THE PROCESS OF APPROXIMATION OF GEORGIAN LEGISLATION TO EU LAW

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ABSTRACT

European Union law has great impact on the formation of national legislations not only of the member states but outside of the European Union as well. Following the increase of pro western aspirations of certain former soviet countries and the activation of several mechanisms for closer cooperation by the EU the process of legal approximation of national legislations to EU law gained an essential and irreversible character.

The thesis aims to explore the process of legal approximation in Georgia, which is in the first lines of pro western oriented former soviet countries and has got aspirations of integration to the EU. The thesis gives an analysis of the ongoing process in Georgia, the legal mechanisms of approximation process of Georgian legislation to EU law and its institutional organization, and identifies resulting problems. To provide comprehensive and better understanding of these problems it comparatively analysis Ukrainian process of legal harmonization to EU law. The thesis also includes references to the experience of Eastern European countries in this context of suggestions for future developments as the process is still ongoing.

CONTENTS

INTRODUCTION

European Union (EU) law in contemporary conditions exceeds the boundaries of European Communities and simultaneously as being the main regulator within EU member states gains more value as an exporting feature. Apart from the states considered as candidates for EU membership this legal expansion is especially significant in post soviet countries. Here EU law became one of the main foreign inspirators. This is due to strong bilateral interests. On the one hand "[t]he expansion of EU rules beyond its borders, including the Eastern neighborhood, is one of the most important dimensions of EU external policy".[1] On the other hand for some post-soviet countries having strong aspirations of European integrations and seeking close cooperation with the EU because of political and economic interests, legal approximation became an important part for achieving their integration aims. Furthermore it is crucial that these countries are in the process of formation of independent national legal systems after the fall of the Soviet Union. The transitional period of lawmaking for the transformation of Soviet legal legacy to the modern legislative system, when borrowing legislative acts is an ordinary phenomenon, creates great possibility for the EU to export its rules to these countries.

Georgia, one of the most pro western oriented post-soviet countries with great aspirations of Euro Atlantic integration belongs to the abovementioned group of states. So EU law has good grounds for expansion in the Georgian legal area. Georgia and the EU in various agreements have declared their aim for close and intensive cooperation[2] and on the recent stage this process is ongoing in the framework of European Neighborhood Policy and the Eastern Partnership mechanism[3] and Georgia

[1] Cardwell, Paul James editor EU External Relations Law and Policy in the Post-Lisbon Era. New York, Springer; T.M.C. Asser Press Hague 2012. P 218

[2] For these documents see the official webpage of the office of the State Minister of Georgia on European and Euro-Atlantic Integration: www.eu-integration.gov.ge

[3] For information of the EU-Georgia bilateral relations see official webpage of the ministry of foreign affairs of Georgia http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=462;

aspires to EU membership in future[4]. In this context the process of approximation of the national legislation of Georgia with EU law acquires great significance and takes place at an important point in the schedule of political branches of Georgian government. Consequently, the issue of legal approximation becomes one of the affecting factors on the lawmaking process in the country.

This thesis creates a general picture of the Georgian process of legal approximation to EU law and analyzes its characteristics. It seeks to explore the process: how the approximation was conducted and is going in the context of the constitutional system of Georgia and not the outcomes of the process. The analysis of the process of the legal approximation is conducted through the analysis of the legal mechanisms and the forms of approximation and the analysis of the institutional organization of the process. As the thesis is focused on the process it does not examine the grades of approximation in certain spheres of legislation. So it does not include assessment of situation in concrete legislative spheres as first of all this is beyond the possibilities of the thesis framework and because of this would need wider and more diverse kind of research far out of the boundaries of the constitutional law. Besides, it can be taken into consideration that such assessments of the situation by separate fields are made annually in special reports of the European Commission[5] and there are some independent researches in separate fields of law as well. While the process of legal approximation itself is still unexplored and analyzed sufficiently and there is serious lack of secondary sources devoted to making an evaluation of this problematic. The fact that the process of approximation of Georgia`s legislation to EU law is still ongoing and is expected to gain more intensified character after ratification of the Deep and Comprehensive Free Trade Agreement

[4] See the English version of the program of the current government of Georgia on the official webpage of the government of Georgia http://www.government.gov.ge/files/41_35183_108931_4.pdf;
[5] http://eeas.europa.eu/delegations/georgia/eu_georgia/political_relations/political_framework/enp_georgia_news/index_en.htm

(DCFTA) and in future Association Agreement between EU and Georgia[6] makes the research topical. In these conditions analysis of the Georgian process of legal approximation, its evaluation and identification of problems, the preparation of certain suggestions taking into consideration the successful foreign experience in this field gives practical significance to this research and increases its practical contribution.

The thesis is constructed so that it firstly look at the Georgian process of legal approximation from inside and then for comprehensive understanding and assessment of Georgian developments it provides a comparative analysis with the Ukrainian process of adaptation of national legislation to EU law. Ukraine is selected for comparative analysis because it has got many similarities with Georgian reality both in political and legal aspects which create the possibility to draw parallels between Georgian and Ukrainian political and legal developments toward the European integration. In the political context Ukraine was one of the leaders of European integration among post-soviet states after the fall of the Soviet Union and one of the first which formed the legal basis for cooperation with the European Community[7]. 2004 "Orange Revolution" in Ukraine is similar to 2003 "Rose Revolution" in Georgia which was an expression for great demand of democracy in the post-soviet society[8]. Ukraine similar to Georgia aspires to deeper European integration[9]. In the legal context Ukraine inherited the same post-soviet legal fortune as other countries former members of

[6] Archil Karaulashvili, Head of European Integration Coordination Department at the Office of the State Minister of Georgia On European and Euro-Atlantic Integration, interviewed on 12 March 2013.

[7] Hillion Christophe, Institutional Aspects Of The Partnership Between The European Union And The Newly Independent States Of The Former Soviet Union: Case studies Of Russia And Ukraine, *Georgian Law Review*, Tbilisi, Third and Fourth Quarters 2000, pp. 3-4.

[8] For detailed overview and evaluation of these two processes see Michael Emerson, edit. *Democratization in the European Neighborhood.* Brussels, Centre of European Policy Studies. 2005. Pp 38-68;

[9] For information of EU-Ukraine relations see the official webpage of the Committee On European Integration of The Verkhovna Rada of Ukraine: http://comeuroint.rada.gov.ua/komevroint/control/en/publish/article?art_id=47742&cat_id=46145

the Soviet Union needing deep legislative reforms.[10] In the legal context general legal bases of Ukraine`s relation to the EU as in the case of Georgia is framed by Partnership and Cooperation Agreement (PCA) and both countries are involved in dialogue for future Association Agreement. The crucial determinant factor to select Ukraine for comparison is that its obligations according to its legal effects before the EU under the PCA are similar to Georgian PCA obligations with similar legally binding character and both countries use more or less similar attitudes to converge their national legislations to EU law.

Besides comparative analysis of Ukrainian developments the thesis includes several references to Eastern European countries` experience depending on certain issues *inter allia* the institutional organization of the process for better understanding of the matter which is considered or for forming suggestion regarding concrete identified problem.

The structure of the thesis contains two chapters and conclusion. The first chapter describes purely the Georgian process of legal approximation because before comparative analysis it is first necessary to have a general understanding of the main developments and then look at them in the comparative prism. This chapter includes three subchapters: the first gives a brief overview of the system of Georgian legislation and EU law and their general characteristics; the second describes and analyzes the legal mechanisms of the process and the third subchapter considers institutional organization of the process and explores the role of the governmental branches in the process of legal approximation in the context of the constitutional system of Georgia. The second chapter aims to make certain comparative analysis of Georgian and Ukrainian problems and perspectives. It contains two subchapters: first creates general picture of Ukrainian process and considers its legal and institutional mechanisms; the second subchapter comparatively analyzes the main characters of

[10] Group of Authors, Mechanisms of Harmonization of Ukrainian legislation to the European and International law; Scientific Report; National Academy of Science of Ukraine, V. M. Koretsko Institute of the state and the law Kiev 2011. P.9 (in Ukrainian);

Georgian and Ukrainian models. The conclusion aims to outline main problems of the process and elaborates certain suggestions for future developments.

The international agreements, legislative acts, by-laws of Georgia and Ukraine, decisions of the constitutional court of Georgia were used as primary sources for the research. Various monographs, articles, reports and reviews were used as secondary sources. However the shortage of the secondary sources and analytical materials regarding to Georgian process of legal approximation left no other alternative than using some interviews with Georgian insiders of the process representatives as governmental institutions of former Georgian-European Policy and Legal Advice Center (GEPLAC) experts, which contain reliable and useful information and in combination with primary sources helped to create general pictures of development and understand the originalities.

Chapter 1. Process of Approximation of the Georgian Law to EU law: look from inside.

Contemporary Georgian legislative system as in almost other former soviet states began its formation after the fall of the Soviet Union. However it did not developed immediately after the dissolution of the Soviet Union as the civil war and conflicts in breakaway regions of Abkhazia and South Ossetia became hindrance of this process and so it only gained systematized character since-1995 by adoption of a new constitution and several important legal acts. It must be taken into consideration that formation of fundament of new Georgian legislation had simultaneous character with first steps of new independent state in international arena. So international developments had certain influence on Georgian lawmaking. Georgia-EU relations were among these foreign factors. Although if membership in World Trade Organization or Council of Europe influenced Georgian legislators for legislating to meet with upcoming accession requirements, conclusion of the (PCA) with the EU, enforced on 1st of July 1999, served for a long-term objective of approximation of

Georgian legal system with western European standards[11]. Since conclusion of PCA EU law become significant foreign inspirator for Georgian lawmakers as "[t]he alignment of Georgian legislation with European legislation by means of approximation [was] intended to serve as a basis for strengthening economic co-operation between both Parties and, moreover, to provide the Georgian legislator with a model for the introduction of modern legal standards."[12]

This chapter considers Georgian process of convergence of national legislation and examines forms of export of EU law within Georgian legal systems. It begins with brief overview of main characteristics of Georgian legislation and EU law for having initial understandings of main issues discussed in further subchapters. The next subchapter analyzes legal sources regulating the process of convergence of Georgian legislation with EU law, the character of the process. The final subchapter reviews institutional organization of the process in the context of the constitutional law of Georgia.

