Constitutional challenges for the implementation of association agreements between the EU and Ukraine, Moldova and Georgia

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1. Introduction

Association agreements between the EU and third countries have become one of the most recognisable brands of the EU external policy. In particular, this relates to the countries of the EU's eastern neighbourhood (Ukraine, Moldova and Georgia) which have either already signed association agreements with the EU (Ukraine), or are about to do so in the near future. The new generation of the EU association agreements (AAs) with the EU's eastern neighbours will substitute outdated partnership and association agreements which were concluded in 1994-1998.[1] The solemn signature of the AAs between the EU and Ukraine, Moldova and Georgia took place the EU Summit in Brussels on 27 June 2014 which followed by ratifications by national parliaments in Moldova, Georgia and Ukraine.[2] This long awaited event culminated the end of very long negotiation and signature process that has been lasting since 2008. Ukraine's road towards the signature of the AA was the most dramatic. Due to mounting economic and political pressure from Russia the Government of Ukraine decided to suspend the process of preparation for signature of the EU-Ukraine AA on 21

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[1] More on the partnership and cooperation agreements read by this author in 'The Partnership and Cooperation Agreements with the Newly Independent States' in A. Ott & K. Inglis (eds) *European Enlargement Handbook* (Asser Press), 2002, pp. 175-194.

[2] Moldovan Parliament expediently ratified the Association Agreement on 2 July 2014. It shortly followed by the ratification by the Georgian Parliament on 18 July 2014. The final accord was played during the simultaneous ratification of the Association Agreement by Ukrainian Parliament and the European Parliament (ratified all three agreements) on 16 September 2014. Meanwhile all three association agreements are under lengthy process of ratification by parliaments of the EU Member States. Therefore the interim application of the association agreements is taking place in accordance with the EU Council decisions (Council Decision 2014/295/EU of 17 March 2014 and COM(2014)609). Application of Title IV (deep and comprehensive free trade area) of the EU-Ukraine Association Agreement has been postponed till 1 January 2016 due to political and security pressure of the Russian Federation.

November 2013.[3] Following this news, hundreds of thousands of Ukrainians went to the streets. The "Maidan" revolution, which claimed more than 100 victims, resulted in the dismissal of President Victor Yanukovich on 22 February 2014 and election of pro-European new president Petro Poroshenko on 25 May 2014. As a consequence, the "most ambitious agreement the EU has ever offered to a partner country"[4] is back on the agenda and was signed along with the the Moldovan and Georgian AAs on 27 June 2014.[5]

Entering into force of the AAs will inevitably lead to the consideration of the legal effect and impact of these agreements on the legal systems of Ukraine, Moldova and Georgia. Yet there is no straightforward clarification of these issues because the AAs are going to be very first framework international agreements in the modern history of Ukraine, Moldova and Georgia which imply their deep and far reaching integration into the legal order of supranational international organisation.

Taking the above as a starting point, the aim of this paper is to analyse what constitutional challenges will arise before Ukraine, Moldova and Georgia in the course of implementation of the AAs into their legal systems. The paper focuses on two major challenges to this intricate process. The first challenge is how to ensure effective implementation and application of the AAs within the Ukrainian, Moldovan and Georgian legal orders. The second challenge is how to solve potential conflicts between the AAs and the Constitutions of Ukraine, Moldova and Georgia.

2. Objectives and specific features of the Association Agreements with Ukraine, Moldova and Georgia

[3] The Ukrainian government's decision cannot be disconnected from the Russian proposal to establish a Eurasian Union building upon the already existing customs union between Russia, Belarus and Kazakhstan. On the background of this initiative and its implications for EU-Ukraine relations, see: G. Van der Loo and P. Van Elsuwege, 'Competing Paths of Regional Economic Integration in the Post-Soviet Space: Legal and Political Dilemmas for Ukraine', 37 *Review of Central and East European Law* (2012), 421-447.

[4] H. Van Rompuy, Press remarks by the President of the European Council following the EU-Ukraine Summit, Brussels, 25 February 2013 (EUCO 48/13).

