

ТЕОРІЯ ТА ФІЛОСОФІЯ ПРАВА

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PROBLEMS OF HARMONIZATION OF NATIONAL LEGISLATION TO INTERNATIONAL LEGAL STANDARDS

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The article presents and analyzes the key theoretical and methodological problems and prospects for the harmonization of national legislation to international legal standards. Four stages of harmonization processes are distinguished: the stage of formation of the national legal mechanism (program) of harmonization of Ukrainian legislation with international legal standards. At this stage, it is necessary to: 1) outline issues that require updated legal regulation; 2) determine the range of international standards for which harmonization should be carried out; 3) create a material and technical base; the stage of comparative legal analysis and legal examination of norms of national legislation for their compliance with international legal standards; the stage of active modernization of national legislation taking into account international legal standards. At this stage, it is necessary to ensure the development and adoption of new normative legal acts, the introduction of changes in the current national legislation, which would maximally meet international legal standards and not violate the uniqueness and peculiarities of the national legal system; the stage of implementation of harmonization processes – implementation of harmonized acts is carried out, evaluation of the achieved results is carried out.

It is concluded that without the introduction of active and effective measures, the process of bringing national legislation into line with the international standards of the UN, the Council of Europe, the EU will in fact remain at the level of declarations and wishes, and the accession of Ukraine to international legal acts that establish international standards will have a rather political, rather than international legal character.

Keywords: state; national legislation; international law; international legal standards; harmonization; Legal System; legal norm; interaction; harmonization processes.

Formulation of the problem. The defining path of Ukraine's democratic development appears in the socio-cultural and value perspective of European civilization. The corresponding vector requires the necessary support, in which a special place is occupied by national legislation, along with values, historical narratives, and the cultural system.

First of all, it is about legal integration and harmonization of national and international legal standards. The most relevant in the implementation of such a task is the coordination of fundamental concepts, principles, terms, and theoretical and methodological approaches that exist within the international legal system and are developing within the national legal tradition of Ukraine.

Considering this, the search and understanding of the theoretical and legal foundations of harmonization of national legislation to international legal standards represent a significant theoretical and methodological potential, epistemological and practical relevance.

Analysis of research and publications. The issues of adaptation, standardization, unification and implementation are theoretically substantiated by a number of researchers, but their implementation is a complex and long-term process. The problem of certain aspects of the harmonization of the Ukraine's national legal system to international standards was studied by such scientists N. Biryukova, O. Danilyan, N. Zheleznyak, O. Kotlyar, M. Kuts, V. Laba, O. Lukhterhandt, N. Malysheva, Yu. Medvedev, N. Parkhomenko, P. Rabinovych, S. Ratushny, V. Opryshko, Yu. Shemshuchenko, I. Yavorska and others. However, until recently, neither in the international legal theory nor in the modern law-making practice was paid due attention to the theory of harmonization of legislation, clarification of fundamental concepts and approaches, although the applied aspects of harmonization of legislation are relevant and widely studied in foreign science.

The purpose of the article is a comprehensive analysis of the theoretical and legal foundations of harmonization as a rational mode of bringing national legislation to international legal standards.

Main material presentation. Quite often, the processes of adaptation, approximation, implementation, referral, harmonization, incorporation, implementation, integration of norms of international law into the internal law of the state, reception, «model law-making», standardization, formation of a special legal regime, the processes of transformation, unification are extremely similar or analogous, which causes the complexity of both their differentiation and application.

Given the significant number of scientific studies that affect the characteristics of various aspects of the rapprochement of the national system of legislation with the norms of international law, we consider it appropriate to analyze the process of harmonization of national legislation with international legal standards. We support the position of Ratushnyi, S. M. that the development of national law in the direction of international legal standards should take place not by unification, but by another way of bringing national legislation in line with international legal standards, above all, by rapprochement or harmonization [1, p. 120].

