

EU IMPACT ON THE INTERPRETATION OF INTERNATIONAL TREATIES BY UKRAINIAN COURTS

IEVGEN ZVIERIEV*

The interpretation of international treaties by national courts is a very challenging task as treaties are unique objects of interpretation. Many external factors affect this process, and EU law is one of those factors (usually not legally binding upon Ukraine but very influential in many cases). This study deals with the impact that EU law is making on the approaches that Ukrainian courts apply in interpreting international treaties. In doing so, the study analyzes the available Ukrainian court practice as well as theoretical findings.

1. Introduction

International treaties form an important framework of regulating interstate relations. They provide basis for the existence and functioning of international organizations, international projects, as well as solve interstate issues. Being one of the main sources of international law, international treaties may also be viewed in a different status. Likewise, they can be considered as sources of national state law. However, treaty on paper does not always equal treaty in real force. In order to make treaty provisions „work”, they have to be interpreted by a competent body (usually the court).

The interpretation of international treaties is a very challenging task as they have dual status (that of an international law source as well as the source of national law). By interpreting international treaties, national courts have to take the dual nature of these documents into account, as well as their international status. Interpretation of those treaties is correlated with the interpretation and application of foreign law – legal norms that were designed in another legal system, and were meant to be applied according to different rules.

This article analyzes general approaches to legal interpretation, its specifics concerning international treaties as a special object of legal interpretation, and the level of affection of the interpretation of international treaties by Ukrainian national courts by the relevant provisions of the law of the European Union.

2. Legal Interpretation

Interpretation as a process has been applied since the very birth of the mankind. The first feeling that a baby has, leaves a certain result for his/her whole life. That result (as well as the process that precedes it) is called *interpretation*, and it follows the new human being throughout his/her lifetime. Ancient Greek philosophers approached this term in their

* PhD candidate and lecturer at National University of “Kyiv-Mohyla Academy”, Kyiv, Ukraine. SJD candidate, Central European University, Budapest, Hungary. Email: zvevhen @ukr.net, zvieriev_ievgen @ceu-budapest.edu.



philosophical findings.¹ *Aristotle*, for example, called it an art, and supported special interpretation competitions to be held between the ancient Hellenic people.² That was also the time when a new study of *hermeneutics* appeared; most probably taking its name from the ancient Greek god ‘Hermes’, whose task was to interpret the will of other gods to the people. The current study is about different approaches of interpretation.³

With a time flow, hermeneutics appeared to be useful not only in philosophy (however, up to now, it primarily exists in that field), but also in theology, literature, art and many other branches of scholarship that benefit from its findings. Law is not an exception here. Ancient Rome (which is widely viewed to have followed Ancient Greece in the terms of human development) created a system of specially trained men whose primary task was to interpret legal norms. They invented the Latin term *interpretacio*, which was the ground of today’s word, *interpretation*.⁴ These were mostly legal scholars whose task was not only to interpret the law but also to generally research and codify it. Considering their high status and theoretical background, Roman law had a famous norm allowing legal scholars’ teachings to be considered as a source of law. That norm can still be found in international law in the Statute of the International Court of Justice (Art. 38). This shows that the status of legal interpretations made by famous legal scholars in the Roman Empire was very high.

However, attitude to interpretation had its downside, as well. A widely known one is the complete resistance to legal interpretation expressed by Emperor Justinian (concerning his *Digests*). The resistance resulted in the criminalization of such activity; however, it was widely ignored after his death because other Emperors „forgot” about that norm.⁵ Other famous examples of interpretation resistance include Napoleon and his Civil Code, which he forbade to interpret by any means. Similar laws also existed in the medieval Austria and Prussia.⁶

Nevertheless, all those means did not stop the development of legal interpretation in scholarship and in practice. Numerous philosophers approached the idea of the interpretation generally and legal interpretation in particular. Views tremendously differ: from those favoring the abolition of legal interpretation to those considering it to be the primary source of extracting legal sense out of every norm.

