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THE EU – UKRAINE RELATIONS THROUGH THE PRISM OF HUMAN RIGHTS

INTRODUCTION

The contemporary integration process in Europe is broadening, deepening and intensifying. It entails that the European Union not only tries to widen its operational areas, but also that it searches for stronger, fundamental reasons for its existence. Thus, the concept of human rights became one of the new sources of European integration articulated already in the form of Declaration on December 7, 2000 as the Charter of Fundamental Rights. Despite its limited scope of implementation, even after the Lisbon Treaty came into force, its purpose was far away from serving the role of a technical legal document. It is a symbol of the importance of the human rights concept in Europe that unites all the EU member states and provides the necessary background for the success of the European project. Therefore, the aim of this paper is to provide a clear argument for the EU's basic values on which it functions in its external relations. This goes in line with the EU's emerging role of a global player with clear set of principles and therefore expectations towards its partners. The aforementioned does not mean that the EU is the flagship of the universal crusade for human rights. Often, for clear political reasons and due to the complexity of the decision making process in the frames of the EU's external relations, the European Union makes compromises that undermine the role of human rights as a crucial factor (it is enough to recall the close economic relations with China and Russia despite their human rights record, not to mention such decisions as those connected with the introduction of stronger sanctions on the Belarusian leader Alexander Lukashenka, which were obstructed because a few members' economic interests were more important than the EU's

principles¹). Nevertheless, human rights remain a key aspect of the European Union and, bearing in mind its economic potential, political attractiveness and international importance, these principles often impact on the relations with external partners. In that sense, a closer analysis of the existing status of relations between the European Union and Ukraine can provide interesting guidelines concerning not only their bilateral relations, but also on the level of the European Union emancipation as a unified and conscious political entity in the international relations. The case of Ukraine is a remarkable litmus test for the European Union's values and the effectiveness of its foreign policy towards a country of its closest neighbourhood.

At the beginning of the 21st century, Ukraine is considered to be territorially the biggest country in Europe, excluding Russia, with a population of over 45 million². Due to the number of its natural resources, attractive developing markets and convenient geopolitical location, Ukraine naturally clings to the interests of neighbouring countries and growing superpowers such as China. In particular, the European Union member-states recognize the importance of Ukraine in several aspects. Primarily, as a transit territory between the Western world and Asia with its oil and gas deposits as well as access to the world sea trading routes; secondly, as a promising new market for European products; thirdly, as a buffer zone between the EU and Russia and a geopolitical shield against Kremlin's political expansion. The current EU-Ukraine relations are shaped by several documents such as the Partnership and Co-operation Agreement (PCA) and the EU-Ukraine Association Agenda (AA) as well as policy frameworks such as the European Neighbourhood Policy (ENP), the Eastern Partnership (EP), not to mention a Secure Europe in a Better World (SEBW). The PCA was signed in June 1994 and came into force on March 1, 1998 setting the layouts for every following branch of the EU-Ukrainian cooperation and partially remains in force up till now. The Association Agenda came into being on November 23, 2009 replacing the ENP Action Plan and aiming to prepare the provisions of the Association Agreement, which was finalized on December 19, 2011 but still remains unsigned. Finally, speaking about policy frameworks, the European Neighbourhood Policy was initiated in 1995 and amended several times afterwards aiming to promote stability in the ring of countries that surround the enlarged EU. The ENP Action Plan towards Ukraine

¹ See M. Shveits, *EU Trades Democracy for Trade*, "KyivWeekly" (April 12, 2012), <http://kyivweekly.com.ua/pulse/world/2012/04/12/131212.html> [accessed October 13, 2013].

² Russia is not taken into account due to the fact that the biggest part of its territory is geographically located in Asia.

was in force from February 2005 till February 2008. On May 7, 2009 the European Neighbourhood Policy framework was supplemented by the Eastern Partnership Programme. The EU-Ukraine relations are also greatly influenced by the EU Security Doctrine, a Secure Europe in a Better World, adopted in Brussels on December 12, 2003, establishing fundamental layouts of what the EU countries consider to be a part of their security issues and the role of neighbouring countries in the common EU-security. All the above-mentioned frameworks and documents were designed to introduce mutually beneficial relations between the EU and Ukraine taking the democratic liberal values as a precondition.

One should also keep in mind that Ukraine is an extraordinary case in the international relations. Few countries, if any, can provide such a glaring example of persistence in their lack of predictability concerning the priorities of their foreign relations. Since its independence in 1991, Ukraine has been drifting between the shores of the pro-Western and pro-Eastern priorities, even within the term in office of one president³. However, the tides of the EU-Ukrainian rapprochement are usually accompanied by more emphasis on democratization, political pluralism and human rights. For this reason, a closer overview of the human rights record of Victor Yanukovich's presidency can provide interesting preliminary observations concerning the mutual relations. Despite Viktor Yanukovich's clear declarations that after his election for the post the Ukrainian foreign policy will not change its pro-western course set up by his predecessor Victor Yushchenko, the political situation, decisions and developments rather argue for the opposite. Secondly, if this is the case, what are the European Union capacities to shape its closest international environment in accordance with its own standards? To what extent can these standards determine other EU priorities such as supply of natural resources, economic relations or even political confrontation with Russia? The answer to these questions can also serve as guidelines for re-thinking the EU's position on the effectiveness and aims of its external relations in a broader sense.

