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Partnership and Cooperation Agreements of the European Union with Central Asian Countries

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Résumé: Le but de cet article est de donner un aperçu général des aspects juridiques des relations entre l'UE et les républiques d'Asie centrale, en examinant les Accords de partenariat et de coopération (APC) et leurs lacunes. Une attention particulière a été accordée à la République d'Ouzbékistan. Les Accords de Partenariat et de Coopération signés entre l'Union européenne (à l'époque des Communautés européennes) et les républiques d'Asie centrale, ainsi que d'autres républiques de la Communauté des États indépendants (CEI) qui ont une histoire particulière. Les Accords de partenariat et de coopération ont la nature d'« accords mixtes », car les champs d'application ne relèvent pas de la compétence exclusive de l'UE ou des États membres où les deux partagent les compétences. L'auteur se concentre sur la nature juridique et sur le caractère « mixte » de l'Accord de partenariat et de coopération et propose de moderniser ces accords en tenant compte de l'expérience de 15 ans au cours des dernières années de sa réalisation.

Mots-clés : Union européenne, les républiques d'Asie centrale, Accords de partenariat et de coopération, nature juridique, ratification, accord « mixte », clause des éléments essentiels, instruments d'implémentation¹, responsabilité juridique internationale.

The European Union (EU) as an economic and political union is a structure of intricate political and legal nature. At the same time, the European Union possesses aspects different from those of both traditional international organisations, and states and state-like entities. Today, from our point of view, it constitutes a peculiar sample of a state-like international organization incorporating confederative features that has gradually been developing an image of a federal state. In this regard, the mutual relations of the states of Central Asia with the European Union differ from relations with other international organisations.

The purpose of this research is to give a general overview of legal aspects of bilateral relations between the EU and the republics of Central Asia by examining the Partnership and Cooperation Agreements and their shortcomings. Special focus here will be done to the Republic of Uzbekistan¹.

The Partnership and Cooperation Agreements signed between the European Communities on behalf of the European Union and Uzbekistan, as well as other republics of the Commonwealth of Independent States (CIS) have a peculiar history.

During the “Cold War”, due to ideology, the relations of the European Communities and the Council for Mutual Economic Assistance (Comecon)² were at a dead end for a long time. The

¹ The Republic of Uzbekistan (Uzbekistan) is chosen merely for the fact that the authors are the citizens of this state, and because Uzbekistan, being one of the Central Asian republics, meets the description laid out in this paper.

² Comecon – Council for Mutual Economic Assistance was formed by the USSR on January 25, 1949, with an aim to establish economic cooperation of socialist countries against Marshall Plan. In January 1949 the Council included the USSR, Bulgaria, Hungary, Poland, Romania and Czechoslovakia. In February 1949 Albania, in 1950 GDR, in 1962 Mongolia, in 1972 Cuba joined the Organization. In 1956 China, North Korea and Vietnam joined it as observers. On

diplomatic relations between the European Communities and the Comecon were established only after signing the Joint Declaration between the European Economic Community and the Comecon on June 25, 1988, in Luxemburg¹. After the establishment of diplomatic relations in September 1988, the EEC-USSR relations went beyond the EEC-Comecon and transformed into bilateral basis. After that, the European Council adopted the Resolution approving the offers of the European Commission concerning the relations with the USSR².

After long negotiations starting in 1988 to conclude the agreements on trade-economic cooperation, "The Agreement between the European Economic Community and the European Atomic Energy Community and the Union of Soviet Socialist Republics on trade and economic and commercial cooperation" was signed by the Minister of Foreign Affairs of the USSR E.Shevarnadze and the chairman of the EEC Council at that time R.Duma on December 18, 1989 (EAEC was included in the agreement to establish nuclear cooperation with the USSR)³.

In the relations between the European Economic Community and the USSR serious changes occurred in 1991. On June 28, 1991, the Comecon was disintegrated. At the end of 1991 the Soviet Union was not among the subjects of international law anymore, and left the international arena at all. The appearance of Newly Independent States assigned the European Community to work out a completely new strategy dealing with the region and create new legal basis for mutual relations with independent republics.