In the context of the world and European integration aspirations of our country, the definition «harmonization of legislation» is often used among politicians, lawyers, scientists and society. The vision of the essence, content, limits, forms and methods of implementation of this process are quite approximate, they only orientate in terms of its understanding. A significant drawback of this situation is the lack of an official definition of this method both in the legal literature and normative legal acts of Ukraine and relevant international documents.

Scientists, lawyers and experts in international law note that it is «harmonization» that adequately reflects the essence of the process of creating a homogeneous legal environment within international (European) integration organizations in accordance with the models proposed by the UN, RE, and EU institutions, and is more widespread in application. Although the content of this definition is interpreted in different ways [2, p. 21].

In the scientific discourse, harmonization is understood as «harmonization of general approaches, concepts of the development of national legislation»; «creation of general legal principles and separate decisions» [3, p. 184]; «one of the main directions and forms of coordinated legal development of the state»; «the process of bringing national legislation into line with the legal systems of leading international organizations in Europe» [4, p. 255].

We support O. Luchterhandt's position that the definition of «harmonization» reflects «the harmonious coexistence and validity of such norms as legal principles, complex legal institutions, as well as separate legal rules and prescriptions that come from different sources of law», and one of the defining dimensions, in which the task of harmonization is implemented, provides for relations «between different legal systems that are fundamentally independent and exist independently of each other, for example, between the legal order of international law or European and national law» [5, p. 57].

In turn, N. Malysheva rightly pointed out that during harmonization, a system of a lower level (i.e., national legislation) can be harmonized under a system of a qualitatively higher level of organization (for example, the EU), even if this state is not a member of this institution. This harmonization is not mandatory and relates to the need to adapt the legal system of Ukraine to international law (anticipatory harmonization) [6, p. 89].

Based on theoretical and practical research on the subject of integration processes, it should be noted that the harmonization of national legislation is adequately correlated with the planned process of convergence, coordination and interaction of national legal systems on the basis of general international legal standards (requirements) defined within a certain legal space, which is targeted on the generalization of legal norms (fundamentals) in individual states, the achievement of consistent national legislation, compliance with international, European and national legal standards, the elimination of legal conflicts through the formation and approval of a unified legal policy, common legal principles, rules, legal standards regarding different legal systems and provides coordinated activity of all subjects of the state, which is implemented within their competence in stages and consistently.

Therefore, harmonization is a universal, generalizing and rational way of bringing national legislation in accordance with international legal standards.

The constitutive methodological principles of the implementation of the harmonization process are unity, completeness, integrity, proportionality, consistency and perfection. The principles of harmonization are the recognition of a person as the highest social value, ensuring the rights and freedoms of a person and a citizen, the rule of law, legality, the social orientation of law-making, democracy, openness, taking into account public opinion, systematicity, predictability and scientific validity of legislative decisions, etc. [7, p. 553].

The effectiveness and efficiency of legal harmonization depends on the presence of a national legal mechanism of harmonization, which is caused by the definition of its forms, establishment of boundaries, delineation of the subject, stages (levels), methods and means of conducting the harmonization process.

Within the limits of research, the subject of harmonization is national legislation, so the forms and boundaries of harmonization are determined by the state's membership in the integration system. Generally, researchers note that harmonization can be carried out both: at the internal (national, intrastate) level and at the external (international, interstate) level.

National legal (domestic) harmonization is ensured through the state's participation in international legal acts, the boundaries of which are defined by the obligations of the parties (participating states) to

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these legal acts, which outline the necessary measures of national legal harmonization. In particular, these measures include:

1) change of domestic legislation or formation of national legislation based on consideration of international standards;

2) improvement of legal prescriptions, national legal ideology, legal awareness, legal culture, legal ideas and concepts, resulting in the creation of unique legal systems in individual states adapted to international legal standards.

The international legal form of harmonization is determined by the participation of the state in permanent interstate associations of an integration nature, the boundaries of which are defined by the legal status of the interstate association, its membership in the integration system, the legal status of the state in these institutions, and are determined by the adaptability of national legislation to international legal standards.

