

PRIVATE INTERNATIONAL LAW OF UKRAINE IN MODERN CONDITIONS

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Abstract. The article examines the influence of modern political and legal processes on the Private International Law of Ukraine. The study identifies two important factors influencing Ukraine's Private International Law: the European integration vector of Ukraine's development and the war in Ukraine. Today, these factors have a multifaceted impact on the current state of Private International Law in Ukraine and the prospects for its development. The author characterizes the impact of European integration processes and the recodification of civil legislation of Ukraine on the Private International Law of Ukraine. The effect of the full-scale military invasion of Ukraine and martial law on the Private International Law of Ukraine has been determined. It has been established that under the influence of the war on private international law, there is an increase in the number and types of private legal relations, complicated by the presence of a foreign element and changes in the legislation of Ukraine in the field of legal regulation of cross-border private relations.

Keywords: adaptation, approximation of legislation, autonomous codification, cross-border private relations, Private International Law, private relations, foreign element, EU Private International Law, recodification.

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The author prepared the article independently. The author independently selected the literature, analyzed it and formulated conclusions

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INTRODUCTION

The role and importance of Private International Law in the world is growing every day. Private International Law has undergone profound transformations over recent decades, evolving from a narrow field focused on conflicts of laws into a dynamic and complex discipline that addresses the legal challenges of globalization (Mansfield, 2024). For Ukraine, Private International Law is a promising area of law, which envisages the future, since it plays a key role in the regulation of private relations of a cross-border nature¹.

¹ In this paper, we use the terms “private relations of a cross-border nature” and “cross-border private relations” to refer to private law relations that, at least through one of their elements, are related to one or more legal orders other than the Ukrainian legal order within the meaning of Article 1 of the Law of Ukraine “On Private International Law”.

Private International Law is an often overlooked but increasingly important dimension of contemporary legal study and practice (Stewart, 2009, p. 1121), because political and economic changes significantly impact private relations and lead to a rise in the number of cross-border private relations. The result of the growth of cross-border private relations is an increase in the need for timely changes in legislation to achieve a modern model of legal regulation of such relations. Today, Ukraine has formed a legal framework for the regulation of cross-border private relations. Conflict-of-laws rules on the regulation of private relations with a foreign element are systematised in the Law of Ukraine “On Private International Law” of 2005 (Law of Ukraine № 2709-IV, 2005). This law establishes the procedure for regulating private law relations that, through at least one of their elements, are related to one or more legal orders other than the Ukrainian legal order (Law of Ukraine № 2709-IV, 2005). However, under the influence of various factors, there was an urgent need to revise the rules of this act in view of compliance with EU Private International Law and the modern society development. The first factor that impacts Ukraine’s private international law and has positive consequences is Ukraine’s European integration. In 2014, Ukraine adopted the European vector of development and undertook to harmonize Ukrainian legislation with European standards (European Union, 2014). This circumstance created the need to develop private international law in Ukraine in such a way that the European model of private international law can be achieved. The second factor that affects Private International Law of Ukraine and has negative consequences is the martial law in Ukraine (Decree of the President of Ukraine, 2022)¹. The problems caused by the full-scale military invasion in Ukraine are not local but escalate to the cross-border level in both the public and private spheres. This is reflected in the legal regulation of social relations, including private relations, which are complicated by the foreign element.

Both described factors have a complex impact on the state of Private International Law in Ukraine and the prospects for its development. Of course, these circumstances are not exhaustive. We have indicated only those factors which, in our opinion, are the main ones, since it is impossible to characterize all the problems of Private International Law of Ukraine within one article and to provide proposals for possible improvement of the legal regulation of international private law relations with a foreign element.

This underscores the necessity for a scientific exploration of the contemporary state of Private International Law in Ukraine, emphasising the importance of a comprehensive and rigorous examination of this subject.

This article aims to study the impact of modern political and legal processes on the Private International Law of Ukraine and the prospects for its development.

In order to achieve the aforementioned aim, the author has set out the following objectives:

To describe the impact of European integration processes on the Private International Law of Ukraine.

To mark the impact of the recodification of the civil legislation of Ukraine on the Private International Law of Ukraine.

To describe the impact of the full-scale military invasion of Ukraine and martial law on Private International Law of Ukraine.

¹ In the article, we use the terminology “war in Ukraine”, “armed conflict”, “martial law”, “full-scale military invasion” in one sense, since the Russian-Ukrainian armed conflict has not received the status of war. In connection with the military aggression of the Russian Federation against Ukraine, on the basis of the proposal of the National Security and Defense Council of Ukraine, following paragraph 20 of part one of Article 106 of the Constitution of Ukraine, the Law of Ukraine “On the Legal Regime of Martial Law”, the President of Ukraine announced the introduction of martial law in Ukraine from February 24, 2022, which is extended every 90 days (Decree of the President of Ukraine “On the Introduction of Martial Law in Ukraine”, No. 64/2022 (2022, February 24). Retrieved from: <https://zakon.rada.gov.ua/laws/show/64/2022#Text>. (in Ukrainian)

LITERATURE REVIEW

The theoretical basis of the article is the works of prominent Ukrainian scientists, whose attention was focused on the study of various aspects of Private International Law of Ukraine. The analysis of existing scientific publications gives grounds to assert that scientists have studied certain topical issues of the current state of Private International Law in Ukraine, mainly issues related to the European integration processes of Ukraine and the harmonization of legislation. In particular, R. Shyshka analyzed the impact of globalization on the evolution of Private International Law (Shyshka, 2023), D. Lukianov, T. Hoffman & I. Shumilo explored the prospects of recodification of Private International Law in Ukraine (Lukianov et al., 2021), A. Matvieieva was thinking about current transformation processes in Private International Law (Matvieieva, 2022), A. Dovgert studied the issue of paradigm shift in Private International Law and its codification (Dovgert, 2024), I. Shumilo determined the current challenges of modernity in international private law (Shumilo, 2024). Some issues of transformation of Private International Law were highlighted by I. Dikovska, A. Dovhert, and V. Kalakura in the monograph on topical issues of recodification of civil legislation of Ukraine, under the general editorship of Professor N. Kuznetsova (Kuznetsova, 2021). These scientists reflected the vector of development of Private International Law of Ukraine in the context of European integration processes, but some issues remain debatable and require additional scientific analysis.