1. THE EU'S ATTITUDE

Almost ten year ago, in 2003, Romano Prodi, President of the European Commission, declared that the EU had no other option than to cooperate

³ R. Kuźniar, K. Szczepanik, *Polityka Zagraniczna RP 1989–2002*, Wydawnictwo Askon, Warszawa 2002, p. 220–243.

with neighbouring countries, particularly with Ukraine, in everything except creating common institutions on the EU level. What is more, he added that: *all the neighbouring countries should be offered the prospect of a stake in the EU's Internal Market and further integration and liberalization to promote the free movement of persons, goods, services and capital*⁴. The words of Romano Prodi are in line with a Secure Europe in a Better World provisions stating that: *stable and reliable countries with democratic governing on the EU's border are of great importance for the European sustainable development and security*⁵. Such declarations and positions reveal Brussels' intentions to launch long-lasting, stable, liberal interaction with the countries within the “ring of friends”. In order to secure the success of this concept, the EU officials constantly emphasize democratic values and human rights as a precondition for inter-state cooperation. This strategy was launched at the beginning of the 1990s and currently plays a significant role in the common foreign and security policy⁶.

However, due to geopolitical calculations and domestic contexts of the neighbouring countries (for example fast-changing political regimes, weak civil societies, corrupted judicial systems, oligarch-oriented economies etc.), the EU *de facto* avoids implementation of the long-lasting programmes with some members of the “ring of friends”. It entails that establishing short-term situational frameworks of economic and political cooperation aiming to satisfy constant EU's major interests can easily overshadow provisions of the ENP, the EP or other frameworks defining relations with Ukraine or with any other country. As Gordon Crawford stresses: *promotion of democracy and human rights by the EU is high on rhetoric but low on achievement*⁷. One can even assume that despite recognizing human rights as the core value

⁴ S. Lavenex, *EU external governance in «wider Europe»*, “Journal of European Public Policy” 2006, Vol. 11, No. 4, p. 688.

⁵ Council of the European Union, *A Secure Europe in a Better World – European Security Strategy*, (December 12, 2003), www.consilium.europa.eu/uedocs/cmsUpload/78367.pdf, p. 8 [accessed January 12, 2012].

⁶ T.A. Börzel, T. Risse, *One Size Fits All! EU Policies for the promotion of human rights, democracy and the rule of law*, “Report for the workshop on democracy promotion”, (October 4, 2004), Stanford University, http://cddrl.stanford.edu/publications/one_size_fits_all_eu_policies_for_the_promotion_of_human_rights_democracy_and_the_rule_of_law [accessed October 13, 2013].

⁷ G. Crawford, *Evaluating European Union promotion of human rights, democracy and good governance: towards a participatory approach*, “Journal of International Development” (August 29, 2002), Vol. 14, No. 6, p. 925.

in the internal space, the EU does not prioritise them in external relations, especially with the hard dealing countries as Ukraine.

Such conclusions are in line with the findings of other European researchers. For instance, Armil von Bogdandy agrees to the point that the well-being of the EU citizens is of greater importance than external strengthening of human rights: *The core objectives of the Union should, for the moment at least, remain peace, wealth and an ever closer union among its peoples. Human rights, though important, should not be understood as the raison d'être of the Union*⁸. Richard Youngs enriches this statement with the fact that there is a permanent contradiction in Brussels between the human rights policy-making community and those who favour realistic way of conducting policy⁹. Such contradiction evidences that human rights prescriptions, despite their doubtless value, face serious obstacles when it comes to coherent promotion. Frank Schimmelfennig emphasizes that the EU's activity in promoting human rights and democracy is shaped by the calculation of financial expenses. *Despite the pervasive political and legal rhetoric of democracy and human rights promotion, actual policy seems to match rhetoric only when consistency is «cheap»; otherwise, it is driven by a host of other geopolitical, economic or security interests*¹⁰. Finally, one of the cornerstone ideas of the EU, which has its roots in the European Coal and Steel Community, resides in the developing of national economies of member-states by taking common actions. It means that the EU was not created for human rights, it was created to satisfy economic purposes, and human rights – immanently existing and recognized in the six founding states – were a convenient substratum for this.

2. THE UKRAINIAN PERSPECTIVE

Covering the issues of how the Western-pattern democracy and human rights are perceived in Ukraine, one should keep in mind two existing poles of interpretation. On the one hand, civil society activists usually idealize and overestimate this branch of the EU policy; on the other hand, the Ukrainian

⁸ A. von Bogdandy, *The European Union a human rights organization? Human rights and the core of the European Union*, "Common Market Law Review", 2000, Vol. 37, No. 6, p. 1338.

⁹ R. Youngs, *Democracy promotion as external governance?*, "Journal of European Public Policy", 2009, Vol. 16, No. 6, p. 899.

¹⁰ F. Schimmelfennig, *Europeanization beyond Europe*, "Living Reviews in European Governance" 2009, Vol. 4, No 3, p. 15.

authorities treat human rights and democracy as one more formality to be arranged for commencing profitable trade with the EU. It can be assumed that these two poles came into being due to the poor awareness in the Ukrainian society what human rights and democracy mean according to the Western states. It seems that the Ukrainian perspective of human rights and democracy is blended with their personal expectations of well-being.

