

PROBLEMS OF ADAPTATION OF UKRAINIAN LEGISLATION TO EU LEGISLATION

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Abstract. The article is concerned with the problems of adaptation of Ukrainian legislation to the legislation of the EU member states as well as the modern problems on the way of harmonization of the national legislation in order to bring it in line with European legal norms and standards

Keywords: adaptation of legislation, integration, harmonization, European Union, Acquis Communautaire Partnership and Co-operation Agreement, Association Agreement.

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Introduction

Historically, Ukraine is not the only state to face the problems of convergence of the national legal system with the legal system of the European Union and the requirements of international legal norms and standards. Almost all the former member states of the USSR confronted this problem since their system of legislation required deep reform.

After the collapse of the Soviet Union, having achieved independence, Ukraine began to expand its ties with the EU. The first important step towards the involvement of the state into the European legal field was the signing of Partnership and co-operation agreement between the European Communities and their member states, and Ukraine of 14 June, 1994 (hereinafter referred to as PCA), ratified by the Law of Ukraine № 237/94-VR of November 10, 1994 (*Partnership and co-operation agreement between the European communities and their member states, and Ukraine, 1994*).

Since then, certain theoretical and practical aspects of the question of adaptation of national law to EU legislation have increasingly been the subject of scientific interest and research of domestic scholars, namely N. Hnydiuk, I. Hrytsiak, H. Druzenko, V. Zabigailo, O. Zerkal, Yu. Kapitsa, V. Muraviov, R. Petrov, N. Parkhomenko, S. Shevchuk and others. However, the process of adapting Ukrainian legislation to EU law is dynamic and encompasses a very large range of issues, a comprehensive analysis of which promotes the continuing relevance of these studies and their further implementation.

Subtitle of the body

The foundation of the process of adaptation was laid in the 90's by the Presidential Decrees “On Enforcement of the Partnership and Cooperation Agreement between Ukraine and the European Community” of February 24, 1998, №148; “On Approval of the Strategy of

Ukraine's Integration into the EU" of June 11, 1998, №615; "On Measures to Improve the Rulemaking Activity of the Executive Bodies" of February 9, 1999, № 145.

One of the main directions of the integration process proclaimed by the Strategy of Ukraine's Integration into the European Union (hereinafter referred to as the Strategy) is the adaptation of Ukrainian legislation to EU legislation which is considered as the approximation to modern European legal system to ensure the development of political, entrepreneurial, social, cultural activity of Ukrainian citizens, economic development of the state within the framework of the EU, contributing to the gradual growth of the welfare of citizens, bringing it to a level of the EU members states.

The Strategy provided for the stages of legal adaptation including implementation of the Partnership and co-operation agreement, conclusion of sectoral agreements, bringing the current legislation of Ukraine in line with the EU standards, creation of a mechanism for bringing draft laws of Ukraine into conformity with EU norms.

Subsequently, by the Resolution of the Cabinet of Ministers of Ukraine of 16 August 1999, №1496, the Concept of adaptation of Ukrainian legislation to EU legislation (hereinafter referred to as the Concept) was adopted. Its provisions were to be the basis for the annual plans of the central executive authorities to adapt Ukrainian legislation to EU legislation and to ensure that they are accounted for during realization of measures aimed at implementation of the Strategy (*The Concept of adaptation of Ukrainian legislation to EU legislation, 1999*).

According to O. Dehtiar, there are three stages provided by the Concept. At the first stage, according to guiding principles formulated in the Declaration adopted by the European Council at the Copenhagen Summit in June 1993, the emphasis should be put on the development of the legal system in Ukraine that would contribute to the achievement of stability in society, ensure the rule of law and human rights and ensure functioning of the market economy; development of the legislation of Ukraine in accordance with the concepts defined by this Concept or Interagency Coordination Council as priority areas in the direction of its gradual approximation with the legislation of the EU. At the second stage continuing up to the present, the process of legislative adaptation focuses on the following tasks: reviewing Ukrainian legislation in the areas specified in Part 2 of Article 51 of PCA, in order to ensure its approximate compliance with EU legislation; legal framework for creating a free trade zone between Ukraine and the EU and preparation for Ukraine's associate membership in the EU. The third stage of legislative adaptation will depend on the conclusion of the Agreement on associative membership of Ukraine in the EU and will include the period of preparation of an expanded program of harmonization of Ukrainian legislation to legislation of the EU in order to ensure Ukraine's integration into the EU common market (*Dehtiar, 2017*).

In June 1998, the Interdepartmental Coordination Council for the Adaptation of Ukrainian Legislation to EU Legislation was created, with the leading role played by the Ministry of Justice of Ukraine responsible for coordinating the process of approximation of legislation at the governmental level.