¹ Малента В. Історичні аспекти становлення тлумачення норм права // Вісник Академії адвокатури України, Число 1 (17), 2010. – С. 19 [Malenta V. *Istorychni aspekty stanovlennya tлумachennya norm prava* // Visnyk Adademiyi advokatury Ukrayiny, Chyslo 1 (17), 2010. – S. 19]

² Bederman, D. J.: *Classical Canons Rhetoric, classicism and treaty interpretation*. Ashgate, Aldershot-Burlington-Singapore, Sydney, 2001. 11-13.

³ Квіт С. Герменевтика стилю. – К.: Вид. дім «Кисво-Могілянська академія», 2011. – С. 13. [Kvit S. *Hermeneytyka stylyu*. – K.: Vyd. dim “Kyevo-Mohylyanska akademiya”, 2011. – S. 13.]; Барихин А. Б. Большая юридическая энциклопедия. – М.: Книжный мир. – 2010. – С. 175. [Barihin A. B. *Bolshaya yuridicheskaya enciklopediya*. – M.: Knizhnyi mir. – 2010. – S. 175]

⁴ Schiller, A. A.: Roman Interpretatio and Anglo-American Interpretation and Construction. *Virginia Law Review*, Vol. 27 (1941) No. 6, 734-735.

⁵ Maclean, I.: *Interpretation and Meaning In the Renaissance: The Case of Law*. Cambridge University Press, Cambridge – New York – Port Chester – Sydney, 1992. 54-55.

⁶ Шершеневич Г. Ф. Курс гражданского права. – Тула: Автограф, 2001. – С. 61. [Shershenyevich G. F. *Kurs grazhdanskogo prava*. – Tula: Avtograf, 2001. – S. 61.]; Протасов В. Н., Протасова Н. В. Лекции по общей теории права и теории государства. – М.: Издательский дом «Городец», 2010. – С. 318. [Protasov V. N., Protasova N. V. *Lekcii po obschey teorii prava i teorii gosudarstva*. – M.: Izdatelskiy dom “Gorodec”, 2010. – S. 318.]; Maclean: *ibid.* 50-59.; Merryman, J. H.: The Italian Style III: Interpretation. *Stanford Law Review*, Vol. 18 (1966) No. 4, 584.

Generally, interpretation is viewed either as a process or as a result of this process. The most general approach is also to divide the process into to autonomous processes of ascertainment and explanation. This view is supported both by representatives of Soviet and post-Soviet legal schools⁷ as well as the representatives of Western legal scholarship.⁸

However, the process (and the result, as well) requires basis. This basis is usually referred to as an object of interpretation. In those terms, scholars' approaches also differ. Some adopt the position that the only object of interpretation is a text of the norm, others