Some of the Ukrainian social scientists do not hesitate to state that human rights and democracy are cornerstones for the whole EU well-being and existence. *Progressiveness of the European political system is assured mainly by the respect for human rights ... The only feature which determines the political influence of any political institution in the EU resides in the level of compliance with the human rights values in the conditions of constant social rivalry*¹¹. Moreover, the above-cited Petro Kohut also emphasizes that respect for human rights should become the obvious guideline for deepening cooperation between Brussels and Kyiv in all the areas. According to his point of view, the crucial precondition for launching political convergence between Ukraine and the EU is the effective functioning of civil society institutions backed by the state support of human rights and liberties. The main feature of this convergence resides in the creation of optimal conditions for political self-realization of an individual. However, Petro Kohut and other Ukrainian social scientists do not always take into consideration such factors as Euro-centrism, possible expenses and probability to succeed in promoting human rights. It is often reiterated in research that Brussels has an “honourable duty” to invest money in promoting human rights in Ukraine¹².

Another interesting Ukrainian assumption is that Brussels will not introduce any sanctions against Ukraine, neither economic nor political, to maintain geopolitical balance. According to the Ukrainian point of view, the European Union is anxious that the alternative for Kyiv will be strengthening the relationships with Russia, China, and Venezuela¹³. One can agree that such strengthening is possible and can trigger a threat for the EU security.

¹¹ P. Kohut, *Personalna skladova politychnogo zblizhennia Ukrayiny ta YeEs [Персональна складова політичного зближення України та ЄС]*, proceedings of the conference “Ukrayina i Yevropeyskyi Soyuz: shlahy ta napriamy zblizhennia i spivpratsi” [“Україна і Європейський Союз: шляхи та напрями зближення і співпраці”], 2008, Vol. 1, p. 67.

¹² Ibidem, p. 68–69.

¹³ Yu. Tyshkun, *The third sector in Ukraine: context of Western States interests in foreign policy implementation*, “Ukrayinska natsionalna ideya: realiyi ta perspektyvy rozvytku” [“Українська національна ідея: реалії та перспективи розвитку”], 2010, Vol. 22, p. 126.

However, taking into consideration the economic relations, it is very unlikely to happen due to the current trading balance.

The third assumption is that the EU should take the role of a judge and punisher in solving internal tensions. It entails that Ukrainian oligarchs can be put under control by the EU's selective pressure on their economic interests in the member-states. Such control would be beneficial for strengthening the reliability of the European business and will encourage Ukrainian oligarchs to support the local civil society. Ultimately, that can secure their assets from being questioned in the EU. *By investing their assets abroad our officials and politicians face the threat of losing their money in case there emerges a confrontation with the political and economic interests of the world's developed countries; such a threat can cause its impact on their willingness to pursue Ukrainian national interest at home and abroad*¹⁴. However, the main flaw of this approach is that the European Union does not recognize the role of a democracy's policeman among its main priorities. It is rather a consequence of the interaction between the member states rather than a conscious policy. Even if recently the European Union is trying, in accordance with its policy of taking positions and pressuring on political issues that are genuinely internal in their nature, the EU does that only towards its own member states. The cases of Austria, Hungary and most recently Romania are the most glaring examples. However, there should be no expectation that the European Union will try to interfere in the internal matters of sovereign third countries in order to improve the human rights situation.

Furthermore, the latest enlargement provides a much more disturbing example that even countries with doubtful achievements in fulfilling the economic and political criteria for membership such as Bulgaria and Romania, can join the club. Actually, the enlargement had the opposite effect of consolidating the existing political and economic transformational status quo by proving that even if not excellent candidates, the countries can join the EU; thus, creating the feeling among Bulgarian and Romanian societies that the existing reality corresponds with the European standards. Remarkably, the "conditional" membership of these two countries created a weird status, where on the one hand Brussels and some of the "old" EU member states, notably the Netherlands and France, obstruct the full integration of Romania and Bulgaria by keeping them away from the Schengen agreement. However, on the other hand, despite the critical cyclical reports on justice and internal affairs of both countries no harsher consequences can be implemented. The

¹⁴ Ibidem, p. 125.

countries will remain members of the EU despite the apparent come off from the EU political standards. In that sense, bearing in mind the existing political status quo in Ukraine, a potential enlargement perspective for Ukraine can be counterproductive, because it ultimately generates a consolidation of the existing political habits.

3. HUMAN RIGHTS IN UKRAINE AND THE EU

An interesting perspective of how human rights shape the EU foreign policy can be discovered in the correlation between the current non-transparent trials over the opposition leaders and delays in signing the EU-Ukraine Association Agreement. The most evident in this regard are trials of Yulia Tymoshenko, ex-Prime Minister of Ukraine, and Yuriy Lutsenko, ex-Minister of Internal Affairs. These two trials will be analysed below in more detail, although the prosecution of other Yulia Tymoshenko's Cabinet of Ministers members should also be highlighted in the context of impact of human rights on the EU-Ukraine relations¹⁵.

