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**Master's degree in  
Human Rights and Multi-level Governance**



TOWARDS EUROPEAN  
INTEGRATION

ALIGNING HUMAN RIGHTS LEGISLATION IN  
UKRAINE WITH THE EUROPEAN UNION ACQUIS

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**Towards European integration: aligning human rights legislation in  
Ukraine with the European Union acquis**

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## ACRONYMS

AA	Association Agreement
CU	Constitution of Ukraine
CCU	Constitutional Court of Ukraine
CSO	Civil Society Organisation
ECHR	European Convention on the Protection of Human Rights and Fundamental Freedoms
ECJ	European Court of Justice
EU	European Union
MFA	Ministry of Foreign Affairs
MoJ	Ministry of Justice
MS	Member State
SCU	Supreme Court of Ukraine
TEU	Treaty of the European Union
TFEU	Treaty on the Functioning of the European Union

## **ABSTRACT**

The full-scale invasion and the ongoing war Russia started in Ukraine has dangled the new peace order created in the aftermath of World War II with the establishment of the European Coal and Steel Community, nowadays known as the European Union. Along with the distrust towards international bodies' effectiveness, the war strives to undermine democratic order together with values inherent in it, such as the rule of law, human rights protection and an active civil society. Ukraine's road toward European integration started long before declaring its independence and Ukraine's role as Gates of Europe in maintaining security in the region cannot be underestimated as of now. The thesis aims to provide historical, theoretical, legislative and political overview of bilateral relations of Ukraine and the European Union, stressing the importance of the Revolution of Dignity and the role of Ukraine's civil society in democratic processes on the road to becoming an EU member.

The thesis examines Ukraine's "accession through war", while relying on the analysis of European Union framework on protecting human rights together with the current human rights agenda in Ukraine, as well as explores judicial reform and fundamental rights protection in times of an international armed conflict, taking into account present challenges and limitations to be addressed.

Key words: Ukraine, European Union, human rights, war, european integration, fundamental rights

## INTRODUCTION

It has been more than 170 years since renowned French novelist Victor Hugo expressed his pan-European ideas in his opening address to the Peace Congress in Paris 1849: “A day will come when your arms will fall from your hands!...A day will come when the only fields of battle will be markets opening up to trade and minds opening up to ideas. A day will come when bullets and bombs will be replaced by votes, by universal suffrage of the peoples..”<sup>1</sup> and his prophetic words found life in the creation of the European Coal and Steel Community which nowadays exists as an economic and political unity of people, numbers 27 Member States and is known as the European Union.

Amid the war of aggression the Russian Federation started in 2014 by annexating Crimea peninsula and supporting so-called “Russian spring” in the east of Ukraine, Ukraine recognized European integration as one of the priority foreign policy directions, which end must be the accession to the European Union. The course of european integration, or rather its “irreversibility” was later entrenched in the Constitution of Ukraine by the Law of Ukraine “ On Amendments to the Constitution of Ukraine (regarding the strategic course of the state to acquire full membership of Ukraine in the European Union and the North Atlantic Treaty Organisation)” as of February, 7 2019 after the events of the Revolution of Dignity, which proved that the people of Ukraine share European values and are ready to give away their lives for the aspirations to become the EU MS .<sup>2</sup> The Preamble reaffirms “the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine", while the course for the acquisition of full membership of Ukraine in the European Union is reflected in three articles of the Constitution: the powers of the Verkhovna Rada in terms of defining the principles of domestic and foreign policy were

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<sup>1</sup> Hugo, Victor. *Opening address to the Peace Congress*. Paris, 1849. Retrieved from <https://www.ellopos.net/politics/hugo-addresses-europe.asp>

<sup>2</sup> Law of Ukraine. *On Amendments to the Constitution of Ukraine (regarding the strategic course of the state to acquire full membership of Ukraine in the European Union and the North Atlantic Treaty Organisation*. February, 7 2019, № 2680 – VIII. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2680-19/ed20190221#n2>

supplemented by the implementation of the strategic course to acquire full membership of Ukraine in the European Union and the North Atlantic Treaty Organization (Article 85), the President of Ukraine is defined as the guarantor of the implementation of the state's strategic course for the acquisition of full legal membership of Ukraine in the EU and NATO (Article 102) and ensuring the implementation of this course is entrusted to the Cabinet of Ministers of Ukraine (Article 116).<sup>3</sup>

The new page in the history of Ukraine was turned on June 23, 2022 when it was granted a candidate status and a year after on December 14, 2023 with the decision of the European Council to open accession negotiations with Ukraine and Moldova. Taking into account the ongoing war of aggression, which escalated on February, 24 2022 it is crucial to ponder about the challenges and developments in the human rights agenda, as well as the success and pitfalls in reforms needed for Ukraine`s full membership in the EU.

The importance of this study lies in its offering real-time analysis on the role of civil society in advancing reforms crucial for the european integration starting from the Revolution of Dignity. Attention in this research is paid mostly to judicial reform and fundamental rights protection in times of war, illuminating progress and difficulties. Last but not least, the study is vital for those on the front lines and behind their backs both in Ukraine and abroad: continuing to believe in the rule of law, democratic order and secure future for the region.

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<sup>3</sup> Constitution of Ukraine (1996). Amended as of 2020. Kyiv. Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/ed20200101#Text>

## **CHAPTER I. Historical and theoretical overview of Ukraine-EU relations**

### **1.1. Bilateral relations of EU and Ukraine in 30-year-lapse**

Shortly after having gained independence in 1991, Ukraine declared the accession to the EU as the main foreign policy objective. The first document to lay the ground for bilateral relations between Ukraine and the European Union was the Partnership and Cooperation Agreement signed in 1994, which entered into force in 1998. The Agreement in its article 1<sup>4</sup> established the following objectives:

- to provide an appropriate framework for the political dialogue between the Parties allowing the development of close political relations,
- to promote trade and investment and harmonious economic relations between the Parties and so to foster their sustainable development,
- to provide a basis for mutually advantageous economic, social, financial, civil scientific technological and cultural cooperation,
- to support Ukrainian efforts to consolidate its democracy and to develop its economy and to complete the transition into a market economy.

This Agreement established political dialogue between Ukraine and the EU, set the annual consultation procedure (summit) on the top-officials level (art.7 and art. 85), dealt with freedom of transit of goods, trade in steel products, business and investment, labour rules, competition policy, protection of intellectual property, economic cooperation in different fields, cultural and financial cooperation; it ensured the EU's support in Ukraine's transition to market economy and established the Cooperation Council to supervise the implementation of the Agreement, while art. 2 highlighted the respect towards democratic principles and human rights as defined in particular in the Helsinki Final Act and the Charter of Paris for a New Europe as an essential part of the partnership determined in the Agreement.

The first meeting took place in Kyiv in September, 1997, but it was not until the second meeting in Vienna in October, 1998, when Ukraine declared its

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<sup>4</sup> Partnership and Cooperation Agreement between the European Communities and their Member States, and Ukraine. OJ L 49, 19.2.1998, p. 3–46. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A21998A0219%2802%29>



desire to access the associate membership within the EU and, thus, Ukraine-EU relations were described as “unique and strategic partnership”<sup>5</sup>. During the following EU-Ukraine summits throughout 2000-2002 president of Ukraine Leonid Kuchma introduced Ukraine’s plans to sign an association agreement with the EU by 2003-2004, negotiate a free-trade area and complete all the requirements needed to enforce association agreement by 2004-2007, create a customs union with the EU by 2005-2007, and meet all EU membership requirements by 2007-2011. However, these aspirations appeared to be ambitious, yet unreachable in terms of deadlines proposed by the president of Ukraine, because of the actual state of political agenda in Ukraine as a result of the Cassette Scandal<sup>6</sup>, questionable freedom of media and the state of human rights. In April 2003 European Conference took place where the programme “Wider Europe-Neighbourhood: A New Framework for Relations with our Eastern and Southern Neighbours” was presented. However, no clear plans on Ukraine’s accession to the EU or acquiring the status of a market economy, let alone simplifying visa requirements for Ukrainian citizens or helping with the closure of Chernobyl Nuclear Power Plant were introduced. Ukraine was presented with a status of a neighbourhood country within the European Neighbourhood Policy.

Ukraine-EU relations were facilitated by the Orange Revolution and the presidency of Viktor Yushchenko during 2005-2010. During the ninth summit Representatives of Ukraine and the EU – British premier Tony Blair, EU High Representative Javier Solana and European Commission President José Manuel Barroso released a joint statement, pointing out that “democracy and reforms have opened new prospects for Ukraine and its relations with the EU.”The EU confirmed its intention to start preliminary consultations on a new EU-Ukraine agreement that would replace the Agreement on Partnership and Cooperation. Partnership and Cooperation Agreement was a 10-year agreement, which could

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<sup>5</sup> The Ukrainian Week. *EU-Ukraine summits: 16 years of wheel-spinning*. (2013). Retrieved from: <https://ukrainianweek.com/eu-ukraine-summits-16-years-of-wheel-spinning/>

<sup>6</sup> political scandal in Ukraine in 2000 named due to tape recordings of Ukrainian President Leonid Kuchma apparently ordering the kidnap of a journalist Gongadze, was one of the main political events in Ukraine's post-independence history, which has dramatically affected the country's domestic and foreign policy

not be prolonged due to outdated provisions, let alone Ukraine's accession to World Trade Organisation in 2008. At the 12th summit, which took place in September 2008 in Paris, a compromise decision was reached on the title of a new enhanced agreement – Association Agreement. Association agreements are considered to be those that often precede a state's membership in the EU, contribute to the establishment of special relations of the EU with third countries, can ensure the closest cooperation of such states with the EU and, according to the opinion of the Court of justice of the EU<sup>7</sup>, are capable of contributing to the introduction of a privileged special relationship of the EU with such a state and participation to a certain extent in the EU system. Since 2010, "ensuring Ukraine's integration into the European political, economic, and legal space with the aim of gaining EU membership" has been directly enshrined as one of the principles of Ukraine's foreign policy in the Law of Ukraine "On Principles of Internal and Foreign Policy".<sup>8</sup>

In 2009, the Ukraine-EU Action Plan was replaced by the Association Agenda, which entered into force on November 24, 2009. The Association Agenda, the main objective of which was the implementation of the future Association Agreement, was approved by the Cooperation Council, but at the same time it was neither instrument of the European Neighborhood Policy, nor of the Eastern Partnership introduced in 2009. It was rather a lighthouse on the road of reforms towards further integration, taking into account the slowing pace of Ukraine's reformation processes in light of world economic crisis and domestic political instability: "Ukraine made no or only limited progress in the implementation of some key political reform measures including constitutional and judicial reform and efforts to combat corruption", - as explained by European Commission.<sup>9</sup> The Agenda allowed for the smooth transition from partnership and

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<sup>7</sup> Judgment of the Court of 30 September 1987. *Meryem Demirel v Stadt Schwäbisch Gmünd*. Reference for a preliminary ruling: Verwaltungsgericht Stuttgart – Germany. Association agreement between the EEC and Turkey – Freedom of movement for workers. Case 12/86. Retrieved from: <https://eur-lex.europa.eu/legalcontent/EN/TXT/?uri=CELEX%3A61986CJ0012>

<sup>8</sup> Law of Ukraine. *On Principles of internal and foreign policy*. Kyiv, 2010. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2411-17#Text>

<sup>9</sup> European Neighbourhood Policy - Ukraine. MEMO/09/189. Brussels, 2009. Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/en/MEMO\\_09\\_189](https://ec.europa.eu/commission/presscorner/detail/en/MEMO_09_189)

cooperation between EU and Ukraine to an actual political association and economic integration.

The main areas of cooperation under the Eastern Partnership Program were visa liberalization and energy independence, economic integration and rapprochement with EU policies, including the creation of deep and comprehensive free trade areas, democracy, reliable governance and stability, people-to-people contacts, as well as the development and conclusion of association agreements instead of partnership and cooperation agreements. The Civil Society Forum was established to facilitate relations between non-governmental organizations and support their dialogue with state authorities.

During the sixteenth summit EU-Ukraine when Viktor Yanukovich was a president of Ukraine (2010-2013), the Association Agreement was finalised and ready to be signed in 2012. However, a pro-russian president of Ukraine played double-game trying to maintain the relations with Russia and Belarus and to join the Customs Union which was against the recommendations of the European Union. Another pitfall was the imprisonment of Yuliya Tymoshenko and Yuriy Lutsenko who were opposition leaders and were convicted of abuse of authority. European Court of Human Rights<sup>10</sup> In its ruling stated that deprivation of opposition leader's liberty for reasons other than bringing him before a competent legal authority on reasonable suspicion of having committed an offence is a violation of art. 18 ECHR. One of the main requirements from the EU for signing an association agreement was to grant Tymoshenko a right to be hospitalised abroad, although, in November 2013 Verkhovna Rada of Ukraine did not succeed in voting for this decision. In the meantime, the first flames of what later became known as the Revolution of Dignity started to flare, as the president of Ukraine (Yanukovich) decided to create a multilateral cooperation between Ukraine, the EU and Russia. The people of Ukraine (mainly students) greeted this decision with a peaceful manifestation against in the capital of Ukraine. In light of mass violence against protesters, discriminatory legislation, use of force, the will of

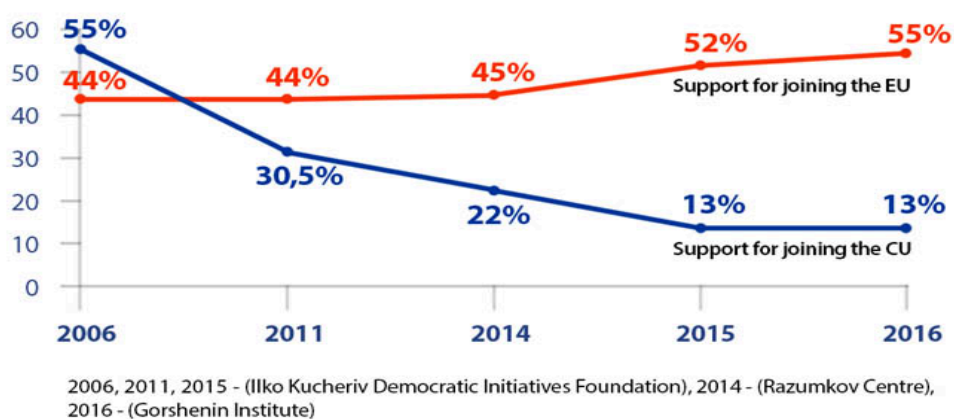
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<sup>10</sup>Lutsenko v. Ukraine (2012) ECHR. Strasbourg. Retrieved from: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22002-5583%22%5D%7D>}

Ukrainian people to join the European Union strengthened. The number of citizens favouring Ukraine's integration into the European Union increased by 10%, according to Ilko Kucheriv Democratic Initiatives Foundation<sup>11</sup>. That was not only about pro-european aspirations, but also about choosing a geopolitical vector for the entire country, drastically different from what it used to be. The number of those, who supported joining the Russian-led Customs Union decreased by 33% from 2006 to 2014.

### Support for joining the European Union Union has grown over the decade

Meanwhile, support for the Russian-led Customs Union has decreased



**Figure 1. Support for joining the European Union and the Customs Union in Ukraine throughout 2006-2016**

As a result of the Revolution of Dignity, discriminatory laws were abolished, Viktor Yanukovych fled the country to Rostov in Russia and the negotiations on the Association Agreement eventually led to its signature. The cost of European future for Ukraine was the “Divine Hundred” maliciously killed by special forces both from Ukraine and Russia (Berkut) and remains to be estimated as of now.

Signed in 2014, the Association Agreement between Ukraine and the EU has acquired the meaning of the main agreement that regulated the relations

<sup>11</sup> Chornohorska A.(2016)*Ukrainians overwhelmingly support european integration*.Euromaidan press. Retrieved from: <https://euromaidanpress.com/2016/04/01/ukrainians-overwhelmingly-support-european-integration-infographics/>

between Ukraine and the EU and determined the main directions of cooperation with the EU for many years. The Association Agreement has always been perceived by Ukraine as a new stage not only in the development of cooperation with the European Union and approach to accession, but also a new stage in the development and implementation of political, legal and economic reforms at the national level in light of the adaptation of Ukrainian legislation and practice to EU standards, as assistance in the establishment of new democratic institutions in the country and the fight against corruption.

From 2015 to 2021 Ukraine started reforming critical areas underpinned by the Association Agreement in its political and economic parts. According to the 2015-2020 report on the implementation of Association Agreement objectives, presented by the Minister for European integration, Ukraine succeeded at 54% of the overall deal, as was reinstated on “Agreement Pulse” - a tool that monitors the approximation pace of Ukraine towards European acquis<sup>12</sup>. The major progress during the entire implementation of the Association Agreement has been made in the following areas:

- Political Dialogue, National Security and Defense — 89 %
- Justice, Freedom, Security and Human Rights — 85 %
- Technical Barriers to Trade - 85 %
- Humanitarian Policy - 84%
- Public Procurement - 83 %
- Entrepreneurship - 81 %

While the least progress was recorded in financial cooperation and combating fraud at 24%. A negative trend in terms of implementation pace was noticed with the following figures: 95% of expected objectives were realised in 2015, but only 32% of them were carried out as of 2020. Apart from the objectives prescribed in the Association Agreement, Ukraine expressed its ambition to execute the “Ukraine Green Deal” approximating it to “Europe Green Deal”<sup>13</sup>. Despite the

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<sup>12</sup> Cabinet of Ministers of Ukraine(2015).*Report on the implementation of the Association Agreement between Ukraine and the European Union for 2015-2020*. Retrieved from: <https://www.kmu.gov.ua/storage/app/sites/1/zviti-pro-vikonannya/aa-implementation-report-2015-2020-ukr-final.pdf>

<sup>13</sup> Green Deal Ukraine Project. Official website. Retrieved from: <https://greendealukraina.org/>

visible progress made, a vast share of politicians and scholars were still sceptical about Ukraine's steadfast accession in the following years<sup>14</sup>.

The prospects of Ukraine's membership in the EU changed already at the beginning of 2022 in connection with Russia's full-scale invasion into Ukraine. Ukraine's steadfast European integration intentions, which it confirms even during the war, and the support of the entire civilized world in this gruesome war created the grounds for Ukraine to receive the status of a candidate country for EU accession on June 23, 2022, and for the decision of the European Council to open negotiations in December 2023, which set a fundamentally new stage in Ukraine's relations with the European Union. According to European think tank Bruegel<sup>15</sup>, while meeting EU criteria Ukraine may face the reversibility principle introduced in REM (Revised enlargement methodology), which allows the Commission to use corrective measures, in case the candidate country moves backwards in EU accession. This principle is crucial, taking into account the ongoing war in Ukraine and, therefore, challenges on implementing "fundamentals" cluster (especially chapters 23 and 24 on judiciary, fundamental rights, justice, freedom and security) which now is a precondition for advancing in all other clusters of chapters.

All in all, from the EU's perspective, walking down the path of Ukrainian accession means revamping the bloc's enlargement agenda; the possible target date for EU to accept another member is set for 2030, according to European Council President Charles Michel, while the ending of the Russian war against Ukraine has no guarantees or deadlines<sup>16</sup>. The EU never in its history admitted a country that was in the position of an international armed conflict and lacked

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<sup>14</sup> Besch S. (2023) Ukraine's Accession poses a unique conundrum for the EU. *Carnegie Endowment for International Peace*. Retrieved from: <https://carnegieendowment.org/2023/10/24/ukraine-s-accession-poses-unique-conundrum-for-eu-pub-90838>

<sup>15</sup> Darvas Zt, Dabrowski M. (2024) Ukraine's path to European Union membership and its long-term implications. *Bruegel*. Retrieved from: <https://www.bruegel.org/policy-brief/ukraines-path-european-union-membership-and-its-long-term-implications>

<sup>16</sup> Rosana G.(2024). Growing pains: what would it take for Ukraine to join the European Union. The Parliament, Retrieved from: <https://www.theparliamentmagazine.eu/news/article/growing-pains-a-closer-look-at-ukraines-accession-attempts>

NATO's security guarantees.

In case of positive events development and reaching a lasting peace as well as security both in Ukraine and the region, an interplay of accession and reconstruction processes will take place. This will be facilitated by the formation of a collective memory, that started long before now with Ukrainians understanding themselves as a part of the European Union - the Revolution of Dignity.

### **1.2. The role of the Revolution of Dignity in furthering developments in the field of human rights in Ukraine**

Human dignity as a moral basis for human rights underwent the process of “juridification” throughout the past two centuries, finding its conceptualisation and protection in numerous international legal instruments, bills of rights and national constitutions. However, it is yet difficult to provide a clear and concise definition of what is understood under human dignity, as the meaning evolves with periodic political challenges, response of a civil society, cultural specifics and international law advancements. Philosophers such as Immanuel Kant argued that “dignity is inviolable and cannot be denied even a vicious men”<sup>17</sup>. An idea of a man as a subject of law derives from Kant's works. The concept of human dignity is interlinked with the concept of one's identity. According to Georg Hegel, the fight for recognition of one's identity has always been the main driving force of the history of humankind<sup>18</sup>.

