

The approximation of the Ukrainian social legislation to the EU acquis in times of war: the key challenges for reforms

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Abstract

The achievement of the EU candidate status by Ukraine during the war gave it a new impetus for providing further approximation of the national legislation to the EU acquis, including in the social sphere. Consequently, this research focuses on the analysis of alignment of the Ukrainian social legislation with the EU law in the pre-war period and scrutinises the European Commission's low mark of the progress made in this sphere after the beginning of the war. Considering the new challenges that arose due to the war, which highlighted the extreme importance of social protection, the authors outlined the key current problems in the social sphere in Ukraine and the main obstacles in providing social reforms in accordance with European social standards in the martial period of time. According to the results, the authors put forward their vision of whether social reforms are needed in Ukraine in times of war or not.

Keywords: acquis, EU integration, social legislation, EU social standards, full-scale Russian aggression

Introduction

Four days after the beginning of the full-scale Russian aggression, Ukraine officially launched its application for EU membership which marked a new stage in the development of the EU-Ukraine relations. The achievement of the candidate status for EU membership in 2022 and the opening of accession negotiations reaffirmed the EU support for Ukraine's European future. At the same time, it was a signal of the rapid commencement of the process of scrutinisation of the level of approximation of the Ukrainian legislation to the EU acquis in all spheres, including the social one.

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According to the Analytical Report following the European Commission Opinion on Ukraine's application for EU membership, published in 2023, the field of social policy and employment was recognized as one of the few spheres with the lowest level of approximation to the EU *acquis*, namely "an early stage of preparation" despite the broad range of obligations in this sphere under the EU-Ukraine Association Agreement (European Commission, 2023). Considering a special chapter in the Association Agreement on social policy, such an assessment should raise questions about further state and society actions and launch relevant scientific searches and discussions.

The various questions on the effectiveness of the Ukrainian social policy functioning and of the compliance of the Ukrainian legislation with European standards have also arisen in the documents of the Council of Europe institutions. The European Court of Human Rights adopted a range of judgements against Ukraine regarding the non-enforcement of national judicial decisions in the social sphere and the European Committee of Social Rights repetitively stated in its conclusions that the national situation is not in accordance with the European Social Charter standards (Smusz-Kulesza & Fedorova, 2021).

The negative assessments of the state of the social protection and security system of Ukraine by the EU and the Council of Europe, on the one hand, and the Government's declaration of the need to implement radical reforms in the social sphere in conjunction with the development of a new social model, on the other, indicate Ukraine's understanding of the catastrophic social situation that is worsening with every day of the war. Moreover, the number of Ukrainians who need social support is also increasing every day and Ukraine is financially unable to even fulfil its current social obligations, given the fact that, according to the 2024 state budget, all social expenditures are covered exclusively by international aid.

At the same time, despite some publications provided by Ukrainian scholars, e.g., Bolotina, Holovko-Havrysheva, Holovashchenko, Maliuha, Petrov, Shumylo, Verlanov, Yakoviyk, etc., on European social standards and the EU social *acquis* implementation in Ukraine this issue has remained underestimated, especially in the context of the new challenges raised by the war and the necessity to continue the process of approximation to the EU law. In this context, this research aims to fill this gap, with an attempt to identify current key problems in the process of approximation of the Ukrainian social legislation to the EU *acquis*, after receiving the EU candidate status and by taking into account the proclamation of the development of a new model of Ukraine's social policy in accordance with the principles and standards of the EU social policy as one of Ukraine's goals in the Recovery Plan for Ukraine (Chapter "Social protection") (National Council for the Recovery of Ukraine from the Consequences of the War, 2022). Consequently, the key questions of the presented research are: what was the situation of approximation of social legislation in Ukraine to the EU *acquis* before the war and what are the main obstacles to providing social reforms in the martial period of time?

Paying more attention to the social topic should improve the current situation in the mentioned sphere through outlining the key benchmarks in the process of bringing the Ukrainian social legislation in line with EU standards. As a starting point, the empirical approach to search for the relevant information and data, identify the level of approximation of the Ukrainian social legislation to the EU law has been utilized. Applying the methods of legal analysis and comparison among other methods helps to outline some contradictions and nonconformities of the Ukrainian social legislation with the EU law as well as the main challenges in this sphere. The methods also include desk research by examining EU and Ukraine legislative documents, relevant literature, analytical materials.

Therefore, the purpose of this article is to discuss the key problems of the Ukrainian social protection system, including the challenges in pre-war time and those occurred due to the war, to outline the necessity and perspectives of its reforming in accordance with the EU acquis in the social sphere and European social standards. Taking into consideration the lack of a unified approach to definitions, interpretations of social security and social protection, there is a diversity of opinions among academics, international organisations, including their understanding as synonymous by the International Labour Organization as emphasised by Hagemeyer (2015). Within the indicated aim of this article, the authors agreed with the approach proposed by Hagemeyer and paid attention to social security and protection in the light of the necessity of changes of the social legislation of Ukraine in accordance with the EU social acquis.

