FEATURS OF THE IMPACT OF COOPERATION BETWEEN THE COUNCIL OF EUROPE AND THE EUROPEAN UNION ON THE DEVELOPMENT OF MODERN INTERNATIONAL LAW

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ABSTRACT

The intensification of cooperation between the Council of Europe (CoE) and the European Union (EU) is of considerable interest to Ukraine, which has identified entry into the European legal space as one of the key vectors of its development. The study is devoted to the study of the peculiarities of the impact of cooperation between the Council of Europe and the European Union on the development of modern international law. The authors explored the evolution of formation and development of cooperation between the CoE and the EU; highlighted the legal aspects of cooperation between the CoE and the EU in the process of EU enlargement; to find out the peculiarities of the impact of cooperation between the CoE and the EU on the development of modern international law and to characterise the international legal forms of cooperation between the CoE and the EU.
Features of the Impact of Cooperation Between the Council of Europe and the European Union on the Development of Modern International Law

Key words: Cooperation, the Council of Europe (CoE), Development, the European Union (EU), International Intergovernmental Organization (IIO), International Law


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1. INTRODUCTION

The Council of Europe and the European Union are two interstate entities, each of which pursues certain goals, having effective means to achieve them, as well as a system of bodies and institutions that ensure the functioning of these different and in their own way unique international associations. The Council of Europe and the European Union are called upon to complement each other, ensuring the interaction of their Member States in various fields on a wide range of issues.

The Council of Europe and the European Union uphold the universal values of human rights, democracy and the rule of law. Although these are various organisations that perform multiple functions, they complement each other in their activities.

The goals of the Council of Europe and the European Union coincide in many respects, primarily in such areas as ensuring human rights and freedoms, development of culture and intercultural dialogue, cooperation in the field of education, solving the problems of youth and many others; therefore, throughout its existence, the Council of Europe and the European Union sought to join forces in the formation of a single common European space – Europe without dividing lines. Moreover, as J.-C. Juncker rightly notes in his report, the partnership of the Council of Europe and the European Union should “be based on the continuous strengthening of democracy, human rights and the rule of law in Europe” [1].

Some international legal aspects of cooperation between the Council of Europe and the EU were considered in their studies by the following Ukrainian and foreign scientists: Alkiviadou N. [2], Bond M. [3], Bowring B. [4], Boyashov A. [5], Brosig M. [6], Dolinai Z. [7], Falalueva L. [8], Grimontprez K. [9], Härtel A. [10], Juncker J.-C. [11], Kohl S. [11], Kolb M. [12], Lewis O. [13], Polakiewicz J., Sandvig J. [14], Reichel D., Vink M., Grimheden J. [15], Winter B. L. [16].

The intensification of cooperation between the Council of Europe and the EU is of considerable interest to Ukraine, which has identified entry into the European legal space as one of the key vectors of its development. Ukraine has consistently adhered to this direction, becoming the 37th member of the Council of Europe and is actively moving towards European integration, defining EU membership as its strategic goal. The signing of the Association Agreement between Ukraine and the EU in 2014 and the intensification of Ukraine’s work within the Council of Europe in recent years marks a new stage of legal cooperation in the process of harmonisation of Ukrainian legislation with European legal standards. Accordingly, there is an urgent need for a comprehensive study of cooperation between the regional organisations of the Council of Europe and the EU, and the impact of its organisational and legal mechanism on Ukraine.

The Council of Europe and the European Union uphold the universal values of human rights, democracy and the rule of law. Although these are various organisations that perform multiple functions, they complement each other in their activities.

Based on fundamental values, the Council of Europe brings together governments of Europe and the world in the adoption of minimum legal standards on a wide range of issues. The Council of Europe also monitors the implementation of the international legal instruments that they have signed and provides the necessary technical assistance, often in cooperation with the European Union (Fig. 1).

![Figure 1 Shared priorities and focal areas for co-operation between the Council of Europe and the European Union (formed by the authors based on [17])](image)

The European Union considers common European values as a critical element in the process of deepening political and economic integration. In developing the legal instruments and agreements in force in its 28 member states, the EU often relies on Council of Europe standards. Besides, in his relations with neighbouring countries, many of which are member states of the Council of Europe, he often refers to the rules of the Council of Europe and the activities of its control mechanisms.

The Lisbon Treaty broadened the scope of the European Union's activities in many areas in which the Council of Europe has already gained considerable experience and expert potential. This has expanded cooperation on issues such as combating trafficking in persons, the sexual exploitation of children and violence against women. Also, this opened up opportunities for the European Union to sign the European Convention on Human Rights, as well as other Council of Europe treaties.

