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Дмитро Васильович Лук'янов

Національна академія правових наук України
Харків, Україна

Кафедра міжнародного приватного права та порівняльного правознавства
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна

Томас Хоффманн

Кафедра права, Школа бізнесу та управління
Талліннський технологічний університет
Таллінн, Естонія

Інеса Анатоліївна Шуміло

Кафедра міжнародного приватного права та порівняльного правознавства
Національний юридичний університет імені Ярослава Мудрого
Харків, Україна

ПЕРСПЕКТИВИ РЕКОДИФІКАЦІЇ МІЖНАРОДНОГО ПРИВАТНОГО ПРАВА В УКРАЇНІ: ЧИ ПОТРЕБУЮТЬ КОЛІЗІЙНІ НОРМИ НОВОГО «ПРИХИСТКУ»?

Анотація. *Метою статті є дослідження напрямів модернізації законодавства, що регулює приватні відносини транскордонного характеру, запропонованих авторами проекту Концепції оновлення (рекодифікації) Цивільного кодексу України, та узагальнення іноземного і міжнародно-правового досвіду розробки актів кодифікації міжнародного приватного права. Автори статті розглядають міжнародне приватне право як галузь, що розвивається найбільш динамічно у зв'язку із постійним розширенням сфери транскордонних відносин та потребує постійного оновлення і адаптації до вимог міжнародного цивільного обігу. У роботі проаналізовані загальні чинники та передумови рекодифікації міжнародного приватного права, усебічно досліджені питання доцільності відмови від автономної кодифікації та перенесення колізійно-правових норм до ЦК України. У центрі дослідження сучасний європейський досвід, оцінка впливу регулятивних актів ЄС на національні кодифікації міжнародного приватного права держав-членів та третіх країн. З метою оцінки ідеї відновлення статусу ЦК України як стрижневого акта, що регулює усі суспільні відносини з приватноправовим змістом, автори дослідження звертають увагу на негативні наслідки міжгалузевої кодифікації міжнародного приватного права у низці постадянських країн. У роботі доведено, що у європейських державах домінує тенденція прийняття консолідованих актів кодифікації у цій галуз та визнання пріоритету уніфікованих міжнародно-правових актів, що регулюють окремі види транскордонних приватних відносин. На основі проведеного аналізу обґрунтовано висновок, що на даному етапі у світі накопичений значний досвід правотворчості у сфері міжнародного приватного права і найбільш ефективною є комплексна автономна кодифікація колізійних норм, в основі якої пріоритет уніфікованих міжнародних актів, широке застосування прямих відсилок до міжнародних угод. Погоджуючись в цілому із запропонованими змінами щодо змістовного оновлення колізійного регулювання, автори наголошують на необхідності вдосконалення та розвитку концептуальних підходів*

Ключові слова: *кодифікація, автономна кодифікація, міжгалузева кодифікація, колізійне регулювання, вибір права*

Dmytro V. Lukianov
National Academy of Legal Sciences of Ukraine
Kharkiv, Ukraine
Department of International Private Law and Comparative Law
Yaroslav Mudryi National Law University
Kharkiv, Ukraine

Thomas Hoffmann
Department of Law, School of Business and Governance
Tallinn University of Technology
Tallinn, Estonia

Inesa A. Shumilo
Department of International Private Law and Comparative Law
Yaroslav Mudryi National Law University
Kharkiv, Ukraine

PROSPECTS FOR RECODIFICATION OF PRIVATE INTERNATIONAL LAW IN UKRAINE: DO CONFLICT-OF-LAWS RULES REQUIRE A NEW HAVEN?

Abstract. *The purpose of the study was to investigate the areas of modernisation of legislation governing private relations of a cross-border nature, proposed by the authors of the draft concept of updating (recodification) of the Civil Code of Ukraine (the CCU), and generalise foreign and international legal experience in developing acts of codification of private international law. The authors of the study considered private international law as a most dynamically developing branch due to the constant expansion of cross-border relations and requirements for constant updating and adaptation to the requirements of international civil turnover. The paper analysed the general factors and prerequisites for the recodification of private international law, comprehensively examined the expediency of abandoning autonomous codification and transferring conflict-of-law rules to the CCU. The study focused on current European experience and assessment of the impact of EU regulations on the national codifications of private international law of member states and third countries. To assess the idea of restoring the status of the CCU as a core act governing all public relations with private law content, the authors of the study addressed the negative consequences of interbranch codification of private international law in a number of post-Soviet countries. The paper proved that European states are dominated by the tendency to adopt consolidated acts of codification in this area and recognise the priority of unified international legal acts governing certain types of cross-border private relations. Based on the analysis, it is justified to conclude that the world has currently accumulated considerable experience in law-making in the area of private international law and the most effective is a comprehensive autonomous codification of conflict-of-laws rules, which is based on the priority of unified international acts and the widespread use of direct references to international agreements. While agreeing in general with the proposed changes regarding the content update of conflict-of-laws regulation, the authors emphasised the need to improve and develop conceptual approaches*

Keywords: *codification, autonomous codification, intersectoral codification, conflict-of-laws regulation, choice of law*

INTRODUCTION

In 2004, on the pages of "Legal Practice", arguing the need for early approval of the draft Law of Ukraine "On Private International Law"[1], prof. V.I. Kysil wrote: "Analysis of the history of lawmaking in the field of private international law indicates that the gradual separation of legislation on private international law from acts of civil and family legislation is inevitable. This process is logical, consistent, has a convincing justification and is welcomed by legal practice. Special laws on private international law have a clear structure and allow applying a comprehensive approach to regulating the most complex problems of the branch of law, which is often regarded as "higher mathematics of legal science". The application of such laws is more convenient and efficient" [1]. The idea of autonomous codification of private international law was justified in the doctoral dissertation of Prof. V.I. Kysil and the studies of

1. Law of Ukraine No. 2709-IV "On Private International Law". (2005, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2709-15#Text.

his students [2; 3], and in 2005 it was implemented by the parliament, which approved the Law of Ukraine "On Private International Law" (hereinafter referred to as "the Law on PIL")[1]. For sixteen years, Ukrainian and foreign scientists and practitioners emphasised the advantages of autonomous codification of PIL in their studies, calling it a "need of the hour" and the embodiment of "best European practices". However, the draft concept of updating the Civil Code of Ukraine (hereinafter referred to as "the Concept") proposed last year radically changed the positions of certain scientific circles, and today the existence of the Law of Ukraine "On Private International Law" is already considered as a "legislative tragedy", a "blow of anti-market forces", which slows down law-making, complicates law enforcement and negatively affects legal education [4]. In one of the last issues of the above-mentioned publication, Prof. A.S. Dovhert noted: "particularly serious consequences (significant losses in law-making, law enforcement, training of lawyers, etc.) occurred as a result of two treacherous blows: the adoption of the Economic Code of Ukraine, which is antagonistic to private law[2] and separation of two books from the codification ("Family Law" and "Private International Law")" [5]. Thus, according to the authors of the Concept, autonomous codification in the field of private international law in its "destructive impact" on the system of legal regulation of private relations is equal to the adoption of the Economic Code of Ukraine[3].

