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Ірина Андріївна Діковська

Кафедра цивільного права юридичного факультету
Київський національний університет імені Тараса Шевченка
Київ, Україна

СУЧАСНІ ПІДХОДИ МІЖНАРОДНОГО ПРИВАТНОГО ПРАВА ТА КОЛІЗІЙНІ НОРМИ ДОГОВОРІВ ПРО ПРАВОВУ ДОПОМОГУ У ЦИВІЛЬНИХ СПРАВАХ

Анотація. Частина договорів про правову допомогу між Україною та іншими державами містить колізійні норми. Ті з них, що визначають право застосовуване до договірних зобов'язань, сімейних та спадкових відносин є такими, що не відповідають сучасним підходам визначення права, застосовуваного до згаданих груп відносин. Метою статті є розкриття відмінностей між колізійним регулюванням приватних відносин у договорах про правову допомогу між Україною та деякими країнами ЄС та сучасними підходами до колізійного регулювання таких відносин у інших джерелах міжнародного приватного права; пояснення того, як слід вирішувати колізії між договорами про правову допомогу та іншими міжнародними договорами; окреслення основних напрямків удосконалення колізійних норм у договорах про правову допомогу. Методами дослідження були порівняльний, діалектичний та формально-логічний, які дозволили виявити проблеми колізійного регулювання у договорах про правову допомогу, та зробити висновки для їх усунення. Використання зазначених методів дозволило з'ясувати, що для регулювання договірних зобов'язань за відсутності угоди сторін про вибір застосовуваного права найчастіше використовується прив'язка *lex loci contractus*. Договір між Україною і Румунією не передбачає можливості вибору права до договірних зобов'язань. Договори про правову допомогу імперативно визначають право, застосовуване майнових відносин подружжя. Вони використовують дуалістичний підхід до визначення права, застосовуваного до спадкування. Встановлено, що конкуренція норм цієї Конвенції та нормами договорів про правову допомогу між Україною та Польщею і Україною та Естонією має вирішуватися на користь Гаазькою конвенції. Запропоновано внести зміни до договорів про правову допомогу укладеними між Україною та Державами-Членами ЄС: колізійні норми, що визначають право, застосовуване до договірних, сімейних і спадкових відносин викласти у новій редакції, використавши у якості моделі колізійні норми відповідних регламентів ЄС.

Ключові слова: колізійне регулювання, договірні відносини, Гаазька конвенція, заповідач, спадкові відносини.

Iryna A. Dikovska

Department of Civil Law

Taras Shevchenko National University of Kyiv

Kyiv, Ukraine

MODERN APPROACHES TO PRIVATE INTERNATIONAL LAW AND CONFLICTING PROVISIONS ON LEGAL AID IN CIVIL CASES

Abstract. *Part of the legal aid treaties between Ukraine and other states contains rules concerning conflict of laws. Where those that determine the law applicable to contractual obligations, family, and hereditary relations are not in line with current approaches to determining the law applicable to the specified groups of relations. The purpose of the paper is to uncover the differences between the regulation of conflict of laws in private relations in the legal aid treaties between Ukraine and some EU countries and the modern approaches to the regulation of conflict of laws in such relations, contained in other sources of private international law; an explanation of how to solve conflicts between legal aid treaties and other international treaties; outlining the main areas of improvement of rules concerning conflict of laws in legal aid treaties. The methods of the study were comparative, dialectical, and Aristotelian, which allowed to identify the problems of regulation of conflict of law in legal aid treaties and to draw conclusions for their elimination. Application of these methods allowed to find out that *lex loci contractus* is most often used to regulate contractual obligations in the absence of an agreement of the parties on the choice of applicable law. The agreement between Ukraine and Romania does not provide for the choice of the law for contractual obligations. Legal aid treaties imperatively determine the law applicable to the property relations of the spouses. They apply a dualistic approach to determining the right to inherit. It has been established that competition between the rules of this Convention and the rules of legal aid treaties between Ukraine and Poland and Ukraine and Estonia should be decided in favour of the Hague Convention. It is proposed to amend the legal aid treaties concluded between Ukraine and the EU Member States: the rules concerning conflict of laws, which define the law applicable to contractual, family, and hereditary relations should be revised using the relevant EU regulations as a model.*

Keywords: regulation of the conflict of laws, contractual relations, Hague Convention, testator, hereditary relations.