Finally, there are currently no scientific publications aimed at studying the impact of the full-scale military invasion of Ukraine and martial law on Private International Law of Ukraine. This issue is extremely relevant since the military conflict has significantly affected various areas of private relations at the national and cross-border levels.

METHODOLOGY

The basis of this research was established using a combination of general scientific and special legal methods of scientific research.

Consideration of certain aspects of the impact of European integration and martial law on the Private International Law of Ukraine and their generalisation was possible using the method of analysis and synthesis. Also, using these methods, we determined the impact of the recodification of the civil legislation of Ukraine on the Private International Law of Ukraine.

The systematic approach was adopted for a comprehensive study of the relationship between political and legal processes and the Private International Law of Ukraine.

The use of special legal methods (legal dogmatics, comparative legal method and the method of legal forecasting) achieved the goals and objectives set in the study.

The legal dogmatics method made it possible to study the current state of legal regulation of social relations, which is complicated by a foreign element under the legislation of Ukraine and the prospects for their changes in the context of European integration processes of Ukraine. Furthermore, with the help of this method, modern theoretical and legal approaches of scientists on the impact of the recodification of the civil legislation of Ukraine on the Private International Law of Ukraine were studied.

In addition, with the help of the legal dogmatics method, it became possible to determine changes in the legislation governing private law relations with a foreign element that occurred after the full-scale invasion, thus showing how the war in Ukraine affected Private International Law of Ukraine.

The comparative legal method made it possible to highlight the impact of the adaptation process of the civil legislation of Ukraine to the EU *acquis*, as well as the impact of recodification of the civil legislation of Ukraine on the Private International Law of Ukraine. Using the comparative legal method, the author identifies current shortcomings in the regulation of private relations complicated

by a foreign element and provides an example of key EU acts in the field of legal regulation of private relations, according to which Ukraine should adapt its legislation.

Legal forecasting was used to assess possible changes in the Private International Law of Ukraine under the influence of European integration and the war in Ukraine.

A comprehensive review of the literature makes it possible to discover the state of research on this issue in the Private International Law of Ukraine. Legislative sources are selected in the official legislative databases of the European Union and Ukraine.

RESULTS AND DISCUSSION

I. The Impact of the European Integration Process on the Private International Law of Ukraine

The European direction of Ukraine's development creates the need to resolve to numerous problematic issues related to integration into the EU. Ukraine received the status of a candidate for EU membership on 23 June 2022 (European Commission, 2022), and this provides for updating Ukrainian legislation and bringing it in line with EU law. As stated in Article 114 of the Association Agreement between the European Union and its Member States, of the one part, and Ukraine, of the other part (hereinafter referred to as the Association Agreement), "The Parties recognize the importance of adapting the current legislation of Ukraine to the legislation of the European Union. Ukraine ensures the gradual compatibility of existing laws and future legislation with the EU acquis. This adaptation will start from the date of signature of this Agreement and will gradually be extended to all elements of the EU acquis referred to in Annex XVII to this Agreement" (European Union, 2014). Said another way, one of the most important tasks of Ukraine in the European integration processes is the obligation to bring its legislation in line with the EU acquis.

The state policy of Ukraine on the adaptation of legislation is formed as an integral part of the legal reform in Ukraine and is aimed at ensuring uniform approaches to the drafting of legislation, mandatory consideration of the requirements of the European Union legislation during the drafting of legislation, training of qualified specialists, creation of appropriate conditions for institutional, scientific, educational, normative, technical, and financial support of the process of adaptation of the legislation of Ukraine (Law of Ukraine № 1629-IV, 2004).

As Professor O.S. Pronevych notes, the adaptation of legislation is conditioned by the desire of European states to consolidate efforts in building a common space of the rule of law, social justice, peace, prosperity, free trade, unhindered movement and communication, security and justice. The objective consequence of the integration processes was the constitution of the EU, which is based on the common interests and values of a unique supranational interstate association, membership in which at the same time, citizens of certain European states consider it as an additional guarantee of strengthening national statehood and the development of civil society (Pronevych, 2016, p. 59).

Ukraine's course for integration with the European Community determines the adaptation of domestic civil law to the European concept of private law (Kharytonov, Kharytonova, 2020, p.1). The key importance in this aspect also concerns the Private International Law of Ukraine, since the subject of its regulation is civil relations in a broad sense, which are complicated by a foreign element.

In reference to private international law relations, clause 2 of Article 24 of the Association Agreement provides that the parties agreed to develop further judicial cooperation between Ukraine and the EU in civil cases based on relevant multilateral legal documents, in particular the conventions of the Hague Conference on International Private Law in the fields of international legal cooperation, judicial process, and child protection (European Union, 2014). We also note that in Chapter 9 of the Association Agreement, considerable attention is paid to the issues of intellectual property rights. In particular, the goals of the parties to the Agreement are a) simplification of the creation and commercial use of innovative products and products of creative activity on the territory of the Parties; and b) achieving an adequate and effective level of protection of intellectual property rights (European

Union, 2014). That is, the European integration vector of Ukraine's development will have a significant impact on the renewal and development of modern private law in Ukraine, including Private international Law. Because in any case, the process of adaptation will also have an impact on the legislation that regulates private law relations, complicated by foreign elements. However, such adaptation changes in most cases will be positive and will contribute to the development of new private legal relations, which were not characteristic of the Ukrainian legal reality. Private International Law of Ukraine is a national branch of law that arose and developed under the public order of Ukraine meaning a set of cultural, economic, political and social values that became the basis of Ukrainian legislation. Under such circumstances, in the author's opinion, in the adaptation processes, Ukraine should try to preserve as much as possible the peculiarity of its legal order, namely cultural, social and other values that have historically developed and are characteristic of our country and have become the basis of legislation.