Modern philosopher and political economist Francis Fukuyama in his work “Identity. The demand for Dignity and the politics of Resentment” advocates the narrative that most international and non-international conflicts of the modern era outbreak due to lack of recognition of one's nation or group's identity. In his book identity can be translated as human dignity. Fukuyama defends the idea that the race for a recognition of one's identity can contribute to the emergence of such leaders as Lincoln, Mandela or Churchill - active defenders of human rights of

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<sup>17</sup> Hill T. E.jr (2021) Kantian perspectives on the rational basis of human dignity. Oxford University Press. pp.69-76. Retrieved from: <https://doi.org/10.1093/oso/9780192845481.003.0006>

<sup>18</sup> Douzinas, C. (2002). Identity, Recognition, Rights or What Can Hegel Teach Us about Human Rights? *Journal of Law and Society*, 29(3), 379–405. Retrieved from: <http://www.jstor.org/stable/4150539>



their time. On the other hand, the race creates tyrants like Hitler or Mao.<sup>19</sup> Fukuyama implies that dignity is not felt unless it is recognised by other people. It is an inherently social and, indeed, political phenomenon.<sup>20</sup>

Protection of human dignity and recognition of its value has been enshrined in numerous international legal instruments, such as the Universal Declaration of Human rights (art.1 and its Preamble)<sup>21</sup>, International Covenant on civil and political rights (art.7 and art 10(1))<sup>22</sup>, European Convention on human rights (art.3)<sup>23</sup>, Charter of Fundamental rights of the European Union (art.1)<sup>24</sup>.

Looking into the case law of the European Union on the matter of dignity, Advocate General C. Stix-Hackl in case C-36/02 Omega<sup>25</sup> stated that human dignity expresses the highest demand for respect and value that a person has by virtue of his human nature . This is protection and respect for the existence or nature of a person as such, the "essence" of a person. In human dignity, a person reflects himself. Human dignity is what makes a person human. Advocate General M. Poiares Maduro in Case C-303/06 Coleman stated that “in its simplest expression, human dignity presupposes that every person is given equal value. A person's life has value just because he is a person, and no life is more or less valuable than the life of another person.”<sup>26</sup> At the same time, he pointed out the close connection between human dignity and personal autonomy. Personal autonomy means that people should be able to make decisions about their lives

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<sup>19</sup> Fukuyama F.(2018) *Identity. The demand for dignity and the politics of resentment*. Farrar, Straus and Girror. 240 p.

<sup>20</sup> Schroeder D.(2017). How to define dignity and its place in human rights - a philosopher's view. *The Conversation*. Retrieved from: <https://theconversation.com/how-to-define-dignity-and-its-place-in-human-rights-a-philosophers-view-81785>

<sup>21</sup> United Nations. (1948). Universal Declaration of Human Rights.

<sup>22</sup> United Nations (General Assembly). (1966). International Covenant on Civil and Political Rights. Treaty Series, 999, 171

<sup>23</sup> The Council.(1975)European Convention on Human Rights. Convention européenne des droits de l'homme. Strasbourg

<sup>24</sup> European Union. “Charter of Fundamental Rights of the European Union.” Official Journal of the European Union C83, vol. 53, European Union, 2010, p. 380

<sup>25</sup> Case C-36/02.Omega Spielhallen- und Automatenaufstellungs-GmbH v Oberbürgermeisterin der Bundesstadt Bonn, Judgment of the Court (First Chamber) of 2004. Retrieved from: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A62002CJ0036>

<sup>26</sup> Case C-303/06, S. Coleman v. Attridge Law and Steve Law, Judgment of the Grand Chamber of the Court of Justice of 17 July 2008. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62006CJ0303>



and conduct them through a series of choices between different value options.

The recognition and protection of human dignity in Ukraine is operated under its constitution<sup>27</sup>. According to article 3 “the human being, his or her life and health, honour and *dignity*, inviolability and security are recognised in Ukraine as the highest social value.” Whereas article 28 states that “Everyone has the right to respect of his or her dignity.No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity”.

According to G.Resta<sup>28</sup> one can classify human dignity into three main operative functions:

- a) dignity as a negative right;
- b) dignity as the source of a government`s duty to protect;
- c) dignity as the source of a government`s duty to provide social benefits.

The Revolution of Dignity started as a result of Ukraine`s authorities depriving its state of its dignity and therefore, personal autonomy in choosing the course of its future. Thus, human dignity was violated as a negative right and as the source of a government`s duty to protect throughout the Revolution. The Revolution of Dignity which started in November, 2013 was the longest and the biggest pro-Europe peaceful manifestation throughout the history of the European Union, which lasted 92 days, took lives of at least 107 Ukrainians (later known as the Heavenly Hundred<sup>29</sup>), while 1372 people were injured. Manifestation started as a result of a state's actions against signing an Association Agreement with the European Union, therefore, abstaining from the course of european integration Ukraine's people aspired for. The Association Agreement was a breath of new democratic hope for all Ukrainians; a promise of a fulfilling future with justice, human rights protection and economic prosperity. When the president of Ukraine Viktor Yanukovich declared the approximation of closer ties with the Russian Customs Union instead of the European Union, people of Ukraine stood up

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<sup>27</sup> Constitution of Ukraine (1996). Amended as of 2020. Kyiv.Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/ed20200101#Text>

<sup>28</sup> Resta G. (2018). The Comparative law of dignity. University of Rome. Retrieved from: <https://romatrepress.uniroma3.it/wp-content/uploads/2018/12/The-comparative-law-of-dignity-an-introduction.pdf>

<sup>29</sup> refers to the 107 unarmed participants killed during the Revolution of Dignity over November 30 - February 22, 2014

against it. On November 21, 2013 the main square of Maidan Nezalezhnosti (Independence square) in Kyiv started to fill up with students, amounting to 1500 people on that night.

Although, drastic change of geopolitical course was not the only precondition for a demonstration, rather it became the last straw, since total corruption, embezzlement of gold reserves, economic crisis, usurpation of power, arbitrariness of the police, censorship, suppression of civil liberties, increasing role of oligarchs in shaping Ukraine`s political agenda, repressions against the opposition took place in Ukraine over 2010-2013<sup>30</sup>. The presidential-parliamentary form of government was restored in Ukraine which gave way to the blooming of authoritarianism; Verkhovna Rada of Ukraine adopted an anti-constitutional “Kivalov-Kolesnichenko” law<sup>31</sup> on the wider use of regional languages, including Russian; so-called “Kharkiv agreements”<sup>32</sup> were signed in 2010, according to which the stay of the Black Sea Fleet of the Russian Federation in Sevastopol was extended for another 25 years. To put it simply, Ukraine agreed to sell its territory for 100 million dollars per year to Russia for military use. The above-mentioned led to Ukraine acquiring the status of "partially free country" under “Freedom House”, equivalent to pre-Orange revolution state of the country<sup>33</sup>.

The escalation of a peaceful demonstration into a gory mass murder and cruelty to which civilians were exposed by both local and russian special forces was brought on January, 16 2014, as a result of the adopted package of laws, under which rights and freedoms of people were abolished, especially freedom of speech and the right to assembly. Hence, the first three victims of the special forces, a Ukrainian of Armenian descent Serhiy Nihoyan, Belarusian national

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<sup>30</sup> Kotlyar Y.(2024). Revolution of Dignity: choice of the European future.Kyiv. Retrieved from: [https://www.researchgate.net/publication/378821267\\_Revolutia\\_gidnosti\\_vibir\\_evropeiskogo\\_maib\\_utnogo](https://www.researchgate.net/publication/378821267_Revolutia_gidnosti_vibir_evropeiskogo_maib_utnogo)

<sup>31</sup> On the principles of State language policy (2012.). *Official website of the Parliament of Ukraine*.Retrieved from: <https://zakon.rada.gov.ua/laws/show/5029-17#Text>

<sup>32</sup> Agreement between Ukraine and the Russian Federation on issues of the presence of the Black Sea Fleet of the Russian Federation on the territory of Ukraine (2010). *Official website of the Parliament of Ukraine*.Retrieved from:[https://zakon.rada.gov.ua/laws/show/643\\_359#Text](https://zakon.rada.gov.ua/laws/show/643_359#Text)

<sup>33</sup> Hai-Nyzhnyk, P.P. (2017). Russia against Ukraine (1990-2016): From blackmail and coercion policy to the war aimed at ab-sorption and the attempt at destruction. Kyiv: “MP Lesia”

Mykhailo Zhyznevskiy and Yuriy Verbytskyy, who was found in the forest tortured, fell three days after. Most of the Heavenly Hundred were killed during February 18-20 when the voting for changes into the form of government took place. Additionally, the Resolution, which condemned unlawful deeds, cruelty, torture, use of weapons against unarmed protesters was adopted. An Agreement on the settlement of the crisis (2014) was adopted and certified by foreign representatives (the Republic of Poland, France, and Germany)<sup>34</sup>. On February, 22 Viktor Yanukovich fled to Russia.

Social media played a crucial role in gathering people from all around Ukraine on the main squares of its cities, let alone in 20 countries all around the world. Display on social media platforms allowed for a consolidation of Ukrainians and the rest of the world, as they saw students being beaten by special forces during a peaceful demonstration on November, 30 2013. Only in Kyiv roughly from 500.000 to 1 million people took part in the demonstration, while overall number peaked at 6,5 million people<sup>35</sup>.

The Revolution brought about the desired changes in the political agenda, transformed and consolidated civil society into non-governmental organisations, charity funds and raised its political awareness, it opened up opportunities for further reforms on decommunisation, transformation of post totalitarian society into a democratic one; the volunteer movement was developed, the free functioning of opposition was ensured, it contributed to the reformation of the judicial system and the rule of law, accelerated the fight against oligarchy and pervasive corruption. According to the report of the Cabinet of Ministers, which encompasses years 2014-2020, Ukraine adopted a Strategy for Public Administration reform in Ukraine till 2021 (2014) that meets the European standards of good governance, in the context of cluster “Justice, Freedom, Security and Human rights” Ukraine implemented 449 measures within 100 tasks,

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<sup>34</sup> Reporter, G. S. (2017). Agreement on the Settlement of Crisis in Ukraine.. The Guardian. Retrieved from: <https://www.theguardian.com/world/2014/feb/21/agreement-on-the-settlement-of-crisis-in-ukraine-full-text/>

<sup>35</sup> Museum of Revolution of Dignity. Official website. Retrieved from: <https://www.maidanmuseum.org/uk/node/2644>

including: visa-free regime to ensure free movement of persons (2017), adopted the Law of Ukraine “On preventing and combating domestic violence” and amendments to the Criminal and Criminal Procedure Codes of Ukraine, which together are aimed at creating new effective mechanisms for preventing and combating violence against women and domestic violence, adopted a social program to ensure equal rights and opportunities for women and men till 2021, which takes into account the directions of the Council of Europe Gender Equality Strategy (quotas), implemented the National Strategy for Civil Society Development in Ukraine for 2016-2020, aimed at establishing cooperation between the authorities and civil society organizations, in the first instance on ensuring human rights and freedoms, created the Coordination Council for Civil Society Development with the status of an advisory body under the President of Ukraine, created and maintained a register (Unified Information Database) on internally displaced persons, formed the Institute of the Government Commissioner for Gender Policy. In the field of justice reform and the rule of law a package of laws on the reform of judicial systems were introduced that altered the structure of the Ukrainian court system (moving from four to three tiers), and merit-based recruitment of supreme-court judges was initiated. However, this reform is as of 2024 in the initiation process and cannot be deemed promising<sup>36</sup>.

A documentary “Winter on Fire”<sup>37</sup> streamed on Netflix depicts chronological events of the Revolution of Dignity and exemplifies the spirit of unitedness of people; it includes interviews with the manifestators and politicians both during and after the revolution. The documentary highlights the united work of religious groups during the protest, which later contributed to the consolidation of the All-Ukrainian Churches Council and the emergence of an Independent from Moscow Orthodox Church of Ukraine.<sup>38</sup>

In June, 2014 a newly-elected president of Ukraine Petro Poroshenko

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<sup>36</sup> Cabinet of Ministers of Ukraine. *Report on the implementation of the Association Agreement between Ukraine and the European Union for 2015-2020*. Retrieved from: <https://www.kmu.gov.ua/storage/app/sites/1/zviti-pro-vikonannya/aa-implementation-report-2015-2020-ukr-final.pdf>

<sup>37</sup> Afineevsky (2015) *Winter on Fire: Ukraine's fight for freedom*. Netflix

<sup>38</sup> All-Ukrainian Council of Churches and Religious Organisations. Official website. Retrieved from: <https://vrciro.org.ua/ua>

signed an Association Agreement<sup>39</sup>, upholding the aspirations of the people of Ukraine, paying tribute to the victims of the Revolution and turning a new page in the history of Ukraine.

### **1.3. Association agreement and its effects on human rights agenda in Ukraine**

The association agreement with Ukraine is the largest agreement in terms of scope among all the agreements that the EU once concluded with third countries, as well as the largest agreement in the history of Ukraine, which distinguishes it from the entire EU treaty array. The Association Agreement laid a new format and legal basis for the further integration of Ukraine with the European Union, because the proper implementation of the provisions of the Agreement by Ukraine will ensure not only compliance of national legislation with a significant part of EU standards, but also the development of a European model of social development and the European future of Ukraine.

The agreement was signed in two stages: first, on March 21, 2014, at the Ukraine-EU extraordinary summit, the political part was signed, which included the Preamble, Article 1, Sections I "General principles", II "Political dialogue and reforms, political association, cooperation and convergence in the field of foreign policy and security policy" and VII "Institutional, general and final provisions"; then there was an economic part signed on June 27, 2014 at a meeting of the EU Council. This process ended on September 16, 2014 with the simultaneous ratification by the European Parliament and the Verkhovna Rada of Ukraine of the Agreement, which was named "Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand.

The decision of the European Council included 6 main points, which were more political than legal in nature, in particular, the most important elements of the Association Agreement were defined as the following: lack of connection of the Agreement with Ukraine's membership in the EU, lack of provisions on freedom

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<sup>39</sup> Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand (2014). *Official website of the Parliament of Ukraine*. Retrieved from: [https://zakon.rada.gov.ua/laws/show/984\\_011#Text](https://zakon.rada.gov.ua/laws/show/984_011#Text)

of movement of persons, on provision of collective security guarantees, access to EU structural funds, determination of respect for democratic principles, human rights and fundamental freedoms, the rule of law and the fight against corruption<sup>40</sup>.

The main goals of Ukraine's association with the EU were enshrined in Article 1 of the Agreement:

- gradual rapprochement of the parties to deepen Ukraine's association with EU policy;
- strengthening of political dialogue;
- support, preservation, strengthening of peace and stability in the regional and international dimensions in accordance with the principles of the Charter of the United Nations and the Final Acts of the Conference on Security and Cooperation in Europe 1975 and goals of Paris charter for a new Europe of 1990;
- creation of conditions for strengthening economic and trade relations through the introduction of the FTAA, which should lead to the gradual integration of Ukraine into the internal market of the EU;
- supporting Ukraine in completing the transition to a market economy and gradual transition bringing Ukrainian legislation into compliance with EU standards and *acquis*;
- strengthening cooperation in the areas of justice, freedom and security to ensure the rule of law and respect for human rights and fundamental freedoms;
- closer cooperation in other areas of mutual interest.

Structurally, the Association Agreement consists of seven chapters and a Preamble:

- The Preamble enshrines the recognition of Ukraine as a European state with shared history and values with other European countries. This provision actually confirms compliance with the formal requirements for joining the EU, which can be a member of any European country that respects and undertakes to implement the EU values defined in Article 2 of the Treaty on European Union;

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<sup>40</sup> Kryvonohova (2016). History of Ukraine's European integration. "Pravo", Kyiv. pp. 386-391

- The first section, entitled "General principles", establishes the basis of cooperation between Ukraine and the EU, listing the main principles, starting with respect for democratic principles, human rights and fundamental freedoms and the rule of law, i.e., the common values of the EU, on which relations of Ukraine and the EU should be built. The principles of a free market economy, ensuring respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence;
- The section "Political dialogue" includes issues of foreign policy, common security and defense policy, it is important as a tool of political association. Within the framework of the political association, the discussion of internal reforms in Ukraine is also expected;
- Within the framework of the "Justice, freedom and security" section, several main issues are combined: migration, asylum and border management, the fight against money laundering and terrorism, the fight against drug trafficking, crime and corruption. At the same time, the Agreement does not provide for the freedom of movement of workers and the issue of social security;
- The section "FTA and related issues" regulates the abolition of customs barriers, approximation of technical standards, issues of public procurement, sanitary and phytosanitary rules, trade in services and electronic trade, protection of intellectual property, property, protection of competition. This section defines Ukraine's entry into the EU internal market, Ukraine's implementation of complex reforms in the economic sphere;
- The section "Economic and industry cooperation" covered chapters that provided for cooperation in various areas: on the development of entrepreneurship, on energy, environment, transport, science and technology, mining and metallurgy, financial services, agriculture, fisheries and maritime politics, healthcare, education, sports, culture, tourism, employment issues, social policy and equal opportunities, issues of civil society, cross-border cooperation;
- The main focus in the section "Financial cooperation and the fight against fraud" is devoted to issues of EU financial assistance and its proper management;

– Chapter VII "Institutional Provisions" included control and monitoring mechanisms to fulfill the obligations of the parties established in the Agreement, providing for the creation of new bodies on a bilateral basis.

The creation of the Association Agreement between Ukraine and the EU is fixed in Chapter 1 of Section VII of the Agreement. The institutional structure provides for annual summits at the highest level to agree on political issues, annual determination of cooperation results and directions for further work. However, apart from the traditional summits which were initiated by the Agreement on partnership and cooperation between Ukraine and EU, the main element of the institutional mechanism of the Association is considered to be the Council of the Association, which includes members of the Government of Ukraine and members of the Council of the EU and the European Commission. The Association Council has broad powers, in particular, it monitors the implementation of the Agreement, makes binding decisions for the parties, including amendments to the appendices. The Association Committee assists the Council in performing its assigned functions. The Committee creates sub-committees, working groups and how the Association Committee in trade composition considers trade issues. Both institutional structures can adopt advisory and binding decisions, including the authority of the Association Council to update the Agreement and its annexes in relation, in particular, to the list of EU acts to which Ukraine must bring its legislation into line, as well as to determine the progress of Ukraine's implementation assumed obligations. A special advisory parliamentary forum was also created - the Parliamentary Committee of the Association, and with the aim of involving civil society - the Civil Society Platform.

Human rights protection is enshrined under the AA in the Preamble, Chapters I and III in art. 2 (general principles), art. 4, art. 6, art 14 (rule of law). From the moment the Agreement entered into force in accordance with its provisions Ukraine reports every year. Information about the status of the implementation of the Agreement is displayed for public access on a special information portal - in the information and analytical system for monitoring the



implementation of the Agreement, the so-called "Agreement Pulse"<sup>41</sup>, which was developed for the purpose of continuous detailed analysis and control of the implementation of the Association Agreement by the Government of Ukraine in cooperation with the EU in 2017.

In 2020, the Government Office for the Coordination of European and Euro-Atlantic Integration of the Secretariat of the Cabinet of Ministers of Ukraine, with the support of the Office of the Vice-Prime Minister for European and Euro-Atlantic Integration of Ukraine and experts of the EU project Association4U, prepared a Report on the implementation of the Agreement for 2015–2020, which reflected all achievements and work results for the first 6 years since the ratification of the Agreement. Therefore, before the start of a full-scale war, Ukraine had accomplished more than 60% of obligations under the Agreement, which, at the same time, did not indicate the adaptation of Ukrainian legislation to EU legislation by the same percentage due to the obsolescence of certain requirements of the Agreement and the constant development of EU legislation. In addition, there is the fulfillment of requirements in various areas. Most commitments were fulfilled in the sphere of political dialogue, national security and defense, as well as in the sphere of justice, freedom, security and human rights<sup>42</sup>.

