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K. M. Buriak, Candidate of Juridical Sciences,
Assistant at the Department of European and international law
of Oles Honchar Dnipro National University

FEATURES OF CONFLICT-OF-LAWS REGULATION OF INTERNATIONAL HEREDITARY RELATIONS

A comprehensive legal study of the basic principles of conflict-of-laws and legal regulation of hereditary relations complicated by a foreign element was provided in the article. The conflict-of-laws issues in the field of hereditary relations complicated by a foreign element were found to arise due to the specifics of the national legislation of each of the countries and the inconsistency of private international law in this area. Four groups of sources of legal regulation of international hereditary relations complicated by a foreign element are considered: norms of national inheritance law; norms of foreign inheritance law; norms of international (regional) conventions; norms of bilateral treaties. The specifics of the norms of national law are indicated on the example of Ukrainian legislation in this area. The norms of foreign law are analyzed using two systems for determining the applicable law in the field of inheritance: universal and separate. Austria, Albania, Bulgaria, Greece, Egypt, Jordan, Iran, Spain, Italy, Cuba, Germany, Poland, Portugal, Syria, Slovakia, Turkey, Hungary, Finland, the Czech Republic, and Sweden were found to have a universal system. There is a binding – the place of residence of the testator, regardless of the nature of the inherited property in Argentina, Brazil, Denmark, Iceland, Colombia, Norway, Chile, Switzerland. The atypical binding of the country's law to the location of inherited property, regardless of the nature of such property and the personal charter of the testator is used in Uruguay and Panama. Cameroon, Moldova, Romania, and Thailand have a separate system. The law of the testator's place of residence to inheritance of movable property and the law of location of things to inheritance of real estate are fixed in the legislation of Australia, Belgium, Great Britain, Israel, Canada, Cyprus, New Zealand, Russia, most states of the United States, France and Ukraine. International Conventions regulating certain issues in the field of inheritance are analyzed. International bilateral treaties of Ukraine, which make it possible to independently determine the international legal basis of external relations with certain states, are considered.

Key words: *international hereditary relations; testament; heir; testator; conflict-of-laws binding.*

К. М. Буряк. Особливості колізійного регулювання міжнародних спадкових відносин

У статті проведено комплексне правове дослідження основних засад колізійно-правового регулювання спадкових відносин, ускладнених іноземним елементом. Зазначено, що колізійні питання у сфері спадкових відносин, ускладнених іноземним елементом, виникають через специфіку національного законодавства кожної із країн та неузгодженість міжнародного приватного права в даній сфері. Розглянуто чотири групи джерел правового регулювання міжнародних спадкових відносин, ускладнених іноземним елементом: норми національного спадкового права; норми іноземного спадкового права; норми міжнародних (регіональних) конвенцій; норми двосторонніх договорів. Специфіка норм національного права зазначена на прикладі українського законодавства в даній сфері. Норми іноземного права проаналізовано за допомогою двох систем визначення застосовуваного права у сфері спадкування: універсальна і роздільна. Зазначено, що в Австрії, Албанії, Болгарії, Греції, Єгипті, Йорданії, Ірані, Іспанії, Італії, Кубі, Німеччині, Польщі, Португалії, Сирії, Словаччині, Туреччині, Угорщині, Фінляндії, Чехії, Швеції діє універсальна система. В Аргентині, Бразилії, Данії, Ісландії, Колумбії, Норвегії, Чилі, Швейцарії діє прив'язка – місця проживання спадкодавця, незалежно від природи спадкового майна. У законодавстві Уругваю та Панами використовується нетипова прив'язка права країни місцезнаходження спадкового майна, незалежно від природи такого майна й особистого статуту спадкодавця. У Камеруні, Молдові, Румунії, Таїланді функціонує роздільна система. Закон місця проживання спадкодавця до спадкування рухомих речей та закон місцезнаходження речі до спадкування нерухомості закріплено в законодавстві Австралії, Бельгії, Великої Британії, Ізраїлю, Канади, Кіпру, Нової Зеландії, Росії, більшості штатів Сполучених Штатів Америки, Франції, України. Проаналізовано міжнародні конвенції, які регулюють окремі питання у сфері спадкування. Розглянуто міжнародні двосторонні договори України, які дають змогу самостійно визначати міжнародно-правові засади зовнішніх зносин з окремими державами.

