

Civil legal relations in the context of adaptation of civil legislation to the legislation of the EU countries in the digital age

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Summary

An essential area is the creation of a single digital market between the EU and Ukraine through information technology. Purpose: to investigate and analyze civil law relations in the field of adaptation of Ukrainian civil law to civil law regulations of the EU. The object of research: Ukrainian civil law and civil law of the EU. The subject of the study is civil law in the context of adaptation of civil law to the legislation of the EU. The following methods of scientific cognition were used during the research: semantic, historical, comparison, analysis and synthesis, generalization. The results of the study show that the harmonization of the legal system of Ukraine with EU law is caused by several goals: successful integration of Ukraine into the EU, legal reforms based on the positive example of EU countries, promoting access of Ukrainian enterprises to the EU market; attracting foreign investment, increasing the welfare of Ukrainian citizens. The adaptation includes three stages, the final of which is the preparation of an expanded program of harmonization of Ukrainian legislation with EU legislation. In the process of adaptation, it is important to take into account the legal history, tradition, features and mentality of Ukraine and before borrowing legal structures to analyze the feasibility of their application in the Ukrainian legal field.

Key words:

Digital single market, information technologies, adaptation of civil legislation, European integration, harmonization of legislation.

1. Introduction

According to the strategy of European integration of our country, the adaptation of Ukrainian legislation to EU legislation is to approximate national legislation with the modern European legal system, which will ensure the development of the political, business, social, cultural activity of Ukrainian citizens, economic development of the state within the EU and contribute to the gradual growth of living standards. The implementation of the provisions of European legislation provided by the economic part of the Association Agreement [1] is significant in the context of reforms, as the terms of the agreement can and should serve as a basis for a new model of socio-economic development of Ukraine. Therefore, when developing the concept and programs of sectoral economic reforms, it is necessary to immediately take into account the requirements of the basic

EU directives, harmonization with which is provided by the agreement.

Adaptation of Ukrainian legislation to EU legislation is one of the main components of the process of Ukraine's integration into the EU, which is a priority of Ukrainian foreign policy.

It is a process of bringing the laws of Ukraine and other normative legal acts in line with the *acquis communautaire*.

According to Section II of the Law of Ukraine "On the National Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union" of March 18, 2004, "... *acquis communautaire* (*acquis*) is the legal system of the European Union) adopted within the framework of the European Community, the common foreign and security policy and cooperation in the field of justice and home affairs" [2].

Following the provisions of the Sustainable Development Strategy "Ukraine - 2020" [3], which was approved by the Decree of the President of Ukraine on January 12, 2015, No. 5/2015, our country has chosen a path of development that has European standards of living as its benchmark and criteria. Such a vector of transformation should provide an opportunity for Ukraine to become a full member of the European Union in the future.

Creating a single digital market with the help of information technology is a priority area of integration. It is also a key element of Ukraine's economic integration into the EU internal market, promoting the development of Ukraine's digital economy. The main advantages are the reduction of transaction and trade costs in trade in goods and services between the EU and Ukraine, increased business efficiency, economic productivity, and GDP of Ukraine.

Despite the large number of scientific studies related to the characteristics of various aspects of the convergence of the legal system of Ukraine with international law, we emphasize that there is still no comprehensive theoretical and legal research.

2. Research Results and Findings

The creation of a common legal space for the regulation of international relations through the harmonization of legal requirements of international law and national law is an objective need and requires purposeful and coordinated activities of different states and international organizations [4].

For Ukraine, the harmonization of national legislation with European and international law is of particular importance and relevance, as this process involves not only the creation of a legal framework for future accession to the EU but also the achievement of other important goals for our country.

Consequently, scientific theoretical and methodological support for the harmonization of Ukrainian legislation with European and international law is an objective necessity and should be present at all stages of the harmonization process to ensure its effectiveness.

