

THE EVOLUTION OF LEGISLATION WITHIN CROSS-BORDER COOPERATION IN EUROPE AND UKRAINE

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Abstract-

*The article explores the impact of European legal acts on the evolution of Ukrainian legislation in the field of cross-border cooperation, as well as on the level of legislation and its implementation both in Europe and Ukraine. The paper applies methods of comparative and legal analysis to identify key factors of particular importance within the policy-making process in European trans-frontier cooperation. The peculiarity of such cooperation refers to actions of European Union as supranational entity that requires legal approximation at all levels (international, national and regional) in Europe. In Ukraine different actors provide institutional support to the implementation of the public regional policy at three basic levels - national, regional and local. One can characterize each administrative level by the activities of actors within their own legal powers. The institutional development of cross-border cooperation bases on three pillars: first, the regulatory system, second, the regulation of mechanisms of interaction between authorities at different levels and third, the creation of a sufficient number in regard to effective institutions in order to promote cross-border cooperation and joint cross-border projects which involve enterprises, public organizations, non-state institutions, educational and science institutions, etc. The empirical analysis helped to improve the classification levels for implementation of cross-border cooperation in Europe and the legislation in Ukraine (1) *acquis communautaire*, 2) international legal agreement ratified by Ukraine, 3) intergovernmental agreements, 4) national legislation, 5) interregional agreements).*

Key words: cross-border cooperation, inter-territorial cooperation, international agreements, European Outline Convention on Trans-frontier cooperation between Territorial Communities or Authorities, Additional protocol to the Convention, *acquis communautaire*.

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I. Introduction

The European integration vector of Ukraine obliges to fulfill the principle of good neighborliness and refers cross-border cooperation with European countries to the priority direction of the integration strategy implementation. Ukraine started to develop qualitatively new relations with European countries. It led to an

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approximation of European Union legislation with consideration that the cross-border cooperation is not only cooperation with States that share a common border with Ukraine, but possibly with other European countries without reference to any borders. In order to approximate the legislation, it is necessary to determine exactly what level of cooperation works.

II. Methodology

The article refers to a set of complementary methods for systematization of empirical information, analysis of legal support within cross-border cooperation in Europe and Ukraine. The methodological basis is the dialectical method of scientific knowledge (within the genesis analysis of transboundary legislation and in order to highlight the main concepts and regularities) which we used in conjunction with the method of systematization and empirical studies (in the study of the theoretical fundamentals of the conceptual framework within cross-border cooperation), a taxonomy-analytical method (in order to design a chronology of normative legal acts in Europe and Ukraine), methods of legal analysis and synthesis (the formation and development of cross-border cooperation on the basis of the transition rules from simple to complex, from abstract to concrete in order to determine the right to conclude cross-border transactions). The basis of empirical study included the papers of domestic and foreign experts, the materials and results of study databases which belong to Association of European border regions, Assembly of European regions, the parliamentary Assembly of the Council of Europe, the European Commission, as well as publications, minutes of meetings of these institutions, the international treaties database of the Verkhovna Rada of Ukraine.

III. Research analysis and problem statement

The cross-border cooperation is a foreign policy topical issue since the Declaration of Independence of Ukraine and has been the subject of research in the papers of various authors, among a significant number of which, it is necessary to note the most famous: P. Belenky, G. Datskiv, N. Mikula, V. Rossikhin, Denis de Rougemont, I. Studennikov and etc.

The purpose of this article is to give classification to the implementation levels of cross - border cooperation (CBC) both in Europe and in Ukraine.

IV. Research results

For more than 50 years, the institutionalized forms of CBC function within the EU countries. Such forms contribute to the economic growth of regions located far from the center of the country, and their harmonization with other regions. Ukraine started the European practice of cross-border cooperation development since its formation as an independent state by formation of the first "Carpathian Euroregion" in 1993, and later - 8 in addition. However, the legacy of the command and administrative system hinders the development and strengthening of the CBC role as "an effective tool for the socio-economic development of border territories" [1, p. 291]. The implementation and approximation of the best practices of European countries, CBC mechanisms, as well as improvement of institutional, legal, organizational and financial support for the development of institutionalized forms of CBC is the basis for socio-economic transformations within the border regions of Ukraine [2, p.3].

