

MASTER THESIS

Titel der Master Thesis / Title of the Master's Thesis

„How do principles of the European Union influence on the
development of Ukraine“

verfasst von / submitted by

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angestrebter akademischer Grad / in partial fulfilment of the requirements for the degree of
Master of Laws (LL.M.)

Wien, 2019 / Vienna 2019

Studienkennzahl lt. Studienblatt /
Postgraduate programme code as it appears on
the student record sheet:

A 992 548

Universitätslehrgang lt. Studienblatt /
Postgraduate programme as it appears on
the student record sheet:

Europäisches und Internationales Wirtschaftsrecht /
European and International Business Law

Betreut von / Supervisor:

Univ. Prof. Dr. Dr. hc. Peter Fischer

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Abstract *in English*

Definition of the thesis theme:

The main aim of this master thesis to find out what is meant by the term of “values” within the framework of the European Union and how does it influence the development of Ukraine. For detecting the research problems, I gave myself several tasks. The most important of them are following: defining and explaining the principles and the values of the European Union; analysing and comparing how do these principles function in the EU member states, i.e. which impact did they bring in order to develop these countries; discussing how do these values influence Ukraine: its development, political strategies and law vision; highlighting and evaluating what does stop Ukraine from becoming a standard democratically developed country; evaluating the concerned issue from the personal point of view and providing an analysis on how to improve the current situation. In order to fulfil the mentioned above tasks, I provided certain statistics and analyses that helped to study the subject of matter.

This thesis is divided into 4 basic parts: introduction, 7 chapters, conclusion and bibliography.

Key words: EU principles and values, the European Union, international agreements, Ukraine, influence on the development.

Abstract *in German*

Definition der These:

Das primäre Ziel dieser Dissertation ist es herauszufinden, was im Rahmen der Europäischen Union unter dem Begriff "Werte" zu verstehen ist und wie diese sich auf die Entwicklung der Ukraine auswirkt. Um die Forschungsprobleme zu identifizieren, habe ich mir mehrere Aufgaben gestellt. Von größter Signifikanz sind folgende: Definition und Erklärung der Grundsätze und Werte der Europäischen Union; Analyse und Vergleich der Funktionsweise dieser Prinzipien in den EU-Mitgliedstaaten; welchen Einfluss hatten diese für die Entwicklung von den Ländern? Erörterung, wie diese Werte die Ukraine beeinflussen: Ihre Entwicklung, politische Strategien und Gesetzesvision; Evaluieren und Hervorheben, was die Ukraine daran hindert, ein demokratisch entwickeltes Land nach Standardnormen zu werden; Begutachtung des betroffenen Themas aus persönlicher Sicht und Bereitstellung einer Analyse zur Verbesserung der momentanen Situation. Um die oben genannten Aufgaben zu erfüllen, sind bestimmte Statistiken und Analysen zur Verfügung gestellt worden, die zur Unterstützung der These beigetragen haben.

Diese Dissertation ist in 4 Hauptteile unterteilt: Einführung, 7 Kapitel, Schlussfolgerung und Bibliographie.

Schlüsselbegriffe: die Europäische Union, Grundsätze und Werte der EU, Internationale Abkommen, Ukraine, Einfluss auf die Entwicklung.

Introduction

Ukraine began to build a state since the beginning of the 90s of the last century, after gaining independence. Therefore, for Ukraine, the concepts of “rule of law” and “democracy” are those that go through a period of their approbation during state-building. Although the principle of the rule of law is enshrined in Art. 8 of the Constitution of Ukraine,¹ it still needs to be properly understood in legal theory and in practical implementation. The main group of problems concerns the very understanding of what a state of law and democracy is and how to adapt these concepts to Ukrainian realities. The European Union was always a dream union for Ukraine, because of its implemented principles and values that protect citizens from the violation of their rights. Perhaps, the main difference between the EU and Ukraine is that in the first case we can see how mentioned above concepts work in reality – sometimes efficient, sometimes less. However, in Ukrainian case it is just a pure theory.

If we idealize the situation, we can declare that in Ukraine there is a certain model of the rule of law and Ukrainian state functions on the basis of laws, i.e. it creates the right and it is bound by this right. Issuing laws, the state obliges not only the subjects of domestic law, but also law itself. Therefore, we can talk about the inextricable link between state and law. However, this is not enough. Legal restriction of the state and compliance with the provisions of legal acts by state bodies, regardless of their content, is not the only element of the rule of law principle, since it means the rule of law. The concept of the rule of law is much broader and also includes such elements as: the adoption of legal acts by state bodies in accordance with the normatively established powers; principle of legal certainty and legality; prohibition of retroactive laws; personal responsibility only on the basis of its violation of positive legal norms; equality of citizens before the law; the right of citizens to trial; a free access to the courts and last, but not least, the guarantee of procedural human rights. Thus, the rule of law is impossible without respect for the rights and freedoms of the individual.

It is believed that in Ukraine the rule of law is identified with democracy. Democracy is based on the constitution. And the Constitution of Ukraine enshrines the dominant role of parliament in lawmaking. That is, parliamentarism is the crown of the constitutional regime in Ukraine. However, in practice, the situation is somewhat different from the ideal. The model of the rule of law in Ukraine has not yet been implemented.

¹ The constitution of Ukraine, following Act of proclamation of independence of Ukraine from August, 24, 1991, to approved on December, 1, 1991 by the national voting, General bases, article 8.

The aim of this thesis is to analyze what does stop Ukraine from becoming a state where the citizens' rights are being respected and how do principles of the European Union influence on its development. However, before starting this analysis itself, we should firstly understand which kind of values does the EU have and how do they affect other countries.

1. The principles and values of the European Union.

Following the European Constitution of 2004, the Treaty of Lisbon shares the principles and values of the Union. Values are formed under the influence of the foundations enshrined in the public consciousness. On the basis of values, the objectives of the functioning of the EU are determined, a legal system is formed with basic provisions – principles of law, a system of bodies and their competence are established.

Some values do not have the same legal value that principles possess. However, due to their particular moral and ethical significance, they are a structural element of European public policy (the foundations of the rule of law of the European Union). The legal sources for securing the values of the Union could be the preambles and the initial articles of the EU Treaty and the Treaty on the Functioning of the EU. Difficulties in qualifying their provisions are related to the fact that the same categories repeatedly refer to values, some to principles. The preamble names the historical heritage of nations (including cultural and religious), freedom, democracy, equality, the rule of law as the values of the EU. Art. 2 of the EU Treaty² includes to the values of the EU the following general categories: human dignity, freedom, democracy, equality, rule of law, human rights, including the rights of minorities (national, religious, etc.), pluralism, non-discrimination, tolerance, justice, solidarity , equality of rights of men and women.

1.1. Democracy: the modern understanding and its functions.

“Democracy - is in fact a recognition that we are all as a single company responsible for each other.” - Heinrich Mann (1871-1950), a German writer.³ Among the various problems that have been addressed over many centuries by many important philosophers, lawyers and other social scientists, special attention has been paid to general democracy and democracy in the political life of society – political democracy. Both domestic and foreign authors have

² Treaty on the European Union, OJ C 83, 30.3.2010, Common Provisions, article 2.

³ Available on: <https://time365.info/aforizmi/aforizm/7197> (2.04.19.)

written many books, brochures and articles, expressed a hundred, if not thousands, of opinions on what democracy is and what is not. However, much of this issue remains controversial.

The starting point for the democracy definition is the idea that the original democracy has its origin in Greece and literally means “the rule of the people.”⁴ Democracy is a form of government in which citizens directly or through elected representatives exercise their political rights. Democracy is based on the principle of recognizing people as the source of authority, which means equality of citizens, rule of law and majority rule over the minority. Modern democracy differs significantly from the antiquity. Its main features are as follows⁵:

- 1) the guarantee of human rights and freedoms;
- 2) the recognition of political and human rights and freedoms to the extent that the legal steps of not only one political party standing at the top of the government, but also opposition parties and movements can be legitimized;
- (3) the presence of representative bodies created by general and fair elections;
- 4) the construction of state power on the principle of “separation of state power”, where Parliament acts as the main legislator;
- 5) political pluralism;
- 6) the publicity of state power.

The functions of democracy are the basic directions of its impact on social relations aimed at improving the social and political activity of citizens in the management of society and the state administration. Given that democracy is not a static but dynamic state of society, its functions have changed, enriched and deepened over different historical periods. The functions of democracy can be divided into two groups: showing the interaction of social relations and the interests of society and expressing internal roles within the activities of the state. The most common features include⁶:

- Protective. It ensures the security, dignity and honor of every citizen. Furthermore, supports the maintenance of human rights and freedoms against third party infringements;

⁴ MALINA Jaroslav, et al., An Anthropological Dictionary, What every person should know: taking into account the history of literature and art, the Academic Publishing House of CERM. Brno, 2009. (pp. 878-880.)

⁵ TURGAEV A.S. and CHRENOV A. E., Politology, Publishing House of Sankt Petesburg, 2005 (p. 43);

⁶DAHL Robert A., On Democracy, 1998 (p. 87-88).

- Founding. It builds on the objective of creating state apparatus of government and local self-government through elections;
- Organizational and political. This function assumes that people are the source of power, and the organization of political power should be created on a democratic basis. This includes the partial function of self-management as a source of state power; it is expressed through organized contacts between the subjects of democracy (for example through government agencies, public institutions, civic associations, working groups);
- Regulatory. It includes the work of all the subjects of a democratic society, which must combine their efforts and interests to preserve the freedom and citizens' rights. It is used to ensure the pluralism of the democratic activity of entities in their cooperation and compromise, as well as to the concentration and consolidation of the various political forces whose priorities should be the interests of civil society and the state. The legal means to ensure this function is to regulate the legal status of the subjects of democracy;
- Social-motivational. Provides an optimal state service for society by maximizing incentives for people to participate in public decision-making;
- Controlling. It ensures the activities of state bodies within their competencies, in accordance with the requirements of normative acts, so that each of them bears responsibility for their role in the functioning of the state apparatus as one mechanism (e.g. the control of representative bodies of the executive power).

Now that I have explained on the preceding pages what the basic features of democracy are and what this concept involves, I would like to go to the analysis of the subject matter itself – democracy as one of the principles of the European Union.

The aims and principles of such a huge integration union, such as the European Union, can reveal the substance and function of its affiliation, those areas of activity entrusted to it by the Member States. The founding treaties of the EU have special features that reflect the content of the integration concept of the Member States. One of such treaties is the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (the Treaty of Lisbon). By this Treaty, the European Union not only defines the values (Article 2), its aims (Article 3), but also recognizes the rights, freedoms and principles (Article 6) that do not go beyond the scope of international law. The Union has even formulated its position on democratic principles (Articles 9-12), which are the basis for its

functioning. With reference to Article 2 of the Lisbon Treaty on the European Union, a reference to the protection of the rights of persons belonging to minorities is a certain novelty compared to previous treaties. The novelty is also the idea of defining these values as “common to the Member States”. In addition, today's generation perceives a similar concept as a matter of course, and it is hard to imagine that the community in which we exist may look altogether different, and instead of democratic principles, the Member States of the European Union would follow a model of dictatorship and discrimination that would spur inequality among citizens. But this will be discussed later in this thesis.

1.2. Equality principles: development and historical examples.

The second part of the TFEU “Non-discrimination and citizenship of the Union”⁷ regulates the principle of equality in its various manifestations and establishes the foundations of the legal status of citizens of the European Union, thereby complementing the provisions of the Section II of the Treaty on European Union “Provisions on democratic principles”.

The principle of equality of men and women is one of the basic principles of the European Union. In accordance with Art. 2 of the 1957 Treaty establishing the EU, all Community activities “are aimed at eliminating inequalities and promoting the achievement of equality between men and women.” The principle is also one of the basic principles of the legal status of an individual (Article 23 of the European Union Charter of Fundamental Rights 2000). The provisions on eliminating inequality between a man and a woman are a special case of the manifestation of the principle of non-discrimination. According to art. 13 of the EU Treaty, the Community may take appropriate measures to combat discrimination on the basis of sex.