For example, on the way to the approximation of Ukrainian legislation with the standards of the European Union, new types of private relations, which previously were not in the legal field of Ukraine, are being legalised in Ukraine. As an example, we can point to civil partnerships, which were not provided for by the legislation of Ukraine and did not give rise to legal consequences. Currently, active work is underway to develop legislation in this area. According to the President of Ukraine, "Ukraine continues its movement towards European standards regarding the legalisation of civil partnership. The Ministry of Justice of Ukraine is currently working on a comprehensive legislative introduction of the institution of civil partnership with the definition of the legal principles, procedure and consequences of its state registration, as well as the legal status and personal non-property and property rights and obligations of partners, considering the peculiarities of existing legal institutions" (Barsukova, 2023). On 14.03.2023, a Draft Law "On the Institute of Registered Partnership" was submitted to the Verkhovna Rada of Ukraine (Draft Law of Ukraine № 9103, 2023), which determines: the legal status, rights and obligations of partners; legal regime of property; inheritance; social protection of partners; registration and termination of partnership. This event caused positive and negative responses in society, as relations that did not correspond to the socio-cultural values of Ukraine began to be established at the legislative level. In this regard, it is worth agreeing with the opinion that when the concept of modernisation of civil law, the values of society should be considered, as well as its possible response to codification/recodification (Kharytonov, Kharytonova, 2020, p. 12).

The process of European integration will have a broad impact on the harmonisation of national conflict rules governing private relations with a foreign element with supranational conflict-of-laws rules of the EU Private International Law. Thus, in the process of Ukraine's European integration, Private International Law of Ukraine is in a state of renewal, as private law norms are being revised following European standards. The approximation of Ukrainian legislation with the EU *acquis* is a complex and long-term process since Ukraine has already formed a system of conflict-of-laws rules that regulate relations with a foreign element. The process of adaptation of Private International Law of Ukraine should be based on the fundamentally important provisions of EU acts in the field of legal regulation of private relations and cross-border private relations, taking into account the peculiarities of the national norms of Private International Law of Ukraine. As noted in the scientific literature, PIL rules, which formally remain at the national level, are under *de facto* compulsion to adapt to European circumstances and requirements in all respects and areas: true national conflict-of-laws rules is increasingly disappearing (Rapatz, 2023).

As it stands today, Ukraine is not a party to important acts of the EU in the field of legal regulation of private relations, including cross-border private relations, which creates certain obstacles and inconsistencies in the legal regulation of private relations, which are complicated by the foreign element. Without the status of an EU member state, Ukraine can only accede to the Conventions of the Council of Europe. Ukraine has been a member of the Council of Europe since 1995 (Law of Ukraine No. 398/95-VR, 1995), EU conventions open to third countries and the Hague Conventions

on Private International Law¹. Ukraine will have to accede to many European acts that constitute a system of sources of EU Private International Law, which will facilitate the resolution of cases involving a foreign element. For example, in the area of regulation of marriage and family relations, this is Council Regulation (EU) 2019/1111 of 25 June 2019 on jurisdiction, recognition and enforcement of judgments in matrimonial matters and in matters of parental responsibility, as well as on international child abduction (Council of the European Union, 2019), Council Regulation (EC) No 4/2009 of 18 December 2008 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations (Council of the European Union, 2009). In the field of inheritance relations: Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession (European Parliament and Council of the European Union, 2012). In the field of regulation of contractual and non-trust relations, this is Regulation (EC) No 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) (European Parliament and Council, 2008), Regulation (EC) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II) (European Parliament and Council, 2007), Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (European Parliament and Council, 2012). Scientists have repeatedly drawn attention to the need to coordinate conflict regulation with EU acts. Professor Dovgert pointed out that the conflict-of-laws regulation of contractual relations in Ukraine is based on the provisions of European conflict-of-laws of thirty years ago. At the same time, it has undergone fundamental changes, in particular, in 2009, for most EU countries, the “Rome Convention on the Law applicable to Contractual Obligations” (1980) was replaced by Regulation (EC) No. 593/2008 “On the Law, applicable to contractual obligations” (Rome I Regulation, therefore, the question arises of bringing the provisions of the conflict-of-laws of Ukraine in line with the updated Private International Law of the EU (Dovgert, Kisil 2013, p. 133). I. Myronenko noticed that today the issue of improving the conflict-of-laws regulation of international commercial contracts in Ukraine in accordance with the provisions of the “Principles of Choice of Law in International Commercial Contracts” (2015) and EU Regulation No. 593/2008 “On the Law Applicable to Contractual Obligations “Rome 1” (Myronenko, 2024, p.150).

The EU acts cited as an example are not exhaustive and are of key importance for the regulation of private relations in the EU countries, so it is impossible to bring Ukrainian legislation closer to the EU *acquis* without considering the guidelines reflected in these acts.

II. The Impact of Recodification of Civil Legislation on Private International Law of Ukraine

One of the most important events in the European integration processes of Ukraine was the launch of the process of recodification of the civil legislation of Ukraine. Considering the need for further private law and private legislation reforms in connection with the European integration processes of Ukraine, the Government of Ukraine adopted the relevant acts on updating (recodification) the civil legislation of Ukraine and established the relevant Working Group (Cabinet of Ministers of Ukraine, 2019). In 2019-2020, the Working Group on Updating (Recodification) of Civil Legislation developed the Concepts for Updating the Civil Code of Ukraine (The concept of updating the Civil Code of Ukraine, 2020, p.5).