The article has two main parts. The first part examines the process of adaptation of the Ukrainian legislation to the EU social standards and the results achieved before the war. The second part is devoted to the analysis of challenges, legislative changes and new approaches appeared after February 2022. It should also be stressed that, in times of war, social issues become more urgent for millions of people whose life depends on social support, which further emphasised the importance of scrutinisation of the key challenges in the process of adaptation of the Ukrainian social legislation to the EU law and of launching relevant reforms.

1. State of play in the sphere of approximation of the Ukrainian social legislation to the EU acquis before the large-scale Russian invasion in Ukraine

1.1. Since the time of proclaiming the independence: initial stage of European social standards implementation

After gaining independence in the early 1990s after the collapse of the Soviet Union, Ukraine actively began its path to the European political and legal space, proclaiming its aspirations to participate in the process of European integration and acknowledging EU integration as one of the key priority areas of the Ukrainian foreign policy (Fedorova, 2013). In 1994, the first document that regulated the EU-Ukraine

relations, namely the Partnership and Cooperation Agreement between EU and Ukraine (1994), was adopted. At that time, this extremely important document for Ukraine set the basis for cooperation with the EU in many areas and became a starting framework for Ukrainian integration in the EU for more than a decade. Despite the absence of any social issues in the priority areas for harmonization, promotion of social reforms, coordination of activities and cooperation in social issues, planning and implementation of reforms aimed at developing social protection were included in the economic cooperation part of the Agreement. Its 10 years period, which started in 1998, and the further development of the EU-Ukraine relations fostered the elaboration and adoption of a new basic document - the Association Agreement between the European Union and its Member States, on the one hand, and Ukraine, on the other (hereinafter - Association Agreement, Agreement).

Cooperation in the social sphere was significantly expanded in 2009 by the adoption of the Agenda of the EU-Ukraine Association for preparation and facilitation of the Association Agreement implementation. In the mentioned document, social policy was given greater importance. In particular, it was determined that the parties cooperated with the aim of preparing Ukraine for the implementation of the EU *acquis* in the areas of gender equality, non-discrimination, occupational health and safety, labour legislation and working conditions. Primarily, the conclusion agreements between Ukraine and EU member states on coordination of social protection of workers, reduction of the number of poor and vulnerable people, etc. could be facilitated. At the same time, according to the Association Agreement, the question of the need for reforms in the social sphere in order to bring national legislation into compliance with EU standards did not arise.

At the beginning of the new century, the EU social policy has been further strengthened, e.g., a range of new or recast directives has been adopted, such as anti-discrimination directives, and new Regulations on the coordination of social security systems adopted in 2000 and 2004, respectively. Important changes occurred in Ukraine, including the introduction of the pension reform and the adoption of the totally new legislation on the pension state obligatory insurance and non-state pension insurance. Later on, in 2006, Ukraine ratified the European Social Charter revised, recognising, in the explanatory note to the Law of Ukraine on ratification of this treaty, that “the main task of this ratification is the development of the national social legislation in accordance with European norms and standards” (Explanatory note, 2006). Moreover, among the anticipated results of the ratification, the increase in the social protection level, adapting national legislation to European social standards and even strengthening the role of Ukraine in international relations in accordance with European integration, were indicated (Explanatory note, 2006).

All the aforementioned events were supposed to lead to the effective reform of the social legislation of Ukraine. Ukraine should have also been stimulated to introduce qualitative changes in this area by the judgements of the European Court of Human Rights (ECHR) regarding Ukraine’s non-execution of national court

decisions related to non-payment of different social benefits, pensions to various categories of persons who were entitled to it in accordance with the current legislation, in particular, since the adoption of the pilot judgement in case “Yuriy Nikolayevich Ivanov v. Ukraine” in 2009 (ECHR, 2009).

In general, at the beginning of 2000s, an active Euro integration policy of Ukraine, acceptance of international obligations in the social sphere in accordance with the European Social Charter and the domestic situation encouraged the continuation of the implementation of reforms for proper adaptation to European social standards.

1.2. Social obligations of Ukraine according to the EU-Ukraine Association Agreement

The evolution of the EU social and labour law, the special recognition of the social policy of the EU as an objective in the Treaty of Lisbon, the consolidation of a wide range of social rights in the EU Charter of Fundamental Rights indicated a significant further development of the EU social policy. Consequently, it led to the inclusion of social obligations into the EU-Ukraine Association Agreement. The Association Agreement, signed in 2014, is the biggest international treaty that Ukraine has ever signed, a complicated document aimed to “deepen the political and economic relations between Ukraine and the EU through the establishment of an enhanced institutional framework and innovative provisions on regulatory and legislative approximation” (Petrov et al., 2015, p. 2). Roman Petrov and Oksana Holovko-Havrysheva also stressed that “with its entry into force, the EU-Ukraine Association Agreement became a lynchpin of economic and legal reforms in Ukraine” (Petrov & Holovko-Havrysheva, 2021, p.2). The social obligations have been enshrined in Chapter 21 “Cooperation on employment, social policy and equal opportunities” in Title V “Economic and sector cooperation” of the Agreement.