In the social sphere, the Treaty allows the EU to support and complement the actions of the Member States to ensure equality of men and women regarding opportunities in the labor market and their treatment at work. It also empowers the Union to take measures to ensure the application of the principle of equal opportunities and equal treatment of men and women in matters of employment and professional activity, including the principle of equal pay for equal work. The treaty also defines the concepts of “payment” and “equal pay without discrimination on the basis of sex”. By “payment” is meant the usual or minimum wage or

⁷Treaty on the functioning of the European Union, C 326 , 26/10/2012, part 2, Non-discrimination and citizenship of the Union, art. 18.

salary, as well as any other remuneration in cash or in kind, which the employee directly or indirectly receives from the employer in connection with his work. So finally it is possible to conclude that “equal pay without discrimination on the basis of sex” means⁸:

1) piece-rate payment for the work of the same quality, calculated in the same units;

2) hourly wage for the same work, calculated at uniform rates.

Despite the fact that the principle of equal pay for men and women for equal work was initially enshrined in the founding agreement of the Union, at the end of the first stage of the formation of the common market (January 1, 1962) and later in the EU countries this principle was just a declaration, without proper legal support. States considered the relevant rules as a program of action, a norm that does not have a direct effect and, as a result, is not subject to judicial protection.⁹

The situation was only changed by the Court in the decision of the case *Defrenne v. Sabena* where the court extended the principle of direct action of EU law in order to fight against the discrimination.¹⁰ The case was about a woman called Gabrielle Defrenne who worked as a flight attendant for the Belgian national airline Sabena. Under Belgian law, the female flight attendants were supposed to obligatory retire at the age of 40, unlike their male counterparts. Ms. Defrenne was forced to retire from Sabena in 1968 and afterwards complained that the lower pension rights violated her right to equal treatment on gender grounds under article 119 of the Treaty of the European Community (now Article 157 of the Treaty on the Functioning of the European Union – prior to the Lisbon Treaty, this was article 141 TEC).

Another case that had a significant impact on the development of equality principle is *Barber v. Guardian Royal Exchange Assurance* case.¹¹ The thing is that UK law allowed employers to set different occupational pension entitlement ages and Mr. Barber claimed against his employer, Guardian Royal Exchange Assurance, that he should be able to get an occupational pension at the same time as his female co-workers. The Court of Appeal made a

⁸Treaty on the functioning of the European Union, C 326 , 26/10/2012, title X, Social Policy, art. 157.

⁹HIX S. a GOETZ K., Introduction: European integration and national political systems, West European Politics, Vol.23, issue 4., 2000. ISSN 0140-2382, (pp 40-62)

¹⁰Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61975CJ0043> (7.2.19)

¹¹ Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61988CJ0262> (10.2.19)

reference to the European Court of Justice whether this violated community law on equal treatment of the gender. The Guardian Royal Exchange has further expanded the scope of the principle of equal pay for men and women, applying it to the issues of pensions.

Since the mid-1970s. the principle of gender equality in the field of labor remuneration, as well as in other areas of labor relations and social security, developed into the secondary law. The Directive 75/117, adopted by the Council in February 1975, has obliged Member States to remove from national legislation, collective agreements and other agreements all provisions that directly or indirectly preserve discrimination of men and women in the establishment and payment of wages and other remuneration for labor. A year later, on 9th of February in 1976 the Council approved Directive 76/207, providing the elimination of all forms of direct or indirect discrimination on the basis of gender in labor relations, in particular in matters of employment, vocational training, and promotion. This document has been substantially modernized by Directive 2002/73 / EC of the European Parliament and of the Council of September 23, 2002.

However, the equality in the labor field is not the only equality meant in the provisions of EU treaties. Firstly, everyone is equal before the law. The labor equality is just an example that was used to show how this principle was developing and how much does it affect our lives on the most regular level – such as work and working conditions.

1.3.Freedom, human rights and other values: the path to the constitutional states.

It can be said that both the 1948 Declaration of Human Rights and Freedoms, and the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms, and the International Covenants of Rights of 1966 establish a list of the rights and freedoms that EU countries guarantee to their citizens. Moreover, back in 2000s, the European Union adopted the Charter of Fundamental Rights of the European Union (hereinafter – the Charter), which became the basis of guarantees of human rights in the European Union. The Charter involves a lot of EU values, for example: human dignity, equality, freedoms etc. Below is a brief description of the most important of them¹²:

- Human dignity is inviolable. It must be respected and protected. Everyone has the right to life.

¹² Charter of Fundamental Rights of the European Union, 2012/C 326/02.

- No one shall be condemned to the death penalty, or executed.
- Everyone has the right to respect for his or her physical and mental integrity.
- Everyone has the right to liberty and security of person
- Every person has the right to have his or her affairs handled impartially, fairly and within a reasonable time by the institutions, bodies, offices and agencies of the Union. This right includes:

(a) the right of every person to be heard, before any individual measure which would affect him or her adversely is taken;

(b) the right of every person to have access to his or her file, while respecting the legitimate interests of confidentiality and of professional and business secrecy;

(c) the obligation of the administration to give reasons for its decisions.

- No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national law or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. If, subsequent to the commission of a criminal offence, the law provides for a lighter penalty, that penalty shall be applicable.

Moreover, everyone has the right to freedom of expression. This right includes the freedom to hold opinions, to receive and impart information and ideas without any interference from public authorities and regardless of state borders. Freedom and pluralism of the media are respected.

I have decided to highlight the mentioned above principles, because unfortunately nowadays exactly these values are being enormously violated in Ukraine. People cannot express themselves, because otherwise it is possible to get in the prison. There is no respect for human rights, no respect for dignity. However, we would get to this issue a little bit later – in the next chapters.

As we see, the legislation on human rights in the EU keeps on developing and trying to meet the demands of the time. In addition to the “classic” human rights, the Charter enshrined a number of new, modern legal provisions. Indeed, after all, if we look at it, more than half a century has passed since the adoption of the 1950 Convention – a very substantial time period. The convention in many respects did not keep pace with the needs of today. So the

Charter has become a program document of the EU in the field of recognition and guaranteeing the rights and freedoms. Now we can go directly to the methods that guarantee the implementation and protection of the rights specified in the Charter.

The European Court of Human Rights was established on the 21st of January in 1959. However, in 1998 the Court was reformed. The functions of the European Court are governed by the European Convention for the Protection of Human Rights and Fundamental Freedoms, signed in Rome on November 4, 1950 (modified in Strasbourg on March 6, 1985), and Protocols N 1 of March 20, 1952, N 2 of 6 May 1983, No. 4 of September 16, 1963, No. 6 of April 28, 1983, No. 7 of November 22, 1984, No. 9 of November 6, 1990, No. 10 of March 25, 1992, N 11 of March 11, 1994.¹³ The European Court of Human Rights consists of the number of judges that is equal to the number of the Council of Europe's members. The European Court of Human Rights should not include more than one citizen from the same state. The European Court of Human Rights considers petitions (complaints) of individuals, non-governmental organizations, groups of individuals who allege that their rights and freedoms provided for by the Convention for the Protection of Human Rights and Fundamental Freedoms and its protocols were violated.

So, in conclusion, I would like to note that the level and system of protection of human rights in the European Union is undoubtedly worthy to make an effort of copying it. Rights and freedoms are directly applicable regarding the content of national legislation. A huge role in their direct protection belongs to the European courts, which are the real guarantors of human rights. There is no doubt that the level of protection of human rights in Europe is noticeably better than in Ukraine. One of the defining vectors of the judicial-legal system reform in this country is the approval of the judicial protection of the rights of citizens, which must face the urgent needs of Ukrainian society and comply with international standards, including European human rights standards. This is a significant update of the legal framework in the field of judicial proceedings.

1.4. Principles' mechanism: how did EU reach efficiency in the law and how it can influence the development of Ukraine.

¹³NARUTSKY A.S. Protection of communitarian rights in the practice of the court of the European Communities, 2002., N 7.

From the previous sections we already figured out that the meaning, content, implementation and development of European Union law reflects in its principles. As it was already mentioned above, some principles are directly contained in the constituent treaties of the European Union. However, others are developed by the practice of the European Union Courts as a result of their interpretation. Perhaps to understand how does the principles' mechanism work, it would be easier to divide them in functional and general. The functional principles include the principle of the rule of law and the principle of direct action.

The principle of the rule of law of the EU means the priority of EU law over the national legislation of the Member States. The legal norms of the national law of the member states must not contradict the norms of EU law. This principle applies not only to the constituent treaties of the European Union, but also to a number of other normative acts of the European Union. The European Court is the guarantor of this principle.

The principle of direct action of EU law means the direct application of EU law in the territory of member states. Actually there is no need for their transformation into a national legislative in order to come into force. This principle is a distinctive feature from the international law, because the norms of international law regulate the relations of states and international organizations. The norms of EU law regulate directly the relations with individuals and legal entities. For example, the provisions of regulations issued by EU institutions become directly applicable throughout the territory of the European Union states from the moment they are approved. In turn, the rules contained in the articles of the EU Treaty for direct action should be stated clearly, in an imperative form and should not be further conditioned by the results of the future activities of the EU member states and institutions.¹⁴

Among the general principles of EU law are: the principle of protection of individual rights and freedoms, the principle of legal certainty, the principle of proportionality, the principle of non-discrimination, the principle of subsidiarity, as well as a couple of procedural principles.

From the facts explained above it is possible to conclude that the EU member states are obliged to strictly promote the implementation of decisions taken by EU institutions. That is the reason why does the principles' mechanism work so efficiently – it is the Member States cooperation. However, how can Ukraine reach this progress? If Ukraine is not EU Member

¹⁴ KASHKIN S. U. European Union Law, 3rd edition, Publishing House of Yurayt, 2010 (pp. 124-125).

State, is there any solution that can help it to become a democratic country where the basic human rights are being respected? And last, but not least – how does EU can influence on the development of Ukraine? The answer to this question hides in the art. 21 of TEU that says the Union's action on the international scene shall be guided by the principles which have inspired its own creation, development and enlargement, and which it seeks to advance in the wider world: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law.

¹⁵ Moreover, the Union shall seek to develop relations and build partnerships with third countries, and international, regional or global organizations which share the principles described above.

Exploring this section of the founding agreement of the EU, we can conclude that the integration policy of the European Union is implemented on the basis of two main types of international agreements: 1) cooperation agreements (partnership and cooperation) and 2) association agreements. These are the two tools that can be used in order to influence on the third countries, in our case – Ukraine.

2. Expectations of the European Union: standard legal state – how does it look like?

However, before starting a discussion about the tools the European Union uses in order to change the social development in Ukraine, I would like firstly to explain its expectations regarding Ukraine as its political partner and a legal state.

2.1. Resolutions and the principle of conditionality.

Given that the diffusion of EU standards and institutional models are not always perceived positively and quickly by other countries (in terms of subjective factors), the need for an effective instrument has been formed to speed up the process of Europeanisation and the approximation of different spheres of activity, including the strengthening of democracy and fundamental human rights, to the Union standards. EU has developed a number of instruments, including legally binding guidelines and mechanisms for developing relations (including the open method of coordination). However, today, the concept of Europeanisation is also linked to the so-conditionality that is actively used in relation to potential partner or

¹⁵Treaty on the European Union, OJ C 83, 30.3.2010, title V, article 21.

candidate countries. It should be noted that the principle of conditionality is the direction of EU foreign policy with regard not only to countries in the region but also for strengthening relations with all other countries. We could define this term as the political, social and economic conditions set by international organizations and influential countries in bilateral and multilateral mutually beneficial agreements.

