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ADAPTATION OF UKRAINIAN LEGISLATION TO EU REQUIREMENTS

ISBN 979-8-88992-698-6

DOI 10.46299/979-8-88992-698-6

**Manhora T., Dzeveliuk A., Manhora V., Kahliak I., Tomliak T.,
Demianchuk Y., Semeniuk O., Pravdiuk A., Skichko I., Pohuliaiev O.**

**ADAPTATION OF UKRAINIAN LEGISLATION TO EU
REQUIREMENTS**

Monograph

2023

UDC 93/94

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Manhora T., Dzeveliuk A., Manhora V., Kahliak I., Tomliak T., Demianchuk Y.,
Semeniuk O., Pravdiuk A., Skichko I., Pohuliaiev O. Adaptation of Ukrainian
legislation to EU requirements. Monograph. – Primedia eLaunch, Boston, USA, 2023.
– 175 p.

Library of Congress Cataloging-in-Publication Data

ISBN – 979-8-88992-698-6

DOI – 10.46299/979-8-88992-698-6

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ANNOTATION

The collective monograph is devoted to the trends of the modern development of the Ukrainian legal society. The research uses an interdisciplinary and legislative approach, which allows to analyze and characterize various aspects, parties and approaches regarding the development and further prospects of social and legal processes in Ukraine, as well as to obtain socially important, legal scientific results.

The subject of scientific interests of **Tamila Manhora** and **Andrii Dzeveliuk** became large-scale acute trends in the modern era of globalization, the issue of cross-border migration, which is caused primarily by its influence on the development of one of the types of international crime, in addition to drug and arms trade - human trafficking. Peculiarities of criminal liability for this type of shadow process are considered. The direct definition of the concept of "trafficking in human beings" is characterized and its characteristic varieties are considered. The current state of legislation regarding this problem is analyzed. The regulatory support for countering this negative phenomenon, as well as the institutional support for countering it, are being studied. The criminal liability for this illegal action has been specified. And also the issue of human trafficking as a form of organized criminal activity is separately investigated.

The chapter by **Volodymir Manhora** and **Inna Kahliak** is devoted to the topic of business contracts in modern social and legal conditions. The expediency of the classification of business contracts has been determined. Their current distribution was carried out in order to determine the place of this or that contract in the general system of economic and legal relations, and their main functional purpose was clarified. The newest form of economic contracts - electronic ones - is characterized. It has been established that the division of this type of contracts into types can be carried out according to various qualification criteria, which is due to the continuous evolution of economic turnover.

Creation of a harmonious and effective system of economic legislation is one of the most important areas of development of the legal system of Ukraine in the context of adaptation to the legislation of the European Union.

According to **Taisa Tomliak's** scientific research, modern evidence of judicial practice of national courts and the European Court of Human Rights proves that judicial bodies have the largest number of cases related to the protection of the rights, freedoms and best interests of the child. It is the judicial bodies that protect the best interests of children, therefore, such a judicial mechanism must be effective and efficient. The mechanism of the legal issue under consideration has its own specifics. Considering the special status of the child as a vulnerable category and the broader concept of the best interests of the child than the rights of the child in general, this issue requires special protection and proper legal protection.

Yurii Demianchuk and **Oksana Semeniuk** consider the issue of the normative and legal basis of the prevention of corruption in Ukraine in relation to the requirements of the European Union. As a method of scientific research, it plays an extremely important role in learning the essence of social phenomena and processes. The expediency of the raised topic is stated as one of the universal methods in the plan of transforming the future, because it is impossible to carry out social transformations without having a proper innovative project. The considered legal model of combating corruption motivates the desire to get into power structures for reasons of personal safety and impunity. Therefore, it includes the processes of the degradation of power and its consistent corruption in Ukraine to the requirements of the European Union.

According to **Andrii Pravdiuk**, information is a productive force and a commodity, simultaneously being a means of protection and attack in defense of state, corporate and personal interests of subjects of power relations. Starting from the time of the first attempts to scientifically understand the concept, essence and meaning of information in society, the problem of the right to access to information has been the object of considerable attention of representatives of various scientific fields - historical, socio-psychological, philosophical, legal, technical, etc. However, despite the different level of coverage of the problem from the point of view of informativeness

and source support, they do not exhaust the topic of research, but on the contrary, in the modern conditions of the formation of the national and global information space, they enrich and update it.