7 See Шершеневич Г. Ф. Учебник русского гражданского права / Редкол.: Е. А. Суханов (вступ. ст.). 3-е изд. М.: Спарк, 1995. - С. 50. [Shershenevich G. F. *Uchebnik russkogo grazhdanskogo prava* / Redkol.: E. A. Suhanov (vstup. st.). 3-e izd. M.: Spark, 1995. - S. 50.]; Шершеневич Г. Ф. Курс гражданского права. - Тула: Автограф, 2001. - С. 61. [Shershenevich G. F. *Kurs grazhdanskogo prava*. - Tula: Avtograf, 2001. - S. 61.]; Пиголкин А. С. Толкование нормативных актов в СССР. - М.: Госюриздат, 1962. - С. 8-9 [Pigolkin A. S. *Tolkovanie normativnykh akrov v SSSR*. - M.: Gosyurizdat, 1962. - S. 8-9.]; Вопленко Н. Н. Официальное толкование норм права. - М.: Юрид. лит., 1976. - С. 61-62. [Voplenko N. N. *Ofitsialnoe tolkovanie norm prava*. - M.: Yurid. lit., 1976. - S. 61-62.]; Нерсесянц В. С. Общая теория права и государства: Учебник для вузов. - М.: Издательство Норма, 2002. - С. 491. [Nersesyanc V. S. *Obschaya teoriya prava i gosudarstva: Uchebnik dlya vuzov*. - M.: Izdatelstvo Norma, 2002. - S. 491.]; Проблемы общей теории права и государства: Учебник для вузов / Под общ. ред. академика РАН, д. ю. н., проф. В. С. Нерсесянца. - М.: Норма, 2006. - С. 442. [Problemy obschey teorii prava i gosudarstva: Uchebnik dlya vuzov / Pod obsch. red. akademika RAN, d. yu. n., prof. V. S. Nersesyanca. - M.: Norma, 2006. - S. 442.]; Протасов В. Н., Протасова Н. В. Лекции по общей теории права и теории государства. - М.: Издательский дом «Городец», 2010. - С. 320. [Protasov V. N., Protasova N. V. *Lekcii po obschey teorii prava i teorii gosudarstva*. - M.: Izdatelskiy dom "Gorodec", 2010. - S. 320.]; Алексеев С. С. Общая теория права: учеб. - М.: ТК Велби, Изд-во Проспект, 2008. - С. 502. [Alekseev S. S. *Obschaya teoriya prava: ucheb.* - M.: TK Velbi, Izd-vo Prospekt, 2008. - S. 502.]; Теория государства и права: учебник для вузов / В. В. Лазарев, С. В. Липень. - М.: Издательство Юрайт, 2010. - С. 484. [Teoriya gosudarstva i prava: uchebnik dlya vuzov / V. V. Lazarev, S. V. Lipeny. - M.: Izdatelstvo Yurayt, 2010. - S. 484.]; С. А. Лисенков. Загальна теорія держави і права. Навчальний посібник. - К.: "Юрисконсульт", 2006. - С. 200. [S. L. Lysenkov. *Zahalna teoriya derzhavy i prava. Navchalniy posibnyk*. - K.: "Yuriskonsult", 2006. - S. 200.]; Толкование права: теоретич. и практ. аспекты / Е. М. Шилина. - Минск: Тесей, 2008. - С. 28. [Tolkovanie prava: teoretich. i prakt. aspekty / E. M. Shilina. - Minsk: Tesey, 2008. - S. 28.]; Смирнов А. В., Манукян А. Г. Толкование норм права: учебно-практ. пособие. - М.: Проспект, 2008. - С. 6. [Smirnov A. V., Manukyan A. G. *Tolkovanie norm prava: uchebno-prakt. posobie*. - M.: Prospekt, 2008. - S. 6.]; Власов Ю. Л. Проблемы толмачения норм права. - К., 2001. - С. 14. [Vlasov Yu. L. *Problemy tlumachennya norm prava*. - K., 2001. - S. 14.]; Молибога М. П. Толмачення (інтерпретація) правових норм: наукове та практичне значення. - Автореферат на здобуття наукового ступеня канд. юрид. наук. - К., 2010. - С. 3. [Molyboha M. P. *Tlumachennya (interpretaciya) pravovyh norm: naukove ta praktichne znachennya*. - Avtoreferat na zdobuttia naukovoogo stupenya kand. yurid. nauk. - K., 2010. - S. 3.]; Дудаш Т. Деякі герменевтичні поняття у теоретичній та практичній юриспруденції // Вісник Львівського університету. Серія юридична. - Вип. 50. - 2010. - С. 19-24. [Dudash T. *Deyaki hermenevtychni ponyattya u teoretichniy ta praktichniy yurisprudenciyi* // Visnyk Lvivskoho universytetu. Seriya yurydychna. Vyp. 50. - 2010. - S. 19-24.]; Молибога М. П. Толмачення норм права: сутнісні характеристики // Часопис Київського університету права, № 2. - 2010. - С. 45. [Molyboha M. P. *Tlumachennya norm prava: sutnisni harakterystyky* // Chasopys Kyivskogo universytetu prava, No. 2. - 2010. - S. 45.] and others

