

# THEORETICAL BASIS OF IMPLEMENTATION OF INTERNATIONAL STANDARDS AND EUROPEAN PRINCIPLES IN UKRAINIAN LEGISLATION

**Nataliia Parkhomenko, V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine**

**Iana Voloshyna, Poltava University of Economics and Trade**

**Tetiana Tarakhonych, V.M. Koretsky Institute of State and Law of the National Academy of Sciences of Ukraine**

**Oleksandr Tykhomyrov, Open International University of Human Development Ukraine**

**Stanislav Husariev, Academy of Internal Affairs**

## ABSTRACT

*The article explores the problems of implementation of international standards and European principles into Ukrainian legislation. It is noted that the European integration of Ukraine, determined as the priority area of the existence of our State from the first days of acquiring international legal personality, has remained an important way of its progress. National and international law are two different theoretical structures, so while improving the system of national law, it is necessary to take into account the specifics of Ukrainian legislation, linguistic, cultural features and belonging to a particular legal family. It is emphasized that the harmonization of national and European law systems cannot be done mechanically. Firstly, the principle of State sovereignty of each country continues to be applied. Secondly, each country has many features that should be protected and should not be lost in the integration process. Thirdly, universal organizational mechanisms for harmonizing relevant legal systems have not yet been established. Besides, there are significant weaknesses in the theoretical solution of the relevant problems which hinder their practical solution. It is concluded that the key means to harmonize the legal standards of Ukraine and the EU is to adapt the national legislation to the EU legal system. To this effect, it is necessary to adopt the relevant legal acts, to make amendments and supplements to the legislation in force in the area of anti-corruption, electoral legislation, legislation on the judiciary, procedural legislation, and, in particular, to the Constitution of Ukraine.*

**Keywords:** Legal System, Harmonization, European Integration, European Union, European Law, Association Agreement, Legal Reform, Constitution of Ukraine, Legislation, International Law, International Standards.

## INTRODUCTION

The conclusion of the Association Agreement with the European Union (EU) by Ukraine assumes the consistent implementation of international European standards in the legal system of Ukraine. The European standards constitute the requirements that ensure the approximation of legal systems and are an important tool of harmonizing the legislation of Ukraine and the

European Union. Adaptation of Ukrainian legislation will be the first step in a lengthy process of approximation of the national legal system, including legal culture, doctrine and judicial and administrative practice, to the European Union law system in accordance with the criteria set out by the European Union for the countries which intend to accede to it. This problem should focus on key trends in the development of democracy in Ukraine, including complex socio-economic and political problems of transition, which reflect not only the successes of reforms and transformations, but their contradictions, incompleteness, and uncertainty. In order to neutralize such a scenario, a holistic concept of legislative policy is needed, which would take into account the processes of legal modernization and integration of our country into the European space. After all, the European integration of Ukraine, determined as the priority area of the existence of our State from the first days of acquiring international legal personality, remained an important way of its progress. However, one should not forget that national and international law are two different theoretical constructs, so when improving the system of national law, it is necessary to take into account the specifics of Ukrainian law, linguistic, cultural features and belonging to the Romano-German legal family. The harmonization of the systems of national and European law cannot be carried out mechanically, because the principle of state sovereignty applies, there are no universal mechanisms for harmonization of the respective legal systems. In addition to that, there are significant weaknesses in the theoretical solution of the relevant problems which hinder their practical solution.

### **Constitutionalization in the Context of Legal Globalization**

There are two key points that determine the need to bring national law and international law into conformity. The external aspect of this process is related to the need to fulfill international obligations, the internal aspect-to bring the legal system of Ukraine to the international and European standards. The fundamental principles of international law in the internal law of Ukraine are set out in the Constitution of Ukraine (Article 9, Article 18) (Law of Ukraine, 1996). The practices of the approximation of Ukraine to the global practice, including European one, are also evidenced by the relevant provisions of the legislation of Ukraine on the priority of the standards of international law over national legislation, in particular the Law of Ukraine “*On the International Treaties of Ukraine*” (Article 19) (Law of Ukraine, 2004).