However, it must be noted that after the collapse of the USSR, it took a long time to prepare a draft of absolutely new agreement replacing the "Agreement on trade and economic and commercial cooperation" signed on December 18, 1989, in Brussels. On October 5, 1992, the Council of the European Union adopted the Resolution allowing the European Commission to hold the negotiations in order to conclude Partnership and Cooperation Agreements with New Independent States⁴. However, unless Partnership and Cooperation Agreements were signed and enforced with each of countries of the CIS, the Treaty on trade and trade cooperation concluded with the former Soviet Union in 1989 still worked well.

Thus, the Partnership and Cooperation Agreements (PCAs) establishing partnership between the European Communities and their Member States, of the one part, and the republics of Central Asia, of the other part, were signed step by step with all 12 Commonwealth of Independent States (CIS). The first one was signed with Russian Federation on June 26, 1994, and entered into force on December 1, 1997. The PCA with Uzbekistan was signed on June 21, 1996, with Kazakhstan on January 23, 1995, and with Kyrgyzstan on February 9, 1995, and all of them entered into force on July 1, 1999. Partnership and Cooperation Agreement establishing a partnership between the European Communities and their Member States, of the one part, and the Republic of Tajikistan, of the other part has been signed on November 11, 2004, and came into

September 17, 1964, Yugoslavia became its member. Due to political instability and economic crises the Organization stopped its activity on June 28, 1991.

¹ For the text of the Joint Declaration see: Declaration conjointe de la Communauté et du CAEM – JO L 157 du 24/06/1988 et Bull. CE 6- 1988, point 1.5.1; Le paraphe a suivi le 9 juin 1988 – Bull. CE 6- 1988, point 1.5.3; La decision du Conseil du 22 juin 1988 – JO L 157 du 24/06/1988; Avis favorable du Parlement europeen le 17 juin 1988 – JO C 187 du 18/07/1988.

² Bull. CE 7/8- 1988, point 2.2.42.

³ Bull. CE 12 - 1989, point 2.2.35.

⁴ Bull. CE 7/8-1992, point 1.4.14. et 1.4.19.

force as of January 1, 2010. PCA with Turkmenistan was signed on May 24, 1998, with Belarus on March 6, 1995, and they have not entered into force yet; with Ukraine on June 16, 1994, with Moldova on November 28, 1994, with Georgia, Armenia and Azerbaijan PCAs were signed on March 22, 1996, and enforced starting from 1997¹.

The PCAs are “mixed agreements” because they don’t fall in the exclusive competence of the EU or Member States but cover fields for which the EU and Member States share competence. The legal bases for the EU to conclude the PCAs are among some more specific articles of the EC Treaty – Art. 133 and Art. 308 (currently Art. 207 and 218 of the *Treaty on the Functioning of the European Union*).

For the time pending the ratification of the agreements, which was because of the high number of parliaments and political situation in the independent states expected to last long, so-called Interim Agreements were signed. These contain the trade-related provisions of the PCAs, and were based on Art. 133 of the EC Treaty.

Bilateral relations in the sphere of trade are of special attention as far as the EU is the main trade partner for the region of Central Asia. It should be pointed out that the Trade and Cooperation Agreement, signed with the former Soviet Union in 1989, served as a basis for the development of bilateral relations with Central Asian republics until the Partnership and Cooperation Agreement (PCA) entered into force on July 1, 1999.

Currently, the EU signed trade agreements with the five countries of the region but only four of them are enforced. These are: PCAs with Kazakhstan, Uzbekistan, Tajikistan and Kyrgyzstan². According to such agreements, Parties grant each other the status of Most Favored Nation (MFN) with respect to customs tariffs and prohibit the imposition of quantitative restrictions in the bilateral trade. The agreements also provide a gradual approximation of national legislations and practices in accordance with EU standards in trade, including technical standards, sanitary and phytosanitary requirements, intellectual property rights and customs. Thus, the goods of Central Asian countries are provided with a wider access to the EU internal markets.