1.1. General understandings of the system of Georgian legislation and EU law

This subchapter overviews the main characteristics of Georgian legislation and EU law to make general understanding of these legal systems which is necessary for further consideration of the process of legal approximation and legal mechanisms regulating this process. It is far of deep analysis of the nature these systems and is rather oriented to give their key definitions for basic acknowledgement within the scope of the present research.

The current system of Georgian legislation is constructed on the fundament of 1995 constitution. Article 66 of the constitution establishes list of the legal acts of the Georgian parliament;

[11] Alexander Barnewitz/David Kereselidze. The Development Of The Legal System of Georgia Since 1997, Georgian Law Review, Tbilisi, First and Second Quarters 2000, p 87.

[12] Maik S. Masbaum, *The Partnership and Co-operation Agreement Between Georgia And European Communities(PCA),* Georgian Law Review, Tbilisi, First and Second Quarters 1999, p 23

subparagraph "j" of paragraph 1of the article 73 defines the legal acts of the president, and paragraph 3 of the article 78 stipulates acts of the government[13]. Apart of being source for identification of the main legal acts of Georgia paragraph 2 of the article 6 of the constitution provides regulation for definition status of the international agreements of Georgia in the national legal order[14]. On the bases of the constitutional outlines the detailed regulation of the system of legislation of Georgia and binding legal effects and hierarchy of the legal acts is provided by the law "On Normative Acts".

The first law "On Normative Acts" was adopted by Georgian parliament on 19 November of 1996 following to entering into force of the Georgian constitution. This act made systematization of the legal acts and established hierarchy among them. According to the initial text of the 1996 law "On Normative Acts" the system of Georgian national legislation was composed by the legislative acts and bylaws[15]. The constitution, constitutional act, organic law, law of the parliament, regulations of the parliament and the presidential decree (issued during the state of emergency or war) were considered as legislative acts, while the enactment of the president and resolution of the parliament, as well ministerial order and act of local government were seen as bylaws[16]. All these acts and also international treaties and agreements were called normative acts of Georgia and following hierarchy was established among them[17]:

- The constitution;
- Constitutional act (i.e. the law of the parliament amending constitution or regulating territorial organization of the state);[18]

[13] See English translation of the constitution of Georgia on webpage of the constitutional court of Georgia http://www.constcourt.ge/index.php?lang_id=ENG&sec_id=19;

[14] Ibid.
[15] Article 5 of the law of Georgia of 1996 "On Normative Acts" (the initial edition);
[16] Ibid.
[17] Article 4 of the law of Georgia of 1996 "On Normative Acts" (initial text);
[18] Paragraph 2 of the article 9 of the law of Georgia of 1996 "On Normative Acts";

- Constitutional agreement between Georgian State and Apostle Autocephalous Orthodox Church of Georgia;
- International agreements and treaties of Georgia;
- Organic law (i.e. the laws of parliament which are adopted purely for regulation the issues beforehand defined by the constitution)[19];
- Laws of the parliament;
- Regulations of the parliament (i.e. the act regulating rules and procedures of the parliament);
- Presidential decree;
- Presidential enactment;
- Resolution of the parliament.
- Bylaws of various executive and regulatory governmental institutions and ministerial orders, also acts of the local governments.

For better understandings of peculiarities of Georgian legislative system and internal legal mechanisms of approximation as well it must be noted that initial regulations of the law of Georgia of 1996 "On Normative Acts" did not include any provision referring of the legal acts of the government, because until 2004 the government as the collegial executive body or separate branch of the political authority did not exist and all executive powers according to the constitution belonged to the president of Georgia and to the ministers assisting him to fulfill this executive functions. It was result influence of the U.S. model of separation power on Georgian constitution[20]. This narrative serves as explanation for the following subchapter which deals with internal legal mechanisms for regulation of the process as there hardly can be found any act of the government on

[19] Paragraph 2 of the article 9 of the law of Georgia of 1996 "On Normative Acts;
[20] Papuashvili GIorgi, Presidential System In Post-Soviet Countries: The Example Of Georgia. *Georgian Law Review*, Third Quarter 1999, p-23;

the first stage of developments. The government as the collegial organ of the executive power was installed after "Rose Revolution" as a result of the constitutional reform of 2004.[21]

Creation of the government as collegial executive body provoked amendments in the 1996 law "On Normative Acts"[22] which following to the constitution defined the resolution - a normative act of the government as bylaw and in abovementioned hierarchy of national legislation placed it below the resolution of the parliament and above the acts of the ministers and other executive agencies[23].

On 22 October of 2009 the parliament of Georgia adopted new law "On Normative Acts", which replaced the 1996 act and is now in force. However the new act maintained the system of legislation which was described above and hierarchy as well[24].

Finally to finish this brief description of how the system of legislation is constructed in Georgia it`s necessary to mention that apart from the legislative acts of the parliament the by-laws of the president and the government also are characterized with strong regulatory function as it can be seen below.

EU law often referred as *acquis communautaire* has longer history and more complicated structure than Georgian Legislation and differently from case of Georgian law fortunately there is multiplicity of considerable scholarships discussing this issue which can be used for understanding of key definitions. Although official acts of the EU do not stipulate explicit definition of EU law and also there are various interpretation EU *acquis* among scholars,[25] if follow the most widely recognized attitudes EU law is whole set of different types of legal acts and is comprised by a) treaties founding and forming European Community, including protocols and amendments thereof; b) secondary legislation of European Community in the form of regulations, directives and decisions, also

[21] See the constitutional act of Georgia of 6 February of 2004 #3272-rs "on amendments of the constitution of Georgia";
[22] See the law of Georgia of June 24 of 2004 "On Amendments of the Law of Georgia On Normative Acts";
[23] Article 4 and 13^1 of the law of Georgia of 1996 "On Normative Acts" (codified text);
[24] See articles 7, 10,11,12 of the law of Georgia of October 22 of 2009 #1876-IIs "On Normative Acts";
[25] Petrov R. A. Transposition of "acquis" of European Union into the Legal Systems of the Third Countries, The Monograph, "istina" Kiev 2011. Pp 28-35; (in Russian)

including recommendations and opinions with persuasive force only; c) international agreements concluded by the Community institutions; d) judicial legislation – the case law of the courts of the European Community.[26]

For easier understanding of this complicated set and to get closer to the hierarchy of these various types of the legal acts within the EU law is necessary to look at the categorization of these acts which exist in EU law. Defending to the fact whether pieces EU law is as a result of action of member states or the Union institutions and bodies it`s sources may be divided into primary and secondary (derived) Union Law[27]. Primary Union Law is at the top of hierarchy of EU law and consists of provisions which were adopted by the Member states directly in capacity of "constituent authority" and these provisions mean all abovementioned founding treaties and protocols and amendments thereof, also the category of primary law includes fundamental rights and the general principles of law ensured by the court of justice following to article 19 of Treaty of European Union[28].

The long list of treaties composing of primary sources of EU law begins with Treaty establishing the European Coal and Steel Community concluded 18 April of 1951 which expired in 2002 and includes numerous amending treaties and accession treaties and charter of fundamental rights.[29] This list currently ends with Lisbon Treaty.[30] Two from this list today are considered as the constitutional base of EU law – the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union[31]. These two treaties constitute the top of hierarchy of EU law.[32]

[26] Steiner Josephine and Woods lorna, *EU Law.* Oxford University Press, 2009. pp75-76;
[27] Lenaerts Koen, Van Nuffel Piet, *European Union Law;* Sweet & Maxwell, London 2011; p-817
[28] Ibid. 818-819;
[29] Dinnage James, *The Constitutional Law of European Union*, New Providence, NJ, LexisNexis, 2012, pp82-85
[30] Steiner Josephine and Woods Lorna, *EU Law.* Oxford University Press, 2009. P-75
[31] Dinnage James, *The Constitutional Law of European Union*, New Providence, NJ, LexisNexis, 2012, p82
[32] Craig Paul, De Burca Grainne, *EU Law Texts, Case And Materials*, Oxford University Press, Oxford 2011, p-109;

Regarding the secondary sources of EU law it can be mentioned that they unify international agreements concluded by the EU institutions and bodies and autonomous legislative measures adopted by EU institutions[33]. This latter group included fifteen different types of legal instruments of EU institutions before adoption of Lisbon Treaty which were reduced to five types of acts by the Lisbon Treaty[34] . These five legal instruments are: the regulation (entirely binding and directly applicable to all member states), the directive (can be addressed only for certain member states as well, with binding effect but for the member states to which it is addressed leaves choice of form and method to achieve aims; the decision (which is addressed to certain subjects and is binding for the subject to whom it is addressed; the recommendation; the opinion[35]. The regulation, directive, and decision are instruments with normative (legally binding character)[36] while recommendations and opinions belong to the category of the soft law[37].

Apart from recommendation and the soft law includes various types of documents for example Policy guidelines issued by the European Commission.[38] Despite not having strong normative character acts belonged to the *soft law* are considered important part of EU *acquis communautaire* by even experts of the third countries involved in the approximation of the national legislations to EU law.[39]

[33] Lenaerts Koen, Van Nuffel Piet, *European Union Law;* Sweet & Maxwell, London 2011; p-818, p-884,

[34] Piris Jean-Claude, *The Lisbon Treaty: a legal and political analysis,* Cambridge University Press, Cambridge 2010. pp92-94

[35] Piris Jean-Claude, *The Lisbon Treaty: a legal and political analysis,* Cambridge University Press, Cambridge 2010. P-94

[36] Steiner Josephine and Woods Lorna, *EU Law.* Oxford University Press, 2009. P-71

[37] Craig Paul, De Burca Grainne, *EU Law Texts, Case And Materials,* Oxford University Press, Oxford 2011, p-107;

[38] Ibid, p 107;

[39] Zerkal Olena, Kachka Taras, *Methodical Manual for Issues of Adaptation of the Ukrainian Legislation to acquis communautaire*, "Nika-Print" Kiev, 2005. p-17;

And finally the case law of the courts of European Union is referred as one of the sources not only by the European authors[40] but by experts of the third countries involved in the approximation of the national legislations to EU law.[41]

There are also different types of classification as EU legal acts kind of legislative, delegated, or implementing acts[42] also different consideration of *acquis communautaire* regarding of the spheres of its usage[43], however after drawing key definitions and main understandings about Georgian and European legal systems, further and deeper analysis is out of the scope of the thesis. Now it`s time to take close look at the process of approximation itself.

1.2. Legal mechanisms regulating the approximation process, threshold and form of convergence

This subchapter seeks to analyze mechanisms which create legal basis and regulate process of legal approximation of Georgian legislation to EU law. The overview of legal mechanisms of the process is significant part of the analysis of the process itself as the legal basis and regulation of the process define character of the process and nature of developments.