The cross-border cooperation is an integral part of the state regional policy of Ukraine. The law of Ukraine "on the basics of state regional policy" defined that such a policy consists of a system of goals, means and coordinated actions of national and local Executive authorities, local self-government bodies and their officials to

ensure a high level of quality of life for people throughout Ukraine with consideration of the regional characteristics by balanced development of Ukraine and its regions through social and economic unity [3].

It is the basis for the development of national legislation of Ukraine, further state support to strengthen coordination of cross-border cooperation, a priori with the participation of Ministry for Regional Development, Construction and Public Housing and Utilities of Ukraine, Ministry of Economic Development and Trade of Ukraine, Ministry of Foreign Affairs of Ukraine and other central executive bodies [4, p.58]. A necessary condition is also to provide a real opportunity for local governments to participate in cross-border cooperation.

The insurance of CBC institutional development bases, firstly, on the regulatory system, secondly, the regulating mechanisms ensure it within interaction between authorities at various levels, and thirdly, by creating a sufficient number of effective institutions that promote the development of CBC and joint cross-border projects with involvement of enterprises, public organizations, non-governmental institutions, educational institutions, and scientific institutions [5]. These institutions should include chambers of Commerce and industry, regional development agencies, business centers, as well as industry associations, such as those that form public initiatives with aim to improve the regulatory policy in the field of cross-border cooperation. The special role belongs to the real possibilities to external assistance from the European Union by means of project applications. These institutions perform information and consulting activities for CBC subjects in regard to the organizational and financial prospects that participation in international cooperation opens for them [6, p. 292].

Within the analysis of the CBC development experience in Europe we can generally distinguish the following levels of such cooperation:

- 1) international level-implementation of the common European interests policy, coordination of national and regional policies for the balanced development of Europe;
- 2) state level-development of national policy in the field of CBC and coordination of national interests with pan-European, as well as harmonization of national and regional goals;
- 3) regional level-implementation of the CBC regional development policy with consideration of the interests within the state and regional units with correspondence to coordination with the regions of neighboring countries;
- 4) local level-coordination of development plans proposed by local authorities (with concern to regional and national interests), "concrete cooperation between subjects of border territories" [7; 8; 9; 15].

Within the fourth level of CBC implementation, there is a cooperation between the subjects of border territories as a characteristic feature. Within the analysis of current trends in the development of CBC in Europe and regulatory documents of the European Union and the Council of Europe:

- 1). Protocol No. 2 to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities within inter-territorial cooperation, where the Council of Europe has declared the possibility of cooperation between States despite the presence or absence of a common border;
 - 2). Protocol N 3 to the European Outline Convention on Transfrontier Cooperation between Territorial Communities or Authorities in concern of Euro-regional cooperation associations (ECS), the Council of Europe noted the cooperation possibilities between the ECS and those countries that do not have a common border;
 - 3). Regulation (EU) № 1082/2006 on the establishment of European Groupings of Territorial Cooperation;
- one can conclude that there is an increasing trend of cross-border cooperation not only between States across a common border, but also between States that have common aspirations to address similar urgent needs.

In accordance with the above-mentioned international legal acts, the fourth level of CBC implementation one can describe in this form: "local level-coordination of development plans proposed by local authorities (with

consideration of regional and national interests), cooperation between CBC entities in order to jointly solve problems.

In accordance with the views of N. Mikula and V. Tolkavanova, the institutional support for the implementation of state regional policy in Ukraine works at three basic levels - national, regional and local. Each level has the characteristics of the activity which refers to subjects with power competence [4].

Under comparison of CBC implementation levels classification in Europe (international, state, regional, local) with the levels in Ukraine (national, regional, local), we see that there are only 3 levels within the scope of the Ukrainian classification. We can explain this by the existence of a supranational entity in Europe - the European Union - and the need to harmonize the European legislation.