¹⁵ Among other members of Yulia Tymoshenko's Cabinet, who faced different kinds of accusations and subsequent prosecution, the following people can be mentioned: Bogdan Danylyshyn (Minister of Economics in 2007–2010, accused of non-transparent tenders during the reconstruction of Boryspil airport; he was given an asylum in the Czech Republic on January 14, 2011); Anatoliy Makarenko (Head of Customs Service of Ukraine in 2009–2010, accused of abuses during clearance of imported Russian gas; sentenced to four years' conditional imprisonment); Valeriy Ivashchenko (Minister of Defence in 2007–2009, accused of mismanagement of a strategic facility – Theodosia Vessel Mechanical Plant; sentenced to five years' conditional imprisonment); Georgiy Filipchuk (Minister of Environment in 2007–2010, accused of the abuse of power while signing contracts for gas extraction in the Black Sea; fined UAH 1,5 million and sentenced to two years' conditional imprisonment); Yevgen Korniychuk (First Deputy Minister of Justice in 2007–2009, accused of corruption; still under arrest), and others. Summarizing, more than 15 different rank officials working with Prime-Minister Yulia Tymoshenko were either arrested or imprisoned. The cases against her, dating back to May 2010, were the first to start the wave of prosecutions against opposition leaders. For example, Anatoliy Makarenko was taken under arrest in June 2010, Valeriy Ivashchenko – in August 2010, Bogdan Danylyshyn – in October 2010 (however, he was released later), Yevgen Korniychuk – in December 2010. The most common accusation against the above mentioned officials was the abuse of power. Notwithstanding, the majority of the European and world organizations (the European Court of Human Rights, the European Commission, the European Parliament, Amnesty International, Human Rights Watch, Freedom House, the Helsinki Committees and others) claimed

At this juncture, Yulia Tymoshenko, one of the Orange Revolution leaders, is under criminal investigation for more than ten criminal charges; however, prosecutors claim that they have opened twenty four criminal cases against her since 1995. Ex-Prime Minister is accused mainly of the abuse of power. The major case to be mentioned in this regard is the signing of a contract on gas supplies from Russia, which is treated by the contemporary authorities as unreasonably expensive. Furthermore, Yulia Tymoshenko is accused of mismanagement of money, which Ukraine received as a supporter of the Kyoto Protocol (the money was invested into a Pension Fund instead of being spent on forestation). She is also accused of non-transparent purchase of 1000 ambulances for village healthcare centres. Finally, in July 2011 Ukrainian Security Service investigated the United Energy Systems of Ukraine – an intermediary company backed by Yulia Tymoshenko – which supposedly failed to fulfil its economic obligations in the amount of 405.5 million dollars in 1996. Thus, the prosecutor claimed it could have posed a potential threat to the economic security of Ukraine by making it more vulnerable to Russia¹⁶.

On October 11, 2011 the trial over gas deals ended and Yulia Tymoshenko was sentenced to seven years' imprisonment. As the judge, Rodion Kireyev, put it: *In January 2009, Yulia Tymoshenko... exercising the duties of Prime Minister... used her power for criminal ends and, acting deliberately, carried out actions... which led to serious consequences*¹⁷. The judge also stated in his ruling that the former Prime Minister was also expected to pay back 186 million dollars to the country's budget as compensation for the assets lost in 2009. She has also been banned from political office for three years, with implications for her role in next year's parliamentary elections.

their innocence. Some coverage should also be given to the prosecution of Ukrainian artists, journalists, and social activists revealing oppositional political views. For instance, a modern writer Maria Matios appealed on January 12, 2011 to the General Prosecutor of Ukraine to stop impounding her books in bookshops and libraries; as she put it, this impoundment was conducted by the representatives of law enforcement agencies. A Ukrainian journalist Oksana Bilozerska experienced an unauthorized search of her flat because she was a suspect for an arson attack on the ruling party's office located nearby; police officers impounded all available technical items, even a mobile phone.

¹⁶ *Ukrayina maye povernuty \$405.5 mln, yaki zarobyla Tymoshenko* [Україна має повернути \$405,5 млн, які заробила Тимошенко], "ZIK" (April 5, 2012), <http://zik.ua/ua/news/2012/04/05/342754> [accessed February 10, 2013].

¹⁷ *Ukraine ex-PM Yulia Tymoshenko jailed over gas deal*, "BBC", (October 11, 2011), <http://www.bbc.co.uk/news/world-europe-15250742> [accessed February 10, 2013].

Just as the verdict was approved, the World Community condemned its non-transparency. Particularly, the High Representative of the Union for Foreign Affairs and Security Policy, Catherine Ashton, made a statement that the verdict showed justice was being applied selectively in politically motivated prosecutions. Remarkably, even the Russian Prime Minister at that time, Vladimir Putin, who had signed the deal with Yulia Tymoshenko in 2009, said he did not understand why she had been imprisoned: *It is dangerous and counterproductive to cast the entire package of agreements into doubt*¹⁸. The voiced positions of human rights NGOs, such as Amnesty International and Freedom House, were also revealing significant anxiety.

Simultaneously, the ex-Minister of Internal Affairs, Yuriy Lutsenko, also faced criminal prosecution. Primarily, he was accused of misuse of Ministerial funds to rent one of the biggest concert-halls in Kyiv for the celebration of the National Militia Day in 2008 and 2009. Secondly, he was accused of illegal granting of the officer's pension to his personal driver, who had weak relations with the law enforcement agencies; as a result, the driver was overpaid 5,000 dollars. On February 27, 2012, after a pre-trial fourteen months' detention, Yuriy Lutsenko was sentenced to four years in jail (and confiscation of his property) for embezzlement and abuse of power. The total damage caused by Lutsenko to Ukraine's budget had been estimated at 125,000 dollars.