[5] European Council, 'Statement at the signing ceremony of the Association Agreements with Georgia, Republic of Moldova and Ukraine', Brussels, 27 June 2014, EUCO 137/14. Available at: <http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/143415.pdf>, accessed 10 July 2014.

The AAs between the EU and Ukraine, Moldova and Georgia are the most voluminous and ambitious among all EU association agreements with third countries.[6] These are comprehensive mixed agreements based on Article 217 TFEU (association agreements) and Articles 31(1) and 37 TEU (EU action in area of Common Foreign and Security Policy).[7] There are many novelties introduced to these agreements. Most prominent of them are strong emphasis on comprehensive regulatory convergence between the parties and possibility for the application of the vast scope of the EU acquis within the Ukrainian, Moldovan and Georgian legal orders. Of particular significance of the AAs is the ambition to set up a Deep and Comprehensive Free Trade Areas (DCFTA), leading to gradual and partial integration of Ukraine, Moldova and Georgia into the EU Internal Market. Accordingly, the AAs belong to the selected group of 'integration-oriented agreements', i.e. agreements including principles, concepts and provisions which are to be interpreted and applied as if the third country is part of the EU. It is argued that the AAs are unique in many respects and, therefore, provide a new model of integration without membership.

The AAs with Ukraine, Moldova and Georgia are innovative legal instruments which are characterised by three specific features: *comprehensiveness*, *complexity* and *conditionality*.[8] The AAs are *comprehensive framework agreements* which embrace the whole spectrum of EU activities from setting up deep and comprehensive free trade areas (DCFTA) to cooperation and convergence in the field of foreign and security policy as well as cooperation in the area of freedom, security and justice (AFSJ).[9]

The *complexity* of the AAs reflects a high level of ambition of Ukraine, Moldova and Georgia to achieve economic integration in the EU Internal Market through the establishment of the DCFTAs and to share principles of the EU's common policies. This

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[6] For example, the EU-Ukraine AA comprises 7 titles, 28 chapters, 486 articles, 43 annexes on about 1000 pages.

[7] EU-Ukraine Association Agreement (OJ 2014 L161). EU-Moldova Association Agreement (Proposal for a Council Decision on the conclusion of the Association Agreement between the European Union and its Member States, of the one part, and the Republic of Moldova, of the other part, of 10 March 2014, COM(2014)146 final). EU-Georgia Association Agreement (Proposal for a Council Decision on the conclusion of the Association Agreement between the European Union and its Member States, of the one part, and Georgia, of the other part, of 10 March 2014, COM(2014)156 final).

[8] For first time these features of the AAs were described by Peter Van Elsuwege in Guillaume Van der Loo, Peter Van Elsuwege, Roman Petrov 'The EU-Ukraine Association Agreement: Assesment of an Innovative Legal Instrument' EUI Working Papers (Law) 2014/09.

[9] See Title II and III of the AAs.

objective requires comprehensive legislative and regulatory approximation including advanced mechanisms to secure the uniform interpretation and effective implementation of relevant EU legislation into national legal orders of Ukraine, Moldova and Georgia. In order to achieve this objective the AAs are equipped by multiple specific provisions on legislative and regulatory approximation including detailed annexes specifying the procedure and pace of the approximation process for different policy areas in more than 40 annexes and based on specific commitments and mechanisms identified in both the annexes and specific titles to the agreement.

Furthermore the AAs are founded on a strict *conditionality* approach which links the third country's performance and the deepening of its integration with the EU.[10] In addition to the standard reference to democratic principles, human rights and fundamental freedoms as defined by international legal instruments (Helsinki Final Act, the Charter of Paris for a New Europe, the UN Universal Declaration on Human Rights and the European Convention on Human Rights and Fundamental Freedoms),[11] the AAs contain common values that go beyond classical human rights and also include very strong security elements such as the "promotion of respect for the principles of sovereignty and territorial integrity, inviolability of borders and independence, as well as countering the proliferation of weapons of mass destruction, related materials and their means of delivery".[12]