Since PCA between the EU and Turkmenistan has not yet entered into force, EU trade relations with both countries are based on other documents. That is why in the bilateral trade relations with Turkmenistan the EU bases on the Trade and Cooperation Agreement of 1989 signed with Soviet Union.

Particular attention should be paid to *The EU and Central Asia: Strategy for a New Partnership*, since it takes a specific place in the system of mutual relations between the EU and Central Asian countries. Adopted by the European Council on June 21-22, 2007, the Strategy is an overall framework for EU relations with Central Asia aimed at strategically strengthening relations in all areas of cooperation. The Central Asian Strategy is mainly implemented through other instruments, like the bilateral agreements between the European Community and states of Central Asia, in particular Partnership and Cooperation Agreements and Interim Agreements, the Trade

¹ For the text of PCAs see: for example, Russia OJ L 327, 1997; Ukraine OJ L 49, 1998; Moldova OJ L 181, 1998; Kazakhstan OJ L 196, 1999; Kyrgyzstan OJ L 196, 1999; Uzbekistan OJ L 229, 1999.

² A Partnership and Cooperation Agreement (PCA) with Turkmenistan has been signed in May 1998 and is under ratification by the EU Member States and the European Parliament.

and Cooperation Agreements, as well as through numerous EU assistance schemes, initiations and programmes.

The case of Uzbekistan.

From the very days of independence Uzbekistan declared the cooperation with the European Union the priority of its foreign policy. The EU, in its turn, considers Uzbekistan being its significant partner.

The Memorandum of Understanding between the Government of Uzbekistan and the Commission of the European Communities signed on April 15, 1992, laid the legal foundations of mutual relations between the EU and Uzbekistan. Diplomatic relations were established on November 16, 1994.

Bilateral dialogue is held within 5 joint organs: Council for Cooperation, Committee for Cooperation, Committee for Parliamentary Co-operation, Sub-Committee for Trade and Investments, Sub-Committee for Justice, Internal Affairs, and associated issues. These organs provide the framework for regular discussion of mutual relations in different areas and elaboration of ways for their further development.

Multilateral agreements signed between the EU and Uzbekistan are as follows: “The Partnership and Cooperation Agreement establishing partnership between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part” signed in Florence, Italy, on June 21, 1996¹; “Interim Agreement on trade and its other supplementary measures” signed in Brussels, on November 14, 1996² (the same agreements were signed between the EU and other republics of Central Asia³); “Agreement on trade of textile products” signed on June 18, 1993⁴ (the same agreements were signed between the EU and other republics of Central Asia⁵); “Cooperation act on use of nuclear energy for peaceful purpose” signed between the European Atomic Energy Community and the Government of the Republic of Uzbekistan on October 6, 2003, and was enforced starting from August 1, 2004.

Among the agreements concluded between the Republic of Uzbekistan and the European Communities the PCA, signed during regular meeting of the member states of the European Union held in fortress “Fortezza de Basso” in Florence (Italy) on June 21, 1996, plays an important role.

¹ Partnership and Cooperation Agreement (PCA) came into force on July 1, 1999. See full text of PCA at: http://ec.europa.eu/external_relations/ceeca/pca/pca_uzbekistan.pdf.

² For the text of the agreement, see: Accord interimaire sur le commerce et les mesures d'accompagnement entre la Communauté européenne, la Communauté européenne du charbon et de l'acier et la Communauté européenne de l'énergie atomique, d'une part, et la république d'Ouzbékistan, d'autre part – Protocole concernant l'assistance mutuelle entre autorités administratives en matière douanière – Acte final – Déclarations communes – Déclaration unilatérale de la République d'Ouzbékistan: *Journal officiel n° L 043 du 14/02/1998. – P. 0002-0019.*

³ Kazakhstan and Kyrgyzstan are meant here.

⁴ For the text of the agreement, see: Accord sous forme d'échange de lettres entre la Communauté européenne et la République d'Ouzbékistan modifiant l'accord entre la Communauté économique européenne et la République d'Ouzbékistan sur le commerce de produits textiles, paragraphe a Bruxelles le 8 juin 1993, modifié *en dernier lieu par un accord sous forme d'échange de lettres paragraphe le 4 décembre 1995 – Procès verbal agréé – Échange de notes Journal officiel n° L 343 du 31/12/1999. – P. 0030-0045.*

⁵ Agreements related to the trade of textile were signed with Kazakhstan, Tajikistan, and Turkmenistan in December 1999. Content of these agreements is almost the same.