The penetration of universally recognized world standards and values into national constitutions and legislation is achieved through the consolidation of Fundamental principles of cooperation in joint treaties. For example, in Art.2 of the Treaty on European Union (European Union, 2012) states that the Union is based on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights.

Such postulates are common to all Member States in a society dominated by pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men (Article 2). Art. 8 Describes the process and content, according to which the Union develops special ties with neighboring countries in order to create, on the basis of European values, an area of prosperity and good neighborliness that is close to cooperation between the two countries. However, the experience of the EU countries in the constitutional reform shows that the prospects for the constitutionalization of the European integration processes in Ukraine should not deny the value of the Constitution to Ukraine.

The requirement of constitutionalization is of great importance in the context of legal globalization and the objective need for the interaction of sovereign legal systems (Kruss, 2014). It is not accidental that one of the sections of the XVII Congress of the International Academy of

Comparative Law (Boele-Woelki & Van-Erp, 2007) was devoted to discussing the problem of constitutionalization of the international legal order. Much attention to the growing role of the constitutional law in both national and international law was paid at the VII Congress of Constitutionalists, held in Athens on June 11-17, 2007. In particular, scientific reports have repeatedly drawn attention to a new stage in the development of constitutional law, which is reflected in the global constitutionalization of all spheres of life of society, the strengthening of State sovereignty, even in the context of interstate integration (e.g. Gardner, 2007). These provisions were also presented in the recommendations of the International Forum in Greece.

The changes related to globalization processes in the modern world are recently of particularly importance for Europe itself and for the countries of the world. The globalization of public life has raised the issue of the harmonization of different legal systems in recent years. It became clear that the States lose a lot if they act in isolation without following the common rules that have been developed in the course of civilization development (Shemshuchenko, 2003).

Today, there is a steady tendency to expand the influence of EU law on the rule of law in Ukraine in connection with the further deepening of cooperation between the partners. In particular, the approximation and harmonization of national constitutional and sectorial legislation of Ukraine with the legal standards of the EU is carried out through the following harmonization methods: reforming and modernizing the constitutional foundations of the European legal integration of Ukraine; adoption of internal legislative and by-laws of Ukraine aimed at ensuring the process of legal adaptation; harmonization of national sectorial legislation with the EU standards, European standards and international legal standards (Strieltsova, 2014).

### **The Ways to Harmonize the Ukrainian Legislation with the Legislation of the EU**

Therefore, the purpose of the harmonization process is to ensure the compliance of Ukrainian legislation with the obligations arising from the Partnership and Cooperation Agreement between Ukraine and the European Community and its Member States, other international agreements on cooperation between Ukraine and the EU, the development of national legislation in the direction of its approximation with EU legislation and ensuring a high level of preparation in Ukraine of draft legislation, creating a legal framework for Ukraine's integration into the EU. The EU Association was seen as a first step towards integrating the country into the Union (Podorozhna, 2016).

According to the prevailing majority of national scientists, the term "*integration*" can be interpreted in two ways: from an internal standpoint, in the usual sense of the term, it is associated with the deepening of a supranational element in the complex structure of the European Union and opposes the expansion of the membership of the organization. However, in a broader sense, integration involves the inclusion of new entrants into the general process and thereby broadening the scope of European law, contradicting the narrow interpretation of the term (Laba, 2005). One of the means of such integration is the harmonization of national legislation with EU law. An important condition for harmonization is to bring the constitutions of States and their national legal systems in conformity with the rules and principles of international law. Harmonization of Ukrainian legislation with the legal systems of international organizations, in particular with the EU, is one of the most important areas of harmonization of Ukrainian legislation with international legal acts. Harmonization occurs in various ways (adaptation, implementation, unification of law, standardization, etc.) and may precede the unification of legislation or be applied when there is no need for such unification.

The Association Agreement provided for a so-called evolutionary approach to the process of approximation of laws, the essence of which is to gradually align Ukrainian legislation with the content and goals enshrined in the EU law. Such an approach will be justified if the national legal system is sufficiently developed, that is, when domestic legislation covers the vast majority of areas covered by the EU acquis (Muraviov & Mushak, 2013).

