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FEATURES OF INHERITANCE IN PRIVATE INTERNATIONAL LAW

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The article discusses the issues of inheritance law in the context of private international law. Special attention is paid to conflicting norms and problems arising in the regulation of inheritance relations with the involvement of an international element, analysis of legal systems of different countries. Inheritance in international private law has an important practical significance, since in view of the migration processes and the growth of the pace of acquisition of real estate abroad, the urgency of the need to regulate inheritance relations complicated by a foreign element is beyond doubt.

Regulation of inheritance relations in international private law is carried out in several ways: application of the conflict of laws rule and the rule of national material law to which it refers; use of norms contained in international treaties.

The issue of legal regulation of inheritance legal relations complicated by a foreign element is solved using the conflict-of-law method of regulation, which determines the law of which state should be applied to regulate certain relations.

Harmonization of inheritance legislation of Ukraine in the field of international private law and its convergence with the legislation of the European Union requires the solution of a number of issues, such as: clarifying the definition of the testator's last place of residence; establishing the order of succession of heirs according to the law depending on the degree of family ties; peculiarities of inheritance of movable and immovable property; removal from the right to inheritance; determination of the legal nature of the will of the spouses; inheritance by

children born with the help of assisted reproductive technologies and others. Today, a significant number of people become participants in hereditary relations.

This article analyzes aspects of inheritance in private international law. These aspects are considered as a key mechanism for achieving a certain consistency between national legal systems, reducing differences between them based on generally recognized legal principles and advanced concepts of legal culture.

Keywords: inheritance, heirs, testators, conflicts of law, foreign element, inheritance law.

Statement of the problem. Inheritance ties play an important role in the private law system of each country. This is explained by the fact that inheritance law regulates relations related to the transfer of rights and obligations in a way that allows them to pass from the testator to the heirs. With the increase in the number and variety of international private relations, the number of cases of international inheritance has also increased. This was the result of increased population migration, marriages with foreigners and acquisition of property abroad by citizens of Ukraine or acquisition of property rights by foreigners in Ukraine. The increase in the number of cases of international inheritance has created problems in the field of law enforcement practice of notaries, lawyers and judges. This requires proper legal regulation of international inheritance issues both through the national legislation of each state and with the help of international treaties.

Analysis of the study of the problem. Issues related to international inheritance in Ukraine are regulated by the Civil Code of Ukraine, the Law of Ukraine "On International Private Law" and other laws. However, the current state of legal regulation of international inheritance relations in Ukraine, according to the Concept of updating the Civil Code of Ukraine, does not fully correspond to the legal aspects of international inheritance. Conflict law requires a change in the regulatory paradigm, improvement of conflict technology and revision of already existing conflict instruments [7].

The study of inheritance features in international private law was carried out by such scientists as S. Bariatti, S. Cámara, G. Contaldi, A. Dutta, B. Kresse, K. Reid, B. Reinhartz, D. Stamatiadis, F. Villata, O. O. Bychkivskyi, V. I. Borysova, T. V. Bodnar, L. K. Burkatskyi, V. V. Valakh, V. V. Vasylchenko, G. O. Galushchenko, I. I. Hlavach-Khomina, V. I. Kysil, L. V. Kozlovska, V. M. Kossak, O. O. Kot, O. V. Kokhanovska, L. V. Krasytska, N. S. Kuznetsova, O. E. Kukharev, L V. Leshchenko, V. V. Luts, R. A. Maidanyk, O. P. Pechenyi, O. V. Rozgon, Z. V. Romovska, E. O. Ryabokon, V. L. Skrypnyk, U. O. Slaboshpytska, S. O. Slipchenko, N. B. Soltys, R. O. Stefanchuk, M. O. Stefanchuk, I. V. Spasibo-Fateeva, A. A. Stepaniuk, I. Ya. Fedorych, E. I. Fursa, S. Ya. Fursa, E. O. Kharitonov, I. O. Kharitonova, T. S. Khorosha, O. Yu. Tsybulska, G. V. Churpita, R. B. Shishka.

The above testifies to the need for a systematic scientific and theoretical study of relations of international inheritance both in the doctrine of civil law and in international private law. This study is aimed at improving the mechanism of their legal regulation and determining ways to solve both theoretical and practical problems.