N. Kuznetsova and R. Stefanchuk noted that Ukraine’s integration into the European space, intensive globalisation processes, the development of numerous harmonisation recommendations in Europe and in general in the world poses new challenges to the Ukrainian state in the field of

¹ Ukraine has been a member of the organisation since 2003 and a state party to 13 conventions in the field of Private International Law

rulemaking and encourage the consideration of European trends in the process of improving private law legislation (Kuznetsova, 2021, p. 7). One of these challenges was the recodification (updating) of the civil legislation of Ukraine, which did not bypass the Private International Law of Ukraine. Under the influence of the recodification (updating) of civil legislation, there is a change in the conceptual provisions of Private International Law in Ukraine.

The developers of the Concept of updating the Civil Code of Ukraine note that the national “conflict-of-laws” theory and rule-making practice are not yet fully consistent with the doctrinal and legislative achievements of Private International Law of European countries. Recodification of Private International Law in Ukraine should consist in the legislative expansion and deepening of the basic ideas of international and foreign national modern codifications of Private International Law, the elements of which were once laid in the foundation of the Law of Ukraine “On Private International Law”, namely: (1) strengthening the private law principles of conflict-of-laws (in particular, expanding its discretion, increasing the regulatory capabilities of conflict-of-laws rules); (2) giving conflict-of-laws rules greater flexibility while maintaining their certainty, including by means of the principle of binding the closest link and the protective (corrective) clause based on the closest link; (3) the “materialisation” of choice of law; (4) clarification of the unilateral approach to resolving the conflict-of-laws issue; (5) a separate area of updating the Ukrainian codification of Private International Law should be the reformatting of the text of the Law of Ukraine “On Private International Law” into the final book of the modified Civil Code of Ukraine (The concept of updating the Civil Code of Ukraine, 2020, p.60).

The recodification of the civil legislation of Ukraine has a direct impact on the Private International Law of Ukraine, in particular, it concerns the change of the place of Private International Law in the system of law of Ukraine and the codification of the rules of Private International Law of Ukraine. The developers of the Concept of Recodification of Civil Legislation propose to significantly update the Civil Code of Ukraine, including the Books “Family Law” and “Private International Law” in its structure, as it was previously planned by the draft law of the Civil Code of Ukraine. In 2003, the Civil Code of Ukraine was adopted, but it did not include the Books “Family Law” and “Private International Law”. In 2002, the Family Code of Ukraine was adopted to regulate family relations (Law of Ukraine No. 2947-III, 2002), and the Law of Ukraine “On Private International Law” was adopted in 2005 to regulate private law relations, which were complicated by the foreign element (Law of Ukraine No. 2709-IV).

Today, the key idea of the representatives of the Concept of Updating the Civil Code of Ukraine is to expand the provisions of the Civil Code of Ukraine by including new books, one of which is planned to be a book on conflict regulation of private relations complicated by the foreign element. That is to say, fundamental changes will take place in the Private International Law of Ukraine.

According to A. Dovgert, “By expanding the scope of recodification, in particular through the inclusion of new books on Family Law and Private International Law, the process of updating the Civil Code of Ukraine should take place” (Dovgert, 2021, p. 45). V. Kalakura noted that “the concept of recodification (updating) of civil legislation is based on the idea of the Civil Code as a private code, i.e. the renewal of civil legislation should take place in systematic unity with the improvement of the norms of Private International Law and the norms governing family relations, as well as contain separate books “Family Law” and “Private International Law” (Kalakura, 2021, p. 99). Thus, the scientific position of the authors of the Concept of Updating the Civil Legislation of Ukraine is to transfer the conflict-of-laws rules from the Law of Ukraine “On Private International Law” (Law of Ukraine No. 2709-IV, 2005) to the future updated Civil Code of Ukraine and the subsequent abolition of the autonomous codified act of the Law of Ukraine “On Private International Law” (Law of Ukraine No. 2709-IV, 2005).

Discussions on this issue have arisen in the scientific community. There are ongoing discussions among scholars about such significant changes in the system of Private International Law of Ukraine.

For example, according to E. Gramatskiy's opinion, it is promising to include legal norms governing private law relations, complicated by a foreign element, in the structure of the Civil Code of Ukraine. This method of legislative technique seems to be optimal and effective, because thanks to it, the effect of the first book "General Provisions" of the Civil Code of Ukraine applies to the entire sphere of Private International Law. It also provides an opportunity to resolve the issue of the principles of Private International Law (Gramatskiy, 2021, p.178).

Other scholars believe that the analysis of current scientific studies and legislation of individual European countries and the EU demonstrates that the idea of abandoning the autonomous codification of PIL proposed by the authors of the Concept is insufficiently justified and requires further investigation (Lukianov, Hoffman & Shumilo, 2021, p. 208).

Therefore, a logical question that has to be answered is whether the abolition of the Law of Ukraine's "On Private International Law" will have positive consequences in terms of recodification of civil legislation and approximation of Ukrainian legislation with the EU *acquis*?

Today, there is a separate act in Ukraine that contains conflict-of-laws rules on the regulation of cross-border private relations, which is called the Law of Ukraine "On Private International Law" of 2005 (Law of Ukraine No. 2709-IV, 2005). In many regards, the Ukrainian codification of Private International Law has become one of the largest in the world. The Ukrainian codification experience aroused the worldwide interest of scientists and legislators. A lot of scientific papers have been published abroad, in which the achievements of Ukrainian scientists have been analysed. The increased international attention to the Ukrainian document is largely because the Law on Private International Law was constructed based on modern approaches to the European legal doctrine, codifications of the Private International Law of Western countries (Austria, Italy, Canada (Quebec), Germany, Switzerland, etc.), international treaties that unify conflict-of-laws rules. Among the latter, it is worth mentioning the Convention on the Law applicable to contractual obligations (Rome Convention), the Hague Convention on the Law Applicable to Contracts for the International Sale of Goods (Hague Convention 1986), etc. (The concept of updating the Civil Code of Ukraine, 2020, p.83).