INTRODUCTION

Legal aid treaties contain several rules important for international private law (hereinafter referred to as IPL), including rules concerning conflict of laws. Ukraine has concluded such agreements with many countries, including the following Member States: the Republic of Poland, the Republic of Bulgaria, Romania, the Estonian Republic, the Republic of Lithuania, the Republic of Latvia, the Czech Republic, Hungary, the Hellenic Republic, the Republic of Cyprus. Furthermore, according to the Ministry of Justice of

Ukraine, by virtue of the Law "On Legal Succession"¹, the treaties concluded by the former USSR continue operating: the Convention between the USSR and the Italian Republic on Legal Aid, the Treaty between the USSR and the Finnish Republic on Legal Aid (as to this Treaty, legal succession of Ukraine was executed via exchange of notes), the Agreement between the USSR and the Federal People's Republic of Yugoslavia on Legal Aid². However, the Ministry of Foreign and European Affairs of the Republic of Croatia does not mention this treaty among the treaties in force between it and Ukraine³.

Legal aid treaties as a source of IPL were investigated by individual scholars. In particular, the place of legal aid treaties among other sources of IPL was analysed by A.S. Dovhert [1]; regulation of conflict of laws of certain types of private relations in legal aid treaties – by V.S. Khachatryan [2]; issues of the international civil process in such treaties – H.A. Tsirat [3]; issues of inheritance in legal aid treaties – O.O. Karmaza [4], M.O. Mykhailiv [5]. At the same time, the conformity of the regulation of conflict of laws in the legal aid treaties to modern approaches of international private law in Ukraine was not analysed. Resolution of conflict of laws between legal aid treaties and other agreements have not been resolved, nor has the specificity of interpreting such treaties been analysed.

Therefore, the purpose of this paper is to identify the differences between the regulation of conflict of laws in private relations in the legal aid treaties between Ukraine and some EU countries and the modern approaches to the regulation of conflict of laws in such relations in IPL; to explain how to solve conflict of laws between legal aid treaties and other international treaties; to outline the main areas of improvement of rules concerning conflict of laws in legal aid treaties.

1. MATERIALS AND METHODS

To achieve the purpose of the study, the following methods of scientific knowledge were used: comparative, dialectical, Aristotelian. In particular, the comparative method was used to identify the essence of regulation of conflict of laws in legal aid treaties and current IPL sources, and allowed to identify differences in approaches to regulation of conflict of laws in these instruments. Thus, most legal aid treaties were found to use *lex loci contractus* to determine the law applicable to the contractual relations in the absence of an agreement between the parties as to the choice of applicable law; for real estate agreements, which are subject to *lex rei sitae* connecting factor. Modern IPL sources use other points of contact: the law of the country with which the contract is most closely connected; the law of the country where the party performing the contract has its habitual place of residence; fixed points of contact, which do not include *lex loci contractus*. The comparative method revealed differences in the regulation of conflict of laws in relations concerning marriage property. It was found that, unlike current IPL sources, some legal aid treaties forbid spouses to choose the law to be applicable to property relations between

¹ Law of Ukraine "On Legal Succession" (1991, October). Retrieved from <https://zakon.rada.gov.ua/laws/show/1543-12>.

² Legal basis in the field of legal relations in civil and criminal cases. Retrieved from https://minjust.gov.ua/m/str_9385.

³List of international treaties and international acts concluded between the Republic of Croatia and Ukraine. Retrieved from <http://www.mvep.hr/en/foreign-politics/bilateral-relations/overview-by-country/ukraine,144.html>.

them. The use of this method made it possible to identify the distinctive features of regulation of conflict of laws in hereditary relations: thus, legal aid treaties apply the dualistic approach to regulation of conflict of laws in hereditary relations, while the most recent source of IPL, which contains rules concerning conflict of laws applicable to hereditary relations, applies monistic approach. The comparative method revealed differences in legal aid treaties and current IPL sources as to the regulation of conflict of laws concerning the form of testaments. In particular, it was established that, compared to current IPL sources, legal aid treaties offer fewer alternatives to determining the law that can govern the form of a testament. Furthermore, the comparative method allowed to identify the place of legal aid treaties among the sources of law of EU and Ukraine, which contain rules concerning conflict of laws, and to identify the commonality in approaches to this issue: legal aid treaties concluded between Ukraine and a particular EU Member State take precedence over both national legislation of Ukraine and EU regulations containing rules concerning conflict of laws.