For easier understanding of the legal mechanisms of approximation conditionally they can be divided into external and internal categories. External dimension contains the international treaties and related legal documents of international law which create international framework for legal approximation and fix the interests of the parties of the process in this case Georgia and the EU. For Eastern European and southern Caucasus countries type of international agreement with legally

[40] Steiner Josephine and Woods Lorna, *EU Law.* Oxford University Press, 2009. P-76

[41] Zerkal Olena, Kachka Taras, *Methodical Manual for Issues of Adaptation of the Ukrainian Legislation to acquis communautaire*, "Nika-Print" Kiev, 2005. pp-13-14,

[42] See Craig Paul, De Burca Grainne, *EU Law Texts, Case And Materials,* Oxford University Press, Oxford 2011, pp112-119

[43] See Petrov R. A. Transposition of "acquis" of European Union into the Legal Systems of the Third Countries, The Monograph, "istina" Kiev 2011. pp 38-96

binding effect for regulation relation with the EU is PCA.[44] As Georgia is the member of this group of countries its relation with the EU are conducted by PCA on current stage and negotiations for closer relations in the framework of Association Agreement are ongoing conclusion of the DCFTA is part of this negotiations[45]. So on current stage main international source of Georgian legal approximation process is PCA. Apart from this main document the most important, but kind of soft law instrument regulating bilateral relations of EU with third countries within the framework of the European Neighborhood Policy are Action Plans.[46]

PCA was concluded between the EU and Georgia on 22 April of 1996 and entered into force on 1 July of 1999[47]. It stipulated as main boundaries of EU-Georgia relation as concrete sectors of cooperation. One of such sectors of relations was considered the legal approximation of national legislation to EU law. According to the article 43 of PCA Georgia takes responsibility to provide legal approximation of existing and future legislation and to ensure its gradual compatibility with EU law, for its part the EU takes obligation to provide technical assistance for implementing these measures. Simultaneously with establishing these general lines of obligation PCA designated certain spheres of law which had to be covered by the approximation process. These are following: "laws and regulations governing investments by the companies, customs law, company law, banking law, company accounts and taxes, intellectual property, protection of workers at the workplace, financial services, rules on competition, public procurement, protection of health and life of humans, animals

[44] Van Vooren, Bart, *Eu external Relations Law and the European Neighborhood Policy: A paradigm for coherence,* London; New York, Routledge; 2012. p-184

[45] For more detailed information about EU-Georgia relation see the official webpage of the office of the sate minister on European and Euro-Atlantic Integration: http://eu-integration.gov.ge/index.php?que=eng/official_documents;

[46] Van Vooren Bart, *Eu external Relations law and the European Neighborhood Policy: A paradigm for coherence,* London; New York, Routledge 2012.p-184

[47] See official webpage of the ministry of foreign affairs of Georgia: http://www.mfa.gov.ge/index.php?lang_id=ENG&sec_id=462;

and plants, the environment, consumer protection, indirect taxation, technical rules and standards, nuclear laws and regulations and transport".[48]

As it can be implied from the provisions of PCA on one hand that it framed legal approximation as long-term objective for Georgia and at the same time identifies these particular areas as task for current stage of relations.

Regarding action plans it can be mentioned that as the instrument to conduct and regulate the EU relations with third countries within the framework of European Neighborhood Policy emerged in 2003.[49] Before this the main soft instruments of this sphere in the EU were Council Conclusions, Commission Communications, European Council Conclusions, Joint Letters of EU officials and EU parliament reports.[50] The Action Plans are bilaterally negotiated document, describing all priorities on which EU and partner country plan to cooperate on current stage.[51] It is considered kind of soft law instrument as it does not need for adoption complex procedures differently to treaties, the process of negotiations are smarter and the document is flexible to be changed by the other instruments on the next stage of relations and development of interests.[52] The ENP Action Plan for Georgia adopted by the EU on 13 November of 2006 and jointly adopted by the both parties on 14 November of 2006[53].

If look at the text of the Action Plan it looks rather schedule of concrete tasks and forms of their achievement rather than act with regulatory function[54]. However it contains certain obligations

[48] Paragraph 2 of the Article 43 of PCA;
[49] Van Vooren Bart, *Eu external Relations Law and the European Neighborhood Policy: A paradigm for coherence*, London; New York, Routledge 2012.p-192;
[50] Ibid. 186;
[51] Ibid 184;
[52] See Van Vooren Bart, *Eu external Relations Law and the European Neighborhood Policy: A paradigm for coherence*, London; New York, Routledge 2012.pp-193-194;
[53] Ibid. p-237;
[54] For English text of the Georgia Action Plan see the official webpage of the European Commission: http://ec.europa.eu/world/enp/documents_en.htm#2;

toward the direction of the legal approximation as designated by PCA as additional to the PCA areas: for example adoption of new Criminal Procedural Code,[55] adoption of new customs code.[56]

If summarize the provisions of the main international legal acts founding the bases of the process of the legal approximation it can be inferred that they establish certain boundaries for approximation on a very general level and do not contain any norms regulating the character or the organization of the process itself or the methods thereof. This room is left to the national legislation.

Formation of national legal mechanisms was begun after concluding PCA but before entering it into force. The first national legal act was the resolution of Georgian parliament adopted on 2 September of 1997 "On Harmonization of Georgian Legislation to EU Law". This act established obligation that all acts adopted by the Georgian parliament after 1 September of 1998 (even one year before entering into force PCA) would be in compatibility with standards and norms adopted by EU[57] (in other words *acquis communautaire*). Furthermore there was established obligation for including the special position in the explanatory note attached by the bill according to the parliament regulations, where would be underlined compatibility of the bill with abovementioned norms and standards[58]. This was the first step on this way and actually the single one during two years of initial stage of the legal approximation process. However it was a strong step as at that time the rules and procedures of the parliament were adopted by the resolution of the parliament[5960] and adoption of such resolution in the light of system of normative acts being in force for that time it was tantamount to be part of the parliamentary rules and procedures with the same legally binding

[55] EU/Georgia Action Plan, Priority Area 1, p 4;
[56] EU/Georgia Action Plan, Priority Area 2, p. 5;
[57] The Resolution of The Parliament of Georgia #828 Is, 2 September of 1997 "On Harmonization of Georgian Legislation to EU law", paragraph 1;
[58] ibid, paragraph 2;
[59] See paragraph 9 of the article 7 of the law of Georgia of 29 October of 1996 #458-Is "On Normative Acts" (the initial edition)
[60] The current for that time rules and procedures of the parliament was adopted by the resolution on 20 September of 1994 and the new resolution regulating the rules and procedures of the parliament was adopted on 17 October of 1997;

effect. Although the resolution included provision to provide additional regulations for proper organization of the process of harmonization[61], there is not found any act in the Georgian legislation of those times which can be used as example of fulfillment of that provision.

The next step on the way of the regulation of the process was made after entering into force of PCA by the president of Georgia, who firstly established governmental commission for upholding partnership and cooperation with EU[62] and ordered preparation of harmonization strategy with EU law[63]. Later he issued enactment on 14 June of 2001 "On Strategy of Harmonization of Georgian Legislation to EU law". These developments normal phenomena as for that time as it was already mentioned Georgia was presidential system and this act was signal of the more active involvement of the executive branch in the process of approximation. However the act adopting the strategy only made emphasis of the process of legal approximation as significant component of the EU integration policy[64], repeated spheres defined by PCA as boundaries for approximation[65] and underlined importance of development economic fundament of the state as one of the conditions for legal approximation[66]. Generally the strategy adopted by the presidential enactment was mostly declaratory document without actual regulatory or organizational function differently for example from Polish experience where in May of 1997 Polish Sejm adopted The National Strategy for Integration which contained even guidelines for methodology of legal approximation to EU law[67]. Furthermore according to the Georgian legal system the presidential enactment had no legally

[61] The Resolution of The Parliament of Georgia #828 Is, 2 September of 1997 "On Harmonization of Georgian Legislation to EU law", paragraph 3;
[62] The Ordinance of the President of Georgia #317 of 24 July of 2000 "On Measures for Implementation of PCA Concluded Between Georgia and EU";
[63] The Enactment of the President of Georgia #1422 on 31 December of 2000 "On Preparation of Strategy of Harmonization of Georgian Legislation to EU Law";
[64] Chapter III of the "Strategy of Harmonization of Georgian Legislation to EU law" adopted by the enactment of the President of Georgia #613 On 14 June 2001;
[65] Chapter IV of the "Strategy of Harmonization of Georgian Legislation to EU law" adopted by the enactment of the President of Georgia #613 On 14 June 2001;
[66] Chapter IV of the "Strategy of Harmonization of Georgian Legislation to EU law" adopted by the enactment of the President of Georgia On 14 June 2001;
[67] See Part III of the National Strategy for Integration of Poland, pp 33-35,

binding effect in comparison with abovementioned resolution of parliament.[68] So this act can be considered rather political instrument than framing legal mechanisms of approximation. Although one of the main outcome was to give start to the task of the governmental commission working on issues of cooperation with the EU to prepare national program of harmonization to EU law and all ministries and governmental bodies were obliged to send their suggestions with this regard[69].

The new stage in developments of formation of national legal basis for approximation began after 2004 constitutional reform in Georgia. This reform resulted transformation of the presidential system in Georgia to the semi-presidential and creation new collegial executive body - the government[70]. The new institution actively engaged in the process of approximation since its first days of work. The most significant first outcome of this engagement was the enactment of government of 8 May of 2004 "On Preparation of the Unified Implementation Plan for National Program of Harmonization of Georgian Legislation with that of EU law and a new agenda for Cooperation with EU". By this act, the government: approved the national program for harmonization, ordered to the members of governments and respectively ministries to prepare implementation plans of the harmonization program in their spheres of responsibility; ordered to establish special unit responsible for legal approximation in every ministry and governmental agency.[71]

This act has crucial significance as internal legal mechanism of approximation process as it gave force national program of harmonization – a landmark document for understanding thresholds and forms of approximation and also drew some organizational outlines within the executive branch.