Yuriy Lutsenko's imprisonment triggered a new wave of criticism from the West. The same day the verdict was announced, Catherine Ashton and Stefan Füle made a joint statement claiming that they observed *the continuation of trials in Ukraine which do not respect international standards as regards fair, transparent and independent legal process*¹⁹. In a statement issued by the Parliamentary Assembly of the Council of Europe (PACE) right after the verdict of 27 February 2012, Yuriy Lutsenko was named *the victim of a political vendetta*²⁰. The next day the President of the PACE, Jean-Claude Mignon, called for his release. Finally, on 3 July 2012, after the six months' long process, the European Court of Human Rights announced its decision that the arrest of Yuriy Lutsenko *had been arbitrary; that no valid reasons had*

¹⁸ Ibidem.

¹⁹ EU statement: «We are disappointed' with Lutsenko verdict», "Kyiv Post", (February 27, 2012), <http://www.kyivpost.com/content/ukraine/eu-statement-we-are-disappointed-with-lutsenko-ver-123225.html> [accessed February 10, 2013].

²⁰ PACE rapporteur says Lutsenko is «victim of a political vendetta», "Kyiv Post", (February 27, 2012), <http://www.kyivpost.com/content/politics/pace-rapporteur-says-lutsenko-is-victim-of-a-polit-123221.html> [accessed February 10, 2013].

*been given for his detention; that he had not been duly informed of the reasons for his detention; and, that the lawfulness of his arrest and detention had not been properly reviewed*²¹.

On the other hand, notwithstanding discovered violations in trials over Yulia Tymoshenko and Yuriy Lutsenko, at the beginning of December 2011 the European Parliament recommended that the EU-Ukraine Association Agreement, prepared in the framework of the ENP Action Plan, should be finalized by the end of 2011. The European MPs considered that signing such a document would force and encourage Ukraine to implement all necessary reforms and adhere to the principles of democracy, respect for human rights and the rule of law. If these reforms had been accepted in Kyiv, the Association Agreement could have been signed by June 2012. However, on October 27, 2011, the European Parliament also listed legal preconditions for postponing the Agreement in case its provisions were ignored by the Ukrainian authorities. One of the crucial preconditions was rooted in guarantees that such ambiguous judicial processes as it was with Yulia Tymoshenko and Yuriy Lutsenko would never happen again. Moreover, the European Parliament called on Kyiv to ensure that the upcoming parliamentary elections in October 2012 would be democratic and all prosecuted politicians could participate. The Ukrainian side failed to comply with both requirements. Particularly, at the end of August 2012, the Central Electoral Commission rejected the acceptance of some opposition parties' candidates' lists containing names of the prosecuted and imprisoned politicians²². Apart from that, opposition parties discovered significant violations or inconsistencies in the formation of local electoral commissions, where the supporters of the ruling party were in majority²³. Finally, opposition parties experienced arbitrary restrictions on

²¹ European Court of Human Rights. *Case of Lutsenko v. Ukraine*, (2012), [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112013#{"itemid":\["001-112013"\]}](http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-112013#{) [accessed November 23, 2012].

²² *Імен Тимошенко і Лутенка у бюлетні не буде [Імен Тимошенко і Луценка у бюлетні не буде]*, "UNIAN", (August 29, 2012), <http://www.unian.ua/news/522441-imen-tymoshenko-i-lutsenka-u-byuleteni-ne-bude.html> [accessed December 1, 2012].

²³ See also the findings of the Ukrainian Civil Network Opora and the Committee of Voters of Ukraine presented at the Batory Foundation in Warsaw on September 20, 2012 in Warsaw <http://solidarityfund.pl/en/wsparcie-demokracji-2012/nowosci-programu/213-miedzynarodowa-spoleczna-misja-obszerwacyjna-wyborow-parlamentarnych-na-ukrainie> [accessed October 13, 2013].

UDAR piytav okruzhkom na falsyfikaciyi holosuvannia shchodo DVK [УДАР піймав окружком на фальсифікації голосування щодо ДБК], "UNIAN", (September 22,

advertising their political programmes in those regions of Ukraine where the ruling party enjoys the strongest support.

On December 19, 2011, after the 15th Ukraine-EU summit came to an end, the EU Council President, Herman Van Rompuy, announced that the talks between Ukraine and the EU on the Association Agreement had been completed. As it is mentioned in the Ukraine-EU Summit Joint Statement, *the leaders noted with satisfaction that chief negotiators had reached a common understanding on the full text of the Association Agreement which will establish the future contractual basis of the EU-Ukraine relations. The way is now open for technical completion of the final consolidated version of the Agreement, including its Deep and Comprehensive Free Trade Area (DCFTA), with a view of its initialling as soon as possible*²⁴. However, Herman Van Rompuy also stressed that the EU desires to sign the Agreement, but whether this happens or not will depend on the domestic situation in Ukraine. The next day Viktor Yanukovich explained Herman Van Rompuy's comment by appealing to the problems with democracy and non-transparent prosecution of the opposition leaders. As he put it: *one of the urgent questions of current agenda – is the question related to the former Prime-Minister Yulia Tymoshenko*²⁵. He also emphasized that the parliamentary elections next year [2012 – O.K., S.D.] would become a litmus test for signing the Association Agreement. The smooth run of these elections should be ensured by two factors at least. Primarily, every candidate should enjoy equal opportunities for promotion of his or her political power. Secondly, the international observers from the OSCE should confirm the democratic nature of October 2012 elections. However, as it was already mentioned, both of these factors proved to be unrealistic due to the fact that opposition politicians were effectively excluded from the competition and doubts concerning the pre-elections procedures were confirmed by the findings of the international observers. As one of the European diplomats commented, Ukrainian authorities: *will never take the chance of letting her [Yulia Tymoshenko – O.K., S.D.] out before the vote, so*

1012), <http://www.unian.ua/news/526385-udar-piy mav-okrujkom-na-falsifikatsiji-jereb-kuvannya-schodo-dvk-foto.html> [accessed December 1, 2012].