The importance of scientific analysis of inheritance issues in international private law is explained by different approaches to the application of inheritance legislation in international inheritance relations in notarial and judicial practice, as well as the need to take into account the experience of foreign countries in this field.

The purpose of the article is to research and justify the need to apply conflict of law norms of inheritance as key mechanisms in the field of international private law, which needs improvement through new approaches in the aspect of modernizing the regulation of private law relations in modern conditions.

Achieving the goal is realized through the following tasks:

- describe problems arising in international private law in the context of inheritance relations;

- consider the essence of inheritance legal relations and their features in different legal systems;
- determine the bases and causes of conflicts arising in hereditary legal relations, especially in the case of the presence of a foreign element.

Presentation main material. Objective reality requires adequate legal regulation of international private law relations. Thus, the world processes of globalization of the economy, integration trends for the unification and codification of law, further diversification of legal relations, internationalization of social life, and an increase in the volume of legal regulation require radical changes in the domestic paradigm of conflict law, improvement of conflict techniques in terms of its detailing, and the construction of legal mechanisms capable of operating with normative material to achieve appropriate legal regulation.

The existence of conflicts in international private law, in particular conflicts in international inheritance, is due to the presence of a foreign element, differences between national legal systems, as well as the interaction of national legal systems, in particular in the field of inheritance law.

In particular, in the materials of a comparative study of inheritance law in EU countries, published by the German Institute of Notaries in 2009, the increasing relevance of international inheritance problems is noted, which is due to a number of circumstances: in some countries.

A significant number of people – citizens of other countries of the Union – live in the Union (for example, in Germany it is 1.8 million people, and in Luxembourg citizens of other countries.

EU make up about 20 percent of the population); many citizens of EU countries have bank accounts or real estate in other countries (according to German banks, more than 1 million Germans own real estate abroad).

Collisions in international inheritance are caused by the following factors: connection of inheritance relations with more than one legal system, pluralism of legal systems and their ability to interact.

The connection of inheritance relations with different legal systems may appear as a result of the movement of subjects of different legal systems across state borders and the spread of property relations in the interstate space. Territorial barriers between different states began to be overcome, especially in the second half of the 20th century, due to which representatives of many strata of the population from different countries actively move from country to country, leaving their relatives and their property in different countries. The mobility of the population is increasing, which leads to an increase in the number of cases of settlement of citizens of one country on the territory of another.

International flows of foreigners lead to the fact that they gradually settle in new countries, move their families and property there, and form them in a new place. In addition, testators can have heirs in different countries, and they can also leave their inheritance in several countries. The tendency of foreigners to purchase real estate in other countries leads to an increase in the problems of international inheritance.

The increase in the number of property of deceased persons, in respect of which the norms of international private law should be applied, are also influenced by: marriages with foreigners, acquisition of dual citizenship, international investment processes, economic and linguistic connectivity of regions.

According to Article 1216 of the Civil Code of Ukraine, inheritance is considered the transfer of rights and obligations (inheritance) from a deceased natural person (testator) to other persons (heirs) [1].

In many countries, the norms concerning inheritance relations are reflected in the civil codes. For example, in Germany, the German Civil Code of 1896 contains Book V “Law of Inheritance”; in France, the Civil Code of 1804 contains relevant provisions on inheritance in Book III “On the various methods of acquiring property rights”, in particular in Title I “On inheritance” and Title II “On gifts between the living and on wills”.

In addition, in addition to titles, codes and statutes, inheritance relations can be regulated by specially adopted separate laws (for example, in Spain). It is important to note that due to the adoption of

Roman law, inheritance law, especially in continental Europe, has common features. The difference lies in the system of inheritance in the countries of the Anglo-American legal family, where judicial precedent plays a decisive role.

O. E. Kukharev notes that the right of inheritance allows to ensure the transfer of the property of the deceased to other persons. The content of this right includes not only the ability to acquire the property of the testator (to inherit), but also the ability of the owner of the property to dispose of it in the event of death (to bequeath) [4].