Despite Russia's annexation of Crimea, the sponsorship of "Russian spring" in the east of Ukraine, let alone COVID-19, Ukraine managed to introduce successful policies and reforms in the field of justice and human rights after the ratification of the Association Agreement. According to the Review of the achievement of the EU-Ukraine Association Agreement objectives as of October, 2021<sup>43</sup> Ukraine adopted the following policies and laws:

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<sup>41</sup> Agreement Pulse. Monitoring of the implementation plan of the Agreement. Official website. <https://pulse.kmu.gov.ua/en/current-progress>

<sup>42</sup> Cabinet of Ministers of Ukraine. *Report on the implementation of the Association Agreement between Ukraine and the European Union for 2015-2020*. Retrieved from: <https://www.kmu.gov.ua/storage/app/sites/1/zviti-pro-vikonannya/aa-implementation-report-2015-2020-ukr-final.pdf>

<sup>43</sup> Review of the achievement of the EU-Ukraine Association Agreement objectives (2021). Cabinet of Ministers of Ukraine. pp. 26-32. Retrieved from: [https://www.kmu.gov.ua/storage/app/sites/1/uploaded-files/review\\_of\\_achievement\\_of\\_euua\\_aa\\_objectives\\_21.10.07\\_2\\_0.pdf](https://www.kmu.gov.ua/storage/app/sites/1/uploaded-files/review_of_achievement_of_euua_aa_objectives_21.10.07_2_0.pdf)

- amendments were made to the Constitution, new laws «On the judicial system and the status of judges», «On the High Council of Justice» were adopted. The judicial system was simplified, competitions were introduced for all vacant judicial positions, the Prosecutor's Office was deprived of excessive functions, a new Supreme Court was created;
- In June 2018, the Law of Ukraine was adopted, which established Supreme AntiCorruption Court (SACC), defined its status and tasks, jurisdiction of SACC cases, requirements for candidates for the positions of SACC judges, the procedure of occupying the positions, as well as additional guarantees of the safety of judges of this court;
- In order to improve anti-discrimination legislation in terms of countering multiple discrimination the draft Law of Ukraine “On amendments to certain legislative acts of Ukraine (concerning the approximation of legislation in the field of preventing and countering discrimination with the law of the European Union)» (registr. No. 0931) was developed and adopted as a basis, the purpose of which is to resolve the issue of defining victimization as a form of discrimination, prohibiting multiple discrimination and association discrimination;
- In July 2021, the Law of Ukraine “On Indigenous Peoples of Ukraine” was adopted, which is aimed at maximum protection of cultural, informational and other rights of indigenous peoples. In particular, the law stipulates that the indigenous peoples of Ukraine that were formed on the territory of the Crimean Peninsula are Crimean Tatars, Karaites, and Krymchaks;
- In May 2021, a law was adopted that implements the provisions of international criminal and humanitarian law on criminal prosecution for international crimes (genocide, crime of aggression, crimes against humanity and war crimes), it is also aimed at ensuring the implementation of international obligations to prevent legal and de facto impunity for the commission of such crimes;
- Ukraine carries out work to protect personal data: in June 2021, the draft Law “On personal data protection» (registr. No. 5628) was registered in the Parliament, which was developed taking into account the requirements for the protection of personal data reflected in Regulation 2016/679 of the European Parliament.

#### **1.4. Information and communication: why focus on Ukraine's European integration processes**

Under the conditions of significant transformations in the world order, when the most influential autocracies declared their ambitions to build their own separate space, democratic countries found themselves faced with an urgent need to consolidate their efforts to protect their own way of life and values. There is an objective need to unite the potential of the countries of the world democratic coalition to organize effective resistance to the authoritarian-totalitarian threat from the east. Ukraine and the European Union play and will play the main roles in this process, because geographically they are at the forefront of opposition to Russian expansion. According to a professor at the Harvard university Serhiy Plohyi, Ukraine has long been a true gate to and for Europe, so without exaggeration, it can be noted that the fate of all humanity depends on how timely and effectively it will be possible to create an effective mechanism for neutralizing the Russian danger. Based on this, relations between Ukraine and the EU acquire strategic importance for the preservation and development of the entire Euro-Atlantic civilization.<sup>44</sup>

Since the beginning of the full-scale invasion, more than 6 million people fled to Europe, while 8 million Ukrainians became internally displaced persons<sup>45</sup>. The European Union activated Council Directive 2001/55/EC<sup>46</sup> on temporary protection, which allowed for a temporary stay within the EU, giving the right to study and work for Ukraine's nationals. Under the current Law on mobilisation, which entered into force on May, 16 2024<sup>47</sup> it is evident that a vast share of Ukrainians (especially men) will seek to remain within the European Union and, therefore, will be the part of future European political agenda.

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<sup>44</sup> Shumska T.(2023) *International relations: Ukraine-European Union*. Lviv,.pp. 52-62 Retrieved from: <https://relint.vnu.edu.ua/index.php/relint/article/view/316/290>

<sup>45</sup> Estimated number of refugees from Ukraine recorded in Europe and Asia (2023). *Statista*. Retrieved from:<https://www.statista.com/statistics/1312584/ukrainian-refugees-by-country/>

<sup>46</sup> Directive on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof, 2001/55/EC (2001).European Council. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32001L0055&qid=1648223587338>

<sup>47</sup> Law of Ukraine on Mobilisation.(2024). Official website of the Verkhovna Rada of Ukraine. Retrieved from:<https://zakon.rada.gov.ua/laws/show/3543-12#Text>

Another reason for focusing on Ukraine and its European prospects is its unique in itself way towards European integration - so-called “accession through war” which challenges the stability of democratic institutions, the trust within Ukraine`s society to public institutions and the uprisal of civic society`s political awareness.

Moreover, bearing in mind that as of 2024 there are nine prospective candidate countries, which pave their way to the EU (Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia, Georgia, Moldova, Ukraine and Turkey), it is of crucial importance to weigh the advantages and challenges to the EU enlargement in view of the pessimistic alternative for the countries mentioned above - joining the Eastern bloc together with Russia and China, which will consequently mean the end to the current state of liberal democracy and its values worldwide.

### **1.5. Research questions and methodology**

The methodology employed a qualitative approach, encompassing document analysis and an interdisciplinary perspective. Data collection involved gathering information on bilateral relations of the EU and Ukraine both pre-war and during the war in Ukraine from open sources, including public information, interviews, reports from international organizations, independent think tanks and analytical centers produced by the media in Ukraine and worldwide. This research incorporates interviews, legal opinions, documentaries, conducted to gain insights into Ukraine`s European integration processes. Interviews aimed to explore different approaches and challenges to successful harmonisation Ukraine`s legislation with the European acquis. Official data from Ukrainian state authorities and current national and international legislation, like Treaty on the Functioning of the European Union (TFEU), Treaty on the European Union (TEU), Association Agreement, Charter of the Fundamental rights of the European Union, formed the basis for legal analysis, conclusions, and recommendations.

This research aims to address the following questions:

- 1) What were the relations of the European Union and Ukraine before the full-scale invasion in 2022, and how have they evolved since then (during the fully-fledged war)?
- 2) How has the Revolution of Dignity in 2013-2014 impacted the course of European integration and human rights agenda in Ukraine? What reforms were carried out in the field of justice and human rights in the course of 2014-2021? How successful they were?
- 3) What mechanisms and legal basis are ensured for the protection of human rights within the European Union ?
- 4) How has Russia`s full-scale invasion affected the human rights agenda and the course of European integration in Ukraine? What challenges and limitations Ukraine experiences on its way to the EU?
- 5) What is the role of the civil society in advancing pro-Europe and pro-human rights courses in Ukraine?
- 6) At what stage is the judicial reform in Ukraine as of 2024 and how far Ukraine went in ensuring a transparent, fair, independent and autonomous system of justice?

The research materials are intended for use by lawyers, NGOs representatives, people who work in the media, and representatives of the legislative and executive branches of government when developing further policies and carrying out reforms in line with the European integration of Ukraine.

## **CHAPTER II. European Union framework on human rights protection and its importance for Ukraine's accession**

### **2.1. EU primary and secondary law on human rights protection**

Since the establishment of the European Coal and Steel Community in 1951 and European Economic Community by the treaties of Rome in 1957, the Community underwent a number of “existential” changes, adding on superstructures, extensions, reforming the existing institutions before the actual European Union was founded in 1992 with Maastricht treaty and the updated Lisbon treaty of 2009, which added the Charter of Fundamental Rights of the European Union that obtained the same value as founding treaties. Starting with merely economic unity, the Community’s main objective was to provide sustainable peace across Europe along with the creation of an internal market to support national economies in the aftermath of WWII. This cooperation, started in 1951, was not aimed at declaring and creating mechanisms for the protection of rights of a person. Conversely, integration processes accompanied by the creation of a common market *objectively* led to the emergence, enrichment and universalization of the catalog of human and citizen rights and freedoms in the European Union<sup>48</sup>. However, with more economic areas of trade and interaction, abolishment of customs duties and creation of a single market, reformation of institutional mechanism, consequent enlargement, let alone fall of the Berlin Wall in 1989, the Community expanded its economic and political role in the region.

The legal mechanism of the European Union lies itself on the primary and secondary sources of the EU law. Primary law is considered to be defined as the supreme law of the European Union encompassed in the Founding Treaties of the EU, which include Treaty on the European Union (TEU), Treaty on the Functioning of the European Union (TFEU) and the Charter of Fundamental Rights of the European Union, regarded of equal value to the treaties mentioned

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<sup>48</sup> Maryniv (2019). Human rights protection in the European Union. *Law and innovative society №1*. Kharkiv. Retrieved from: <https://apir.org.ua/wp-content/uploads/2019/06/Maryniv12.pdf>

above<sup>49</sup>. Treaty on the European Union evolved from the Treaty of Maastricht alongside with the Treaty on the Functioning of the European Union improved since the Treaty of Rome. According to the article 216 of the TFEU, to primary law one can add also the treaties on the accession of the new Member States to the EU, protocols and annexes to the treaties, amending the existing rules, additionally the Union can conclude agreements with international organisations and third countries. Primary legal sources of the EU law bear binding effect on the and Member States, they formulate and articulate competences of the EU and its institutional mechanism, enshrined in the Treaties (art. 2-6 TFEU). To assist in the carrying out competences, the grounding principles of subsidiarity and proportionality come in use; they ensure the existence and well-functioning of a unique mechanism of institutional balance.

Under article 2 of the TEU “The Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.”<sup>50</sup> This article is fundamental in understanding key requirements for the potential Member States to live up to in order to join the EU – they have to ensure rule of law, democracy and respect towards human rights.

The Treaty on the Functioning of the European Union contains the establishment of the institute of citizenship of the European Union (articles 18-24). In addition, this part of the agreement enshrines the rights and freedoms of citizens, such as the right to free movement and permanent residence in the territory of the member states, the right to participate in voting, the right to diplomatic and consular protection, the right to appeal to institutions or bodies of the European Union. It also encompasses the principle of non-discrimination.

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<sup>49</sup> Under Article 6 of the TEU “The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties.”

<sup>50</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (2007) Official Journal C 306, 13 December, pp 1 - 271. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT>

To **principles** of the EU, under art. 3 of the TEU belong: promotion of peace and well-being of the people, offering citizens an area of freedom, security and justice without internal frontiers, free movement of citizens, recognising external border controls, immigration and asylum, and prevention of crime. Principles and values, alongside with the notion of European identity are enshrined in the preamble to the TFEU: “Drawing inspiration from the cultural, religious and humanist inheritance of Europe, from which have developed the universal values of the inviolable and inalienable rights of the human person, freedom, democracy, equality and the rule of law..”

Secondary sources of the EU law are subordinate to primary sources of the EU law; they derive from the work of the institutions of the European Union and are comprised of those sources listed in the article 288 of the TFEU, which are *regulations, directives, decisions, opinions, recommendations and conclusions*. Regulations have general application, a binding character and direct applicability in all Member States, which means no ratification is needed, nor any abstaining from it is presumed. Directives are binding to the result achieved upon each Member State, but the State can opt for a method of implementation of a directive, which means that only the result of implementing a directive is vital, whereas choice of implementation method depends on the Member State and its national laws. Decisions are binding only on the addressee. It is a form of legal act aimed at the settlement of certain issues, and therefore it can be compared with an administrative act<sup>51</sup> in the system of national law. The decision is binding in all its parts on the person named in it. They can be addressed to Member States, bodies of the European Union, individuals and legal entities, and are binding only on those specified in this legal act. Decisions that concern certain Member States are binding on both those states and their citizens. If the decision concerns a natural or legal person, enforcement is carried out in accordance with the national procedures in force in the given Member State. Recommendations and conclusions are not binding. The objective of these sources is to draw the

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<sup>51</sup> Bandas D. (2014). Human rights protection in the EU law. Lviv. pp. 154-157. Retrieved from: <http://dspace.wunu.edu.ua/bitstream/316497/17190/1/154-158.pdf>



addressee's attention to the expediency of a certain type of behavior, without binding him with legal obligations. They do not require a reason or legal basis, and are not subject to the jurisdiction of the European Court. However, the lack of binding nature does not mean that recommendations and conclusions should not be taken into account. They have a certain political force, and their non-implementation should be dictated by important arguments. Recommendations and conclusions can be adopted by the most important EU bodies, and their addressees can be both Member States or EU bodies, as well as individuals and legal entities. A recommendation differs from a conclusion primarily in that it not only formulates a certain assessment of the situation, but also offers specific actions to get out of it.

Rulings and decisions of the European Court of Justice play a special role in the hierarchy of EU legal sources. Under article 19 of the TEU, the Court is responsible for interpretation and application of the Treaties in respective manner. Despite its special character in the hierarchy, rulings of the Court cannot be attributed to the primary or secondary sources of EU law. They are somewhere in between, acting as a mediator or a watchdog, at the same time establishing precedents, principles and, practically, advancing not only the understanding of the EU Treaties but indirectly advancing the legal systems of the Member States and the EU itself.

Separate attention is deserved to be driven towards the Charter of the Fundamental Rights of the European Union. It was first introduced during the meeting of the European Council in Nice 2000.<sup>52</sup>

The Charter contains an extensive catalog of basic rights and freedoms, which are recognized by every person in the territory of the European Union, and covers civil, political, economic, social and cultural rights. The fundamental rights enshrined in the Charter are correlated with those recognized by the European Convention on Human Rights of 1950, and are also based on the constitutional traditions of the member states. It should be noted that the Charter is not only a

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<sup>52</sup> European Council (2000). Conclusions of the presidency. Nice. Retrieved from: [https://www.europarl.europa.eu/summits/nice1\\_en.htm](https://www.europarl.europa.eu/summits/nice1_en.htm)

law-making act, a source of law. The document establishes a new outlook on man and his place in the world. The Preamble declares that at the center of the Union's activities is man and his interests. Meanwhile, the method of presenting rights and freedoms in the Charter is innovative<sup>53</sup> as well: in the Charter, they are placed not according to the traditional division into political, economic, social, cultural, but according to the system of EU values, which these rights are aimed at protecting. Each section symbolizes one of the basic values or public good, which are reflected by the rights and principles placed in them. Overall, the Charter is comprised of seven chapters (dignity, freedoms, equality, solidarity, citizen's rights, justice and general provisions). Article 6 of the TEU states that the Union accedes to the European Convention for the Protection of Human Rights and Fundamental Freedoms and fundamental rights enshrined in it and deriving from constitutional traditions of the Member States constitute general principles of the EU law, which means that countries that wish to accede to the European Union shall be also the signatories of the ECHR<sup>54</sup>.

Thus, the European Union has come a long way in developing its own legal system: from a complete rejection of the idea that the protection of human rights can take precedence over the provisions of the law of the EU, to the development of its own catalog of human rights, which became the Charter of Fundamental Rights. In addition, the entry into force of the Treaty of Lisbon introduced the legal grounds for the EU's accession to the European Convention on Human Rights. All this raises the question of Ukraine's need to improve its own human rights protection system, because under the criteria for joining the EU, only a state with an appropriate level of observance of human rights and fundamental freedoms can become a full member of the European Union.

## **2.2. The role of European Court of Justice in safeguarding human rights**

The European Court of Justice, as known nowadays, was established with the Treaty of Rome 1957 and found its legal ground in article 234 (ex 177)

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<sup>53</sup> Silvia, T. (2012). The evolution of human rights protection within the EU legal system. The International Conference "The European Integration - Realities and Perspectives," 7(1), 320–328.

<sup>54</sup> Jones C. (2012). The EU's accession to the European Convention on Human rights: a cause for celebration or concern. Statewatch journal. Retrieved from: <https://www.statewatch.org/media/documents/analyses/no-187-echr.pdf>

through preliminary ruling procedure became the main facilitator in the legal integration of Europe<sup>55</sup>. It was created to rule out disputes in the European Community and provide guidance to national courts in terms of interpretation and application of EU laws, making sure that the Member States comply with the rules of the Community.

The Court of Justice of the European Union, under article 13 of TEU belongs to one of seven main bodies of the institutional system of the Union and, according to article 19 of the TEU: a) rules on actions brought by a Member State, an institution or a natural or legal person;(b)gives preliminary rulings on the interpretation of Union law or the validity of acts adopted by the institutions;(c) rules in other cases provided for in the Treaties. It also has jurisdiction in deciding on administrative matters under article 270 TFEU<sup>56</sup>.

Since the emergence of the Court in 1957, its competences were limited to resolving issues in the economic sphere. Subsequently, the EU went beyond the framework of the economic union, which in turn expanded the powers of the Court of Justice of the EU, so the protection of human rights also belongs to its competence. For the first time, the official recognition of human rights at the level of communities took place with the entry into force of the Single European Act of 1987<sup>57</sup>.

The European Court of Justice began to develop its human rights practice as early as 1969 with the Stauder decision<sup>58</sup>. This case was brought before the Court on the following question: " Can the fact that the decision of the Commission of the European Communities of 12 February 1969 ( 69/71/EEC ) makes the sale of butter at a reduced price to beneficiaries under certain welfare

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<sup>55</sup> Gierczyk Y. (2005). The evolution of the European legal system: The European Court of Justice's role in harmonisation of laws. *ILSA Journal of International&Comparative Law*. Retrieved from:<https://nsuworks.nova.edu/cgi/viewcontent.cgi?article=1567&context=ilsajournal&httpsredir=1&referer=>

<sup>56</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (2007) Official Journal C 306, 13 December, pp 1 - 271. Retrieved from:<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT>

<sup>57</sup> Bermann G. (1989). The Single European Act: A Constitution for the Community? *Columbia Journal of Transnational Law*. 27.529. Retrieved from:[https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?params=/context/faculty\\_scholarship/article/3114/&path\\_info=Bermann\\_The\\_Single\\_European\\_Act.pdf](https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?params=/context/faculty_scholarship/article/3114/&path_info=Bermann_The_Single_European_Act.pdf)

<sup>58</sup> Case 29/69 Erich Stauder v City of Ulm. Judgment of the Court of 12 November 1969.Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61969CJ0029>

schemes dependent on revealing the name of the beneficiary to the sellers be considered compatible with the general principles of Community law in force?” The case was associated with the *right to dignity* of a person in Grundgesetz and the Court ruled that it is not a requirement to identify the beneficiary by his name, as well as “ the provision at issue contains nothing capable of prejudicing the fundamental human rights enshrined in the general principles of Community law and protected by the Court”. With this case the Court created an array of general principles of law as a source of EU law and addressed the gap in protection of fundamental rights<sup>59</sup>.

In the Nold case of 1973<sup>60</sup> the Court reiterated the significance of fundamental rights protection as a reference to the ECHR adopted in 1950: “as the court has already stated, fundamental rights form an integral part of the general principles of law, the observance of which it ensures in safeguarding these rights, the court is bound to draw inspiration from constitutional traditions common to the member states, and it cannot therefore uphold measures which are incompatible with fundamental rights recognized and protected by the constitutions of those states. International treaties for the protection of human rights on which the member states have collaborated or of which they are signatories, similarly, can supply guidelines which should be followed within the framework of community law.”

The principle of non-discrimination and equality was developed under the Defrenne case (1976)<sup>61</sup> in which Gabrielle Defrenne, who was working as an air hostess and was promoted to head of cabin crew, received lower salary than her male colleagues, while performing the same duties. She challenged this discriminative treatment before the respective courts. The European Court of

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<sup>59</sup> Defeis E.(2007). Human rights and the European Court of Justice: An Appraisal. *Fordham International Law Journal* 31-5. Retrieved from: <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=2110&context=ilj&ei-redir=1>

<sup>60</sup> Case 4-73.J. Nold, Kohlen- und Baustoffgroßhandlung v Commission of the European Communities.Judgment of the Court of 14 May 1974. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61973CJ0004>

<sup>61</sup> Case 43-75.Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena.Judgment of the Court of 8 April 1976. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:61975CJ0043>

Justice ruled that “The principle that men and women should receive equal pay , which is laid down by article 119, is one of the foundations of the Community. It may be relied on before the national courts. These courts have a duty to ensure the protection of the rights which that provision vests in individuals, in particular in the case of those forms of discrimination, which have their origin directly in legislative provisions or collective labour agreements, as well as where man and women receive unequal pay for equal work which is carried out in the same establishment or service, whether private or public.”

Following Stauder, Nold and Defrenne, the Wachauf case of 1989<sup>62</sup> signified the limitation in fundamental rights application and protection. The Court ruled that “The fundamental rights recognized by the Court are not absolute, but must be considered in relation to their *social function* . Consequently, restrictions may be imposed on the exercise of those rights, in particular in the context of a common organization of a market, provided that those restrictions in fact correspond to objectives of general interest pursued by the Community and do not constitute, with regard to the aim pursued, a disproportionate and intolerable interference, impairing the very substance of those rights.”