In order to ensure the progressive approximation of the laws of the associated countries, the following stages of implementation of the provisions of EU legislation in the associated countries can be distinguished as:

1. Adoption of regulatory principles;
2. Adoption of acts on complete harmonization;
3. Concluding agreements with the EU. Therefore, under the association agreement, the process of transformation of national legislation was envisaged to be carried out in three stages.

The first of them (which we have already passed) brought Ukrainian legislation in line with the requirements of the aforementioned Agreement and other international treaties concerning Ukraine's cooperation with the European Union. In the second and third stages, considerable work has been done to prepare the legislation of our country for the complete harmonization with the law of the European Union and the implementation of the program of harmonization of the domestic legislation with the legislation of the European Union in order to fully integrate our State into the common market of the latter. In this respect, there is a number of necessary constitutional changes to further deepen relations with the EU, in particular:

1. A procedural element that provides for determining the place of EU legal acts in the hierarchy of legal acts of Ukraine;
2. An essential element that defines the content of the amendments:
  1. Regarding possible participation in the EU;
  2. Regarding the procedure for amending the Constitution of Ukraine, arising from obligations stemming from membership or association with the EU;
  3. Identification of the issue of the probable delegation (partial restriction) of sovereignty;
3. An institutional element, which defines the subjects of constitutionalization, the powers of which also undergo transformation in the context of European integration:
  1. The Constitutional Court of Ukraine (regarding interaction with the EU Court and interpretation of normative acts of Ukraine regarding their compliance with EU acts);
  2. The Cabinet of Ministers of Ukraine (on government procedures for implementing EU acts) (Chornopyschuk, 2013).

In view of this, it is necessary to establish a set of measures to create constitutional legal conditions and determine the principles of State membership in the EU, which are enshrined in the provisions of the Constitution concerning fundamental foundations of State participation in the European Union, interpreted by the bodies of constitutional justice provisions of the Constitution and normative legal acts respectively to the European law.

The Law of Ukraine *“On Amendments to the Constitution of Ukraine (Concerning the Strategic Course of the State for Acquiring Full Membership of Ukraine in the European Union and in the North Atlantic Treaty Organization)”* (Law of Ukraine, 2019) supplemented the provision of the Constitution of Ukraine with the European identity standard of the Ukrainian people and irreversible course of Ukraine. Moreover, since then, the powers of the Parliament of Ukraine include: defining the principles of domestic and foreign policy and realization of the strategic course of the state for the acquisition of full membership of Ukraine in the European Union and the Organization of the North Atlantic Treaty (Article 85). The President of Ukraine,

in his turn, guarantees the implementation of the strategic course of the State, the acquisition of full membership in the European Union and in the North Atlantic Treaty Organization by Ukraine (Article 102).

These constitutional changes are an additional stabilizing factor in the development of public relations and the improvement of legislation with a view to the implementation of the Association Agreement with the EU (hereinafter referred to as the Agreement), which entered into force on 01 September 2017 (International Treaty, 2017). As noted, the implementation of the Agreement primarily means approximation of EU legislation to the system of national legislation, which includes, inter alia, the implementation of EU legal acts in the legal system of Ukraine.

In addition, full-scale reforms require updating of the Fundamental Law on issues such as strengthening State sovereignty, the direct effect of EU acts, the existence of a parallel EU legal system in Ukraine, the rule of law in the EU, etc. This may require a separate article or section in the text of the Constitution, as in the case, for example, of the Constitution of the French Republic (Vyshniakov, 2001).

The modification of the Constitution of Ukraine and its updating, first of all, involve the analysis of two interrelated aspects of this process—conceptual and system-structural. This is the so-called internal constitutionalization (constitutionalization of the internal law and order). It significantly enhances the role of the Fundamental Law in many spheres of society. These issues, in the context of the modernization of the national legal system and the harmonization of Ukrainian legislation, are increasingly drawing attention to international and European standards.

