes that “Cooperation will, in particular, aim at strengthening the judiciary, improving its efficiency, safeguarding its independence and impartiality” which led to a long-awaited and essential judicial reform. The reform reorganized the judicial structure and introduced new procedures for appointment, dismissal and responsibility of judges through a newly-established institution - High Council of Justice [4]. This council is mostly comprised of an independent judiciary. It was approved by the Venice Commission and positively assessed by the OSCE, EU and US officials [5]. The Reform ensured judges impartiality and fairness, lowered corruption risks and thus, gave an ability to safeguard the rights of individuals. At the same time, the surveys showed that confidence in the fair trial has increased insignificantly. For example, the civil society accused re-elections to the new Supreme Court in the lack of transparency and fairness [6].

However, the reform is still not finished as re-election and assessment of judges has not been completed yet in all 3 tiers of
courts. Apart from that, the High Anti-Corruption Court of Ukraine was introduced in June 2018 and started its work on September 5th, 2019 [7]. It is called to improve the Ukrainian anti-corruption struggle among top-level politicians.

The effectiveness of a judicial system, from my point of view, shall be ensured by the right division of independency and supervision by authorities or civil society. The aim is to ensure the impartiality of the decisions rendered by the courts. This can be implemented by the growing role of the Public Integrity Council during the assessment and selection process while retaining certain Judge immunities.

2. Anti-corruption policy.

The cooperation in the efforts of eliminating corruption both in private and public sectors is enshrined in the EU-Ukraine Association Agreement Article 22. The rule of law cannot co-exist with a high-level of corruption, as the latest erodes democratic institutions and human rights protection mechanisms.

Ukraine has built a broad system of anti-corruption institutions: the National Anti-Corruption Bureau (NABU) [8], the Special Anti-Corruption Prosecutor’s Office (SACPO), the National Agency for Prevention of Corruption (NAPC)[9], State Investigation Bureau [10], High Anti-Corruption Court (HAC)[7]. All these institutions were created between 2015 and 2019 and the appointment procedure to the offices was independent and open. However, NABU and NAPC showed little efficiency in combating corruption [11]. A huge part of NABU investigations has not led to court sentences; NAPC has managed to establish automatic verification of e-declarations of public servants, but NAPC has not yet produced a convincing track record of effectively verified declarations of high-level officials [11], which has diminished trust in new anti-corruption policy in Ukraine.

State Investigation Bureau, which deals primarily with high government officials, has achieved significant results; nevertheless, it is still too early to assess them. The same statement is true for the HAC, which started its work on September 5th, 2019. The anti-corruption policy remains one of the topical issues in Ukraine’s society and recent President and Parliament elections campaigns.

Many lawyers agree on the point, that Ukrainian government has made too many different institutions with similar powers. Therefore, neither of them is effective enough. It is better to unite such agencies into one, which will raise efficiency and both decline the expenses. It is also of crucial importance, that these institutions must not be involved in political processes.

3. Human rights policy.

The respect for human rights and fundamental freedoms of every individual is reflected in the Article 14 EU-UA Association Agreement. This obligation covers not only institutional but also legislative actions.

a) Implementation of international standards.

Ukraine has approved National Human Rights Strategy in 2015 which is closely connected with the Council of Europe institutions. Thus, Ukraine has to implement judgements of the European Court of Human Rights (ECHR), sign and ratify Protocols to the European Convention on Human Rights.

The European community for many times has encouraged Ukrainian authorities to sign the Istanbul Convention [12], which introduces the definition of “gender” and facilitates gender equality and non-discrimination. Unfortunately, it has not been signed yet.

Another matter of concern is the Rome Statute [13], which will expand International Criminal Court jurisdiction to the territory of Ukraine. It is of great relevance in the light of the ongoing international armed conflict in the Eastern Regions of Ukraine. The ICC jurisdiction has been established already by Ukrainian consent to all the crimes committed after 20 February 2014 [14], therefore, there are no reasons to postpone the ratification process of the Rome Statute.

Human rights protection covers not only a mere proclamation of a certain right but also guarantees to exercise them. Therefore, if the right is violated while the State does not provide effective methods of protection, an individual can apply to international institutions, in particular – to the European Court on Human Rights.