[68] Article 11 of the law of Georgia of 29 October of 1996 "On Normative Acts";
[69] Paragraphs 2-3 of the enactment of the President of Georgia On 14 June 2001;
[70] For detailed analysis and evaluation see Melkadze O, Critical Analysis Of the Constitutional Reform, *Georgian Law Review* 7/2004-4, pp-643-661
[71] Paragraphs 1,2,3 of the enactment of government of Georgia #22 On 8 May of 2004 "On Preparation of the Unified Implementation Plan for National Program of Harmonization of Georgian Legislation with that of EU law and a new agenda for Cooperation with EU";

If look into the National Program of Harmonization of Georgia, it becomes clear that this document sets up concrete lists of concrete EU legal acts, mostly from secondary sources, in the concrete spheres defined by PCA with whom convergence of relevant Georgian acts will be achieved. If get rather closer look to the Program it becomes obvious that the more than even vast majority of the EU acts listed there are Council Directives[72]. There is no word about general understanding of EU *acquis communautaire*, its character, composition, its essence for Georgian perspective or etc. Everything is very concrete.

After this enactment it became ordinary procedure for Georgian government to adopt concrete implementation plans or for this program for regulation how to conduct the approximation process. This process gained more active character after adoption EU-Georgia ENP Action Plan in 2006. It caused adoption of annual implementation plans containing schedules of concrete measures[73]. Also negotiation on DCFTA was one of the reasons for encouragement to adopt such types of plans and programs by the governmental enactments. The most recent such documents are "The Comprehensive Strategy and Legislative Approximation Program in Food Safety" adopted by the enactment of the government of Georgia # 1756 of 28 December of 2010 and "Strategy in Standardization, Accreditation, Conformity Assessment, Technical Regulation and Metrology and Program on Legislative Reform and Adoption of Technical Regulations" adopted by the enactment of the government of Georgia # 1140 of 25 August of 2010.[74]

[72] See National Program of Harmonization of Georgian Legislation with that of EU law;

[73] These documents and reports of their fulfillment are available on the official webpage of the office of the state minister of Georgia for European and Euro-Atlantic Integration: http://eu-integration.gov.ge/index.php?que=eng/official_documents

[74] For English versions of these documents see the official webpage of the government of Georgia: http://www.government.gov.ge/index.php?lang_id=ENG&sec_id=41;

Besides the practice adoption of concrete agendas of approximation, it became ordinary practice for Georgian government to regulate organizational conduct of the process by the governmental enactments as well. It refers as establishment of the main institutional mechanism Georgia EU Integration Commission[75] as the establishment and regulation of the conduct of inter-agency working groups for actual drafting of legislative acts[76].

Finally at the end of the review of national legal mechanisms special attention must be devoted to the regulations of parliament adopted since 2004 in the form of legislative act and not resolution[77]. Currently it`s the highest national legal act regulating part of approximation process. Namely, following to the parliament regulations the initiators of the bill are required specially to note the issue of the compatibility of the bill with Council Directives[78]. Here again is emphasis on the Council Directives as the main point of interest of the Georgian legislator.

If summarize the legal mechanisms regulating the approximation process it can be inferred that International legal sources PCA and ENP Action Plan are standard EU instruments and they create general legal fundaments of approximation process, set up main lines of approximation and leave the greater part of regulation to the national legal mechanisms. The analysis of the Georgian legal mechanisms itself shows that there are two categories of regulatory acts: the first category contains acts with very general type of regulations (the parliamentary resolution and

[75] The Enactment of The Government of Georgia #76 of 10 July of 2004 "On Establishment of EU Integration Commission of Georgia" and the resolution of the government of Georgia #76 of 9 Septemver of 2004 "On Adoption of the Regulations of the EU Integration Commission";

[76] The Resolution of the Government of Georgia #61 of 21 February of 2012 "On Establishment of Inter-agency Working Group for Providing Negotiations Between Georgia and EU about DCFTA", (members of this group simultaneously with negotiations were engaged in process of legal drafting for fulfillment DCFTA requirements for legal approximation);

[77] Paragraph 5^1 of the article 9 of the of the law of Georgia of 29 October of 1996 #458-Is "On Normative Acts" (the codified text);

[78] Paragraph 2 of the article 147 of the Regulations of the Parliament of Georgia, legislative act #3353-RS adopted On 17 February 2004; and paragraph 2 of the article 145 of the Regulations of the Parliament of Georgia, legislative act #6533-IS adopted On 22 June February 2012;

the presidential enactment) defining general principles and obligations while the second category unifies very concretized regulations defining certain measures and actions. Almost all these acts except the regulations of the parliament do not belong the legislative acts – primary category of the legal acts following to the hierarchy of the Georgian legal system. And finally in Georgian national legal sources does not exist unified, clear and well established understanding of *acquis communautaire*. All legal acts conducting the process are oriented to fulfill short time concrete tasks to ensure convergence of certain norms while there is no legal background for global understanding of the role of EU law within Georgian legal system. It casts shadow and ambiguity to the long term and strategic objective gradual approximation of EU law. Absence clear understanding of the essence of *acquis* and its relation with national law affects the quality of process in general.

Another problem related to the legal mechanisms is how to understand the character of convergence of national system to EU law. As it is clear the PCA uses the term of "approximation" while all national legal instruments use the term of "harmonization". To clarify this confusion it is better to check some Ukrainian sources as there is shortage of such research among Georgian legal scholars. This problem seems to be common to the Ukrainian scholars exploring the process of the convergence of their national legislation with EU law[79]. In Ukrainian legal scholarship there are various considerations of this issue[80]. Although Ukrainian experts touching this issue agree that "harmonization" is more global and comprehensive understanding of the process of convergence of national legislation to EU law[81]. Also they consider that the word "approximation" emerged in the

[79] Gomonay V. V., *Approximation of Ukrainian Legislation to the Legal System of The European Union,* Journal of Koretsko Institute of the State and the Law of the National Academy of Science of Ukraine, vol. 44, 2009 Kiev, p-206; (in Ukrainian);

[80] Omelchenko, A., Organizational-legal Issues of Harmonization of the Legislation of Ukraine Regulating External Economic Activity with International and European Law, Journal Entrepreneurship, Economy and Law, 8 , 2011 (188) p-117;

[81] Group of Authors, Mechanisms of Harmonization of Ukrainian legislation to the European and International law; Scientific Report; National Academy of Science of Ukraine, V. M. Koretsko Institute of the state and the law Kiev 2011. p.5, pp 13-18; (in Ukrainian);

EU documents simultaneously to "harmonization" means unilateral activity of the interested states to converge their legislation to EU law.[82] If follow the analysis of European authors absence of the legal templates in EU bilateral documents within ENP framework and references only general EU norms and standards and international norms shows existence of some discretion of recipient countries. [83]

If examine legal sources regulating Georgian process of convergence in the context of above discussed it is clear that despite confusing difference of terms of the international and national legal mechanisms, the process can be generally called as approximation. Neither PCA nor Action Plan contains strong regulations of forms or methods of convergence or direct adoption and implementation of certain EU rules. Also Georgian legal sources regulating the process, although defining lists of acts to be converged, do not establish obligation of direct adoption of EU norms. From practical standpoint as legal experts participating in the process of drafting new Georgian legal acts for providing the approximation in the light of DCFTA negotiations describe their tasks while legal drafting did not include translation of concrete EU norms or templates and putting it to the Georgian draft laws, but rather on the bases of EU law to elaborate compatible regulations taking into account Georgian realities[84]. If follow the definition of adaptation elaborated by Ukrainian scholars as multistage process of improving of national legislation by the state authorities using lawmaking, planning, coordinating and controlling mechanisms to achieve its final compatibility with international norms[85] and summarize Georgian legal sources and practice it can be implied that

[82] Ibid p 18;

[83] Cardwell, Paul James. editor, EU External Relations Law and Policy in the Post-Lisbon Era, New York, Springer, T.M.C. Asser Press Hague 2012. P 228;

[84] Lida Oniani, Advicer of the Department for Foreign Affairs of the Chancellery of the Government of Georgia in 2006-2012, member of the inter-agency working group for DCFTA negotiations innerved on 13 March, 2013;

[85] [85] Group of Authors, Mechanisms of Harmonization of Ukrainian legislation to the European and International law; Scientific Report; National Academy of Science of Ukraine, V. M. Koretsko Institute of the state and the law Kiev 2011. p.5, p-18; (in Ukrainian);

the form Georgian process of convergence can be characterized as adaptation of national legislation to EU law.

1.3. Institutional organization of the process: roles of the governmental branches in the light of the development of the process

This subchapter discusses the institutional organization of the process of legal approximation and analyzing the roles of the governmental branches of Georgia in this process and in this light overviews general developments of the process.

As process of legal approximation can be conducted mainly through lawmaking it is necessary first to make brief overview of legislative process in Georgia. According to the constitutional system of Georgia established by the constitution of 1995 the parliament is main and unlimited lawmaker[86]. The constitution declares lawmaking as the constitutional prerogative of the parliament and simultaneously does not provides any boundaries of competence in this sphere. Such boundaries accordingly are not established by any legislative act as well. Before the constitutional reform of 2004, members of parliament, parliamentary committees and factions, supreme representative bodies of Abkhazia and Adjaria autonomous republics, 30000 citizens and the president were enjoyed right of legislative initiative[87]. And after the reform the government was entitled by this right and in conjunction with the rights to ask priority of considerations of the governmental bills and right of prior consent for adoption bills with financial outcomes it became an important player in lawmaking process.[88] As it can be seen bellow all these facilitated to form the government as leading institution in the process of approximation of the national legislation to EU law.

One significant peculiarity of the Georgian legislative system that has to be noted before beginning of more detailed consideration is that although in Georgian constitutional law there is not

[86] Article 48 of the constitution of Georgia;
[87] Article 67 of the constitution of Georgia (initial text);
[88] Paragraph 2 of art 67, paragraph 8 of art 93 of the constitution of Georgia (the version that is currently in force);

established any explicitly regulatory power[89] for the government and there is not even constitutional provision for impaling the possibility of delegation of lawmaking powers to the government, it became practice after constitutional reform of 2004 that n the basis of the legal acts of the parliament, governmental by-laws regulate certain important spheres.[90] This conduct based on the article 12 of the law "On Normative Acts" evidences that although main line of legal approximation goes through the legislative process in parliament, part of the process goes on the level of lawmaking of the bylaws of the government. In this dimension Georgian model is closer to Polish experience where important part of approximation was done through the by-laws of the government[91]. Besides the fact that government of Georgia plays important role in approximation through adopting by-laws which conditions its significant place in the institutional organization of the process; the government is actively engaged in legislative process on the level of the parliament as will be discussed below.