The content of the Concept and the categorical nature of many of its provisions have caused a wave of discussions in the academic environment, and experienced lawyers and young scientists are joining them with renewed vigour and new arguments. It is difficult to overestimate the importance of scientific events that are currently being discussed because modern lawyers have much wider access to the European and world scientific space, research information platforms and leading legal publications, which enables a more in-depth study of doctrinal approaches and practical experience in codifying private law in different states.

The problem of codification of PIL has been discussed in doctrine since the second half of the 19th century. Until recently, it was widely believed that the PIL is not ready for codification at all due to its "youth", excessive complexity and casuistry, and in some European countries this concept still prevails (France, Norway, Sweden, etc.). However, since the second half of the last century, doctrinal approaches have changed dramatically and codification processes have become extremely active because the existence of an effective act of codification of the PIL is one of the mandatory conditions for the development of foreign economic turnover, which is crucial for the economy of any country. Today, there are more than 90 national codifications of PIL in the world.

Thus, the current challenges and level of discussion have become an extremely favourable moment for studying the phenomenon of national codification of private international law in Ukraine. Especially important, in the authors' opinion, is the analysis of the arguments of supporters of both interbranch and autonomous codification because referring to the same circumstances (economic globalisation, liberalisation of market relations, comprehensive internationalisation), appealing to the studies of the same acknowledged specialists (S.C. Symeonides [6], R. Cabrillac [7], J. Basedow [8], etc.), referring to the analytical reports of international institutions, the authors draw diametrically opposite conclusions regarding the optimal form of consolidating the PIL provisions.

The purpose of the study is an analysis of the proposed areas of modernising legislation governing private relations of a cross-border nature, generalisation of foreign and international legal experience in the development of acts of codification of private international law and an attempt to formulate the author's vision of the prospects for the recodification of private international law in Ukraine.

1. LITERATURE REVIEW

The theoretical framework of this study included the articles of Ukrainian and foreign scientists in the field of private international law, in particular, the studies by V.I. Kysil [1; 2], A.S. Dovhert [5; 9], V.Ya.Kalakura [3], which cover the problems of PIL codification in Ukraine. To investigate the experience of foreign codifications, the Encyclopaedia of Private International Law was used as one of the main sources [10], which was published in 2016 under the editorship of the director of the Max Plank Institute for Private International Law and Comparative Law, professor J. Basedow and today is the most authoritative and comprehensive reference source in this subject area.

The study of the works of S.C. Symeonides [6], R. Cabrillac [7], and Cs. Varga [11] was of great importance for clarifying the opinions of world-famous researchers on the modern processes of PIL codification. The fundamental works of these scientists provide an in-depth understanding of the institution of codification as such, allow determining its essence and significance from legal, technical, historical, sociological, and other standpoints. The book "Codification of private international law around the world: an international comparative analysis" by S.C. Symeonides contains a global study of codifications of private international law for 50 years (1962-2012) [6]. During this period, more codifications in the field of PIL were adopted than in all previous years, and horizontal comparison and analysis of these codifications provides answers to the fundamental philosophical and methodological dilemmas of PIL.

The authors of this study also investigated the articles of young scientists, their new views on the theory of codification, on the prospects for the development of legislation in the field of PIL in the global digital economy. In particular, the results of the dissertation work of Professor

1. Law of Ukraine No. 2709-IV "On Private International Law". (2005, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2709-15#Text.

2. Economic Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/436-15#Text.

3. *Ibidem, 2003.*

E.A. Hetman "Codification of the Legislation of Ukraine: General Characteristics, Features and Types" and other developments of this scientist were used [12; 13]. The studies of Estonian legal scientists Prof. Tanel Kerikmäe[14], Karin Sein [15], Maarja Torga [16], Lithuanian scientist Prof. Valentinas Mikelėnas [17] and others also became important literary sources. The experience of codifying PIL in the Baltic States is important for Ukraine, first and foremost because this process in began simultaneously in these countries and the initial conditions were quite similar. Of particular importance for comparative analysis is the fact that, despite similar doctrinal approaches, conflict-of-laws rules were included in civil codes in Lithuania and Latvia, and the Estonian legislator carried out autonomous codification by adopting the Law of Estonia "On Private International Law"[1]. To summarise the Baltic experience, the study investigated the monograph "Law of the Baltic States" under the general editorship of Prof. Tanel Kerikmäe, one of the sections of which contains a deep comparative analysis of the private law of three states [14]. Studies of Prof. K. Sein and M. Torga, doctor of law, covering the development of the Estonian PIL and its relationship with EU regulations [15] were also used to get acquainted with certain aspects of the national codification process in this area.

The studies of Russian scientists Prof. N.I. Marysheva [18], prof. I.B. Hetman-Pavlova [19], researcher Ye.O. Krutiy [20] were also of great importance for the coverage of the subject under study, as well as the opinions of the famous Kazakh civilian Prof. M.K. Suleimenova [21]. The analysis of the studies of these authors clearly illustrates the change in doctrinal approaches to the codification of PIL in the post-Soviet space under the influence of European and global trends, at least in the field of theoretical research.

2. MATERIALS AND METHODS

The methodological framework of the study included a set of general and special methods of scientific cognition, namely such methods of empirical research as comparison, methods of analysis and synthesis, induction and deduction, methods of formal legal, comparative, and historical analysis. At all stages of the study, the general philosophical (universal) method of cognition and the hermeneutical method were used to interpret theoretical concepts of private international law and the provisions of current legislation.

Considering the scientific task set, the main research method was the critical legal method. According to one of the most influential contemporary philosophers of science, K. Popper [22, p. 29-30], any solutions proposed in social research should be subjected to critical analysis, and solutions that are not available for criticism should be excluded as unscientific. The essence of the critical analysis was to verify the relevance of legal information and the completeness of the sources used, as well as to evaluate the proposed scientific solution. The paper also widely used the method of comparative law, which allowed identifying the most important features of the problem under study: factors and prerequisites for the codification of PIL, approaches to the classification of national codifications of PIL from the standpoint of consolidating provisions, structural aspects of modern codifications of PIL, etc. The comparison covered acts of national codifications of PIL and international unified legal provisions. Diachronic comparison allowed tracing the development of national codifications of different countries according to the principle of time sequence, which made it possible to determine the vector of development of PIL codifications as a legal phenomenon and outline future trends. Synchronous comparison was applied to simultaneously existing codification phenomena.

The method of historical analysis allowed studying the stages of development and adoption of private international law codification acts in Ukraine and other states. The dialectical method provided an opportunity to analyse the PIL codification in its development, to identify trends in improving the legislation of EU Member States and third states in the context of harmonisation and European integration. The formal legal method was used to analyse the legal provisions governing certain types of cross-border legal relations and the practice of their application.