8 Moore, M. S.: Interpreting Interpretation. Marmor, A. (ed.): *Law And Interpretation. Essays in Legal Philosophy*. Clarendon Press, Oxford, 1997. 6.; Ricoeur, p.: The Model of the Text: Meaningful Action Considered as a Text. *New Literary History*, Vol. 5 (1973) No. 1, 104.

dwell more on substance. There are also other approaches which focus on legal relations, intentions of the author (or authors) and others.⁹

Depending on the focus most favored by the person when conducting interpretation, three most widely accepted approaches (theories) to legal interpretation exist: textualism, intentionalism, and teleological theory.¹⁰ The first theory focuses on the interpretation of the text, and is reluctant to apply extratextual sources. The second one mostly dwells on the intentions of the author of the norm, and allows application of extratextual sources, and the third one considers the norm to „live its own life” and interprets it relying on the purpose that the norm is supposed to serve at a certain point in time. All three theories have their advantages and disadvantages, so the most appropriate would be to apply a certain combination of the three main theories, as well as their varieties.

3. International Treaties as a Special Object of Interpretation – the Ukrainian Situation

As it had already been noted, the interpretation of international treaties is a challenging task. This situation exists due to the dual nature of international treaties. On the one hand, they are clearly sources of international law, and they primarily function in that legal system. They are designed according to the rules of international law, and are mostly aimed at serving its needs.

On the other hand, international treaties may well become part of national law. There are two main procedures applicable in the world in this matter.¹¹ The first one is not to provide international treaties the status of national legislation acts but to adopt a special national legal act which would include the terms of the signed treaty or referral to it. This approach is mostly applied in so-called „dualistic” countries. They have the position that international law and national law form two different systems which do not correlate. Usually, dualistic approach is adopted by common law (legal) systems.

The second procedure is to automatically provide international treaties the status of national legal act. This is mostly accepted in monist countries. Opposite to dualist countries, these consider national and international law to be parts of one legal order, hence, no special act of legislation is needed in order to provide international treaty with a national legal act status. This approach, however, has its dark sides. The most obvious one is a problem of determining the status of international treaties in the national law of monist countries. Unlike the dualist countries, where this status is determined by the status of the act of national legislation incorporating the appropriate treaty in the national legal system,

9 Cf. Білозборов Є. В. Проблеми тлумачення норм чинного законодавства України // Матеріали наукової конференції 23-24 квітня 2009 року. – К.: Видавництво НПУ імені М. П. Драгоманова, 2009. – С. 78. [Bilozorov Ye. V. Problemy tлумachennya norm chynного zakonodavstva Ukrayiny // Materialy naukovoyi konferenciyi 23-24 kvitnya 2009 roku. – K.: Vydavnytstvo NPU imeni M. P. Drahomanova, 2009. – S. 78.]

¹⁰ Зверев Є. Тлумачення міжнародних договорів у національному праві: сучасні теорії та підходи // Наукові записки НаУКМА. – Т. 116, Юридичні науки, 2011. – С. 35-37. [Zvieriev Ye. Tлумachennya mizhnarodnyh dohovoriv u nacionalnomu pravi: suchasni teoriyi ta pidhody // Naukovi zapysky NaUKMA. – Т. 116 Yurydychni nauky, 2011. – С. 35-37.]

¹¹ Зверев Є. Міжнародний договір як джерело національного права // Наукові записки НаУКМА. – Т. 103, Юридичні науки, 2010. – С. 41-44. [Zvieriev Ye. Mizhnarodniy dohovir yak dzherelo nacionalnoho prava // Naukovi zapysky NaUKMA. – Т. 103, Yurydychni nauky, 2010. – С. 41-44.]

monist states usually determine this status by the special provision in the constitution or in the special law. This is true for most of them, however, not for all.