Ukraine has adopted legislation of the enforcement of ECHR decisions far ago – in 2004, nevertheless, Ukrainian government has never fulfilled its obligations in full. For many years Ukrainian citizens are placed among the top 3 claimants to the ECHR [15], which means that Ukrainian internal judicial and other dispute resolution procedures cannot safeguard the free exercise of rights enshrined in the European Convention on Human Rights. There are also several positive signs – Ukraine paid its debt on the ECHR decisions rendered in 2008-2013 [16].

Ukrainian law proscribes that ECHR decisions have legal power of a precedent that means that Ukrainian courts have to take into account ECHR decisions in interpreting local legislative acts, but they rarely do. In order to improve Ukrainian practice, the awareness of new ECHR practice has to be significantly increased. It includes workshops, media projects, scientific projects, special courses for lawyers and judges.

In 2016 one of the effective European
mechanisms was introduced in Ukraine – a constitutional claim [17]. Beginning from 2016 every individual has a right to apply to Constitutional Court of Ukraine and address conformity issues of a law or legislative act to the constitution. Ukraine has also adopted new procedural codes for Civil and Criminal proceedings implementing high European standards of equality of the parties and impartial investigation [18].

b) Armed conflict influence on human rights.

The variety of problems in the sphere of human rights has arisen due to the armed conflict. Firstly, the violation of freedom of speech and the right for a fair trial are constantly occurring in the occupied Crimea and Donbas. Another, flagrant violation is the minority rights of the Crimean Tatars, who were deprived of their self-governance. The Office of the United Nations High Commissioner for Human Rights (UNHCR) has addressed this issue in almost every report on the situation in Ukraine. Unfortunately, as this territory is temporary occupied, Ukrainian authorities cannot stop and prevent this violation.

Apart from this, the rights of the internally displaced persons (IDPs) are a matter of great concern. These are individuals from Crimea and Donbas, who decided to leave occupied territories and resettle in the other parts of Ukraine. There are 1.5 million registered IDP’s currently living in Ukraine [11]. By mischance, the establishment of legal status of IDP does not make them eligible for extensive government support. They are also deprived of their right to elect local authorities. Ukraine has to develop a complex strategy that will cover housing, employment and education. UNHCR has called on Ukraine’s government to introduce universal support for such persons, enable them to exercise their rights in a full manner [19].

Lastly, Ukrainian government has to develop a roadmap of the reintegration of Donbas region to Ukraine and ensure at least basic rights for individuals from the occupied territories and provide financial support for this legal status. The issue can cause a great social disturbance, therefore the procedures for the development of the roadmap have to include wide civil discussion in order to take into account different positions of view and reach the compromise.

4. Civil society.

The people are the power in the democratic society; they delegate their power to the parliament members and local officials but still are able to participate in the decision-making process themselves, in the form of civil society.

From 2014 civil society became a major observer and participant of democratic changes in Ukraine. Civil society takes part in discussions on new legislative acts, and specifically in the sphere of human rights. This participation becomes a sign which determines the level of state authorities’ transparency. From the 2014 Ukrainian Parliament included in different decision-making processes the stage of involvement of the civil society. Such approach has to be upheld and continued in order to pursue the aims outlined in the Association Agreement. Civil society continues to take a prominent role in the Eastern Partnership Civil Society Platform and the EU-Ukraine Civil Society Platform foreseen by the Association Agreement. It is not a secret that the volunteers made a significant role in assisting army and supporting IDPs for the last 5 years.

Ukrainian government has to continue the delegation of power to the civil society, encourage individuals to take an active role in the decision-making process and to fulfill the pieces of advice which are made through the democratic procedures by the civil society.

CONCLUSIONS AND SUGGESTIONS.

The association agreement between Ukraine and European Union does not provide certain steps to fulfill in the sphere of justice and human rights. It contains only aims that have to be achieved by Ukraine. Such aims are the values of European Union: respect for human rights, rule of law, zero tolerance to corruption etc. Common values are essential to become a part of a big European nation’s family, but they have to be established on a base of a solid system of the rule of law, which will strengthen democratic changes and safeguard human rights.

Ukraine has only started to build a system of European values, and much more effort and time have to be taken and spent in order to make lives of all Ukrainian Citizens safe and comfortable. This system has to be based not on personalities but on institutions, procedures and law. The democracy, as an English proverb says, first of all, is a procedure. Only balanced procedure will provide equal rights and equal opportunities.

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