The Law of Ukraine "On Private International Law" is quite well structured and does not cause problems in law enforcement. Of course, with the development of social relations and changes in political processes, this law needs to be finalised by revising conflict-of-laws rules and including new ones. This need is caused by the challenges of our age. It is assumed that currently, in the process of updating civil legislation, the transfer of the provisions of the Law of Ukraine "On Private International Law" into a separate book of the updated Civil Code will not have a qualitative result and impact on improving the legal regulation of private relations complicated by the foreign element (cross-border private relations). This will have a purely technical result. The most important issue is to bring the conflict-of-laws rules of the Law of Ukraine "On Private International Law" to the European PIL model. At present, the most pressing issue is the harmonisation of the provisions of the Law of Ukraine "On Private International Law" with the acts of the Hague Conference on Private International Law and other EU acts regulating cross-border private law relations. Since when considering disputes involving a Ukrainian foreign element (subject, object or legal fact), foreign courts, firstly refer to the conflict-of-laws rules of law, which similarly form the system of Private International Law of Ukraine.

It seems that when including the provisions of the Law of Ukraine "On Private International Law" (Law of Ukraine No. 2709-IV, 2005) in the Civil Code of Ukraine (Law of Ukraine No. 435-IV, 2003), it is also worth paying attention to the following two features.

Firstly, the focus of the Law of Ukraine "On Private International Law" (Law of Ukraine No. 2709-IV, 2005) is aimed at regulating private relations with a foreign element in a wide sense. In this aspect, it is worth agreeing with the opinion of I. Zub that the full incorporation of the "modernised" provisions of the Law of Ukraine "On Private International Law" into the updated Civil Code of Ukraine, which is proposed in the Concept, requires clarification of the scope of relations regulated in it since some

of the provisions of the current version of the Law of Ukraine “On Private International Law” are aimed at regulating relations other than civil ones (Zub, 2021, p.28). For example, this applies to the following issues:

Law of Ukraine “On Private International Law” (Law of Ukraine No. 2709-IV, 2005) contains Section VIII entitled “Conflict-of-law rules on labour relations”. The question arises whether it is permissible to include conflict-of-laws rules on labour relations complicated by the foreign element in the Civil Code of Ukraine? Or, perhaps, the conflict-of-laws rules regarding labour relations with a foreign element will be incorporated into the updated Labour Code of Ukraine (Labour Code of Ukraine No. 322-08, 1971)? These questions remain open. Currently, the Labour Code of Ukraine does not regulate cross-border labour relations, but only refers to the Law of Ukraine “On Private International Law”. The Labour Code of Ukraine stipulates that the labour relations of Ukrainian citizens working abroad, as well as labour relations of foreign citizens working at enterprises, institutions and organisations of Ukraine, are regulated by the Law of Ukraine “On Private International Law” (Article 8, Labour Code of Ukraine No. 322-08, 1971).

In addition, the Law of Ukraine “On Private International Law” contains conflict-of-laws rules governing proceedings in cases involving foreign persons, in particular: Chapter XI “Proceedings in cases involving foreign persons”, Chapter XII “Jurisdiction and enforcement of foreign letters of request” and Chapter XIII “Recognition and enforcement of foreign judgements”. Therefore, it is necessary to further comprehend the question of whether the structure of the Civil Code of Ukraine will lose its logic after recodification and inclusion in its composition of conflict-of-laws rules and norms governing the issue of proceedings in cases involving foreign persons. Is there a possibility that Chapters XI-XIII of the Law of Ukraine “On Private International Law” will be transferred to the Civil Procedure Code of Ukraine (Law of Ukraine, 2004)? Although their regulation is aimed at one issue – the regulation of proceedings with the participation of a foreign entity, they have a different vector of regulation. The Civil Procedure Code of Ukraine regulates the procedure for consideration of cases in civil proceedings, and the Law of Ukraine “On Private International Law” defines the rules for choosing the applicable law and the competence of courts in international cases.

But the Concept of Updating the Civil Code of Ukraine stipulates that “the remarks of some legal scholars about the alleged unusualness of the inclusion in the Civil Code of procedural rules or conflict-of-laws concerning relations that are not its subject (for example, “labour”) appear to be unfounded. This is confirmed by the experience of foreign countries (Argentina, Quebec, Peru) (The concept of updating the Civil Code of Ukraine, 2020, pp. 68-68). Therefore, the authors of the concept of recodification of civil legislation cut off possible discussions on a wide scope of private relations with a foreign element, which are proposed to be included in the new book “Private International Law” of the future updated Civil Code of Ukraine.

Secondly, in addition to the above, it should be noted that the structure of the Law of Ukraine “On Private International Law” and the Civil Code of Ukraine includes different types of legal norms. In particular, the Law of Ukraine “On Private International Law” contains only a system of conflict-of-laws norms, and the Civil Code of Ukraine is formed from substantive legal norms.

It follows from the above that the recodification of the civil legislation of Ukraine is indeed an important process that has a transformative impact on the modern Private International Law of Ukraine. The main goal of recodification should be to update civil legislation and clean it, so to speak, to create ideal norms that would correspond to the current state of development of society and technologies at the stage of approximation of Ukrainian legislation with the EU *acquis*. However, recodification due to the inclusion of the provisions of the Law of Ukraine “On Private International Law” in the future updated Civil Code of Ukraine is still a premature and debatable issue and requires further scientific study and discussion. In the author’s opinion, the existence of an autonomous codification of the norms of Private International Law of Ukraine has more advantages than disadvantages.

III. The Impact of the War on Private International Law of Ukraine

In modern conditions, it seems quite difficult to make a clear distinction between the impact of hostilities in Ukraine on private and public relations, since legal relations can be regulated by both private and public law. In the context of the war in Ukraine, private and public relations are closely intertwined, since interference in public law relations and their regulation will necessarily affect private law regulation and private relations.