The dialectical method was used to find out the extent to which the rules concerning conflict of laws, contained in legal aid treaties, conform to the needs of modern life. It revealed the obsolescence and inconvenience of *lex loci contractus* connecting factor. The use of the dialectical method allowed to conclude that depriving the spouses of the opportunity to choose the law applicable to property relations between them does not meet modern requirements, and in some cases conduces legal uncertainty. The dialectical method helped to identify the difficulties caused by the application of a dualistic approach to the regulation of conflict of laws in hereditary relations in the modern world and to identify issues arising from its application. The dialectical method allowed to identify the inconsistency of the regulation of conflict of laws concerning the form of testament in the legal aid treaties, particularly with regard to the *favour testamenti* principle, which is one of the key principles in modern IPL. The discrepancy, in particular, is that legal aid treaties concluded between Ukraine and the EU Member States provide less opportunity to implement this principle than is required in modern life.

The Aristotelian method was used to develop proposals for resolving conflicts between the rules of legal aid treaties and those of other international treaties. In particular, this method allowed to establish that competition between provisions of the Hague Convention on conflict of laws, which concern the form of testaments and the rules of legal aid treaties between Ukraine and Poland, and Ukraine and Estonia should be decided in favour of the Hague Convention.

2. RESULTS AND DISCUSSION

2.1 Common features of regulation of conflict of laws in legal aid treaties between Ukraine and individual countries

First, it should be noted that all legal aid treaties between Ukraine and other countries can be classified into 3 groups. The first group includes treaties that do not contain rules concerning conflict of laws¹. The second group includes treaties containing rules

¹ Treaty between Ukraine and the Republic of Hungary on Legal Aid in Civil Affairs. (2001, August). Retrieved from https://zakon.rada.gov.ua/laws/show/348_026; Treaty between Ukraine and the Hellenic Republic on Legal Aid in Civil Affairs. (2002, July). Retrieved from

concerning conflict of laws relating only to hereditary relations and the form of the testament¹. The third group consists of treaties that have rules concerning conflict of laws that determine the law applicable to a wide range of relations: contractual, non-contractual, family, hereditary, restrictions, and deprivation of legal capacity².

Analysis of the rules concerning conflict of laws in legal aid treaties suggests that the approaches they use to determine the law applicable to contractual obligations, family, and hereditary relations are archaic and do not correspond to modern tendencies in the regulation of specified groups of relations.

For example, most legal aid treaties, to determine the law applicable to the regulation of contractual relations, the parties of which did not agree on the law applicable to the contract, establish *lex loci contractus* connecting factor, except contracts for real estate, regulated according to *lex rei sitae*³.

Meanwhile, the inconvenience of using such a connecting factor as *lex loci contractus* is generally recognized. It is explained by the fact that different legal systems have different approaches to determining the place of conclusion of the contract (in some countries – the place of sending the bill of acceptance, in others – the place of receiving the bill of acceptance). Furthermore, situations often occur where the contract is not in any way related to the state of the place of its conclusion. It is for this reason that modern IPL sources do not use this connecting factor to determine the law applicable to contractual relations.

For example, the Law of Ukraine “On International Private Law” (hereinafter referred to as LoU “On IPL”) provides that in the absence of a choice of law to the agreement, contractual relations shall be governed by the law of the state with which the treaty is most closely connected (Art. 44 of the LoU “On IPL”). This right is determined by analysing the terms and conditions, the essence of the transaction or the totality of the circumstances of the case (Art. 32, Part 3 of the LoU “On IPL”). If the analysis of these factors does not allow to determine the law applicable to the contractual relations, it shall be defined as the law of the state "where the party responsible for performance, which is crucial for the content of the transaction, has its place of residence or location" (Art. 32, Part 3 of the LoU "On IPL"). Article 44, Part 1 of the LoU “On IPL” defines such a party for 23 agreements. Article 44, Part 2 of the LoU “On IPL” offers a specific mechanism for determining the law that has the closest connection to the agreement for certain types of

https://zakon.rada.gov.ua/laws/show/300_013; Treaty between Ukraine and the Republic of Bulgaria on Legal Aid in Civil Affairs. (2004, May). Retrieved from https://zakon.rada.gov.ua/laws/show/100_056.