Ключові слова: *міжнародні спадкові відносини; заповіт; спадкоємець; спадкодавець; колізійна прив'язка.*

Problem statement. Society is developing rapidly, and therefore the inheritance law itself is changing and improving. In this regard, new rules of law are being created both at the national and international levels. Legal regulation of international inheritance is carried out with sources of private international law, among which an important place is given to national legislation. The existence of conflicts in hereditary relations with a foreign element is due to different approaches in the national legislation of states to their regulation. This indicates the need to study the national legislation of different states as a source of legal regulation of inheritance with a foreign element. Taking into account the above information, it is quite relevant to study the legislation regulating inheritance

relations complicated by a foreign element, as well as to justify and formulate specific actions to improve legislation in this field.

Analysis of recent research and publications. The issue of features of conflict of laws regulation of international work relations was explored by Ukrainian and foreign scientists: M.M. Boguslavsky, V.G. Butkevich, Yu.V. Vusenko, G.V. Galushchenko, P. Stone, A.J. Mayss, G.S. Fedynich, E.I. Fursa. S.Ya. Fursa.

Purpose of the article is analysis of problematic issues of legal regulation of inheritance complicated by a foreign element.

Research result. The existence of conflict-of-laws in international inheritance law is due to the presence of a foreign element, differences among national legal orders, as well as the interaction of national legal systems. Conflict-of-laws in international inheritance are caused by the following factors: the connection of hereditary relations with more than one legal system, the pluralism of legal systems and their ability to interact.

The increase in the number of property of deceased persons in respect of which the norms of private international law should be applied is also affected by: marriages with foreigners, the acquisition of dual citizenship, international investment processes, economic and linguistic connectivity of regions [1, p. 174].

Most scientists among the sources of legal regulation of international hereditary relations complicated by a foreign element, distinguish the following:

– Norms of national inheritance law;
– Norms of foreign inheritance law;
– Norms of international (regional) conventions;
– Norms of bilateral agreements.

1. In Ukraine, the norms on inheritance are contained in book six of the Civil Code of Ukraine [2] "Inheritance law". Chapters 84–90 are devoted to the legal regulation of these issues. in particular, chapter 84 "General provisions" defines: the concept of inheritance; types of inheritance; rights and obligations of a person who is not part of the inheritance; features of opening an inheritance; the circle of heirs; the right to inheritance and removal from the right to inheritance; inheritance of certain types of rights, etc. Chapter 85 "Inheritance by testament" is devoted to such a basis of inheritance as a testament. This chapter sets out provisions on the right to a testament, sets out the form of a testament and its types, regulates issues related to the certification of a testament and sets out provisions on the invalidity of a testament. Chapter 86 "Inheritance by law" sets out the order of inheritance, the procedure for calling for inheritance and the determination of parts in inherited property. Chapter 87 "Realization of the right to inheritance" contains rules that determine the procedure for accepting inheritance by heirs and the terms of its acceptance, the distribution of inheritance among heirs, taking measures to protect inherited property, as well as issues related to inheritance management. Chapters 88 and 89 are devoted to the execution of a testament and registration of the right to inheritance. Chapter 90 regulates relations related to the conclusion of an inheritance contract. In the field of inheritance, the norms of Notarial legislation are also applicable, for example, the law of Ukraine "On notaries" [3] and The Procedure for performing notarial actions by notaries of Ukraine [4], etc. Many norms regarding inheritance are also contained in special laws in the field of: intellectual property rights; corporate relations; property rights and other real rights; Medical Law, etc. Resolution № 7 of the Plenum of the Supreme Court of Ukraine on the 30-th of May 30, 2008 "On judicial practice in inheritance cases" is important for the correct application of norms in the field of inheritance [5]. However, such judicial practice concerns only explanations on the application of substantive law norms by courts in the field of inheritance. There are currently no explanations on the application of conflict-of-laws rules on inheritance by courts in Ukraine.

2. The next source of legal regulation of international hereditary relations is the norms of foreign law. Today, in international practice, two systems for determining the applicable law in the field of inheritance have been formed: universal and separate. The universal system subjugates inheritance to the national law or the law of the testator's last place of residence, regardless of the type of property. The separation system defines separately the right of inheritance for movable property (National Law or the law of the last place of residence) and immovable property (the law of the location of property).

The Universal regime countries, which are guided by the principle of applying the law of the testator's state of citizenship include Austria, Albania, Bulgaria, Greece, Egypt, Jordan, Iran, Spain, Italy, Cuba, Germany, Poland, Portugal, Syria, Slovakia, Turkey, Hungary, Finland, Czech Republic, Sweden, etc.