The analysis of the process of approximation of Ukrainian legislation to the EU legal system makes it possible to identify problems that need to be urgently addressed and suggest approaches to increase the efficiency of this process. The adaptation of Ukrainian legislation to EU legislation is taking place simultaneously with the legal reform in Ukraine. The state must update the legislation under international principles and standards, as so far, its legal framework did not contain these principles and standards.

The current legal framework of Ukraine is contradictory, unstable, and therefore imperfect. However, the EU attaches particular importance to the quality of legal acts. The EU Council has decided on the rules for their preparation, according to which, the legal action must be: clear, ambiguous, without excessive use of abbreviations, not to contain slang, too long phrases, incomprehensible references to other texts, difficulties that make it difficult to read. Ukraine also needs to take into account the economic, political, and social consequences of the adoption of relevant legislation adapted to the requirements of EU legislation.

As you can see, in the process of establishing standards of European law or standards of European Union law, there is a problem of defining the scope of certain concepts and terms used in connection with the process of convergence of legal systems of individual EU countries.

It should be noted that both in the literature and some legislative acts to define these processes also use different terms: "harmonization", "unification", "adaptation", "approximation".

Analyzing the use of these terms, we can say that not always a distinction is made between their meaning, quite often they are used as identical concepts.

At the same time, it is necessary to see that each of them has its peculiarity, taking into account the

etymological meaning of the term itself, as well as the peculiarities of yoga application in practice. Obviously, it is based on these factors that several types of harmonization of legislation are mentioned, which were mentioned above, regarding the use of ix in the process of approximation of EU legislation.

In particular, under adaptation (Latin *adapto* – *adapto*) – the process of adaptation to changing conditions; in international law, adaptation is the process of bringing national legislation into line with the norms and standards of international law by improving national legislation (making changes and additions, adopting new regulations), concluding or acceding to international treaties [5].

Adaptation of national legislation to the legislation of international organizations is carried out by authorized public authorities on the principles of lawmaking, planning, coordination and control. Adaptation is a component of integration processes, a prerequisite for harmonization of national legislation with the legislation of international organizations. This is a planned process, which is divided into several successive stages, at each of which it is necessary to achieve a certain degree of compliance of national legislation with international law and standards.

Thus, speaking about the problem of harmonization of Ukrainian legislation, especially, civil and EU legislation, or the adaptation to European Union standards, it should be borne in mind that in forming a single set of civil legislation should take into account the general principles of civil (private) EU law, which defines the basic principles of legal regulation of property and non-property relations within the EU, as well as certain unified within the EU legal mechanisms, which are enshrined in the binding sources of EU law.

In the practical level of adaptation processes, it should be noted that the Civil Code of Ukraine (hereinafter referred to as the Civil Code of Ukraine) adopted in 2003 contains a sufficient basis for those conceptual private law provisions that allow for private reform in Ukraine and to form such civil legislation, which will meet in all areas the requirements established by the European Union in its foremost sources.

In particular, we note radical changes in the formation of the legal framework governing contract law, based on the introduction of the principle of freedom of contract, dispositive in regulating the rights and obligations of participants, establishing mechanisms for mutual liability of corporate law, which should be based on consideration and protection of interests minority shareholders, ensuring the rights of the "weak side"; ensuring the functioning of a set of personal non-property rights of an individual, which would be guaranteed from state intervention in the sphere of personal private life, etc.

Consider the example of the main institutions of civil law and the need for adaptive reorganization of the latter to the requirements of European law in an integrative process.

One of the ways to approximate national legislation with EU legislation is the possible borrowing and introduction into national legislation of certain legal institutions inherent in the law of leading European countries. One such legal institution is the trust or fiduciary (i.e., trust-based) property, which is a rather peculiar legal construction of modern European and Anglo-American law.

In a generalized form, the European "understanding" of the legal structure of trust property is contained in the rules of the Model Rules of European Private Law, which are called DCFR [6]. According to Art. X.-1: 201 DCFR.