The Agreement on Partnership and Cooperation was ratified with the 292nd Decree of Oliy Majlis of the Republic of Uzbekistan of August 30, 1996. After the Agreement was ratified by the Parliament of France in June 1999, it came into force on July 1, 1999.

The parties of the Agreement on Partnership and Cooperation. The Republic of Uzbekistan *of the one part*, the sides provisioned in the Treaty establishing European Community entitled “Member States”, of the Treaty establishing European Coal and Steel Community, the Treaty establishing European Atomic Energy Community – The Kingdom of Belgium, the Kingdom of Denmark, Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland, as well as European Community, European Coal and Steel Community, European Atomic Energy Community *of the other part*, are the primary parties of the PCA.

In accordance with the Treaty on joining¹ signed between the Member States of the European Union and Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia, Slovenia on April 16, 2003, in Athens, and coming into force on May 1, 2004, these states joined the PCA.

This process is legally regulated by “A Note to the Agreement on Partnership and Cooperation establishing partnership between the Republic of Uzbekistan of the one part, and the European Communities and their Member States of the other part, to take account of the accession of Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovakia, the Republic of Slovenia to the European Union”².

Thus, the number of the states participating in the Partnership and Cooperation Agreement reached 25. As a result of the fact that Bulgaria and Romania joined the Union in 2007; the last new member of the EU – Croatia joined in 2013; there are 28 states now.

Thus the European Community, European Atomic Energy Community as well as their 28 Member States and the Republic of Uzbekistan are the parties of the PCA.

The Agreement consists of a preamble and 102 articles. 5 Annexes³, a Protocol on mutual assistance between administrative authorities in customs matters are integral parts of the

¹ Treaty of Athens consists of Treaty on membership, Treaty on the requirements for the membership and 10 protocols, 18 annexes and over 40 declarations annexed to it. The Treaty on the membership in the EU between the European Union Member States and Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovakia and Slovenia has three articles and determines the main basis for Treaty on membership. In accordance with article 2 paragraph 1 of it, the Treaty on membership came into force on May 1, 2004. For the full text see at: *Official Journal L 236 of 9 September 2003*.

² A note to the Agreement on Partnership and Cooperation establishing partnership between the Republic of Uzbekistan of the one part, and European Communities and their Member States on the other part, to take account of the accession of Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovakia, the Republic of Slovenia to European Union. The Legal treaty department of the Ministry of Foreign Affairs of the Republic of Uzbekistan P/UZ/CE/uz 1-7.

³ 1. The indicative list of privileges granted by the Republic of Uzbekistan to the Independent States in accordance with article 8(3); 2. Community reservations in accordance with Article 22(2); 3. Uzbekistan’s reservations in accordance with Article 22(4); 4. Financial services referred to in Article 25(3); 5. Intellectual, industrial and commercial property conventions referred to in Article 41.

Agreement (Article 96). 8 Joint Declarations¹, Exchange of letters between the Community and the Republic of Uzbekistan in relation to the establishment of companies and the Declaration by the French government (On non-application of the PCA to the overseas countries and territories associated with the European Community pursuant to the Treaty establishing the EC) are attached to the Final Act of the PCA. Thus, the Agreement has 18 parts².

The Partnership and Cooperation Agreement has 11 Titles. Except for the first (Title 1: General Principles) and the last (Title 11: Institutional, general and final provisions) titles, each title is dedicated to individual branch of cooperation: Political dialogue (Title 2); Trade in goods (Title 3); Provisions affecting business and investment (Title 4); Legislative cooperation (Title 5); Economic cooperation (Title 6); Cooperation on matters relating to democracy and human rights (Title 7); Cooperation on prevention of illegal activities and the prevention and control of illegal immigration (Title 8); Cultural cooperation (Title 9); Financial Cooperation in the field of technical assistance (Title 10).