Active hostilities in Ukraine and the imposition of martial law in Ukraine have also had a significant impact on Private International Law. The mass migration of Ukrainian citizens to other countries has led to an increase in the number of private law relations with a foreign element. The increase in private law relations with a foreign element leads to the deepening of the problems of conflict-of-laws regulation of private law relations due to differences in the legal regulation of the same relations by the legislation of different countries.

In our opinion, the war impact on the Private International Law is multi-dimensional. Firstly, there is an impact on cross-border private relations in the direction of increasing their number and types. Secondly, there is an impact on the existing legislation of Ukraine in the field of legal regulation of cross-border private relations. Thirdly, under the influence of the war in Ukraine and with the support of individual countries of the world community, there are some changes in the Private International Law of countries that provide asylum to Ukrainian citizens and directly affect cross-border private relations with the participation of the Russian Federation.

The impact of the war on the development of cross-border private relations in the direction of increasing their number and types. On 22 February 2022, a full-scale invasion of Russian troops into the territory of Ukraine began, which provoked a mass migration of the population of Ukraine to safe territories. On 4 March 2022, the European Union adopted an Implementation Decision on establishing the fact of a mass influx of displaced persons from Ukraine within the meaning of Article 5 of Directive 2001/55/EC and resulting in the introduction of temporary protection (Council of the European Union, 2022; Council of the European Union, 2001), which provided an opportunity for Ukrainians to live, receive education, and work in the country where they were granted asylum. In addition, the Guidelines for Temporary Protection were developed (European Commission, 2022). The Union has shown, and will continue to show, its resolute support for Ukraine and its citizens, faced with an unprecedented act of aggression by the Russian Federation. This Decision forms part of the Union's response to the migratory pressure resulting from the Russian military invasion of Ukraine (Part 4, Council of the European Union, 2022). Such EU support has led to an increase in the number of cross-border private relations with foreign elements, as Ukrainian citizens who have received temporary protection status in EU countries enter into contractual, property, labour and family relations with foreign nationals or are a party to tort relations.

If we analyse the areas of private relations that are included in the subject of Private International Law, we can give quite interesting and vivid examples of how the war affected the increase in the number of private relations of a cross-border nature.

In particular, the number of court cases has increased, which are complicated by problems with determining jurisdiction in family, inheritance, property, tort and labour disputes, which are complicated by the foreign element. Also, in modern conditions, the number of litigations with a foreign element related to the consequences of the war (cases of compensation for material damage, non-fulfilment of contractual obligations) has increased. Also, as V. Urkevych notes, today, in the context of the full-scale war of the Russian Federation against Ukraine, the most important issue for the justice system of Ukraine is the perception at the international level of national courts' decisions in cases in which the Russian Federation is the defendant. A difficult issue is the need for Ukrainian courts to overcome the judicial immunity of the Russian Federation, which consists in the fact that the state, in the absence of the consent of its competent authorities, cannot be involved in the case in the national court of another state. This is enshrined, in particular, in Art. 79 of the Law of Ukraine "On Private

International Law” (Urkevich, 2024). In this regard, there are conclusions of the Supreme Court regarding the judicial immunity of the aggressor country. In the resolution of the Civil Court of Cassation of the Supreme Court of 14 April 2022, in case No. 308/9708/19, the Supreme Court for the first time formulated a conclusion that the Russian Federation can't invoke its judicial immunity in cases related to harm to health or life if such damage is fully or partially caused on the territory of the state of the court and if a person, who caused damage, at that time was on the territory of the state of the court. The Supreme Court stated that after the outbreak of the war in Ukraine in 2014, the court of Ukraine, considering a case where the defendant was identified as the Russian Federation, has the right to ignore the immunity of this country and consider cases of compensation for damage caused to an individual as a result of Russia's armed aggression under a lawsuit filed specifically against this foreign country (Urkevich, 2024; The Supreme Court, 2022).

An additional justification for this position was set out, for example, in the rulings of the Civil Court of Cassation of the Supreme Court of 18 May 2022 in cases No. 428/11673/19 and No. 760/17232/20-П (Supreme Court, 2022). According to the conclusions of the Supreme Court, maintaining the jurisdictional immunity of the Russian Federation will deprive the plaintiff of effective access to the court to protect his rights, and this is incompatible with the provisions of clause 1 of Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (Urkevich, 2024).

In the field of inheritance relations, the procedure for establishing heirs and dividing the inheritance has become more complicated, in circumstances where the heirs are in different countries. In addition, problematic issues arose regarding the application of the legislation of different legal systems to hereditary relations.

There were some problems in the field of legal regulation of cross-border labour relations, in particular, the regulation of labour relations of employees who have temporary protection status (Sushch, 2024).

In the field of family relations, the number of cases of child abduction by one of the parents has increased. The war has led to divorces, and loss of contact between family members, which complicates the resolution of issues related to child custody, cross-border disputes over the determination of the child's permanent residence, alimony, division of property, etc. Today, certain “new” relationships require meaningful regulatory decision, for example, the independent departure of children aged 16 and over to Europe, where they are considered unaccompanied children under the age of 18 (Sushch, 2024, p.42), the problems of establishing jurisdiction in cases of parental responsibility and preventing the protection of children under temporary protection, the problems of removing children from Ukrainian families, who enjoy temporary protection in EU countries.

In addition, the problems caused by war and affecting the increase in cross-border private relations include the following:

economic and political, in particular, destruction of the energy and food system of Ukraine, job cuts, annexation and occupation of territories within certain administrative-territorial units of Ukraine, reduction of the volume of foreign economic activity.

demographic – the loss of the population of Ukraine as a result of hostilities and its mass migration to foreign countries in search of temporary protection or asylum.

Sometimes it seems impossible to solve emerging problems with the help of conflict-of-laws rules due to, for example, the “novelty” of such relations (in particular, the mass migration of Ukrainians, which is mostly forced to ensure the protection of their rights and their own security) and the lack of bilateral or multilateral convention rules between states (in particular, in matters of double taxation). Thus, there is an urgent need to overcome conflicts (conflicts of qualifications) through the creation of new conventional norms.