Using the method of deduction based on the doctrinal opinions of scientists, a conclusion was made about the general prerequisites for systematisation and codification of legislation in the field of PIL. The study also identified the specific features of the main types of codification used in the implementation of modern approaches, and evaluated their effectiveness. The inductive method helped conclude that the intersectoral approach to PIL codification reduces the effectiveness of regulatory influence, complicates the processes of updating and adapting to EU legislation. The Aristotelian method was used to analyse the content of the current legislation of Ukraine and other states in the field of private international law, identify problems of legislative technique used in certain regulations.

The results obtained thanks to special scientific research methods were corrected considering the data of related legal sciences (history and theory of law, civil studies, comparative law), which helped identify the historical and meaningful context of ideas about the forms and methods of systematisation of conflict-of-laws rules of modern lawyers and scientists of past centuries.

The theoretical framework of the study comprised scientific articles and monographic studies of leading domestic and foreign experts in the field of law theory, civil studies, private and public international law. In addition, the paper used specialised doctrinal studies covering the entire range of issues of systematisation and codification of PIL. The study analysed the concept of updating the Civil Code of Ukraine [4], prepared by the members of the working group formed by the Resolution of the Cabinet of Ministers of Ukraine, under the scientific supervision of Professor

1. Law of the Republic of Estonia "On Private International Law". (2002, July). Retrieved from https://www.riigiteataja.ee/akt/13242136.

A.S. Dovhert and Prof. N.S. Kuznetsova[1]. The regulatory framework of the study comprises modern national acts of codification of the PIL, foreign family, commercial, civil, and civil procedural legislation, international universal and regional agreements, EU regulations and directives. The study also investigated such regulations as the Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Brussels I")[2], Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility[3]; 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")[4], etc.

3. RESULTS AND DISCUSSION

3.1 Refusal of autonomous codification of PIL as a component of the system update of private law in Ukraine

The idea of abandoning the comprehensive autonomous codification of private international law in Ukraine was proposed by the authors of the Concept as one of the factors of the "general process of reviving private law in Ukraine", which should be implemented in the updated CCU[5], which will become a "supermarket of legal opportunities for every citizen of Ukraine" [23]. The particular relevance of recodification with a change in the structure and a considerable expansion of the scope of regulation of the Civil Code of Ukraine[6] is explained by pan-European trends, namely, the invention of "globally applicable legal provisions (solutions)" by scientists of the EU countries for many areas of private law relations, and the modernisation of "old" civil law codifications, considering European and universal international documents.

Systematic updating of legislation, admittedly, plays a critical role in the development of legal systems, at the same time, codification (recodification) is the most radical means that provides an orderly statutory regulation of certain legal relations, so this type of law-making requires a particularly careful and responsible attitude. In the theory of law, there have been many attempts to classify the types of systemic updates of legislation, but, as noted by the outstanding Hungarian legal scientist C. Varga, each such project is born in a unique socio-historical environment, so attempts to deduce rigid schemes and regularities of the development of these processes do not make sense [11, p. 328].

The current socio-historical and political situation in Ukraine is, in fact, unique, and it determines the main actors of changes, goals, and volumes of modernisation of legislation. Further transformation of society, the impact of new technologies on all spheres of life, admittedly, require a corresponding update of the legal regulation of private relations, which participants in national and international legal events have been discussing in recent years, primarily emphasising the urgent need to introduce changes and amendments to the current CCU[7]. Well-known Ukrainian civilists, namely prof. O.E. Kharytonov and prof. A.S. Dovhert believe that the current civil legislation is outdated and needs a complete reinterpretation and adaptation to the European concept and new political values, as well as elimination of substantial gaps and shortcomings [9; 24]. Other scientists, in particular, prof. I.V. Spasibo-Fateeva, on the contrary, believe that the CCU of 2003 is based on a well-thought-out and consistently implemented scientific concept, "the application of provisions of the Civil Code did not reveal any obvious and gross shortcomings for 15 years. Therefore, it cannot be said that the reason for the modernisation of the Civil Code is its shortcomings, which must be eliminated" [25]. Despite some differences in opinions, almost all representatives of civilistic schools as well as foreign researchers [26] are united in the fact that the main reason for the crisis of regulation of civil law relations is the Economic Code of Ukraine, which creates other legal mechanisms compared to those proposed in the CCU, and "its existence does not allow reforming what modern society urgently demands" [27, p. 101]. Thus, the main efforts to date are aimed at "reforming the Civil Code in such a way that nobody could find what has left of the Economic Code" [25].

The proposed concept generally meets the goals outlined above, defining the abolition of the Economic Code of Ukraine[8] as the primary task, it makes provision for clarifying the areas of application of civil legislation, in particular, the inclusion of "additional areas of social reality –

1. Resolution of the Cabinet of Ministers of Ukraine No. 6501 "On the Establishment of a Working Group on Recoding (Updating) of the Civil Legislation of Ukraine". (2019, July). Retrieved from https://zakon.rada.gov.ua/laws/show/650-2019-y%D0%BF#Text.
2. Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. (2000, December). Retrieved from eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32001R0044&from=EN.
3. Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000. (2003, November). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32003R2201.
4. 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/LexUriServ/LexUriServ.do?uri=OJ:L:2008:177:0006:0016:En:PDF.
5. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/main/435-15#Text.
6. Ibidem, 2003.
7. Ibidem, 2003.
8. Economic Code of Ukraine. (2003, January). Retrieved from: https://zakon.rada.gov.ua/laws/show/436-15#Text.

entrepreneurship, corporate, or information spheres, etc.". It is also proposed to expand the list of objects of civil rights. The concept contains detailed analytical materials and important suggestions for structural and meaningful changes to each book of the current Civil Code. Therewith, the argument for the abolition of the Family Code of Ukraine[1] and the Law on PIL[2] and the transfer of their provisions to the updated Civil Code is concise, and about ten pages of the Concept are devoted to both issues taken together. The least attention is paid to family law, Section 7 states that "the inclusion of family law in the updated Civil Code of Ukraine is considered by the Working Group as an important step towards the harmonisation of Ukrainian doctrine and *jus commune* legislation, but the main areas of the recodification are not elaborated, with a mere reference that they will be presented after discussing the concept at the stage of its completion [4, p. 59].

The issues of PIL recodification are considered somewhat more broadly. The section "Main areas of updating (recodification)" provides a critical analysis of the content of the current Law on PIL[3], stating that the national conflict-of-laws theory and rule-making practice do not fully comply with the legislative achievements of European countries and suggesting updating the content of the Law on PIL[4] in five identified areas: strengthening the private law foundations of conflict-of-laws rules; providing conflict-of-laws rules with greater flexibility while maintaining their certainty; "materialising" the choice of law; clarifying a one-vector approach to solving a conflict-of-laws issue; reformatting the text of the Law on PIL in the final book of the modified CCU. The appendices separately consider the factors and prerequisites for updating the CCU, the main results of the PIL codification in 2005, provide a brief analysis of the practice of applying the PIL provisions by the courts of Ukraine, address individual unification acts, legislation of the EU and foreign states, the fundamental ideas of which should be considered during recodification, and outline the expected results of modernisation.