¹ Treaty between Ukraine and the Republic of Cyprus on Legal Aid in Civil Affairs. (2004, September). Retrieved from https://zakon.rada.gov.ua/laws/show/196_008. (hereinafter referred to as the Treaty between Ukraine and Cyprus).

² Treaty between Ukraine and the Republic of Poland on Legal Aid and Legal Relations in Civil and Criminal Affairs. (1993, May). Retrieved from https://zakon.rada.gov.ua/laws/show/616_174 (hereinafter referred to as the Treaty between Ukraine and Poland); Treaty between Ukraine and the Republic of Lithuania on Legal Aid and Legal Relations in Civil, Family, and Criminal Affairs. (1994, November). Retrieved from https://zakon.rada.gov.ua/laws/show/440_002 (hereinafter referred to as the Treaty between Ukraine and Lithuania).

³ Agreement between Ukraine and the Czech Republic on Legal Aid in Civil Affairs. (2008, December). Retrieved from https://zakon.rada.gov.ua/laws/show/203_018 (hereinafter referred to as the Treaty between Ukraine and Czechia).

agreements. The connecting factor applicable to consumer contracts, in the absence of a choice of law, is the law of the country where the consumer has its place of residence (Art. 45, Part 3 of the LoU “On IPL”). That is, the LoU “On IPL” does not apply the *lex loci contractus* connecting factor to contractual obligations.

The Regulation of the European Parliament and of the Council on the law applicable to contractual obligations (Rome I)¹ (hereinafter referred to as Rome I Regulation) also does not apply the said factor, which, in the absence of a choice of law by the parties to the agreement, offers a number of fixed connecting factors, among which there are no *lex loci contractus* (Articles 4-8 of Rome I Regulation). Furthermore, the contract may be governed by the law of the state where the party carrying out a specific performance of the agreement has its habitual residence, if it is an agreement that is not mentioned in Art. 4, Part 1 of the Rome I Regulation or if it contains elements of various agreements referred to in Art. 4, Part 1 of the Rome I Regulation. It is therefore considered that the "specific performance" connecting factor in the Rome I Regulation is used in a subsidiary manner [6].

The *lex loci contractus* connecting factor also is not applicable in the Law of Switzerland “On International Private Law” (hereinafter referred to as the LoS "On IPL")², which is rightly referred to as the “Comprehensive Codification” of IPL [7]. According to the document, the primary connecting factor applicable to the contractual obligations in the absence of an agreement of the parties as to the choice of applicable law is the law of the state with which the agreement is most closely related. The law applicable to certain types of agreements is determined according to other connecting factors, but there are no *lex loci contractus* among them (Art. 117-123 of the LoS "On IPL").

Article 31 of the Agreement on Legal Aid between Ukraine and Romania, instead of the term "contractual relations", uses the term "legal relations with immovable and movable property" and defines the law applicable to them as "the law of that contracting party in whose territory the real estate or movable property is located". However, the parties to such legal relations are not empowered to choose the law applicable to such relations. Considering that the aforementioned Treaty between Ukraine and Romania contains special rules concerning conflict of laws which cover different groups of private legal relations (Article 33 – tort relations, Articles 34-36 – hereditary relations, Article 26 – relations governing marriage property) other than contractual, it is obvious that Art. 31 refers to contractual relations.

Depriving the parties to the agreement of the right to choose the law applicable to the agreement appears more than surprising, considering the fact that the principle of autonomy of the will of the parties (in particular, in contractual relations) is a fundamental principle of the modern IPL, enshrined in most of its sources (for example, Article 3 of the Rome I Regulation, Article 43 of the LoU “On IPL”, Article 116 of the LoS “On IPL”). A considerable number of international contracts contains an agreement on the choice of applicable law, most of which are supported by courts [8].

Rules concerning conflict of laws that determine the law applicable to the marriage

¹ 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). Retrieved from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32008R0593>.

² Bundesgesetz über das Internationale Privatrecht (IPRG) vom 18. Dezember 1987 (stand am Januar 2019). Retrieved from <https://www.admin.ch/opc/de/classified-compilation/19870312/index.html>.

property relations also do not correspond to modern approaches of their regulation, since they do not establish the right of spouses to choose the law applicable to them, and imperatively define such right (see, for example, Article 26 of the Treaty between Ukraine and Lithuania, Article 29 of the Treaty between Ukraine and Czechia, Article 26 of the Treaty between Ukraine and Romania)¹.