As it has already mentioned ***the parliament*** was the first from the Georgian governmental branches to begin work toward the approximation process by adopting resolution in 1997 "On Harmonization of Georgian Legislation to EU Law". Later these regulations of this resolution were incorporated into the regulations of the parliament adopted in 2004 and in 2012. These regulations became more sophisticated than that general requirement established by the resolution and obliged initiators of the bill to note specially in the explanatory memorandum the issue of compatibility of the bill with EU directives[92]. Simultaneously the legal department of the parliamentary staff was charged with task to

[89] Paragraph 3 of article 78 of the constitution of Georgia (the version that is currently in force);
[90] For illustration of this fact can serve: Resolutions of the government of Georgia: #90 of 7 March, 2012 on adoption of "Special Rules of Hygiene For Food Originated From The Animals; #282 of 10 September, 2010, on adoption "Rules of Hygiene for Entrepreneurs/Distributors of Food And Animal Fodder and similar acts;
[91] Zubek, Radoslaw, Core Executive and Europeanization In Central Europe; Palgrave Macmillan, New York, 2008, p-30;
[92] See respectively Paragraph 2 of the article 147 of the Regulations of the Parliament of Georgia, legislative act #3353-RS adopted On 17 February 2004; and paragraph 2 of the article 145 of the Regulations of the Parliament of Georgia, legislative act #6533-IS adopted On 22 June February 2012;

check this compatibility of the bills with EU law sources.[93] This attitude of Georgian legislators were similar to Slovak experience of 1996 establishing mandatory inclusion so called "compatibility clause" in explanatory memorandum of the bill.[94] However Georgian practice differently from Slovakian was not as successful as the provision of regulations of the parliament about scrutinizing compatibility as the mechanism of enforcement of the Georgian compatibility clause entered into force only at the end of 2012 and before it was persuaded practically only voluntarily by the initiators and there is no data how sufficiently it was observed. This affected the quality of the process of approximation as it reveals bellow.

Another important organizational step was made by the parliament in the process of approximation when established the standing committee On European Integration in 2004.[95] The functions of the committee include: controlling activity of the government with regard to EU integration issues, initiating bills and scrutiny of the introduced bills in the context of compatibility with EU law.[96] The committee became main engine within the parliament for initiating bills regarding approximation to EU law. In its initiations the committee generally followed areas established by the National Program of Harmonization, although differently to the government it sometimes afforded to initiate more than it was envisaged by the National Program.[97] If on the initial stage the committee was actively engaged in legal drafting, lately the situation changed. The statistical data provided by the organizational issues department of the staff of Georgian parliament shows that initiations of the Committee for European Integration were too minimal in comparison with legislative initiations of

[93] See respectively subparagraph "e" of the paragraph 2 of the article 149 of the Regulations of the Parliament of Georgia, legislative act #3353-RS adopted On 17 February 2004; and subparagraph "e" of the paragraph 2 of the article 148 of the Regulations of the Parliament of Georgia, legislative act #6533-IS adopted On 22 June February 2012;

[94] Kellermann Alfred E. [et all] editor, The Impact of EU Accession On The Legal Orders Of The New EU Member States and (Pre-) Candidate Countries, The Hague, T.M.C. Asser Press, 2006, pp450-451;

[95] Subpharagraph "f" of the paragraph 1 of the article 30 of the Regulations of the Parliament of Georgia, legislative act #3353-RS adopted On 17 February 2004;

[96] Article 2 of the regulations of the committee adopted by the decision of the Bureau of the Parliament #13/16 on 10 December 2012;

[97] Tamta Chumburidze, Short Overview of Draft Laws Initiated by the Committee for the European Integration of the Parliament of Georgia in 2005, *Georgian Law Review 8*, 2005 3/4 p-307;

the government. For example in VII convocation parliament (2008-2012) the committee initiated only 4 bills, while governmental initiatives only during 2012 reached 166.[98] It can be presumed that not all governmental bills were devoted to approximate Georgian laws with EU law; however the divergence is high despite this. The committee according to its regulations and parliamentary regulations provides independent scrutiny of bills but it does not mean checking of the compatibility clause and following to the regulations of the parliament not all bills fall under mandatory control and assessment of the committee.[99]

The representatives of Georgian ***executive branch*** were actively involved to the legal approximation process from its beginning phase after PCA conclusion.[100] As it is usually presumed beginning phase of the legal adaptation process is screening of national legislation to identify areas needing adaptation.[101] In the process of screening representatives of the executive were involved with EU experts.[102] The next stage was planning of the process and preparation of national regulatory documents, which were adopted by the acts of the president considered in subchapter 2 of the thesis. One of the peculiarities of organizational side of Georgian process is that after constitutional reform of 2004 as the legislative history discussed in subchapter 2 evidences the legal approximation issues came to the competence of the government from the sphere of the competences of the president. The government instituted the commission for European integration that became main political decision making body in the organizational system of the legal approximation process. The commission is composed by the ministers and the prime-minister is the chairperson of the commission. The

[98] The official statistical information of the legislative activity of the parliament as annually as for every convocation is provided by the organizational issues department of the parliament staff and is available publicly upon official written request.

[99] Articles 146, 147, 148, 152, of the Regulations of the Parliament of Georgia, legislative act #6533-IS adopted On 22 June February 2012;

[100] Kakha Gogolashvili, In 1999-2000 a secretary of EU-Georgia cooperation council, member of Georgian mission in EU (1996-2000) and in 2005-2010 Georgian Director of GEPLAC, interviewed on 13 March 2013;

[101] Group of Authors, Mechanisms of Harmonization of Ukrainian legislation to the European and International law; Scientific Report; National Academy of Science of Ukraine, V. M. Koretsko Institute of the state and the law Kiev 2011. P-21 (in Ukrainian);

[102] Nino Chokheli, legal expert of GEPLAC in 1999-2010, interviewed on 15 March 2013;

chairpersons of parliamentary Committee on European Integration, Legal Issues Committee, Sector Economy and Economic Policy Committee are asked to participate in the work of the commission to ensure coordination with the parliament[103].

If on the top, political decision-making level the process was well organized within framework of the one leading institution. On the middle level, which is responsible for everyday systemic work, the Georgian government chose different attitude. Instead of creating strong permanent governmental unit especially responsible for daily routine in legal approximation issues as it was elaborated for example in Czech Republic[104] or to entrust this work to the certain specialized ministry as it was the case with Ministry of Justice in Hungary[105]; it installed officials in every ministry and governmental agency, responsible for EU integration issues.[106] These personnel were responsible for legal drafting within their specific areas of responsibility in coordination with the office of the state ministry for European and Euro-Atlantic Integration but making any special scrutiny of other pieces of drafts of legal acts was out of their scopes of responsibility.[107] As the legislative history discussed in previous chapters evidences it can be inferred that representatives of the ministries in charge for EU legal approximation issues periodically recruited in for working groups for drafting concrete legal acts. For example such officials are members of the inter-agency working group for DCFTA negotiations.[108] The office of the state ministry for European and Euro-

[103] Paragraph 3 of the Enactment of the Government of Georgia #76 of 10 July 2004 "On Establishment of EU Integration Commission";

[104] Kellermann, Alfred E. [et all] editor, *The Impact of EU Accession On The Legal Orders Of The New EU Member States and (Pre-) Candidate Countries*, The Hague, T.M.C. Asser Press, 2006, p-326;

[105] Zubek, Radoslaw *Core Executive and Europeanization In Central Europe*; Palgrave Macmillan, New York, 2008, pp136-137;

[106] Paragraphs 1,2,3 of the enactment of government of Georgia #22 On 8 May of 2004 "On Preparation of the Unified Implementation Plan for National Program of Harmonization of Georgian Legislation with that of EU law and a new agenda for Cooperation with EU";

[107] Archil Karaulashvili, Head of European Integration Coordination Department at the Office of the State Minister of Georgia On European and Euro-Atlantic Integration, interviewed on 12 March 2013;

[108] The Resolution of the Government of Georgia #61 of 21 February of 2012 "On Establishment of Inter-agency Working Group for Providing Negotiations Between Georgia and EU about DCFTA", (members of this group simultaneously with negotiations were engaged in process of legal drafting for fulfillment DCFTA requirements for legal approximation);

Atlantic Integration itself acts as secretariat of abovementioned EU-integration commission[109]. At the same time it also was involved in legal drafting of the bills[110] but not provide any scrutiny of the initiated bills by other players because of lack of sufficient recourses.[111] GEPLAC experts confirm that the government in a manner of outsourcing often asked them for making assessment with regard of compatibility with EU law of certain bills.[112]

If summarize constitutional powers of the government, legislative history discussed in previous subchapter and developments at the parliament or the government becomes obvious that the government after taking the process of approximation in its hands emerged as leading institution in this process and key entrepreneur of approximating bills. Especially the first years of engagement of the government in the legal approximation process were very productive if judge following to the drafted bills under the motto of National Program of Harmonization.[113]

However the government lead process not always was positive in the context of approximation. The first criticism began already in 2006, when GEPLAC despite general positive results, assessed that "legislative harmonization in some sectors [had] been stalled or even reversed"[114]. Later especially new Labor Code initiated by the government[115] was strongly criticized as incompatible with EU law.[116] Kakha Gogolashvili, one of the most prominent Georgian experts in EU integration matters identifies several political changes in the government on the decision making level as main cause of

[109] Paragraph 2 of the Enactment of the Government of Georgia #76 of 10 July 2004 "On Establishment of EU Integration Commission";

[110] Giorgi Khuroshvili, Overview of the Legislative Activities of the Government of Georgia (Statistics and Trends), *Georgian Law Review*, vol. 9; 2006 1/2; p-65;

[111] Archil Karaulashvili, Head of European Integration Coordination Department at the Office of the State Minister of Georgia On European and Euro-Atlantic Integration, interviewed on 12 March 2013;

[112] Nino Chokheli, legal expert of GEPLAC in 1999-2010, interviewed on 15 March 2013; Kakha Gogolashvili, In 1999-2000 a secretary of EU-Georgia cooperation council, member of Georgian mission in EU (1996-2000) and in 2005-2010 Georgian Director of GEPLAC, interviewed on 13 March 2013;

[113] For detailed information and evaluation of the governmental legal drafting activities see: Giorgi Khuroshvili, Overview of the Legislative Activities of the Government of Georgia (Statistics and Trends), Georgian Law Review, vol. 9; 2006 1/2;

[114] Implementation of the National Program for Harmonization of the Georgian Legislation with that the EU; overview by GEPLAC; *Georgian Law Review*, vol.9 2006; 3/4; p-215;

[115] Labor Code, evaluated by GEPLAC as not compatible with EU law, was adopted by the parliament upon governmental initiative on 25 May 2006 by the law #5908-Is;

[116] Nino Chokheli, legal expert of GEPLAC in 1999-2010, interviewed on 15 March 2013;

these problems and at the same time he refers the problem of absence effective scrutiny mechanism of legislative drafts in the context of compatibility with EU laws.[117] The problem of effective scrutiny mechanisms of compatibility at the parliament and within the executive is clear from abovementioned considerations of institutional organization as well.