During inheritance, a foreign element may be present when the inherited property or the testator or the heir are abroad (the latter may have citizenship of another country). In such situations, participants in inheritance legal relations, notaries and judicial authorities need not only to know the substantive legal norms concerning inheritance in individual countries, but also to take into account the legal norms that apply to inheritance relations complicated by a foreign element.

Due to the diversity of legal systems, conflicts arise in some cases, as different countries may have different systems of inheritance regulation. In international private law, the regulation of inheritance relations with a foreign element is carried out in two ways: by applying the conflict of law rule and the rule of national material law to which it refers, as well as by using the rules contained in international treaties of states. Thus, two methods of regulation are used for the settlement of these relations: conflict and substantive law.

A conflict in international inheritance should be defined as a legal situation in which inheritance relations are related to two or more national legal systems that can regulate them through interaction [5].

Conflict of laws rules in the field of international inheritance can be considered in the context of different types of inheritance, such as legal inheritance and testamentary inheritance. According to the subject of inheritance relations, conflicting norms can be divided into the following categories: conflicting norms concerning the inheritance of movable property; conflict of laws rules governing the inheritance of real estate; conflicting rules determining the inheritance of other property rights and obligations.

Pluralism of legal systems is a prerequisite for the emergence of conflicts, since the inheritance law of different countries has significant differences in the regulation of the inheritance process. These differences are caused by historical, economic, religious, moral, cultural, social and other factors. Inheritance law is largely conservative because it is a continuation and addition to the right of ownership and contains many provisions arising from the right of ownership that operates in a certain area for a certain period.

Inheritance law norms, in general, differ in one socio-economic function, but have significant differences and characteristics in different legal systems. Differences between domestic inheritance laws are partly technical in nature. For example, in the countries of continental Europe, inheritance is universal legal succession, where the rights and obligations of the testator directly pass to the heirs. In common law countries, the inherited property first goes to the personal representative of the deceased, who transfers it to the heirs only after the procedure for clearing debts, that is, after resolving issues with creditors [3].

The rules regarding wills also vary from country to country. For example, the legislation of the Federal Republic of Germany provides for the possibility of joint wills between spouses; mutual wills are known in English and US law. In Italian and Polish law, a will is a unilateral act, so two or more persons cannot express their will in the same document, regardless of whose benefit the will was made. The French Civil Code expressly prohibits joint and mutual wills.

In some countries, such as Germany, Switzerland, France, there are inheritance contracts that enter into force from the moment of conclusion and cannot be unilaterally terminated.

French law defines three types of legatees: universal, partial and singular. Universal legacies provide for the transfer of all the property of the testator to one or more persons; partial legatees provide for the transfer of only a certain part of the inherited property; singular legacies have a limited purpose and relate only to certain property rights.

In parallel with inheritance by law, in Ukraine there is also inheritance by will, which is regulated by the norms of Chapter 85 of the Civil Code of Ukraine. In many countries, such as Switzerland, Great Britain and most states of the USA, a person can make a will from the age of 18, while in Germany the right to do so is given to persons as young as 16 (according to the German Civil Code). In France, in addition to adults, minors who have reached the age of 16 can make a will, but only for half of their property.

In the countries of continental Europe, a mandatory condition for the validity of a will is a written, handwritten will, i.e. one that the testator made in his own hand in accordance with the requirements of the law. There are also different forms of wills such as public deed, secret will and special wills. For example, the legislation of Great Britain provides that the will must be signed by the testator and attested by two witnesses.

A special category in inheritance law is made up of countries with a Muslim legal tradition. They are characterized by a significant limitation of the freedom of the will, where inheritance by law is the main one. The heir cannot change the order of inheritance established by law, and can dispose of only a third of the inherited property in favor of persons who do not belong to the heirs by law. In such systems, there is no equality between men and women, and a woman can receive only half of a man's inheritance. It is also important to note that heirs cannot be persons of other religions or faiths.

In the inheritance law of tropical African countries, it is often stipulated that the inheritance is distributed among the closest relatives of the deceased. Traditionally, the eldest son or sons of the testator are the heirs. If there are none, the eldest daughter has the right to inherit. In some countries, the surviving spouse may be entitled to receive half of the deceased's property. In polygamous families, women receive lots depending on the number of children each of them has. Inheritance of agricultural land, crops and livestock is often governed by a separate order, determined by the law or custom of the deceased's community, tribe, religion or sect.