Upon the uprisal of protecting principles and fundamental rights within the EU, a near-overlapping of two systems of ECHR and ECJ emerged in 80s-90s. In the cases as Hoechst (1989)<sup>63</sup> or Kremzow (1997)<sup>64</sup> the Court drove specific attention and attributed significant role to the European Convention on Human Rights<sup>65</sup>. However, in Opinion 2/94( the Accession by the Community to the European Human Rights Convention), the ECJ noted that the Convention is of

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<sup>62</sup> Case 5/88. Hubert Wachauf v Bundesamt für Ernährung und Forstwirtschaft. Judgment of the Court (Third Chamber) of 13 July 1989. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61988CJ0005>

<sup>63</sup> Case 19/84, Pharmon B.V. v. Hoechst A.G. Preliminary Ruling of 9 July 1985 requested by the Hoge Raad (the Netherlands). Retrieved from: <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=95199&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=278347>

<sup>64</sup> Case C-299/95. Friedrich Kremzow v Republik Österreich. Judgment of the Court (Fifth Chamber) of 29 May 1997. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61995CJ0299>

<sup>65</sup> Waagstein P (2010). Human rights protection in Europe: between Strasbourg and Luxembourg. *Freeman Spogli institute for international studies*. Retrieved from: [https://fsi9-prod.s3.us-west-1.amazonaws.com/s3fs-public/humanrights\\_in europe Layout 1.pdf](https://fsi9-prod.s3.us-west-1.amazonaws.com/s3fs-public/humanrights_in europe Layout 1.pdf)

particular importance, but the EU cannot accede to it without significant amendments to the Treaty of Rome<sup>66</sup>. In the case of *Kremzov v. Republik Österreich*, the plaintiff, demanded that the decision on issues of human rights protection be included in the jurisdiction of the ECJ. But the ECJ refused to expand its jurisdiction, citing the danger of interfering with the jurisdiction of the ECtHR<sup>67</sup>. Only with the Lisbon Treaty the “constitutional” change was implemented with the use of article 6(2) of TEU, according to which the EU was granted a “mandate” to join the ECHR, while the ECJ has the jurisdiction over monitoring the activities of EU institutions, bodies and agencies for the observance of human rights under Charter of Fundamental Rights and Freedoms<sup>68</sup>.

In protecting the fundamental rights of citizens in the EU, the ECJ creates cultural and moral unity across Member states, which contributes to positive integration. Upholding human rights has been integral to the foundations of the EU and contributed in four ways to European integrity, according to J.Honan: by way of constitutionalisation, protecting fundamental rights at the EU level, treaty-interpretation, preliminary ruling procedure. As a result, this ideological framework is reflected in the judgments of the ECJ<sup>69</sup>. The European Court of Justice has been repeatedly condemned as an overly active body that goes beyond the powers of the integrative association, creating standards for the protection of human rights, but it was this activity of the Court that became the driving force for turning the Community into the European Union and a safeguarder of human rights.

### **2.3. Institutional mechanism of the EU in advancing human rights**

The system of the European Union is characterized by a profound institutional

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<sup>66</sup> Opinion 2/94. Opinion pursuant to article 228 of the EC Treaty of March, 1996. Retrieved from: <https://curia.europa.eu/juris/showPdf.jsf?text=&docid=99549&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=281126>

<sup>67</sup> Hlushytskyy D.(2021) Jurisdiction of the European Court of Justice and European Court of Human Rights in human rights protection. *Kyiv Mohyla Academy journal*. Retrieved from: <https://core.ac.uk/download/pdf/149249592.pdf>

<sup>68</sup> Komarova T.(2018). The European Court of Justice as an organ for human rights protection. *Yaroslav Mudryi National University*. Retrieved from: [https://www.researchgate.net/publication/328630784\\_SUD\\_SPRAVEDLIVOSTI\\_ES\\_AK\\_ORGAN\\_ZAHISTU\\_OSNOVOPOLOZNIH\\_PRAV\\_LUDINI](https://www.researchgate.net/publication/328630784_SUD_SPRAVEDLIVOSTI_ES_AK_ORGAN_ZAHISTU_OSNOVOPOLOZNIH_PRAV_LUDINI)

<sup>69</sup> Velluti S.(2016), ‘The Promotion and Integration of Human Rights in EU External Trade Relations’. 32(83) *Utrecht Journal of International and European Law* 41, 68

mechanism, including in relation to the observance of human rights and fundamental freedoms. Among the seven main bodies of the European Union (the European Parliament, the European Council, the Council of the EU, the European Commission, the Court of Justice of the European Union, the European Central Bank, the Court of Auditors of the EU), the European Court of Justice has the leading role in the protection of human rights and freedoms and its jurisdiction is binding on member states, as observed in subparagraph 2.2. Although, a characteristic feature of the institutional mechanism of the European Union is that each body of the Union pays attention to issues of human rights protection to one degree or another and, therefore, human rights competence in the EU is distributed among its bodies respectively, as they carry out their work on the basis of EU values and principles, endowed in the Treaties.

With this in mind, one can categorize the bodies of the European Union on human rights protection according to the following criteria<sup>70</sup>:

1. Depending on the purpose of its emergence:

- specialized institutes for the protection of human rights: The EU Agency for Fundamental Rights, European Ombudsman ;
- bodies of general competence: EU Commission, EU Council, European Parliament.

2. According to the subject who can apply to the institute for protection of his/her rights:

- European Ombudsman (for individual appeals);
- Agency for Fundamental Rights of the European Union (only bodies of the European Union can appeal);
- Council of the EU ( only the member states of the European Union can appeal).

*The Council of the European Union* is the main institution of the EU, which is entrusted with decision-making. It adopted a number of documents on certain aspects of European citizenship, the establishment of certain specific

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<sup>70</sup> Martynovska V. (2022). Institutional mechanism of the European Union for human rights protection. *Odesa Law Academy Journal* 177-181. Retrieved from: <https://dspace.onu.edu.ua/server/api/core/bitstreams/8d3910aa-50d9-4575-a23e-e20381d58908/content>



bodies in the field of human rights. According to Art. 7 of the TEU, the Council has the authority to take measures against a member state that violates the principle of respect for human rights, as enshrined in Art. 2 of this Agreement.

The main executive body of the EU is the *Commission of the European Union*, which performs the function of inquiry regarding illegal actions and the application of fines.

The *Agency for Fundamental Rights of the EU* (hereinafter - AFP) is a body, endowed with special powers, the purpose of which straightforwardly refers to increasing the degree of protection of individual rights in the EU. The main task is to provide assistance to EU institutions and participating countries in decision-making and in the process of choosing the development of functions necessary to guarantee fundamental rights.

That is, the Agency for Fundamental Rights of the EU performs a coordinating and informative function<sup>71</sup>. The agency has no right to consider personal appeals. However, it sits an important place in the created regulatory framework, which combines the main principles of individual rights and a coordinated mechanism for the protection of rights of persons within the EU. The Agency was officially established in 2007. Internal structure of the Agency contains the following divisions: the Board, the Executive Bureau and Scientific committee.

As for *the European Parliament*, it participates in the development, implementation and evaluation of the effectiveness of EU measures in the field of human rights by adopting resolutions, preparing reports, sending missions to third countries, participating in events dedicated to human rights<sup>72</sup>.

Within the framework of the European Parliament, there is a *Subcommittee on Human Rights*, which is the center of discussion of a wide range of human rights issues in the Parliament. The subcommittee accepts parliamentary initiatives in this area and establishes a permanent forum for discussions with other EU institutions, UN Special Rapporteurs, the Council of Europe, government

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<sup>71</sup> Caba O (2022). Mechanism of the European system for human rights protection. *Kharkiv* 434-438. Retrieved from: <https://dspace.nlu.edu.ua/bitstream/123456789/11866/1/Kaba.pdf>

<sup>72</sup> Mayrhofer, M. (2020). The EU's institutional human rights architecture. Oxford. Retrieved from: <https://doi.org/10.1093/oso/9780198814191.003.0006>



representatives, human rights activists and non-governmental organizations (NGOs) on the state of human rights and the development of democracy in third countries<sup>73</sup>.

The right of every EU citizen, introduced in accordance with the Maastricht Treaty, to submit petitions to the European Parliament deserves special attention. The petition is examined by the Committee on Petitions of the European Parliament, which decides on its admissibility and, together with the European Parliament, is responsible for its consideration. The right of petition was introduced in order for EU citizens and persons permanently residing in the EU to have the opportunity to address EU institutions with wishes and complaints in a simpler way, let alone expressing one's right to petition, ensured by the Treaties and the Charter.<sup>74</sup>

Another organ, whose objectives are human rights observance is the Agency for Fundamental Rights of the European Union. On March 1, 2007<sup>75</sup>, the EU Agency for Fundamental Rights began its work. It is an independent Agency of the Union that deals with human rights issues in the EU and member states.

The purpose of the Agency's activity is to provide the institutions of the European Union and member states with assistance and expertise on fundamental human rights when they implement the provisions of EU law within their competence in full compliance with the principle of respect for human rights<sup>76</sup>.

According to article 228 of TFEU, the European Parliament appoints the *European Ombudsman* for the duration of its mandate after each election. The latter is authorized to receive complaints from any citizen of the community, any natural or legal person who lives or has a registered office in one of the member states, regarding violations in the activities of EU institutions and bodies, except judicial ones. The ombudsman conducts an investigation of offenses and informs

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<sup>73</sup> Subcommittee on Human Rights of the European Parliament. *Official website*. <https://www.europarl.europa.eu/committees/en/droi/home/highlights>

<sup>74</sup> Committee on Petitions of the European Parliament. *Official website*. <https://www.europarl.europa.eu/petitions/en/home>

<sup>75</sup> Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights. Retrieved from: <https://eur-lex.europa.eu/eli/reg/2007/168/2022-04-27>

<sup>76</sup> European Union Agency for Fundamental Rights. *Official website*. <https://fra.europa.eu/en>

the person who filed a complaint about the results of such an investigation. The investigation may be carried out either following a complaint or by initiative of the Ombudsman. This position was introduced in 1995 by the Decision<sup>77</sup> of the European Parliament regarding instructions and general conditions that regulate the performance of ombudsman duties.

Last but not least, the Sakharov prize awarded by the European Parliament annually since 1988 serves as a recognition of human rights work in the field of freedom of thought, protection of minorities rights, women`s rights, democracy and the rule of law. Very first prize was awarded to Nelson Mandela - a prominent human rights activist of South Africa, while the 2022 award was granted to the people of Ukraine for their bravery in standing up against Russian full-scale invasion<sup>78</sup>.

Thus, the EU institutions mainly perform functions *related* to the implementation of policies in the field of human rights. A characteristic feature is that in the EU there are bodies that are entrusted with the consideration of complaints and petitions from citizens, as well as bodies that are engaged in the development of new approaches and the implementation of projects related to human rights in the EU.

#### **2.4. Understanding Copenhagen criteria: “accession through war”**

During the last European Union enlargement, which was the largest enlargement in the history of the EU and took place in 2004, “A10” acceded to the Union: Czech Republic, Cyprus, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia. Ever since the EU tried to alleviate the load taken and in the recent address of Ursula von der Leyen, dedicated to 20th anniversary of the last enlargement, the President stated that the voice of the EU became more powerful on the global stage and allowed for resolute support to Ukraine, she expressed the wish on future enlargement with the negotiations on the accession of Ukraine and Moldova being open and reaffirmed the choice the EU made

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<sup>77</sup> 95/376/EC, ECSC, Euratom: Decision of the European Parliament of 12 July 1995 appointing the Ombudsman of the European Union. Official Journal L 225 , 22/09/1995 P. 0017 - 0017. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX%3A31995D0376>

<sup>78</sup> Sakharov prize. *Official website of the European Parliament.* <https://www.europarl.europa.eu/sakharovprize/en/home/>

towards Ukraine<sup>79</sup>. In light of negotiations being open and the ongoing Russian full-scale war against Ukraine, it is crucial to assess the so-called “accession through war” path that Ukraine is currently taking from the perspective of Copenhagen criteria.

According to article 49 of TEU “Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union.” These values include: respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. Moreover, the Copenhagen criteria, established by the European Council in 1993 are to be met and include the following: a) stability of institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities; b) a functioning market economy and the ability to cope with competitive pressure and market forces within the EU; c) the ability to take on the obligations of membership, including the capacity to effectively implement the rules, standards and policies that make up the body of EU law (the ‘*acquis*’), and adherence to the aims of political, economic and monetary union<sup>80</sup>.

According to the opinion of Krzysztof Niecypor, Ukraine’s fast-track candidate status success is owed not only to public support of Ukraine within EU, steady fulfillment of Association Agreement provisions of 2013 and Copenhagen criteria mentioned above, but to effective PR campaign performed by the officials in the Eastern and Central Europe and Ukrainian diaspora in the European Union<sup>81</sup>. However critical this viewpoint has been made, it proves the uprisal of the civil society of Ukrainians not only in Ukraine, but abroad as well. Given the accession happens in the foreseeable future with the sustainable peace, Niecypor argues that it will affect majorly the whole institutional mechanism of the EU and its policy-making. He states that Ukraine would have 9% of the votes in the

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<sup>79</sup> Speech by the President von der Leyen at the European Parliament formal sitting on 20th anniversary of the 2004 EU enlargement (2024). *Official website of the European Union*. Retrieved from: [https://ec.europa.eu/commission/presscorner/detail/en/speech\\_24\\_2282](https://ec.europa.eu/commission/presscorner/detail/en/speech_24_2282)

<sup>80</sup> Accession Criteria. *Official website of the European Union* [http://ec.europa.eu/enlargement/enlargement\\_process/accession\\_process/criteria/index\\_en.htm](http://ec.europa.eu/enlargement/enlargement_process/accession_process/criteria/index_en.htm) .

<sup>81</sup> Niecypor K.(2022). V-4 Think Tank Program. OSW. Retrieved from: <https://europeum.org/data/articles/krzysztof-niecypor.pdf>

Council decisions, making the voting powers such as Germany slightly decrease from 18% to 16%, while in the European Parliament, the number of seats allocated to Ukrainian MPs will be between Poland (52 seats) and Spain (59). This will shift the geopolitical power axis of the European Union to the East.

In the Opinion<sup>82</sup> of the European Commission on the EU membership application of Ukraine, Brussels acknowledges Ukraine's endeavors in meeting the political and economic criteria and set the requirements for keeping the candidate status: a) the judicial reform (Constitutional Court of Ukraine (CCU)); b) finalise the integrity vetting of the candidates for the High Council of Justice members by the Ethics Council and the selection of candidate to establish the High Qualification Commission of Judges of Ukraine; c) strengthen the fight with corruption especially on high level; d) implement the anti-oligarch law; e) tackle the influence of vested interests by adopting a media law that aligns Ukraine's legislation with the EU audio-visual media services directive and empowers the independent media regulator; f) finalise the reform of the legal framework for national minorities currently under preparation as recommended by the Venice Commission, and adopt immediate and effective implementation mechanisms. Later on, the European Commission confirmed that Ukraine's achievements would be considered in light of "established criteria and conditions".<sup>83</sup>

According to R. Petrov, Ukraine's "accession through war"<sup>84</sup> must reflect the scope and objectives of a future peace deal between Ukraine and Russia. Ukraine's ability to conduct the accession negotiations with the EU will inevitably depend on the outcome of the war, and the terms upon which hostilities eventually end. A potential war settlement will indeed define and/or confirm the geographical borders of Ukraine and could influence its sovereignty on issues related to its security and ability to join international organisations like NATO or the EU itself. He argues that Ukraine's candidate status was granted mostly as an

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<sup>82</sup> Opinion on the EU membership application of Ukraine of June 17, 2022. Brussels. Retrieved from: [https://Opinion\\_on\\_the\\_EU\\_membership\\_application\\_by\\_Ukraine.pdf](https://Opinion_on_the_EU_membership_application_by_Ukraine.pdf)

<sup>83</sup> EU and Ukraine, Joint Statement following the 24th EU-Ukraine Summit, 3 February 2023, Retrieved from: <https://europa.eu/IPJjpk9>

<sup>84</sup> Petrov R.(2023) Applying for EU Membership in Time of War: "Accession through War" of Ukraine. *Istituto Affari Internazionali*. Retrieved from: <https://www.iai.it/sites/default/files/iaip2309.pdf>

act of moral support due to country's resistance to the aggression and, perhaps more than ever in the history of EU enlargement, as a (geo)political decision rather than a scrupulous legal application of the conditions related to Article 49 TEU.

Whatever preconditions and rationale might have been, Ukraine works on its accession procedure according to Copenhagen criteria and no fast-track accession is envisaged. Reminiscing of the last enlargement in 2004, the EU was concerned that many countries (such as Poland) were not on track with criteria fulfillment because of country's specifics, its past, economic hurdles (GDP development) etc, that is why it is essential to take into consideration each state's legal and political system's peculiarities.<sup>85</sup> By doing so, no favourable conditions or speedfast accession are applied, rather it allows for a profound and context-integrated approach to evaluating the criteria fulfillment. In late April 2024 Ukraine conducted the first among all countries, in principle, a *self-screening* on harmonisation of its legislation with "acquis", prior to consultations with the Commission and produced a detailed report on it.

All in all, Ukraine's accession to the EU is of crucial importance to the stability of Central Europe, it is a prerequisite for the country's continued survival as an independent entity, constituting a vital obstacle to Russia's further expansionist goals.

## **2.5. "Gates of Europe": Ukraine's institutional mechanism in shielding human rights**

Ukraine as an heir to Rus' shares a vast history on human rights protection since "Rus'ka pravda" (The truth of Rus')<sup>86</sup> and through the Constitution of Pylyp Orlyk (1710). Nowadays article 3 of the Constitution of Ukraine states that a person, his life and health, honor and dignity, inviolability and security are defined as the highest social value in Ukraine. However, enshrining basic human rights and freedoms at the legislative level is insufficient. They are implemented only when the state, with the help of a legal mechanism for

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<sup>85</sup> Id [81]

<sup>86</sup> The truth of Rus' -a collection of ancient laws compiled in the Kyivan state in the XI-XII centuries. based on customary law (1016);

ensuring human rights, creates the proper conditions for everyone to exercise their rights, freedoms and legitimate interests.

The basis of the mechanism for ensuring the rights and freedoms of a person and a citizen are the conditions and requirements for the functionality of authorities, local self-government bodies, their officials, citizens, who collectively ensure compliance, implementation and protection of the rights and freedoms of citizens. The effectiveness of such a mechanism also depends on the presence of independent non-state authorities that protect rights and freedoms and monitor compliance and enforcement of norms establishing rights and freedoms.<sup>87</sup> In Ukraine, the mechanism of rights protection is implemented through activity of the Committee of the Verkhovna Rada of Ukraine on human rights, national minorities and international relations, other committees of the Verkhovna Rada of Ukraine in the area of activities for ensuring and protecting human rights; Commissioner of the Verkhovna Rada of Ukraine for human rights; General Prosecutor's Office of Ukraine; Institute of Advocacy (Institute of Legal Aid); The Ministry of Internal Affairs of Ukraine (in terms of the formation and development of internal control over the observance of human rights); of the Ministry of Justice of Ukraine (in particular, the National Bureau for Compliance with the European Convention on Fundamental Rights and Freedoms); other central bodies of executive power (in terms of ensuring and protecting human rights); human rights organizations (national and international); research institutions; mass media. Therefore, the mechanism for the protection of rights is a system of institutions, bodies, officials, organs and NGOs, aimed at protecting human and citizen rights.

It is known that the only body of legislative power in Ukraine is its parliament - *Verkhovna Rada of Ukraine*, which in accordance with Article 91 of the Constitution of Ukraine adopts laws, resolutions and other acts. In the following article 92, it is determined that exclusively the laws of Ukraine define

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<sup>87</sup> Hryshko O (2017) Mechanism for human rights protection in Ukraine. *Legal regulation of economy N16*, pp. 33-43. Retrieved from: [https://kneu.edu.ua/userfiles/24\\_11\\_2015/2017/5\\_pdf.pdf](https://kneu.edu.ua/userfiles/24_11_2015/2017/5_pdf.pdf)

human and citizen rights and freedoms, guarantees of these rights and freedoms<sup>88</sup>.

The *Committee of the Verkhovna Rada of Ukraine on Human Rights, National Minorities and International Relations* is responsible for the following issues: observance of human and citizen rights and freedoms; activities of the Commissioner for Human Rights of the Verkhovna Rada of Ukraine; citizenship, status of foreigners and stateless persons, etc. Under article 33 of the Law of Ukraine "On Committees of the Verkhovna Rada of Ukraine"<sup>89</sup> it is determined that if the committee establishes a violation of the rights, freedoms and interests of a person and a citizen, the interests of the state, territorial community protected by law, the committee sends such materials for appropriate response to state bodies or local self-government bodies.

Parliamentary control over constitutional compliance on human and citizen rights and freedoms and protection of everyone's rights on the territory of Ukraine and within its jurisdiction is carried out by the *Commissioner of the Verkhovna Rada of Ukraine for human rights* (Article 55 of the Constitution of Ukraine provides that everyone has the right to apply for the protection of their rights to the Commissioner of the Verkhovna Rada of Ukraine for human rights).

Article 102 of the Constitution of Ukraine stipulates that the President of Ukraine is the guarantor of the observance of human and citizen rights and freedoms. In particular, with the aim of improving activities related to the establishment and provision of human and citizen rights and freedoms in Ukraine, the Presidential Decree approved the National Strategy in the field of human rights<sup>90</sup>, which was determined by the need to improve the activities of the state in respect of the establishment and provision of human rights and freedoms, as well as the creation of an effective protection mechanism in Ukraine on human rights and freedoms.