Thus, the analysis of the text of the concept allows conditionally distinguishing three types of provisions concerning the PIL recodification: determination of general factors and prerequisites for its implementation; proposals for meaningful updating and improvement of individual PIL provisions; justification of the expediency of transferring conflict-of-law rules to the CCU[5]. Therefore, the authors of this study attempted to consistently analyse the prerequisites and expediency of recodification using critical legal, comparative legal, dogmatic, and other methods of legal research and determine the degree of their validity, compliance with historical principles and modern needs of society, verify the presence of contradictions, compliance with fundamental principles, etc.

3.2 Analysis of the prerequisites for the PIL recodification and the feasibility of transferring conflict-of-laws rules to the CCU

The concept names five factors that led to the start of work on the recodification of private law, two of which are related to internal processes: the development of market legislation and increasing the potential of Ukrainian private law science. These processes are ongoing and, according to the authors of this study, cannot be considered as decisive factors of influence. Other factors are external in nature and are related to the legislative experience of both individual European countries and trends at the pan-European level, namely the availability of model provisions of international acts, the experience of recodification of civil codes of France[6] and Germany[7], a legislative example of new EU members.

The subject of analysis in the future will be precisely external factors in terms of their impact on conflict-of-laws regulation. However, according to the authors of the Concept, there is another factor at play that should encourage the PIL recodification, which is "the restoration of the national legal tradition regarding the placement of conflict-of-laws rules, since earlier the Civil Code of 1963 contained a similar part, although under a different name – "the application of foreign law and international treaties, the legal status and capacity of foreign citizens" [4, p. 126].

Admittedly, the Civil Code of the Ukrainian SSR[8] (Articles 565-572) and Fundamentals of Civil Legislation of the USSR and Its Republics[9] (Articles 156-170) contained about a dozen conflict-of-laws rules focused on regulating a very narrow scope of issues because the emergence of a "foreign element" in private relations was a rare phenomenon behind the "Iron Curtain" of a totalitarian state. However, even in those days there were ties with individual countries, and after the end of the Cold War, with a gradual change in foreign policy, the exchange in the private sphere intensified, which required expanding the scope of conflict-of-laws regulation. As early as in the 1970s, a

1. Family Code of Ukraine. (2002, January). Retrieved from https://zakon.rada.gov.ua/laws/show/2947-14#Text.
2. Law of Ukraine No. 2709-IV "On Private International Law". (2005, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2709-15#Text.
3. Ibidem, 2005.
4. Ibidem, 2005.
5. Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/main/435-15#Text.
6. Civil Code of France. (2020). Retrieved from https://hindravi.files.wordpress.com/2019/12/french-civil-code.pdf.
7. Civil Code of Germany. (2002). Retrieved from https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf.
8. Civil Code of the Ukrainian SSR. (1963, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2709-15#Text.
9. Fundamentals of Civil Legislation of the USSR and Its Republics. (1991, May). Retrieved from https://zakon.rada.gov.ua/laws/show/v2211400-91#Text.

recognised specialist of that time, the author of a fundamental course on private international law, Prof. L.A. Lunts proposed to develop and adopt a special law on PIL, and in 1990 his students O. M. Sadikov, N. I. Martsheva and A.L. Makovskyi developed a Draft Law of the USSR "On Private International Law and International Civil Procedure"[1]. The developers of this project are convinced that it did not become law due to departmental competition and administrative influence. Later, an abridged version of the text of the draft law was included in the Civil Code of the Russian Federation[2]. However, to this day, Professor N.I. Marysheva and other well-known experts in the PIL defend the expediency of autonomous codification proposed by L.A. Lunts, believing that only in this way "the shortcomings of branch codification" can be successfully overcome. "The adoption of the federal law on private international law and international civil procedure would allow, firstly, most fully and consistently defining and distinguishing between general and special institutions in this area and, secondly, achieving goals that can be defined as 1) restoring gaps, 2) eliminating duplication, 3) eliminating contradictions. But most importantly, the introduction of this law would provide a rare opportunity to unite (or rather, reunite) related institutions of private international law, scattered across "branch compartments", and would be one of the serious steps towards the development of truly private law" [18, p. 62].

Consequently, the reference to the regulatory framework and doctrine of the Soviet period, according to the authors of this study, is insufficiently justified. It is improbable that the approaches of that time can be considered the origins of the national legal tradition, given that the most authoritative scientists, whose professional development took place in the pre-Soviet period, even then saw the advantages of a comprehensive autonomous codification of private international law.

Next, the authors analysed the external factors and prerequisites for the PIL codification. The Concept names new pan-European trends as *the first factor.* Admittedly, the reform of European private law is of great importance for Ukraine, given the European integration aspirations and the need to perform programme tasks to adapt national legislation to EU legislation. The European Union has been active in the field of PIL and international civil procedure for more than two decades, and today a supranational codification has been created, comprising EU directives and regulations in this area.

Association Agreement between Ukraine and the EU of June 27, 2014[3] (hereinafter referred to as "the AA") makes provision for the rapprochement of the private legislation of Ukraine to *acquis communautaire* in the field of corporate regulation, intellectual property, contractual relations, etc., but it does not contain special rules relating to the private international law issues. Only Article 24 of the AA[4], which covers legal cooperation, notes that the parties intend to develop further judicial cooperation in civil cases based on relevant multilateral legal documents, in particular the conventions of the Hague Conference on Private International Law in the areas of international legal cooperation[5], litigation, and child protection.

According to Prof. J. Basedow, such "blind spots" of the AA[6] regarding the PIL are understandable when it comes to mutual recognition of court decisions within the EU, established by the Brussels I Regulation[7] but the harmonisation of conflict-of-laws regulation, for example, relating to non-contractual obligations, established by other acquis documents, "does not affect the sovereignty of associated states, such as Ukraine", and can contribute to the development of a good-neighbourly policy [8, p.16]. Comments by Prof. J. Basedow, according to the authors of this study, are quite reasonable. Unfortunately, the National Programme of Adaptation of Ukrainian Legislation to EU Legislation[8], approved on May 18, 2004, does not make provision for particular measures for rapprochement of national conflict-of-laws regulation and does not contain a list of corresponding regulations of the EU and Ukraine.

It appears that upon developing the conceptual framework for modernising the provisions of the PIL, most of all, it is necessary to conduct an in-depth analysis of the EU regulatory framework and determine the list of acquis acts of priority importance, as well as the scope and limits of adaptation of legislation in this area. At present,

1. Draft Law of the USSR "On Private International Law and International Civil Procedure". (1970, March). Retrieved from https://zakon.ru/Tools/DownloadFileRecord/24255.

2. Civil Code of the Russian Federation. (1994, November). Retrieved from http://www.consultant.ru/document/cons_doc_LAW_5142/.

3. Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part. (2014, June). Retrieved from https://zakon.rada.gov.ua/laws/show/984_011#Text.