²⁴ European Union External Action, *EU-Ukraine Summit Joint Statement*, (December 20, 2011), http://www.eas.europa.eu/delegations/ukraine/press_corner/all_news/news/2011/2011_12_20_01_en.htm [accessed December 1, 2012].

²⁵ *Yanukovich: «pytannia Tymoshenko – yedine zauvazhennia Yevropu» [Янукович: «питання Тимошенко – єдине зауваження Європи»]*, “Ukrayinska Pravda” [“Українська Правда”] (December 15, 2011), <http://www.pravda.com.ua/news/2011/12/15/6840451/> [accessed February 10, 2013].

the OSCE will be forced to say the elections are not free and fair and the EU will have to react. He also named 2016 as a more realistic date for ratification after the next presidential elections²⁶.

At this juncture, the official position of the European Union towards Ukraine is revealed in the latest EU Parliament's Resolution adopted on December 13, 2012. This resolution seems to be the most rigorous of all three on the issue adopted until now²⁷. It stresses once again the EU interest in signing the Association Agreement, including the DCFTA, however, explains the existing delays with the inappropriate policy pursued by the Ukrainian authorities, particularly in the field of human rights. [The] *effective cooperation between Ukraine and the European Union can only be realised on the basis of a clear willingness on the part of the Ukrainian authorities to carry out and implement the necessary reforms, in particular that of the legal and judicial system, with the aim of fully adhering to the principles of democracy and respect for human rights and fundamental freedoms, minority rights and the rule of law*²⁸. The respect for the rights and freedoms of the imprisoned opposition leaders, particularly Yulia Tymoshenko, Yuriy Lutsenko and Valeriy Ivashchenko, are mentioned as crucial for renewing a constructive dialogue between Kyiv and Brussels: [The European Parliament] *takes a strong appeal to the Ukrainian authorities to find, together with the European Parliament's envoys, Aleksander Kwasniewski and Pat Cox, a reasonable and just solution to the Tymoshenko case; urges the Ukrainian Government to respect and implement the final decisions of the European Court of Human Rights on the ongoing case of Yulia Tymoshenko and Yuri Lutsenko*²⁹. Finally, the European Parliament raises concerns about the transparency of October 2012 parliamentary elections indirectly accusing the Ukrainian authorities of the misuse of administrative resources and numerous violations in campaign financing. To avoid such violations in future, the European MPs call on the new government *to continue strengthening the provisions of the law on party financing in order to provide for more transparency of funding and spending, a full disclosure of sources and amounts of campaign*

²⁶ A. Rettman, *Future of EU-Ukraine relations uncertain despite new treaty*, "Euroobserver", (December 19, 2011), <http://euobserver.com/24/114683> [accessed May 12, 2012].

²⁷ Two others were adopted on October 27, 2011 and May 22, 2012.

²⁸ European Parliament, *European Parliament resolution on the situation in Ukraine*, (December 13, 2012), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2012-0507+0+DOC+XML+V0//EN> [accessed February 11, 2013].

²⁹ Ibidem.

*expenditure and the sanctions for violation of campaign funding provisions in particular*³⁰.

Looking at the EU – Ukraine relations from the most recent perspective, one may discover that the overall tensions and disagreements between both sides have decreased. It seems the Ukrainian authorities became more lenient towards the EU demands and decided not to wait until the next Presidential elections in 2016³¹. This can be explained, on the one hand, by their estimation of the probability to sign the Association Agreement during the summit in Vilnius on November 28–29, 2013, and, on the other hand, by experiencing Russian political pressure which once again demonstrates Kremlin’s unwillingness to release Ukraine from its geopolitical orbit. In their turn, the European authorities are not referring to the cases of violations of human rights as vigorously as they did before. The recent resolution of the European Parliament of September 12, 2013 on the pressure exerted by Russia on Eastern Partnership countries neither mentions Yulia Tymoshenko’s case, nor other cases of selected political prosecution which resonated during the last three years. At this juncture, the European MPs seem to be enthusiastic about the signing of the Association Agreement with Ukraine and creating the DCFTA. Their enthusiasm may be partially justified by the fact that the Party of Regions openly and persistently stresses their commitment to the democratic values, Yuriy Lutsenko was released and it seems that Viktor Yanukovich is ready to find a way out also for Yulia Tymoshenko³². Moreover, Yulia Tymoshenko herself appealed to the EU authorities encouraging them to disregard her custody and sign the Association Agreement; from her perspective, that was what Ukraine needs most. Therefore, the forthcoming Vilnius summit may become a turning point in the EU – Ukrainian relations, revealing whether the European geopolitical calculations can outweigh the European policy of safeguarding human rights in the EEP countries. (Especially, in case Yulia Tymoshenko remains in prison).

³⁰ Ibidem.

³¹ A. Rettman, *Future of EU-Ukraine...*, op. cit.

