

Problems of Adaptation of Legislation of Ukraine Towards Legislation of European Union: Problem of Adaptation of National and International Air Law

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The article deals with the nation core of the process of adaptation. The functions of institutions responsible for providing adaptation are being analyzed. The problems of the institution of “authorized management” are defined together with the principles and organization of the process of adaptation of legislation.

Proclaiming of the independence of Ukraine gave the possibility to this country to build democratic state, developing international cooperation and defining trends of its development. As a result the necessity of adaptation of national legislation towards the legislation of European Union became evident.

In fact, the beginning of this process should be considered the Agreement on Partnership and cooperation between Ukraine and their states–members, which became ratified on March 1, 1998. (Read the “Agreement” Later on in the text).

It’s quite clear, that signing of this treaty put an obligation on Ukraine to fulfill the chain of urgent steps. The priority lies on organizing the subjects of adaptation, and working out the law basics of their activity, and also the plot and mechanisms of providing adaptation.

Adaptation of legislation of Ukraine towards legislation of

European Union (further read: “adaptation of legislation”) – it’s the process of bringing closer and gradual leading of legislation of Ukraine in accordance to the demands of legislation of European Union. Thus, the process of adaptation of legislation, from our point of view, is the system of mutually connected legislative, organizational, social-economic and scientific measures, directed at bringing closer the legislation of Ukraine towards contemporary European system of projecting new and changing already existing Legislation of Ukraine, taking into account general European standards reflected in existing legislation of European Union and countries-members of EU, and also by means of providing persistent fulfillment of existing legislation.

The meaning of the process of adaptation defines the necessity of the formation of the system of its realization of systemic approach, subordination, coordination, and professionalism.

According to the President’s of Ukraine Order on August 30, 2000 number 1033 the National Council on the questions of adaptation of legislation of European Union is formed under President’s of Ukraine supervision as the consultative organ (read further; National Council).

This Council, headed by the President of Ukraine, and comprised the Head of Administration of the President of Ukraine and the first Vice Head of the Supreme Council of Ukraine, and Head of primary (Key) Committees of Supreme Council of Ukraine, and Key Ministers and Vice governmental secretary of the Cabinet of Ministers of Ukraine, and also representatives of the most important law scientific centers. It had to unite and direct the efforts of all participants of the process of adaptations of legislation.

The major tasks of this Council are as follows: providing coordination of measures undertaken by the institutions of state power as to adaptation of legislation, supporting the interaction in this sphere, defining prior directions of development of legislation

of Ukraine taking into account main statements and articles of the legislation of European Union, fulfillment of monitoring of adaptation legislation in Ukraine.

Interacting Institutional Coordinative Council on adaptation of legislation of Ukraine towards legislation European Union is formed at Ministry of Justice of Ukraine to provide coordination and interaction of Ministers and other central institutions of legislative power in the process of adaptation of legislation in accordance to the Resolution of Cabinet of Ministers of Ukraine on Jun 12, 1998 №852 “about providence of the mechanism of adaptation legislation of Ukraine towards legislation of European Union”.

In accordance to the statement about ICC, proved by resolution of the Cabinet of the Ministers of Ukraine on November, 12, 1998 №1773, its main tasks are as follows:

Coordination of the Ministers activities, of other central and local institutions of legislative power as to providence of adaptation of legislation;

Working out the proposals as to strategy of adaptation of legislation;

Development of recommendations of the law projects, other normative law acts as to realizations of the statements of Ukrainian Law System, providing documents of the Council on the questions of cooperation between Ukraine and European Union;

Preparation of recommendations on providing fulfillment of international projects and programs on reforming of Ukrainian legislation by Ukraine.

The Organs (Institutions) of executive power carry responsibility for the fulfillment of measures on adaptation of legislation according to their competence which is defining by above mentions Resolution of the Cabinet of Ministers.

The work of the institution of executive power on adaptation of legislation is fulfilled on the bases of mutual system of planning,

coordination and check up and has such stages:

Planning of the work on adaptation of legislation;

Working out projects of normative-law acts of Ukraine in accordance with the demands of ULS and taking into account main statements of the legislation of European Union;

Providing law expertise including on the subject of their correlation to sub legislative normative acts and administrative decisions on the question, brought to its competence.

Besides, the analyses of the activity of these subjects finds out the fact, that the major part of the concrete work is fulfilled by little amount of employees mainly from the Ministry of Justice. Because of being busy at the main place of work the members of National Council and Interacting Committee cannot fulfill consultative and analytical work constantly and with high results.

For providing systematic process of law compiling the adaptation of legislation has to be integral part of the process of preparing projects of normative-law acts in Ukraine. Just this statement in accordance with the foundation of theory of managing should be accepted as one of the major principles of the formation of the mechanism of adaptation of legislation.