The constitutionalization of international law (foreign constitutionalization) can be characterized as a process of influence of the modern doctrine of constitutionalism, standards and principles of constitutional law of different States on the normative system of international law. In such circumstances, international law is constantly under pressure from constitutional principles, thereby acquiring a more universal basis for its further development under conditions of interstate integration. The constitutionalization of international law is directly dependent on the active penetration of the rules, principles and doctrines of constitutional law into international law, in which they are enshrined. The reformed Fundamental Law of Ukraine must comply with generally recognized international standards, principles and requirements of international legal instruments in the area of human rights, and to take into account the recommendations and conclusions of the European Commission for Democracy through Law (Venice Commission), Parliamentary Assembly of the Council of Europe, achievements and trends of world constitutionalism.

Another area of legal reforming is the process of eradicating the practice of unjust judgments. In this respect, a system of measures aimed at compensating citizens and organizations for losses from non-judicial decisions and red tape in courts with compensation from a specially created fund for this purpose should also be developed. This requires the determination and responsibility not only of the entire society, but also of the judicial community.

Regarding administrative reform, its main priorities at the present stage are the modernization of the institution of local self-government, taking into account foreign experience, which requires focusing the efforts of local self-government on a number of tasks, including: strengthening the foundations of local democracy; political structuring, formation of elements of civil society at the local level; creation of conditions for ensuring vital interests, social protection of the population, providing it with high-quality services; ensuring the protection and realization

of citizens' rights and freedoms; promoting the consolidation, cultural and spiritual development of local communities; implementation of an effective policy for development of villages, towns, cities and territories; development of initiative and activity of the population; training for local self-government bodies and the like.

### **The Status of Implementation of the Association Agreement between the European Union and Ukraine**

With regard to the status of implementation of the Agreement, one should say that in 2018 the Cabinet of Ministers of Ukraine approved the Action Plan for the implementation of the Association Agreement between Ukraine and the EU (Order of the Cabinet of Ministers of Ukraine, 2016). In accordance with Articles 461–470 of the Agreement, institutional frameworks—joint bodies of the association—were established: the Association Council, the Association Committee, the Parliamentary Committee of the Association and the Civil Society Platform. The Government has an Office of the Vice Prime Minister for European and Euro-Atlantic Integration of Ukraine.

Sadly, not all the results of the implementation of the Agreement were positive. Thus, insufficient institutional capacity of the ministries hinders the fulfillment of the tasks of the Agreement on time and in full. Significant opposition from individual interest groups reduces the effectiveness of passing European integration laws in Parliament. There is also an irresponsible attitude of some of the deputies to the intention of our country to become the EU Member State. At the same time, Ukraine has made the most progress in such areas as entrepreneurship, agriculture, reduction of technical barriers to trade, social policy and labor relations, the financial sector and energy.

Last year, our country additionally fulfilled 10% of its commitments for 2017. According to the results of the tasks, scheduled for 2018, the agreement was executed by 52%. In order to optimize the process of implementation of the Agreement, Ukraine has proposed and agreed a new approach with the EU, according to which integration took place in the priority sectors, namely in such areas as digital market, customs policy, energy, as well as justice, freedom and security (European Union, 2018).

### **The Main Legal Forms of Approximation of the Ukrainian Legislation to the EU Legislation**

Regarding the main legal forms of approximation of the Ukrainian legislation to the EU legislation, the following should be noted.

Firstly, the EU-Ukraine Association Agreement requires public authorities to approximate national legislation to the EU legislation of two main types: regulations and directives. This requires specially designed national legal acts to put them into effect. The EU regulations do not have direct effect in Ukraine, unlike in EU Member States. In this case, it is possible to repeal the current regulatory acts of Ukraine, which contradict or do not comply with the Association Agreement or the acts of the EU legislation specified therein. In addition to adopting the relevant legal acts for the implementation of the Agreement, it is important that they are implemented in a timely manner, which cannot be changed unilaterally. Ukraine fulfills its obligations in stages.

Secondly, in addition to the mandatory approximation, Ukraine can also voluntarily and dynamically implement the EU acts, which are not mentioned in the Association Agreement.

This is due, on the one hand, to the fact that the EU is constantly adopting new legal acts and, therefore, the list of acts requiring harmonization can be adjusted. On the other hand, in view of its own interests, Ukraine may implement the acts not provided for in the Agreement or which have already expired.