Chapter 21 proclaimed the necessity of strengthening the dialogue and cooperation between the parties in various areas, including social protection, social inclusion, that should be aimed to increase the level of social guarantees, modernise the social protection system, promote the development of corporate social responsibility etc. In this context, it should be emphasized that, despite the non-recognition of the social sphere as one of the priorities in the Association Agreement, the above-mentioned Chapter 21 defined the specific obligations of Ukraine to bring national social legislation in compliance with the legislation of the European Union. Meanwhile, the obligation of approximation in the sphere of social policy, enshrined in article 424 of the Agreement, has “a soft formulation”: “Ukraine shall ensure gradual approximation to EU law, standards and practices in the area of employment, social policy and equal opportunities, as set out in Annex XL to this Agreement” (Association Agreement, 2014, p. 157). It means that the precise obligations which include all major EU social, employment policy and non-discrimination achievements

have been disclosed in the mentioned Annex. Annex XL encompassed more than 40 directives in the sphere of labour and social law and equal opportunities adopted in the EU in times of Association Agreement preparation. At the beginning of the Annex, the provision of Article 424 on the obligation of Ukraine to “gradually approximate its legislation” was repeated for the provided list of the directives with the indication of a special period of time for approximation of each of them to the Ukrainian legislation (Association Agreement, 2014). For a significant number of directives, 3-4 years from the date of entry into force of the Association Agreement have been given. In particular, this timeframe has been prescribed for the implementation of Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security, Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding, Directive 96/34/EU on the framework agreement on parental leave etc (Association Agreement, 2014). Directives on occupational health and safety issues, typically, should have been implemented within a period of 7-10 years.

The majority of the listed obligations in the indicated Annex have not been completely new and unknown for Ukraine from a theoretical point of view, taking into account numerous governmental programmes and acts, as well as the whole work on the approximation of the Ukrainian legislation to the EU standards, which have been going on for a long time before the Association Agreement adoption, including the years of its elaboration. For instance, in 2012, the Progressive plan of adaptation of the Ukrainian legislation to the EU legislation, which mentioned a significant number of directives defined afterwards in the Association Agreement, has been adopted in Ukraine (Fedorova, 2013).

To observe the process of implementation of the Agreement, a special monitoring mechanism was established, within whose framework Ukraine prepared annual reports on achievements, measures taken, legislative changes introduced and other activities undertaken for the fulfilment of the commitments under the Agreement. The Ukrainian Government also prepared and adopted a range of different documents for the organisation of the process of approximation of the Ukrainian legislation to EU standards and for the implementation of the Agreement, in general, the main one being the national Action Plan. Besides the annual report, all statistical data, general number of commitments, analytical information on the implementation of the Agreement, such as assessment of progress, civil control and other information that were updated regularly, have been displayed on the special information portal “Pulse of the Agreement”, which is open for public. According to the spheres, all commitments were divided into 24 groups, one of which was devoted to social policy and employment relations, which dealt with the tasks of Ukraine in the fields of labour relations, social protection, occupational health and safety, as well as combating discrimination and ensuring gender equality (Fedorova, 2023). Despite the launch of the informational portal in 2017, the collected information had

showed progress since 2015. According to this official data, Ukraine fulfilled 100% of its tasks in the social and employment sphere in 2015, 2016, 2019, 2022 and 87%, 70% and 88% in 2017, 2018, 2021, respectively (Pulse of the Agreement, 2024). At the beginning of February 2024, the system showed 62% progress for 2024. Therefore, according to the provided statistical information, the process of approximation of the Ukrainian legislation to the EU acquis in the sphere of social policy has been properly advancing with the total result of 79% that should indicate significant changes in the Ukrainian social and labour legislation.

However, such positive indicators of achievements are disputable, considering the opportunity to be marked as done for the task that was partially included to the draft law, registered in the Ukrainian Parliament. All provisions that were included in the draft of the Labour Code of Ukraine obtained positive results despite the fact that the new Labour Code of Ukraine has not been adopted as of the beginning of February 2024. The last updated draft of this Code, which was presented in 2023, raised debates and an ambiguous assessment regarding the implementation of EU standards (Dudin, 2024).