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<sup>88</sup> Constitution of Ukraine (1996). Amended as of 2020. Kyiv. Retrieved from: <https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80/ed20200101#Text>

<sup>89</sup> Law of Ukraine «On Committees of the Verkhovna Rada of Ukraine» of April 4, 1995, No. 116/95-VR (as amended). *The official web portal of the Verkhovna Rada of Ukraine*. Retrieved from: <http://www.rada.gov.ua>

<sup>90</sup> Decree of the President of Ukraine «On Approval of the National Strategy for Human Rights» dated August 25, 2015, No. 0501/2015. *The official web portal of the Verkhovna Rada of Ukraine*. Retrieved from: <http://www.rada.gov.ua>

Article 116 of the Constitution of Ukraine stipulates that *the Cabinet of Ministers of Ukraine* takes measures to ensure the rights and freedoms of man and citizen. In particular, the Cabinet of Ministers of Ukraine by its order appoints the Government Commissioner for the European Court of Human Rights, who ensures the representation of Ukraine at the European Court of Human Rights.

The *Ministry of Internal Affairs of Ukraine* is the main body of the system of central bodies of executive power, which provides formation of state policy in the field of protection of human rights and freedoms, interests of society and the state, maintenance of public safety and order, as well as provision of police services. Article 1 of the Law of Ukraine "On the National Police"<sup>91</sup> defines that the police is a central body of executive power that serves society by ensuring the protection of human rights and freedoms, countering crime, maintaining public safety and order.

The *Constitutional Court of Ukraine* is a body of constitutional jurisdiction in Ukraine, which ensures the supremacy of the Constitution of Ukraine, resolves the issue of conformity of the Constitution of Ukraine with the laws of Ukraine and in cases provided for by the Constitution of Ukraine other acts, carries out the official interpretation of the Constitution of Ukraine.

According to Article 8 of the Constitution of Ukraine, recourse to court is guaranteed to protect the constitutional rights and freedoms of a person and a citizen, and Article 55 provides that the rights and freedoms of a person and a citizen are protected by a court. Article 7 of the Law of Ukraine "On the Judiciary and the Status of Judges"<sup>92</sup> states that everyone is guaranteed the protection of their rights, freedoms and interests within a reasonable time by an independent, impartial and fair court established by law.

The implementation and protection of the rights, freedoms and duties of a person and a citizen are also carried out by courts of general jurisdiction, which specialize in civil, criminal, economic, administrative cases, as well as cases of

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<sup>91</sup> Law of Ukraine «On National Police» dated July 2, 2015 No. 580-VIII (as amended). The official web portal of the Verkhovna Rada of Ukraine. Retrieved from: <http://www.rada.gov.ua>

<sup>92</sup> The Law of Ukraine «On the Judiciary and Status of Judges» of June 2, 2016, No. 1402-VIII. The official web portal of the Verkhovna Rada of Ukraine. Retrieved from: <http://www.rada.gov.ua>



administrative offenses. Court, administering justice based on the principles of the rule of law, ensures the protection of the rights and freedoms of a person and citizen, the rights and legitimate interests of legal entities, the interests of society and the state, guaranteed by the Constitution and laws of Ukraine. Courts of general jurisdiction form a single system of courts.

According to the Law of Ukraine "On Advocacy"<sup>93</sup>, the Bar of Ukraine is a non-state self-governing body an institution that provides protection, representation and provision of other types of legal assistance (advocacy for providing legal information, consultations and clarifications on legal issues, legal support of the client's activities, drafting statements, complaints, procedural and other documents of a legal nature, aimed at ensuring the realization of the rights, freedoms and legitimate interests of the client, preventing their violations, as well as on facilitating their restoration in case of violation) on a professional basis.

Thus, the mechanism for ensuring human rights in Ukraine is determined by the totality of its elements (normative and institutional). And in the case of exhaustion of the national mechanism for ensuring human rights, everyone has the right to apply the international mechanism for ensuring human rights (both at the regional and global levels), while the reform of decentralisation in Ukraine (started in 2016) allowed for a creation of a vast mechanism on human rights protection in Ukraine.

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<sup>93</sup> Law of Ukraine «On Advocacy and Advocacy» dated July 5, 2012 No. 5076-VI (as amended). The official web portal of the Verkhovna Rada of Ukraine. Retrieved from: <http://www.rada.gov.ua>

## **CHAPTER III - Ukraine`s latest developments in human rights protection: judicial system and fundamental rights**

### **3.1. Russia`s war of aggression and the state of human rights in Ukraine in 10-year-span (2014-2024)**

On February, 24 2022 at 5 a.m. Russia did not begin a war against Ukraine, rather it was an unprovoked full-scale *continuation* of a colonial hybrid war launched back in 2014 with the annexation of Crimea in March and the so-called “russian spring” in the east of Ukraine, which took place shortly after the unlawful referendum was held on a peninsula. The events of February 2022 can be regarded as a consequence of the Revolution of Dignity and the choice the people of Ukraine made within it - to accede to the European Union.

It all started on February, 20 alongside the political crisis Ukraine tried to deal with in the aftermath of the Revolution of Dignity, as democracy was unstable, when Russian special forces seized the Crimea peninsula, unlawfully entering the Parliament of Crimea. The seizure was against the rules of international law and the bilateral agreements signed between Ukraine and Russia (1997). Shortly after having declared a “muppet” regime with the head Serhiy Aksyonov, the head of this very pro-Russian regime addressed Vladimir Putin to contribute to “peace and tranquility” in the region. In one week from 11 to 17th of March the Autonomous Republic of Crimea declared its independence and organised an antidemocratic referendum, which stated that 96,77% of people supported the new status of Crimea<sup>94</sup>. Later such high numbers of support towards annexation will be seen in the occupied territories after February 2022.

According to the opinion of the Venice Commission, this referendum was illegal under Ukrainian and Crimean Constitutions and violated international standards of conducting a referendum<sup>95</sup>, as 1) secession of a part of the territory of

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<sup>94</sup> Pifer S (2020) Crimea: Six years after illegal annexation. Brookings. March 17, 2020. Retrieved from: <https://www.brookings.edu/blog/order-from-chaos/2020/03/17/crimea-six-years-after-illegal-annexation>

<sup>95</sup> Venice Commission (2014) Draft Opinion on "whether the decision taken by the Supreme Council of the

the country cannot be the object of a local referendum; 2) Ukraine`s constitution enjoys supremacy over Crimean one; 3) Ukraine did not adopt a law regulating local referendums; 4) the wording of referendum questions is not put in a neutral way.

Afterwards, in late March both pro-Russian and pro-European manifestations (somewhat peaceful and somewhat violent) took place in the east and south of Ukraine. Pro-Russian demonstrations were supported by Russian special services, mercenaries and citizens, who stood up against the changes the Revolution of Dignity brought about. During the manifestations an idea of the creation of “people`s republics” was put forward, therefore, in a month, Russian subversive groups invaded the territories of Donetsk and Luhansk regions, occupied forcefully the local administrations and organised puppet regimes on the respective territories, called Donetsk People`s Republic (April, 7) and Luhansk People`s Republic (April,12). There were also attempts to destabilise with separatist creations Kharkiv, Zaporizhzhia, Dnipro, Kherson, Mykolayiv and Odessa regions<sup>96</sup>.

On April 12, the National Security and Defense Council of Ukraine adopted a decision (by the Decree "On urgent measures to overcome the terrorist threat and preserve the territorial integrity of Ukraine") to launch the Anti-Terrorist Operation (ATO) (since 2018 - the Joint Forces Operation (JFO)) aimed at countering the activities of Russian and pro-Russian armed groups in eastern Ukraine. This was the beginning of Russia's undeclared war against Ukraine in Donbas<sup>97</sup>.

Throughout 2014-2022 Russia`s participation in this war, she claimed to be a civil one, was proven by the battles for Donetsk and Luhansk airports, Ilovaisk, the offensive on Mariupol (2014); 2015: battles for Debaltseve;

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Autonomous Republic of Crimea in Ukraine to organise a referendum on becoming a constituent territory of the Russian Federation or restoring Crimea's 1992 constitution is compatible with constitutional principles". Retrieved from:

[https://www.venice.coe.int/webforms/documents/?pdf=CDL\(2014\)019-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL(2014)019-e)

<sup>96</sup> MFA Ukraine, official website. How long does Russia's aggression against Ukraine really last? March 2022. Retrieved from: <https://war.ukraine.ua/the-history-of-russian-aggression-in-ukraine/>

<sup>97</sup> Ibid

2016-2022: positional battles for Avdiivka, Maryinka, Svitlodarsk bulge)<sup>98</sup>. Yet Russia did not admit its participation and demanded that negotiations would be conducted with the representatives of the so-called "people's republics". The Minsk Agreements (September 5, 2014 - February 12, 2015) and the Normandy meetings (2014 - 2021) in a quadripartite format of representatives of Ukraine, Germany, France and Russia became an attempt to solve the Russian-Ukrainian "situation". However, Minsk agreements were ignored by Russian mercenaries and it contributed to more than fourteen thousands deaths in the east of Ukraine pre-February 2022<sup>99</sup>.

The annexation of Crimea was condemned by the Resolution 68/262 of the UN General Assembly, which supported territorial integrity of Ukraine within its internationally recognized borders. The United Nations Human Rights Monitoring Mission in Ukraine (HRMMU) has documented serious human rights and humanitarian law violations since the Russian Federation illegally annexed Crimea. In its report<sup>100</sup> from February, 2024 HRMMU notes that Russian authorities impose citizenship, legal and administrative systems, which is against international humanitarian law; over the last decade local authorities applied discriminative laws and measures against Ukrainians and Crimean tatars, including detention, repression, torture and disappearance. Crimean Tatars were denied access to freedom of expression, assembly and religion. Those who did not accept Russian citizenship were considered "foreigners" and could no longer reside in Crimea. On the other side, Russian "unlawful settlement" took place, with Russians overtaking illegally "empty" houses or buying already owned property of those who fled the peninsula, fearing persecution, resulting in at least 100,000 Russian citizens having relocated to the peninsula between 2014 and 2017. As evidence to this, the report gives another resolution of the State Council

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<sup>98</sup> Y.Yashyna, M.Suprun, K.Knysh (2020) Evidences of Russian military aggression against Ukraine. Lviv: Litopis, p.12

<sup>99</sup> Ukraine's Struggle for Independence in Russia's Shadow (2022) The Council on Foreign Relations Journal. Retrieved from <https://www.cfr.org/media/59214/modal?anchor=timeline-59214>

<sup>100</sup> Ten years of occupation by the Russian Federation: Human rights in the Autonomous Republic of Crimea (2024) Human Rights Monitoring Mission in Ukraine. Retrieved from: <https://ukraine.un.org/sites/default/files/2024-02/2024-02-28-OHCHR-Ten-Years-Occupation-Crimea.pdf>

of the Republic of Crimea (December 2022), which initiated the free transfer of Crimean land to Russian Federation service members taking part in hostilities in Ukraine, those disabled during conflict, and family members of those killed. Also, as of December 2023, the Mission reported that at least 30,000 Crimean Tatars were conscripted to Russian military forces to take part in hostilities against Ukraine.

From 2017 to 2024, Crimean courts ordered the deportation of at least 864 individuals (mostly Ukrainian citizens) considered foreigners under Russian Federation law. On 24 Such all-encompassing restrictions ultimately effectively compelled residents to assume Russian citizenship. By 2024, only around 0.5% of the official residents of Crimea did not hold such citizenship. The same occurred to independent media on a peninsula: broadcasts of Ukrainian television channels were shut off, with Russian TV channels broadcast in their place. In June 2014, the only Ukrainian language newspaper, Krymska svitlytsia, was banned from distribution, Crimean Tatar media outlets TR and Avdet were among those denied reregistration under Russian Federation legislation and thus compelled to cease operations on the peninsula; Human rights NGOs informed HRMMU that the authorities blocked their websites without prior notice.

To prove that Russian forces are present in the east of Ukraine the Prosvita Institute together with the Office of NATO Representation in Ukraine issued four parts of the book “Evidence of Russian military aggression against Ukraine”, almost one thousand pages, that gather identified data of Russian military personnel as well as Russian military equipment used in Ukraine, together with footages of their locations and usage. But one of the most prominent, yet horrific evidence of their presence became the case presented before the European Court of Human Rights on January 25 in 2023<sup>101</sup>. The case involved Ukraine and the Netherlands, while Ukrainian claims were brought against Russia with the link to shooting down an airliner MH17 over the east of Ukraine, which brought about

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<sup>101</sup> Tropin Z (2023). ECHR ruling confirms Russian invasion of Ukraine began in 2014. The Atlantic Council. Retrieved from: <https://www.atlanticcouncil.org/blogs/ukrainealert/echr-ruling-confirmsrussian-invasion-of-ukraine-began-in-2014/>

the deaths of 298 people. The ECHR ruling upholds that the full-scale invasion of February, 24 2022 was a continuation of the war that began in 2014. It dismissed Russian attempts to depict so-called separatist republics in eastern Ukraine as legitimate units. Moreover, any subsequent Russian attempts to justify the ongoing invasion of Ukraine by claiming it was prompted by pleas from their puppet regimes were rejected by the ruling.

The report of the UN Human Rights Monitoring Mission in Ukraine found at least 4000 cases of ill-treatment, torture and disappearances. However, not so much information can be attained, as independent monitors are not allowed on self-proclaimed people's republics. One of the grave examples of the report's findings<sup>102</sup> is "Isoliatsiya" - once created as an art center in Donetsk, served as a premise for detention and torture and reminisced of a concentration camp. One of the prisoners Stanislav Asyeyev, who spent 28 months in Isoliatsiia, described the tortures he saw in a book<sup>103</sup>: "One man was tortured with an electrode in his anus - and he tried to open his veins with a nail...they simply opened the cells of prisoners, including women, at night, and simply beat the prisoners. Also, people could, for example, be asked to "hold the wall", when you spread your arms and legs and rest your head against the wall. And you stand like that for several days until you fall. As soon as a person falls, they start beating him...Also, in "Isolation" the lights are on 24 hours a day in the cells. After my release I had a problem, I couldn't sleep normally without light. People were also forced to climb under bunks, bark like dogs, or sing Soviet songs while being tortured". "Isoliatsiia" was used as a detention and torture centre for those convicted in espionage or pro-Ukrainian views on the territory of so-called Donetsk People's Republic.

During the spring-autumn 2021 Russia started to accumulate military equipment and personnel close to the borders with Ukraine. On February, 22 the president of Russian Federation declared the so-called people's republics in the

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<sup>102</sup> Human rights violations permeate conflict in eastern Ukraine (2020). UN report. Retrieved from: [https://www.voanews.com/a/europe\\_un-report-human-rights-violations-permeate-conflict-eastern-ukraine/6208123.html](https://www.voanews.com/a/europe_un-report-human-rights-violations-permeate-conflict-eastern-ukraine/6208123.html)

<sup>103</sup> Asyeyev S.(2021) In Isolation: essays on Donbas. Chorna Hora, Kyiv, 216 p.

east of Ukraine - independent and exited the Minsk Agreements. The full-scale invasion that started on February, 24 2022, violated an array of international agreements and mechanisms (at least 400), including the Budapest Memorandum (1994), the UN Charter, the Genocide Convention, Helsinki Declaration, ECHR, Charter of the Council of Europe etc. Since Russia annexed Crimea and occupied the east of Ukraine, Ukraine officially derogated from some of the provisions of the ECHR of the Council of Europe, as it could not guarantee the compliance with human rights on the temporarily occupied territories as well as under the rule of martial law, which is a regular procedure and does not necessarily imply that Ukraine tends to a dictatorship and violations of human rights.

During the first weeks of the full-scale invasion Russian armed forces seized the Chernobyl Nuclear Power Plant, creating a potential nuclear danger for the whole region, attacked civilian infrastructure in a number of Ukrainian cities, including a kindergarten in Sumy region, which violated Rome Statute, seized a number of cities, such as Melitopol, Berdiansk, Kreminna and Mariupol, several rounds of peace negotiations were conducted without any further results, as according to Russian peaceful plan, Ukraine needed to abstain from the aspirations to join NATO, abolish laws on the functioning of Ukrainian language, forget about contested territories in the east and south (including Crimea). On 16 March 2022, the International Court of Justice ordered the Russian Federation to suspend the military operations<sup>104</sup>. After the counteroffensive of Ukrainian army took place in the north and east of Ukraine, the world was revealed with the atrocities Russian army committed on those territories. As of June 2022, at least 20% of the territory of Ukraine was under the control of the Russian Federation, which amounts to 125 thousand square kilometers or equals to the area of Bulgaria, Iceland, South Korea or ½ of Italy<sup>105</sup>.

During a successful counteroffensive, as of January 2023, the Armed

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<sup>104</sup> Allegations of Genocide under the Convention on the Prevention and Punishment of the Crime of Genocide (Ukraine v. Russian Federation), Order, 16 March 2022. Retrieved from: <https://www.icj-cij.org/public/files/case-related/182/182-20220316-ORD-01-00-EN.pdf>.

<sup>105</sup> Mind.(2022) 20% of the territory of Ukraine is occupied by Russia, and Donbas is almost destroyed – Zelenskyi (20% території України окуповано росією, а Донбас майже зруйновано – Зеленський)

Forces of Ukraine liberated 40% of the territories occupied by Russia after February 24<sup>106</sup>. Figure 2 shows the areas of temporary Russian occupation prior and after the full-scale invasion<sup>107</sup>.



**Figure 2. How military control of Ukraine has changed prior and after the full-scale invasion**

The Independent International Commission of Inquiry on Ukraine conducted an investigation and produced a report about its findings from February-March 2022 in Ukraine. The Commission found evidence of violations against both civilians and Ukrainian defenders: usage of cluster munition and unguided rockets by the Russian army, proofs of shooting civilians trying to flee, as well as summary executions, unlawful confinement, torture, torture chambers for children, ill-treatment, rape, collective rape and other types of sexual violence (victims aged 2-94 years) committed in areas occupied by Russian armed forces. As of 17

<sup>106</sup> Babel.(2023) The Armed Forces of Ukraine liberated 40% of the territories occupied by Russia after February 24. Retrieved from: <https://babel.ua/en/news/88939-the-armed-forces-of-ukraine-liberated-40-of-the-territories-occupied-by-russia-after-february-24>

<sup>107</sup> Brown D, Hurrell B.(2023) Ukraine in maps: Tracking the war with Russia. BBC News. Retrieved from <https://www.bbc.com/news/world-europe-60506682>



October 2022, OHCHR had recorded 6,306 people killed and 9,602 wounded in all of Ukraine since 24 February 2022<sup>108</sup>. What happened in Bucha, Hostomel and Irpin showcases a genocidal behaviour and shall be trialed in International Criminal Court<sup>109</sup>. After these findings Russia was suspended from Human Rights Council.

In October 2023, the Commission produced another report with evidence on wilful killing, torture, rape and other sexual violence, and the deportation of children to the Russian Federation. “A 75-year-old woman who stayed alone to protect her property, was attacked by a Russian soldier who hit her on her face, chest, and ribs, strangled her, as he was interrogating her. He ordered her to undress and when she refused, he ripped off her clothes, cut her abdomen with a small sharp object and raped her several times. In addition to the consequences of the rapes, the victim suffered several broken ribs and teeth”<sup>110</sup> The Office of the United Nations High Commissioner for Human Rights (OHCHR) verified a total of 30,457 civilian casualties during Russia's invasion of Ukraine as of February 15, 2024, but the actual number is believed to be much higher. Another undermining of a morale of Ukrainian people came with attacks on energy infrastructure in 2022 and 2024. Overall, these attacks damaged at least half of the energy facilities of Ukraine causing power and electricity shortages all over its territory.

Additionally, according to the information produced by Children of War Initiative, at least 19,500 children were forcefully deported to Russia, while Ukraine was able to return only 388 of them throughout 2022-2024. Putin and Lvova-Belova were issued with a warrant for unlawful transfer of Ukrainian

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<sup>108</sup> Independent International Commission of Inquiry on Ukraine (2022). Retrieved from: <https://documents.un.org/doc/undoc/gen/n22/637/72/pdf/n2263772.pdf?token=iXX7kHjk44rZyTft9S&fe=true>

<sup>109</sup> Deutsch A (2024) Hallmarks of genocide in Russian crimes across Ukraine. Reuters. Retrieved from: <https://www.reuters.com/world/europe/hallmarks-genocide-russian-crimes-across-ukraine-ukrainian-prosecutor-says-2024-04-02/>

<sup>110</sup> Independent International Commission of Inquiry on Ukraine (2023). Retrieved from: <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/coiukraine/A-78-540-AEV.pdf>

children and adoption of the latter by Russian families<sup>111</sup>. Russia violated the right to education by destroying at least 3,790 educational facilities since February, 2022 according to Human Rights Watch<sup>112</sup>.