Meanwhile, Article 61 of the LoU "On IPL", including Article 22 of the EU Regulation on enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes allow spouses to choose the law applicable to marriage property regimes² (hereinafter referred to as the Marriage Property Regulations) (although there are restrictions on alternatives from which the applicable law can be chosen). With that, as commenters of the said Regulation note, this document treats the autonomy of the will of the spouses to choose the law applicable to the regimes of marriage property as a matter of paramount importance. Moreover, it avoids ambiguity as to the law governing the regimes of marriage property, which is inevitable if spouses do not choose the right applicable to their property relations [9].

Regulation of conflict of laws in hereditary relations in legal aid treaties is also obsolete. In particular, this is because they apply a dualistic approach to determining the right to inheritance (that is, the inheritance of movable property is governed by the law of the country where the heir had its last residence (or by the law of the country of its nationality, if it chose the law of that country in the testament); real estate is inherited according to the law of the country where the property is located (see, for example, Article 36 of the Agreement between Ukraine and the Republic of Estonia on Legal Aid and Legal Relations in Civil and Criminal Affairs³ (hereinafter referred to as the Treaty between Ukraine and Estonia), Article 34 of the Treaty between Ukraine and Romania, Article 35 of the Treaty between Ukraine and Lithuania, Article 18 of the Treaty between Ukraine and Cyprus. In principle, this corresponds to the approach contained in Article 70 of the LoU "On IPL", but the most progressive codifications of rules concerning conflict of laws apply a monistic approach to determining the law applicable to inheritance (that is, inheritance is subject to the law of one state, regardless of whether the hereditary mass includes both movable and immovable property). This is conditioned upon the fact that the use of different connecting factors, and therefore the laws of different states to inherit one person's property significantly complicates the planning of inheritance, especially when the law of one of the states applied to the inheritance has the institution of compulsory

¹ Treaty between Ukraine and the Republic of Lithuania on Legal Aid and Legal Relations in Civil, Family, and Criminal Affairs. (1994, November). Retrieved from https://zakon.rada.gov.ua/laws/show/440_002 (hereinafter referred to as the Treaty between Ukraine and Lithuania); Treaty between Ukraine and the Czech Republic on Legal Aid in Civil Affairs. (2008, December). Retrieved from https://zakon.rada.gov.ua/laws/show/203_018 (hereinafter referred to as the Treaty between Ukraine and Czechia).

² Council Regulation (EU) 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R1103>.

³ Treaty between Ukraine and the Republic of Estonia on Legal Aid and Legal Relations in Civil and Criminal Affairs. (1995, February). Retrieved from https://zakon.rada.gov.ua/laws/show/233_659.

inheritance, and the law of another state uses other mechanisms to protect the interests of the family [10]. For this reason, for example, the EU Regulation 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 Succession¹ (hereinafter – the Succession Regulation) does not contain any specific rules concerning conflict of laws applicable to the inheritance of immovable property, and defines the right applicable to inheritance at large). (see Articles 21, 22 of the Succession Regulation).

Regulation of the conflict of laws concerning the form of the testament, which is contained in legal aid treaties, is also not in line with current approaches. Thus, most of them provide that the form of the testament or the act of cancellation thereof may be governed either by the law of the state where it was drafted, amended, or revoked accordingly, or by the law of the state whose nationality the testator had at the time of drafting the testament or the act of at the time of cancellation thereof (see, for example, Article 19 of the Treaty between Ukraine and Cyprus; Article 39, Part 2 of the Treaty between Ukraine and Poland). Meanwhile, the basis of modern regulation of the conflict of laws concerning the form of testament underlies the *favour testamenti* principle, according to which the intention of the testator is to be given the maximum possible effect [11]. The implementation of the *favour testamenti* principle is ensured by the fact that the rule concerning conflict of laws, which defines the law applicable to the form of testament, establishes several alternative connecting factors, which, referring to the laws of different states, enable the court to choose the one which refers to the law that supports the validity of the testament [12]. That is why, for example, the Convention on the Conflicts of Laws relating to the Form of Testamentary Dispositions, concluded on 5 October 1961 (hereinafter referred to as the Hague Convention), establishes, compared with the legal aid treaties, a greater number of alternatives to determine the law applicable to the form of testament. In particular, Art. 1 of the Hague Convention states that: "a testament is valid as to its form if the same is in conformity with national law: a) the place where the testator made it, or b) the nationality of the testator at the time of the drafting the testament or at the time of their death, or c) a permanent place of testator's residence at the time of the drafting the testament or at the time of their death, or d) the habitual residence of the testator at the time of drafting the testament or at the time of their death, or e) as far as real estate is concerned – its location".