The principle of conditionality involves the creation of specific incentives (for example, for Southeast Europe – EU membership) in order to enter the democratic principles of the European Union, adjusting legislation, politics, economy and EU acts and compliance with the Copenhagen criteria. The same is valid for material assistance. The approaches and conditions of different countries will be highlighted, depending on the country's readiness and would be governed by the requirements of the European Union and its standards and values. For less developed countries in Southeast Europe, Europeanisation with the aid of the principle of conditionality means modernizing their political and economic systems and becoming acquainted with the EU's democratic principles.¹⁶ This principle is also applied in the Eastern Partnership project – a project that would be discussed later in the thesis. The EU Eastern Partnership Memorandum of May 5, 2009 explained how this principle should be applied: “... the extent to which we move in relation to each country will depend on progress made by partners on the path of reform and modernization. It is clear that the core of the Eastern Partnership is shared interests and values.”¹⁷

So actually it means that each country, if it wants to receive the award from the Union, should change something in its social-political structure. For example, a Civil Society Forum which took place from 19th to 20th September in 2016, and its subject was “Human Rights Situation in the Eastern Partnership Countries”. This event hosted about 50 human rights experts from EU and Eastern Partnership together with major international non-governmental organizations, EU institutions and the Council of Europe.¹⁸ During the two-day event, the main issue was the debate on democratic principles and the related international mechanisms addressing human rights in the Eastern Partnership countries, best practices for human rights

¹⁶ HIX S. a GOETZ K., Introduction: European integration and national political systems, *West European Politics*, Vol.23, issue 4., 2000 (s. 53-55).

¹⁷ Available on: <http://www.rubaltic.ru/article/politika-i-obshchestvo/vostochnoe-partnerstvo-po-litovskivelosiped-bez-pedaley1072013/> (01.03.19.)

¹⁸ Available on: <http://eap-csf.eu/en/news-events/news/eap-csf-human-rights-conference-on-the-frontline-human-rights-situation-in-the-eap-countries/> (3.03.19.)

defenders as well as human rights monitoring and protection in conflict zones. As a result of this forum, two resolutions have emerged, which contain certain expectations and obligations of third countries aimed at strengthening the protection of human rights and the principles of democracy.

In one of the resolutions it is stated that, in accordance with Article 46-1 of the European Convention on Human Rights, States are obliged to enforce decisions of the European Court of Human Rights and, in particular, to remedy violated rights, to stop international violations, to restitute violated rights and to prevent violations that will occur in the future, in particular through the adoption of individual and general government measures. Also, the Work Program (2014-2017) sets out the key priorities to be pursued under the Eastern Partnership project; these are the goals set for partner countries, with a huge part of the issues related to the promotion of democracy and fundamental rights. In November 2015, it was confirmed that reforms in the area should continue to be in the common interests of the participants of the project¹⁹.

Democratic governance:

- Promoting reforms in the area of electoral standards, freedom of expression, national human rights institutions, children's rights, gender equality, prevention and fight against corruption, transparent public goods management and public administration reforms;
- Education and networking of local authorities in order to strengthen the administrative capacity of local authorities and support for local government reforms and decentralization. This will be done in cooperation with the Committee of the Regions at the Conference of Regional and Local Authorities of the Eastern Partnership (CORLEAP);
- Applying, where it is possible, a mutual evaluation in the relevant areas of reforms, building on existing Commission cooperation with the Organization for Economic Cooperation and Development.

2.2. Legislation comparison: protection mechanism of human rights.

¹⁹ Joint Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Review of the European Neighbourhood Policy, JOIN (2015) 50 final, 2015.

The Constitution of Ukraine enshrines a large number of human rights and freedoms. First of all, it is necessary to name personal, i.e. civil human rights. They ensure the existence of man as a biological being. Such rights include the right to life, the right to liberty, the right to respect for honor and dignity, the right to personal integrity. Moreover, the article 3 says that the rights and freedoms of citizen and their guarantees determine maintenance and orientation of activity of the state. The state is responsible to the man for the activity. Assertion and providing of rights and freedoms of man is the main duty of the state.²⁰ The same rights are declared in the Charter of Fundamental Rights of the European Union, which became the basis of guarantees of human rights in the European Union. Political rights provide an opportunity for a person to take part in ruling the state. These rights include the right to elect and to be elected to state bodies, to unite in political parties and public organizations, to participate in peaceful rallies and demonstrations. These two groups of rights usually do not require large amounts of collateral from the state. To a large extent, the role of the state in ensuring these rights is to protect them from unlawful violations. Human rights belonging to these groups are sometimes called classical, or the rights of the first generation – they were recognized by most states in the era of bourgeois revolutions.

The next group of human rights enshrined in the Constitution is socio-economic rights. These are human rights to work, to protect health, to social protection, to rest, to own property etc. They give an opportunity to a person to ensure their existence economically – independently earn their living or receive their means of subsistence from the state. In Ukraine people are the transmitter of sovereignty and unique source of power. People carry out power directly and through public authorities and organs of local self-government.²¹

Cultural rights are sometimes distinguished from socio-economic rights, among which are the rights to education, to enjoy cultural achievements, etc. Social-economic and cultural rights were recognized much later – in the 20th century. That is why they are called second-generation human rights. To ensure economic, social and cultural rights, active state activity is needed, considerable funds, because people need to receive education, pay pensions, provide assistance in case of unemployment, create conditions for health protection, and the like.

²⁰ The constitution of Ukraine, following Act of proclamation of independence of Ukraine from August, 24, 1991, to approved on December, 1, 1991 by the national voting, General bases, article 3.

²¹ Official interpretation in obedience to the decision of Constitutional Court of Ukraine is given to position of part second of the article 5 from 05.10.2005 N 6/2005

The human rights declared by the Constitution of Ukraine must be ensured by the state. For this, was created a certain system of human rights guarantees. The guarantees of human rights and freedoms are the conditions and methods that ensure the full implementation and full protection of individual rights and freedoms. It is customary to distinguish four types of guarantees of human rights and freedoms. Economic guarantees are perfect economic relations, a rational economic system, that makes material and financial resources which ensure the realization of the proclaimed rights and freedoms, available. After all, it is clear that for the realization of the right to education, we need appropriate educational institutions, textbooks, funding for the work of teachers, etc.

Political guarantees are the sovereignty of the people, which is carried out both directly and with the help of statutory representative bodies. An important political guarantee of human and civil rights and freedoms is to ensure democratic principles in the activities of all state and local government bodies. Political guarantees also include pluralism in various spheres of public life – a variety of views and approaches, positions in legal, economic, cultural and other activities.

Ideological guarantees are the general culture of society and its members and the level of their legal awareness. Finally, legal guarantees are legal norms and institutions that provide for the unhindered implementation of human rights, their protection and restoration if it's necessary. The Ukrainian state has created a system of mechanisms for the protection of human rights. In case of violation of human rights, they are subject to judicial protection and it is possible to seek help from law enforcement authorities, other government agencies or local governments. If the human rights were violated by the state and cannot be protected in Ukraine, a citizen is entitled to appeal to international human rights bodies.

However, the most important and relevant in our case is the article 10 which declares that the state provides comprehensive development and functioning of Ukrainian in all spheres of public life on all territory of Ukraine.²² Moreover, international standards of human rights after the Second World War were enshrined in the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child. Also was adopted a number of European conventions in the field of human rights.

²² The constitution of Ukraine, following Act of proclamation of independence of Ukraine from August, 24, 1991, to approved on December, 1, 1991 by the national voting, General bases, article 10.

So from according to the described facts above it is possible to conclude that in Ukrainian legislation are declared basically the same rights as in the in the Charter of Fundamental Rights of the European Union and EU Treaties, especially the conformity can be seen in the articles of the first generation. So why do then these fundamental democratic principles work in the EU Member States, but not in Ukraine? In my opinion, Ukraine faces here the same negative factors that are stopping it from the further social development: corruption, no faith in the judicial system, ignorance of the government etc. So what does it mean in reality? It means that even if my rights as Ukrainian citizen were violated, I cannot rely on the protection mechanism, because the guarantee of the protection is basically just in the papers, not in the real life.

So although Ukraine ratified Conventions regarding human rights, pledging to implement them with great diligence, Ukrainian authorities are not going to embody anything like that, because for them recognition of the rights of the Ukrainian is akin to the death of their power.

2.3. The development of values in the European Union.

After comparison in the subchapter above, it is clear that there a lot of inner factors that bring a negative impact on the social development in Ukraine. The European Union tried to influence on Ukraine on the different levels, including memberships in the international organizations and ratification of important documents regarding democratic principles, but unfortunately these efforts had just a partial success. However, what about the European Union itself? Apparently its principles and values needed some time to develop and be accepted in the Member States as well.

The establishment and consolidation of the principle of respect for human rights in EU law has come a long way. Initially, the European Communities were created as purely economic, therefore the provisions on human rights were not included in the treaties establishing the European Communities. Thus, the Paris Treaty on the Establishment of the ECSC of 1951 speaks of the rule of law, the guarantor of which was to be the EU Court of Justice, and democracy, ensured through the creation of the Assembly. As in the Treaty of Paris, the Treaty of Rome on the Establishment of Euratom 1957 contains no provisions relating to the protection of human rights. The Treaty of Rome on the Establishment of the EEC of 1957 contains rules on the freedom of movement of goods, capital, persons, as well as the freedom to provide services. However, these norms only indirectly affect the issue of human rights

guarantees and are more likely connected with the main objectives and competence of the European Communities.

Being ignored by the founding treaties of the European Communities, the principle of respect for human rights and freedoms is gradually beginning to be ensured by the practice of the EU Court of Justice, which played an important role in shaping and developing mechanisms for the protection of human rights in the EU. Guided by the generally accepted principles of international law, international human rights treaties in which the member states of the European Communities participated, taking into account the law of the European Communities, as well as the constitutional traditions, legislation and law enforcement practice of Germany, Italy and some other states, the EU Court sought to fill the gaps of the founding treaties focused on economic activities and limited to the recognition of only some human rights in strictly economic purposes.

For the first time, the question of basic human rights was raised by the EU Court in 1969 in connection with case 29/69 “Erich Stauder v. Ville d'Ulm-Sozialamt” dated November 12, 1969²³. The case dealt with the European Community’s supply program as part of social assistance oil for a low price. The applicant was entitled to get a low-priced oil, but he objected to the mandatory presentation of a coupon for receiving oil, since the coupon contained information on his name and address. The complainant believed that it was humiliating and violated his right to privacy, therefore the act of the European Community providing for such a duty should be annulled. The EU court found no violation of the applicant's rights, but in the decision of the case he formulated a position that predetermined the vector of judicial practice in human rights cases: The EU court indicated that it would protect “basic human rights as they follow from the general principles of the Community”.

In the judgment of case 11/70 “International Handelsgesellschaft v. Einfuhr-und Vorratsstelle für Getreide” dated December 17, 1970²⁴, the EU Court reiterated its position: “Respect for fundamental rights is an integral part of the general principles of law, the observance of which is ensured by the Court.” Moreover, the Court highlighted that fundamental human rights must be ensured within the framework of the structure and aims of the European Communities in accordance with the general constitutional traditions of the member states.

²³ Available on: <https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=CELEX%3A61969CJ0029> (5.3.19)

²⁴ Available on: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61970CJ0011> (7.3.19)

In the 1970s, the impetus for the development of the EU Court's practice in the field of human rights was the confrontation between the EU Court and the Federal Constitutional Court of Germany, which indicated that the transfer of authority to the European Communities could not deprive citizens – in this case, German – of that protection which they are provided by the provisions of national constitutions in the field of human rights. The Federal Constitutional Court of Germany has repeatedly raised before the EU Court the issue of violation of the basic human rights guaranteed by the Constitution of the Federal Republic of Germany by European Community law (see, for example, the decision of the Federal Constitutional Court of Germany on May 29, 1974 in the case of Solange I). In response, the EU Court insisted that the Federal Constitutional Court of Germany had no right to speak about the invalidity of EU acts under any circumstances, even if it considers that they contradict the constitutional law of Germany and, in particular, provisions guaranteeing respect for fundamental human rights. In turn, the Federal Constitutional Court of Germany agreed to comply only if a number of conditions were met, among which were the effective protection of a specific codified list of human rights under EU law.²⁵

Thus, the European Communities were told that it was necessary to fix generally accepted values in their legal order that go beyond a purely economic nature.