³² *Solana rozpoviv chomu Yanukovych dosi ne zvilnyv Tymoshenko* [Солана розповів, чому Янукович досі не звільнив Тимошенко], “Ukrayinska Pravda” [“Українська Правда”], (October 12, 2013), <http://www.pravda.com.ua/news/2013/10/12/6999870/> [accessed October 13, 2013].

CONCLUSIONS

The European postponements of signing the Association Agreement in the conditions of completed negotiations and mutual interest make several issues evident. Primarily, it may entail that Brussels puts human rights above economic cooperation stressing that well-governed democratic neighbours are of higher priority compared to the facilitation of trade. From this perspective the Agreement was blocked by the European security concerns, listed in "A Secure Europe in a Better World". Moreover, this provision is emphasized in the EU Parliament Resolutions of May 22, 2012 and December 13, 2012.

Secondly, the long lasting Association Agreement does not seem to be vital for the EU economy so the short-term arrangements with Ukraine can fit the up-to-date context better. Moreover, a pause in the Agreement would not harm the European trade balance and the stability of resources supply so no extra expenses are foreseen, which is of additional importance in the light of dealing with the current economic hurdles. On the other hand, the signing of the Agreement would cement European influence in the biggest of the EEP states opening new markets for exported goods and improving the post-crisis economic recovery of the EU member-states.

Thirdly, ignoring cases of arbitrary trials over opposition leaders in Ukraine could harm the legitimacy of the EU institutions within the EU. European citizens may condemn their officials for supporting the non-democratic regime, which subsequently might trigger a wave of additional difficulties in the governing of the EU. The EU institutions are facing accusations concerning a deficit of democracy. On the other hand, the Ukrainian ruling authorities are showing signs of gradual, if not delusive, democratisation, which might convince the EU to introduce a more assertive approach towards Kyiv.

Fourthly, despite some populism in their actions, the opposition leaders of Ukraine are perceived by the West as more reliable partners and democracy supporters when compared with the ruling Party of Regions. Therefore, non-transparent prosecution of the opposition leaders diminishes the possibility of establishing constructive dialogue between the EU and Ukraine. Not to mention that the officials in Brussels may interpret the oppression of democratic opposition in Ukraine as the purposeful undermining of their own values.

Fifthly, due to the enormous attractiveness and soft power the EU enjoys in Ukraine, it would be ridiculous to sign the Association Agreement with

politicians, who have a record of ambiguous attitude towards western values, openly violated the rights of their political opponents and deeply divide the Ukrainian society. Keeping this in mind, the EU officials agreed to follow the democratic principles strictly and not to allow the current Ukrainian authorities to affect the bilateral relations without granting freedom to political prisoners. In that sense, economic interests should not prevail over human rights, as Ukrainian authorities would like to see it.

Should the Ukrainian authorities change after the parliamentary and presidential elections in 2012 and 2016 respectively, a better political climate can appear. At that moment signing the Association Agreement will also serve the purpose of a strong signal for the EU sympathy towards Kyiv determination and credit for the Ukrainian pro-Western orientation. However, should this process be protracted, the EU influence in Eastern Europe may be dangerously weakened. One more thing should be remembered: the most recent Ukrainian history shows that even the so-called pro-Western leaders often forget about the values and principles of the European Union.

Undoubtedly, the European Union's relations with Ukraine are influenced by the human rights principles. The steps of the EU-Ukraine rapprochement are conditioned by a number of provisions requiring implementation of stronger human rights standards in the latter. The EU politicians use every occasion to criticize the Ukrainian state actions, condemn the involved actors and urge for improvement of the human rights situation. The virtual political slack in the EU – Ukrainian relations, caused by Brussels refusal to ratify the Association Agreement unless the human rights situation improves, is directly linked with the October election results. However, possible reaffirmation of the popular support for Viktor Yanukovich's Party of Regions will provide strong arguments for the continuation of his policy of suppression of political enemies. Bearing in mind the next presidential elections, Viktor Yanukovich will have enough time to successfully diminish the role of any significant opposition and to introduce the Russian model of dealing with political adversaries³³. In that case, the strongly diversified alternative political

³³ Actions in that respect are already launched. The Libel Bill passed in the first reading introduces changes in the Criminal and Criminal Procedure Codes of Ukraine to stiffen Responsibilities for Infringement of Honor, Dignity and Business Reputation of Individuals. This step repeats the Russian experience in that respect and triggered another wave of critical comments concerning the human rights situation, the suppression of media and the attempt to suffocate social activism. See: Libel Bill To Stifle Speech <http://kyivweekly.com.ua/pulse/politics/2012/09/28/173941.html> [accessed October 13, 2013]. The bill was re-voted and rejected on October 2, 2012.

perspectives will be weak enough and will cease to exist as a significant player in the Ukrainian social and political life, leading to “Russification” of the political environment and a failure of the European Union efforts. However, the Ukrainian society has proved that the sense of freedom is a recognizable value. Should the elections be fair, the Ukrainians will decide themselves which option is best for them.

As it concerns the European Union itself, an interesting feature of the EU’s foreign policy and in this particular case, is that the political statements are often the only tool, which is used. Of course, the case of Ukraine is remarkable. In Europe, a clear example already exists that radical criticism of non-democratic regimes does not improve the human rights situation on the ground, as in the case of Belarus. Completely dependent on Moscow, Alexander Lukashenka knows well that closer relations with the EU will be a strong embarrassment for Moscow and might lead to his removal from power. On the other hand, Russia does not require respect for any human rights standards and actually cheerfully welcomes the suppression of every example of Western kind of political, social or economic behaviour in Belarus. Furthermore, the EU is not a self-sufficient entity and is well aware that weakening the ties with Ukraine because of human rights concerns will have negative consequences for its own member states’ economic relations with Kyiv. For this reason Brussels should either carry the burden of compensating the countries for losses from the implementation of more decisive political and economic action against Kyiv or agree that the current status quo draws the limits to the EU capabilities in the field of protecting and promoting basic values at home.