According to the Swedish law "On the conflict of laws regarding inheritance", the inheritance of property of deceased Swedish citizens who have not made the testament takes place under Swedish law even if the deceased person did not live permanently in the kingdom. As for the inheritance of property of a foreign citizen, the law of the country of which the deceased person was a citizen should be applied to hereditary relations [6].

In the Hungarian law "On private international law" [7], Chapter VIII "The right of inheritance" regulates hereditary relations with a foreign element, namely relations concerning the drafting and cancellation of an oral testament, extortionate property (articles 64 and 65 of this law). Thus, according to Article 64 of this law, an oral testament is formally valid if it is concluded in accordance with the legislation of Hungary; the current legislation in the city and at the time of its compilation or cancellation; the law, which was the personal law of the testator at the time of the signing of the oral testament or its cancellation or at the time of the testator's death; a law, which

was in force at the place of residence of the testator or in the usual place of residence at the time of the signing of an oral testament or its cancellation or at the time of the testator's death; in the case of the signing of an oral testament about immovable property, a law, which applies in the place where the immovable property is located. Article 65 of the Hungarian law stipulates that if, in accordance with the law, which applies to succession, there are no heirs to property, which is located in Hungary, the provisions of Hungarian law regulating the succession of the Hungarian State apply to it. At the same time, the Hungarian law "On private international law" also contains other conflict-of-laws rules regarding inheritance relations. Thus, Article 98 of this law defines the jurisdiction of the court and notaries in inheritance cases, namely, the Hungarian court has jurisdiction in inheritance proceedings if the testator was a Hungarian citizen at the time of death; the Hungarian public notary has jurisdiction in testament cases if the testator was a Hungarian citizen at the time of death or if the property is located in Hungary. According to article 102 of the Hungarian law, if a Hungarian court has jurisdiction in an inheritance case, the scope of such jurisdiction should also consider the issue of marital property law following inheritance. Chapter XI "Recognition and enforcement of foreign decisions" of the Hungarian law "On private international law" contains a separate article, which concerns decisions of a foreign court in inheritance cases. Thus, according to Article 115 of the Hungarian law, in cases of inheritance, a foreign court decision is interpreted as legitimate if the jurisdiction is based on the place of residence of the testator at the time of death or the nationality of the testator.

The Polish law "On private international law" stipulates that a testator in a testamentary disposition may subordinate inheritance issues to the law of the country in which he has a permanent place of residence or a place of ordinary stay at the time of such expression of will or at the time of death. In the absence of a choice of law, the law of the country of which the testator was a citizen at the time of death applies to inheritance relations [8].

According to the Italian law "Reform of the Italian system of private international law", succession is regulated by the law of the country citizenship of which the testator had at the time of death. However, the law allows the testator in the testament to choose the right of the country in which the inherited property is located, if the choice of law, made by the testator, does not restrict the rights, which Italian law grants to heirs who are in Italy at the time of the testator's death [9].

In Germany, the main charter of inheritance is the Personal Law of the testator, namely the law of the country of citizenship. But for real estate located in this country, the testator can choose German law in the testament [10].

Countries, which use the binding-place of residence of the testator, regardless of the nature of the inherited property, include Argentina, Brazil, Denmark, Iceland, Colombia, Norway, Chile, Switzerland and so on.

According to Article 1012 of the Colombian Civil Code, succession occurs in accordance with the right of the last place of residence of a person [11].

In accordance with articles 955 and 997 of the Civil Code of the Republic of Chile, inheritance relations begin from the moment of death of a person in accordance with the law of the country of the testator's last place of residence, except in cases determined by law. Foreigners have the right to inheritance opened in Chile, on the same grounds and in the same order as Chileans [12].

Binding about the location of inherited property to the law of the country, regardless of the nature of such property and the personal Charter of the testator is atypical. It was accepted by the legislation of Uruguay, Panama and some other states.

Countries, which have adopted a separate regime of conflict-of-laws regulation (application of the law of citizenship of the testator to the inheritance of movable property and the law of location of things to the inheritance of real estate) include Cameroon, Moldova, Romania, Thailand, etc.