Thus, the failure to enact the relevant legislative act by the Parliament could delay the fulfilment of obligations under the Agreement and does not provide an opportunity to assess the real situation on bringing the Ukrainian legislation into compliance with EU legislation, including in the social and labour spheres. Understanding this situation is important in the light of the analysis of the assessment provided by the European Commission as early as 2023, which will be considered further.

Another problem of the approximation of the Ukrainian social legislation to the EU acquis has been closely linked to the dynamic nature of the Association Agreement and the lack of amendments to its annexes despite the permanent evolution of the EU legislation and case-law of the Court of Justice of the EU which provides interpretation of EU acts. Only several annexes have been updated, but not annex XL to the Chapter “Cooperation on employment, social policy and equal opportunities” (European Commission, 2022).

The well-known example of the outdated obligation under the Association Agreement is the necessity of implementation of the Directive 96/34/EC on the framework agreement on parental leave. Even during the elaboration of the Agreement’s text and annexes, the new Directive on parental leave was adopted in 2010. This new Directive implemented the revised Framework Agreement on parental leave and repealed and replaced the previous one, but it was mentioned neither in the Association Agreement, nor in Ukrainian legal acts, nor in the Action Plans on the process of adaptation of national legislation to the EU acquis. In 2019, Directive 2010 was repealed again by the newest Directive on the work-life balance for parents and carers (2019/1158) with the transposition period for EU States until August 2022. The 2019 Directive introduced many changes in the former regulation and provided new rights. Nonetheless, under Annex XL, Ukraine was still bound by

obligations of implementation of the old Directive 96/34/EC and no changes were adopted. In the Ukrainian reports on the progress of Agreement implementation, Directive 2010 was mentioned as effectively implemented. For example, in 2017, the Ukrainian Government reported that the several requirements of Directive 96/34/EC, such as the obligation to eliminate discrimination based on gender in relation to parental leave for child care and to impose sanctions for violation of the legislation on parental leave were fully implemented. At the same time, other provisions of the Directive or other tasks for the further approximation of the Ukrainian legislation to Directive 96/34/EC or to the new ones have never been indicated since 2015 in the monitoring portal “Pulse of the Agreement”.

However, according to the first Directive, the right to parental leave should, in principle, be granted on a non-transferable basis. Subsequent Directives 2010 and 2019 developed the obligation to provide each parent with a non-transferable part of parental leave. The provision on the obligation to provide both parents with a non-transferable part of parental leave has never been discussed by Ukrainian authorities. No indicators as “overdue obligations” or “fulfilment at risk” on this EU standard have been included in the monitoring portal. Also, the conformity of the Ukrainian legislation with the EU standard on adequate compensation for at least 2 non-transferable months at a level that would facilitate the take-up of parental leave by both parents is disputable enough, taking into account the nature and size of childbirth allowance. The provided example shows a selective approach to the implementation of the provisions of the EU acts that could lead to the partial implementation of the whole document or even misunderstanding of its goals. Therefore, some case of approximation can be dubious in practice.

In addition, the European Committee of Social Rights stated in its conclusions, adopted in 2019, that the situation in Ukraine has not been in conformity with the European Social Charter’s provisions on parental leave within article 27 devoted to the rights of workers with family responsibilities to equal opportunities and equal treatment, on the ground that the level of the parental leave benefit was inadequate and there was no guarantee of an individual, non-transferable right to parental leave (European Committee of Social Rights, 2019). Considering the interrelations and correlations of the social standards enshrined in the European Social Charter revised and the EU acquis, non-fulfilment of the obligations under this treaty by Ukraine can also demonstrate the problems of the Ukrainian social legislation adaptation process to European standards, in general, and reflect the process of approximation of the EU acquis in the social sphere. Furthermore, out of 54 conclusions submitted by the Committee in 2019-2021 (for 2022 - there were none due to non-submission of the report) there were 10 positive conclusions (when the situation meets the requirements of the Charter), 33 negative (the situation does not meet the requirements of the Charter) and 11 conclusions were deferred (due to lack of information), including only one conclusion of conformity within the thematic group

II “Health, social security and social protection” in 2021 (European Committee of Social Rights, 2022).

Finally, all the aforementioned demonstrate that social policy is one of the important spheres for bringing Ukrainian legislation into alignment with the EU acquis. However, before the beginning of the full-scale Russian aggression, Ukraine had many unresolved issues and debatable progress on the EU social standards implementation as well as non-compliance with the European Social Charter’s provisions and non-fulfilment of judgements of the European Court of Human Rights in relation to social issues. The necessity of reforms has become even more obvious since the appearance of the new challenges caused by the war and the EU member candidate status achieved by Ukraine in 2022.