Thus, David P. Stewart notes that the existing approaches to defining the content of the category of “Private International Law” require deep understanding in the context of further coordination of

efforts between sovereign states in the areas of jurisdiction, choice of law and enforcement of court decisions. Even though these issues are regulated by conventions on Private International Law, it is necessary to develop procedural mechanisms to overcome discrepancies in national norms, as well as to formulate basic principles aimed at promoting the harmonisation and codification of legal norms in different legal systems to facilitate the resolution of cross-border disputes (Stewart, 2009).

Private International Law of Ukraine will play a key role in the regulation of cross-border private relations in the post-war period, as the need to attract foreign investment and foreign specialists for the reconstruction and development of the state will increase in Ukraine. Improvement of legislation in the field of Private International Law and the development of mechanisms for its effective implementation will increase the confidence of foreign investors and the investment attractiveness of Ukraine and provide high guarantees for the protection of foreign investments.

Despite the enormous negative consequences of the armed aggression of the Russian Federation for Ukraine – both in terms of Public International Law and Private International Law – these events have necessitated a rethinking of the international legal regulation of certain institutions of Public International Law and Private International Law, strengthening international cooperation and coordination of efforts of sovereign states to create convention norms and mechanisms to eliminate existing gaps and conflicts.

These issues are subject to regulation of Private International Law if there is a “foreign” element in these relations. The increase in private law relations with a foreign element leads to the deepening of the problems of conflict-of-laws regulation of private law relations due to differences in the legal regulation of the same relations by the legislation of different countries.

In our opinion, modern Private International Law has not been adapted to the problems that may arise under martial law. The current norms, which regulated private law relations, were designed for the voluntary “nature” of the foreign element. Under current conditions, some citizens of Ukraine who receive temporary protection abroad are forced to acquire the status of a “foreign” element and are not ready to fully adapt to the conditions of application to them of the legislation of the host country, because they are mainly related to Ukraine: having property and family members in Ukraine, continuing labour relations in Ukraine with the receipt of Ukrainian wages (insufficient for normal residence in Europe), etc. These issues also require proper substantive regulation and conflict resolution. In addition, certain private law issues (the object of which, for example, is personal non-property rights), considering the concept of cultural relativism, are regulated differently by the national legislation of individual countries and international legal norms. According to Western researchers, today the issues of Private International Law require a new doctrinal approach to their solution.

The impact of the war on the legislation of Ukraine regulating private legal relations with a foreign element. In the context of globalisation and certain challenges of our time (pandemic, aggravation of state-to-state relations accompanied by armed conflicts), both national legislation and international norms are being improved. Issues that are the subject of regulation of Private International Law were created in peacetime, but in the context of an armed conflict, there is even more need to refer to the norms of Private International Law to regulate private relations, which are complicated by the foreign element. For example, only as a result of the armed conflict in the former Yugoslavia, the institution of temporary protection was formed in international (in particular, European) law (Council of the European Union, 2001), but it is developing today in the context of the ongoing armed aggression of the Russian Federation and the mass migration of Ukrainians abroad, mainly to European countries (Council of the European Union, 2022).

Until now, there has been no practice of extending temporary protection for more than 3 years, as provided for by the Temporary Protection Directive. The European Union and its individual member states are developing rules based on which it will be possible to extend the temporary protection of Ukrainians.

The Law of Ukraine “On Private International Law” has not changed during the war in Ukraine, however, changes have occurred in various spheres of legal regulation of public relations, including in relations that are complicated by a foreign element and have a cross-border legal nature.

In particular, the Law of Ukraine “On the Basic Principles of Forcible Seizure of Property Rights of the Russian Federation and Its Residents in Ukraine” (Law of Ukraine, 2022) was adopted, which regulated the issue of forced seizure in Ukraine of property rights of the Russian Federation and its residents without any compensation (recovering) for their value.

To overcome the labour shortage in Ukraine, which has arisen as a result of war and migration, it is necessary to stimulate the attraction of foreigners to work through the improvement of legislation (Interfax-Ukraine, 2024). In July 2024, the Verkhovna Rada of Ukraine registered the “Draft Law on Amendments to Certain Legislative Acts of Ukraine on Improving the Procedure for Employment of Foreigners in Ukraine” (Draft Law of Ukraine No. 11405, 2024). As stated in the Explanatory Note to the Draft Law of Ukraine “On Amendments to Certain Legislative Acts of Ukraine on Improving the Procedure for Employment of Foreigners in Ukraine” (Law of Ukraine, 2022), the purpose and objectives of the Draft Law are to create a legal framework to increase the attractiveness of Ukraine for foreign workers needed by the economy, and to implement the norms of Ukrainian legislation under the requirements of Directive 2003/109/EC on the status of long-term migrants (Council of the European Union, 2003), Directive 2011/98/EU on a single permit (European Parliament and Council of the European Union, 2011) and EU Directive 2016/8012 on the conditions of entry and stay of foreigners for scientific work and study (European Parliament and Council of the European Union, 2016).

This Draft Law proposes to amend Part 6 of Article 42 to the Law of Ukraine “On Employment” (Law of Ukraine, 2012) in terms of permitting foreigners to work in Ukraine without obtaining a license. In particular, it is proposed to add EU citizens to the list of foreign persons who can work without obtaining a permit; foreigners and stateless persons whose applications have led to a decision on the processing of documents to resolve the issue of recognition as a refugee or a person in need of subsidiary protection and the issuance of a Certificate of Protection in Ukraine for the period of validity of such certificate; foreigners and stateless persons who arrived in Ukraine to study at higher education institutions and are employed within 9 months after graduation (clause 2 of part 1 of the Draft Law on Amendments to Certain Legislative Acts of Ukraine on Improving the Procedure for Employment of Foreigners in Ukraine) (Draft Law of Ukraine No. 11405, 2024). Thus, amendments to the labour legislation of Ukraine regarding the employment of foreigners on the territory of Ukraine will directly affect the increase in cross-border labour relations, which are complicated by the foreign element.