The new wave of legislative approximation started after beginning DCFTA negotiations[118]. The parliament adopted several new pieces of legislation upon the governmental initiative into this direction.[119]

The role of ***judiciary branch*** is minimal in approximation process. Although judicial harmonization is seen one of the important component of harmonization process and despite Europe Agreements do not contained provisions regulating judicial harmonization, this process was significant in Eastern and Central European countries.[120] PCA like Europe Agreements does not provide any obligation of Georgia with this regard. The practice shows that ordinary Georgian courts do not use EU law norms or any references to European Court of Justice case law as there is no obligation differently from European Court Of Human Rights case law, which is actively referred by the courts[121]. However differently from ordinary courts the Constitutional Court of Georgia (CCG) had to deal with some issues in its two judgments. As far as Georgia`s integrationist process is not so developed to rise issues regarding transfer of the national sovereignty or supremacy as it was concerned in Eastern and Central Europe,[122] cases before CCG were connected with protection of

[117] Kakha Gogolashvili, In 1999-2000 a secretary of EU-Georgia cooperation council, member of Georgian mission in EU (1996-2000) and in 2005-2010 Georgian Director of GEPLAC, interviewed on 13 March, 2013;
[118] Kakha Gogolashvili, In 1999-2000 a secretary of EU-Georgia cooperation council, member of Georgian mission in EU (1996-2000) and in 2005-2010 Georgian Director of GEPLAC, interviewed on 13 March, 2013;
[119] Food/Animal Fodder Safety, Veterinary and Plant Protection Code, Product Safety and Free Movement Code were adopted on May 8 2012 by the laws #6155-Is; ##6157-Is, also laws regulating free trade, standardization and etc;
[120] Albi, Anneli. *EU Enlargement and the Constitutions of Central and Eastern Europe;* Cambridge University Press, 2005, pp-52-53;
[121] Batar Chankseliani, Head of Division on Representation to the Courts of the Legal Department of Staff Parliament of Georgia; representative of the Georgian Parliament to the Constitutional Court in 2004-2019; interviewed on 7 March, 2013;
[122] For more information see: Albi, Anneli. *EU Enlargement and the Constitutions of Central and Eastern Europe;* Cambridge University Press, 2005, pp-170-178;

certain rights. In the first case ruled on 9 February of 2007 CCG referred to the tendency of EU law to afford strong protection of consumers and suggested it as acceptable principle for Georgian legislation in direction of consumer's rights[123]. The second case was related to violation of rights of property of minor stockholders by the new amendments in the law "On Entrepreneurs", which introduced squeeze-out principle into the Georgian legislation. The authors of the act from the government argued that it was adopted for approximation to the national regulation to EU norms.[124] However CCG stroke down the amendment as unconstitutional, found that the procedure of squeeze-out was violating stockholder`s right[125]. In the light of these cases of CCG it can be inferred that generally CCG accepts the principles of EU law but does not give any crucial significance to the motivation of approximation national legislation to EU law while considering the cases. It also has to be noted that CCG avoided deeper examination and interpretation of relevant EU norms.

If summarize institutional organization of the process of legal approximation in Georgia it can be implied that it is characterized with strong leading role of the executive in the process and making important decisions within the framework of the government. On decision-making level Georgian model is in many points similar to Central European attitudes in this sphere[126] however strongly diverges on the middle level of executive because diversification of tasks not only within the institutions of the executive branch but even among the parliamentary structures.

Chapter 2. Georgian Process and the Ukrainian Experience

This chapter explores Ukrainian ongoing process of legal adaptation of the national law and provides comparative analyses of its main characteristics with Georgian developments which were

[123] Judgment #1/1/374,379 of the first board of the constitutional court of Georgia, 9 February, 2007;

[124] Paragraph 10 and 11 of the Judgment #2/1-370,382,390,402,405 of the second board of the constitutional court of Georgia, 18 May, 2007;

[125] Judgment #2/1-370,382,390,402,405 of the second board of the constitutional court of Georgia, 18 May, 2007

[126] For detailed analysis and evaluation of Polish, Hungarian and Czech models see: Zubek, Radoslaw *Core Executive and Europeanization In Central Europe*; Palgrave Macmillan, New York, 2008, pp 107-152;

considered above for better understanding of the deficiencies of the Georgian process. The chapter is composed by two subchapters. The first subchapter aims to overview Ukrainian process by analyzing legal sources regulating the process and its institutional organization. After drawing general picture of the process and forming main understandings of the Ukrainian originalities by the first subchapter the second one provides comparative analysis of the experience of Ukraine and Georgia. While comparison for better evaluation of the certain developments there are also included several references on certain models already used in the countries of the Central and Eastern Europe, joined to the EU in 2004. The analysis of the second subchapter also in its own way serves as point of departure for the passage to the conclusion.

2.1. Overview of the Ukrainian Process

This subchapter explores legal sources regulation of the Ukrainian process of convergence of national legislation to EU law and the institutional organization established on the bases of these legal sources and seeks to summarize general originalities of the Ukrainian experience in this dimension.

To the international legal instruments regulating the Ukrainian process of legal approximation belongs PCA concluded between the EU and Ukraine on 14 June, 1994 and entered into force on 1 March, 1998[127]. Ukraine similar to Georgia had got Action Plan[128] within the ENP framework jointly adopted by the parties on 21 February, 2005,[129] which was replaced on 29 November, 2009

[127] English Text of the PCA between EU and Ukraine and related information is available on the webpage of EU commission: http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=217;

[128] Official text of EU/Ukraine Action Plan is English see on the webpage of European Commission: http://ec.europa.eu/world/enp/pdf/action_plans/ukraine_enp_ap_final_en.pdf;

[129] Bart Van Vooren, *Eu external Relations Law and the European Neighborhood Policy: A paradigm for coherence,* London; New York, Routledg 2012. p-237;

by Association Agenda.[130] Association Agenda is the similar type of soft law instrument for the EU external relations.[131]

The framework international document for Ukraine legal approximation still remains PCA. Article 51 of PCA defines the obligation of convergence of national legislation to EU law as significant condition of the whole integration process and frames the areas of legal approximation. These areas are literally similar to the areas defined by Georgian PCA[132]. However Ukrainian PCA differently from Georgian in several other articles contains references about convergence of certain other issues with EU rules[133]. This increases of Ukrainian obligations in comparison with Georgia. Action Plan and Association Agenda respectively also give certain legal background for legal approximation as contain obligations for improving and adapting certain spheres of Ukrainian legislation[134]. The international legal instruments do not regulate the conduct of the process and only define the material areas of legal approximation and similar to Georgia room for procedural regulations is left to the national legislation.

The first important piece of the national legislation on the way of regulation of approximation process according to the semi-presidential nature of the Ukrainian state was the decree of the president of Ukraine #615/98 on 11 June, 1998 "On adoption of the national strategy for EU-integration. It was the mostly political document but was important because contained one chapter devoted to the legal adaptation[135]. This act was immediately followed by the resolution of the Cabinet of Ministers of Ukraine. #852 on 12 June, 1998 "On Establishment of the Mechanism of the

[130] English Text of the Association Agenda between EU and Ukraine and related information is available on the webpage of EU commission:: http://www.eeas.europa.eu/ukraine/docs/2010_eu_ukraine_association_agenda_en.pdf

[131] Bart Van Vooren, *Eu external Relations Law and the European Neighborhood Policy: A paradigm for coherence*, London; New York, Routledg 2012. P 205-208;

[132] See article 43 of PCA between EU and Georgia;

[133] For example see articles 77 of Ukrainian PCA;

[134] For example see section 17, section 21 of paragraph 2.2 of Action Plan; paragraph II of Association Agenda; sanitary and phytosanitary area of paragraph III, section 5 and etc;

[135] Text in Ukrainian available on the official webpage of the government of Ukraine: http://zakon2.rada.gov.ua/laws/show/615/98;

Adaptation of the Ukrainian Legislation to EU law" and the resolution of the Cabinet of Ministers of Ukraine #10 on July 13, 1998 "On regulation issues of the functioning Ukrainian part of EU integration committee",[136] which included rules of the composition of the committee and regulations of the work of it. These acts give birth to the process of approximation and also several governmental and presidential legal instruments regulating certain aspects of the process[137]. From these by-laws Ukrainian experts emphasize importance of the resolution of the Cabinet of Ministers #1496 on 16 August, 1999 "On the Concept of the Adaptation of the Ukrainian Legislation to EU Law"[138] and the resolution of the Cabinet of Ministers #1365 on 15 October, 2004 "On Several Issues of the Adaptation of the Ukrainian Legislation to EU Law", the resolution of the Cabinet of Ministers #1742 on 15 December, 2004 "On Establishment of the State Department of the Adaptation of Legislation"; the decree of the president #965/2004 on 21 August, 2004 "On Organizational Issues of the Preparation of the Bill "On National Program of Adaptation of the Ukrainian Legislation to EU law""; the decree of the president #1411/2004 on 16 November 2004 "Amending several decrees of the president" and etc. [139] These acts had important regulatory impact on the first stage of the process. The determinant factor reducing the significance of the by-laws as regulators of the legal approximation process was the fact that on 18 March, 2004 the parliament of Ukraine adopted the law #1629-IV "On National Program of Adaptation of the Ukrainian Legislation to EU law", which became main national legal source for regulating the process of the adaptation.