2. New chance for social reforms in Ukraine since achieving the EU candidate status in 2022

2.1. The EU assessment of the level of adaptation of the Ukrainian legislation in the social sphere to the EU acquis within the EU candidate country status

The beginning of the full-scale Russian aggression against Ukraine in February 2022 changed Ukraine and its people dramatically. But, at the same time, the willingness to become a part of the EU and to fight for European common values in a literal sense has been decisively reflected through the submission of the official application for the EU membership by Ukraine on the 28th of February 2022. It took less than 2 months to receive the Questionnaire from the European Commission, which contained hundreds of questions. Among the questions that Ukraine had to answer, there were dozens devoted to the social sphere, mostly in chapter 19 - “social policy and employment”, where the Commission repeated that the EU acquis in the social field included “minimum standards in areas such as labour law, equal treatment of women and men in employment and social security, as well as health and safety at work, etc.” (Government of Ukraine, 2022). Considering the inclusion of social protection in the EU social policy as a component, chapter 19 of the Questionnaire encompassed a broad range of questions on social protection, e.g., general philosophy, the main principles and mechanisms of the social protection system, main financing sources of the social protection, overview of allowances, protection of persons with disabilities, social inclusion, pensions, including the public-private mix, assessment of the financial sustainability of the system and provided reforms. Social questions, such as questions about the supplementary pension rights of employed and self-employed persons; prohibition of discrimination were also incorporated into the chapter on the free movement of workers. A broad range of questions on the coordination of social security systems was also added. For instance, the question about the social security services of Ukraine’s experience in applying the principle of export of benefits in relation with other countries was

included. Comprehensive questions regarding the approximation of the Ukrainian legislation with the EU Regulation 883/2004 were also asked. The last-mentioned question includes explanations regarding the distinction in the legislation between social security benefits and social assistance as it was given in the EU Regulation 883/2004 and of the difficulties expected in applying the provisions of the various chapters of the mentioned Regulation, such as sickness and maternity, invalidity, old age and death, unemployment, family benefits etc. Furthermore, the separate part on insurance and occupational pensions was included in the chapter on financial services. One question was about the non-transferable part of parental leave for both parents, which has already been discussed in the previous part of the article. One of the questions was about the protection of night workers, regulated by the EU Directive, which was included in Annex XL to the Association Agreement. The recommendation to provide national legislation with the definition of “night worker” was also repeatedly given by the European Committee of Social Rights. Unfortunately, the definition of “night worker” has not been fixed in the Ukrainian legislation.

It should be stressed that the Questionnaire contained both EU directives included in the Association Agreement and EU acts that were not mentioned in it, involving soft law acts, for example, the Council Recommendation (2019/C 387/01) of the 8th of November 2019 on access to social protection for workers and the self-employed. Overall, the list of questions should be analysed by the academics. Moreover, Ukrainian decision-makers should pay attention to this list when developing further reforms.

Ukraine managed to provide answers to all questions remarkably fast within a month due to the previous annual analysis of the progress in the Association Agreement implementation. Despite the detailed comprehensive replies given by Ukraine, the European Commission stated that “there are some areas in the cluster where the approximation to the *acquis* is still limited, for example in the area of social policy and employment” (European Commission, 2022, p.18). In the Analytical report that completed the Commission’s Opinion on Ukraine’s application for EU membership submitted in 2023, Ukraine obtained the lowest assessment of the process of approximation to the EU *acquis* in the field of social policy and employment, namely, “an early stage of preparation” (European Commission, 2023). It should be stressed that the state answers to the Questionnaire are not the only source for scrutinisation because many EU experts are also engaged in the analysis of the level of *acquis* implementation, including various expert missions, peer reviews, etc. (Turp-Balazs, 2022). Indeed, some answers are disputable and controversial. For instance, the amount of maternity leave payments was indicated as 100 percent of the average salary for the period of maternity leave regardless of the insurance period. At the same time, further in the text, the minimum size of such a benefit was indicated as not less than “the size of benefits, calculated on twice the amount of the minimum wage” (EU-UA, 2022). However, according to

article 9 of the Law of Ukraine “On State Aid to Families with Children”, the maternity leave payment is 100% of the average monthly income that can be not only salary, but also unemployment benefit, financial support or scholarship and, in any case, the amount must be not less than 25% of the subsistence minimum (Verkhovna Rada of Ukraine, 1992). It means that the minimum amount for maternity leave can be even lower than the minimum salary.

The European Commission’s Opinion together with the Analytical report are comprehensive analytical documents of the country’s legal and constitutional framework and of the implementation of a huge array of the EU acquis. Therefore, the detailed questions formulated in the Questionnaire, with indicated EU acts, together with the Opinion and comments given by the Commission in the Analytical Report, actually represent a new road map for determining the further steps of adaptation of the Ukrainian legislation to the EU acquis, including the social sphere. For example, while continuing the pension reform, it will be necessary for Ukraine to pay attention to a set of questions regarding professional pension insurance schemes, which are not currently included in the Ukrainian legislation, as well as the level of the accumulative system of compulsory state pension insurance, whose launch has not been introduced for 20 years since it was enshrined in the national legislation in 2004. In addition, many problems were also indicated in the sphere of human rights protection of people with disabilities. These issues will only become more urgent, considering the necessity to ensure social protection of the thousands of people who were injured, traumatised during the war.