Apart from the more general 'common values' conditionality, the AAs contain a specific form of 'market access' conditionality, which is explicitly linked to the process of legislative approximation. Hence, it is one of the specific mechanisms introduced to tackle the challenges of integration without membership. Of particular significance is a far-reaching monitoring of Ukraine's, Moldova's and Georgia's efforts to approximate national legislation to EU law, including aspects of implementation and enforcement.[13] To facilitate the assessment process, the governments of Ukraine, Moldova and Georgia are obliged to provide reports to the EU in line with approximation deadlines specified in the Agreements. In addition to the drafting of progress reports, which is a common practice within the EU's

[10] For example, the preamble to the EU-Ukraine AA explicitly states that "political association and economic integration of Ukraine within the European Union will depend on progress in the implementation of the current agreement as well as *Ukraine's track record in ensuring respect for common values, and progress in achieving convergence with the EU in political, economic and legal areas* [emphasis added].

[11] Arts. 2 EU-Ukraine, EU-Moldova and EU-Georgia AAs.

[12] Art. 2 EU-Ukraine AA and Arts. 3 EU-Moldova and EU-Georgia AAs.

[13] Art. 475 (2) EU-Ukraine AA, Arts. 448-449 EU-Moldova AA, Arts. 414-415 EU Georgia AA.

pre-accession strategy and the ENP, the monitoring procedure may include "on-the-spot missions, with the participation of EU institutions, bodies and agencies, non-governmental bodies, supervisory authorities, independent experts and others as needed."[14]

3. Effective implementation and application of the AAs within the Ukrainian, Moldovan and Georgian legal orders

Implementation and application of the AAs within the legal systems of Ukraine, Georgia and Moldova will be governed by their national constitutional laws. Provisions of the constitutions of Ukraine, Georgia and Moldova on application of international agreements follow the same approach and provide that in case of conflict of the AAs provisions with their national legislation (excluding national Constitutions), the former prevails. Once duly ratified by the Parliaments of Ukraine, Georgia and Moldova the AAs will became an inherent part of their national legal systems as any other duly ratified international agreement.[15]

Relevant provisions of the Constitutions of Ukraine, Georgia and Moldova imply that, on the one hand, properly ratified AAs will not only be equated to the same status as national laws but will also enjoy a priority over conflicting national legislation.[16] On the other hand, the

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[14] Art. 475 (3) EU-Ukraine AA, Art. 450 EU-Moldova AA, Art. 416 EU Georgia AA.

[15] Article 9 of the Ukrainian Constitution of 1996 provides that: 'International treaties in force, consented by the Verkhovna Rada of Ukraine [Ukrainian Parliament] as binding, shall be an integral part of the national legislation of Ukraine. Conclusion of international treaties, contravening the Constitution of Ukraine, shall be possible only after introducing relevant amendments to the Constitution of Ukraine'. Full text in English is available at <http://www.president.gov.ua/en/content/constitution.html>, last assessed 10 July 2014. Article 8 of the Moldovan Constitution of 1994 provides that: "The Republic of Moldova pledges to respect the Charter of the United Nations and the treaties to which she is a party, to observe in her relations with other states the unanimously recognized principles and norms of international law. The coming into force of an international treaty containing provisions contrary to the Constitution shall be preceded by a revision of the latter". Full text in English is available at <http://ijc.md/Publicatii/mlu/legislatie/Constitution_of_RM.pdf>, assessed 10 July 2014. According to Article 6(2) of the Constitution of Georgia, an international treaty or agreement of Georgia unless it contradicts the Constitution of Georgia, the Constitutional Agreement, shall take precedence over domestic normative acts. Full text in English is available at <http://www.parliament.ge/files/68_1944_951190_CONSTIT_27_12.06.pdf>, assessed 10 July 2014.