It is noteworthy that all alternatives in this rule concerning conflict of laws are connected by the "or" conjunction. That is, it is sufficient that the form of the testament corresponds to the law of at least one of the states mentioned in any of the alternatives. Article 72 of the LoU "On IPL" provides for connection factors similar to those in the Hague Convention to determine the law governing the form of a testament and the act of its cancellation. We support the opinion that the said article (similar to the Hague Convention) seeks to determine the choice of any of the alternatives it establishes to determine the applicable law [13].

¹ 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. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32012R0650>.

2.2 Interaction of legal aid treaties with other sources containing rules concerning conflict of laws

Since the Hague Convention involves States with which Ukraine has bilateral legal aid treaties, which also contain connection factors regarding the form of the testament, which differ from those specified in the Hague Convention, it is necessary to find out which the rules will be subject to prevailing application. The Hague Convention does not address the matter of correlation of its rules with those of other international treaties. Article 97 of the Treaty between Ukraine and Poland states that: "this Treaty shall be without prejudice to the provisions of other Treaties to which one or both Contracting Parties are bound". Therefore, in case of competition between the Treaty between Ukraine and Poland and the Hague Convention, the latter shall be subject to application.

The Treaty between Ukraine and Estonia does not determine the correlation of its provisions with the rules of other international treaties in which the contracting states take part. Therefore, this issue will be resolved according to Art. 30 of the Vienna Convention on the Law of Treaties, which permits the application of a previous treaty which has not been terminated, only to the extent that its provisions are compatible with those of the following treaty.

In this regard, it is important to decide which contract is the previous one and the following one. Sometimes the answer to that question is obvious. For example, in 1992, two states acceded to the multilateral convention adopted in 1985, which entered into force in 1990. Later, in 2000, they entered into a bilateral agreement, which entered into force for each of them in 2001. It is clear that the 2000 treaty, which came into force in 2001, is the following one compared to the 1985 treaty, which came into force in 1990 in general, and in 1992 for the two states in particular..

However, more complex cases are also encountered, such as the situation with the Hague Convention and the Treaty between Ukraine and Estonia. It is known that the Hague Convention was adopted on 5 October 1961 and entered into force on 5 January 1964.¹ According to Article 15 (1) of the Hague Convention, it shall come into force on the 60th day after the deposit of the third instrument of ratification. It entered into force for Ukraine on 14 May 2011, and for Estonia on 12 July 1998.² According to Article 15 (1) of the Hague Convention, it shall enter into force for each state that signs it and subsequently ratifies it on the 60th day after the deposit of its instrument of ratification. According to Article 14 of the Hague Convention, the deposit of instruments of ratification is carried out by the Ministry of Foreign Affairs of the Netherlands. The Legal Aid Treaty with Estonia was signed on 15 February 1995 and entered into force on 17 May 1996.

In this regard, it should be noted that there are several approaches in international law to determine the date with which the understanding of the "following treaty" is connected in Art. 30 of the Vienna Convention. The first assumes that such a date is the date of acceptance of the international treaty (in other words, the date on which it became open for signing) [14]. The second is the date of entry into force [14]; the third is the entry into force of a specific state [14]; the fourth is the date of occurrence of mutual rights and

¹ Hague Convention. Retrieved from <https://www.hcch.net/en/instruments/conventions/full-text/?cid=40>.

² Status table of Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. Retrieved from <https://www.hcch.net/en/instruments/conventions/status-table/?cid=40>.

obligations between specific states. If the Hague Convention entered into force on 12 July 1998 and for Ukraine on 14 May 2011, the date on which the mutual rights and obligations arise therefrom is 14 May 2011.