The purpose of **Irina Skichko's** research is to analyze the state of adaptation of the legislation of Ukraine to the legislation of the European Union in the context of the actually implemented and planned. The author emphasizes that despite Ukraine's active implementation of the Association Agreement between Ukraine on the one hand, and the European Union, the European Atomic Energy Community and their member states on the other, the application for Ukraine's membership in the European Union was submitted only during a full-scale military intrusion. This situation is explained by the large amount of unfinished rule-making work to adapt Ukrainian legislation to European legislation. Even despite the constant obstacles on the way to adaptation, as of February 2023, Ukraine has fulfilled 72% of the obligations stipulated in the Association Agreement with the European Union. Considering the above, it is relevant to review the current and future steps taken regarding this adaptation.

Oleksandr Pohuliaiev makes an attempt to analyze the historical process of unification of legal institutions of European states. According to the author, this process can serve as an example for Ukraine and other countries that intend to join the European Union. Treaties regulating relations between Ukraine and the EU have been reviewed. Ukraine's fulfillment of requirements for deepened political and legal integration into the European family is analyzed.

European integration is a natural and logical path for the European Ukrainian nation. Other alternatives are absent or unprofitable. It has been proven that membership in the European Union contributes to the improvement of quality standards of all state institutions and modernizes the country's legal system. Since the second half of the 20th century, integration processes have intensified all over the world.

The content of the collective monograph corresponds to the direction of scientific work of the Department of Law of Vinnytsia National Agrarian University. The monograph is the result of the initiative theme "Legal regulation of social relations

in the conditions of martial law and post-war reconstruction of Ukraine in the conditions of European integration". State registration number 0123U100675. The head of the topic is Candidate of Law Sciences Associate Professor Manhora T.V.). The monograph uses: legal, social and legislative research methods, statistical analysis, legal approach of national and international practice.

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6. Adaptation of Ukrainian legislation to EU legislation

Annotation

Despite Ukraine's active implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, the application for Ukraine's membership in the European Union was submitted only during a full-scale invasion [26].

This situation is explained by the large amount of unfinished rule-making work to adapt Ukrainian legislation to European legislation. Even despite the constant obstacles on the way to adaptation, as of February 2023, Ukraine has fulfilled 72% of the obligations stipulated by the Association Agreement with the European Union [28]. Considering the above, it is relevant to review the steps taken for adaptation and those to come.

The purpose of the study is to analyze the state of adaptation of the legislation of Ukraine to the legislation of the European Union in terms of what is actually implemented and what is planned.

According to the second paragraph of Chapter II of the Law of Ukraine "On the Nationwide Program for the Adaptation of the Legislation of Ukraine to the Legislation of the European Union", the adaptation of the legislation of Ukraine to the legislation of the EU is the process of bringing the laws of Ukraine and other normative legal acts into compliance with the *acquis communautaire* (legislation of the European Union, which consists of primary legislation, various directives, regulations - secondary legislation and other acts - tertiary legislation) [5]. With regard to the practical implementation of this goal, we note that it is not only about improving existing legal acts, but also about the development of new ones.

According to E.O. Kharitonov and O.I. Chariton adaptation is possible with the compatibility of legal systems, belonging to the same civilization, which is a prerequisite for the existence of common values. Moreover, we are not talking about

the formal adaptation of legislation, but about the adaptation of legal concepts, provisions and principles [32, p. 457].

We cannot but agree, because thoughtlessly copying the legislation of another country (in our case – the union of countries) without taking into account national, cultural, historical or even geographical specificities is guaranteed to be ineffective. For example, the African country of Liberia. The system of government bodies and legislation, completely borrowed from the United States of America, did not lead to the construction of a democratic country and the observance of human rights, the legislation was rather formal and declarative in nature [23, pp. 184-199].

In view of the above, it is important to investigate the legal nature of adaptation in more depth. According to N.M. According to Parkhomenko, adaptation is the process of adaptation to conditions that are in the process of change; in the context of international law, it is the process of improving national legislation by bringing it into line with the standards of international legislation or joining international treaties and agreements. In the case of approximation of the Ukrainian legislation to the European one, the researcher suggests using the term "harmonization", because we are talking about the consistent and step-by-step activities of both parties, not only Ukraine [29, p. 338]. At the same time, V. Muravyov claims that the concept of harmonization covers the entire process of developing a homogeneous legal system through the adoption of directives [27].