Conclusively, a decade after the beginning of the implementation of the Associate Agreement and national reforms in the social sphere, Ukraine still needs to intensify its efforts in view of further alignment of national social and employment legislation with the EU law.

2.2. The perspectives of the social reform in Ukraine through current challenges

The full-scale Russian invasion in Ukraine raised tremendous challenges not only in the military and defense sphere, but also in the social field. The social system has managed to continue functioning effectively and the Government has been trying to provide additional social support for displaced, war-affected people from the first days of the full-scale war, e.g., special allowance for housing, new lump sum benefits have been introduced. It is obvious, as the academics emphasized, that the Ukrainian authority encountered two key assignments for national social protection and security system: to ensure the maintenance of its proper functioning, which mainly includes the continuation of fulfilment of the social obligations prescribed by the national legislation and, at the same time, to elaborate additional social financial and in-kind support for various groups of war-affected people (Fedorova & Hamul’ák, 2023).

Within the two years that have passed since the beginning of the large-scale war, a range of amendments to the legislation in force and adoption of new laws have

been made for the protection of war-affected civilians and military personnel. In addition to new social benefits, allowances, various national and in cooperation with international partners social programmes, financial stimulations were launched, e.g., to provide people in need with adequate housing. A special digital platform, called 'eSupport', was launched by the Ukrainian government with the purpose of collecting and providing people with information about assistance from 3 main actors: the state, volunteer organisations and international organisations.

Alongside new legal acts for the protection of war-affected people, the maintenance of the pre-war level of social protection has continued. The Ukrainian Government has adopted a set of provisions to guarantee social payments that were awarded before the war, in particular for vulnerable people. For this purpose, the payment of social benefits and validity of medical documents for people with disabilities necessary for granting social benefits and assistance were extended for the whole period of martial law and one month after its termination. A range of other amendments have been made, new legal acts and approaches were elaborated. For instance, the new priority in the sphere of social services has been introduced, e.g., a new algorithm for the procurement of social services with the involvement of non-state providers and an absolutely new approach with a focus on providing people with a rather certain set of social services than financial aids have been created (Krytska & Zholnovych, 2023).

All pension payments, as well as the vast majority of other social benefits, allowances, assistance that had been awarded before the war and which have been awarded during this period in accordance to the current national legislation, are paid in full and mostly on time (Zholnovych, 2024), besides payments for beneficiaries in the temporarily occupied territories and territories of active military actions. Nevertheless, cases of reduction and termination of some social benefits, governmental refusal of providing some social payments have appeared. One of these cases was connected to the essential reduction of the amount of annual one-time payment to war veterans. The reduction was made in accordance with the Governmental Resolution No. 540, adopted on 7 May 2022, despite its stipulation in the Law of Ukraine "On the status of war veterans, guarantees of their social protection". The initial judicial practice on this issue has already been formed by the Supreme Court. In its Resolution, adopted on 1 December 2022, the Court considered that the power to provide fundings and take other measures within its powers related to the introduction of the legal regime of martial law on the territory of Ukraine was given to the Cabinet of Ministers of Ukraine by the Decree of the President of Ukraine No. 64/2022 "On the imposition of martial law in Ukraine", approved by the Parliament. The Supreme Court stated that the claimant's right to the payment of an annual one-time benefit is a subject of the guarantees provided for in the Constitution of Ukraine and, on the other side, this guarantee may be temporarily limited under conditions of martial law or state of emergency. It was also stressed that, based on the limited financial resources of the state and local

budgets, and the state's compulsory social and pension insurance funds, the adoption of a governmental decision on the Temporary Order of application and amount of state social standards and guarantees regarding one-time (non-systematic, additional to pension and other types of social payments) state financial benefits should not be considered as mitigation of the right to social protection (Supreme Court, 2022).

It should be underlined that the restriction of the human and citizens' rights and freedoms in conditions of war or a state of emergency must not be carried out arbitrarily, but in accordance with the procedure provided for by law. In this context, Osadchiy (2023) argued that the mentioned Decree of the President of Ukraine 64/2022, which, in particular, establishes an exhaustive list of constitutional rights and freedoms that are temporarily restricted, did not provide for the limitation of the right to social protection guaranteed by Article 46 of the Constitution of Ukraine (despite such a possibility for almost all scope of social rights). Furthermore, the specific measures, whose introduction is connected with the restriction of this constitutional right, are not provided for by neither this Decree, nor other national legislation.