Ukraine is one of the latter ones. Article 9 of the Ukrainian Constitution provides that international treaties which received Ukrainian parliamentary consent on their obligatory application on the territory of Ukraine (usually this consent is expressed in the form of ratification of the treaty) are parts of Ukrainian national legislation. The basic law of Ukraine, however, is silent on the exact status international treaties have in Ukraine. Unlike the Russian Constitution (Article 15), which automatically provides that in case of conflict of norms between national legal acts and international treaties; the latter prevail, Ukraine does not have that norm in the Constitution. It is found in the act of lower level – the Law of Ukraine „On International Treaties of Ukraine” (Article 17). However, legal purity of such norm is disputed by many researchers.¹²

Concerns are mostly related to the issue of legal hierarchy. There is a position that since international treaties are ratified in the form of the law of Ukraine (a status that any other law adopted by the parliament and signed by the President of Ukraine), international treaties, as far as the national legal system of Ukraine is concerned, also have such status.¹³ Others argue that international treaties are products of international law, and they are adopted into the national legal system of Ukraine like stepchildren, hence, may not prevail in national legal acts. Usually, this view is expressed by the older generation of Ukrainian legal scholarship trained in the Soviet Union, where this norm existed in order to protect socialist law from the „bad views of capitalist legal order”.¹⁴ Others adopt the view that since the norm of the law exists, we are bound by it, hence, the norms of international treaties prevail in the norms of national legislation in case of their conflict.

The latter view is mostly adopted by Ukrainian courts which usually apply a very simple argumentation approach lacking ties between the arguments. They mostly do not go into deep analysis of the legislation, international norms and other sources. The simple textualist application of the norms of the Law of Ukraine „On International Treaties of Ukraine” is usually the approach of the courts. However, such situation not only concerns international treaties but also other cases, as well. The state of Ukrainian court argumentation technique is extensively criticized.¹⁵

4. European Union and Ukraine

The European Union has been on the Ukrainian agenda probably from its birth as a nation state. Following the example of its eastern neighbors; Poland, Slovakia, Hungary and the Czech Republic that also had to be engaged in a long way of reforming their economic,

¹² Козюбра М. І. Тенденції розвитку джерел права України в контексті європейських правоінтеграційних процесів // Наукові записки НаУКМА. – Т. 26. – 2004. – С. 4. [Kozyubra M. I. Tendenciyi rozvytku dzherel prava Ukrainy v konteksti yevropeyskyh pravointegratsiynyh procesiv // Naukovi zapysky NaUKMA. – T. 26. – 2004. – S. 4.]

¹³ Ibid.

¹⁴ Petrov R. – Kalinichenko P.: The Europeanization of Third Country Judiciaries Through the Application of the EU Acquis: the Cases of Russia and Ukraine. *International and Comparative Law Quarterly*, Vol. 60 (2011) 335.

¹⁵ О. Мінін, О. Шемяткін Український суд: коли «все пофіг» // <http://www.epravda.com.ua/publications/2012/10/24/341024/> [O. Minin, O. Shemiattkin Ukrainyskiy sud: koly "vse pofig"].

political and social life and adopting a new system of checks and balances, Ukraine was inspired by a great idea, namely, to enter the family of the European nations as a full member. That idea still exists, and is supported by the majority of the Ukrainian population.¹⁶ Moreover, Ukraine's goal to enter the European Union is clearly prescribed in the laws (Law of Ukraine „On the fundamentals of internal and external policy”).¹⁷ For quite a long time, the Ukrainian Ministry of Economics had an additional „and European Integration” phrase beside its name. Failing to fulfill the aim, the phrase disappeared, however, legal acts still keep the norm stating the general aim to join the EU.

In order to fulfill that aim, the Ukrainian legal system had to be reformed according to EU standards. It mostly concerned judicial reform, reform of the criminal procedure, as well as reforms in many other spheres. Some goals are fulfilled, however, the majority of them are only fulfilled on paper and nothing has been done in reality in order to conduct the reforms in practice.