The EU Court ensured the protection of human rights on the basis that respect for human rights is an integral part of the basic principles of the law of the European Communities. However, the content of human rights distinguished from these principles has not been yet precisely defined in the EU's judicial practice. The EU Court made only a general reference to the law of the Member States of the European Communities and international agreements of which these States were parties, based on the priority of the common interests of the European Communities. At the same time, the fundamental nature of human rights for the law of the European Communities was no longer questioned, and the practice became the starting point for the formation of an unwritten catalog of human rights within the European Communities. Subsequently, the practice of the EU Court of Justice was approved and adopted by all institutions and member states of the European Communities, and was

²⁵ STREINZ Rudolf, The Role of the German Federal Constitutional Court Law and Politics, Ritsumeikan Law Review, 2014 (pp 102 – 104).

subsequently consolidated in the preamble of the Single European Act, in the Maastricht, Amsterdam and Nice treaties.

In 1975, the Commission of the European Communities began developing a catalog of fundamental human rights and freedoms that would respond to the real needs of the European Communities, and included, above all, economic and social rights. In 1977, the European Parliament, the European Commission and the European Council adopted a Joint Declaration on Fundamental Rights, emphasizing their desire in the exercise of their powers and the goals of the European Communities to observe fundamental rights as they are enshrined in the constitutions of member states and also in the Convention on Human Rights.

The Declaration on Democracy, approved by the European Council in April 1978, and then in the Solemn Declaration on the European Union, was adopted in Stuttgart on June 19th in 1983 and emphasized that “the observance and maintenance of representative democracy and human rights by each of the member states is part of the European Communities.”²⁶

In 1986, the first reference to basic human rights appeared in the primary law of the European Communities. In the preamble of the Single European Act, states reaffirmed their commitment to the principles of democracy, rule of law and human rights, deciding to jointly promote the development of democracy based on fundamental rights recognized by the constitutions and laws of the member states, the Convention for the Protection of Human Rights and Fundamental Freedoms and the European Social Charter, and namely, freedom, equality and social justice. A landmark year for the development of European Community law in the field of human rights was the year 1989.

On the 12th of April in 1989, the European Parliament adopted the Declaration of Fundamental Human Rights and Freedoms. The document included 25 articles guaranteeing civil, political, economic and social rights. Among them: the right to life, equality before the law, freedom of movement, the right to property, the right to access information, etc. On the 13th of July 13 in 1989, the EU Court issued another significant decision. In the case of “Hubert Wachuauf v. Bundesamt Ernährung und Forstwirtschaft”²⁷ it was a question of a farmer who worked on the land he rented and invested his own money and labor in the

²⁶ Conclusions of the sessions of the European Council (1975 - 1990) Copenhagen; Bull. EC 3- 1978.

²⁷ Available on: <https://eur-lex.europa.eu/legal-content/GA/TXT/?uri=CELEX:61988CJ0005> (11.3.19)

development of its further production. However, at the end of the lease term, it turned out that the results of his efforts — an increase in the milk production quota — went to the owner of the land. Considering this case, the EU Court for the first time asked whether it should monitor the observance of human rights in the application of EU law, not only by EU bodies and institutions, but also by states. The position of the EU Court was unambiguous: the EU legal requirements for the protection of human rights are also binding on the member states when they apply Community rules.

On 7th of February in 1992 was adopted the Treaty on the Establishment of the European Union, what became an important step in the development of EU law in the field of human rights.

Art. 2 of the Maastricht Treaty provides the obligation of EU to respect the fundamental human rights arising from the Convention on the Protection of Human Rights and Fundamental Freedoms of 1950 and from the general constitutional traditions of the member states as the basic principles of the law of the European Communities. Reference to fundamental rights is also contained in sect. VI.

Furthermore, protection of human rights was one of the objects of regulation of the Treaty of Amsterdam, signed on the 2nd of October in 1997. Only with its adoption were made serious provisions on fundamental human rights appearing later in the law of the European Communities and EU. The Amsterdam Treaty declared that provisions according to which human rights are one of the fundamental principles of the EU, and their observance – a condition for joining the EU and puts human rights at the priority of European integration.

With the adoption of the Amsterdam Treaty, provisions appeared to control the EU member states' compliance with the fundamental principles of the Union, including the principle of respect for human rights, as well as sanctions that can be applied to the violator. The Amsterdam Treaty also expanded the non-discrimination clause by imposing a general prohibition on discrimination on the basis of gender, race, ethnicity, religion, age, sexual orientation, and other grounds.²⁸

²⁸ Amsterdam Treaty, Luxembourg: Office for Official Publications of the European Communities, 1997 ISBN 92-828-1652-4, art.13.

Later was signed the EU Charter of Fundamental Rights. The purpose of the development of the Charter was a wish to make human rights in EU, due to their exceptional importance, more accessible and understandable for EU citizens. The Charter relies on already existing international and European acts on human rights, the Convention for the Protection of Human Rights and Fundamental Freedoms and the case law of the ECHR, as well as the rather developed practice of the EU Court of Justice. Although the EU Court was created primarily to serve the interests of integration and checking for compliance with human rights, protection requirements is not the main duty of the EU Court. At the time of signing the Charter, the EU Court already exercised strict and effective control over the observance of human rights and freedoms within the EU .

The Charter's preamble refers to the EU's goal of a shared, peaceful future based on common values (individual dignity, freedom, equality, solidarity, rule of law) and stresses the need to achieve a balance between common values, diversity of cultures and traditions of European peoples at national, regional and local levels, and between recognizing rights and responsibilities, responsibilities for everyone.

3. Ukraine: the current situation in the socio-democratic sphere.

In this chapter I would like to provide the analysis of how does the value system function in Ukraine and discuss which factors do stop Ukraine from its further development. In my opinion, the problem of Ukraine is even not the fact that its state power is weakened, but the imperfection of the Constitution. It lacks a clear distribution of powers between the president and the government. This concerns the appointment and recall of ministers and competences of certain authorities (i.e. parliament, cabinet of ministers, president competences). That's why nowadays it is difficult to talk about the creation of a legal state in its classical sense, which includes freedom, equality, autonomy of the individual within the framework of universal law and order independent courts.

3.1. Factors that stop democratic development in Ukraine.

Human rights are violated, which is manifested in various forms. The most famous examples of such violations are torture of the detainee in the police; keeping a person in custody for a long time without prosecuting; refusal to allow lawyers to talk to their arrested clients. The European-type potential system has not been created. As another evidence, wiretapping in Ukraine is widely used (statistic says that in 2008 around 25,000 judicial sanctions were

received for this. For comparison, in the Netherlands, France, the United States and other countries, an average of 1000 listening permits are given per year²⁹). Moreover, sometimes people do not receive a salary for several months. Corruption of the state apparatus is developed on such a high level that Ukraine is leading in top list of corrupted countries.

A significant problem for building a legal state in Ukraine is the corruption of the judiciary. One of the reasons for this is the incomplete judicial reform. To change the judicial system, it is necessary to carry out a number of activities that include ensuring a transparent selection of judges on a competitive basis, creating a service of judicial inspectors to verify information regarding the non-fulfillment by judges of their duties, creating legislative guarantees for effective administration of justice and the observance of reasonable terms of judicial proceedings in accordance with the European Convention for Human Rights and Fundamental Freedoms, providing more computerization and informatization of the courts, office automation, as well as the creation of the Unified Register of judgments with the open access to it through the Internet. It is also necessary to revise the powers of the prosecutors, removing functions that restrict the powers of other authorities, including the executive and judicial ones, from under its authority.

As I was mentioning in previous chapters, an enormous support for the implementation in practice the rule of law is cooperation with the European Union. Its members are the states in which the rule of law and democracy has been long and successfully operating.

3.2. The role of membership in the Council of Europe.

Before starting the discussion about the European Union' and Ukraine's cooperation, I would like to admit that another important element for the development of Ukraine is its membership in the Council of Europe. The Charter of the Council of Europe is based on principles that all member states, including Ukraine, should respect. One of these principles is the rule of law and democracy. The Statute of the Council of Europe establishes a provision according to which every member of an organization must recognize the principle of the rule of law and the principle that all persons under its jurisdiction should enjoy human rights and fundamental freedoms.³⁰ The vital role in making the Council of Europe's aims real is the European Court of Human Rights. His activity helps Ukraine to ensure respect for human

²⁹ Available on: <http://noviny.su/A0010333.html> (11.02.19)

³⁰ European Social Charter (Revised), Strasbourg, 3.V.1996, art 3.

rights and freedoms as an integral component of the rule of law and democracy. However, what is more important is the cooperation with the European Union. Cooperation with EU covers not only the economic sphere, but also the political, legal and humanitarian fields. The integration of Ukraine can be considered as one of the effective factors of the democratization of Ukrainian society, the consolidation of the principle of supremacy and its observance.

It should be noted that EU often uses external relations as a legal tool for consolidating political principles that create political obligations for the member states, in particular, for Ukraine. Cooperation agreements with third countries include provisions on the need to respect the rule of law and democracy in these countries. In addition, not only the respect for democratic principles and human rights, but also the respect for principles of the market economy is included in the essential elements of cooperation agreements.

As we now have a theoretical idea of how the European Union's principles' and value mechanism works, the subject of our next exploration will be how this model of functioning is reflected externally. After making some researches, I came to the conclusion that there is one project that could actually influence the development in Ukraine. It is the Eastern Partnership – a project mentioned in the previous chapter.

3.3 The Eastern Partnership as a potential solution.

The Eastern Partnership is a project that has been created in the European Union. It was submitted by the Minister of Foreign Affairs of Poland in May 2008, but officially was established only in 2009 in Prague. The main objective of the project is to bring the EU closer to the six countries of the former Soviet Union: Ukraine, Moldova, Azerbaijan, Armenia, Georgia and Belarus. It is a complement to the Northern Dimension and acts as a basis for negotiations on visa agreements, free trade agreements and strategic partnerships with the eastern neighbors, replacing the debate on the enlargement of the European Union and the accession of these countries. Russia will be invited to take part in such discussions only if it concerns some local initiatives, for example in the Kaliningrad region.³¹

The main purpose of the Eastern Partnership is not to increase the number of European Union Member States, but to support a number of changes that should aim to bring those countries

³¹KOROSTELEVA, E.A., *The European Union and its Eastern Neighbours: Towards a more ambitious partnership*. London: BASEES/Routledge Series on Russian and East European Studies, 2012 (s. 273-281).

closer to the standards existing within the EU, notably in the areas of economy, public administration, effective governance, NGO development, cross-border cooperation and the environment. Successful reforms, inspired by the Eastern Partnership program, can make it easier for states to join the EU, but it is not a direct goal of the project.

The following priorities are identified as key priorities for reforms in partner countries and their cooperation with the European Union:

- Democracy, improved governance and stability;
- Economic integration and convergence with the EU's sectoral economic policy, including the creation of free trade areas;
- Energy security;
- Developing people-to-people contacts (liberalizing the visa regime and strengthening the fight against illegal immigration).

In addition, it has launched several new initiatives, including:

- The Eastern Partnership Integration and Cooperation Program that involves the granting of privileged conditions for financial assistance to those countries who succeed to be the most advanced in implementing reforms to deepen democracy and protect human rights (€ 65 million in 2012).
- A comprehensive program to strengthen the potential support to institutional reforms (approximately EUR 175 million in 2011-2013);
- Pilot regional development programs related to the differences in social-economic development of regions (around 75 million euros for 2012-13).³²

As Swedish ex foreign minister Carl Bildt said: *"It's time to look to the east to see what we can do to strengthen democracy."*³³

4. EU and Ukrainian dialogue: where does it lead?

³² Available on: http://eeas.europa.eu/eastern/docs/eap_vademecum_en.pdf (20.02.19.).