The formation of Ukraine as a legal, democratic state and the development of a civil society in it with a high level of protection of the rights and freedoms of a person and a citizen determines the implementation of international legal standards in the practice of those intergovernmental institutions of which Ukraine is a member, and those in which our state seeks to acquire membership. Considering the legal status of Ukraine in the international legal space, it should be noted that within the integration processes currently being carried out, international legal harmonization is characteristic of our state, within the framework of Ukraine's participation in the United Nations, the Council of Europe, as well as national-legal (internal) harmonization within the framework of «Ukraine-EU» relations.

It must be noted, that the process of harmonization of legislation can be unilateral or multilateral (mutual). Thus, at the unilateral harmonization, the legislation of one state is harmonized with the legislation and legal principles of another (other) state (states) or international intergovernmental organizations. While in the case of multilateral (mutual) harmonization, all participants on an agreed basis, jointly apply measures for the convergence and harmonization of legislative systems, and not only implement harmonization norms regarding the modification of national domestic legislation, but also exert a certain influence on the formation of the legislation system of the relevant international intergovernmental institution, which, in fact, distinguishes multilateral harmonization from unilateral harmonization.

The majority of Ukrainian scientists adhere to the position that the implementation of the harmonization of legislation in our country is determined by its one-sided nature. And indeed, in the conditions of Ukraine's European integration aspirations, the urgent tasks for today are the development of clear and effective measures to eliminate the current shortcomings and existing collisions in national legislation, deepened in the conditions of long-term «permanent reforms» in various social spheres, which characterizes the process of harmonization of national legislation as a one-sided process.

At the same time, taking into account the generalizing, long-term and continuing nature of the harmonization of national legislation with international legal standards, as well as the peculiarity of legal relations to change, gaining a new additional quality, through their development under the influence of modern trends, modernization of the space necessary for the manifestation of positive principles, and, on the contrary, the containment of negative and anachronistic connections and processes, it is likely that the process of harmonization of national legislation in relation to our state may acquire a multilateral mutual character, under which Ukraine will not only fulfill the harmonization norms regarding the metamorphosis of national legislation and internal law and order, but and will influence the formation of the international legal system.

As we noted, harmonization is implemented in phases and sequentially. Certain stages, levels, individual stages of legal harmonization depend on the obtained results, which are achieved through the state's participation in international legal acts (treaties, agreements, conventions, charters, etc.) or in interstate intergovernmental institutions and organizations.

Usually, full harmonization of the national legislation system involves two main stages. The first stage consists in the preliminary interaction of domestic (national) legislation with international legal standards, i.e., determining the obligations of states regarding the structure, substance and content of the harmonization measures that they must apply. The second stage of harmonization of legislation consists in the entry of the state into international legal systems within a single legal space and in the complete convergence of the national legal system with generally recognized norms and principles of international law and international legal standards.

According to Polish experts, for states that are officially recognized as candidates for joining the European Union, the relationship between harmonization of national legislation with EU law is determined by harmonization, content and stages, the expected results of which are determined at the contractual level. However, there remains a possible legal situation when the national legal system is harmonized under the international (European) legal system, while the relevant state is not a member, or even a candidate for joining a certain international intergovernmental institution. This state has no influence on the formation of international law, but only implements it and unilaterally changes the national legal order, so in this case the definition «adaptation of law» should be applied [8, p. 78].

The fundamental nature of harmonization of national legislation with international legal standards is directly determined by the stages of this harmonization. Researcher N. Parkhomenko singles out five stages of harmonization of national legislation with European and international law [9, p. 340]. Comparing and taking into account the subject of this study, as well as the peculiarities of the modernization processes of various social spheres in Ukraine, we propose to single out four stages of harmonization processes:

1) the stage of formation of the national legal mechanism (program) of harmonization of Ukrainian legislation with international legal standards. At this stage, it is necessary to: 1) outline issues that require updated legal regulation; 2) determine the range of international standards for which harmonization should be carried out; 3) create a material and technical base;

2) the stage of comparative legal analysis and legal examination of norms of national legislation for their compliance with international legal standards;

3) the stage of active modernization of national legislation taking into account international legal standards. At this stage, it is necessary to ensure the development and adoption of new normative legal acts, amendments to the current national legislation, which would maximally meet international legal standards and not violate the uniqueness and peculiarities of the national legal system;

4) the stage of implementation of harmonization processes – the implementation of harmonized acts is carried out, the achieved results are assessed.