The Ministry of Justice of Ukraine was due to translate the acts of the *Acquis Communautaire* into the Ukrainian language, ensure the functioning of the national information network on EU law and to analyze the consequences of the implementation of the *Acquis Communautaire* in the legislation of Ukraine in areas where the legal relationship is governed by the law of the European Union.

On March 18, 2004, the Verkhovna Rada of Ukraine adopted the Law of Ukraine № 1629-IV which approved the "National program of adaptation of Ukrainian legislation to the

legislation of the European Union” (hereinafter referred to as the National Program). The National Program was proclaimed as a priority area of Ukrainian foreign policy in order to bring the Ukrainian legal system into conformity with the *Acquis Communautaire*, taking into account the criteria of compliance with the third Copenhagen and Madrid criteria for membership in the European Union (Section 1 of General Provisions of the National Program) (*On the National Program of Adaptation of Legislation of Ukraine to the Legislation of the European Union, 2004*).

V. Bozhko notes that the literal translation of the term “*Acquis Communautaire*” from French means “Community acquisition” (hereinafter referred to as the EU *Acquis*) and emphasizes the peculiarities of the legal system of the European Union which covers but is not limited to acts of the European Union. Such a system has been formed and developed for almost 60 years, and now it contains more than 15,000 different types of legal acts and almost 10,000 decisions of the EU Court (*Bozhko, 2017*).

Having analyzed the concept of “adaptation”, N. Parkhomenko notes that adaptation is a process of adapting to changing conditions; in international law, adaptation is the process of bringing national legislation to the norms and standards of international law by improving the national legislation (making amendments and additions, adopting new legal acts), concluding or joining international treaties. Adaptation of national legislation to the legislation of international organizations is carried out by the authorized bodies of state power on the path of lawmaking, planning, coordination and control. Adaptation is an integral part of integration processes, a prerequisite for the harmonization of national legislation with the legislation of international organizations. This is a systematic process that involves several successive stages, each achieving a degree of compliance with national legal norms and standards (*Parkhomenko, 2012*).

Speaking about adaptation of Ukrainian legislation to EU legislation, O. Prylypchuk notes that one should take into account the following structure of the European legislation that consists of:

- Treaty establishing the European Coal and Steel Community (Paris, 18 April 1951), Treaty establishing the European Economic Community (Rome, 25 March 1957);
- Treaty establishing the European Atomic Energy Community (Rome, 25 March 1957)
- provisions, directives and other normative acts adopted by the competent authorities of the European Communities;
- international agreements where the European Communities is one of the parties;
- decisions of the Court of Justice of the European Communities providing official interpretation of the relevant legal provisions (*Prylypchuk, 2015*).

The Order of the Cabinet of Ministers of Ukraine №201-p of June 16, 2005 approved the “Plan of measures for implementation of the 2005 National program for the adaptation of Ukrainian legislation to the legislation of the European Union”. Since 2005, the Cabinet of Ministers of Ukraine has annually approved a plan of measures for its implementation. These plans included not only the list of legal acts (both draft laws and bylaws) to be developed and adopted, terms of execution and responsible persons, but also the list of sources of the EU *Acquis* that regulate legal relations in various areas: labour protection; taxes; financial services; information relations; health and life of people, animals and plants; the environment; technical rules and standards; power engineering; transport; intellectual property; rules of competition, etc.

Also, by the Order of the Cabinet of Ministers of Ukraine №157-p of March 25, 2013, the “Plan of measures for implementation of the National program for the adaptation of Ukrainian legislation to the legislation of the European Union” was approved in 2013 (On Approval of the Action Plan for Implementation in 2013 of the National Program of Adaptation of Legislation of Ukraine to the Legislation of the European Union)

In accordance with §35 of the Rules of Procedure of the Cabinet of Ministers of Ukraine approved by the Government Resolution №900 of July 18, 2007, as amended by the Decree №160 of February 24, 2016, the draft resolution of the Cabinet of Ministers of Ukraine, as well as a draft decree of the Cabinet of Ministers of Ukraine on approval of the concept of the state policy implementation in the corresponding sphere, the concept of the state target program and the concept of the law is subject to elaboration in accordance with the obligations of Ukraine in the field of European integration.

During the development of the draft act of the Cabinet of Ministers of Ukraine, the developer should identify the sources of European Union law (EU Acquis) governing the legal relationship, similar to that planned to be regulated by the draft act; the presence of Ukrainees commitments in the field of European integration, including international legal, regarding the subject of legal regulation of the draft act; availability of program documents in the field of European integration on the subject regulated by the draft act.

According to Part 2 of Article 11 of the Law of Ukraine “On the principles of internal and foreign policy” of July 1, 2010 (On the Principles of Internal and Foreign Policy of Ukraine), the main principles of the foreign policy of Ukraine are proclaimed to ensure the integration of our state into the European political, economic and legal space in order to gain membership in the European Union, as well as to the principles of domestic policy in the social sphere, the desire to ensure the rights and freedoms guaranteed by the Constitution of Ukraine on the basis of the implementation of European standards social protection and improvement of the quality of social services (Part 1 of Article 8 of the Law).