Unfortunately, Ukraine adopts a very simplistic approach to reform its legal system. Usually, what is done is that the appropriate Ministry simply translates the appropriate EU directive into Ukrainian, and requests the parliament to pass it as a law, which is usually done by „piano voting”, and does not even try to adjust the text to Ukrainian real life.¹⁸ Moreover, in the process of lobbying, some deputies add their amendments to the existing laws reflecting EU directives, in which many cases break the balanced system prescribed by the directive. That way, we get a situation in which obligations of the implementation of the EU norms in Ukrainian national legal system are implemented on paper – the directive is copied – but it still does not work because of the amendments.¹⁹

5. EU Law and Ukrainian Courts

EU law is considered to be a law of foreign entity, and cannot be automatically applied in Ukraine. What can be applied is the principles EU law is based on, or EU law can be applied in analogy to Ukrainian law, where the latter lacks regulation. Ukrainian courts also refer to EU law as the additional argument when proving some position or principle that Ukraine obliged to follow in its „eurointegration” attempts. The Ukrainian court practice proves that despite of some hesitance in the application of the norms of foreign law in Ukraine, the courts of this country have been starting to pay more and more attention to what is being proposed by these norms in order to follow the regular worldwide accepted tendencies. The amount of the appropriate decisions is small; however, the tendency is growing.

¹⁶ http://www.eu.prostir.ua/files/1323958642893/EU_poll_ukr.pdf

¹⁷ Закон України «Про засади внутрішньої та зовнішньої політики» №2411-VI від 01.07.2010 // <http://zakon2.rada.gov.ua/laws/show/2411-17>

¹⁸ Cf. Для імплементації другої газової директиви ЄС ніякі нові закони не потрібні [*For the implementation of the EU Second Gas Directive no new laws are needed*] // http://dt.ua/ECONOMICS/dlya_implementatsiyi_drugoyi_gazovoyi_direktivi_es_niyaki_novi_zakoni_ne_potribni.html

¹⁹ Cf.: Королева без корони [*Queen without a crown*] // <http://ukurier.gov.ua/uk/articles/koroleva-bez-koroni/p/>

The main spheres of EU law influence on Ukrainian court decisions are the consumer rights protection,²⁰ refugee related cases,²¹ and cases concerning the representation of the legal entity²². The latter group of cases deals with reference to the EU Council's First Directive 68/151/EEC (March 9, 1968) concerning the limitation of the authority to represent the legal person. All these decisions state this rule as a reference to a set up world practice. Additionally, it is worth mentioning that this reference is copied word to word in almost all of the noted decisions.

Nevertheless, even having the decisions completely „copy-pasted” (as in the last case), Ukrainian courts do start referring to the EU law for guidance in argumentation of their position. The majority of decisions only make this simple referral, however, there is one case that needs a separate glance. The Decree of High Administrative Court of Ukraine of August 3, 2010 (No. K-19198/10) in case of the Private Person v. Southern Customs Office is the only decision found in “revestr.gov.ua” state-run court decisions database, in which a Ukrainian court made a referral to the decision of European Court of Justice. No other case can be found in that database that turned to European Union case law.

The issue concerned with the import of a car by a person from a Transnistrian Moldovan Republic – a *de facto* existing but unrecognized state which borders Ukraine on the Southwest. Due to her domicile change, the person wished to import a car that was registered in that “state” to Ukraine. Should this car be registered in the Republic of Moldova, the person would be exempted from Ukrainian customs duty, VAT and excise. However, Ukrainian customs authority refused to apply this rule concerning the person, basing its decision on arguments that official documents of Transnistrian Moldovan Republic are not recognized in Ukraine. Lower courts ruled in favor of the person, and customs authorities turned to High Administrative Court of Ukraine to overrule their decision.