The main draw back of this process is the lack of necessary specialists, who simultaneously know national legislation and law of European Union and have the experience of analytical scientific and legislative work, and also possess a good command of foreign languages.

The attempt to overcome these negative factors was made by introduction of the institute of so-called "authorized management". This is the structural subdivision, appointed by the Order or separate employees by the certain organ of legislative power. They are in charge of the process of adaptation (5).

The Resolutions of the existing legislation find out that "authorized management" is in charge of enormous amount of functions: organizational (providing measures on implementation

of the statements of agreement, preparation of the plan of works, organization of the translation of the legislative acts of European Union), analytical (analysis, development, expertise of the projects of normative-law acts), informative (formation of the data base of the texts of the acts of EU legislation in authentic language, preparation of quarterly annual reports, speeches), educational (learning and analysis of certain international treaties, training an upgrading the employees skills in foreign languages and EU legislation).

This wide variety of functions is the completed one and deserves approval. But the real lack of workers of organs of executive power for such kind of activity law level of their competence in these questions, great overloading by other kinds of works according to primary positional functions make the process of adaptation to be the formal one.

As it was mentioned before, the work on adaptation of legislation is the integral part of the general acts and norms compiling process. In regard to this the responsibility for fulfillment of this work in the frames of separate central organ of executive power has to be, firstly, laid on the representatives of juridical service, who participate in preparation, correlation and signing of the project of normative law acts of Ukraine, and also fulfill the law expertise of such projects as to their correlation with the existing legislation in Ukraine.

Simultaneously, the work on adaptation on legislation is a peculiar connection of law and international law aspects. It means, that the representatives of not only juridical branches of the central organs of executive power, but also the management representatives who provide international cooperation may be appointed as the people in charge such kind of responsible and hard work demands increase of the number and quantity of juridical services.

In particular, according to the Order of the President of the

Ukraine on February 24, 1998 N 148 "About implementation of Agreement on Partnership and cooperation between Ukraine and improvement of the mechanism of cooperation with European Union" (1), Ministries and other central organs of executive power, whose leaders form the Ukrainian part of the Council on questions of cooperation between Ukraine and E"U have to provide formation of structural subdivisions on the questions of cooperation with EU, but, in accordance with these documents, "in the frames of existing staff quantity". It's common knowledge, if everybody does the matter, it means, that the matter is done by nobody. Besides, the matter of adaptation very often sinks in the endless stream of unexplained plans, programmers and especially oral and written reports about their fulfillment.

Thus, the analyses of today's state of the process of adaptation of the legislation demands formation of scientifically approved structures and development of active mechanisms of its providence, adequate professional level and technical equipment of the officials of the organs of executive power, implementation of the effective mechanism of court defense of rights and interests of the participants of juridical relations which appear on the basis of these norms.

Simultaneously, central organs of executive power have to provide organization of the reliable institutional infrastructure.

From our point of view, the state should organize:

Organs, having the right to control implementation of adapted legislation, which will adopt the necessary normative acts, directed at fulfillment of this function in entire volume; organs of certification and testing laboratories for checkup and approval of the reliability of the products (goods, services) in accordance to normative acts of Ukraine, brought into agreement with the EU legislation, educational establishments which will provide proper level of training and preparation of state officials on EU legislation, and Judges, and upgrading their skills in a certain

order.

For juridical, methodological and organizational providence of the process of adaptation of legislation such order is suggested:

Organization of the process of implementation of the Agreement on partnership and cooperation between Ukraine and EU;

Organization of the mechanism of the development of projects of legislative and other normative law acts of Ukraine regarding to EU and states-EU members practice;

Defining priorities in bringing Ukrainian normative-Law acts closer to proper EU acts;

Development and providing realization of the main documents, defining major principles, aims and mechanisms of adaptation of the normative law basis of Ukraine to the proper EU legislation.

Fulfilling measures on adaptation of normative-law basis towards proper EU standards it's also necessary to take into account variety of directions of Ukraine foreign policy, which focuses on three geopolitical centers, which influence both foreign and home policy in Ukraine. Such centers are: European Union, the United States of America and Russian (Union of Independent States).

It's clear, that such variety of directions gradually will make the place for integral processes, which take place in international relations. It is explained by increase of cooperation of international organizations and leading countries as to harmonization of standards, which are used in several spheres of economy. Adaptation of normative-law basis of Ukraine to EU standards will become the first step on the way to joining Ukraine to this process.

We consider the major principles of the process of adaptation of legislation being defined as:

-dynamic and flexibility of mechanism of adaptation of Ukraine according to EU standards;

-analytical explanation of suggested changes;

- professional and unanimous adoption of decisions;
- adoption of decisions;
- superiority of law;
- taking into account modern situation of Ukraine society, its interests and possibilities;
- strict sticking to undertaken obligations according to international treaties.

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