“The Partnership and Cooperation Agreement establishing partnership between the European Communities and their Member States, of the one part, and the Republic of Uzbekistan, of the other part” is a complicated treaty in terms of volume and content.

In the Preamble and 32 articles of the PCA there are references to 35 universal and regional conventions, bilateral and multilateral general agreements, programmes, international standards, regulations of the European Council. The list of the international treaties, that Uzbekistan is recommended to join, is given in Annex 5 attached to the text of the Agreement (Intellectual, industrial and commercial property referred to in Article 41).

There are references to the United Nations Charter (article 2), the Final Act of the Conference on Security and Cooperation in Europe (CSCE), the Concluding Documents of Madrid and Vienna Follow-up meetings, the Document of the CSCE Bonn Conference on Economic Cooperation, the Charter of Paris for a new Europe, all the principles and rules of international law reflected in Helsinki document entitled “The Challenges of Change” of the CSCE in 1992 (preamble, articles 2, 3, 68). Particularly, such principles of international law as preserving international peace and stability, peaceful settlement of disputes (preamble), principles of market economy (article 2), establishment of good neighborhood relations, respect for human rights and freedoms, and strengthening superiority of law are precisely underlined in it. Joint declaration concerning article 95 has a reference to general norms of international law.

To sum up, “Partnership and Cooperation Agreement establishing a partnership between the Republic of Uzbekistan of the one part, and the European Communities and their Member States of the other part” is really significant but at the same time complicated treaty in terms of its essence and characteristics.

Likewise, the PCA is an intricate international treaty both in terms of volume and structure.

¹ 1. Joint Declaration on personal data; 2. Joint Declaration in relation to Article 5; 3. Joint Declaration concerning Title III; 4. Joint Declaration concerning Article 14; 5. Joint Declaration concerning the notion of “control” in Article 24(b) and Article 35; 6. Joint Declaration concerning Article 34; 7. Joint Declaration concerning Article 41; 8. Joint Declaration concerning Article 95.

² The Agreement on Partnership and Cooperation. The manual on the Agreement on Partnership and Cooperation. (In Uzbek, English and Russian Languages). European Commission publication, Brussels, 2003. P. 4-129.

First, the legal status of the Partnership and Cooperation Agreement is rather a thorny issue. The 1969 Vienna Convention on the Law of Treaties and the Vienna Convention on International Agreements between States and International Organisations or between International Organisations adopted on March 21, 1986, as well as the Law of the Republic of Uzbekistan “On International Treaties of the Republic of Uzbekistan” of 22 December 1995, do not mention international-legal nature of this category of “mixed” treaties. In our opinion, it is necessary to make relevant amendments and addenda to Article 1 of the Vienna Convention on the Law of Treaties of 1969 and Article 1 of the Vienna Convention on International Treaties between States and International Organisations or between International Organisations of 1986, as well as to reflect these amendments in the national legislation.

Second, from the perspective of the European Union Law, the analysis of Partnership and Cooperation Agreements leads to even deeper debates. These agreements constitute a new category – third generation treaties – placed between the treaties of association and trade-commercial treaties based on Article 207 of TFEU (ex.133 of the CE Treaty).

Third, the “mixed” nature of the PCA in legal sense ought to be comprehended correctly and wholly. As demonstrated from the Agreement’s title, the parties to this treaty are the Republic of Uzbekistan, on the one part, the European Union (ex-Community), on the other, and their Member States, on the third. This type of treaties can no doubt be referred to multilateral treaties. However, the participating European Communities and their Member States in some cases can be considered as one party to this treaty and in other cases as separate independent parties. Hence, it represents an intricate legal structure in which some of the norms of the Agreement stem from the absolute competence of the EU while some other norms are based on shared competences of the EU and their Member States. This state of affairs further complicates the understanding of the treaty’s legal essence. For this reason, the issue of division or distribution of competences between the EU and Member States constitutes the very quintessence of the European Union Law, and is considered the knottiest of the issues.