In the process of harmonizing national legislation with international legal standards, it is necessary to ensure high-quality translation of international legal acts, qualified preparation of legislative provisions taking into account international standards (laws, subordinate legal acts, etc.), systematicity and integrity of the harmonization process, the need to apply new legislative technologies and forms (complex acts, coordinating laws, etc.), active participation of judicial bodies in the convergence of legal systems.

It is important to build the process of harmonization of national legislation on the basis of apoliticism, to strengthen it with appropriate technical assistance (conducting seminars, trainings, exchange of experts) in order to increase the level of professional legal culture of legislators and other persons involved in the law-making process, able to effectively implement the prescriptions of international law, international legal standards of the UN, PE, EU and initiative to participate in solving various problems in the global legal space. An effective factor in ensuring the independence of harmonization processes is the control of the relevant integration bodies (for example, the European Commission for Democracy through Law (Venice Commission), the European Commission of the European Union) over their implementation, etc.

Conclusions. We believe that at the national level it is expedient to create a state authority responsible for the implementation of UN, Council of Europe, EU norms and standards into the legislation of Ukraine, whose activities would be coordinated in accordance with the principle of separation of powers in Ukraine, and empowered to form a national legal mechanism (programs) harmonization of national legislation, active modernization of Ukrainian legislation, implementation of harmonization processes and analysis of their effectiveness, optimality, etc. The proposed approach would be able to ensure the principle of independence of each branch of government in the process of reforming, improving, achieving compliance with international legal standards, etc.

Of course, without the introduction of active and effective measures, the process of bringing national legislation into line with the international standards of the UN, the Council of Europe, the EU will in fact remain at the level of declarations and wishes, and the accession of Ukraine to international legal acts that establish international standards will have a political rather than international legal character.

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ПРОБЛЕМИ ГАРМОНІЗАЦІЇ НАЦІОНАЛЬНОГО ЗАКОНОДАВСТВА ДО МІЖНАРОДНО-ПРАВОВИХ СТАНДАРТІВ

У статті представлено та проаналізовано ключові теоретико-методологічні проблеми та перспективи гармонізації національного законодавства до міжнародно-правових стандартів. Виокремлено чотири етапи гармонізаційних процесів: етап формування національно-правового

механізму (програми) гармонізації законодавства України із міжнародними правовими стандартами. На цьому етапі треба: 1) окреслити питання, що вимагають оновленого правового регулювання; 2) визначити коло міжнародних стандартів, щодо яких варто провести гармонізацію; 3) створити матеріально-технічну базу; етап порівняльно-правового аналізу та правової експертизи норм національного законодавства на предмет їх відповідності міжнародним правовим стандартам; етап активної модернізації національного законодавства із урахуванням міжнародних правових стандартів. На цьому етапі варто забезпечити розробку та прийняття нових нормативно-правових актів, внесення змін у чинне національне законодавство, які б максимально відповідали міжнародним правовим стандартам і не порушували унікальності, особливості національної правової системи; етап реалізації гармонізаційних процесів – здійснюється реалізація гармонізованих актів, проводиться оцінка досягнутих результатів.

Висновується, що без запровадження активних та ефективних заходів процес приведення національного законодавства у відповідність із міжнародними стандартами ООН, РЄ, ЄС залишиться на рівні декларацій і побажань, а приєднання України до міжнародних правових актів, що закріплюють міжнародні стандарти, матиме, радше, політичний, а не міжнародно-правовий характер.

Ключові слова: держава; національне законодавство; міжнародне право; міжнародно-правові стандарти; гармонізація; правова система; правова норма; взаємодія; гармонізаційні процеси.