Thirdly, it is necessary to take into account the specificities of the EU acts in the process of approximation of legislation, which, unlike the normative legal acts of Ukraine, always start with a preamble and also have specific terminology that is not used in the legislation of Ukraine.

Fourthly, while approaching, authorized entities should take into account not only the content of EU regulations or directives, but also other sources of EU law, including the case-law of the Court (European Union, 2017).

One of the main disadvantages of implementing the Association Agreement is the imperfect planning of legislative approximation measures by the public authorities; uneven implementation of individual measures; slow development and adoption of normative acts providing for implementation of the relevant standards; failure to observe the principle of transparency in the implementation process; partial approximation of legislation; inconsistency and sometimes contradiction of the content of the adopted legal acts; insufficient information to the public on the results of the implementation of the Agreement and involvement of civil society institutions in the implementation of measures; lack of monitoring the results of the implementation of the provisions of the Agreement (Parkhomenko, 2016.). In addition to that, the financial tools and funds needed for implementation are not budgeted.

Therefore, after two years of implementation of the Association Agreement between Ukraine and the EU, it is already possible to find out the main achievements and shortcomings of this process, the overcoming of which requires the consolidation of the efforts of all authorized entities, prudent but operative State policy in this direction, which in the end will facilitate its implementation in due time. The main tasks of Ukraine's foreign policy were and will remain the protection of the country's sovereignty and independence, the preservation and spread of international solidarity and support, the active and irreversible progress on the path of European and Euro-Atlantic integration.

## CONCLUSION

There are two key points that determine the need to bring national law and international law into conformity. The external aspect of this process is related to the need to fulfill international obligations, the internal aspect-to bring the legal system of Ukraine to the international and European standards. In order to ensure the progressive approximation of the laws of the associated countries, the following stages of implementation of the provisions can be distinguished:

1. Adoption of regulatory principles;
2. Adoption of acts on complete harmonization;
3. Concluding agreements with the EU. Therefore, under the association agreement, the process of transformation of national legislation was envisaged to be carried out in three stages.

With regard to the status of implementation of the Agreement, one should say that not all the results of the implementation of the Agreement are positive. According to the results of the tasks, scheduled for 2018, the agreement was executed only by 52%. In order to optimize the process of implementation of the Agreement, Ukraine has proposed and agreed a new approach with the EU, according to which integration took place in the priority sectors.

Nevertheless, there are many positive points of the process of European integration and the approximation of the legal system of Ukraine to international standards. Thus, in 2018 the Cabinet of Ministers of Ukraine approved the Action Plan for the implementation of the Association Agreement between Ukraine and the EU, according to which joint bodies of the association were established—the Association Council, the Association Committee, the Parliamentary Committee of the Association and the Civil Society Platform. The Government has an Office of the Vice Prime Minister for European and Euro-Atlantic Integration of Ukraine.

The processes that take place in Ukrainian society today should reflect current international trends in the development of law and promote the development of the rule of law and civil society. However, the desire of Ukraine to become closer to the European Union is possible only if there are significant changes in national legislation through the adaptation of domestic legislation with the EU legal system. To that end, it is necessary, first of all, to adopt the relevant normative legal acts, to amend the current ones, in particular, the Constitution of Ukraine, anti-corruption legislation, electoral legislation, judicial legislation, procedural legislation, etc. An effective mechanism for the examination and review of regulations for their compliance with the *acquis communautaires* will allow Ukraine to reach the European level of legal life. The approximation of the Ukrainian legislation with the modern European system of law will ensure the development of political, social, cultural activity of the citizens of Ukraine, economic development of the country within the EU and will contribute to the gradual growth of the well-being of citizens, bringing it to the level established in the EU Member States, which is the main priority of the foreign policy of Ukraine.