These views, persuasions of a part of Ukrainian society about impossibility of reductions of social payments, benefits defined in the legislation, as well as the rather contradictory interpretation of Article 22 of the Constitution of Ukraine regarding the prohibition of diminution of content and scope of existing rights and freedoms in new laws –, inhibit the revision of the national social legislation and of the current social model. Drastic changes in the social legislation are also necessary for the execution of the extraordinary judgement of the European Court of Human Rights in the “Burmych and Others v. Ukraine” case, which joined more than 12 000 applicants. This judgement, adopted on 12 October 2017, directly emphasized the necessity to ensure compliance between the provisions of budget legislation and social payment obligations of Ukraine and to change the social legislation in the context of the inability to execute national judicial decisions. It was a crucial point in the European Court case-law on the Ukrainian problem that has already been mentioned in this article. In 2021, the Committee of Ministers' Department for the Execution of Judgments of the European Convention on Human Rights published the Memorandum “on the case of Yuriy Nikolayevich Ivanov against Ukraine and group of cases of Zhovner/ Burmych and Others against Ukraine concerning the non-enforcement or delayed enforcement of domestic judicial decisions in Ukraine” (Council of Europe, 2021). A special part of the Memorandum was devoted to the development of social policies in Ukraine. It was recognized that “the Ukrainian social security system is based on several dozens of framework laws and hundreds of regulatory acts” (art. 83) with the lack of harmonisation with budget expenditures, many of acts are outdated, neither correspond to present-day realities, nor are coherent. The extensiveness, complicatedness of the Ukrainian system of social benefits, aids, subsidies were also underlined, as well as the lack of precise official

data on its numbers (Council of Europe, 2021). Moreover, the lack of fundamental reforms of social security system was also noticed.

These conclusions and provided recommendations in the Memorandum are worth being compared with the conclusions drawn by the European Commission in its Analytical Report following the Commission Opinion on Ukraine's application for EU membership. Likewise the Memorandum, the Analytical report stated that the Ukrainian social protection system remained to be "underdeveloped and faced key challenges, such as the law on social expenditure, targeted and needs-based approach of the Ukrainian social security system, ageing and risks of old-age poverty, especially for women" (European Commission, 2023, p. 38).

Moreover, the Ukrainian social legislation can still be characterised by its paternalistic principles of multiple types of social payments, benefits, and subsidies, lack of justification of the state's financial ability to fulfil relevant social obligations, including international obligations in this sphere and fulfilment of relevant judgments of the European Court of Human Rights. Nowadays, Ukraine continues to create new social benefits without financial resources. On the other side, it should be underlined that, in times of war, social issues become more urgent and relevant for millions of people whose life totally depend on governmental social support. In the Action Plan of the Government of Ukraine for 2023, social policy was identified as one of the main priorities. The Plan's framework emphasized the tasks to "develop a new social contract between the state and the citizen" and "improve the targeting of payments and increase them for those who really need it" (Shmygal, 2023). An implementation of these tasks needs to be continued further. In the context of social reform and reviewing all its elements, some experts asked about the demographic risks and the plausible lack of people who "would want to come or return to Ukraine, stick around, work for 20 years if there was no pension guarantee in the country" (Farbar & Rowley, 2023). However, the stability of the current pension system is vague and illusive, without perspectives to real enhancing, taking into account a huge deficit of the National pension fund (Marchak & Ierusalimov, 2021) and demographic crisis.

In other words, measures of reviewing the whole system of social protection can be considered as inevitable state actions, particularly bearing in mind the size of the budget deficit of Ukraine for 2024, which encompasses the entirety of social payments, pensions, education, public health, etc. and will totally depend on international fundings (Sisak, 2023). Indeed, the financial and economic indicators of Ukraine are aggravated by the war, consequently, the ability to fulfil the social obligations significantly worsens (Fedorova & Hamulák, 2023). In addition to pre-war social guarantees, new social payments for internally displaced persons, war-affected people, social benefits for militaries are increasing due to the everyday growth of the number of their beneficiaries, as well as the general number of social benefits and their amount. Thousands of injured people need treatment and rehabilitation, millions are left without housing. According to United Nations High

Commissioner for Refugees (UNHCR), 14.6 million Ukrainians will need humanitarian assistance in 2024 (UNHCR, 2024). The World Bank predicted a substantially large percentage of poverty growth for Ukraine (World Bank, 2023) and expects to provide help to around 10 million people in greatest need in Ukraine in 2024 within a special social project.

Agreeing with Petrov and Holovko-Havrysheva (2022) that “Ukraine’s ability to meet the accession conditions is being further depleted every day of the devastating aggression” (p. 10), it should also be added that, nowadays, after the beginning of the war, Ukraine has faced the inevitability of social reforms as a result of the aggravation of all problems in the social sphere that have been accumulating for decades. The war that brings death, suffering, injuries, poverty, destruction is itself the main challenge. But, at the same time, it is the chance for fair, transparent social reform, based on social standards with an active EU support and EU membership perspectives. Despite all concerns on possible changes, establishment of new social approaches and models, including the principle of guaranteed basic social assistance is a chance to transform Ukraine into a welfare state in the future, a chance to continue the EU integration process, particularly considering the fact that social issues also hold an important position within Ukraine’s EU candidate status.