[16] Article 19(2) of Law of Ukraine "On International Treaties of Ukraine" provides that "If duly ratified international treaty of Ukraine contains other rules then relevant national legal act of Ukraine rules of the respective international treaty should be applied". Article 19 of the Moldovan Law No. 595-XIV 'On International Treaties' of 24 September1999 states: 'international treaties shall be complied with in good faith, following the principle of *pacta sunt servanda*. The Republic of Moldova shall not refer to provisions of its domestic legislation to justify its failure to comply with a treaty it is a party to' (*Monitorul Oficial,* 2

AAs can not overrule conflicting provisions of the national Constitutions and the legal systems of Ukraine, Georgia and Moldova do not envisage direct enforceability of international agreements in the national legal order.

The AAs are not just ordinary international agreements but complex framework legal structures that contain not only specific norms that govern the functioning of the association relations and DCFTA between the EU and Ukraine, Moldova and Georgia but also envisage a possibility of application of the vast scope of the "pre-signature" and "post-signature" EU acquis[17] within the legal system of the eastern neighbouring countries. The scope of the EU acquis to be applied by Ukraine, Moldova and Georgia covers not only EU primary and secondary EU laws but also EU legal principles, common values, and even case law of the ECJ as well as specific methods of interpretation of the relevant EU acquis within the their legal systems. Hitherto, the Ukrainian, Moldovan and Georgian legal systems have not faced the necessity to implement and to effectively apply a dynamic legal heritage of an international supranational organisation.[18] Subsequently, adherence of Ukraine, Moldova and Georgia to the dynamic EU acquis via the AAs will encapsulate a plethora of challenges to their national legal orders.

One of the serious challenges to be faced by the eastern neighbouring countries is reluctance of the judiciary in the eastern neighbouring countries to apply and effectively implement international law sources in their own judgments.[19] In practice, the Ukrainian, Moldovan and Georgian courts refer mainly to international agreements which are duly signed and ratified by their national parliaments and which are self-executing within the Ukrainian legal system. Even in these cases, the correct application of international

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March 2000, No. 24). Article 6 (1) of the Law of Georgia 'On International Treaties' states that an international treaty of Georgia is an inseparable part of the Georgian legislation. 'Parlamentis Utskebani', 44, 11/11/1997.

[17] For more on application of "pre-signature" and "post-signature" EU acquis in the EU external agreements see R. Petrov "Exporting the *acquis communautaire* through EU External Agreements" (NOMOS, Baden-Baden, 2011).

[18] May be with exemption of application of the EU sectoral "energy" acquis under the framework of the Energy Community which Ukraine joined in 2010. See R. Petrov "Energy Community as a Promoter of the European Union's "energy acquis" to its Neighbourhood", 38(3) Legal Issues of Economic Integration (2012), 331-35.

[19] R. Petrov and P. Kalinichenko, "The Europeanization of Third Country Judiciaries through the Application of the EU Acquis: The Cases of Russia and Ukraine", 60 International & Comparative Law Quarterly, (2011) 325-353. This happens mainly due to: 1) the belief that international case law is not relevant to civil law systems; 2) the translation of case law and jurisprudence; 3) lack of translation of case law into Ukrainian to help judges adapt their decisions to best European standards. Furthermore, the Verkhovna Rada of Ukraine is not always expedient in solving conflicts between ratified international agreements and national legislation.

agreements is not guaranteed. It happens because one of the most important impediments for the application of international law by the Ukrainian, Moldovan and Georgian judiciary is the correct understanding of these international conventions by national judges. Application of the AAs by the eastern neighbouring countries' judiciaries will increase through increasing familiarity with the AAs and the EU legal order as well due to claims on behalf of Ukrainian, Moldovan and Georgian nationals based on provisions of the AAs and the EU "acquis".[20]

In the writer's opinion, the objective of effective implementation and application of the AAs may be achieved by issuing a special implementation law that will clarify all potential conflicts of provisions of this agreement with Ukrainian, Moldovan and Georgian legislative acts. For example, Ukraine has already gained some experience in ensuring the implementation and application of the European Convention of Human Rights (ECHR) which Ukraine ratified in 1997. The ratification of the ECHR by Ukraine took place by means of two laws. The first law was law on ratification of the ECHR wherein Ukraine recognised the jurisdiction of the European Court on Human Rights (ECtHR).[21] The second law was a special law on application of case law of the ECtHR in Ukraine. It imposed on Ukraine a duty of mandatory and timely execution of all judgments of the ECtHR related to this country.[22] In accordance with these laws judgments of the ECtHR are being formally accepted by the national judiciary as sources of law and Ukrainian judges frequently refer to the ECtHR judgments in their decisions. However the rate of effective application of the ECtHR case law in Ukraine is considered as unsatisfactory and lags far behind other European countries.[23]