As long as the EU lacks the necessary tools to effectively block particular EU member states’ interests, Brussels will not be able to impose comprehensive strategies on its foreign relations. The leaders of the EU member states well remember the Russian – Ukrainian gas crisis and its impact on the energy supplies to a number of the EU members.

Lastly, the EU should take one more aspect into consideration. The economic attractiveness of Ukraine, its multiethnic society and historical implications require an active attitude of a number of the EU members from Central and Eastern Europe towards Kyiv. In that respect, Poland provides an interesting example of compromising the clear position on the human rights situation with close and friendly relations, which, even if short-sighted, allows it to claim that it plays the role of Ukrainian advocate in Europe.

There is no clear answer to the question whether EU should act differently. Undoubtedly, the EU is between the undesirable perspective of

loosing Ukraine in a Belarusian way and the need for clear identification of its own political values. With diminishing attractiveness due to its internal problems, the EU should rethink its economic links and ties. More than twenty years ago, a number of Central and Eastern European countries decided to follow the path towards the European Communities, not because there was a clear perspective for membership, but because the EU was an attractive alternative offering normal, decent and prosperous life. Despite all the current difficulties, more than twenty years later, this perception of the EU has not changed radically and this argument must be exploited properly. As it was already mentioned, Frank Schimmelfennig argues that the EU actions in the field of human rights appear only when the costs are low. Maybe it is time for change in that respect. Weakening the economic relations with regimes violating human rights can be a clear signal that the EU has a coherent set of priorities and that the mutually profitable interests are possible only when they are based on common principles. The immediate consequences will not be visible and will require remodelling particular branches of the EU economic ties, particularly the gas supplies. However, the decreasing flow of Euros to the non-democratic regimes will impact mainly on the population and at a certain point can contribute to the social unrest necessary to overturn non-democratic regimes. Then, hopefully, a new quality of relations can be established.

This theoretical proposal was part of the collapse of the Soviet model. However, the last twenty years created a new international environment, which should also be taken into consideration. The existence of alternative sources of power with ambiguous attitude towards the Western principles of democracy, pluralism and human rights, like China or Russia, can have negative consequences for Ukraine. A clear signal of condemnation from Brussels for Viktor Yanukovich's regime can push the country straight in the hands of Moscow or Beijing. Recently, also the developments in the Arab states do not provide the best arguments for that strategy. The Arab Spring shows that even when the model of social unrest overturning authoritarian regimes is practically implemented, there is no guarantee that the consequences will be desirable from the Western perspective. The rejection of authoritarian regimes did not lead to the imposition of the Western liberal model as the best social and political solution. Reversely, radical religious alternatives struggle to replace the authoritarian regime, feeding the masses with new perspectives deeply embedded in the social experience, economic backwardness and local prejudices. Luckily, countries like Ukraine and Belarus should not be compared with the misfortunes of the

Middle East and North Africa because their history and experience are only European ones and they are much closer to Europe than they themselves believe they are.

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The amended version of the paper accepted for publication on November 12th, 2013.

STRESZCZENIE

Badanie obejmuje: (1) specyfikę obecnej polityki zagranicznej UE wobec Ukrainy; (2) wyliczenie i analizę dokumentów, umowy i traktatów, które określają ramy tej polityki; (3) wpływ kwestii praw człowieka na kształtowanie i prowadzenie tej polityki. Na podstawie spraw karnych przeciwko liderom opozycji przeprowadzono analizę, w jakim stopniu naruszenie praw człowieka na Ukrainie może pogorszyć stosunki pomiędzy Kijowem a Brukselą w obecnym kontekście. W rezultacie badań wskazano kilka kluczowych czynników, które mogą wpłynąć na zmianę polityki zagranicznej UE wobec Ukrainy.

SUMMARY

The research: (1) embraces peculiarities of the current EU foreign policy towards Ukraine; (2) enumerates and analyzes documents, agreements and treaties which establish the frameworks for this policy; (3) discovers the impact of human rights issues on shaping and conducting this policy. Based on the criminal trials against opposition leaders, the analysis is provided to establish to what extent the human rights violation in Ukraine can worsen

the relations between Kyiv and Brussels in the current context. As a result, several key factors which can alter the EU foreign policy towards Ukraine are pointed out.

РЕЗЮМЕ

Это исследование: (1) охватывает особенности текущей внешней политики ЕС по отношению к Украине; (2) указывает и анализирует документы, соглашения и договора, которые представляют собой основу для ведения этой политики; (3) демонстрирует влияние нарушений прав человека в Украине на формирование и реализацию политики ЕС. На основании уголовных дел, возбужденных против лидеров оппозиции, авторы исследования анализируют, каким образом нарушения прав человека в Украине могут ухудшить отношения между официальным Киевом и Брюсселем в текущем контексте. В результате исследования было обнаружено несколько ключевых факторов, имеющих непосредственное влияние на внешнюю политику ЕС по отношению к Украине.