4. *Ibidem, 2014.*

5. Conventions, protocols, and principles. Hague Conference on Private International Law. (n.d.). Retrieved from https://www.hcch.net/en/instruments/conventions.

6. Association Agreement between Ukraine, of the one part, and the European Union, the European Atomic Energy Community and their Member States, of the other part. (2014, June). Retrieved from https://zakon.rada.gov.ua/laws/show/984_011#Text.

7. 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), OJ 2012 L 351/1. (2012, December). Retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32012R1215.

8. Law of Ukraine No. 1629-IV "On the National Program for Adaptation of the Legislation of Ukraine to the Legislation of the European Union". (2004, March). Retrieved from https://zakon.rada.gov.ua/laws/show/1629-15#n16.

the Concept briefly mentions only the EU regulations "Rome I"[1] and "Rome II"[2] as such that should improve the institution of autonomy of the will in Ukraine [4, p. 61].

Notably, such research and identification of priorities are quite a difficult and time-consuming task. As Prof. T.K. Grazianonotes, "over the past two decades, the number of EU regulations in the field of private international law has grown at breakneck speed, on the one hand, this has eliminated many gaps, but, on the other hand, it is becoming increasingly difficult to determine the scope of EU regulations. Moreover, the same legal terms have different meanings in different regulations, there are complex issues concerning the interaction of procedural provisions and provisions regarding the choice of proper law. That is, the system of private international law of the EU is becoming increasingly difficult to apply and risks losing its consistency" [28, p. 585].

The need to systematise EU conflict-of-laws legislation is currently being discussed by the European academic community and EU advisory bodies. As one of the options for solving the issue, the possibility of adopting the European Code of Private International Law is considered, the draft of which is being developed by experts of the Directorate General of Internal Policy of the EU [29, p. 75]. In the authors' opinion, this experience is worthy of attention and should also be considered when determining ways to update the PIL of Ukraine. The EU's legislative activity in the field of private international law has considerably affected the internal codifications of Member States, but it is impossible to completely replace national legislation at this stage of integration. Therefore, the study of options for modernising conflict-of-laws regulation at the national level is important for the further development of the Ukrainian PIL doctrine and legislative activities.

The second external factor to which the Concept attaches special importance are the civil codes of France[3] and Germany[4] – "bastions" of civil law in continental Europe, the reform of which over the past decade affects the legislative processes of neighbouring states. It is impossible to disagree with this statement, but it is worth noting that in the field of conflict-of-laws regulation, the approaches used in both countries are based on ideas that clearly do not coincide with the proposals of the authors of the Concept.

Germany is one of the countries that have an autonomous national PIL codification. In 1986, the Law "On New Regulation of Private International Law"[5] introduced Chapter Two of the Introductory Law to the Civil Code of Germany, entitled "Private International Law". However, as Prof. Jan von Hein notes, due to the constant expansion of EU conflict-of-laws legislation, the scope of application of national provisions is becoming narrower, with courts applying internal conflict-of-laws rules only in the absence of corresponding European regulation or an international treaty [30].

France belongs to a number of states where private international law is not codified. Prof. Gilles Cuniberti, highlighting French legislation in the Encyclopaedia of Private International Law, notes as follows: "ironically, the birthplace of the Civil Code has never had a comprehensive regulation of private international law... except for three articles of the Civil Code of the Napoleonic era: Article 3 (on the applicable law) and Articles 14-15 (on the choice of jurisdiction)" [31, p. 2079]. Today, conflict-of-laws rules on the applicable law are contained in certain national laws governing family and property relations, numerous universal and bilateral agreements on private international law, as well as EU regulations. Conventionally, the practice of higher courts is of great importance for governing relations with a foreign element. French legal doctrine proceeds from the fact that the casuistry of legal matter necessitates the construction of decisions in accordance with each particular case, which judicial practice succeeds in much better than codes. Prof. Pierre Mayor, in particular, argues that "the extremely complex nature of the problems being solved requires compliance with the concept of legal provisions that are created based on consideration of particular situations. If we do not have such a beacon, then the human mind, whatever the inherent power of abstraction, risks falling into error" [32]. The French approach is not unique in Europe, the PIL is not codified in the Scandinavian countries (Denmark, Norway, Sweden, Finland, Iceland), as well as in Ireland and Cyprus.

Eleven European countries, five of which are former republics of the USSR (Russia, Belarus, Armenia, Latvia, Lithuania, Moldova), have carried out interbranch PIL codification and placed the main array of conflict-of-laws rules in one of the last sections (books) of the civil codes, and individual institutions in family, commercial, and other codified acts. However, the absolute majority (twenty-five countries) have special laws on the PIL, or the PIL codes (Belgium, Bulgaria, Turkey), which also include the rules of international civil procedure, that is, these countries have performed a comprehensive autonomous codification of PIL.

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/LexUriServ/LexUriServ.do?uri=OJ:L:2008:177:0006:0016:En:PDF.

2. 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). Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R0864&from=en.

3. Civil Code of France. (2020). Retrieved from https://hindravi.files.wordpress.com/2019/12/french-civil-code.pdf.

4. Civil Code of Germany. (2002). Retrieved from https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.pdf.

5. The Law of Germany on Private International Law. (1986, July). Retrieved from https://www.bgbl.de/xaver/bgbl/start.xav?start=//*%5B@attr_id=%27bgbl186s1142.pdf%27%5D#__bgbl__%2F%2F*%5B%40attr_id%3D%27bgbl186s1142.pdf%27%5D__1622817586757.

Consequently, the complexity of conflict-of-laws rules in the vast majority of legal systems does not prevent the PIL codification – on the contrary, codification in theory and practice is considered a means of overcoming excessive complexity and casuistry. As noted by R. Cabrillac, the code does not necessarily have to simplify, it can consolidate complex realities, "nothing prevents formulating decisions found by judicial practice in one or two abstract provisions" [7, p. 392]. Significant, from this point of view, is the PIL codification in the UK. Neither the complexity of English law nor its casuistry prevented the adoption of the PIL law in 1995[1], where a small scope of relations in this area has been settled, but with a trace of desire for broader codification. Notably, in most countries of the Anglo-Saxon legal system, unofficial PIL codifications are popular, such as the work Dicey, Morris & Collins *on the Conflict of Laws* [33], where the relevant precedents are systematised. In the United States, the first (1934) [34] and second (1971) sets of rules on conflict of laws are widely known [35] (*Restatements of the Conflict of Laws*), the latter is a 30-volume publication, where precedents are systematised and set out in the form of articles of the law. In 2014, the American Institute of Law commenced the development of the third Restatement, which should radically reconsider the American tradition of conflict-of-law regulation [36].

Thus, according to the authors of this study, there is no reason to assert that interbranch codification, that is, the placement of an array of conflict-of-laws rules in civil codes, is confirmed by the current legislative practice of European countries. On the contrary, the vast majority of countries in the continental legal system implemented autonomous codification of the PIL at the beginning of the third millennium, a trend that remains dominant and is gaining popularity even in common law states.