In our opinion, the date of adoption of an international treaty cannot be decisive for the establishment of a “following treaty”, since the opening of a treaty for signing does not in itself impose any obligations on specific states perform it. The same applies to the entry into force of an international treaty. Thus, the entry into force of the 1964 Hague Convention had no consequences for either Ukraine or Estonia. The entry into force of an international treaty for one country has no consequences for the other. Therefore, the date of entry into force of an international treaty for a particular country cannot be decisive for determining which of the two international treaties is the following. Therefore, it should be acknowledged that the following of the two international treaties is the one under which mutual rights and obligations later arose. Considering the fact that the Hague Convention's mutual rights and obligations for Ukraine and Estonia arose on May 14, 2011, and for the Treaty between Ukraine and Estonia – on May 17, 1996, the Hague Convention should be recognized as the "following" of these two treaties.

Therefore, competition between the Hague Convention and the Treaty between Ukraine and Estonia should be resolved in favour of the Hague Convention.

There are several theories regarding the interaction of international treaties and national law [15]. However, Art. 19, Part 1 of the Law of Ukraine "On International Treaties of Ukraine"¹ envisages priority of the rules of international treaties over the national law of Ukraine. The law of other states (e.g. Poland) with which Ukraine has legal aid treaties defines the correlation between international treaties and national law in a similar fashion [16].

According to the general rule provided, in particular, by Art. 62 of the Regulations on regimes of marriage property, Art. 25 of the Rome I Regulation, Art. 75 of the Succession Regulation, the rules of the international treaty in which the participating Member State(s) and third country(ies) take precedence over the rules of the corresponding regulation. If only international Member States are involved in an international treaty, then the relevant regulation, which regulates the same issues as the international treaty, shall be subject to overriding application. Regulations may, however, provide for exceptions to the latter rule.

That is, the rules concerning conflict of laws of the legal aid treaty between Ukraine and the EU Member State take precedence over the rules concerning conflict of laws of the EU, which contain the rules concerning conflict of laws that define the law applicable to the same issues as the specified international treaty.

CONCLUSIONS

Part of the legal aid treaties between Ukraine and other states contains conflict of law rules. The rules concerning conflict of laws in legal aid treaties to determine the law applicable to contractual obligations, family, and hereditary relations are not in line with current IPL approaches to regulating these groups of relations. *Lex loci contractus* is most often used

¹ Law of Ukraine "On International Treaties of Ukraine". (2004, June). Retrieved from <https://zakon.rada.gov.ua/laws/show/1906-15>.

to regulate contractual obligations in the absence of the parties' agreement on the choice of applicable law. Modern IPL sources (the LoU "On IPL", Rome I Regulation) offer other connecting factors to determine the law applicable to the contract in the absence of an agreement on the choice of law more convenient to govern the contractual relations. The Treaty between Ukraine and Romania does not provide for the possibility of choosing the law to govern contractual obligations, which contrasts sharply with the importance of the principle of autonomy of contractual parties' will, which is indisputable in the IPL doctrine, and is reflected in current IPL rules concerning conflict of laws.

Furthermore, legal aid treaties imperatively determine the law applicable to the marriage property relations, without giving the spouses any choice of applicable law. At the same time, LoU "On IPL" and the Regulations on Marriage Property Regimes give spouses the right to choose the law applicable to their proprietary relations. Legal aid treaties apply a dualistic approach to the definition of inheritance law, which, although consistent with the LoU "On IPL" approach, is contrary to the Succession Regulation approach, which uses a monistic approach that simplifies the regulation of hereditary relations with a foreign element as against the dualistic approach. Regulation of the conflict of laws regarding the form of the testament in legal aid treaties creates less opportunity to implement the *favour testamenti* principle than the Hague Convention and the LoU "On IPL". In this case, competition between the Hague Convention and the legal aid treaties between Ukraine and Poland, and Ukraine and Estonia should be resolved in favour of the Hague Convention. Conflicts between legal aid treaty rules and the LoU "On IPL" are solved in favour of legal aid treaties. Conflicts between legal aid treaties involving EU Member States and third countries and EU regulations containing rules concerning conflict of laws shall be solved in favour of legal aid treaties. With this in mind, it is necessary to amend the legal aid treaties, in particular those concluded between Ukraine and the EU Member States: to establish rules concerning conflict of laws applicable to contractual, family, and hereditary relations similar to the corresponding EU regulations.

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Iryna A. Dikovska

Associate Professor, Professor
Department of Civil Law
Faculty of Law
Taras Shevchenko National University of Kyiv
01033, 60 Volodymyrska Str., Kyiv, Ukraine

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