Relations between the Council of Europe and the European Union are enshrined in the following documents:

- Collection of documents on relations between the Council of Europe and the European Union;
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- memorandum of understanding between the council of europe and the european union [18].

the council of europe and the european union have been working together for decades. still, the memorandum of understanding has strengthened this cooperation by clearly defining the goals and principles of collaboration and setting common priorities in the fields of human rights, democracy and the rule of law (fig. 2).

figure 2 the action of the council of europe in the field rule of law (formed by the authors based on [17])

analysis of the constituent documents, joint agreements and other legal acts of the council of europe and the eu made it possible to note that cooperation has gone through four stages of evolution (fig. 3).

figure 3 the evolution of formation and development of cooperation between the coe and the eu (formed by the authors based on [17])
The CoE and the EU, in addition to the various features due to their legal nature, have a typical historical, legal, value principles, as well as a common goal - to build a European legal space – Europe without dividing lines.

The Council of Europe includes 47 member states, 27 of which are members of the European Union. The total budget of the Council of Europe in 2020 is € 496,000,000. Contribution of Ukraine – 3 827 464 € [17]. Ukraine became the 37th member State of the Council of Europe on 9 November 1995. Action by the Council of Europe in Ukraine focused on several directions (Fig. 5).

![Image of values and actions of the Council of Europe in Ukraine]

**Figure 4** The action of the Council of Europe in Ukraine *(formed by the authors based on [17])*

Ukraine is an active participant in the activities of the Council of Europe. An important direction in Ukraine's participation in the Council of Europe is the involvement of our country as a member of the Organization in the process of institutional reform of the Council of Europe, as well as strengthening cooperation between the Council of Europe and the European Union. The main priorities and key areas of collaboration between the two structures are set out in the Memorandum of Understanding between the CoE and the EU (2007), which aims to strengthen co-operation between the CoE and the EU in areas of common interest, such as human rights and fundamental freedoms, development, intercultural dialogue, education, social sphere, youth policy.

From recent interactions are the independence of the National Anti-corruption Bureau of Ukraine, the implementation of the Budapest Convention on Cybercrime, changes to the Constitution of Ukraine to complete decentralisation, etc.

### 3. RESULTS AND DISCUSSION

The study shows that the Council of Europe and the EU work closely together in the field of legal cooperation as the creators of European law by improving international law since all EU member states are also members of the Council of Europe.

With the help of joint law-making and law-enforcement practice, the CoE and the EU create a vast array of international legal norms in the European legal space, which form an integral part of European law and can gradually become universal, thereby making a significant contribution to the development of the law of international organisations and...
modern international rights in general. The European states, implementing the legal norms of the CoE and the EU through their national legal systems, harmonising them, are approaching their strategic goal – the creation of a single European integrated legal space as the basis for regulating problems in various fields and areas. The dynamic and progressive development of the law of international organisations and modern international law gives rise to new forms of cooperation, the active subjects of which are international intergovernmental organisations (IIO). International institutions, realising their right of external relations to the process of collaboration among themselves, use other forms of relationships that are different from states with IIO. Current trends in the development of the law of international organisations are closely related to the establishment of the institution of membership of one IIO in another.

The active cooperation of IIO led to the emergence of relations in a new format, namely, the membership of one international organisation in another. As a rule, the members of IIO are states, but the practice of modern international law indicates that other international organisations are members of IIO. With this in mind, the UN International Law Commission in the Draft Articles on IIO Responsibility gave the following definition: "An international organisation is an organisation created based on an international treaty or other documents that is governed by international law, which has international legal personality. IIOs may include as members non-state entities" [19]. From this interpretation, it follows that IIO members can be other IIOs with different types of membership.

The impact of cooperation between the Council of Europe and the European Union on the development of modern international law is manifested in several aspects; however, the main one is the Protection of human rights.

One of the most significant achievements of the Council of Europe is the development and adoption of the European Convention for the Protection of Human Rights and Fundamental Freedoms [20], when The Council of Europe has brought the issue of human rights protection to the international level.

It is generally accepted that the Council of Europe has a unique mechanism for the protection of human rights, which has no analogues in the world. The Convention introduced not only the world's most advanced system of international human rights law but also one of the most advanced forms of international legal procedure. EU accession to the Convention is a unique case in international law and the law of international organisations, when the EU joins the CoE Convention by concluding an accession agreement of a "special kind", not in the way and practice of relations between IIO and international treaty law in general. With this process comes the emergence of a particular form of international legal cooperation - accession to the CoE Convention by concluding an accession agreement of a "special kind".

One of the main advantages of the Convention is its system of compulsory jurisdiction, which means that as soon as a state ratifies or accedes to the Convention, it automatically puts itself under the jurisdiction of the European Court of Justice. Thus, from the moment of ratification, a case of violation of human rights can be brought against the state. Another reason for the success of the Court is the legal force of its decisions. States are required to comply with the final decisions of the Court. The Committee of Ministers of the Council of Europe is following this.

The European Court of Human Rights monitors the implementation of the Convention by accepting complaints about its violation. The Court consists of judges according to the number of countries party to the Convention, however, the number of judges of one citizenship is not limited. Judges are elected by the Parliamentary Assembly of the Council of Europe and have a term of office of nine years.

Judges in their work do not represent a member country, but exclusively the interests of the Court. Moreover, their independence and impartiality is ensured, in particular, by a ban on
any activity incompatible with the permanent nature of their work within the framework of the Court. The term of office of judges is limited to reaching the age of 70 years.