The third external factor considered by the authors of the Concept as decisive for applying an interbranch approach to the recodification of PIL in Ukraine is the experience of new EU Member States. However, the analysis demonstrates that only three countries that are considered as new EU members use a cross-branch approach, namely Romania, Latvia, and Lithuania. Other countries, including Bulgaria, Estonia, Poland, Slovenia, Slovakia, Hungary, Croatia, Czech Republic, etc., have separate laws or codes of the PIL.

The authors of this study are particularly interested in the experience of the Baltic States, which from the middle of the 19th century and prior to the Soviet occupation had a unified Baltic Civil Code [37], also had almost similar legislation in the Soviet period, but after the restoration of independence chose entirely different approaches to the PIL codification. The least developed is conflict-of-laws regulation in Latvia, where certain provisions of the PIL are placed in the Introductory Law to the Civil Code, which was in force since 1937 and was updated in 1992 in an almost unchanged wording[2]. Seventeen articles of this regulation (Articles 7-24) contain strict conflict-of-laws rules that have a structure inherent in codifications of the middle of the 20th century, while Article 25 establishes the priority of international treaties in governing cross-border private relations: "the rules of this law apply to the extent that otherwise is not established by international treaties and conventions in which Latvia takes part".

In the Civil Code of Lithuania[3] of 2000, a separate chapter covers the issues of the PIL, where five articles contain general rules of conflict-of-laws: application of foreign law, restrictions on the application of foreign law, determination of the content of foreign law, international treaties and reverse references, and forty-seven articles govern individual institutions of the general part of the PIL. The Civil Code of Lithuania also recognises the priority of international treaties, but reservations are made regarding their direct application and compliance with a unified approach to the interpretation of terms. The Lithuanian model is more advanced than the Latvian one, but it considerably differs from the latest codifications of Western European states. Scientists from Latvia and Lithuania and representatives of the judiciary, upon discussing ways to improve conflict-of-laws legislation, more frequently suggest referring to the experience of autonomous codifications of EU Member States. Thus, professor of Vilnius University *Valentinas Mikelėnas* considers that the absence of a single law on private international law and the dispersion of conflict-of-laws rules between different codes "is the weakest link in the reform of private international law" in Lithuania. The scientist hopes that this is only the first stage, the next step of the reform will no longer be a "leap into darkness" for Lithuanian judges and scientists [17, p. 181].

Unlike Lithuania and Latvia, Estonia has had a separate Law "On Private International Law" in force since 2002[4], which was developed by German, Swiss, and Austrian lawyers, since Estonia traditionally belongs to the German legal family [15]. The law was drafted according to the Swiss model and included both the rules of the PIL and the rules of international civil procedure, but only conflict-of-laws regulation was ultimately introduced. The scientific literature notes the modernity and thoughtfulness of the principles for determining the competent legal order

1. Private International Law (Miscellaneous Provisions) Act. (1995, November). Retrieved from https://www.legislation.gov.uk/ukpga/1995/42.

2. Civil Law of Republic of Latvia. (1937, January). Retrieved from http://www.vvc.gov.lv/export/sites/default/LV/publikacijas/civillikums.pdf.

3. Civil Code of the Republic of Lithuania. (2000, July). Retrieved from https://e-seimas.lrs.lt/portal/legalActPrint/lt?jfwid=14f2280hqa&documentId=TAIS.400592&category=TAD.

4. The Law of Estonia on Private International Law. (2002, March). Retrieved from https://www.riigiteataja.ee/akt/13242136.

proposed by the Estonian legislation, the presence of blanket rules containing references to EU legislation and The Hague Conventions on private international law. The indisputable advantages also include detailed conflict-of-laws regulation of ownership relations for such objects as vehicles and securities, devoting articles to certain types of obligations (consumer agreements, assignment of claims, insurance agreements, etc.). Therewith, the regulation of certain PIL issues is contained in other regulations: in the Laws "On Succession"[1] of 2009, "On Investment Funds"[2] of 2004 and in Chapter 62 "Proceedings on Cases on Recognition of the Execution of Acts of Foreign Judicial and Other Bodies" of the Civil Procedural Code[3] of 2005.

Assessing the prospects for the development and improvement of the regulation of cross-border relations in the legislation of the Baltic States, most legal experts note the need for more complete implementation of the fundamental provisions of EU acts regarding the PIL and the most developed European codifications [14, p. 147].

Prof. I.V. Hetman-Pavlova connects the specific features of the PIL codification in the former Soviet countries with the "Soviet tradition of interbranch codification of the PIL" [19, p. 56], which is deeply rooted in the minds of lawyers. That is why even the latest autonomous codifications of Estonia and Azerbaijan do not include the rules of international civil procedure, despite the global trend that has dominated since the beginning of the 1980s. Comparable to Latvia and Lithuania, a larger or smaller set of conflict-of-laws rules is contained in the civil codes of Moldova[4], Kazakhstan[5], Belarus[6], Armenia[7] and some other post-Soviet countries. As the well-known Kazakh scientist Prof. M. K. Suleimenov fairly pointed out upon answering a question regarding the prospects for the development of the PIL of Kazakhstan, "we abandoned the Soviet greatcoat but still remain in it. Therefore, we still use the Russian model in our activities. We shall see what the future brings" [38].

Thus, according to the authors, the modern form of codification of PIL in Ukraine, carried out considering the best practices of European codifications, demonstrates a departure from Soviet traditions. In one of the latest dissertation studies covering modern codifications of private international law, three types of modern codifications of PIL are identified in terms of the form of consolidating rules, namely, interbranch, autonomous, and complex, and it is proved that since the mid-1980s, the world has been dominated by the trend of complex autonomous codifications. The overwhelming majority of experts in the PIL make the following arguments favouring autonomous codification:

– the separation of the PIL rules from the provisions of civil and economic legislation is necessary due to the special subject of regulation, which emphasises its independence as a definite branch of law;

– the presentation of the general PIL institutions in one specialised act allows them to subordinate all types of private legal relations with a foreign element, which contributes to a clearer and more detailed systematisation of legislation;

– combining the PIL rules in one act ensures their greater accessibility to all stakeholders, hence their effectiveness;

– integrated autonomous codification of the PIL avoids duplication of the same provisions, eliminates gaps and discrepancies between different conflict-of-laws rules;

– the adoption of a codified act on the PIL enables the reduction of the legislative array in general, contributing to the "legislation clearing";

– there are no "mutual references" in full-scale codification, as well as fewer grounds for applying the analogy of law;

– the clear structure of special laws on the PIL enables the implementation of a comprehensive approach to regulating the most complex branch of law (which is called "higher mathematics of legal science") and consistent distinction between its general and special institutions [20, p. 55-56].