³³ *"It's time to look to the east to see what we can do to strengthen democracy."* - Swedish ex foreign minister Carl Bildt . Available on: <https://euobserver.com/foreign/26211> (17.02.19).

However, the practical implementation of EU principles and norms significantly depends on how each of them is being interpreted. In order to prevent possible disagreements regarding the interpretation of the contents of these principles and values in the cooperation, a political dialogue was created.

The main purpose of the political dialogue is to ensure rapprochement and close cooperation between Ukraine and EU, in political and in other areas. Political dialogue is carried out at several levels. In particular, it consists of having consultations at the highest level. On the other hand, the Cooperation Council, established under the Partnership and Cooperation Agreement between Ukraine and the EU, provides dialogue at the ministerial level.³⁴ The political dialogue was also carried out at the level of senior officials, through diplomatic channels and through the exchange of political information. The development of relations between the partners led to the emergence of another channel for political dialogue – regular meetings between the leaders of Ukraine and the European Union.

4.1. The Ukraine-EU Action Plan as plan B for saving the values.

In addition to cooperation agreements, the legal instruments for regulating relations between Ukraine and EU are acts of certain institutions and bodies of the Union. After the Treaty of Amsterdam coming into force, the Common Strategy became such an instrument. It contained references to EU assistance by the emergence in Ukraine of a stable, pluralistic and legal democracy and a market economy. Among the priorities of the Common Strategy is also to support the process of democratic reforms and economic transformations in Ukraine. As part of the neighborhood policy, it is envisaged to establish special relations between the European Union and Ukraine. Such relationships should promote prosperity and good neighborliness based on the principles and values of the Union – those that I was mentioning in the previous chapter: respect for human dignity, freedom, democracy, equality, the rule of law and last, but not least, respect for human rights.

The Ukraine-EU Action Plan, which became an instrument of the neighborhood policy and replaced the Common Strategy, detailed the principles and values of EU as a basis for partner relations.³⁵ Another priority of cooperation is to promote the stability and efficiency of the bodies that ensure democracy and the rule of law (the continuation of administrative reform).

³⁴ Available on: <https://ukraine-eu.mfa.gov.ua/en/ukraine-eu/dialogue/council> (14.02.19).

³⁵ Available on: <https://library.euneighbours.eu/content/eu-ukraine-action-plan-0> (14.02.2019).

Other priorities include: conducting judicial and legal reforms to ensure the independence of the judiciary and strengthening its administrative capacity, ensure the impartiality and effectiveness of prosecutors, ensure the effectiveness of the fight against corruption, ensure respect for human rights and fundamental freedoms, the development of civil society, respect for the freedom of the media and freedom of expression, preventing the inappropriate treatment of people and torturing.

4.2. New perspectives for the cooperation.

The EU's Eastern Neighborhood Policy also focuses on building relations between Ukraine and the EU based on the principles of international law and fundamental values, including democracy, the rule of law, respect for human rights and fundamental freedoms, and a market economy. In connection with the preparation of an association agreement between Ukraine and EU in June 2009 in Brussels was adopted the Association Agenda. This document came into force on the 24th in 2009 and its intention was to replace the Action Plan of Ukraine.

The document marks the beginning of the first stage of Ukraine's integration into the European Union, since it is aimed at implementing the association agreement, which will include a free trade zone. Like other documents approved by the Ukraine-EU Cooperation Council, this document is just a recommendation. Its provisions can be attributed to soft law, what is very characteristic for the European Union for regulating primarily political relations with third countries. However, it becomes the most practically significant among all other documents that define the basis for cooperation between Ukraine and EU, because it has no expiration date. The purpose of its adoption is to facilitate the implementation of the temporal and then full-fledged association agreement between Ukraine and the Union.

This document emphasizes that Ukraine, as a European country, has a common history with Europe and shares common values with its member states. It also provides the continuation of the political dialogue initiated in the framework of the Partnership and Cooperation Agreement and the Ukraine-EU Action Plan. The use of political dialogue within the framework of the Association Agenda is closely linked to the implementation by Ukraine EU standards. A political dialogue aimed at strengthening respect for democratic principles, the rule of law, the establishment of good governance, ensuring human rights and the fight against corruption. Due to this reason, Ukraine should take into account the recommendations of the Venice Commission of the Council of Europe, the standards of the European Charter of Local Self-Government, the recommendations of the Organization for

Security in Europe and the Bureau of Democratic Institutions for Human Rights. In order to counteract corruption, Ukraine should complete the ratification of the UN Convention against Corruption and the Council of Europe Convention on Criminal Law against Corruption, implement the national action plan against corruption in cooperation with the relevant EU authorities.

The preamble of the Association Agreement³⁶ enshrines some similar provisions of the Treaty on European Union and the Treaty on the Functioning of the European Union. This is primarily about the common values of the Union. In addition to respecting democratic principles, the rule of law, human rights and fundamental freedoms, including the rights of persons belonging to national minorities, non-discrimination of minorities, respect for diversity, human dignity, they are complemented in the Association Agreement by the principles of good governance and the maintenance of a market economy that should facilitate the participation of Ukraine in European politics. The preamble also recognizes Ukraine as a European country, which has a common history and common values with the member states of the Union. These provisions together with the provisions on common values are very important, primarily because it opens up the possibility for Ukraine to join the European Union in the future, since any European country that respects the values enshrined in Art. 2 TEU and undertakes to implement them.

The Constitution of Ukraine includes an article regarding the application of the norms of international law³⁷: the provisions of this article serve as the legal basis for inclusion in Ukrainian law and order the international agreements concerning the rule of law and ensuring human rights. Thus, the provisions of the Association Agreement between Ukraine and the European Union, after its ratification, were supposed to become part of Ukrainian legislation, with all European values.

Ukraine negotiated on the Association Agreement in 2007-2011, the agreement was initialed in March 2012, but in November of the same year the process was interrupted with reference to the extremely difficult economic situation in the country. In March 2014, only a small part of the agreement was signed, but in January 2016 the agreement was already applied,

³⁶ The Association Agreement, Official EN Journal of the European Union L 161/3.

³⁷ The constitution of Ukraine, following Act of proclamation of independence of Ukraine from August, 24, 1991, to approved on December, 1, 1991 by the national voting, General bases, article 9.

although just provisionally (Titles III, V, VI and VII and related annexes and protocols were provisionally applied from 1 November 2014, whereas Title IV became applicable from 1st of January in 2016). Provisions formally came into force on 1 September 2017 following ratification of the Agreement by all signatories.

Cooperation in the political and legal sphere does not presuppose the harmonization of the Ukrainian law with the law of the European Union. One of the tools that can be used in order to replace harmonization within the EU is TWINING program. It involves the training of Ukrainian officials in European management with the help of specialists from the EU.

4.3. The Association Agreement: a step closer to become EU Member State?

The text of the Association Agreement consists of a preamble and seven titles. The document also includes 44 annexes, 3 protocols and a declaration with a total volume of about 2,000 pages, which are also part of the agreement. The Preamble welcomes Ukraine's European integration aspirations – rapprochement with the EU in political, economic and legal spheres, including the obligation to form a stable democracy and market economy, and also points out political association and economic integration of Ukraine with the Union from the implementation of the Association Agreement. Title I defines the general principles of association between EU and Ukraine: respect for the principles of democracy, human rights and freedoms, the rule of law, sovereignty, territorial integrity, inviolability of borders and independence, as well as combating the proliferation of weapons of mass destruction. The key principles of engagement proclaim the principle of a free market economy, good governance, the fight against corruption, various forms of transnational organized crime and terrorism, the promotion of sustainable development and multilateral contacts.

Title II presents the aims of political dialogue and cooperation between EU and Ukraine, defines the levels and formats of political dialogue: the Ukraine-EU summit and at the ministerial level the dialogue within the Association Council. Political dialogue is aimed at deepening political association, strengthening cooperation in the field of international security and crisis management, as well as promoting the domestic political reforms. A separate article is devoted to the ratification and implementation of the Rome Statute of the International Criminal Court and its related tools. Title III is the section we are also interested in, because it covers “Justice, Freedom and Security” and deals with cooperation in law, respect for human rights, personal data protection, cooperation in migration, asylum and border control, movement of persons, treatment of workers, labor mobility, cooperation in the

fight against crime and corruption, drug trafficking, money laundering and the financing of terrorism.

As we can see, there are 3 titles that dedicate to the general principles of the European Union, but why is there so many pages and so less of result?

On September 17, 2014, the Ukrainian government approved the implementation plan for the Association Agreement between Ukraine and the European Union for 2014-2017. On October 25, 2017, a similar document was approved for 2017–2025.³⁸ In November 2017, the current president Poroshenko declared that Ukraine had implemented 15% of the total reforms needed to fully implement the Association Agreement. In addition, Poroshenko noted that the implementation of the Association Agreement with the EU is a prerequisite for further steps on European integration and future EU membership.³⁹

However, I personally consider this comment to be very naïve, because according to the official government report, in 2017 just less than half of the measures planned for the year to implement the Agreement were completed.

In Ukraine, supporters of integration with Russia stated that the Association Agreement with the European Union is contrary to the country's geographical position, its economic and cultural interests. So, experts of the Kiev Center for Political Studies and Conflictology, led by Mikhail Pogrebinsky, pointed to serious risks for key sectors of the Ukrainian economy, including the possibility of reducing the level of customs protection of national production, the influx of speculative investments from EU countries, reducing the supply of agricultural products to EU countries, strengthening the raw material orientation of the economy.

Generally speaking, it cannot be argued that Ukraine struggles with building a rule-of-law state with developed democracy. So far this process is not very confident. The state protects the interests of a small group of people and not necessarily Ukrainian citizens (many oligarchs have dual citizenship, etc.). In the process of European integration, Ukraine will be obliged to adhere to the principles of a rule-of-law state and democracy, and thus, in the course of developing cooperation with the Union, prerequisites will inevitably arise to be

³⁸ Available on: <https://interfax.com.ua/news/political/457126.html> (17.02.19)

³⁹ Available on: <https://www.rbc.ua/rus/news/ukraina-vypolnila-soglashenie-assotsiatsii-1511189083.html> (20.02.19)

enshrined in legislation and, most importantly, the practical implementation of EU values, such as democracy, for example.

But did signing the Association Agreement have a big impact on Ukraine? Did it manage to make Ukraine a bit closer to EU? The answer to this question can be found in the comment of Jean-Claude Juncker, President of the European Commission, who said once during his speech at the political and social event in The Hague: “Ukraine will not become a member of the European Union or the North Atlantic Alliance for the next 20-25 years.”. The quote just says that notwithstanding all the foregoing, the Union does not see Ukraine as its potential Member State, which is quite understandable to me because, in my opinion, Ukraine is not ready yet to face all EU requirements. Moreover, Ukraine is losing motivation for any changes, including the creation of a democratic state, reduction in the level of corruption and accepting EU values and principles.

5. Problematic key factors: why is there lack of result?

From the previous chapter we can conclude that the European Union already made some efforts to influence the democratic development in Ukraine, however the results are not that impressive. So in this chapter I would like to provide the analysis which can explain why did the Union’s project hasn’t worked out well till now.