On the other hand, O. Chornobai is convinced that the adaptation of Ukrainian legislation to European legislation is one-sided, and therefore it should be called "approximation" - the introduction of "secondary legislation" standards, namely directives and regulations [34, p. 68].

The problem of choosing the right terminology outlined above prompted R. Khorolskyi to limit himself to the concept of "approximation of legislation" which is a compromise for all parties (but, in our opinion, clearly not a legal one) [33].

We believe that limiting ourselves to one concept for the entire researched process is not enough. So situationally, it will be quite appropriate to talk about implementation, approximation, adaptation, etc. At the same time, it should not be

forgotten that the legislator chose the term "adaptation", thus emphasizing the purpose of his activity in relation to the legislation of the European Union.

Implementation of the tasks of the Law of Ukraine "On the Nationwide Program for the Adaptation of the Legislation of Ukraine to the Legislation of the European Union" was initially carried out by applying the Agenda of the Ukraine-EU Association for the preparation and promotion of the implementation of the Association Agreement [30]. Prior to the signing of the Association Agreement, the main orientations and directions for the adaptation of the legislation were specified in this act, after the signing of the Association Agreement, this Procedure was updated.

The process of adaptation in the sense of the Law of Ukraine "On the Nationwide Program of Adaptation of the Legislation of Ukraine to the Legislation of the European Union" began after the signing of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand June 27, 2014 (hereinafter - the Agreement) [2].

Thus, Article 114 of this Agreement provides for the adaptation of Ukrainian legislation from the moment of signing the agreement, the adaptation applies to all elements of the EU acquis, specified in Annex XVII to this Agreement, where such areas as the provision of financial, telecommunications, postal and courier services are specifically mentioned. However, the Agreement itself covers all possible spheres of life, so further we will mention only some examples of the adaptation of Ukrainian legislation to the legislation of the European Union. A more detailed Action Plan for the implementation of the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and their member states, on the other hand, was approved by the Cabinet of Ministers of Ukraine [17].

It turned out to be the most difficult to adapt domestic legislation to European environmental law. According to the Deputy Prime Minister for European and Euro-Atlantic Integration of Ukraine, Olha Stefanishyna, in certain aspects, Ukrainian environmental legislation lags behind European legislation by a decade [25].

For example, one of the important issues of environmental legislation is waste management (one of the components of cooperation in the field of the environment,

specified in Article 361 of the Agreement). On November 8, 2017, the National Waste Management Strategy in Ukraine until 2030 was approved [18]. This strategy is primarily aimed at creating a closed-type economy in Ukraine and introducing new methods of waste management.

A closed-loop economy means the maximum possible reuse of waste in production after its processing. An action plan has been developed separately for different types of waste: household, communal, industrial, construction, medical, batteries and accumulators, hazardous waste. In addition, the mentioned strategy emphasizes the need to move away from recycling and waste disposal.

In continuation of the announced goal, the Law of Ukraine "On Waste Management" was adopted, which will enter into force in the summer of 2024 [6]. The aforementioned law introduces a European hierarchy of waste management, a new organization of waste management planning at different levels, bringing landfills up to European standards, increased responsibility of manufacturers in terms of ensuring the disposal of packaging of their goods.

Dozens of areas of environmental law require such thorough study (protection of the natural environment, creation and protection of protected areas, legislation on flora and fauna, regulation of emissions, etc.).

Another direction of active rule-making is the improvement of the system of checks and balances, in terms of the creation of new control, law enforcement and judicial bodies and/or rules for their selection.

Thus, on June 11, 2021, the President of Ukraine approved the Strategy for the Development of the Justice System and Constitutional Judiciary for 2021–2023. In addition to general confirmations of the European integration course of Ukraine, you can also find such novellas in this direction as:

- specification of the procedure for the Supreme Court's appeal to the European Court of Human Rights with a request for advisory opinions on the interpretation of the Convention on the Protection of Human Rights and Fundamental Freedoms [1] and its protocols;

- clarification of the legal status of information from competitions, qualification evaluations and disciplinary proceedings;
- revision of the court fee [19].