While Bucha, Hostomel and Irpin are notorious for the civilian massacres carried out by Russian military in spring 2022, Olenivka is infamous for the mass killings of Ukrainian prisoners of war, which took part in summer 2022. The barracks were blown up within the building, causing at least 62 prisoners of war and wounding 75-130. Ukrainian authorities provided satellite images of pre-dug graves and intercepted communications indicating Russian culpability in this case. A fact-finding mission was meant to be started, as promised by the UN-Secretary General, albeit Russia refused to cooperate with the UN and Ukraine<sup>113</sup>. Another evidence of prisoners of war treatment was released as a video of an unarmed Ukrainian defender, who was smoking a cigarette, and said “Glory to Ukraine” after these words he was relentlessly shot several times. Hundreds of videos of this type were released by Russian soldiers and gathered by Ukrainian prosecutors for building up a case in Hague.

One of the most exponential cases of damage to ecology, a true ecocide during this war of aggression happened in June, 2023 when Russian military forces, having total control over mined Kakhovka HPP, blew it, causing a total destruction of the neighbouring areas, including residential area and national park “Askaniya Nova”. No independent team had access to the dam to monitor and investigate the case, however, a week earlier on May 30 Russia adopted new legislation prohibiting the opening of investigations into accidents that might occur on "hydraulic structures" in the context of its military operations in the

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<sup>111</sup> Ukrainian children deported to Russia: plenary debate (2024). Retrieved from: <https://www.europarl.europa.eu/news/en/agenda/briefing/2024-03-11/12/ukrainian-children-deported-to-russia-plenary-debate>

<sup>112</sup> Ukraine: War's toll on schools, children's future (2023). Human Rights Watch. Retrieved from: <https://www.hrw.org/news/2023/11/09/ukraine-wars-toll-schools-childrens-future>

<sup>113</sup> Tragedy in Olenivka was not caused by Ukrainian forces launching HIMARS missile (2023). Mind. Retrieved from: <https://mind.ua/en/news/20263586-un-tragedy-in-olenivka-was-not-caused-by-ukrainian-forces-launching-himars-missile>

"annexed" Ukrainian regions of Donetsk, Luhansk, Kherson and Zaporijjia<sup>114</sup>.

Last but not least, nobody shall or will be able to forget what has been done in Mariupol - a city in the Donetsk region, which stood against occupation for four months, Azovstal, as its last fortress fell in May 2022. The documentary "20 days in Mariupol" produced by Mstyslav Chernov and his team depicts the first most horrifying twenty days in Mariupol, when Russia shelled residential areas, killed thousands of civilians, shelled maternity hospital, bombed the Mariupol Theatre, which was a major bombshelter for civilians, killing at least 300 people, cut the suppliance of food and water by Ukrainian volunteers, which caused cholera and famine; the city witnessed the fleeing of representatives of international organisations, journalists and investigative reporters as well as massive burying as morgues were overcrowded. The city was on its own. As a result of military actions, 90% of the city infrastructure was destroyed.

The war against colonialism, dictatorship and tyranny continues; as this thesis is being worked on, Russian military forces are trying to advance in the Kharkiv direction, destroying Vovchansk to the ground.

### **3.2.Candidate status of Ukraine: toward fulfillment of "Seven EU requirements" throughout 2022-2024**

As in June 2022 the European Commission advised the European Council to grant Ukraine a candidate status, not all Member States welcomed this decision. Some mentioned the impossibility of accession due to ongoing war and instability of officially recognised borders of the country, while others addressed the human rights agenda in Ukraine or issues related to the rule of law, fair justice and economic challenges. Yet, on June, 23 2022 the European Union welcomed Ukraine into candidate status by Resolution of the European Parliament with 529 votes for and the respective decision of the European Council. This, according to vice-premier for european integration of Ukraine, meant the following<sup>115</sup>: 1) the EU officially recognises and legally approves the European future of Ukraine; 2)

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<sup>114</sup> Petit F. (2023)Kakhovka dam: Ukraine pioneers prosecution for ecocide. Justiceinfo. Retrieved from:

<https://www.justiceinfo.net/en/119148-kakhovka-dam-ukraine-pioneers-prosecution-ecocide.html>

<sup>115</sup> Ukraine gained a candidate status (2022). Official website of Cabinet of Ministers of Ukraine.<https://www.kmu.gov.ua/news/ukrayina-otrimala-status-kandidata-na-chlenstvo-v-yes>

Ukraine continues adapting its legislation to *acquis* and implements needed reforms; 3) financial support will be available to Ukraine as a country on the road to EU membership in technical assistance, investments and grants; 4) cooperation development, as Ukraine will gain access to EU initiatives and programs aimed at EU Member States and candidate countries.

According to C. Bastasin, there are three reasons for the surprising acceleration of Ukraine's accession procedure. The first is that most European governments hope that EU accession would push away Kyiv's request for joining NATO immediately, as many European leaders fear it would cross Russian President Vladimir Putin's red line and draw the EU into a frontal clash with Russia; the second is that, however the military campaign ends, it would be too dangerous to leave Ukraine unmoored from Europe and at risk of persistent instability; the third is that Europe has not much else to offer to Kyiv, neither ammunitions nor money<sup>116</sup>. While this viewpoint may hold truth within its lines, no acceleration is in sight, as Ukraine needs to maintain democratic stability in war, continue carrying out reforms in all respective fields, while maintaining human rights agenda and the functioning of judicial system as top priority, so as not to backslide.

To maintain the candidate status and open the accession negotiations, the EU put forward the so-called "seven requirements": 1) introduction of a new procedure for the selection of judges to the Constitutional Court with a preliminary check of integrity and professional qualities in accordance with the recommendations of the Venice Commission; 2) continuation of the judicial reform: completion of formation of the High Council of Justice and the High Qualification Commission of Judges of Ukraine; 3) fight against corruption: appointment of the head of the SAP and the director of the NABU; 4) fight against money laundering and law enforcement reform; 5) implementation of the anti-oligarchic law in accordance with the recommendations of the Venice Commission; 6) adoption of the law on media, harmonized with the audiovisual

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<sup>116</sup> Bastain C. (2023) Want Ukraine in the EU? You'll have to reform the EU too. *Brookings*. Retrieved from: <https://www.brookings.edu/articles/want-ukraine-in-the-eu-youll-have-to-reform-the-eu-too/>

directive of the EU; 7) completion of the reform of legislation on national minorities in accordance with the recommendations of the Venice Commission.

In its conclusions on enlargement and the Stabilisation and Association Process, the EU Council refers for the first time to Ukraine, Moldova, and Georgia in December 2022. Enlargement policy is mentioned in the document as one of the EU's strategic priorities to "firmly anchor peace, democracy, prosperity, security and stability" in Europe<sup>117</sup>.

The Communication on EU Enlargement Policy (Ukraine) of 2023 highlighted the efforts of Ukraine's government and people in moving towards EU accession: democratic decision-making process was marked as continuous, yet transparency of it was hindered by security issues related to the ongoing war; as regards, the functioning of the judiciary, Ukraine had some level of preparation and must continue its efforts. Despite the Russian war of aggression, Ukraine continued to deliver justice services and made good progress on the implementation of the 2021 reform of the judicial governance bodies focused on integrity and professionalism. As for fundamental rights, the Communication states that despite the compliance of Ukraine with most of international instruments on human rights protection, the major problem pertains to Russian atrocities and war crimes being committed, while the number of registered discrimination against minorities, including against LGBTIQ persons and national minorities as well as antisemitic acts, has strongly decreased in Ukraine. The situation of children (but also of older persons) in care institutions as well as persons with disabilities remains difficult, but commitments on the deinstitutionalisation of childcare and to rebuilding Ukraine in a barrier-free manner are promising and need to be implemented as a priority<sup>118</sup>.

The analytical center "New Europe" in cooperation with other Ukrainian public organizations regularly published an expert assessment of Ukraine's

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<sup>117</sup> Council conclusions on enlargement and stabilisation and association process (2022). EU Council. Retrieved from: [https://neighbourhood-enlargement.ec.europa.eu/news/council-conclusions-enlargement-and-stabilisation-and-association-process-2022-12-13\\_en](https://neighbourhood-enlargement.ec.europa.eu/news/council-conclusions-enlargement-and-stabilisation-and-association-process-2022-12-13_en)

<sup>118</sup> Communication on EU Enlargement Policy (2023). Retrieved from: [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD\\_2023\\_699%20Ukraine%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf)

fulfillment of the seven candidate requirements under the name "Candidate Check"<sup>119</sup>. Starting in August 2022, 5 reports were published with scores for each of the 7 areas on a 10-point scale. As of June, 2023 the European Commissioner Oliver Varhej updated the fulfillment of 7 conditions by Ukraine at 2/7. Only one year later in November 2023 the European Commission released a detailed report on the progress of Ukraine in fulfillment of seven requirements, stating that the country fully fulfilled 4/7 conditions and with an overall progress in judicial reform, media laws and the legislation on national minorities, which allowed for a successful negotiations about opening negotiations in December 2023. This was made possible with a constant pressure from European institutions on Hungary and unblocking 10 billion euros in funds for Budapest. The delegation of Hungary left the room in order for the decision for Ukraine to be adopted. The position of Hungary in this matter is not solely based on the pro-russian narratives dominant in the Hungarian society and politics, appeals to the rights of Hungarian minorities in Zakarpattia (Ukraine) and the ongoing war, but rather on fear of Orban for the financial support of Ukraine in the aftermath of war, which will, according to his statement, drive a significant share of funds from supporting Central Europe to Ukraine`s recovery<sup>120</sup>.

There is a pinch of truth in his words, as regards post-war reconstruction. Indeed, Ukraine will need financial support to bring life back to the country. According to the Second Rapid Damage and Needs Analysis (RDNA2) prepared by the World Bank in cooperation with the Ukrainian government, the European Commission and the United Nations in March 2023, the direct damage to Ukraine after a year of war exceeded \$135 billion (USD). The country's reconstruction and rehabilitation needs are estimated at around USD 411 billion as of 24 February 2023, which includes building a modern, low-carbon and resilient country with policies and standards aligned with the EU, i.e., a country that is ready to join the

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<sup>119</sup> Кандидат-Check-5: Where is Ukraine in fulfillment of EU requirements (2023). Nova Europa. Retrieved from: <http://neweurope.org.ua/analytics/kandydat-check-5-de-ukrayina-perebuyaye-u-vykonanni-7-rekomendatsij-yes/>

<sup>120</sup> Katsimon O (2023). Fears of Hungary for Ukraine`s joining EU. Suspilne. Retrieved from: <https://suspilne.media/644162-akso-ukraina-priednaetsa-do-es-to-vsi-grosi-dla-krain-centralnoi-evr-opi-distanutsa-im-orban/>

EU<sup>121</sup>. At the Ukraine Recovery Conference in Lugano in July 2022, the seven requirements of EU were intertwined with the seven guiding principles for Ukraine's recovery process. These are: 1) partnership; 2) reform focus; 3) transparency, accountability and rule of law; 4) democratic participation; 5) multi-stakeholder engagement; 6) gender equality and inclusion; 7) sustainability<sup>122</sup>. The Declaration adopted highlights the reform process in Ukraine with a focus on the foreseeable European integration in the future.

At the meeting of EU ambassadors on May 29, Hungary blocked the approval of the draft negotiation framework for Ukraine's accession to the European Union due to the issue of the rights of national minorities, so the negotiations will not start until the end of June with the newly elected European Parliament and the Hungary's six-month presidency of the EU Council, which begins in July. Hungary will potentially be able to use the presiding authority to block decisions regarding Ukraine that is why it was decided upon between Kyiv and Brussels to open negotiations in late June taking into account the self-screening made by Ukraine and the European Commission.

On February 9, 2024 Ukraine adopted a 114-pages Action Plan<sup>123</sup> pursuant to fulfillment of recommendations by the European Commission to accelerate the opening of negotiations. The document involved policymaking, adopting legislation and introducing methodology in all the clusters. As for the rule of law, fair justice and human rights protection, the Action Plan foresaw:

- Adopting a law on fair lobbying (this will be a part of anti-oligarchic influence on public sector in Ukraine);
- Resuming the selection of employees for public service on a competitive basis, as martial law “postponed” the competitive selection until the end of war;

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<sup>121</sup> Ukraine Rapid Damage and Needs Assessment (2023). World Bank. Retrieved from: <https://documents1.worldbank.org/curated/en/099184503212328877/pdf/P1801740d1177f03c0ab180057556615497.pdf>

<sup>122</sup> Lugano Declaration adopted on July,5 2022. Retrieved from: [https://uploads-ssl.webflow.com/621f88db25fbf24758792dd8/62c68e41bd53305e8d214994\\_URC2022%20Lugano%20Declaration.pdf](https://uploads-ssl.webflow.com/621f88db25fbf24758792dd8/62c68e41bd53305e8d214994_URC2022%20Lugano%20Declaration.pdf)

<sup>123</sup> Action Plan on fulfillment of the European Commission's recommendations (2024). Cabinet of Ministers of Ukraine. Retrieved from: <https://zakon.rada.gov.ua/laws/show/133-2024-%D1%80#Text>

- Filling vacant positions of judges of the Constitutional Court of Ukraine in accordance with the requirements of the law;
- Renewing the selection for the post of judge on the basis of improved legislation, in particular regarding clear criteria of integrity and professionalism and a strong role of the Public Integrity Council;
- Increasing the number of judges of the High Anti-Corruption Court and restoring the work of the Public Council of International Experts;
- Adopting legislation aimed at implementing the provisions of the Council of Europe Convention on the Prevention of Violence against Women and Domestic Violence;
- Completing the revision of the legislation on the rights of persons belonging to national minorities, in particular in the field of education, media and the use of the state language, as well as the law on national minorities in accordance with the recommendations of the conclusion of the Venice Commission of June 2023;
- Ensuring compliance of restored and rebuilt infrastructure with barrier-free environment standards;
- Developing a road map to support the recovery of a pluralistic, transparent and independent post-war media space;
- Working towards the ratification of the Rome Statute of the International Criminal Court (ICC) and related documents (possible only after cancellation of martial law).

On April 2024, the Government Office for Coordination of European and Euro-Atlantic Integration of the Secretariat of the Cabinet of Ministers of Ukraine submitted to the European Commission the first Report of Ukraine on the implementation of the reform recommendations identified for Ukraine in the Ukraine Progress Report under the EU Enlargement Package 2023. The Report consists of 1600 pages and observes the decisions and laws adopted by Ukraine between June 15, 2023 and March 31, 2024. Therefore, the Report contains updated information on 33 negotiating chapters, political and economic criteria, including data on Ukraine's implementation of the European Commission's recommendations. In addition, this year, a new methodology was applied,



according to which most of the negotiating chapters were analyzed from the perspective of the anti-corruption component<sup>124</sup>. The report is not available for public yet, however, it is based on the Action Plan from February 2024, mentioned above.

The maintenance of candidate status, while continuing the reformative process, harmonising legislation with the EU acquis and protecting the country's territorial integrity, makes Ukraine a case of a bombed path towards EU, where time, resilience of the people, safeguard of fundamental rights and establishment strong and fair judiciary will tell, whether the country will join the EU. The rest of this chapter will focus on the progress made during the full-scale invasion in judiciary reform, human rights protection and the role of civil society in promoting both of them.

### **3.2.1. Reformation of judicial system: pitfalls and achievements**

Courts in Ukraine remain a social institution with one of the lowest levels of trust. In 2018, only 1.7% of citizens fully trusted the courts, and the overall level of trust did not exceed 8%. The judicial reform launched after the Revolution of Dignity did not bring the desired results. Less than 1% of citizens considered it completely successful, purporting the failure to corruption within the system. According to the survey by USAID in Ukraine of 2020, the situation changed with every sixth Ukrainian trusting domestic courts<sup>125</sup>.

An effective, independent and virtuous justice system is not only a precondition for EU accession, but also a condition for the survival of the state. Therefore, judicial reform was not just a matter of time during the war - a full-scale invasion made it even more relevant.

According to the “Agreement Pulse” as of progress in June 2024, Ukraine implemented and fulfilled the requirements in area of justice and fundamental rights at 33%, while the overall progress throughout the years

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<sup>124</sup> Ukraine submits the first Report on the implementation of the reform recommendations (2024). Cabinet of Ministers of Ukraine. Retrieved from: <https://www.kmu.gov.ua/en/news/ukraina-peredala-ievropeiskii-komisii-pershyyi-zvit-u-mezhakh-pak-eta-rozshyrennia-ies-2024-roku>

<sup>125</sup> Public trust barometer (2020). New Justice USAID. Retrieved from: [https://newjustice.org.ua/wp-content/uploads/2021/03/Public\\_Trust\\_Barometer\\_Report\\_1st\\_Stage\\_2020\\_UKR.pdf](https://newjustice.org.ua/wp-content/uploads/2021/03/Public_Trust_Barometer_Report_1st_Stage_2020_UKR.pdf)

(2014-2024) in this field is fixed at 92%<sup>126</sup>.

The 2021-2023 strategy for enhancing the justice system and constitutional judiciary has outlined key reform priorities in the justice sector, such as restructuring local courts, revamping key judicial governance bodies, enhancing the Supreme Court's function to ensure consistency in jurisprudence, advancing alternative dispute resolution, appointing new judges, reforming prosecution processes, and restructuring the Constitutional Court. The strategy included various reform measures, with a significant focus on the restructuring of judicial governance bodies and the appointment process for CCU judges, which were successfully put into effect. No official review was done to gauge the strategy's implementation. However, it is necessary to create a new strategy for reforming the justice system to address wartime challenges in a transparent and inclusive way.

In May 2023, the President of Ukraine approved a profound strategic plan to reform the law enforcement bodies during the period of 2023-2027. Among other measures, the strategy included broad reform guidance for the prosecution service, including the strengthening of its coordination role over the law enforcement agencies and raising legal certainty and uniformity of practice in criminal procedures. An action plan, that will define the expected results, tasks and performance indicators for the strategic plan, is being finalised by the inter-agency working group and with the involvement of the EU experts. Its speedy adoption and steady and consequent implementation should lead to concluding the reform process in the area<sup>127</sup>.

To crucial achievements in this field over the 2022-2024 span one can add that Ukraine has successfully completed the reform of two key bodies of judicial governance: the High Council of Justice and the High Qualification Commission of Judges with the meaningful involvement of independent experts.

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<sup>126</sup> Agreement Pulse. Monitoring of the implementation plan of the Agreement. Official website. <https://pulse.kmu.gov.ua/en/current-progress>

<sup>127</sup> Communication on EU Enlargement Policy (2023). Retrieved from: [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD\\_2023\\_699%20Ukraine%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf)

This reform was realised because of insufficient autonomy and transparency of the judiciary from the executive and legislative branches, low public trust in the judiciary, high levels of corruption and the strong presence of vested interests in the work of courts. The reform started in July 2021 with the adoption of legislation that foresaw integrity vetting for the HCJ sitting and candidate members, as well as integrity and professionalism checks of HQCJ candidates. Moreover, the legislation incorporated a temporary yet strong role for independent experts nominated by international donors, including the EU, in the respective selection and vetting bodies. The reform was fully aligned with the relevant Venice Commission recommendations, focusing on strengthening integrity and public trust in the judiciary. It helped the government to start filling up more than 2000 vacancies and revive the qualification evaluation (vetting) of sitting judges.

Ukraine also adopted the law on a transparent and merit-based preselection of judges of the Constitutional Court in 2023<sup>128</sup>, in line with the Venice Commission recommendations, and started implementing it. It was a long road, since December 2022, when Ukraine adopted a law to reform the selection procedure for future CCU judges, which was not compliant with the above mentioned Venice Commission's recommendations, as the Advisory Group of Experts were not granted a decisive role in the preselection procedure, and thus, constrained public trust in the CCU decisions and reputation, previously damaged by cases of corruption and controversial rulings.

Therefore, in July 2023, Ukraine adopted amendments to the CCU Law, which implemented the outstanding Venice Commission recommendations contained in its Opinions<sup>129</sup> on CCU reform from December 2022 and June 2023. Following the adoption of these amendments, the CCU judges selection commenced. The Parliament and the Council of Judges announced competitions to fill the available vacancies in the Constitutional Court. In 2024 Ukraine started filling up the vacant positions of the Constitutional Court of Ukraine. The process

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<sup>128</sup> Law of Ukraine on selection of the judges of CCU (2023). Verkhovna Rada official website. Retrieved from: <https://zakon.rada.gov.ua/laws/show/3277-20#Text>

<sup>129</sup> Opinion on the reform of Constitutional Court of Ukraine (2022). Venice Commission. Retrieved from: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2023\)022-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2023)022-e)

gained resonance among civil society, as some of the candidates were openly ignorant about provisions of the Constitution, the date of its adoption, they could not provide a transparent record of their assets and evidence on their transparency, while some of the candidates showed moral corruption<sup>130</sup>.

In December 2022, the Parliament adopted a law abolishing the Kyiv district administrative court (KDAC)<sup>131</sup>, which covered disputes involving the central government bodies, because of cases in which KDAC judges were involved in corruption allegations. According to this law, KDAC was abolished and obliged to transfer its cases to the Kyiv region administrative court until a new Kyiv city administrative court is established.