**Figure 5** The impact of the Convention for the Protection of Human Rights and Fundamental Freedoms on the development of modern international law *(formed by the authors)*

The President of the Court is elected in plenary. The Court is divided into four Sections, the content of which should represent the various legal systems of the States parties to the Convention and take into account geographical and gender characteristics.
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Recently, the Court of Justice has increasingly used the provisions of the Convention in its judgments as a direct source of fundamental rights and freedoms in the EU legal order (Fig. 5).

At the same time, the Convention, as the main document on the international protection of human rights, adopted within the Council of Europe and not the EU, is explained by several reasons. Among the most obvious are the following:

- at the time of the adoption of the text of the Convention (4 November 1950), the European Communities and the EU did not yet exist at all;
- the primary purpose of the Treaty establishing the European Community was the economic rather than the political integration of the Member States and, accordingly, the need to regulate human rights at that time did not exist and concerning other areas of international cooperation. At that time, international protection of human rights was already carried out at the CoE level under the Convention.

At the same time, the Convention is an essential component not only of the CoE legal system but also of the European legal system as a whole. The EU made a full reception of the Convention, the only universal document of the Council of Europe and the case-law of the Convention based on it, in its legal system. With the adoption of the EU Charter of Fundamental Rights in 2000, the gradual formation of a network of legal norms at the EU level that ensure the protection of human rights and freedoms began.

The Convention for the Protection of Human Rights and Fundamental Freedoms is also actively supported in Ukraine (Table 1, Fig. 6).

Table 1 Activity of consideration by the Court of cases of Ukraine in which at least one violation of the European Convention on Human Rights was revealed [21]

<table>
<thead>
<tr>
<th>Applications processed in</th>
<th>2017</th>
<th>2018</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applications allocated to a judicial formation</td>
<td>4385</td>
<td>3197</td>
<td>3991</td>
</tr>
<tr>
<td>Communicated to the Government</td>
<td>296</td>
<td>442</td>
<td>329</td>
</tr>
<tr>
<td>Applications decided</td>
<td>15413</td>
<td>3043</td>
<td>2414</td>
</tr>
</tbody>
</table>

Figure 6 Statistics on resolving applications in 2017-2019 (formed by the authors)

Thus, cooperation between the Council of Europe and the European Union has a significant impact on the development of modern international law, but still needs further
improvement in both organisational and legal and substantive components, to avoid duplication, both on the part of the CoE and the EU.

4. CONCLUSION

Summarising the research, we can draw the following conclusions:

1. An analysis of the history of cooperation between the Council of Europe and the European Union shows that initially during the fifty years of partnership between these two interstate entities, the partnership mainly came down to interaction in individual highly specialised areas (for example, was carried out as part of joint programs) and generally met the interests of the Council Europe, the European Union, as well as the member states of these entities, however, at the beginning of the new millennium, the traditional form of cooperation ceased to adequately meet the needs of member states, which required their improvement. The strategic partnership between the CoE and the EU has significantly intensified in recent years. It requires a clear definition of the status and formal legal consolidation of relations, taking into account the practice of cooperation between international intergovernmental organisations at all levels. In the process of collaboration between the Council of Europe and the EU, a new type of membership is introduced, it is practically not researched and is not defined in the theory of the law of international organisations, but it got its consolidation in the practice of their relations. The most appropriate form of cooperation between the Council of Europe and the EU is the associated partnership established in the process of close collaboration and provides for a clear definition of the legal status of each of the organisations in the other and strengthens cooperation in the formation of the European legal space. Legal consolidation of the form of cooperation - the associated partnership will lead to the emergence of a new type of membership in the theory of the law of international organisations, which in practice already exists and reflects the realities of the relationship between the Council of Europe and the EU.

2. The main goal of interaction between the Council of Europe and the European Union at the present stage of development is the creation of Europe without dividing lines, namely, a pan-European political, legal, social, cultural and educational space based on three values common to the Council of Europe and the European Union: democracy respect for human rights and the rule of law.

3. The legal basis for co-operation between the Council of Europe and the EU are universal treaties of a treaty and customary nature, bilateral international treaties, in particular the Memorandum of Understanding 2007 and several other international legal acts, as well as declarations, resolutions, recommendations and other documents. Agreements concluded between the Council of Europe, and the European Union have their peculiarities, in particular: 1) regardless of the name, according to the 1986 Vienna Convention, they are called international; 2) do not have the classical structure of the contract (the term "contract" is not used to denote the name of agreements between the Council of Europe and the EU); 3) are mainly political and legal; 4) do not require ratification by members and are obligatory only for the parties, they have concluded; 5) are not subject to mandatory registration; 6) do not provide for liability for non-compliance; 7) do not contain a validity period; 8) concluded following international law and based on the principle of pacta sunt servanda. A special place in the processes of legal regulation of relations between the Council of Europe and the EU is occupied by the norms of "Soft law", which are also contained in joint non-contractual documents and lay the foundations for their possible recognition as binding in the future.
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