[136] Text in Ukrainian available on the official webpage of the government of Ukraine: http://zakon2.rada.gov.ua/laws/show/1074-98-%D0%BF;

[137] List of these legal acts are available on the official webpage of the government of Ukraine: http://www.kmu.gov.ua/control/uk/publish/article%3fart_id=224176868&cat_id=223280554&ctime=1245677311433 ;

[138] Demidovich M.S. adaptation of the Legislation of Ukraine and context of European Legal Integration; *Journal of Koretsko Institute of the State and the Law of the National Academy of Science of Ukraine*, vol. 32, 2006 Kiev, p-58; (in Ukrainian);

[139] Zerkal Olena, Kachka Taras, *Methodical Manual for Issues of Adaptation of the Ukrainian Legislation to acquis communautaire*, "Nika-Print" Kiev, 2005. pp-3;

This law: defined meaning of the *acquis communautaire* and its sources for Ukrainian legislative system stipulated fundament of the national policy of Ukraine in this dimension; framed the stages of adaptation of legislation, established institutional framework and determined tasks, powers and responsibility of the governmental institutions in this process[140]. The adaptation of law, which is on the top of the legal system of Ukraine after the constitution,[141] did not leave the room to the by-laws to regulate essential aspects of the process and gave the process more stable and foreseeable character.

Regarding the terms defining the form of convergence of Ukrainian legislation to EU law there are several considerations among Ukrainian scholars as the PCA itself uses different words additionally to the approximation to define the process of divergence of national system to EU norms.[142] However it has to be noted that all Ukrainian national legislative instruments strongly follow the unified attitude and call the process as "adaptation". And as the law "On National Program of Adaptation of the Ukrainian Legislation to EU law" clearly interprets the character of the adaptation process[143] the discussion can have purely theoretical and scientist character.

As the legal sources as the institutional organization of the process has its own originalities. From the early beginning of the process the Cabinet of Ministers of Ukraine was actively engaged as in resolving organizational matters of the process as devoted great attention to the adaptation issues while considering legislative initiatives of the government.[144] The initiative taken into the hands of the Cabinet was hold successfully during whole process as it reveals below.

[140] See respectively chapters II, III and VIII of the program adopted by law #1629-IV of 18 March, 2004 "On National Program of Adaptation of the Ukrainian Legislation to EU law";
[141] See articles 8 and 19 of the constitution of Ukraine; official text in English available on the webpage of the president of Ukraine: http://president.gov.ua/en/content/constitution.html;
[142] Gomonay V. V., Approximation of Ukrainian Legislation to the Legal System of The European Union, *Journal of Koretsko Institute of the State and the Law of the National Academy of Science of Ukraine*, vol. 44, 2009 Kiev, p-206; (in Ukrainian);
[143] Chapter II, III and IV of the National Program adopted by the law of 18 March 2004 #1629-IV "On National Program of Adaptation of the Ukrainian Legislation to EU law";
[144] Zerkal Olena, Kachka Taras, *Methodical Manual for Issues of Adaptation of the Ukrainian Legislation to acquis communautaire*, "Nika-Print" Kiev, 2005. p-24.

Regarding the organizational issues within the executive branch it has to be mentioned that on the first stage of developments the Cabinet entrusted the Ministry of Justice with special powers to lead the daily process of adaptation within the executive branch and to coordinate work of other ministries in this dimension. For ensuring better coordination between governmental institutions special inter-agency council was established at the Ministry of Justice[145]. For the political decision making level was established national council for the issues of the adaptation of the Ukrainian Legislation to EU law, chaired by the president and composed by the ministers, members of parliament, scientists[146]. According to the evaluation of the prominent Ukrainian experts the model of institutional organization was not effective and needed reforms.[147] The national council had parallel structure the state council for European and Euro-Atlantic integration established and chaired by the president[148] which following to the Ukrainian legal experts caused duplication of the functions and subsequently facilitate passive and ineffective role of the national council[149]. In case of inter-agency council at the Ministry of Justice the ineffectiveness was caused by the absence of real authorities of the council to control the enforcement of adopted decisions and the absence of high level executive officials in the council.[150]

This model of work on the adaptation issues continued until 2004 the adoption of the law "On National Program of Adaptation of Ukrainian Legislation to EU law", which framed new form of institutional organization of the process. Established a new main political decision making body to lead the adaptation work of the executive and coordinate conduct of all governmental institutions. It

[145] See the resolution of the Cabinet of Ministers of Ukraine. #852 on 12 June, 1998 "On Establishment of the Mechanism of the Adaptation of the Ukrainian Legislation to EU law"

[146] See the decree of The President of Ukraine # 1033 on 30 August, 2000 "On National Council of the Issues of Adaptation of the Legislation of Ukraine to the EU law.

[147] Zerkal Olena, Kachka Taras, *Methodical Manual for Issues of Adaptation of the Ukrainian Legislation to acquis communautaire*, "Nika-Print" Kiev, 2005. p-28

[148] See the decree of The President of Ukraine # 791 on 30 August, 2002 "On State Council of the Issues of European and Euro-Atlantic Integration of Ukraine;

[149] Zerkal Olena, Kachka Taras, *Methodical Manual for Issues of Adaptation of the Ukrainian Legislation to acquis communautaire*, "Nika-Print" Kiev, 2005. p-26;

[150] Ibid, 28

was called the Coordinating Council and chaired by the prime-minister of Ukraine.[151] The Coordinating Council was composed by the misters and heads of independent governmental agencies, the head of the National Bank and the chairperson of the parliamentary committee on European Integration became *ex officio* members of the council[152]. At the same time the Cabinet of the Ministers set up in the Ministry of Justice the state department for adaptation of the Ukrainian Legislation to EU law to secure legal drafting, scrutiny of the bills and provide all necessary work to run daily routine of adaptation[153]. As the law "On National Program of Adaptation of the Ukrainian Legislation to EU law" considered the Cabinet of Ministers as the main institution for legal drafting to ensure the program of adaptation[154] and the Cabinet of Ministers created special unit explicitly charged for executing this obligation[155]the state department became key entrepreneur of legal drafts devoted for adaptation. They did a great work not only in dimension of legal drafting but at the same time prepared and published several analytical and information materials related to the adaptation process[156]. After ending of the active phase of legal drafting and fulfillment its main aims the department was reorganised.[157]

[151] Chapter VIII of the program adopted by law #1629-IV of 18 March, 2004 "On National Program of Adaptation of the Ukrainian Legislation to EU law";

[152] The resolution of the Cabinet of Ministers #1365 on 15 October, 2004 "On Several Issues of the Adaptation of the Ukrainian Legislation to EU Law";

[153] The resolution of the Cabinet of Ministers #1742 on 15 December, 2004 "On Establishment of the State Department of the Adaptation of Legislation";

[154] Chapter VIII of the program adopted by law #1629-IV of 18 March, 2004 "On National Program of Adaptation of the Ukrainian Legislation to EU law";

[155] The resolution of the Cabinet of Ministers #1742 on 15 December, 2004 "On Establishment of the State Department of the Adaptation of Legislation";

[156] For example the department issued annual review of conditions of the adaptation of the legislation of Ukraine to *acquis communautaire.* (in Ukrainian: *огляд стану адаптації законодавства україни до acquis communautaire*), provided comparative analysis of regulations of EU law and Ukrainian legislation in several areas and published (see: правове регулювання сфери транспорту в європейському союзі та в україні, том 1, Київ, 2006; Система конкурентного законодавства Європейського Союзу.Правове регулювання правил конкуренції в Україні. Шляхи адаптації законодавства України. Київ 2006 and etc.);

[157] The resolution of the Cabinet of Ministers #256 on 7 March,, 2006 "On Improvement of the organization of the work on national legislation getting in accordance with EU norms and standards";

The role of Ukrainian parliament – Verkhovna Rada is not so significant to be compared with governmental activities in the field of legal drafting. According to the constitution of Ukraine Verkhovna Rada is exclusively entitled with legislative power[158]. In the context of adaptation process of national legislation to EU law it can be implied from the law "On National Program of Adaptation of the Ukrainian Legislation to EU law" that Verkhovna Rada remains rather passive legislator and controlling body and acting mostly upon the initiative of the government.[159] Even before adoption of this law the engagement of the Verkhovna Rada into process of adaptation of national legislation was more political than oriented of active lawmaking.[160] The first most important signal of the organizational involvement in the process was establishment of the standing Committee on European integration on 7 June, 2002 with the main tasks of lawmaking in EU adaptation area, controlling the process of EU integration and providing inter-parliamentary contacts.[161]

Although Verkhovna Rada is not as actively engaged in drafting of laws as the executive, the adoption of the law "On National Program of Adaptation of the Ukrainian Legislation to EU law" conditioned its position as main regulator of the process and guarantor of the stability of the process. Besides this the law "On National Program of Adaptation of the Ukrainian Legislation to EU law" entrusts important role to the parliament to ensure scrutiny over all bills initiated regarding the compatibility with EU *acquis communautaire* as maintenance of the achieved results is considered as important dimension.[162] Although the regulations of the Verkhovna Rada does not explicitly

[158] Article 75 of the constitution of Ukraine;
[159] Chapter IX of the program adopted by law #1629-IV of 18 March, 2004 "On National Program of Adaptation of the Ukrainian Legislation to EU law";
[160] The Dimension of the Parliament in the European Integration, Nora-print, Kiev 2005, p-57; (joint publication of the committee on European Integration of Verkhovna Rada and the Institute of Social-Economic Strategy, In Ukrainian)
[161] Ibid, p-57;
[162] Chapter VIII of the program adopted by law #1629-IV of 18 March, 2004 "On National Program of Adaptation of the Ukrainian Legislation to EU law";

contains requirement about compatibility clause in explanatory memorandum attached to the bills[163] the committee on European Integration is single unit within the parliament responsible to make assessment of essence of every bill with regard to EU law compatibility in conditions of strong scrutiny[164].

According to the provisions of the law "On National Program of Adaptation of the Ukrainian Legislation to EU law" there is no judicial dimension of adaptation or harmonization and only political branches of Ukrainian governments are as responsible as empowered to enforce adaptation.[165] So as there is no international and national legal bases to do these task Ukrainian courts are not directly involved in the process of adaptation of legislation.[166]

2.2. Comparative Analysis between Georgian and Ukrainian Processes

After having general understandings about Georgian and Ukrainian developments this subchapter seeks to provide some comparison between certain attitudes and institutions elaborated within the process of legal approximation. The comparison covers as legal sources regulating the process as the institutional organization of it. Because of minimal role of judiciary in the process of approximation in both countries the subchapter provides comparison only political branches of the government while discussing the institutional organization issues. As it can be seen below there are some similarities and some significant differences although both countries are engaged in the similar process.