5.1. EU purposes: from the article to reality.

As I mentioned at the beginning of my thesis, Article 2 of the Treaty on European Union lays down the fundamental values of the Union, which are respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society dominated by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men. Article 21 specifies how the Union’s action in external relations should theoretically be managed. Paragraph 1 tells us that the Union’s action on the international scene is governed by the principles which have been applied in its establishment, development and enlargement and which it intends to promote in the rest of the world, that is to say, democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, the preservation of human dignity, equality and solidarity and respect for the principles of the United Nations Charter and international law. The Union shall also try to develop relations and build partnerships with third countries and

with international, regional or world organizations which recognize the common principles referred to in the first subparagraph. It promotes multilateral solutions to common problems, particularly within the framework of the United Nations. Paragraph 2 specifies more precisely what common policies and actions the Union is pursuing to achieve a high degree of cooperation in all areas of international relations in order to:

- preserve its values, fundamental interests, security, independence and integrity;
- consolidate and promote democracy, the rule of law, human rights and the principles of international law;
- to maintain peace, to prevent conflict and to strengthen international security in accordance with the aims and principles of the United Nations Charter, the principles of the Helsinki Final Act and the purposes of the Paris Charter, including those relating to the external borders;
- to promote the sustainable economic, social and environmental development of developing countries with the main objective of eradicating poverty;
- encouraging the integration of all countries into the world economy, including through the gradual removal of barriers to international trade;
- contribute to the development of international measures to preserve and improve the quality of the environment and the sustainable management of global natural resources in order to ensure sustainable development;
- to assist populations, countries and regions affected by natural or man-made disasters and
- to promote an international system based on enhanced multilateral cooperation and good governance across the globe.

The last paragraph of this article states that the Union shall ensure consistency between the different areas of its external action and between them and other policies. The Council and the Commission, assisted by the High Representative of the Union for Foreign Affairs and Security Policy, shall ensure this mutual respect and shall cooperate for that purpose.⁴⁰

⁴⁰ Treaty on the European Union, OJ C 83, 30.3.2010, title V, article 21.

So we already know that the Union should preserve its values, fundamental interests, security, independence and integrity, and in particular to consolidate and promote democracy, the rule of law, human rights and the principles of international law. When we once again draw attention to the Eastern Partnership project and compare its results with the provisions of this particular article, it would be probably clear to what extent the theoretical basis actually manifests itself in reality. Yes, this project works, but the level of democratic principles in partner countries, including Ukraine, has not increased significantly yet. So analyzing the situation, I was able to set aside key problematic factors that may negatively affect the strengthening of democratic principles in Ukraine.

5.2. Negative influencing aspects.

Firstly, the Eastern Partnership has encountered the cruel reality of the weak, or I might even say, the malfunctioning institutions and the unstable political situation in Ukraine. The European Union ignores the problem that probably some of the political parties, which are essentially the Union's main allies, contain a number of people accused of corruption. In this case, a high level of corruption in post-Soviet countries is probably not worth reminding, it is just a sad, but real fact. The politicians also use pro-European rhetoric to hide their sins in order to secure their survival on the political scene. As a result, there is a lack of confidence in the political establishment of the Eastern Partnership countries, which has negative consequences for overall support of EU and its relations with partner countries.

Secondly, the European Union probably does not fully understand Russia's position in the region and its enormous impact on the political, economic and social system in the Eastern Partnership countries, especially in Ukraine's case.

Even if we now wouldn't take into account the Partnership program, the Union should always think about the neighboring state or states which could potentially affect its future political partner, because it is quite problematic to build up a democratic consensus in the framework of aggression from the neighbor's side. If we go back to the subject of Russia, the fact that the Union did not pay much importance to its position, enabled the interested Russian parties to put pressure on those countries that refused to reverse or slow the process of association and integration with EU. By neglecting this factor and Russia's ability to act quickly, the Union has left out the obvious risks and threats coming from the East.

Eastern Partnership is a good project that pursues high moral goals, but is not ready to serve as a tool to fight external risks. Of course, it was perceived by Russia as a weakness and later used not only for the destabilization of Ukraine but also for the pressure on Moldova, Belarus and Georgia, and changed the external orientation of Armenia. In addition, issues such as security and its wider use, including energy and the military area, are unlikely to be addressed in the current Eastern Partnership.

Thirdly, the Eastern Partnership does not sufficiently address the different countries' priorities by trying to solve different problems using the same tools. Respect for human rights, the principles of democracy and the rule of law should be unconditionally accepted by all partner states, but even here we see some differences.

5.3. Democracy index as an indicator of EU social standards.

One of the most important fundamental principles of EU is democracy, it plays an enormous role in the functioning of the whole European union. As it is mentioned earlier, the theoretical basis for democracy should be political equality of citizens and public control in decision-making process. In order to promote democracy, the European Union uses almost the same tools as for the protection of human rights:

- 1) political conditions;
- 2) financial assistance;
- 3) election observation and counseling;
- 4) diplomatic instruments;
- 5) civilian and military missions.⁴¹

So in conclusion of this chapter I would like to show by an example that despite all the efforts on the part of the European Union, including the ratification of the Association Agreement, the Union couldn't bring any satisfying impact, as is shown by the statics of Democratic Index below. The Democracy Index is a classification from 167 countries regarding the development of democracy in these countries. It is made by the British newspaper Economist Intelligence Unit. When compiling the classification, 60 different indicators are grouped into

⁴¹ European Political Cooperation, Statement by the twelve on human rights, Brussel, 1986.

5 categories: Electoral process and pluralism, Civil Liberties, Functioning of government, Political Participation and Political Culture. For the first time, the index was compiled in 2006, supplemented in 2008, 2010 and so on.

In the final ranking, all states are ranked based on the Index of Democracy and are classified according to the type of power regime in four categories:

- Full democracy;
- Flawed democracy;
- Hybrid regime;
- Authoritarian regime.

A detailed description of the Index formation methodology and data sources are usually provided in the report, which is published based on the results of the comparative studies. It should be noted that the organization does not indicate the experts themselves, nor their number, whether these specialists are employees of the Economist Intelligence Unit or independent scientists. Since when I was writing this master thesis, it was just the beginning of 2019, I have decided to provide the statistic of 2018.

Economist Intelligence Unit: The Democracy Index⁴²

Democracy Index 2018								
Rank	Country	Score	Electoral process and pluralism	Functioning of government	Political participation	Political culture	Civil liberties	Category
84	 Ukraine	5.69	6.17	3.21	6.67	6.25	6.18	Hybrid regime

⁴² Available on: <http://www.eiu.com/home.aspx> (22.02.19).

As we can see Ukraine is on 84th place and was put in the category of Hybrid regime countries. It strongly contrasts with the results of EU Member States, who stay in the category of Full democracy or of Flawed democracy. To comparison, in 2015 Ukraine was on 88th place, but the score was 5,70, so for sure there is a partial success, but it is not enough to face even the half of the European Union's principles and values.

Moreover, once a year, the European Commission and the High Representative of the European Union for Foreign Affairs and Security Policy report on progress towards the goals of the project. But where is control to check those who are suspected of corruption and are still actively involved in the Eastern Partnership project? How can these top-level people help to uphold the principle of democracy and the EU's social values? In my opinion, this certainly belongs to a group of factors that prevent democracy from being developed in third countries like Ukraine.

But perhaps there is one more factor – that is insufficient motivation. Yes, the Union may set stricter requirements for Ukraine, but there is no guarantee that the state wouldn't simply ignore them. In order to solve this problem, I gave myself a task – detect other alternative solutions that can help Ukraine to become socially closer to the standard of the European Union.

6. Motivation for Ukraine.

In my opinion, the biggest reason why the Association Agreement hasn't worked that efficiently till now, hides in the lack of the motivation. Of course, Ukraine would like to join EU, but let's stick to reality: the chances of this possibility to happen are very low right now. Ukraine needs something more realistic to decide that it's time for changes, something that can bring the results soon enough and not just in the potential future.

6.1. Generalised System of Preferences.

The Generalized System of Preferences is a system of preferential rates. Its aim is to support developing countries to export manufactured goods and processed agricultural products to developed countries. The system was introduced by the developed countries in line with the recommendations formulated at the United Nations Conference on Trade and Development in Delhi, India in 1968. Developed countries can adopt their own general preference systems. However, they must be exempted from World Trade Organization rules (i.e. Most Favored

Nation Exemption). The exceptions were first granted for a period of 10 years from 1971, but then were extended for an indefinite period.

Since its inception, GSP has been actively developing and improving. So, the key aspects of the operation of GSP are the following:

- definition of developing countries;
- determination of the rules of origin of goods;
- the establishment of forms of documents confirming the origin of the goods;
- improvement of forms of supervision for the use of GSP.

Within the framework of the Generalized System of Preferences applies also the „Everything But Arms“ Agreement. A new generalized system of preferences was introduced in the European Union in January 2002. Its main purpose was to increase stability of preferences. For the period of 2006-2008 was introduced a new system, adopted in June 2005 and implemented from the 1st of January 2006 to 31st December 2008.⁴³

The main elements of the new system are greater stability, towards sustainable development and focus on those countries who are the most in need of accessing to EU markets. However, the General System of Preferences Regulation reforms an own system that better targets to those countries who are the least-developed countries and other low- or middle-income countries. Countries classified as higher middle-income countries are excluded from general preferences.⁴⁴ The implementation of the Deep and Comprehensive Free Trade Area, signed by the Union and Ukraine on 27th of June in 2014, as part of their broader Association Agreement, has been provisionally applied from 1 January 2016. As the Deep and Comprehensive Free Trade Area provides better tariff preferences as the GSP for substantially all trade, Ukraine was removed from the list of GSP beneficiary countries in Annex II with

⁴³ Generalised System of Preferences, List of Beneficiaries , Geneva – 1501073 (E) – February 2015 – 637 – UNCTAD/ITCD/TSB/MISC.62/Rev.6

⁴⁴ Report from the Commission to the European parliament and the Council, Report on the Generalised Scheme of Preferences covering the period 2016-2017, Brussels, 19.1.2018 COM(2018) 36 final.

application from 1st of January in 2018.⁴⁵ Although, the Generalized System of Preferences was a great option for Ukraine, I think there is another motivation for its further democratic development that could be considered – a program called „GSP +“.

6.2. GSP+ project.

So GSP regulation created a new program – a special stimulus for sustainable development and good governance called „GSP +“. It is an instrument of EU trade policy that aims to encourage third countries to behave in accordance with fundamental international standards on human rights and democratic freedoms, labor rights, environmental protection and good governance. This is a special layout of the system of generalized preferences. While the GSP generally provides for a reduction of the customs duties or suspensions of developing countries by about 66% of the EU tariff items, GSP + is a proposal to provide an additional benefit, which manifests itself in the form of a complete suspension of duties essentially from the same products. In return, the recipient countries must undertake to ratify and effectively implement international conventions on human and labor rights and conventions on environmental protection and good governance. Beneficiaries must also undertake to cooperate with the monitoring of the procedures established by these Conventions and the EU GSP + monitoring process. Standard GSP beneficiaries wishing to benefit from GSP + must demonstrate that they meet the GSP + entry requirements as set out in the GSP Regulation. Applications shall be accepted by the Commission. Once the country asks for GSP +, the European Union will evaluate the application within 10 months. For the Commission, the request can take up to 6 months. Finally, assuming that the entry requirements are met, it proposes granting the GSP +. The EU Council and the European Parliament then have up to 4 months to consider the Commission's proposal. In order for the state to be eligible for GSP +, it must meet the first assumption, what means that they should comply with the GSP standards. In order to be able to use a standard GSP, a country can not be classified for a period of three consecutive years as a country with higher middle income or high income, and should not benefit from another preferential EU market. When applying for GSP +, it is necessary for countries to ratify the basic 27 international conventions listed in Annex VIII of the GSP Regulation. These conventions directly affect human and labor rights, environmental protection and good governance. In addition, countries may not make any reservations that

⁴⁵ Commission Delegated Regulation (EU) 2017/217 of 5 December 2016 amending Annex II to Regulation (EU) No 978/2012 of the European Parliament and of the Council applying a scheme of generalised tariff preferences, C/2016/7809.

are prohibited by these conventions or which are incompatible with the subject matter and purpose of the convention. Finally, the countries to be admitted to the GSP + system, should follow the conclusions and recommendations of the control bodies of the conventions to avoid serious infringements.⁴⁶

As I mentioned, the 27 international conventions relevant to the GSP + regime are listed in Annex VIII of the GSP Regulation. Part A of Annex VIII contains seven conventions from the United Nations (UN) on Human Rights and Democratic Freedoms and eight from the International Labor Organization on Labor Rights. Part B of Annex VIII contains eight environmental conventions and four conventions on good governance.