CONCLUSIONS

In any branch of law, the level of regulatory support is extremely important, and private international law is no exception. The constant development of social relations requires timely changes and development of the legislative system. Relations in the field of private international law do not stop developing, they are constantly changing, under the influence of various factors, which leads to problems in finding competent legislation to regulate them.

It has been established that the private international law of Ukraine is under the significant influence of political and legal processes that have a positive and negative result on the development of this branch of law. The first factor that has positive consequences is Ukraine’s European integration and the approximation of Ukrainian legislation to the EU acquis. The second factor that affects Private International Law of Ukraine and has negative consequences is the war in Ukraine. The problems caused by the full-scale military invasion in Ukraine are not local but escalate to the cross-border level in both the public and private spheres. This is reflected in the legal regulation of social relations,

including private relations, which are complicated by the foreign element.

Today, the Private International Law of Ukraine is in a state of modernisation, which is associated with the adaptation of the national legislation of Ukraine to the EU legislation. The peculiarity of adaptation is the maximum approximation of legislation, however, in our opinion, it is very difficult to create the most similar legislation in the field of private law, given the peculiarities of the formation and development of private law relations in different countries. In the adaptation processes, Ukraine should try to preserve as much as possible the peculiarity of its legal order (national identity). Without the status of an EU member state, Ukraine is not a party to important acts of the EC in the field of legal regulation of private relations, including cross-border private relations, which creates certain obstacles and inconsistencies in their legal regulation. Thus, the primary objective of approximating Ukraine's private international law to the EU *acquis* is to take into account the guiding principles of EU private international law reflected in these acts.

The recodification of the civil legislation of Ukraine is indeed an important process that has a transformative impact on the modern Private International Law of Ukraine. The main goal of recodification should be to update civil legislation and clean it, so to speak, to create ideal norms that would correspond to the current state of development of society and technologies at the stage of approximation of Ukrainian legislation with the EU *acquis*. However, recodification due to the inclusion of the provisions of the Law of Ukraine “On Private International Law” in the future updated Civil Code of Ukraine is still a premature and debatable issue and requires further scientific study and discussion. In the author's opinion, the existence of an autonomous codification of the norms of Private International Law of Ukraine has more advantages than disadvantages.

The imposition of martial law in Ukraine, active hostilities and mass migration of the population of Ukraine in search of international protection have significantly affected the Private International Law of Ukraine. Modern Private International Law is not adapted to the problems that may arise under martial law. The issues that are the subject of regulation of Private International Law were created in peacetime, but in the context of an armed conflict, there is an even greater need to refer to the rules of Private International Law to regulate private relations, which are complicated by the foreign element. Despite the enormous negative consequences of the armed aggression of the Russian Federation on Ukraine, both from the point of view of public international law and Private International Law, these events have led to the need to rethink the international legal regulation of certain institutions of international and Private International Law and to strengthen international cooperation and coordination of sovereign states efforts to create conventional norms and mechanisms to eliminate existing gaps and conflicts.

Undoubtedly, Private International Law is a branch of law, a science and an academic discipline, the importance of which is growing every year due to the internationalisation of the private law sphere. Modern innovative technologies, demographic and economic processes require timely changes in legislation in the field of Private International Law and scientific research on the problems of legal regulation of these relations at the theoretical and legal practical levels. The issues of the impact of European integration processes, the recodification of civil legislation and the war in Ukraine on private international law are relevant and promising areas of further research.

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ПРИВАТНЕ МІЖНАРОДНЕ ПРАВО УКРАЇНИ В СУЧАСНИХ УМОВАХ

Анотація. У статті досліджено вплив сучасних політичних і правових процесів на приватне міжнародне право України. У ході дослідження визначено два важливі чинники, які впливають на приватне міжнародне право України: євроінтеграційний вектор розвитку України та війна в Україні. Сьогодні ці чинники мають багатогранний вплив на сучасний стан приватного міжнародного права України та перспективи його розвитку. Охарактеризовано вплив євроінтеграційних процесів і рекодифікації цивільного законодавства України на приватне міжнародне право України. Визначено вплив повномасштабного військового вторгнення в Україну та воєнного стану на приватне міжнародне право України. Установлено, що під впливом війни спостерігається зростання кількості та видів приватноправових відносин, ускладнених наявністю іноземного елемента, а також зміни у законодавстві України у сфері правового регулювання транскордонних приватноправових відносин.

Ключові слова: адаптація, наближення законодавства, автономна кодифікація, транскордонні приватноправові відносини, приватне міжнародне право, приватноправові відносини, іноземний елемент, ПМП ЄС, рекодифікація.

PRIVATE INTERNATIONAL LAW OF UKRAINE IN MODERN CONDITIONS

Abstract. The article examines the influence of modern political and legal processes on the Private International Law of Ukraine. The study identifies two important factors influencing Ukraine's Private International Law: the European integration vector of Ukraine's development and the war in Ukraine. Today, these factors have a multifaceted impact on the current state of Private International Law in Ukraine and the prospects for its development. The author characterizes the impact of European integration processes and the recodification of civil legislation of Ukraine on the Private International Law of Ukraine. The effect of the full-scale military invasion of Ukraine and martial law on the Private International Law of Ukraine has been determined. It has been established that under the influence of the war on private international law, there is an increase in the number and types of private legal relations, complicated by the presence of a foreign element and changes in the legislation of Ukraine in the field of legal regulation of cross-border private relations.

Keywords: adaptation, approximation of legislation, autonomous codification, cross-border private relations, Private International Law, private relations, foreign element, EU Private International Law, recodification.

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