According to Article 1622 of the Civil Code of the Republic of Moldova, inheritance relations of movable property are determined according to the national law of the testator, which was in force at the time of death and inheritance relations of real estate are determined by the law of the state in the territory of which this property is located. In such circumstances, it is established that the national law of a person is the law of the state in which this person has citizenship. According to Article 1587 of the Civil Code of the Republic of Moldova, if a person has two or more citizenships, national law is the law of the state with which the person has a close connection [13].

The conflict – of-laws principle – the law of the testator's place of residence use to inheritance of movable property and the law of location of things use to inheritance of real estate in the legislation of Australia, Belgium, Great Britain, Israel, Canada, Cyprus, New Zealand, Russia, most states of the United States, France, Ukraine, etc.

The law of Ukraine "On private international law" has established the theory of "splitting the inheritance Charter" on inheritance issues, which is based on the application of various conflict-of-laws criteria for the inheritance of movable and immovable property. Thus, Article 70 of the law applies to the inheritance of movable property, which establishes a universal binding to the law of the state in which the testator had his last place of residence. As for the inheritance of immovable property and property subject to state registration, Article 71 of the law, which stipulates that the inheritance of immovable property is regulated by the law of the state on the territory of which this property is located and property subject to state registration in Ukraine is regulated by the law of Ukraine. Separately, the law regulates the ability of persons to draw up and cancel a testament, the form of a testament and the act of its cancellation. In Article 72 of this law establishes a general conflict-of-laws binding, which will determine the ability of a person to draw up and cancel a testament, as well as the form of the testament and the act

of its cancellation, namely the law of the state in which the testator had a permanent place of residence at the time of drawing up the act or at the time of death. A testament or an act of its cancellation may not be declared invalid due to non-compliance forms, if the latter meets the requirements of the right of the place of making a testament or the right of citizenship or the right of the testator's usual place of residence at the time of drawing up the act or at the time of death, as well as the rights of the state in which the immovable property is located [14].

According to Article 78 of the Belgian law "Code of private international law", inheritance is regulated by the law of the state in which the deceased had a permanent place of residence at the time of death and inheritance of immovable property is regulated by the law of the state in which the property is located [15].

According to the requirements of English and American law, the inheritance of movable property is subject to the right of domicile of the deceased at the time of his death (this rule applies only to inheritance in the proper sense of the word, not taking into account the rights of the state to escheat). In England, the suitable rule was established in the Precedent of 1744 and means that movable property in the absence of a testament is distributed among the heirs according to the domicile law of the testator at the time of his death. This law defines the circle of persons called to inherit, the share of each one, the right to represent, the rights of the second spouse, the responsibility of heirs for debts and all other issues of legal relations regarding inheritance. The same law regulates inheritance under a testament of movable property, testamentary legal capacity and the form of testament [16].

As for the United States, the doctrine and practice of this state mostly follow the same principles as in the United Kingdom. Informal codification of conflict-of- laws is in force in most states (Restoration of the law of Conflict of Laws as adopted and promulgated by the American Law Institute at Washington D.C. – Restoration I), it contained the issue of conflicts in the field of inheritance and the following main provisions. Inheritance of immovable property is determined by law by its location (§ 245). The division of movable property takes place according to the law of the testator's domicile at the time of his death (§ 303). The same law determines the validity and validity of a testament, as well as the act of revocation of a testament (§ § 306 and 307). In the absence of heirs by law or testament, the property passes to the state treasury, where it is "administered" (§§ 309–310) [17].

Describing the legal provisions concerning the regulation of international hereditary relations in the system of continental law in French law, it is necessary first of all to indicate that although the legislation of this country with regard to inheritance and the concept of universal succession is established, but with respect to such that it is related to the legal order of several states, French doctrine and practice strictly adhere to the principle of poly-charter inheritance.

Real estate located in France, including those one owned by foreigners, is subject to French law. The most general rule of operation of these provisions is the indisputability of their application in the material and legal field. The thesis about using the provisions of this article to cases of inheritance of real estate is derived as a result of interpretation of judicial practice. This fact was confirmed by the French court of Cassation. In particular, the decision in the Bendeddouche case of January 3, 1980 notes that "French law determines the inheritance of real estate located in France" [18].

In this norm, there is a differentiation of inheritance regimes in relation to movable and immovable property. In addition, according to this rule the inheritance of real estate is subject to the law of the country in which the property is located.

In modern French judicial practice, it is firmly accepted that the inheritance of movable property is determined by the law of the last domicile of the testator. The wording of this principle is given in the decision of the court of Cassation of June 24, 1878, which referred to the inheritance of a Bavarian citizen who lived in France all his life. The same decision also established the application of reverse references in the field of inheritance law.