As noted above, there is also a clear trend at this stage to incorporate the rules of international civil procedure into codified acts of the PIL. Examples include the Hungarian PIL Law (2017)[8], Section IX of which covers the international civil procedure (Articles 66-126); the Law of Slovakia "On Private International Law and Rules of Procedure" (as amended in 2008)[9] contains Part 2 "International Civil Procedure" (Articles 37-68); the Law of Czech Republic on PIL (as amended in 2015)[10] governs not only the general provisions of international civil procedure, but also cross-border bankruptcy procedures (Articles 102-123).

1. The Law of Estonia on Succession. (2008, January). Retrieved from https://www.riigiteataja.ee/akt/104012021036.
2. Investment Funds Act of Estonia. (2016, December). Retrieved from https://www.riigiteataja.ee/akt/131122016003.
3. Code of Civil Procedure of Estonia. (2005, April). Retrieved from https://www.riigiteataja.ee/akt/109042021017.
4. Civil Code of the Republic of Moldova. (2002, June). Retrieved from https://cis-legislation.com/document.fwx?rgn=3244.
5. Civil Code of the Republic of Kazakhstan. (1994, December). Retrieved from https://cis-legislation.com/document.fwx?rgn=3634.
6. Civil Code of the Republic of Belarus. (1998, December). Retrieved from http://law.by/document/?guid=3871&p0=Hk9800218e.
7. Civil Code of the Republic of Armenia. (1998, May). Retrieved from http://www.translation-centre.am/pdf/Translat/HH_Codes/CIVIL_CODE_en.pdf.
8. The Law of Hungary XXVIII "On Private International Law". (2017, April). Retrieved from https://magyarkozlony.hu/dokumentumok/016703e04c2a3e6791025f6066da98b69fca22d8/megtekintes.
9. The Law of the Republic of Slovakia No. 97 "On Private International Law and Rules of Procedure". (1993, December). Retrieved from http://jafbase.fr/docUE/Slovaquie/LoiDIP.pdf.
10. Law of Czech Republic No. 91/2012 Sb. "On the Regulation of Private International Law". (2012, January). Retrieved from http://obcanskyzakonik.justice.cz/images/pdf/Act-Governing-Private-International-Law.pdf.

The Concept states that "the emergence of individual laws on the PIL in some countries is explained by tradition (Albania, Poland, Turkey, Czech Republic, Hungary, the countries of the former Yugoslavia, Japan) or the lack of civil codes or the initiated processes of their modernisation" [4, p. 68]. The authors of this study believe that this provision is subject to additional study because Poland, Hungary, the Czech Republic, Slovakia, Estonia, and even Turkey have national civil codes, and the legislation on PIL has been updating for the last 3-5 years. Thus, the authors also believe that the experience of the new EU members and the conducted theoretical research convincingly indicate that the integrated autonomous codification of the PIL is currently the most popular, relevant, and widespread form of systematisation of the PIL rules and international civil procedure.

Concluding a fundamental study on the codification of private international law, professor S. Symeonides wrote: "this book was written in 2013, which coincidentally matches with the 700th anniversary of Bartolus de Saxoferrato (1613-1357), the founder of modern private international law. Over the course of seven centuries, the world has become closer and more complex, and the art of codifying law has become a science... today private international law is not only *alive and well*, although less idealistic, but it is also more viable, refined, flexible, and pluralistic" [6, p. 425]. The development of the PIL as an independent branch of law, legislation, science, and academic discipline has taken place, and it deserves a modern autonomous codification.

CONCLUSIONS

Unlike many former Soviet bloc republics, after lengthy discussions in independent Ukraine, the idea of autonomous codification was implemented, the PIL law was a big step in the development of private law, meeting the requirements of an open society and embodying the best achievements of academic science of that period. The existence of a separate law emphasised the independence of the branch of private international law, which does not require "shelter" on the periphery of branch codifications, which was emphasised in the comments and reviews of the vast majority of scientists and practitioners.

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. Firstly, there is a controversial claim regarding the violation of national legal traditions of the Soviet period, the minimum number of conflict-of-laws rules in the civil legislation of that time, which were almost not applied in judicial practice, hardly give grounds to speak about the existence of tradition. Ukraine created conflict-of-laws regulation starting "from scratch", based on the best European practices of the beginning of the third millennium. Secondly, the emphasis on the dominance of interbranch codification in the EU is confirmed neither by the modernisation results of the "bastions" of civil legislation, the codes of France and Germany, nor by the current legislative practice of the new EU members. On the contrary, the vast majority of countries in the continental legal system implemented autonomous codification of the PIL at the beginning of the third millennium, a trend that remains dominant and is gaining popularity even in common law states. The development of EU lawmaking in the field of PIL has put on the agenda the need to systematise numerous regulations, and the possibility of adopting a European Code of Private International Law is being considered as one of the options.

It is also worth considering the fact that the development processes of information and communication technologies, which have been ongoing for more than thirty years, have developed a new space of social interaction, which does not have territorial and temporary barriers. The role of law in the new so-called networked society is undergoing considerable changes, and the PIL is at their forefront, as it governs cross-border private law relations, which are currently distinguished by a certain anti-hierarchy and decentralisation. In such circumstances, the modernisation of conflict-of-laws legislation, the conceptual revision of individual institutions and the introduction of new ones are much more effective within the framework of a special law. Thus, the provisions of the Concept of updating the Civil Code of Ukraine regarding the PIL require further professional discussion and an in-depth analysis of the prospects for the proposed recodification.

REFERENCES

[1] Kisil, V.I. (2004). The adoption of the law cannot be delayed: The autonomous codification of the private international law is the demands of time. *Legal Practice*, 340(26), 20-21.

[2] Kysil, V.I. (2001). *The mechanism of the conflict-of-laws regulation on the modern private international law* (Doctor thesis, Taras Shevchenko National University of Kyiv, Kyiv, Ukraine).

[3] Kalakura, V.Y. (1993). *Private international law codification in the European countries* (Candidate thesis, Taras Shevchenko National University of Kyiv, Kyiv, Ukraine).

[4] Dovhert, A.S., Kuznietsova, N.S., Khomenko, M.M., Buiadzhy, G.V., Zakhvataiev, V.M., Kalakura, V.Y., Kapitsa, Y.M., Kot, O.O., Kokhanovska, O.V., Maidanyk, R.A., & Stefanchuk, R.O. (2020). *The concept of updating the Civil Code of Ukraine.* Kyiv: ArtEk Publishing House.

[5] Dovhert, A.S. (2021). *Everything on private. Legal Practice, 7-8(1208-1209).* Retrieved from https://pravo.ua/articles/vse-po-chastnomu-2/.

[6] Symeonides, S.C. (2014). *Codifying choice of law around the world: An international comparative analysis*. New York: Oxford University Press.