It is worth mentioning that European integration contributed to the creation of new law enforcement and judicial bodies to fight corruption and economic offenses (within the requirements of Article 22 of the Agreement) - the National Anti-Corruption Bureau of Ukraine [7], the High Anti-Corruption Court [8], the Specialized Anti-Corruption Prosecutor's Office [22], Bureau of Economic Security of Ukraine [9].

The reforms did not bypass the election legislation, which in 2019 was codified into the Election Code of Ukraine with the following key provisions [4]:

- implementation of a proportional electoral system with open regional lists instead of a majoritarian electoral system;
- appearance of a gender quota for electoral lists;
- increasing the size of the monetary deposit for the presidential elections of Ukraine and returning the monetary deposit in the presence of a certain level of support and others;
- introduction of mandatory publication of open election data.

In order to continue adaptation to the legislation of the European Union, it is also planned to make changes to this Code in terms of election campaigning and information support for elections.

Subchapter 6 of Part 5 of Chapter 6 of Title IV of the Agreement deals with financial services. Since the signing of the Agreement, the National Bank of Ukraine has been systematically improving its own acts in the mentioned area (in particular, the liberalization of currency regulation, which was temporarily stopped due to a full-scale invasion), but the biggest achievement, in our opinion, is the adoption of the Law of Ukraine "On Capital Markets and Organized Commodity Markets » [10].

The aforementioned Law, unlike the previous one, extends its regulation not only to securities, but also to other financial instruments, in particular, bonds and derivatives, as well as products and currency values traded on organized markets.

At the same time, the National Commission, which carries out state regulation in the field of financial services markets, was liquidated with the redistribution of its powers between the National Bank of Ukraine and the National Securities and Stock Market Commission [20]. Such reforms bring Ukraine closer to European standards and contribute to more effective supervision in the mentioned sphere.

Chapter 20 of Section V of the Agreement is aimed at protecting consumer rights. On November 3, 2022, the Law of Ukraine "On materials and objects intended for contact with food products" was adopted for adaptation to the legislation of the European Union in this matter, which will enter into force in November 2025 [11].

According to the law, such materials and objects must not contain elements that will be transferred to food products and cause harm to the health of consumers and/or the properties of the food product. Attention is also paid to labeling and advertising of these materials and objects, state registration of substances that are their constituents.

Previously, as part of the adaptation of Ukrainian legislation to European legislation, laws on standardization and information for consumers regarding food products were also adopted. Together, this block of normative regulation not only complies with the legislation of the European Union, but will also contribute to the protection of the life and health of consumers.

Article 222 of the Agreement is devoted to the issue of the protection of data provided for the authorization of the sale of a medicinal product, which, in combination with regulations on the protection of consumer rights, led to the adoption of the new Law of Ukraine "On Medicinal Products" on July 28, 2022 [12]. Note that the old law is still marked as valid on the website of the Verkhovna Rada of Ukraine. Among the short stories, we can single out the following:

- the law is significantly supplemented with terminology;
- different registration terms are established for different types of medicinal products;
- it is planned to create a new control body by merging the State Service of Ukraine for Medicinal Products and Drug Control and the State Expert Center of the Ministry of Health of Ukraine;

- new requirements for licensing and for drug manufacturers;
- new requirements for the promotion and labeling of medicinal products.

The adaptation of legislation in the pharmaceutical field will allow domestic manufacturers to fully enter the European markets in the near future, which will be especially relevant in the framework of the post-war reconstruction of Ukraine.

Article 397 of the Agreement provides for the adaptation of Ukrainian legislation in the field of audiovisual industry, which covers television, radio, activities of journalists, etc. The Law of Ukraine "On Media", which will enter into force on March 31, 2023, took a very long way to adoption in December 2022 [13].

Difficulties in its adoption are due to both the large volume (in particular, it codifies a number of branch laws and makes changes to more than fifty other laws) and public indignation regarding the risks of restricting freedom of speech. Nevertheless, the Council of Europe believes that the Law on Media generally complies with the provisions of the European Union legislation (although it needs minor adjustments) [24]. The following are the main innovations:

- The National Television and Radio Broadcasting Council extends its control from radio and television to print and online publications, has the right to impose sanctions and block all media without the need to obtain a court decision;
- online media are divided depending on the availability of contact information
- anonymous media will be blocked faster;
- language quotas close to European standards are established.