Modern French doctrine pays special attention to the problem of "splitting international legacies" ("morcellement des successions intematinales"), defending the expediency and logic of this phenomenon.

The legislation of many countries allows the choice of the law, which will be applied to hereditary relations by the testator himself during the implementation of testamentary orders. As a rule, the possibility of such choice is limited by the law of the testator's country of citizenship. Also, the testator's choice of the right of the state of his citizenship may become invalid if the testator's citizenship changes over time.

As a rule, even if the law is based on a conflict-of-laws criterion of place of residence and the testator is granted a certain autonomy of will, it is only possible to choose the right of the testator's state of citizenship. The legislator does not allow broad rights of choice in order to prevent fraudulent circumvention of the law and manipulation of the distribution of inheritance.

The scope of law applied to hereditary legal relations in general does not solve conflict-of-laws issues of the ability to make a testament, the form of a testament and the act of its cancellation, for which special conflict-of-laws rules are provided (Belarus, Kazakhstan, Uzbekistan, etc.). Because there is a rule that the testator in the testament can indicate that the law of the country of his citizenship will apply to relations on inheritance of this property (article 1292 of the Civil Code of Armenia [19], article 1133 of the Civil Code of Belarus [20], article 1121 of the Civil Code of Kazakhstan [21]). This rule is established in the Civil codes of Armenia, Belarus, Kazakhstan along with the general binding of inheritance of movable and other property that does not relate to real estate to the law of the country in which the deceased had domicile in case of death.

3. International conventions regulate certain issues in the field of inheritance, due to the fact that there are disagreements in domestic regulation, which lead to difficulties in the process of unification of legal regulation of international inheritance relations. This circumstance leads to a small number of conventions in this area:

– The Hague Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions (October 5, 1961) [22]. The convention deals with conflict-of-laws bindings, which relate to the form of a testament. According to the provisions of this Convention, the legislation of the country of nationality or the country of domicile are applied. In addition, the Convention allows the application of the legislation of the country where the property, which is the subject of inheritance, is located. It is also allowed to apply the law of the country with which the testator had the closest legal connection;

– The Hague Convention on the Law Applicable to Trusts and on their Recognition Entry into force (July 1, 1985) [23]. The Convention declares a special procedure for establishing a right by recommendation for person, who transfers the inherited property, independently choose the right, which will be applied in a particular case;

– Washington Convention on the Uniform Law on the form of international will (October 26, 1973) [24]. The convention declares a single law on the form of an international testament and aims to create uniform substantive rules, which establish the form of a testament. The Convention obliges states-parties to introduce rules for drawing up international testament at the national level. The testament must be drawn up and signed by the testator in the presence of two witnesses and an authorized person; and if it is impossible to sign the will with your own hands, the testator makes a statement about this to the authorized person, the testament is signed by another established person and a note about this is made in the testament itself;

– The Hague Convention Concerning the International Administration of the Estates of Deceased Persons (October 2, 1973) [25]. The convention declares the use of an international certificate, which defines the person or circle of persons authorized to manage movable and immovable property after the death of the testator, as well as the powers of such persons;

– Convention on the Law Applicable to Succession to the Estates of Deceased Persons (August 1, 1989) [26]. The convention provides an opportunity to choose the right of the closest connection for regulating relations in the field of inheritance of immovable property, which is issued by an application, the form and content of which are determined by the state where it was drawn up. In addition, the rights of the country with which the person has the closest connection can be applied, if the law of this country does not specify which acts should be guided.

4. International bilateral treaties concluded by states allow them to independently determine the international legal basis of their external relations and thus influence all international relations as a whole. In the sphere of international inheritance relations, Ukraine has signed: the consular agreement between Ukraine and the Republic of Belarus [27]; the Consular Convention between Ukraine and the Great Socialist People's Libyan Arab Jamahiriya [28]; the Consular Convention between Ukraine and the Syrian Arab Republic [29].

Conclusions and prospects. Consequently, conflict-of-laws issues of inheritance have been and remain one of the most complex in private international law. Conflicts in international inheritance law are legal situations in which hereditary relations are connected with two or more national legal systems. Such relations can be regulated if the legislation of different countries and legal systems interact. In the modern world, there are different modes of inheritance. The type of specific regime is determined by the legislation of the relevant state.

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