## REFERENCES

- Boele-Woelki, K., & Van-Erp, J.H.M (2007). General reports of the XVIIth Congress of the International Academy of Comparative Law Ra. Bruxelles: Utrecht, the Netherlands.
- Chornopyshchuk, Y.O. (2013). *Constitutionalization of the process of European integration of Ukraine*. National University Odesa Law Academy.
- European Union. (2012). *Consolidated version of the treaty on European Union*. Official Journal of the European Union C 326 of October 26, C 326/13 – C 326/45.
- European Union. (2017). *Report of the Ukrainian side of the EU-Ukraine civil society platform on the assessment of the implementation of certain provisions of the EU-Ukraine Association Agreement by Ukraine*. Retrieved May 22, 2020 from <https://drive.google.com/file/d/1o57qeCyRdYtfd9LqoryaB-mtc04Dm8cc/view>
- European Union. (2018). Government office for coordination on European and Euro-Atlantic integration. *Association Agreement Implementation Report 2018*. Retrieved May 22, 2020 from <https://eu-ua.org/sites/default/files/inline/files/association-agreement-implementation-report-2018.pdf>
- Gardner, J.A. (2007). In search of subnational constitutionalism. *Originally prepared for Seventh World Congress, International Association of Constitutional Law Athens, Greece*. Retrieved May 22, 2020 from [https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=1230&context=journal\\_articles](https://digitalcommons.law.buffalo.edu/cgi/viewcontent.cgi?article=1230&context=journal_articles)
- International Treaty. (2017). *Association agreement between the European Union and Ukraine*. Retrieved May 22, 2020 from <https://www.kmu.gov.ua/en/yevropejska-integraciya/ugoda-pro-asociacyu>
- Kruss, V.Y. (2014). Dialectics of constitutionalization and the interaction of legal systems in the context of globalization. *Russian Legal Journal*, 5(1), 26–39.
- Laba, O.V. (2005). *European Union law and Ukrainian law: Theoretical and legal problems of correlation and harmonization*. National Academy of Internal Affairs.
- Law of Ukraine. (1996). The constitution of Ukraine of June 28, no. 254k/96-VR. *Official Website of the Verkhovna Rada of Ukraine*. Retrieved May 22, 2020 from [http://search.ligazakon.ua/l\\_doc2.nsf/link1/Z960254K.html](http://search.ligazakon.ua/l_doc2.nsf/link1/Z960254K.html)
- Law of Ukraine. (2004). On the International Treaties of Ukraine of June 29, no. 1906-IV. *Official Website of the Verkhovna Rada of Ukraine*. Retrieved May 22, 2020 from <https://zakon.rada.gov.ua/laws/show/1906-15>
- Law of Ukraine. (2019). *On Amendments to the Constitution of Ukraine (Concerning the Strategic Course of the State for Acquiring Full Membership of Ukraine in the European Union and in the North Atlantic Treaty*

- Organization) of February 07, no. 2680-VIII. Retrieved May 22, 2020 from <https://zakon.rada.gov.ua/laws/show/2680-19>*
- Muraviov, V., & Mushak, N. (2013). Harmonization of Ukrainian legislation with the law of the European Union within the Association Agreement between Ukraine and the EU. *Viche*, 8(1), 12-18.
- Order of the Cabinet of Ministers of Ukraine. (2016). *Action plan for the implementation of the association agreement between Ukraine and the EU*. Retrieved May 22, 2020 from <https://www.kmu.gov.ua/en/yevropejska-integraciya/vikonannya-ugodi-pro-asociaciyu/plani-zahodiv>
- Parkhomenko, N.M. (2016). *Development of Ukrainian legislation in the context of constitutionalization, European integration and human rights*. Monography. Kyiv: Institute of State and Law.
- Podorozhna, T.S. (2016). *The legal order: Theoretical and methodological principles of constitutionalization: monograph*. Kyiv: Yurinkom Inter.
- Shemshuchenko, Y.S. (2003). *Theoretical problems of harmonization of Ukrainian legislation with the European law*. Kiev: Yurynkom Inter.
- Strieltsova, O.V. (2014). The ways of influencing the law of the European Union on the constitutionalization of the legal system of Ukraine. *Bulletin of the Ministry of Justice of Ukraine*, 1(147), 70–77.
- Vyshniakov, O. (2000). Ukraine's integration program into the European Union: legal perspectives. *Presented at the international scientific and practical conference Modern constitutionalism and constitutional justice*. Odesa, Ukraine.