The special law on implementation of the AAs may solve much more complicated issues than the Ukrainian law on ratification of the ECHR in 1997. For instance, this law will face the necessity of clarifying how binding decisions of the Association Councils should be applied in Ukraine, Moldova and Georgia. Direct applicability of the Association Councils'

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[20] More on judicial activism and voluntary application of the EU acquis in the eastern neighbouring countries see P. Van Elsuwege and R. Petrov, "Legal Approximation of EU Law in the Eastern Neighbourhood of the EU: Towards a Common Regulatory Space?", (Routledge Press, 2014).

[21] Law of Ukraine "On Ratification of the European Convention on Human Rights 1950, First Protocol and protocols№ 2, 4, 7 and 11" of 17 July 1997, № 475/97-BP.

[22] Law of Ukraine "On Execution of Judgments and Application of Case Law of the European Court of Human Rights" of 23 February 2006, № 3477-IV.

[23] See the 7th Annual Report of the Committee of Ministers 'Supervision of the Execution of Judgments and Decisions of the European Court of Human Rights' in 2013. Available at <http://www.coe.int/t/dghl/monitoring/execution/Source/Publications/CM_annreport2013_en.pdf >, last visited 30 May 2014.

decisions will depend on their undisputed acceptance by national judiciaries. The special law on implementation of the AAs must clarify whether the ECJ case law constitutes a part of the EU sectoral acquis contained in the AAs' annexes. This issue is of prime importance for the Ukrainian, Moldovan and Georgian governmental agencies and the judiciaries which will deal with interpretation of various elements of the EU sectoral acquis within their national legal orders. Another challenge is clarification of how the EU directives listed in the annexes to the AAs should be implemented into the legal system of Ukraine, Moldova and Georgia. In other words may this process take into account choice of form and method of implementation of the EU directives listed in the annexes to the AAs? Last but not least what are legal means of transposing the EU dynamic acquis into the Ukrainian, Moldovan and Georgian legal systems? All these issues will be novel for the relatively immature legal system of Ukraine, Moldova and Georgia and, therefore, have to be answered in the special law on implementation of the AAs.

Ukraine, Moldova and Georgia may study and apply experience of other third countries which signed association agreements with the EU and issued national laws on implementation of these agreements. For instance, in 2001 the Croatian Parliament ratified the Stabilization and Association Agreement (SAA) and at the same time enacted the Act on Implementation of the SAA which required implementation of all secondary association acquis but did not envisage its direct effect within the Croatian legal order.[24] The Norwegian Parliament adopted a statutory law on implementation of the EEA Agreement in 1992. This law granted provisions of the EEA Agreement and its secondary law a supremacy over conflicting national legislation. The Norwegian law on implementation of the EEA Agreement clarified that relevant EU regulations are to be implemented without change but the implementation of EU directives must take into account choice of form and method of implementation.[25] In order to ensure effective application of the relevant EU acquis within myriad of sectoral agreements with the EU Switzerland adopted several implementation laws too. For example, Federal Law on Swiss Internal Market in 1996 mirrors most of the

[24] S. Rodin, "Requirements of EU Membership and Legal Reform in Croatia" (2001) 38 Politička misao 87–105.