[7] Cabrillac, R. (2007). *Les codifications*. Moscow: Statut.
[8] Basedow, J. (2018). EU private law in Ukraine – The impact of the association agreement. *Max Planck Private Law Research Paper,* 18(26), 3-20.
[9] Dovhert, A.S. (2019). Re-codification of the Civil Code of Ukraine: The main factors and the initial conditions. *Law of Ukraine*, (1), 27-41.
[10] Basedow, J., Rühl, G., Ferrari, F., & de Miguel Asensio, P. (Eds.). (2017). *Encyclopedia of Private International Law.* Cheltenham: Edward Elgar Publishing Limited.
[11] Varga, C. (2011). *Codification as a socio-historical phenomenon.* Budapest: Szent Istvan Tarsulat.
[12] Hetman, Y.A. (2012). *The Codification of the Legislation of Ukraine: General characteristics, features, types.* Kharkiv: Pravo.
[13] Hetman, Y.A. (2015). Consolidation as form of the systematization of the legislation of Ukraine. *Journal of the National Academy of Legal Sciences of Ukraine*, (3), 21-28.
[14] Kerikmäe, T., Joamets, K., Pleps, J., Rodina, A., Berkmanas, T., & Gruodyte, E. (2017). *The law of the Baltic States.* Cham: Springer.
[15] Sein, K. (2009). The development of private international law in Estonia. In P. Sarcevic, A. Bonomi, & P. Volken (Eds.), *Yearbook of Private International Law* (pp. 459-472). Berlin – New York: Sellier de Gruyter.
[16] Torga, M. (2019) *The conflict of conflict rules – the relationship between European regulations on private international law and Estonian legal assistance treaties concluded with third states.* (Doktoritöö, University of Tartu). University of Tartu Press. Retrieved from https://dspace.ut.ee/bitstream/handle/10062/63311/torga_maarja.pdf?sequence=1&isAllowed=y
[17] Mikelėnas, V. (2005). Reform of private international law in Lithuania. In *Yearbook of Private International Law* (pp. 161-183). Berlin – New York: Otto Schmidt/De Gruyter European law publishers.
[18] Marysheva, N.I., Lazarieva, T.P., & Vlasova, N.V. (2015). The Civil Concept of the Private International Law. *Journal of the Russian Law*, 9(255), 57-66.
[19] Krutij, Y.A. (2012). *The modern codifications of the private international law* (Candidate thesis, The National Research University "The Higher School of Economics", Moscow, Russian Federation).
[20] Hetman-Pavlova, Y.V., & Krutij, Y.A. (2010). Autonomous national codifications of the private international law in the 21st century. *Advokat*, (4), 49-61.
[21] Suleimenov, M. Introduction to the Law of Kazakhstan. In Z. Kembayev (Ed.), *Chapter 11: "Private International Law"* (pp. 197-210). Alphen aan den Rijn: Wolters Kluver.
[22] Popper, K. (2005). *The logic of scientific discovery*. Moscow: Respublika.
[23] Stefanchuk, R. (2021). *The Civil Code is a supermarket of the legal opportunirties*. Retrieved from https://www.ukrinform.ua/rubric-polytics/3179284-stefancuk-mi-povinni-peretvoriti-civilnij-kodeks-na-supermarket-pravovih-mozlivostej.html.
[24] Kharytonov, O.Y., & Kharytonova, O.I. (2020). The political values and the re-codification of the Ukrainian private legislation. *Civil Law Journal*, (36), 18-24.
[25] Spasybo-Fatieieva, I.V. (2019). About the Concept of the modernization of the Civil Code of Ukraine. *The legal and Judicial Newspaper.* Retrieved from https://sud.ua/ru/news/blog/157375-z-privodu-kontseptsiyi-schodo-modernizatsiyi-tsivilnogo-kodeksu-ukrayini-rekodifikatsiyi.
[26] Hoffmann, T. (2016). Europeanisation of Private Law in Ukraine: Comparisons in the field of Law of Obligations. In T. Kerikmäe, & A. Chochia (Eds.), *Political and Legal Perspectives of the EU Eastern Partnership Policy* (pp. 181-196). Heidelberg: Springer International Publishing.
[27] Kuznetsova, N.S., Kot, O.O., Hryniak, A.B., & Pleniuk, M.D. (2020). Abolition of the Commercial Code of Ukraine: Potential consequences and necessary prerequisites. *Journal of the National Academy of Legal Sciences of Ukraine*, 27(1), 100-131.
[28] Graziano, T.K. (2015). Codifying European Union private international law: The Swiss Private International Law Act – a model for a comprehensive EU private international law regulation? *Journal of Private International Law*, 11(3), 585-606.
[29] Kramer, X., Rooij, M., Lazic, V., Blauwhoff, R., & Frohn, L. (2012). *A European Framework for private international law: Current gaps and future perspectives.* Brussels: European Parliament.
[30] Cuniberti, G. (2016). France. In J. Basedow, & R. Giesela (Eds.), *Encyclopedia of Private International Law* (pp. 2079-2089). Cheltenham: Edward Elgar publishing.
[31] Jan, H. (2016). Germany. In J. Basedow, & R. Giesela (Eds.), *Encyclopedia of Private International Law* (pp. 2101-2112). Cheltenham: Edward Elgar publishing.
[32] Mayer, P. (1982). Les reactions de la doctrine a la creation de droit par les juges en droit international prive. In *T. XXXI, Economica.* Paris: Travaux de l'Association Capitant.
[33] Dicey, A.V., Morris, J.H.C., & Collins, L. (2018). *Dicey, Morris, and Collins on the conflict of laws.* London: Sweet & Maxwell.

[34] Lorenzen, E.G., & Heilman, R.J. (1935). The restatement of the conflict of laws. *University of Law Pennsylvania Review*, 83(5), 555-589. Retrieved from https://core.ac.uk/download/pdf/72834727.pdf.
[35] The American Law Institute. (1988). *Restatement of the Law Second. Vol. 1&2.* Philadelphia: American Law Institute.
[36] Singer, J.W. (2020). Choice of law rules. *Cumberland Law Review*, 50(2), 7-39. Retrieved from https://scholar.harvard.edu/files/jsinger/files/clr.pdf.
[37] Bukovsky, V. (1914). *The Code of Civil Legislation of the Baltic Provinces with the continuation of 1912-1914 and with explanations: In 2 volumes.* Riga: Printing House G. Gempel & Co.
[38] The interview with Professor M.K. Sulejmenov. The academic interview. (2021). Retrieved from https://pravo.hse.ru/intprilaw/news/442606343.html.

Dmytro V. Lukianov

Doctor of Law, Professor
Corresponding Member
National Academy of Legal Sciences of Ukraine
61024, 70 Pushkinska Str., Kharkiv, Ukraine

Head of the Department of Internationa Private Law and Comparative Law
Yaroslav Mudryi National Law University
61024, 77 Pushkinska Str., Kharkiv, Ukraine

Thomas Hoffman

Doctor of Law, Professor
Department of Law, School of Business and Governance
12616, Ehitajate tee 5, Tallinn, Estonia

Inesa A. Shumilo

Candidate of Law, Associate Professor
Department of Internationa Private Law and Comparative Law
Yaroslav Mudryi National Law University
61024, 77 Pushkinska Str., Kharkiv, Ukraine

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