Unlike many cases that end up in High Administrative Court of Ukraine, this one was carefully analyzed, and moreover, the court not only turned to international treaties and the internal legislation of Ukraine, it also referred to foreign case law. One case came from a British court („Emin v. Eldag”), while the other came from ECJ case law („R” v. „The Minister of Agriculture, Fisheries & Food, ex Parte S.P. Anastasiou (Pissouri) and Others”). Both cases are concerned with the recognition of the documents issued by the Turkish Republic of Northern Cyprus. In the first case, a British court ruled that acts of private law of unrecognized states could be found valid in British courts in case the law does not forbid such recognition. The Ukrainian court, by referring to this conclusion, states that this approach makes state unrecognition consequences easier for private

²⁰ High Court of Ukraine on Civil and Criminal matters Decree of August 1, 2012 in the case of Private Person vs. PJSC „Bank “Finansy ta kredyt”

²¹ See a number of High Administrative Court of Ukraine Decrees in cases No. K-4707/10 of May 11, 2011; K-42905/10 of June 1, 2011; K-30486/10 of March 28, 2012; K/9991/89649/11, K/9991/89646/11, K/9991/12805/12 of June 21, 2012; K/9991/37950/12 of August 30, 2012.

²² Cf. a number of High Commercial Court of Ukraine Decrees in cases No. 4/127-ПД-06 of February 28, 2008; 2-21/3136-2004 of May 21, 2008; 13/363 of April 1, 2010; 18/186 of June 16, 2010; 2/467-3/338 of June 21, 2010; 29/245ПД, 29/246 ПД of July 14, 2010; 11/66-10-3108 of February 2, 2011; 1/191ПД of February 9, 2011; 22/135-10-3502 of June 1, 2011; 33/128-22/397 of July 20, 2011; 7/44, 5008/349/2011 of October 12, 2011; 5020-5/017/77/2011 of December 20, 2011; 30/5009/6977/11 of May 8, 2012; 5010/1702/2011-12/38 of July 23, 2012; 5011-33/2803-2012 of September 5, 2012; 5015/7221/11 of October 17, 2012; 5011-27/1392-2012 of November 7, 2012 and some other cases.

individuals. The second case did not prove this position. ECJ ruled that customs documents issued by the Turkish Republic of Northern Cyprus could not be recognized.

Ukrainian court, however, took the first approach stating that British exception rule „follows modern needs when public law and foreign law of unrecognized states would not have a negative influence on private law, on rights of private individuals.” Stating that, the court dismissed Southern customs office claims and ruled in favor of the private person.

Unfortunately, this case is more of an exception than a rule in Ukraine. The court of higher rank took its time and analyzed not only the obstacles of the case but also turned to foreign case law, and, after careful analysis, only made a conclusion that EU case law will not be applicable in the given case. Unfortunately, such cases do not appear in Ukrainian courts on a daily basis. However, one should also note that its existence is already a positive step forward from the old Soviet tradition of justice to European standards.

This case also proves that cases concerning the interpretation of international treaties can also be objects of referral by Ukrainian courts. Unfortunately, as for now, none of such attempts has been detected. To the most part when Ukrainian legal scholars and practitioners talk about the application of European case law in terms of international treaty interpretation, they mean the practice of the European Court of Human Rights. However, Ukrainian judges are obliged to apply that practice by a special Ukrainian law that expressly states that. Going outside of the „letter of law”, in this case is still not a common practice in this country.

6. Conclusion

Despite of the downturns in its „eurointegration” policy, Ukraine still did not deny its goal to become a full member of the European Union. In order to do that, it adopted a strategy of reforming its laws in line with European standards. In most cases, especially in practice, the efforts failed. Legal system, especially the courts, in a situation where, even the international treaties’ status is not clearly defined, still make attempts to engage in applying the norms of EU law. The most parts of this application is chaotic, it only exists for reference purposes, and usually does not have a direct binding nature. Nevertheless, even these rare facts leave the possibility to still believe that Ukraine being a full member of the European Union is not a nice Ukrainian tale for children, but a real goal, product of realistic steps that can and will be done. The few exceptions of the Ukrainian court practice prove that the light in the end of the long tunnel does exist. This definitely concerns the referral to EU law in the interpretation of international treaties by Ukrainian courts. Lacking such practice now, the judges would have to do that sooner or later.