On December 30, 2023, the Law of Ukraine “On amendments to the Law of Ukraine “On the Judiciary and the Status of Judges” came into force, under which optimisation of the duration of judicial career procedures was introduced. The High Qualification Commission of Judges restarted its work on June 2023 and elected a new composition of the Public Integrity Council with the participation of representatives of public associations engaged in activities aimed at fighting corruption, protecting human rights, supporting institutional reforms, including implementing projects in these areas. On November 13, 2023, the Commission resumed the qualification assessment of judges for their competency to hold their positions. A total of 1,884 judges of local and appeal courts from all over Ukraine were subject to this assessment. The work on competitive procedures for filling vacant positions of judges in local courts is ongoing. In December 2023, the HQCJ approved the ratings of participants in the competition for the positions of judges of local administrative, commercial and general courts. The competition is scheduled to be completed in 2024.

On the other hand, there have been external challenges to the judiciary reform. Ukrainian authorities have been confronted with the unprecedented scope and gravity of atrocities committed by the Russian Army. Russia’s military

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<sup>130</sup> Surprises from the candidates of judges to the CCU (2024). TSN. Retrieved from: [https://www.youtube.com/watch?v=6q-haTVqZus&ab\\_channel=%D0%A2%D0%A1%D0%9D](https://www.youtube.com/watch?v=6q-haTVqZus&ab_channel=%D0%A2%D0%A1%D0%9D)

<sup>131</sup> Law of Ukraine on abolition of KDAC (2022). Verkhovna Rada official website. Retrieved from: <https://zakon.rada.gov.ua/laws/show/2825-IX#Text>

aggression against Ukraine has posed major challenges to Ukraine's judicial system. By the end of April 2023, 12 members of its judicial staff were killed, 114 court buildings (15% of the total) were either destroyed or damaged by the hostilities, and a large number of case files were lost. This has led to an increased need to strengthen the capacities and provide expertise to investigate, prosecute and adjudicate core international crimes (also called atrocity crimes), while building on the experience that Ukraine had already gained since 2014. As a result, Ukraine started taking significant measures to advance its comprehensive framework for addressing atrocity crimes at domestic level. Since Russia's full-scale invasion and war of aggression, a total of 107 951 incidents related to various atrocity crimes have been officially registered. 267 people have been indicted and 63 convicted for war crimes by Ukrainian courts.

A strategy aimed at war crimes prosecution was adopted with additional resources having been enacted with the support of the European Union Advisory Mission in Ukraine to facilitate investigations into these crimes.

Additionally, the internal challenges have also been present. The reform of the judicial governance bodies was completed irrespective of an outleash of a high-level corruption case involving the Head of the Supreme Court. This case became public in May 2023, when the National Anti-Corruption Bureau claimed to have uncovered an organised crime group that allegedly received a bribe equivalent to EUR 2 500 000 to affect Supreme Court decisions in favour of a particular oligarch<sup>132</sup>.

All things considered, the judicial reform in Ukraine has undergone significant changes since the introduction of it in 2016 with new legislation. Despite the ongoing combat actions, the judicial system in Ukraine is slowly regaining trust from civil society, while being reorganised and restructured according to the requirements of the European Commission, which results in satisfying 7/7 preconditions of the EU as of June 2024 to open the negotiations on accession with Ukraine.

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<sup>132</sup> Ukraine Supreme Court head held in corruption probe (2023). BBC. Retrieved from: <https://www.bbc.com/news/world-europe-65610985>

### **3.2.2. The state of fundamental rights protection on the way to the EU membership: key areas of interest**

Since February, 24 2022 the lives of Ukrainian people divided into “before” and “after”, “us” and “them”, “civilians” and “combatants”, which is why this subchapter will categorise the achievements and challenges Ukraine underwent, policies having been carried out and legislation adopted as regards the following groups of people: women, children, combatants, persons with disabilities, national minorities, LGBTQ+ people, while taking into account freedom of expression, existence of independent media, freedom to assembly under martial law.

The government of Ukraine has made significant efforts and progress in safeguarding human rights, despite war, while aligning it with international human rights standards and the EU acquis, according to the Communication on EU Enlargement of 2023<sup>133</sup>. Although, strong influence of atrocities committed by Russian forces will pose a serious challenge for Ukraine’s judiciary, prosecution and civil society in the coming years. Overall, the Communication holds that Ukraine succeeded in living up to 7 requirements of the EU by adopting the new media law as well as the Law on national minorities of Ukraine in December 2022, as well as ratifying the Istanbul Convention and adopting an updated national action plan on the implementation of United Nations Security Council Resolution 1325. It also adopted the 2030 state strategy on ensuring equal rights between men and women. What implications it caused over 2022-2024 on the respective groups?

Women in Ukraine are one of the most vulnerable groups due to the ongoing war. At least 90% out of 5.5 millions who fled the country in 2022 are estimated to be women and children<sup>134</sup>. Those who remained in Ukraine became the stronghold of Ukrainian civil society: taking care of their families, volunteering, inscripting into the Armed Forces of Ukraine (as of March 2023 at

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<sup>133</sup> Communication on EU Enlargement Policy (2023). Retrieved from: [https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD\\_2023\\_699%20Ukraine%20report.pdf](https://neighbourhood-enlargement.ec.europa.eu/system/files/2023-11/SWD_2023_699%20Ukraine%20report.pdf)

<sup>134</sup> Rapid Gender Analysis of Ukraine (2022). UN Women. Retrieved from: <https://www.unwomen.org/en/digital-library/publications/2022/05/rapid-gender-analysis-of-ukraine>

least 60 538 women were serving in the AFU<sup>135</sup>), while they also fell victims to the conflict-related sexual violence. Since the full-scale invasion, at least 187 such cases were registered by the Office General Prosecutor of Ukraine, whereas 13 cases involved children<sup>136</sup>. The number of cases is presumed to be much higher because of fear for life, PTSD, emigration etc. These cases include rape, sexual slavery, forced prostitution, forced pregnancy, forced sterilization, forced exposure, and the abhorrent act of forcing victims to observe sexual violence and other atrocities. Independent experts from New Lines Institute for Strategy and Policy have identified rape and sexual violence as elements of a genocidal model aimed at the destruction of Ukrainians<sup>137</sup>. The ratification of the Istanbul Convention became a crucial step in protecting women (and men) from different forms of violence, including domestic violence, as in 2021 326 000 people claimed to have suffered from cases of domestic violence in Ukraine<sup>138</sup>. After the ratification, Ukraine still needs to amend its Criminal Code and Criminal Procedural Code.

Another vulnerable and rising group in Ukraine are persons with disabilities. Before the full-scale invasion the number of PWD was estimated at 2,7 million people in 2021, while in 2023 it peaked at 3 million people, according to data provided by Ministry of Social Policy of Ukraine<sup>139</sup>. Such a drastic rise is not only war-related, but also mobilisation-related, as the “shadow business” issued falsified documents with evidence of disability for men so they could cross the border. Also, according to Ukraine’s law, a person with a disability group 1 or

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<sup>135</sup> Ukrainian women joining the military amid Russia’s invasion(2022) Al Jazeera Media Network. Retrieved from <https://www.aljazeera.com/news/2022/9/17/meet-the-women-joining-ukraines-militaryamid-russias-invasion>

<sup>136</sup> Mykhailov D.(2023) War-related sexual violence in Ukraine. Suspilne. Retrieved from: <https://suspilne.media/472756-zafiksovano-187-vipadkiv-skoenna-zlociniv-seksualnogo-harakteru-z-boku-vijskovih-rf-ofis-genprokurora/>

<sup>137</sup> An Independent Legal Analysis of the Russian Federation’s Breaches of the Genocide Convention in Ukraine and the Duty to Prevent (2022)New Lines Institute for Strategy and Policy. Massachusetts Retrieved from: <https://newlinesinstitute.org/rules-based-international-order/genocide/an-independent-legal-analysis-of-the-russian-federations-breaches-of-the-genocide-convention-in-ukraine-and-the-duty-to-prevent/>

<sup>138</sup> Ukraine after Istanbul Convention (2022). YurFem. Retrieved from: <https://life.pravda.com.ua/columns/2022/08/10/249886/>

<sup>139</sup> Uprisal of persons with disabilities in Ukraine (2023). Ukrainska Pravda. Retrieved from: <https://life.pravda.com.ua/society/6509cf1fb4620/>

2 is entitled to be escorted by one of his relatives, friends or a trusted person to cross the Ukrainian border. This scheme was broadly used by men to avoid inscription in the army as well. Nevertheless, creation of a barrier-free environment for persons with disabilities in Ukraine is one of top priorities nowadays. Barrier-free environment is not only about accessibility, but also about raising awareness within the society on the matter and acceptance of diversity, it is one of requirements of the EU under the cluster of “fundamental rights”. The educational course for citizens of Ukraine on “barrier-free society” was introduced on DIIA platform, while the government of Ukraine adopted a national strategy for a creation of “barrier-free environment” until 2030<sup>140</sup>. Thus, all restored infrastructure shall be compliant with barrier-free standards. On the international level, Ukraine has been a part of the UN Convention on the Rights of Persons with Disabilities and its Optional Protocol, since 2010. As regards civil initiatives, a former defender of Ukraine Oleksandr Teren, who was injured and subsequently had his legs amputated and rehabilitated, started a project named “Legs dump” which main objective is to check Ukrainian cities and their compliance with barrier-free standards<sup>141</sup>. Prosthetics and rehabilitation is currently available free of charge under the auspices of international donors and ambassadors of benevolence at such centers as Superhumans and Unbroken.

Since the escalation of Russian aggression against Ukraine under the data of OHCHR of 2023 535 children were killed and 1095 injured. In 2024 this number increased to 550 killed and 1364 injured accordingly<sup>142</sup>. As 3 395 educational institutions have suffered from bombings and shelling and 363 have been completely destroyed, Ukraine created a unified school for distant learning for those children who want to matriculate in Ukraine, but do not have physical capability because their school no longer exists as a result of war, children became internally displaced persons or obtained temporary/international protection in

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<sup>140</sup> National Strategy on creating barrier-free environment until 2030 (2021). Cabinet of Ministers of Ukraine. Retrieved from: <https://zakon.rada.gov.ua/laws/show/366-2021-%D1%80#n10>

<sup>141</sup> Teren O. Legs Dump. YouTube Channel. Retrieved from: [https://www.youtube.com/watch?v=7gQR2UuoOpw&ab\\_channel=%D0%A2%D0%95%D0%A0%D0%95%D0%9D](https://www.youtube.com/watch?v=7gQR2UuoOpw&ab_channel=%D0%A2%D0%95%D0%A0%D0%95%D0%9D)

<sup>142</sup> Kapustianska I (2024) Children killed by Russia in Ukraine. Lb News. Retrieved from: [https://lb.ua/society/2024/06/01/616459\\_rosiya\\_vbila\\_550\\_ukrainskih\\_ditey-.html](https://lb.ua/society/2024/06/01/616459_rosiya_vbila_550_ukrainskih_ditey-.html)



other countries. While many children depend on online education, it is complicated by a lack of access to technology, internet connectivity and electricity availability. As a part of the European integration process, Ukraine reformed secondary education according to the experience of European countries and the Recommendation of the European Parliament and of the Council on key competences for lifelong learning<sup>143</sup>. Apart from the right to education, another problem Ukraine faces as regards the rights of children, is forced deportation. Russia forcibly transferred and deported at least 19 000 children from non-government-controlled territories of Ukraine, using the pretext of ‘evacuation’. In 2022, Russia introduced legislative changes to allow Ukrainian orphans and children without guardianship to obtain Russian citizenship in a simplified manner, enabling Ukrainian children to be adopted by Russians. Ukrainian and international non-governmental organisations (NGOs) report on the forced ‘russification’ of Ukrainian children in Russian institutions and ‘summer camps’<sup>144</sup>. As of January 2024, Ukraine was able to reunify 518 children with their Ukrainian families.

In the area of LGBTQ+ rights Ukraine achieved moderate success. The trend towards a decrease in the number of attacks and hate crimes against LGBTQ+ persons persists (–44% since 2020). Surveys carried out in 2022 show that a majority is in favour of same-sex partnerships and equal rights for LGBTQ persons. The government clearly communicates its support for the rights of LGBTQ persons and against hate crimes and discrimination. Moreover, Kyiv Pride was held on 25 June 2023 in Warsaw together with the city’s Equality Parade, focusing on rights for LGBTIQ persons as well as on the support for Ukraine. The Armed Forces of Ukraine drew attention of civilians to the problems persistent in the society related to inheritance rights and the right to family and private life, so the Draft Law on civil partnerships was introduced in the

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<sup>143</sup> Recommendation of the European Parliament and of the Council of 18 December 2006 on key competences for lifelong learning. Retrieved from: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32006H0962>

<sup>144</sup> Meeting of the Security Council 9404. Deportation, Treatment of Ukraine’s Children by Russian Federation Take Centre Stage by Many Delegates at Security Council Briefing (2023) UN Press coverage. Retrieved from: <https://press.un.org/en/2023/sc15395.doc.htm>

Verkhovna Rada by MP Inna Sovsun<sup>145</sup>, as the issue gained resonance and the respective petition was supported by 25000 people in several days. A registered partnership will determine the legal status of partners, rights and obligations, legal regime of property, right of inheritance, social protection of partners, rights in case of death or disappearance of a partner, etc. The media law, adopted on 15 December 2022, bans hate speech and incitement based on sexual orientation and gender identity in media. The National Human Rights Action Plan 2021-2023 foresees progress in the status of persons belonging to LGBTQ by amending the Criminal Code of Ukraine to apply the notion of the term 'bias' as regards sexual orientation and gender identity. Additionally, a new law on the ensuring the right of military personnel and other persons to biological parentage (maternity)" on preserving the gene pool of the Ukrainian people<sup>146</sup> was adopted in 2024, which envisages the possibility of preserving the reproductive cells of servicemen and women in the event of their death.

Ukraine has been a party to the Council of Europe's Framework Convention for the Protection of National Minorities since 1998 and to the European Charter for Regional and Minority Languages since 2005. Since 2017, the legal framework for national minorities is being reformed. Introducing amendments to legislation on national minorities is one of the 7 prerequisites for opening the negotiations on accession of Ukraine to the EU. Overall, Ukraine is home to more than 100 different nationalities, while the major group of minorities are Russians constituting 17%, 4,9%- other nationalities, which include at least 0,6% Belarussians, 0,5% Crimean Tatars, 0,5% Moldovans, 0,4% Bulgarians and 0,3% - Hungarians and Romanians. Ukraine introduced a law on national minorities compliant with requirements of the EU and recommendations of Venice Commission in 2022. The law proposes amendments to the laws "On local self-government in Ukraine", "On higher education", "On education", "On ensuring the functioning of the Ukrainian language as a state", "On

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<sup>145</sup> Draft Law 9103 on registration of civil partnerships (2023) Verkhovna Rada of Ukraine. Retrieved from: <https://itd.rada.gov.ua/3b039eff-9ba4-4114-b81d-34ef231ff96b>

<sup>146</sup> Law of Ukraine 10448 on preserving the gene pool of the Ukrainian people (2024). Verkhovna Rada of Ukraine. Retrieved from: <https://zakon.rada.gov.ua/laws/show/3573-IX#Text>

comprehensive general secondary education", "On national minorities (communities) of Ukraine", "About media". According to the law, privately owned higher education institutions have the right to freely choose the language of instruction, which is the official language of the European Union, while ensuring the study of the state language as a separate academic discipline<sup>147</sup>. According to the information provided by the Ministry of Education Ukraine estimates 735 schools, where education in languages of national minorities is provided, which constitutes 5% of the overall number of public schools in Ukraine. As regards the Jewish community, the lowest number of acts of antisemitic vandalism was recorded in 20 years of monitoring, with no cases of antisemitic violence in 2022. Previously existing low levels of antisemitism have been practically non-existent in Ukraine since the start of Russia's full-scale invasion, according to the Communication on Enlargement of EU of 2023.

Since Russia's blatant invasion, and as a result of its complete support by the Moscow Patriarchate of the Russian Orthodox Church, Ukraine has introduced legal restrictions since November 2022 against the Moscow-affiliated Ukrainian Orthodox Church. This includes sanctions against some members of the church hierarchy accused of supporting Russia's war of aggression and carrying out searches inside various church premises in application of legal standards and practices. With these measures, Ukraine aims to prevent foreign interference from Russia through a religious entity, while not targeting ordinary followers of the church. Some members of the church were involved in the cases of corruption of minors. Russian Representative at the UN Security Council expressed his concern as regards religious freedom in Ukraine<sup>148</sup>, however the very followers of this church pose a threat to national security of Ukraine, while priests and members committed state treason and collaborated with Russian army<sup>149</sup>. As of now, the draft law on the abolishment of all religious entities, praising the Russian war

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<sup>147</sup> Verkhovna Rada of Ukraine introduced amendments to laws on the rights of national minorities (2023). Interfax Ukraine. Retrieved from: <https://interfax.com.ua/news/general/952852.html>

<sup>148</sup> Concerned by Restrictions on Religious Freedom, Speakers Warn against Using Religion to Fuel Conflict, as Security Council Considers Situation in Ukraine. (2023) UN Press. Retrieved from: <https://press.un.org/en/2023/sc15178.doc.htm>

<sup>149</sup> Abolishment of the Orthodox Church of Moscow in Ukraine (2024). Radio Svoboda. Retrieved from: <https://www.radiosvoboda.org/a/uptz-mp-zaborona-zakon/32931544.html>

against Ukraine is slowed down due to strong pro-Russian lobbyist forces. How the right to religious belief and freedom will be realised in the future and how it affects European integration remains unknown.

Last but not least, Ukraine maintains steady success in freedom of expression and independent media. According to the data presented by Reporters without Borders global ranking of freedom of media, Ukraine improved its position from 106th to 61th place in 2024<sup>150</sup>. Under martial law, Ukraine adopted some decisions to restrict access for media and journalists on the frontlines, owing this to strong confidentiality and efforts to avoid leak of information. Despite the adoption of the package of laws on media in line with the EU requirements in 2022, Ukraine is still facing difficulties with freedom of expression. For instance, in January 2024 there was a scandalous persecution of independent media “Bihus info”. Pressure on the press, in particular, on journalists investigating corrupt practices by the Ukrainian authorities, looks completely unacceptable in a situation where Ukraine not only declares its desire to integrate into European and Euro-Atlantic structures, but is also completely dependent on Western financial and military aid<sup>151</sup>.

To sum up, despite significant improvements and compliance with the 7 requirements introduced by the European Commission, Ukraine still needs to accede to the Rome Statute of the International Criminal Court and the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, while preserving and safeguarding human rights in the fragile Ukrainian democracy, constantly shelled by Russian armed forces.

### **3.2.3. The role of civil society in advancing human rights in Ukraine**

Andreas Wimmer in ‘Nation Building: Why Some Countries Come Together While Others Fall Apart’ has argued for three mechanisms that bridge ethnic divides. The first factor is the density of voluntary and civil society networks that ‘knit together different regions into a quilt of political networks’. The second is

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<sup>150</sup> Reporters without borders global index on the freedom of media (2024). Reporters without borders official website. Retrieved from: <https://rsf.org/en/index>

<sup>151</sup> Media scandal in Ukraine (2024). BBC News. Retrieved from: <https://www.bbc.com/ukrainian/articles/cw4q057p8y7o>

the state's 'capacity to provide public goods'. The third is linguistic homogeneity.<sup>152</sup>

Civil society refers to a wide variety of communities and groups such as non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations that function outside of government to provide support and advocacy for certain people or issues in society<sup>153</sup>. Since the events of the Revolution of Dignity in Ukraine and through 2022-2024 the country transformed enormously in terms of consolidation of people, formation of collective memory, cultural changes and the growing interest towards the history of predecessors, creation of volunteering movement, increasing number of NGOs and charity foundations, emergence of activists and advocacy for a liberal democratic rule in Ukraine. According to Kundlenko A. Ukrainian resilience, forming an integral part to consolidated civil society is based on the value of freedom, the decentralized nature of the Ukrainian society and traditions of self-organization as well as the vision of a better life as part of the European family and transatlantic institutions<sup>154</sup>.