On 01.11.2014, the 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, entered into force. The article 446 of this agreement defines the subject of cooperation in the field of regional policy. "The Parties shall promote mutual understanding and bilateral cooperation in the field of regional policy, on methods of formulation and implementation of regional policies, including multi-level governance and partnership, with special emphasis on the development of disadvantaged areas and territorial cooperation, hereby establishing channels of communication and enhancing exchange of information between national, regional and local authorities, socioeconomic actors and civil society.." Further, in Chapter 27, "Cross-border and regional cooperation" of section V, "Economic and Sector Cooperation", entrenches the obligation to involve local and regional authorities and relevant management structures in cross-border cooperation in order to strengthen it by the organization of favorable legislative framework, as well as provision of the cross-border relations development. The Association Agreement lists the elements of cross-border cooperation: transport, energy, communication networks, culture, education, tourism, health and other fields[10]. The key principle of the entire Agreement is the postulate about approximation of the European Union norms with the legislation of Ukraine: approximation with the EU in the legal sphere, adaptation of legislation in Ukraine, which will contribute to gradual economic integration and deepening of political Association, adaptation of Ukrainian legislation to the EU acquis. There is a multiple use of such terms as "Approximation" or "Approximating" (preamble, articles 1, 59, 84, 337, 358, 375, 405, 417, 428, 474 etc. "Legislative approximation" (articles 149, 152), "Regulatory approximation" (articles 64, 114, 124, 133, 322), "adapt" (article 138), "гармонизация" (articles 359, 404), "recognition of international principles and standards" (articles 291, 346, 378, 385), "взаимное признание правил" (articles 70, 83, 106, 140), "транспозиция" (articles 56, 65, 96), etc. [11].

However, we should note that Ukraine began the process of harmonization in regard to its legislation through signing the partnership and cooperation Agreement with the European communities and their member States in 1994 (PCA) [14]. the scientists Evans Andrew and Viktor Muravyov believe that the process of harmonization of national legislation between Ukraine and EU legislation began even before the signing of the PCA with concern to the regulation of competition, labor and social relations. We can consider such period as stage of voluntary harmonization [12, 13].

In 2004, the National program for the adaptation of Ukrainian legislation to the legislation of the European Union already provided for a legislative adaptation mechanism, the process of legal adaptation of Ukraine and other legal acts within the scope of the *acquis communautaire*.

Under these norms and scientific ideas, we can make a conclusion that there is a long-term necessity in regard to the legal adaptation between Ukraine and EU standards.

The scientist V. S. Portnyh underlines the following levels of development in regard to cross border cooperation in Ukraine: 1) international legal instruments under ratification of Ukraine, 2) interstate agreements, 3)

national legislation, 4) interregional agreements, 5) agreements between participants, in particular, of Euro-regional entities, that relate to cross-border cooperation [9].

In accordance with consideration that the laws of Ukraine and other legal acts coordinate with *acquis communautaire*, as well as Regulation (EU) № 1082/2006 on the establishment of European cross-border cooperation groups (the possibility of Ukraine's participation within the CBC), it is necessary to supplement the levels classification of cross-border cooperation development in Ukraine with the characteristic feature: *acquis communautaire*. Also, in accordance with the Law of Ukraine "On transborder cooperation" subjects of cross-border cooperation are territorial communities, their representative bodies, local Executive authorities of Ukraine, which interact with the communities and the relevant authorities of other States within its competence under the legislation and agreements on cross-border cooperation. Euroregion - organizational form of cooperation within administrative-territorial units of the EU, it operates in accordance with the bilateral or multilateral agreement on cross-border cooperation [16]. Since the law does not separate interregional agreements from agreements between CBC participants, there is no need to classify them separately.

V. Conclusions

With consideration to the above-mentioned material, the new edition of the levels classification in regard to development of cross-border cooperation in Ukraine looks like this: 1) *acquis communautaire*, 2) international legal instruments under ratification of Ukraine, 3) interstate agreements, 4) national legislation, 5) interregional agreements. Each level has the characteristics of the activity which refers to subjects with competence in accordance with the current legislation of Ukraine.

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