The media must be responsible for the information disseminated, which is clear and beyond the question of adaptation to the legislation of the European Union, so we do not see a violation of freedom of speech in the implementation of a mechanism for prompt response to the activities of unscrupulous media.

Nevertheless, there are still directions for development in the media and information sphere. I.A. Stroyko draws attention to such issues of providers' activities as establishing direct responsibility for copyright and related rights violations in the case of content distribution without the right holder's permission [31, p. 208].

To solve the highlighted problem, on March 20, 2023, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine Regarding Strengthening the Protection of Intellectual Property Rights" was adopted, which brings the legislation of Ukraine closer to European standards [15]. As of the time of writing this article, the Law is awaiting the signature of the President of Ukraine.

According to Chapter 13 of Section V of the Agreement, legislation on the establishment and operation of companies, corporate governance also needs adaptation. It should be noted that in this field, the legislator is characterized by fruitful rule-making, among the most recent changes it is worth mentioning the adoption of the new Law of Ukraine "On Joint Stock Companies" in July 2022, which entered into force at the beginning of 2023 [14]. The law introduced many changes, including:

- new models of corporate governance were implemented - one-level (general meeting and board of directors) and two-level (general meeting, supervisory board, executive body - one-person is also allowed);
- alienation of shares no longer requires the consent of other shareholders;
- the size of the minimum authorized capital has been reduced;
- such institutions of corporate law as irrevocable power of attorney and corporate contract have been improved;
- the mandatory position of corporate secretary is introduced for some joint-stock companies;
- at the same time, the audit commission is no longer a body of the company;
- 3 formats of general meetings of shareholders are envisaged - face-to-face, electronic and remote.

In accordance with Article 291 of the Agreement, Ukraine undertakes to implement labor standards recognized by international law.

It seems to us that such a goal is difficult to achieve in view of the existence of the Soviet Labor Code of Ukraine [3], despite repeated attempts by deputies of all convocations to adopt the Labor Code of Ukraine. The Code of Labor Laws of Ukraine has undergone so many changes since the 1970s that it is easier to actually adopt a new

code than to make subsequent amendments, which, however, does not happen every once in a while.

So far, instead, on February 23, 2023, a new Law of Ukraine "On Collective Agreements and Contracts" was adopted, which at the time of writing this article is awaiting the signature of the President of Ukraine [16]. Unlike the previous one, this Law:

- expands the subject composition of parties to collective negotiations;
- provides for the possibility of concluding territorial agreements in a separate industry;
- regulates the formation of a joint representative body at any level of dialogue;
- provides for the possibility of suspending and stopping the effect of certain provisions of collective agreements and contracts,
- provides for the possibility of new entities joining agreements and contracts.

Note that even when it enters into force immediately after being signed by the President of Ukraine (which is atypical for recent legislative practice), it is necessary to take into account the effect of martial law, during which certain labor rights are limited [21].

The adaptation of the legislation of Ukraine to the legislation of the European Union affected many other areas (education, science, culture, industry, taxes, customs, etc.), it does not seem possible to review all the implemented and planned changes within the framework of one article, however, the mentioned rule-making activity it is quite enough to highlight general trends and regularities.

Conclusions. The process of adapting the legislation of Ukraine to the legislation of the European Union is speeding up significantly. On the one hand, this accelerates Ukraine's accession to the European Union, and on the other hand, it can affect the quality of legislation. In addition, we see the following risks in such activity of the legislator:

1. all laws are adopted with delayed (sometimes significantly) entry into force, which allows, for example, to cancel them upon joining the European Union;

2. the effect of a significant number of new laws can be fully verified only after the abolition of martial law. That is, for post-war Ukraine, which will need reconstruction and additional assistance, another problem will appear - the simultaneous entry into force of a large array of norms, which in practice and/or with simultaneous implementation may act unpredictably and not in a manner acceptable to the European Union;

3. it should also not be forgotten that borrowing the laws of Ukraine does not borrow legal consciousness and legal culture, the development of which is possible only by one's own efforts, which in the current conditions of survival of the nation is not a priority task.

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