The line of similarities begins with international legal sources regulation the process. PCA for Georgia and PCA for Ukraine contain similar obligations for both countries and create similar

[163] See articles 91 and 97 of the Regulations of Verkhovna Rada of Ukraine adopted by the law #1861-VI on 10 February, 2010, regulating the issues related with explanatory memorandum and other attached documents to the bill;
[164] Chapter IX of the program adopted by law #1629-IV of 18 March, 2004 "On National Program of Adaptation of the Ukrainian Legislation to EU law".
[165] Ibid;
[166] Bogdan Fostik, deputy of the chairperson of the secretariat of the Committee on European Integration of Verkhovna Rada of Ukraine, Interviewed on 19 March 2013;

grounds for convergence of the legislation to EU law. Although obligations toward Ukraine are greater because of additional requirements of further articles of PCA regarding to approximate systems in different spheres[167] and the language of Action Plans and the Association Agenda are different[168], the very nature of the approximation process and its general framework is similar for both countries. It means independent activities with great discretion of both national governments to ensure their national legislation getting closer to EU law and they are free to choose forms and methods of the process.

Regarding to the national legal instruments regulating the process it can be mentioned that on the first stage of developments in both countries the by-laws of the executive played important regulatory role. However on the second stage, beginning since 2004 in Ukraine the situation is significantly changed. Adoption of the law "On National Program of Adaptation of the Ukrainian Legislation to EU law" gives more stable and organized character to the Ukrainian process and ensures certain continuity and the Georgian attitude to maintain regulation of the process on the level of governmental enactments lacking normative power and easily changeable documents in comparison with adoption legislative act seems obviously disadvantaged. It can be implied that the absence in Georgia of such important legal document with stronger binding force like Ukrainian law "On National Program of Adaptation of the Ukrainian Legislation to EU law" in its way facilitated the problems of political decision-making character causing the reverse of the process of approximation in several spheres of Georgian legislation in 2006-2008. The regulation of the process on the level of the governmental enactments conditions passive engagement of the parliament in this process. Active engagement of the parliament in the process of adaptation of the national legislation to EU law is considered as one of the main determinant factors of the stability and respectively effectiveness of the whole process according to suggestions for Verkhovna Rada

[167] For example see articles 51, 60, 67, 76, 77 of Ukrainian-EU PCA;
[168] See texts of EU-Georgia Action Plan and EU-Ukraine Action Plan and EU-Ukraine Association Agenda;

elaborated by Ukrainian-European Policy and Legal Advice Center (UEPLAC) before upcoming DCFTA and Association Agreement[169].

In the sphere of institutional organization it can be inferred that both countries share Central European experience and follow the model elaborated in these countries which means leading role of the executive in approximation process in context of legal drafting.[170] Especially after 2004 adoption new institutional organization of the process by the law in Ukraine and constitutional reform in Georgia, this analogy with Central European model became stronger. After 2004 both countries established main political-decision making bodies (Coordination Council in Ukraine and EU Integration Commission in Georgia) purely on the bases of the cabinet chaired by the prime-ministers; while in previous stage the presidents of both countries were more less formally involved in the process.

However if there is strong similarity in the organization on the political decision-making level, there is strong contrast between Ukrainian and Georgian models to organize the process on the level of daily routine. On the first stage of developments it can be mentioned that attitude of both countries were similar and both relied upon inter-agency institutions (council at the Ministry of Justice in Ukraine and representatives of the several ministries in Georgia working coordination with the office of the State Minister on European and Euro-Atlantic Integration). On the next stage of developments which began after 2004 Ukraine after failure of this model reformed it[171] and during the active phase of adaptation process established strong and unified governmental unit specially responsible for EU legal approximation issues while Georgia still maintains attitude to diversify this

[169] Всебічна підтримка європейської інтеграції та наближення законодавства України: компендіум вибраних доробків Українсько-європейського дорадчого центру з питань законодавства (UEPLAC) - Етап V, Київ 2012 pp-114-115;

[170] For more information and detailed evaluation of Polish, Hungarian and Czech models in this dimension see: Zubek, Radoslaw *Core Executive and Europeanization In Central Europe*; Palgrave Macmillan, New York, 2008, pp 107-15;2

[171] Zerkal Olena, Kachka Taras, *Methodical Manual for Issues of Adaptation of the Ukrainian Legislation to acquis communautaire*, "Nika-Print" Kiev, 2005. p-28;

function among representatives of several ministries and the office of the State Minister on European and Euro-Atlantic Integration and to recruit temporary inter-governmental working groups for certain tasks and necessities. Georgian attitude seems to be more flexible but if compare results achieved through these different attitudes is become obvious that Georgia falls far behind especially in the dimension of providing analytical and informational work.

As consideration of developments from previous subchapters shows the role of the parliament in the process of approximation can be evaluated in three aspects: regulatory role of the parliament in the process; level of engagement in legal drafting and finally the scrutiny of compatibility of new bills with EU law as significant mechanism for maintenance achieved results. If compare Georgian and Ukrainian experience in these aspects, Georgian parliament theoretically has some points of advantage in the sphere of legal drafting while falls behind Verkhovna Rada in regulatory role because of its law "On National Program of Adaptation of the Ukrainian Legislation to EU law" and looks very weak in the area of scrutiny of the bills as well. As it seems attitudes of legislative bodies respectively to their executives diverge regarding to the organization of the scrutiny function within parliament. Verkhovna Rada follows the experience of its executive and entrusts the scrutiny of compatibility to the one unit with strong emphasis of the importance of this function for the whole process of legal adaptation[172], while Georgian parliament preferences to diversify this function among two independent bodies[173].

[172] Chapter IX of the program adopted by law #1629-IV of 18 March, 2004 "On National Program of Adaptation of the Ukrainian Legislation to EU law";
[173] Articles 146, 147, 148, 151 and 152 of the Regulations of the Parliament of Georgia, legislative act #6533-IS adopted On 22 June February 2012;

Conclusion

Description of Georgian developments of approximation of the national legislation to the EU law provided by the thesis, evaluation of legal mechanisms of approximation and institutional organization of the process within the framework of the comparative analysis with Ukrainian experience in this sphere leads to the following assessment of the situation. The Georgian process of approximation of the national legislation to EU law, despite progress achieved on the current stage is characterized with several problems as in the sphere of legal regulations as institutional organization of the process which would become more challenging and create hindrances for future development of the process of approximation in the context of upcoming DCFTA or Association Agreement.

It can be summarized that the main problem for legal regulatory mechanisms and institutional organization of Georgian process of legal approximation is lack of systemic character. In the sphere of legal regulation of the process on the national level it is expressed in the existence of different legal acts (bylaws or sometimes individual acts) of different governmental branches: the parliament, the president and the government. While all these acts either have very general character and regulate the issue in the framework of declaratory principles or on the other hand are oriented to stipulate certain plans for short-term actions. *Prima facie* it creates image that such situation is flexible for the national government as it leaves greater room for activity and decision-making. However the absence of the formed, unified and high level legislative act in the national legal system, which could systemically regulate the national agenda, procedural mechanisms and institutional organization of the legal approximation process, significantly affects of the quality of the process of the legal approximation and provokes the problems kind of reverse of already approximated acts, slowing down of the process and subsequently threatens stability of the process in general. The absence of such legislative act is also one of the causes of such unique situation that

the unified definition of *acquis communautaire* still does not exist in the Georgian legislation that accordingly casts certain shadow of the thresholds of the approximation.

Regarding the institutional organization of the process it can be emphasized that although Georgia theoretically follows the experience of Eastern European countries and uses the so called core executive model the process of the legal approximation still faces several systemic problems in this field. The main institutional mechanism for providing legal approximation is created by the Georgia's EU Integration Commission composed by the members of government and temporary working groups of governmental experts for providing routine work for drafting legal acts for legal approximation and small staff of the office of the state minister on European and Euro Atlantic Integration. Although on the political decision making level the work is done, neither governmental experts of the working groups who simultaneously hold offices and work for the concrete ministries and governmental agencies, nor members of the small staff of the office of the state minister who simultaneously are in charge of several political issues are able to secure sufficiently the systemic character and continuity of the work done in this field. The existence of strong, well-organized permanent structure purely in task to run daily routine of the process of the legal approximation is necessary not only for providing active law drafting activity but simultaneously to work in direction to secure maintenance of achieved results, to ensure analytical work and make available of the information about EU law for other governmental bodies.

Another and more complex problem of the institutional organization of the Georgian process of the legal approximation is diminished role of the parliament in the process. Apart from weak position of the parliament to be main regulator of the process, the diversification of the scrutiny function between several units within the parliament reduces its capabilities in this field, which is significant dimension after active phase of lawmaking. Rather stronger involvement of the parliament in

regulatory activity and scrutiny field is necessary to increase effectiveness, continuity and irreversibility of the process and

Besides there are a lot of technical problems, Georgian process suffers also from such shortcomings of the secondary character which are connected with lack of availability of acts of EU law in Georgian and analytical materials, absence of unified terminology, significant shortage of the analytical materials reviewing the developments regarding the legal approximation process in the Georgian legislation and lack of EU law legal sources and relevant analytical sources translated into Georgian. These technical challenges were responded by establishing strong and well-organized unit in the Ministry of Justice in Ukraine and sharing certain aspects of this experience taking into account Georgian realities and availability of recourses would be useful to facilitate if not whole eradication but diminishing these problems.

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Interviewed Persons:

Archil Karaulashvili, Head of European Integration Coordination Department at the Office of the State Minister of Georgia on European and Euro-Atlantic Integration, member of the office since 2004, interviewed on 12 March 2013;

Kakha Gogolashvili, In 1999-2000 a secretary of EU-Georgia cooperation council, member of Georgian mission in EU (1996-2000) and in 2005-2010 Georgian Director of GEPLAC, Currently Director of EU Studies at Georgian Foundation For Strategic And International Studies, interviewed on 13 March 2013;

Nino Chokheli, Legal expert of GEPLAC in 1999-2010, interviewed on 15 March 2013;

Batar Chankseliani, Head of Division on Representation to the Courts of the Legal Department of Staff Parliament of Georgia; representative of the Georgian Parliament to the Constitutional Court in 2004-2019; interviewed on 7 March, 2013;

Lida Oniani, Advicer of the Department for Foreign Affairs of the Chancellery of the Government of Georgia in 2006-2012, member of the inter-agency working group for DCFTA negotiations innerved on 13 March, 2013;

Bogdan Fostik, Deputy of the chairperson of the secretariat of the Committee on European Integration of Verkhovna Rada of Ukraine, Interviewed on 19 March 2013.

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