In 2022, the new social model concept in Ukraine, accompanied by the detailed idea of elaboration of the Social Code of Ukraine were presented (National Council for the Recovery of Ukraine from the Consequences of the War, 2022). Among the reasons for the reforms and development of the Social Code, the following ones were distinguished: multiplicity of types of social payments, unstructured, chaotic system of social protection; a paternalistic approach formulated during the Soviet era; the inability of the state to fulfil its social obligations and the need to ensure compliance between the provisions of the budget legislation, the financial capacity and the social obligations of the state; the significant reduction of budget expenditures unrelated to the security and defense of the country, with a catastrophic budget deficit and the need to redistribute available funds for social support of vulnerable categories of persons. Providing, in the majority of cases, the individually based social payments with an opportunity to ensure a decent standard of living and help people in difficult life circumstances, vulnerable categories of persons were also indicated as one of the Code’s goals. The new social model should be based on guarantees of universal basic social assistance which will depend on the level of income and will be aimed at supporting the most vulnerable groups of the population (Skavron, 2023). Clear, transparent and objective criteria for obtaining social services, social payments, pensions, benefits etc. will guarantee a fair distribution of available resources, prevent non-discrimination and contribute to the growth of trust in the authorities. Moreover, the inclusion of the EU social *acquis* must be the essential component of such a reform.

Conclusions

Ukraine started its social reforms shortly after gaining independence. Within decades, governmental attempts to increase the level of social support of the population led to the establishment of new types of social benefits, subsidies, assistance, enlargement of their beneficiaries, frequently enough without appropriate substantiation of the state financial capacity. The light modernisation of the social legislation, unfortunately, has reflected neither the needs of society, nor the challenges faced by the state, including the demographic and financial crises.

The significant impetus for changes in the social sphere turned out to be the obligations under the EU-Ukraine Association Agreement, which required the approximation of the national legislation to almost all key EU achievements in this sphere. During almost a decade since the adoption of the Agreement and before the full-scale war's start, many amendments had been made, in particular in the sphere of occupational safety and health, non-discrimination, equal opportunities; reforming of social services' system, social state insurance etc. At the same time, many changes and reforms have only been promised to be adopted, such as the new Labour Code, state compulsory accumulative pension. Some amendments have not had a complex but only partial, fragmentary character, some have not been able to solve the problem they were aimed at.

Despite the official declaration of a high percentage of approximation of the Ukrainian legislation to the EU social acquis by the Ukrainian authorities during the whole period before the full-scale war, the achievement of significant changes of national legislation in line with the EU law is disputable. On the contrary, the rapid increase in the numbers of social cases in national courts, as well as their non-execution due to the lack of financial resources, unprecedented judgements of the European Court of Human Rights related to social issues and negative conclusions of the European Committee of Social Rights reflected the existence of structured problems with social legislation and its effectiveness. Therefore, before the full-scale war started, the Ukrainian system of social protection had not undergone necessary crucial reform.

Within the achievement of the EU member candidate status by Ukraine shortly after the beginning of the Russian full-scale invasion, the first Analytical report of the European Commission, which focused on the alignment of the Ukrainian legislation with the EU acquis, assessed the level of approximation of the Ukrainian social legislation to the EU acquis as the initial one. The lowest mark of the approximation level in the social sphere revealed the problems of implementation of the Association Agreement and reaffirmed the necessity of reforms within the accession process. For better understanding the scope of EU requirements, the relevant parts of the Questionnaire with indicated EU acts, the European Commission Opinion and the Analytical Report should be scrutinised and taken as a guideline for reforms. The decision of the European Council to open the accession negotiation with Ukraine,

adopted on 14 December 2023, fostering approximation of the Ukrainian legislation and practice to the EU acquis, including the social policy sphere.

However, all shortcomings of the Ukrainian system of social protection have been significantly aggravated after the war started. Moreover, in the conditions of a significant shortage of resources, a daily increase in the number of people who need social support and assistance, social services, rehabilitation, housing, Ukraine seems implausible, in short perspectives, to ensure a high level of social protection. At the same time, the inevitability of reforms has become more obvious due to the imminence of redeployment of resources and support for the most vulnerable people. Since the appearance of the new challenges caused by the war, goals, feasibility of all social payments, services, criteria of their awarding, etc., must be reviewed. And the only pathway to solve such challenges is to try not only to apply current norms and distribute international aid, but endeavours to look ahead, change approaches, social models and elaborate the new Labour Code and Social Code in conjunction with the EU acquis.

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