Fourth, the change in the balance of competence separation between the EU and Member States, the shift of some of the spheres from the exclusive competences of Member States to those of the EU, or “communitarization”, to some extent paralyses the legal status of the parties. As a result, the problem of treaty-legal obligations and confusions deriving from the Agreement becomes even more complicated. In cases of misapprehension with regard to the Agreement, the participation of the EU and Member States as opposing parties, is one of the legal consequences of the “mixed” or “joint” nature of the PCA.

The Vienna Convention on the Law of Treaties (1969) offers mechanisms for judicial settlement, arbitration and conciliation to resolve conflict situations with respect to invalidity, termination, withdrawal from or suspension of the operation of a treaty (Articles 65, 66).

It is imperative that transparent law mechanisms of resolving bilateral and multilateral misunderstandings within the framework of the Partnership and Cooperation Agreement be worked out and implemented in practice. The following ought to be taken into account:

If there is no clear indication of competences separation in the treaty, or if a situation when an international legal liability occurs within mixed or joint competences of the European

Union and Member States, the plaintiff (Republic of Uzbekistan) has the right to simultaneously place charges against the EU (or Communities) as well as (a) Member State(s).

In our opinion, it has become urgent to upgrade the Partnership and Cooperation Agreement taking into account the 15 year experience over the past years of its realization, the structural and qualitative changes happened as a result of horizontal and vertical expansion of the European Union integration (enlargement and deepening), the specific connotation of internal and foreign policy of the Republic of Uzbekistan corresponding to contemporary trends.

A number of normative decrees were adopted in order to implement and realize the PCA in Uzbekistan¹. Hence, until up now necessary steps have been done in order to raise it to the level of law and create a solid legal basis. If one looks at foreign experience in this matter, it becomes obvious that Ukraine adopted the Law "On harmonizing the Ukrainian legislation with EU's legislation" in 2002².

In order to realize the PCA two agendas and one action plan have been developed in Uzbekistan. Analysis of these documents shows that the Republic of Uzbekistan is more or less taking steps to realize the above mentioned agreement.

However, there are several objective obstacles which make implementation process difficult, and some of them are connected with unordinary nature and character of the agreements in question.

The analysis of normative legal acts concerning national legal foundations of mutual relations between the European Union and the Republic of Uzbekistan demonstrates a number of shortcomings in the national legislation. For one, the status and the legal foundations of the activity of the Mission of the Republic of Uzbekistan to the European Union are not sufficiently reflected in the national legislation. That can be clearly felt by the example of the Mission of the Republic of Uzbekistan to the EU, which is under the Embassy of Uzbekistan to the Kingdom of Belgium.

Deriving from the principle of broadening the scope and consolidating bilateral mutually beneficial relations with the European Union, it would be appropriate to institute an independent diplomatic mission of the Republic of Uzbekistan to the European Union, separate from the Embassy of Uzbekistan to the Kingdom of Belgium and to maintain it with the help of independent financial sources. In addition, it is recommended that diplomatic ranks and grades of mission's chiefs of this type be codified by introducing amendments and addenda to relevant laws of the Republic of Uzbekistan.

Conclusion.

Partnership and cooperation agreements (PCAs) are the main instrument regulating the relations between the EU and new independent states of Central Asia appeared after the collapse

¹ Decree of the Cabinet of Ministers of the Republic of Uzbekistan № 415 "On complex programme of the Government of the Republic of Uzbekistan on realization of the Partnership and Cooperation Agreement between the Republic of Uzbekistan and the European Communities and their member states" of September 3, 1999; Decree of the Cabinet of Ministers of the Republic of Uzbekistan № 328 "On organizational measures directed at realization of the Partnership and Cooperation Agreement between the Republic of Uzbekistan and the European Communities and their member states" of July 5, 1999.

² Law of Ukraine "On harmonizing the Ukrainian legislation with EU's legislation" of November 21, 2002 № 228 – IV. See: Delo i pravo. 2003. December. Vol. 1. P. 5.

of the former Soviet Union. They replaced the Agreement on trade and economic cooperation signed in December 1989 between the EEC and the Soviet Union. PCAs cover a broad spectrum of issues such as trade in goods, economic cooperation including investment promotion and protection among others, energy, environment, transport, tourism besides financial cooperation, cross-border supply of services and others. From the point of view of some authors, "despite this broadness the established relations are not very deep, e.g. the PCAs do not create a free trade area, but contain at most a "prospect" of it"¹.