[25] Statute of 27 November 1992, nr. 109. For more detail see K. Bruzelius, "The Impact of EU Values on Third Countries' National Legal Orders: EU Law as a Point of Reference in the Norwegian Legal System" in F. Maiani, R. Petrov, E. Mouliarova (eds.), *European Integration without EU Membership: Models, Experiences, Perspectives,* European University Institute Working Papers (Max Weber Programme), 2009/10, 81-89.

relevant EU acquis and Swiss Law on Federal Parliament ensures "euro compatibility" of Swiss law drafts with the EU acquis.[26]

4. Potential conflicts between the AAs and the Constitutions of Ukraine, Moldova and Georgia

The process of implementation of the AAs may release a plethora of constitutional conflicts in the legal systems of Ukraine, Moldova and Georgia. One of the major problems to be solved in the course of implementation and application of the AAs is lack of direct enforceability of international agreements in the eastern neighbouring countries' legal orders. This challenge had been faced by other associate countries too before their accession to the EU. Most of the countries of the Central and Eastern Europe and the Western Balkan region promoted Euro-friendly interpretation of their national legislation. For instance, in 1997 the Polish Constitutional Tribunal rejected the binding force of EU law provisions in the EU-Poland AA within the Polish legal order but acknowledged the obligation on the Polish government and judiciary to interpret "the existing legislation in such a way as to ensure the greatest possible degree of such compatibility".[27] In 1998 in the landmark *Europe Agreement* judgment the Hungarian Constitutional Court did not recognised direct applicability of provisions of EU law referred in the EU-Hungary AA without their 'express constitutional authorisation' in the dualist Hungarian legal order.[28] However the Hungarian Constitutional Court considered references to the EU acquis in the

[26] F. Maiani, "Legal Europeanisation as Legal Transformation: Some Insights from Swiss "Outer Europe" in F. Maiani, R. Petrov, E. Mouliarova (eds.), *European Integration without EU Membership: Models, Experiences, Perspectives,* European University Institute Working Papers (Max Weber Programme), 2009/10, 111-123.

[27] Decision of the Polish Constitutional Tribunal K. 15/97, OTK [Orzecznictwo Trybunalu Konstytucyjnego, the collection of decisions of the Constitutional Tribunal], nr. 19/1997, at 380.

[28] Hungarian Constitutional Court, *Decision 30/1998, (VI 25) AB.* Also see D. Piquani, "Constitutional Courts in Central and Eastern Europe and their Attitude towards European Integration" (2007) 1(2) European Journal of Legal Studies, available at <http://www.ejls.eu/issue/2>, accessed 24.06.2014. J. Volkai, "The application of the Europe Agreement and European Law in Hungary: The judgment of an activist Constitutional Court on Activist Notions", (1999) 8 Harvard Jean Monnet Working Paper, available at <www.jeanmonnetprogram.org/papers/99/990801.rtf>, accessed 10 July 2014.

EC-Hungary AA should be 'taken into consideration' in the course of the implementation by national authrorities.[29]

The Czech Constitutional Court emphasised the special importance of EU law for the Czech legal system and frequently cited the EU acquis including the ECJ case law in its judgments.[30] One solution of this problem is when the Constitutional Courts in Ukraine, Moldova and Georgia rule on the Euro-friendly interpretation of the AAs within their national legal orders and refer to experiences of other associate countries which either already joined the EU or are on the pre-accession track. Another solution could be an amendment of the Ukrainian, Moldovan and Georgian Constitutions in order to ensure direct enforceability of the AAs. In 2001 both the Czech and Slovak republics made international law directly enforceable in their domestic legal systems by amending their respective constitutions.[31] However it is unlikely that the eastern neighbouring countries may introduce new amendments that may imply at least a minimal limitation of the national sovereignty. For example, Ukraine formally rejected accepting full membership in the Eurasian Customs Union for constitutional reasons (because of the threat to national sovereignty).Some of the AAs provisions impose commitments on Ukraine, Moldova and Georgia that directly contradict their national constitutions. For instance, the EU-Ukraine AA binds Ukraine to ratify and to implement the Rome Statute on the International Criminal Court and its related instruments. However, the Constitutional Court of Ukraine has ruled out the constitutionality of some provisions of this document for Ukraine.[32] Consequently, the ratification of the Rome Statute on the International Criminal Court by the Verkhovna Rada of Ukraine (parliament) is possible only after positive ruling of the Constitutional Court of Ukraine. Furthermore, the issue of approximation of dynamic EU acquis by Ukraine in adoption of which Ukraine does not take part may be challenged before the Constitutional

[29] Hungarian Constitutional Court, *Decision 30/1998, (VI 25) AB* at V. 5.