To pursue these principles, the political part of the Association Agreement between the European Union, the European Atomic Energy Community and their member states and Ukraine was signed at the extraordinary EU-Ukraine Summit on March 21, 2014.

On June 27, 2014, the President of Ukraine and the EU leadership and heads of states and governments of the 28 member states signed an economic part of the Agreement which together with the rest of the text of the Agreement constitute a single document.

On September 16, 2014, the Verkhovna Rada of Ukraine and the European Parliament simultaneously ratified the Association Agreement between Ukraine and the EU (On Ratification of the Association Agreement between the European Union, the European Atomic Energy Community and their member states and Ukraine, 2014), and on September 1, 2017, after a long process of ratification of the Agreement by the parliaments of all 28 member states, the Association Agreement between the European Union, the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other, has come into force in full.

The preamble to the present Agreement states that Ukraine has undertaken to ensure gradual adaptation of the Ukrainian legislation to the EU Acquis in accordance with the directions specified in this Agreement and to ensure its effective implementation.

In addition, in Article 1 (2) (d), the European Union agreed to support Ukraine’s efforts to complete its transition to a functioning market economy, including through the gradual adaptation of its legislation to the EU Acquis.

In article 114 “Adaptation of legislation” the parties of the Agreement emphasize the importance of adapting current legislation of Ukraine to the legislation of the European Union. Ukraine has agreed to ensure that its current laws and future legislation gradually achieve compatibility with the EU Acquis. This adaptation should start from the date of signing this Agreement and gradually extend to all elements of the EU Acquis mentioned in Annex XVII to this Agreement.

In accordance with Article 93 of the Rules of Procedure of the Verkhovna Rada of Ukraine approved by the Law of Ukraine “On the Rules of the Verkhovna Rada of Ukraine” №1861-VI of February 10, 2010, it is stipulated that every bill, draft of other act, after its registration in the parliament, is sent for examination on its compliance with internationally-legal commitment of Ukraine in the area of European integration for the preparation of an expert opinion.

On July 7, 2015, the President of Ukraine signed the Decree №398/2015 on repealing some decrees of the President of Ukraine which revokes some acts of the President in the European integration area of the past years, due to the fact that the Presidential Decree № 5/2015 of January 12, 2015, approved the Strategy for Sustainable Development “Ukraine-2020”, and the Presidential Decree №287/2015 of May 26, 2015 approved the Strategy of National Security of Ukraine. These documents clearly formulate the European integration aspirations of Ukraine and take into account the new stage of relations between Ukraine and the European Union that is enshrined in the Association Agreement and corresponds to the realities of the present.

Thus, today all the prerequisites for adaptation of Ukrainian legislation to the legislation of the EU member states have been created. The Ukraine’s law-making mechanism has been equipped with the system which ensures the development and adoption of all normative acts without exception in accordance with EU law standards.

At the same time, Ukraine, unfortunately, is still far from the European standards of legal regulation in many spheres of relations. Among the main factors that make it difficult to harmonize national legislation with the European legislation, the following should be mentioned:

- versatility of the European legal field, its complex nature;
- considerable duration of formation of the state’s legal field as a social process organically associated with changes in all other spheres of society life;
- confrontation between the branches of power in Ukraine and the sharp political struggle that impede the effective legislative activity of the parliament;
- lack of clear criteria for defining the priority areas for the adaptation of Ukrainian legislation;
- absence of effective mechanism for implementation of current legal norms.

Conclusions and suggestions

Therefore, in order to address the problems of adaptation of the legislation of Ukraine and the EU, the greater efficiency of the process of approximation of the legal framework of the state with the standards of EU law a number of measures should be taken:

- to develop a new Concept of adaptation of Ukrainian legislation to the legislation of the European Union which would correspond to the present;
- to develop clear criteria for defining priority areas of adaptation and a list of EU legal acts, in accordance with which the Ukrainian legislation should be brought into line;

- to adopt new, consistent with the EU legal framework, legislative acts simultaneously with the adaptation of already existing laws;
- to ensure coordinated cooperation of all branches of power in the process of lawmaking, overcoming the confrontation between the branches of power and various political forces in Ukraine for the sole purpose;
- to develop clear schedules of work of state authorities of Ukraine on harmonization of legislation for certain branches of law, with delimitation of competence of each of them;
- to create a special committee of the Verkhovna Rada of Ukraine which would ensure the coordination and coordination of the relevant legislative activity;
- to involve foreign experts in the process of harmonization of Ukrainian legislation and maximize the use of EU technical assistance;
- to create a single integral system of legislation of Ukraine overcoming its dispersion which complicates the process of adaptation.

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