Inheritance law of Ukraine provides for the possibility of inheritance both by law and by will. The Civil Code of Ukraine establishes various institutions of inheritance law, such as the spouse's will, six lines of heirs, inheritance contract, secret will, etc. [6].

Each state independently establishes the limits of its own laws in relation to the laws of other countries in the field of inheritance law. This ensures the harmonization of international inheritance relations, allowing or not allowing the operation of foreign inheritance law in its territory in accordance with its own priorities and aspirations. Thus, any conflicting rule related to international inheritance can be considered as a mechanism that regulates the interaction of different legal systems regarding inheritance relations, taking into account the conditions of foreign inheritance law on the territory of each specific state.

Conclusions. Having studied the European legal systems of inheritance, we can come to the conclusion that in these countries it is considered as universal legal succession, according to which the rights and obligations of the testator pass directly to the heirs.

The increase in freedom in making wills and the expansion of the circle of heirs in Ukraine indicate a tendency to increase the rights of heirs and greater flexibility in determining the disposition of property through a will. In Western countries, on the contrary, there is a narrowing of these opportunities, which indicates tighter state control over the disposal of the deceased's inheritance.

Conflict of laws rules governing international inheritance play a key role in resolving legal conflicts arising from differences in legal systems in different countries. These norms contribute to the interaction of different legal systems in the field of inheritance, minimizing possible legal disagreements and misunderstandings between participants in inheritance relations.

After the death of a citizen of Ukraine abroad or in the case when his property or property rights are located outside the country, various legal issues arise, among which the aspects of legal regulation of inheritance relations occupy an important place. Although Ukrainian international law defines some

aspects of inheritance, the existing norms are not always sufficient to fully resolve all possible legal issues that may arise in inheritance relations with a foreign element. Therefore, we consider it expedient to study European practice in these matters and to develop our own system of legal regulation of inheritance relations, which would ensure effective functioning in modern conditions.

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ОСОБЛИВОСТІ СПАДКУВАННЯ В МІЖНАРОДНОМУ ПРИВАТНОМУ ПРАВІ

У статті розкрито питання спадкового права в контексті міжнародного приватного права. Особливу увагу присвячено колізійним нормам та проблемам, що виникають під час регулювання спадкових відносин із залученням міжнародного елемента, аналізу правових систем різних країн. Спадкування в міжнародному приватному праві має важливе практичне значення, оскільки з огляду на міграційні процеси та зростання темпів придбання нерухомості закордоном, актуальність необхідності регулювання спадкових відносин, ускладнених іноземним елементом, не викликає сумніву.

Регулювання спадкових відносин у міжнародному приватному праві здійснюється декількома способами: застосування колізійної норми та норми національного матеріального права, до якої вона відсилає; використання норм, що містяться в міжнародних договорах.

Питання правого регулювання спадкових правовідносин, ускладнених іноземним елементом, вирішується за допомогою колізійно-правового методу регулювання, що визначає, право якої держави має застосовуватись для врегулювання певних відносин.

Гармонізація спадкового законодавства України у сфері міжнародного приватного права та його зближення з законодавством Європейського Союзу потребує вирішення низки питань, таких як: уточнення визначення останнього місця проживання спадкодавця; встановлення порядку черговості спадкоємців за законом залежно від ступеня родинних зв’язків; особливостей спадкування рухомого та нерухомого майна; усунення від права на спадкування; визначення правової природи заповіту подружжя; спадкування дітьми, народженими за допомогою допоміжних репродуктивних технологій, та інші. На сьогодні значна кількість осіб стає учасниками спадкових відносин.

У цій статті аналізуються аспекти спадкування в міжнародному приватному праві. Ці аспекти розглядаються як основний механізм досягнення певної узгодженості між національними правовими системами, зменшення відмінностей між ними на основі загальновизнаних правових принципів та передових концепцій правової культури.

Ключові слова: спадкування, спадкоємці, спадкодавці, колізії права, іноземний елемент, спадкове право.