[30] *Skoda Auto* case, Collection of decisions of the Constitutional Court, vol.8, p.149. Therein the Czech Constitution Court stated that the EU founding treaties result from the same values and principles as the Czech constitutional law, therefore the interpretation of EU competition law by the EU institutions should be taken into account in the course of interpretation of the corresponding Czech rules.

[31] Z. Kühn, "Application of European law in Central European candidate countries" (2003) 28 European Law Review 551-560.

[32] Ruling of the Constitutional Court of Ukraine on compatibility of the Constitution of Ukraine to the Rome Statue of the International Criminal Court of 11 July 2001, Nr. 1-35/2001.

Court of Ukraine as contrary to fundamental constitutional principles of Ukraine on legality and sovereignty.[33]

The AAs will certainly produce a profound effect on the legal systems of Ukraine, Moldova and Georgia which will significantly contribute to further Europeanisation of these countries' judiciaries.[34] It will face a necessity of application and interpretation of the relevant EU acquis contained in the main body of the AAs and in annexes. Furthermore, the Ukrainian, Moldovan and Georgian judiciaries will encounter a challenge of referring to EU legal principles and common values especially in the domain of non-discrimination and equal treatment. One of the necessary first priority measures to answer this challenge will be in depth training of the Ukrainian, Moldovan and Georgian judges and civil servants in fundamentals of EU law. The implementation of the AAs will trigger a reform of the national institutional framework responsible for the approximation of national legislation in line with the EU acquis. Ukraine, Moldova and Georgia will have to upgrade the competence of governmental bodies and to set up a specialised ministry or horizontal governmental agency responsible for coordination of legal approximation in order to keep up with strict deadlines of adoption of the EU sectoral acquis as provided in the annexes to the AAs. Another challenge could be the need to ensure the timely transposition of the EU dynamic sectoral acquis into the legal systems of Ukraine, Moldova and Georgia.[35] The eastern neighbouring countries have never faced the need to adopt and implement dynamic legislation of other international organisation while not taking part in the law making process. Legal justification for this action could be either clarified by the Constitutional Courts of Ukraine, Moldova and Georgia. The most likely solution is to equip the Association Councils with the right to define and propose the scope of the EU dynamic sectoral acquis to be adopted by Ukraine, Moldova and Georgia after signature of the agreements.

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[33] Article 5 of the Constitution of Ukraine provides that "The right to determine and change the constitutional order in Ukraine shall belong exclusively to the people and shall not be usurped by the State, its bodies, or officials".

[34] R. Petrov and P. Kalinichenko, "The Europeanization of Third Country Judiciaries through the Application of the EU Acquis: The Cases of Russia and Ukraine" (2011) 60 International & Comparative Law Quarterly 325-353.

[35] For example, Articles 114(1), 124(1), 133(1) of the EU-Ukraine AA state that "Ukraine shall ensure that its existing laws and future legislation will be gradually made compatible with the EU *acquis"*. Article 153(1-2) of the EU-Ukraine AA reads "Ukraine shall ensure that its existing and future legislation on public procurement will be gradually made compatible with the EU public procurement *acquis*. In this process, due account shall be taken of the corresponding case law of the European Court of Justice and the implementing measures adopted by the European Commission as well as, if this should become necessary, of any modifications of the EU *acquis* occurring in the meantime."