Moreover, all PCAs include human rights and democracy clauses, which still have been a topic of endless discussions.

Human rights and democracy clauses so-called "essential element clause" have similar wording in use among the twelve PCAs including PCAs with Central Asian republics. The PCAs with Kyrgyzstan and Kazakhstan contain the following "essential element clause": "Respect for democracy, principles of international law and human rights (...) constitute an essential element of partnership and of this Agreement".

The PCA with Turkmenistan mentions in Art. 2: "Respect for democratic principles and fundamental and human rights (...) constitute an essential element of this Agreement".

In addition to the "essential element" clauses, the PCAs also contain a "suspension" or "non-compliance" clauses, lying down the procedure to be followed in cases of human rights violations. These clauses are identical in all PCAs.

This type of suspension clause was first used in 1994 in the association agreements with Bulgaria and Romania. Later, it replaced the so-called "Baltic suspension clause", used in the treaties with the Baltic states and Albania, which did not refer to the possibility of negotiations and demanded "serious violations" of human rights.

Consequently, the "appropriate measures" referred to in the clause mean a partial or complete suspension or termination of the agreement.

Although the EU uses human rights clauses for several years, no treaty so far has been suspended solely due to human rights violations. There were some cases of treaty suspension with some states like Rwanda, Somali, Sudan, but the suspension was not only due to human rights violations, but due to a general non-fulfillment of a treaty mixed with human rights violations, e.g. civil wars². As for Central Asian republics, this practice has not been real case so far.

Last eastern enlargement³, the European integration enhancement and its impact on the EU-Central Asian relations, internal and external factors requiring some changes that are

¹ Berdiyev, Berdi. EC Human rights and democracy clauses in the Partnership and Cooperation Agreements with states of Former Soviet Union. Central Asian Journal. Kimep. Volume III Issue 2. P. 31.

² Idem., p.39.

³ The last enlargement and its internal impact on the social and economic situation of Central and Eastern European countries are largely described in the following literature which are at the same time recommended as recommended and required readings for interested audiences: Inglehart, R. "Modernization and Postmodernism: Cultural, Economic & Political Change in 43 Societies. Princeton University Press; Sztompka Piotr. "The Sociology of Social Change" Blackwell 193, MA 303; Cris Shore. Building Europe. The Cultural Politics of European Integration. Routledge 2000. MA 306.2904; Kjell Goldman. "Transforming the European Nation-State". Sage 2001; Norman Davies "Europe. A History". PIMLICO 1997. MA 940 B; Anthony D. Smith. National Identity. University of Nevada Press. MA 320.54. See also: Zdzislaw Mach. Polish national culture and its shifting centers. – Online academic paper: <http://www.ces.uj.edu.pl/european/papers.htm>; Katarzyna Zukrowska. The economic opening of the Polish economy

necessary to make this agreement work more effectively, need thorough investigation from the perspective of European Union and International Law.

One of the main problems here is that after the last enlargement, all new member states became part of the PCA (in 2005, 2007 and 2013) under the requests of the EU Law without taking into account its complex nature. The point of this problem is that since then all of the EU member states have been seeking replacement of the bilateral agreements with given country of the region (Central Asia) by the PCA, as far as the European Union Law (including international treaties) is supreme over national. The serious questions that lawyers and politicians encounter today and are required to find a clear answer to are: *Does the PCA cover all scope of bilateral agreements? What kind of implementation instruments compatible with their national interests exist? How to achieve the main goals of the PCA and take benefits from it* etc. Due to particular status and legal nature of the PCA both European and Central Asian scholars and practicing lawyers have been definitely seeking the best solution but things still go in the non-identified direction.

The current process of revising bilateral agreements between new member states of the European Union and Central Asian republics and then promoting those relations, replacing previously bilateral treaty-legal frame by the so-called multilateral “mixed agreements” where the EU and the Member States act jointly, still remains a main point of discussion.

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