The Seven UN Conventions on Human Rights are as follows:

- Convention on the Prevention and Punishment of the Crime of Genocide;
- International Covenant on Civil and Political Rights;
- International Covenant on Economic, Social and Cultural Rights;
- International Convention on the Elimination of All Forms of Racial Discrimination;
- Convention on the Elimination of All Forms of Discrimination Against Women;
- Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment;
- Convention on the Rights of the Child.⁴⁷

The 2016-2017 reporting period covers 10 GSP+ beneficiaries: Armenia, Bolivia, Cabo Verde, Georgia, Kyrgyzstan, Mongolia, Pakistan, Paraguay, the Philippines and Sri Lanka,⁴⁸ however in 2019 there are just 9 of them (Georgia was excluded).

⁴⁶ Commission Delegated Regulation (EU) No 155/2013 of 18 December 2012 (OJ L 48, 21.2.2013, p. 5).

⁴⁷ Available on: http://trade.ec.europa.eu/doclib/docs/2016/january/tradoc_154178.pdf (14.03.19.)

⁴⁸ Report from the Commission to the European parliament and the Council, Report on the Generalised Scheme of Preferences covering the period 2016-2017, Brussels, 19.1.2018 COM(2018) 36 final.

It is difficult yet to see how this program will run for these countries, but in my opinion, it is a good chance of making third countries strengthen the Union's democracy and social values, such as human rights or fundamental freedoms. In essence, GSP + serves as a good incentive for some countries that are still in sleep mode and only pursuing their own financial interests. Maybe democracy is being so often criticized, because it is not possible to force someone to start using it precisely because of its basic principles? It is a special mechanism that will work in full force only if all its concepts are fulfilled on a voluntary basis; therefore, in countries like Ukraine it is so hard to find the right key for strengthening democratic principles and fundamental human rights.

And that is exactly the reason why the European Union seeks to deepen the idea of democracy and its principles not only within its member countries but also externally – towards third countries. So in my opinion, the GSP + project is a bigger stimulus for Ukraine than the Eastern Partnership program. Of course, there are more stringent requirements and a higher level of control, but at the same time the benefits are more tempting as well. To prove this statement I would like to provide a short analysis of Armenia's achievements. According to the National Statistical Service of the Republic of Armenia, the foreign trade turnover between Armenia and EU in 2016 amounted to \$ 1.2 billion, with an annual growth of 2.1%. In particular, exports increased by 15.9% to \$ 478.8 million, while imports fell by 5.2% to \$ 739.9 million.⁴⁹ Moreover, in 2018 exports increased by 19% in 2018, comprising 1 billion 830 million 74 thousand USD, against the 1 billion 537 million 564 thousand USD of 2017.⁵⁰ But what is more important, in February 2017, the Armenian Government adopted a new National Human Rights Action Plan for the period 2017-2019. Also starting from the February 2018, Eurasia Partnership Foundation with the support of the Democracy Reporting International is implementing the project on "Promoting Human and Labor Rights through GSP+" in Armenia. The project is implemented within the EU-funded "Promoting Human and Labor Rights through GSP+" global project.⁵¹

6.3. Some other motive powers.

⁴⁹ Available on: http://finport.am/full_news.php?id=28911 (15.03.19)

⁵⁰ Available on: <https://www.tert.am/en/news/2019/02/20/arm-eu/2926966> (17.03.19)

⁵¹ Report from the Commission to the European Parliament and the Council on the Generalised Scheme of Preferences during the period 2016 – 2017, Brussels, 19.1.2018 SWD(2018) 23 final.

From the previous chapters of this thesis it can be concluded that the Union is actually willing to make agreements with third countries, because it brings a certain benefit to both parties. The only problem is that a third country like Ukraine can face an unexpected handicap – interference of a neighboring country, i.e. Russia. In my opinion, when the European Union starts a fixed partnership with a non-EU country, it must in some way ensure that the neighboring state does not cause any particular damage to the partner country of the Union. A specific agreement about the guarantee of protection or a program oriented on monitoring coercion or aggression from neighboring countries would greatly “release the hands” of Ukraine and would motivate it to develop faster. Without feeling any pressure from the states like Russia it can faster apply EU fundamental principles, because there would be no more handicaps for establishing the democracy and other values. In this case, the European Union, in accordance with the principle of democracy and human rights, could play the role of mediator – this would generate more confidence from partner country and help them to change the concept of their governance as soon as possible.

In addition, I would recommend better control over the detection of corruption, because most of the funds that the Union provides in good faith to Ukraine for the purpose of strengthening democracy is stolen by the politicians. When we talk about values such as the elimination of discrimination and the promotion of democratic principles, building such relationships requires fairness, honesty and accountability from the European Union as well as from third countries, otherwise this relationship will not work. Other matters depend only on the will of the countries themselves, which must understand that the Union does not require them any more than their members. Although the requirement to meet the criteria of a democratic regime is a political issue, the Treaty on European Union has introduced this requirement as a legal prerequisite. The Treaty on European Union states that the Union respects the national identities of the Member States whose democratic systems are based on the principles of democracy.

It follows from the above that everything depends on the wish of Ukraine to change and modernize its social-political structure. The European Union can only provide some assistance and various incentives that can accelerate and ensure that the process takes place in safety. Ukraine cannot rely entirely on the Union. That is why I would like to end this chapter with one important quote:

“The Best Medicine for Democracy Disease is – more Democracy.” – Alfred E. Smith (1873-1944), Governor of New York.⁵²

7. Overview: are there any significant changes so far?

From the previous chapters it is possible to conclude that in general the situation in Ukraine is not great and stable; however I decided to explore the discussed issue a bit more in order to understand if there are any positive changes since the European Union started to interfere in Ukraine's development.

7.1. Association Implementation Report on Ukraine.

As we already know, Ukraine ranked 84th place in the Index of Democracy 2018 ranking among 167 countries of the world and 17th in Europe. Democratic indicators of the country remained at the same level as in 2017, and constitute 5.69 points out of 10 possible. The country was included in the list of those in which the hybrid regime of government is used. This means that in Ukraine are being used both authoritarian and democratic governance. At the same time, the lowest rates were recorded in 2014 and amounted to 5.42 points.⁵³ So just from this fact we can make a conclusion that Ukraine slowly, but consciously started to develop. The political agreements between Ukraine and EU brought Kiev closer to the Union and Western institutions and visa-free travel can just confirm this statement. Of course, the Ukrainian downturn is also the result of post-revolutionary events, Russian aggression, the lack of reforms for two decades, and the government's attempts to stabilize the macroeconomic that at the end turned into a deeper chaos.

However, according to the Association Implementation Report on Ukraine, in 2018, Ukraine has further advanced in its reform process, which is closely connected to the implementation of the Association Agreement that was discussed in the previous chapters. During the reporting period, Ukraine continued to set up inter-institutional mechanisms to further the Association Agreement implementation, including the Deep and Comprehensive Free Trade Area, and demonstrated additional efforts to streamline the process. A number of important reforms in the social sector, launched at the end of 2017, are being carried out, in particular in the area of pensions, healthcare and education. Public administration and

⁵²Available on: <http://citaty.su/aforizmy-i-citaty-o-demokratii> (17.03.19.)

⁵³Available on: <https://112.ua/politika/ukraina-zanyala-84-e-mesto-v-reytinge-indeks-demokratii-2018-476464.html> (19.03.19.)

decentralization reforms continued to be implemented steadily. Reforms also advanced in the areas of the judiciary and anti-corruption, albeit at a slower pace. The renewal of the judiciary continued with the newly established Supreme Court becoming operational in late 2017.

The legislation establishing the new High Anti-Corruption Court was adopted in June 2018 and the selection of judges and other practical tasks have started. There has been progress in the establishment of an automatic verification system for electronic asset declarations, as the necessary verification software was launched in September and connections to some registers for cross-checking of information are established. Further measures are however required to establish a fully functioning system and to prove a convincing track record of effectively verified declarations of high-level officials. The issue of obliging anti-corruption activists and foreign members of supervisory boards of state-owned enterprises to file asset declarations remains unresolved despite commitments made by the Ukrainian authorities and repeated appeals by the EU.⁵⁴

7.2. Developing democracy, human rights and good governance system in Ukraine.

However, what is even more important, the Association Implementation Report states that local self-government has been strengthened by the decentralization reform launched in 2015, which has further advanced in 2018, with 705 new municipalities established since 2015. The law which allows major cities of a region to become part of the amalgamation process was adopted in May 2018. On 20th of September in 2018, the Parliament appointed 14 new members of the Central Election Commission, to replace those whose mandates expired in 2014 and in 2017. One seat remains vacant. The renewed Central Election Commission scheduled constituent local elections in over 120 newly amalgamated communities for December 2018. Electoral legislation still remains to be harmonized and aligned with international recommendations. A new draft electoral code, which could provide the basis for the electoral reform, passed first reading in November 2017. At the same time, more than 1.6 million internally displaced persons remain deprived of parts of their voting rights in the absence of dedicated legislation. In December 2017, the Constitutional Court invalidated the provision adopted in February 2016, whereby political parties were allowed to modify lists of parliamentary candidates after the elections. The decision is in line with the 2016 recommendations by the Venice Commission. The implementation of the 2015-2020

⁵⁴ Association Implementation Report on Ukraine, Brussels, 7.11.2018 SWD (2018) 462 final.

National Strategy and Action Plan on Human Rights is ongoing. A new Parliamentary Commissioner for Human Rights Ludmyla Denisova was elected in March 2018. The human rights situation in the illegally annexed Crimean peninsula continued to deteriorate in 2018. The systematic repression of individuals and groups who refuse to align themselves with the de-facto “authorities” continued unabated, with an increasing number of human rights abuses including arbitrary arrest, torture and ill treatment.⁵⁵ The activities of the Crimean Tatar Mejlis remain banned since 2016 under Russian law and wide-ranging restrictions to the community as well as its leaders are still in place. Human Rights and fundamental freedoms, such as freedom of opinion and of expression, continue to be severely curtailed by armed groups in the Non-Government Controlled Areas (hereinafter – NGCA) of Eastern Ukraine, including via targeted killings, arbitrary and incommunicado detention, sexual and gender-based violence, torture, and arbitrary violation of property rights. The humanitarian situation in Eastern Ukraine remains of serious concern and continues to present a challenge to the country, for the fifth consecutive year. According to various international interlocutors, including the United Nations, the humanitarian situation has even worsened throughout 2018, due to the continued indiscriminate shelling of civilian infrastructure, the deterioration of the economic situation in NGCA as a result of the conflict, and decreasing international assistance. Humanitarian access to NGCA remains limited though some improvement was achieved during May 2018 with renewed access for a number of UN agencies to NGCA territory.⁵⁶ The situation is particularly dire in the sectors of health, food, protection and access to basic infrastructure and utilities. Moreover, around 3.4 million people on both sides of the contact line remain in need of humanitarian assistance and protection. At present, only 29% of the 2018 UN Humanitarian Response Plan for Ukraine is funded. Environmental damage and waterborne diseases remain a real risk.

Modalities for the provision of social benefits to IDPs remain very cumbersome, while pensioners residing in NGCA continue to face difficulties in accessing their pensions. An appropriate legislative framework to ensure the respect of IDPs' rights remains to be adopted. In 2018, the Government adopted an Action Plan for NGCA, which was welcomed by the international community for its inclusive approach and attempt to bring the State closer to

⁵⁵ Report on the human rights situation in Ukraine 16 February to 15 May 2018, the Office of the United Nations High Commissioner for Human Rights.

⁵⁶ UN Children's Fund (UNICEF), UN High Commissioner for Refugees (UNHCR), International Organization for Migration (IOM) and UN Office for the Coordination of Humanitarian Affairs (OCHA).

citizens residing in NGCA. However, the temporary suspension of cargo transfers to and from NGCA, except humanitarian, in place since March 2017, following the confiscation of Ukrainian companies by the so-called authorities in the NGCA, continues to pose serious challenges for the economic aspects of the Action Plan.