To embark on, the Revolution of Dignity and the civil society's formation as a result of it, not only prevented the pro-authoritarian rule with pro-Russian policies and legislation in Ukraine, but shifted the geopolitical interests of Ukraine into opposite direction - to the EU, which resulted in electing another president and subsequent signing the Association Agreement. During the 2013-14 Revolution of Dignity, the volunteer movement acquired a mass self-organized and self-regulated character. Its representatives were engaged in collecting material resources for various current needs (financial donations, food, clothing and other things, medicines) and personally carried out practical activities (organizational and cultural-educational work, medical assistance, legal

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<sup>152</sup> Wilson A (2023) Ukraine at war: Baseline identity and social construction. Wiley Online library. Retrieved from: <https://onlinelibrary.wiley.com/doi/full/10.1111/nana.12986>

<sup>153</sup> Longley R (2022) Theory of civil society. ThoughtCo Retrieved from: <https://www.thoughtco.com/civil-society-definition-and-theory-5272044>

<sup>154</sup> Kudlenko, A. (2023). Roots of Ukrainian resilience and the agency of Ukrainian society before and after Russia's full-scale invasion. *Contemporary Security Policy*, 44(4), 513–529. <https://doi.org/10.1080/13523260.2023.2258620>

consultations). The majority of citizens were engaged in individual volunteer activities, however, many initiatives were created on the basis of professional interests and acquired an organized character. After the annexation of Crimea by Russian forces and the beginning of war in the East of Ukraine, the volunteer movement became more widespread. Volunteer organisations in the period of 2014-2019 took on some of the state functions. One of the biggest volunteer movements and charity funds that exist up until today are “Come back alive”, Serhiy Prytula Charity Foundation, Razom for Ukraine, United24 (established after the full-scale invasion in 2022) etc. Anti-occupational movement called “Yellow Ribbon” functions on the temporarily occupied territories of Ukraine expressing their peaceful protest against Russian occupation.<sup>155</sup> At first it was founded in Kherson, which was under Russian occupation until November 2022, but since then other occupied regions of Ukraine started showing their support of the movement and painting yellow on the highways, boards, buildings, leaving yellow ribbons everywhere to show that there are still Ukrainian citizens out there and they are waiting for reintegration. Overall, it is estimated that at least 99,5 thousands of non-governmental organisations exist in Ukraine as of 2023 which is twice as much as back in 2014, whereas 77% of them support the Armed Forces of Ukraine directly or indirectly<sup>156</sup>.

Democratic transformation allowed for the emergence of activists and human rights defenders in Ukraine, such as Serhiy Sternenko, Roman Ratushnyi, Kateryna Handziuk and others. The Handziuk list is a list of criminal cases related to attacks on Ukrainian public figures and activists that occurred since the beginning of 2017. The list includes 56 cases, including 5 murders. All cases remain unsolved, while investigations continue not actively. Serhiy Sternenko case was one of the fundamental cases against Ukrainian activists, whose case was fabricated on the grounds of person’s kidnapping. Serhiy Sternenko was fighting with pro-Russian powers in Ukraine, he survived in three murder

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<sup>155</sup> Non-violent civil resistance movement in Ukraine (2023).Sci NGO. Retrieved from: <https://sci.ngo/vov/yellow-ribbon-non-violent-civil-resistance-movement-in-ukraine/>

<sup>156</sup> Ukraine improved sustainability of NGOs (2023). Detector Media. Retrieved from: <https://cs.detector.media/law-and-money/texts/185703/2023-10-26-ukraina-pokrashchyla-pokaznyk-stalosti-organizatsiy-gromadyanskogo-suspilstva/>

attempts after he had tried to save the Litniy Theater in Odesa. In 2020 The Ukrainian Helsinki Group for Human Rights published an open statement in which it called the persecution of anti-corruption activist Serhiy Sternenko politically motivated<sup>157</sup>. Sternenko was broadly supported by Ukrainian society and for now Serhiy remains one of the most influential activists in Ukraine, who started his YouTube channel with daily news overview.

Ukraine is also a home to 8 LGBTQ+ advocacy organisations, who consolidated their efforts in order to carry out a National Pride in 2024. It will be the first pride held since the full-scale invasion in Ukraine.

As regards national pride, pride in Ukrainian citizenship increased from 59% in 2020 to 82% in 2022. There was also a surge in support for democracy as the ‘best form of government’ from 41% in April 2019 to 76% in May 2022. At least 40% of Ukrainians volunteer, 13% are serving in the army, while 67% donate money, which explains why Ukraine was considered the second most generous country in the world in 2023.<sup>158</sup> The level of trust among Ukrainians also increased from 35% in October 2021 to 62% in June 2022<sup>159</sup>.

The war since 2014 brought about transformations in the field of rights related to freedom of assembly, cultural rights and collective memory of Ukrainian people as well. Ukrainians defied remaining in the same cultural space as Russians. In May 2019 a Law on the functioning of Ukrainian language as a state one was adopted, it was widely supported by Ukrainians assembled outside Verkhovna Rada. The law envisages Ukrainian language as the only state language, obligation for state officials, public sector, businesses, public institutions, radio, television to use Ukrainian language, whereas the use of other languages is left within private sector. The full-scale invasion changed the data on

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<sup>157</sup> Ukraine: Uphold fair trial rights of anti-corruption activist Sternenko (2021) The Kyiv Independent. Retrieved from:

<https://www.nhc.nl/ukraine-uphold-fair-trial-rights-of-anti-corruption-activist-serhiy-sternenko/>

<sup>158</sup> Zarembo K.(2023) The Resilience and Trauma of Ukraine’s Civil Society. Carnegie Endowment in Europe. Retrieved from: <https://carnegieendowment.org/research/2023/06/the-resilience-and-trauma-of-ukraines-civil-society?lang=en&center=europe>

<sup>159</sup> Gradus Research Survey (2022). Retrieved from: [https://gradus.app/documents/273/TRUST\\_IN\\_UKRAINIAN\\_SOCIETY\\_DURING\\_THE\\_WAR\\_ENG.pdf](https://gradus.app/documents/273/TRUST_IN_UKRAINIAN_SOCIETY_DURING_THE_WAR_ENG.pdf)



the use of languages in Ukraine. Prior to the invasion 61% of Ukrainians spoke Ukrainian on a daily basis, while after February 2022 this number grew gradually to 71% , while number of those speaking only Russian decreased to only 9%<sup>160</sup>. Alongside with the steady use of Ukrainian language, Ukrainians started to read in Ukrainian twice as much as before the invasion, not to mention the successful play “The Witch of Konotop”, which gained social resonance and the tickets for it are being sold out within hours every time<sup>161</sup>. In May 2024 Russia burnt to the ground one of the largest printing houses in Europe located in Kharkiv destroying at least 50.000 books and killing 7, while injuring 26 people. The erasure of Ukrainian cultural identity is a tool of Russia's war against Ukraine and an element of the genocidal policy aimed at the destruction of the Ukrainian nation. This resolution was supported by the Culture Committee of the Parliamentary Assembly of the Council of Europe (PACE) in late May 2024<sup>162</sup>.

The Ukrainian Institute created in 2017 is aimed at representing Ukrainian culture in the world and to form a positive image of the country as a way of cultural diplomacy. The offices of it were opened in Great Britain, France and Germany<sup>163</sup>.

The rights of Ukrainian diaspora are considered to be enlarged in 2024 with the new draft law proposed by the president of Ukraine<sup>164</sup>. The draft law envisages obtaining and recognising Ukrainian citizenship for the descendants of the diaspora in a simplified manner. This draft law was introduced as an act of gratitude to Ukrainians abroad, who resiliently supported Ukraine and spread the word about the war of aggression by volunteering, raising funds, holding peaceful manifestations etc.

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<sup>160</sup> Barsukova O (2023) Data on the use of languages in Ukraine. LifePravda. Retrieved from: <https://life.pravda.com.ua/society/2023/03/10/253276/>

<sup>161</sup> Karmanska Y (2023) Ukrainians started to read more often. Forbes UA. Retrieved from: <https://forbes.ua/news/yak-chitayut-ukraintsi-pid-chas-vtorqnennya-chastka-lyudey-yaki-chitayut-kni-gi-shchodnya-zrosla-vidvichi-doslidzhennya-uik-12102023-16629>

<sup>162</sup> Resolution of the Culture Committee of the Parliamentary Assembly of the Council of Europe (2024) World Ukrainian Congress. Retrieved from: <https://www.ukrainianworldcongress.org/ua/element-henocydu-komitet-parie-vyznav-znyshchenia-ukrayinskoi-identychnosti-instrumentom-viiny-rosii/>

<sup>163</sup> Ukrainian Institute official website: <https://ui.org.ua/mission/>

<sup>164</sup> Draft Law on the Multiple Citizenship №104125. Verkhovna Rada of Ukraine. Retrieved from: <https://suspijne.media/667252-zakonoproekt-pro-mnozinne-gromadanstvo-vse-so-potribno-znati/>



Last but not least, despite the freedom of assembly under martial law in Ukraine being restricted, Ukrainians gather every day at 9 am on the main streets of their cities to honour the deceased in this war and to raise their voice on the issue of prisoners of war from Azovstal. These acts consolidate the memory of Ukrainians, while not allowing the world to forget about the ongoing military actions, war crimes, committed in the centre of Europe in the XXI century.

### **3.3. Challenges and limitations to EU accession and alignment with the EU human rights standards**

While the war became an accelerator of Ukraine's integration to the EU, it at the same time poses serious threat to Ukraine actually becoming a Member State in the foreseeable future.

To begin with, Ukraine will need to win the war in order to join the EU, as for the moment, its officially recognised borders are being contested due to the military actions in Crimea, Donetsk region, Luhansk region, Zaporizhzhia region, Kharkiv region and Kherson region. If by the time Ukraine is accepted as a Member State the war will continue and no security guarantees will be provided, it will create a security hazard for the entire European Union, as Ukraine will benefit from the Union's mutual defense clause in Article 42.7 once it officially becomes a member. Article 42.7 commits EU countries to help other Member States that fall victim to an armed attack "by all the means in their power." It has been invoked only once, by France, following the November 2015 terror attacks in Paris. In practice, however, the article has mostly remained a paper tiger<sup>165</sup>.

Some may point to Cyprus joining the EU in 2004 as a showcase of the EU accepting a new Member State with no NATO security guarantees during territorial conflict involving a third party, in this case Turkey. Irrespective of the fact that tensions between Cyprus and Turkey are still a persistent headache for EU policymakers, the case also differs significantly from that of Ukraine. Cyprus had no territorial conflicts for thirty years by the time it joined the EU. And Turkey's NATO membership provides avenues for communication and crisis

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<sup>165</sup> Wolczuk, K. (2023). UKRAINE'S BOMBED WAY TO EU MEMBERSHIP. *Journal of International Affairs*, 75(2), 233–246. Retrieved from: <https://www.jstor.org/stable/27231749>

management that do not exist with Russia.

At the same time, when taking Turkey into account, as the war continues, democracy level decreases and creates potential democratic backsliding or even freezing the negotiations, not yet even started<sup>166</sup>.

With the approaching European Parliament elections and potentially new President of the European Commission, it is also invaluable to assess the solidarity with Ukraine and advocacy for EU enlargement that Ursula von der Leyen supported. According to the research done by Hooghe L., Marks G. et al<sup>167</sup>, 97 of 269 parties in 29 countries in Europe reject one or more of the following: providing weapons, hosting refugees, supporting Ukraine's path to European Union membership, or accepting higher energy costs.

Secondly, the ongoing war poses serious threat not only to external policy of Ukraine and other countries, but internal policy as well, especially that which relates to the rule of law and well-functioning of democratic institutions. One of the potential issues may relate to Russian propaganda through Russian Church in Ukraine, as the draft law on abolition of Russian Church was introduced, but due to strong pro-Russian lobby it was not adopted yet. Trying to deal with the implications of Russian propaganda (as an invaluable element of war through so-called Gerasimov doctrine<sup>168</sup>) Ukrainian authorities, but mostly civil society, stopped the potential hazard persistent especially through social media and botfarms (TikTok, Facebook), which was launched by Russian authorities as “The Third Maidan”, “Zelenskiy is not legitimate”, “Language does not matter”, “We are brotherhood nations”, “Ukraine is bombing its civilians”<sup>169</sup> etc.

In February 2021, for example, Kyiv shut down the Russian-language TV

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<sup>166</sup> Experience of candidate countries on their way to the EU (2022). NADS. Retrieved from: <https://nads.gov.ua/storage/app/sites/5/DIYALNIST/Mignarodna%20dijalnist/2-dosvid-krain-kandyda-tiv-na-chlenstvo-v-eu-2.pdf>

<sup>167</sup> Hooghe, L., Marks, G., Bakker, R., Jolly, S., Polk, J., Rovny, J., Steenbergen, M., & Vachudova, M. A. (2024). The Russian threat and the consolidation of the West: How populism and EU-skepticism shape party support for Ukraine. *European Union Politics*, 0(0). Retrieved from: <https://doi.org/10.1177/14651165241237136>

<sup>168</sup> The theory of chaos and hybrid war (2023). Zerkalo. Retrieved from: <https://news.zerkalo.io/world/30296.html>

<sup>169</sup> Sakharchenko A (2024) Strategies of Russian propaganda in Ukraine . UkrPravda. Retrieved from: <https://www.pravda.com.ua/columns/2024/04/1/7449107/>

channels of a Ukrainian oligarch, Viktor Medvedchuk, which espoused views that aligned with the Kremlin's. In December 2018, with strong state support, the autocephalous Orthodox Church of Ukraine (OCU) was created as a national church, with the aim of eroding the influence of the Ukrainian Orthodox Church (UOC), which was under the jurisdiction of the Moscow Patriarchate of the Russian Orthodox Church (ROC). Since the invasion, pressure has only increased on Russian-language media and the UOC. Kyiv banned several political parties because of their allegedly pro-Russian sympathies. One of those parties, the Opposition Party for Life, enjoyed widespread support among ethnic Russians, especially in the country's southern and eastern provinces, which elected forty-four of its members to the national parliament. Kyiv believed it had credible evidence that Moscow was using these institutions as cover for Russian agents, who assisted the Kremlin's war effort with intelligence, propaganda, or other kinds of support. Pro-Russian entities were also a ready source of collaborators in occupied territories.

Another challenge to Ukraine's accession related to the ongoing war is martial law and restrictions on human rights, such as curfew, restricted freedom of movement, right to property, right to family and private life, freedom of expression, right to access and disseminate information, freedom of assembly and the right to protest, as Ukraine derogated from some of the provisions of ECHR in 2022 and 2024 respectively. With this in mind, it will be difficult to assess the overall state of human rights protection in Ukraine for independent experts and evaluate thoroughly the compliance with the EU requirements.

Last but not least, this war of exhaustion hinders the democratic transformation in Ukraine through the impossibility of holding fair and independent presidential, parliamentary and municipal elections under martial law for all citizens: those on the frontline, under occupation, those in relatively safe conditions, when the shelling of Ukrainian cities persists. Entering the second presidential term, Zelenskyi understands the need for rotation, as regards his position, the session of Verkhovna Rada and the Cabinet of Ministers.

The imposed pressure on the rule of law, protection of human rights,

effective functioning of democratic institutions makes one question Ukraine's fulfillment of article 49 TEU<sup>170</sup> on its bombed path towards European Union's family. Throughout its history, Ukraine displayed a strong aspiration to align itself with European values, legislation, and institutions, seeking closer political association and economic integration with the EU. Despite some external scepticism, internal issues related to the ongoing war and influence of Russian propaganda, which tries to divide the society, Ukraine has shown satisfactory results in complying with the 7 requirements of the European Commission and continues advancing its integration process, bringing it closer to its aspiration to become an integral part of the European Union.

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<sup>170</sup> Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (2007) Official Journal C 306, 13 December, pp 1 - 271. Retrieved from: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016ME%2FTXT>

## CONCLUSION

A comprehensive analysis of the alignment of human rights legislation in Ukraine with the EU acquis, taking into account the impact of the ongoing Russian aggression is presented in this thesis. Spanning across historical, theoretical, legal, philosophical, social and practical dimensions, this research delves into the evolution of bilateral relations between Ukraine and the European Union in 30-year-span, internal transformations in Ukraine on its way to the EU as well as challenges and limitations on its way towards accession. We explore these topics through the lens of our research questions:

- 1) What were the relations of the European Union and Ukraine before the full-scale invasion in 2022, and how have they evolved since then (during the fully-fledged war)?
- 2) How has the Revolution of Dignity in 2013-2014 impacted the course of European integration and human rights agenda in Ukraine? What reforms were carried out in the field of justice and human rights in the course of 2014-2021? How successful they were?
- 3) What mechanisms and legal basis are ensured for the protection of human rights within the European Union ?
- 4) How has Russia's full-scale invasion affected the human rights agenda and the course of European integration in Ukraine? What challenges and limitations Ukraine experiences on its way to the EU?
- 5) What is the role of the civil society in advancing pro-Europe and pro-human rights courses in Ukraine?
- 6) At what stage is the judicial reform in Ukraine as of 2024 and how far Ukraine went in ensuring a transparent, fair, independent and autonomous system of justice?

First of all, circling back to the first research question, we have witnessed “Declarative Europeanisation”<sup>171</sup> in Ukraine since it gained

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<sup>171</sup> Wolzchuk K (2022) Ukraine's policy towards the European Union: a case of Declarative Europeanisation. Retrieved from: [https://www.batory.org.pl/ftp/program/forum/eu\\_ukraine/ukraine\\_eu\\_policy.pdf](https://www.batory.org.pl/ftp/program/forum/eu_ukraine/ukraine_eu_policy.pdf)

independence in 1991. The European Union supported democratic transformation of Ukraine through high-level annual meetings started back in 1997, bilateral agreements, which later led to signing an Association Agreement in 2014, Eastern Partnership Program and Eastern Neighbourhood Policy, which aided Ukraine to step on the track of reforms and eventually filing an official application to join the EU on February, 28 2022 - subsequently gaining a candidate status in June 2022. This “unique and strategic” partnership was facilitated by evergrowing support of the EU accession by the people of Ukraine through the Revolution of Dignity and throughout the ongoing war.

Secondly, the Revolution of Dignity as the longest and biggest pro-Europe peaceful manifestation, contributed to signing an Association Agreement, consolidation of Ukrainian society, growth of volunteer movement, ensured free functioning of the opposition and constitutional changes to avoid authoritarianism. Throughout 2014-2021 Ukraine implemented a Strategy on Public Administration in line with the European Standards of Good Governance, successfully started decentralisation reform, introduced visa-free regime for free movement of persons through Schengen zone, adopted Gender Equality Strategy, which raised the quota for women-representation among professions, especially public service. Ukraine started a long-awaited judicial reform in 2016 and facilitated connections with civil society organisations through a National Strategy for Civil Society Development.

Thirdly, on its way to the EU, Ukraine makes sure to comply with the primary and secondary law of the EU, taking into account peculiarities of the system functioning on the principles of proportionality, subsidiarity and conferral, fulfilling 7 requirements of the European Commission to maintain the candidate status, while moving forward in understanding the extensive and balanced institutional mechanism of the EU in safeguarding human rights and taking into account the role of the Court as the main facilitator of legal integration.

Covering the fourth question, Ukraine’s accession to the EU is of crucial importance to the stability of Central Europe, as it constitutes a vital obstacle to Russia's further expansionist goals. Russian war of aggression showcases a

serious threat to the existence of democracy and protection of human rights. Over 2014-2024 the world has seen what is done by Russian “liberation operation” in the annexed Crimea and occupied territories of Ukraine: illegal referendums carried out under the threat of gunfire and without presence of international experts, repression of national minorities, russification of population, elimination of Ukrainian language and culture, restrictions on freedom of expression, freedom of movement, freedom of assembly and religious beliefs, imposing citizenship, detentions, repressions and torture, unlawful settlement and deportations. The scale of human rights` violations is impeccable and impossible to comprehend. Since the full-scale invasion, the UN Human Rights Monitoring Mission in Ukraine documented numerous violations of international humanitarian law, including usage of cluster munition and unguided rockets by the russian army, proofs of shooting civilians trying to flee, as well as summary executions, unlawful confinement, torture, torture chambers for children, ill-treatment, rape, collective rape and other types of sexual violence (victims aged 2-94 years) committed in areas occupied by Russian armed forces. The cradle of new democratic hopes for Ukrainians is steadily turning into the coffin of human rights protection in the face of war, as Russia violates the Rome Statute, creates a true ecocide by dectroying Kakhovka HPP, threats the world with a nuclear hazard on the mined NPP in Ukraine etc.

Despite all the atrocities, Ukraine commits itself to the fulfillment of Copenhagen criteria, 7 requirements of the EU, harmonising its legislation with the *acquis communautaire*. In the last two years Ukraine adopted Istanbul Convention, modernised its legislation on the rights of national minorities, introduced the law on media in line with the EU standards, aspires for the creation of barrier-free environment, drafts legislation on civil partnerships and elimination of discrimination against LGBTQ+ people, reformed primary and secondary education while seeking to reunite abducted by Russia children with their relatives.

As regards judicial reform in Ukraine, it achieved some success in making justice system more transparent with the introduction of new legislation in

2016, completion of two key bodies of judicial governance after 2022: the High Council of Justice and the High Qualification Commission of Judges with the international experts, adopting the law on a transparent and merit-based preselection of judges of the Constitutional Court in 2023 starting to appoint judges of the Constitutional Court of Ukraine in 2024. Issues persist with regard to corruption and oligarchs intrusion, however new legislation on fair lobbyism may change the situation.

Finally, the role of civil society transformation shall not be underestimated starting from the Revolution of Dignity and up until now. The density of volunteer and civil society networks, growing linguistic homogeneity in Ukraine contributed to the emergence of human rights activists, advocacy projects, lowering the level of discrimination practices and hate crimes, a surge in media freedom and media literacy, consolidation and unification of collective memory, growing percentage of trust among the citizens of Ukraine, steady support of European and Euro-Atlantic integration, growing interest towards Ukrainian culture and history, making the EU recognise the pivotal role of Ukraine`s civil society in shaping the European future for Ukraine and striving for becoming the part of the same system of values as the European Union in the sustainable and peaceful future.



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