On 29 May 2014 the Presidents of the Russian Federation, Belarus and Kazakhstan launched the Eurasian Union as an alternative integration project for the countries of the post-Soviet area.[36] Consequently the eastern neighbouring countries (including Armenia and Azerbaijan) will encounter and need to resolve a very complicated dilemma in their foreign policy. It concerns the choice between setting up an association and DCFTA with the EU or joining the Eurasian Union with Russia, Belarus and Kazakhstan. A major bone of contention is what are consequences for joining these regional integration projects for the sovereignty of the eastern neighbouring countries? This issue is complicated by the fact that both regional integration projects imply some degree of sacrifice of national sovereignty. In the case of concluding an association agreement and setting up the DCFTA the eastern neighbouring countries will commit themselves to the implementation and adoption of the "pre-signature" and "post-signature" EU acquis, comprehensive monitoring on behalf of the EU and the need to implement binding decisions of the Association Councils. In the case of joining the Eurasian Union the eastern neighbouring countries will be asked to abide by decisions of supranational institutions, and, consequently, to transfer part of its sovereignty to an international organisation in the fields of common commercial policy and free movement of goods, persons, services and capital and to align national legislation with supranational legislation of the Eurasian Union.[37] Decisions of the Eurasian Economic Commission are binding and have direct effect similar to the EU Regulations.[38] Despite many similarities of the Eurasian Union to the EU (customs union, internal market with four freedoms, common policies and other) the former lacks one important feature of the EU. This is a possibility to set up association relations with third countries which either do not want to join this supranational organisation or are not ready to do so. In this respect the AAs represent a serious advantage before the Eurasian Union. In spite of its far reaching integration objectives the AA is not a supranational agreement but an international agreement that presumes equality of the parties while the Eurasian Union does not offer such a possibility.

[36] Eurasian Union: Putin's answer to the EU, available at http://www.dw.de/eurasian-union-putins-answer-to-the-eu/a-17669138, assessed 10 July 2014.

[37] Treaty on Eurasian Economic Union of 29 May 2014, Treaty on Eurasian Economic Commission of 18 November 2011, available at <http://www.eurasiancommission.org>, last visited 30 May 2014.

[38] Article 5 of the Treaty on Eurasian Economic Commission of 18 November 2011.

5. **Concluding remarks**

To conclude, we have set out a number of considerations which lead us to believe that the signature of the AAs with the EU will trigger significant internal reforms in the eastern neighbouring countries. First of all, the future AAs will serve as a template for further political and economic reforms in these countries. The obligation to share the EU's common democratic values will imply regular monitoring by the EU institutions. Thereby this should prevent the eastern neighbouring countries from undemocratic practices. The new joint institutions set up under the framework of the AAs will help to pursue the programme of approximating the laws with the help of its binding decisions. The process of effective implementation of the AAs will constitute the greatest challenge for Ukraine, Moldova and Georgia. These countries have to prove their adherence to the EU's common democratic and economic values, and ensure the proper functioning of their deep and comprehensive free trade areas. The latter objective may be achieved only under the condition of establishing truly competitive market economies and the adoption of international and EU legal standards. Ukraine, Moldova and Georgia will be bound by decisions of the dispute settlement body established by the AAs. Following the widely-used practice in the EU's external agreements the AAs contain so-called "evolutionary" and "conditionality" clauses. These are provisions in the EU's external agreements with specific objectives (for instance, granting a visa-free regime, access to all freedoms of the EU Internal Market), the attainment of which is conditional either on certain actions on behalf of a party to an agreement (such as the elimination of trade barriers and uncompetitive practices) or the effective functioning of democratic and market-economy standards (such as free and fair elections and fighting corruption).

Looking at the pattern of future implementation and application of the AAs and their impact on the Ukrainian, Moldovan and Georgian legal systems we may conclude with a suggestion that the success of this process is threefold. First, the efficient implementation and application of the AAs implies considerable constitutional reforms in Ukraine, Moldova and Georgia in order to enhance the direct enforceability of international agreements. Second, effective application of the AAs requires Ukraine, Moldova and Georgia to issue the implementation laws that will clarify all potential challenges of this process for their national legal systems. Third, the scope of the EU acquis to be adopted by Ukraine, Moldova and

Georgia is massive and covers not only EU laws but EU fundamental principles, doctrines and the ECJ case law. Ukrainian, Moldovan and Georgian civil servants and judges will require in depth training in EU law in order to be able to apply the EU acquis in their everyday activities. In case these challenges are successfully met Ukraine, Moldova and Georgia could claim fruits of closer European integration and to engage into an expanding European Legal Space.