With a high level of contamination of mines, civilians are exposed to injury and death and often lack access to agricultural land. Over 1,600 casualties have been recorded in Eastern Ukraine since 2014 due to extreme levels of landmine and other explosive remnants of war contamination. According to the UN, the contact line in Eastern Ukraine has become one of the most mine-contaminated stretches of land in the world, globally counting the largest number of casualties. Ukraine has not yet established a National Mine Action Centre and not yet adopted appropriate demining legislation that would ensure proper coordination of the work of its agencies and allow international humanitarian actors to further assist the country in addressing this major security concern. In December 2017, the Parliament adopted amendments to the Criminal Code and the Criminal Procedural Code related to sexual and gender-based violence. A new law on domestic violence was adopted at the same time and is largely in line with the Istanbul Convention, which is still to be ratified. The Government Commissioner for Gender Equality Policy was officially nominated in early 2018. In April 2018, a State Social Program on Equal Rights and Opportunities for 2018-2021 was approved. The program looks at strengthening the institutional mechanisms and an integrated approach for enhancing gender equality in all areas of public life in Ukraine. In 2018, the 2016-2020 National Action Plan for the implementation of UN Security Council Resolution 1325 on Women, Peace and Security will undergo a mid-term review, to be followed up by relevant amendments. In 2018, the Kiev Equality March was held peacefully. However, attacks on Women's Marches on the occasion of International Women's Day were recorded. An increased amount of hate speech and violence targeting minority groups including LGBTI and Roma has been documented by the UN Human Rights Monitoring Mission in Ukraine. The majority of these were reportedly perpetrated by extreme right-wing groups.

Following the December 2017 Venice Commission opinion on the language provisions of the new framework law on education, the Ukrainian authorities took a number of steps taking into account these recommendations. In early 2018, a roadmap for the implementation of the article in question was drawn up and consultations with representatives of minorities started in June-July 2018 with a view to further legislative steps regarding implementation. The Parliament has yet to adopt the legislative amendments proposed by the Government to

extend the transitional period of the law on education, in line with recommendations by the Venice Commission. The public broadcasting service (hereinafter – PBS) established in 2017 has remained underfinanced in 2018 with only 50% of the budgetary allocation stipulated under Ukrainian law. The financial situation rendered PBS unable to fulfil its basic financial obligations till the end of the year and prompted it to take austerity measures in September 2018, affecting its staff and postponing payments for contractual obligations. Due to its insolvency, PBS analog broadcasting was cut off in all regions. Other expected consequences of such underfunding are the switch off of the analog signal for PBS radio stations as well as the switch off of digital broadcasting. While freedom of the media is broadly respected in Ukraine, as of September 2018 the Institute of Mass Media reported that since the beginning of the year, there have been 67 cases registered of impediment to lawful professional activities of journalists, 24 cases of threats, 22 cases of beatings of journalists, and 12 cases of limitation of access to information.

The investigation into the 2016 high-profile killing of the prominent journalist Pavlo Sheremet has not brought results, while the trial of two suspects for the killing of journalist Oles Buzyna⁵⁷ commenced in February 2018. Progress has been made in the area of Public Administration Reform. In 2017-2018, the Government aimed at strengthening its capacity to design policies and legislation, including those stemming from the AA. A centralized, transparent and merit-based recruitment system has been launched through a dedicated web-platform with close to 24 000 applications received between October 2017 and September 2018 for approximately 1010 positions published. The Government of Ukraine has initiated the process of updating its PAR Strategy in line with recommendations of a baseline measurement of Ukraine's public administration prepared by the EU-OECD “SIGMA” program. In 2018, Ukrainian civil society continued to play a very active role in the promotion, design and oversight of reforms, especially in the areas of anti-corruption, judiciary, human rights, decentralization, energy, and healthcare. Some civil society actors denounced increased pressure from authorities on their activity. Various attacks on civil society activists have been documented in different cities of Ukraine. The legal provision requiring anti-corruption nongovernmental organizations (hereinafter – NGOs) to submit electronic asset-declarations introduced in 2017 remains in place. Throughout 2018, Ukrainian civil society organizations continued to take an active part in the Eastern

⁵⁷ Oles Buzina (1969 - 2015) was a Ukrainian journalist and writer known for his strong pro-Russian views.

Partnership Civil Society Platform and the EU-Ukraine Civil Society Platform foreseen by the Association Agreement.⁵⁸

7.3. Hopes for the progress.

After studying Association Implementation Report on Ukraine, I can conclude that there are some significant improvements in Ukraine's development, for example – in reforms' field. However, there is a strong need for improvements in some other areas, in particular in the field of judiciary and fight against corruption.

“Ukraine has advanced in a number of important and demanding reforms over the past year, including healthcare, pensions, decentralization, public administration, public procurement and the environment. These are all vital for the implementation of the Association Agreement and therefore for a more prosperous and stable Ukraine. Now, in Ukraine's pre-election period, it is crucial to maintain the reform momentum and to make these changes irreversible. There cannot be roll-back on issues such as anti-corruption efforts. Continued reforms in the economic and justice sectors will send a strong signal not only to the citizens, but also to domestic and international investors and help boost the creation of jobs in Ukraine”, said the Commissioner for European Neighborhood Policy and Enlargement Negotiations, Johannes Hahn.

So all in all, it is possible to deduce that Ukraine is trying to change and already does some efforts in its social developing, however it is a longer process that may take many years. At the moment it is still difficult to judge objectively, but it seems to me that Ukraine has embarked on the right path. Perhaps the statistics on the violation of human rights do not reflect the improvement in the country, but the awareness of the problem is already halfway to its solution. If Ukraine would find the courage to rely not only on the help of the European Union, but on its own strength, the process of applying EU democratic principles will occur sooner.

⁵⁸ Association Implementation Report on Ukraine, Brussels, 7.11.2018 SWD (2018) 462 final.

Conclusion

Overall, by writing this thesis I realized that the most important EU principle is democracy. If there is higher level of democracy in the state, there's a respect to fundamental human rights, no violation of law and no discrimination is involved. The term "perfect democracy" has two meanings. According to the first one, the ideal is understood as the best system of all others that are possible. The second one – the ideal system is a "refined" version of the real system. However, in my opinion there is no such thing as ideal democracy at all, however its closest version can be seen in the European Union or at least in its Member States with the higher democracy index. As it was mentioned in the previous chapters, Ukraine has 84th place in the Index of Democracy 2018 ranking among 167 countries of the world. Perhaps, the result isn't that outstanding as it could be expected, but at the same time Ukraine moved from 88th place that it took in 2015. So it is possible to deduce that the process of the development in Ukraine has started, the question is just when it would reach the target.

The purpose of this thesis was to find out what is meant by the term of "values" within the framework of the European Union and how does it influence Ukraine. For detecting the research problems, I gave myself several tasks:

- (1) Defining and explaining the principles and the values of the European Union;
- (2) Analysing and comparing how do these principles function in the EU member states, i.e. which impact did they bring in order to develop these counties;
- (3) Discussing how do these values influence Ukraine: its development, political strategies and law vision;
- (4) Highlighting and evaluating what does stop Ukraine from becoming a standard (in the EU's understanding) developed country.
- (5) Evaluating the concerned issue from the personal point of view and providing an analysis on how to improve the current situation.

I completed the task: the answers were found. The principles of the European Union are its fundamental values and democratic principles: human dignity, freedom, democracy, equality, rule of law, human rights, including the rights of minorities (national, religious,

etc.), pluralism, non-discrimination, tolerance, justice, solidarity, equality of rights of men and women. And although these values were at the beginning not included in the functioning process of the Union, people fought for their rights in order to change the situation. I provided a couple of examples of these fights – law cases, which in my opinion, helped to change the history of the European Union.

I also explained how the principles function in EU and which impact they brought in order to develop its Member States: the biggest impact is the implementation of these values themselves. Moreover, I explained what does stop Ukraine from becoming a standard, in the EU's understanding, developed country. One of these negative influencing factors is the corruption of the judiciary. I also highlighted which human rights are being the most frequently violated and provided a statistic that can show the real numbers of these violations. Furthermore, I enlightened the expectations of the European Union – how it would like to see Ukraine as its political partner and a democratic European state.

And last, but not least, I found the most significant answer of the thesis: how do the principles of the European Union influence on the development of Ukraine. Finally, at the end of this thesis I can confidently confirm that EU principles play an enormous role in the development of Ukraine. Without the Union's efforts, Ukraine would just get stuck in the corruption and violation of human rights. EU pushes the development in Ukraine via its legal instruments: different projects and agreements, e.g. the Association Agreement which was analyzed in the previous chapters. I think the Association Agreement is a great step closer to EU standards, although it wasn't efficient that much the Union expected to. I have already clarified why the Association Agreement didn't work out. Firstly, it is a longer process – changing the political strategy and social orientations in a country are not a thing that can be immediately changed. Secondly, Ukraine doesn't feel motivated enough for these changes –

and it is just a problem of the Ukrainian nation, not of whole EU. However, there are some ways how to make Ukraine more interested in its developing and starting to apply the European Union's principles and values. So I evaluated the concerned issue from the personal point of view and provided an analysis on how to improve the current situation: with more motivation and benefits like GSP+ program.

So although the European Union distributes a lot of money in developing democratic principles, without the wish of Ukraine itself to get changed, it is impossible to improve the situation. However, the main question of the thesis was answered: the principles of the European Union do influence the development of Ukraine. At least, Ukraine now realizes how democratic state should look like and does some efforts in order to transform.

“Changes in the level of democracy are ambiguous. There are improvements at the local government level due to the decentralization process. But we noticed a decline in two categories: the development of independent media and civil society, which is related to issues of corruption. The country's leadership should answer the question of whether a decline in democracy is a temporary phenomenon or is this a trend, ” said Nate Shenkan, head of research at Freedom House, “Nations in Transit 2018. Confronting Illiberalism”. He also added that Ukraine is a partially free country with a hybrid regime where freedom and authoritarianism are closely intertwined.⁵⁹ It was also noted that Ukrainian politicians use a sense of patriotism to attack non-governmental organizations and journalists, accusing them of undermining military efforts. Thus, politicians try to exclude their voices from public debates just because they criticize the government. As a result, the level of media independence in the country has fallen to its lowest level since 2014 .

Physical attacks on journalists, massacres of mass media editorials, lack of progress in investigating the murder of journalist Pavel Sheremet, blocking social networks as “Vkontakte” and “Odnoklassniki” and Russian TV channels also affected the decline in democracy. Moreover, there is a pressure on the Internet publications. During the year there were several politically motivated cases against the media. In August, the Ukrainian secret

⁵⁹ Available on: <https://www.opendemocracy.net/en/odr/who-is-ordering-attacks-on-activists-in-ukraine> (22.03.19.)

service, known as the SBU, hacked one of the websites, as well as invaded the houses of two journalists and confiscated computers. Nate Shenkan also recalled the existence of blacklists in Ukraine, which does not correspond to the concept of freedom of speech. The Ukrainian Security Service has a black list of 40 activists who are forbidden to enter the country. However, the actual number of people who have been blocked from entering is much higher.⁶⁰

The adoption of the principle of democracy and all related values is a long and complex process, as it is clear from the analysis of the Union Treaties themselves, which I discussed in the previous chapters and from the analysis of its historical path to the gradual change of priorities. So far, we can only follow how this process affects Ukraine step by step, the question is just how much time the process takes. But for now, I have no choice but to agree with Valentin Pikul's, Soviet novelist, famous statement: "In politics, as in love, anything is possible."⁶¹

⁶⁰ Available on: <https://www.fondsk.ru/news/2018/04/21/freedom-house-na-ukraine-net-demokratii-zato-korruptcija-stabilna-45989.html> (22.03.19.)

⁶¹ Available on: <http://weaft.com/documents/velikie-fraza-vyrazhenie-politika-znamenitye-lyudi-short-quotes> (24.03.19.)

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