Trust owner, by Art. X.-5: 201 DCFR, has the right to take with the property transferred to it in trust property, any lawful actions directed on achievement of the purpose established by the founder of management. Thus, we can conclude that the right of trust property DCFR authors understands a special type of property right, which is to take any legal action, limited by the conditions of establishing trust property and aimed at achieving the goal set by the founder of trust property.

As for the Ukrainian legislation, the borrowing and introduction into the legal system of our state of the studied legal institution have caused a lot of controversy among the scholars.

Today, the use of this legal institution in law enforcement practice is complicated by the lack of a legal definition of "trust property". The Civil Code also does not contain a legal definition of this definition.

Simultaneously, there is another point of view in the science of civil law, according to which the introduction of the legal institution of trust property in Ukrainian legislation is impractical, as this legal structure, borrowed from another legal system, does not fully correspond to the Ukrainian concept of property rights.

Scholars who oppose the borrowing and introduction into the civil law of Ukraine of the category of trust property, justify their opinion as follows. The institution of trust property originated in the law of ancient Rome, and was developed and finally formed in medieval Britain. The specificity of this legal institution is explained by the existence in the Anglo-Saxon legal system concept, according to which it is possible to divide the powers that make up the content of property rights to the same property between different entities whose rights are based on different sources of law: common law and the right of Justice.

According to the concept of property rights inherent in continental law, including Ukrainian law, the right of ownership, as an absolute right, cannot be divided, as the right of ownership can belong to only one person. That is why it is absolutely impossible the existence of two identical property rights to the same property. That is why

the full borrowing of the legal institution of trust property is impossible without significant transformations and transformations.

Article 319 of the Civil Code of Ukraine stipulates that the owner owns, uses, disposes of his property at his discretion. The owner has the right to take any actions against his property that do not contradict the law. Thus, the transfer of property to the management, which by law is the basis for the emergence of fiduciary property, is one way to exercise the owner's powers. However, there should be no new ownership. According to Kotlyar, this proves the difference between the institution of property management enshrined in the Civil Code of Ukraine and the institution of trust property (trust) enshrined in the law of countries with the Anglo-Saxon legal system [7].

When concluding a management contract, the manager, in addition to the property, also receives from the owner a certain part (and sometimes even all) of authority over this property. These powers are exercised by the manager on his behalf, but in the interests of the founder of the management-owner of the property.

The trustee in the relationship of trust also exercises the powers delegated to him by the founder of the trust-owner of the property, on his behalf, however, in contrast to the management of property in the interests of the beneficiary. In this case, each of these participants in the trust, having a certain amount of authority of the owner, is the subject of property rights. In this case, the relationship between the owner and the manager is trusting.

Thus, in our opinion, the legal institution of trust property, enshrined in the national legislation of Ukraine, is not identical to the legal institution of trust, but only to some extent similar to it in form and content.

In contrast to Ukrainian law, the trust owner in common law countries is limited only by the terms of the trust agreement. However, at the same time, Part 2 of this article equates the manager in the right to protection of his right to the owners of the property, noting that the manager has the right to demand the elimination of any violations of his rights to property transferred to management. This once again confirms the existence of a process of gradual convergence of legal systems, because such protection was previously inherent only in the common law.

Property has a special place in the lives of citizens, both public and private. Throughout life, everyone is faced with issues related to their property.

Particular attention should be paid to judicial protection of owners' rights and enforcement of court decisions in the context of protection of property rights, which is a fundamental guarantee of property rights.

Thus, in Ukraine, there is a lack of unity of judicial practice in property cases, in particular, the terms of consideration of cases are violated, and there are a lot of questions about non-enforcement of court decisions. This

leads to a significant weakening of guarantees of owners' rights.

At the same time, the positive aspect of state registration of property rights is the creation of a single register of property rights, its transparency, and access to information, which has simplified the procedure for registration of property rights and reduced the time required for such registration.

It is interesting and promising to borrow European experience to improve the process of applying information technology in Ukrainian civil law. The EU has long been in the process of a digital revolution and is using digital opportunities to improve people's lives and the European space as a whole.

The digital single market aims to break down regulatory barriers and move from national markets to the EU digital single market. According to some estimates, a fully functioning digital single market can save up to € 415 billion annually and increase employment, i.e. create new jobs. It is also important to harmonize all legal, technical, and business aspects.

Regarding the assessment of the state of Ukraine in terms of the use of electronic identification tools and electronic services, it should be noted that technically such opportunities are already in place. However, currently, the electronic digital signature is widely used only when applying to the fiscal service and when submitting declarations to the National Agency for the Prevention of Corruption. Some services can be obtained entirely online, such as the utility bill, but for some services, it is only possible to apply online and register online (state marriage registration and birth registration). In the process of obtaining most electronic services, a mobile phone number and password are used to identify a person, which is a less reliable way than an electronic digital signature. Searching for the required e-service is not a click away, sometimes you have to browse many categories and subcategories.

Articles 139-140 of the Association Agreement are aimed at creating conditions in the field of electronic commerce. The Parties have agreed to develop e-commerce between them, given that this type of trade expands the exchange of goods and services in many sectors. The development of e-commerce should be subject to full compliance with the highest international standards of information security to ensure the trust of e-commerce users. Electronic data transmission is considered to be the provision of services within the meaning of the Association Agreement ("Cross-border provision of services"), from which no customs duties are levied [1].

Given the objective need to legislate the specifics of concluding contracts in electronic form, on September 3, 2015, the Law of Ukraine "On e-commerce" was adopted (some issues were also regulated by the Law of Ukraine of May 22, 2003, "On electronic documents and electronic document circulation" and from May 22, 2003, "On electronic digital signature"). Ukrainian legislation should be in line with the main provisions of Directive 2000/31/EC of the European Parliament and of the Council of 8 June, 2000, on certain aspects of information services, in particular e-commerce, in the internal market (the e-Commerce Directive). And the most important provisions of the Law of Ukraine "On e-commerce" are the legal consolidation and definition of terms related to e-commerce: "e-contract", "electronic signature with a unique identifier", "online store", "information e-services" etc. [10].

3. Discussion

Analyzing the development of domestic and foreign legal thought, we can identify several goals of adaptation of Ukrainian law to EU law: acquisition of EU membership; carrying out administrative, high-quality judicial reform, establishing the rule of law and democratization of social processes; promoting access of Ukrainian enterprises to the EU market; attracting foreign investment; avoiding the undesirable consequences of EU enlargement, etc.

However, the practice of European integration organizations and the implementation of EU law shows that, despite the use of different terms in both EU law and Community agreements with third countries, it is essentially the same process of bringing national legislation into line with provisions of the law of the European integration association. That is, both terms can be used interchangeably.

Having studied the institutions of organizational support for the adaptation of legislation through the disclosure of the peculiarities of the implementation of their status in the process of adaptation of legislation, due to their exercise of both general and special (specific – to adapt legislation and specific – to implement the Association Agreement) powers.

Adaptation of the legislation of Ukraine to the legislation of the EU is a step-by-step adoption, and implementation of normative legal acts of Ukraine developed taking into account the main provisions of the EU legislation" [8]. The adaptation includes three stages, the final of which is the preparation of an expanded program of harmonization of Ukrainian legislation with EU legislation [9].

3. Conclusion

Given the above, it can be concluded that despite the course chosen by our country for European integration and harmonization of national legislation with EU law, full borrowing of legal constructions tested in foreign legal systems is not always justified. At the same time, the emergence of new legal structures, their borrowing in a form adapted to Ukrainian realities and the introduction into current legislation of norms that will respond more quickly and effectively to changes in modern socio-economic conditions and the structure of the national economy, testify to the active participation of our state in the modern process of convergence of legal systems, in particular European countries, which is characterized by the convergence of legal systems as a whole and at the level of individual branches of law, which is fully consistent with Ukraine's chosen course of European integration.

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