

## EUROPEAN INTEGRATION AND PRIVATE INTERNATIONAL LAW OF UKRAINE: JUDICIAL ASPECT

## ЄВРОПЕЙСЬКА ІНТЕГРАЦІЯ ТА МІЖНАРОДНЕ ПРИВАТНЕ ПРАВО УКРАЇНИ: СУДОВИЙ АСПЕКТ

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Judicial aspect of European integration of Ukraine which entails legal mechanism to ensure recognition and enforcement of Ukrainian judgments in civil and commercial matters is analyzed in the article. Association Agreement between Ukraine and the European Union dated June 27, 2014 which is the ground of massive and fundamental changes in Ukrainian national law system is looked over in relation to the process of adaptation of private international law legislation to the European standards in order to enhance the processes of convergence of legal systems. Particular articles of the Association Agreement referring to private international law are analyzed. Special attention is paid to the issue of European integration processes and their direct impact on private international law system and its mechanism of legal regulation. The aim, features and mechanism of national law adaptation in the context of European integration changes are the subject to detailed analysis. The issue of recognition and enforcement of Ukrainian judgments in civil and commercial matters in the EU and vice versa is studied in details under Ukrainian and European law with regard to circulation of judgment concept. The basic principles of recognition and enforcement of judgments, specific conditions and requirements are analyzed under the Brussels I bis Regulation. Grounds for refusal of recognition and enforcement of judgments are studied under the Brussels I bis Regulation and the Law of Ukraine "On Private International Law". Special attention is paid to the issue of other legal mechanisms (conventions) to ensure free circulation of judgments (for example, Lugano Convention). Author's point of view with regard to implementing certain legal tools to ensure automatic recognition and enforcement of judgments between Ukraine and the European Union is outlined.

**Key words:** European integration, recognition and enforcement of judgments, automatic recognition, Brussels I bis Regulation, adaptation of Ukrainian legislation, private international law, Lugano Convention.

У статті проаналізовано судовий аспект європейської інтеграції України, а саме правовий механізм забезпечення визнання та виконання українських судових рішень у цивільних та господарських справах. Угода про асоціацію між Україною та Європейським Союзом від 27 червня 2014 року, яка є основою масштабних та фундаментальних змін у національній правовій системі України, розглядається в аспекті адаптації законодавства про міжнародне приватне право до європейських стандартів з метою посилення процеси конвергенції правових систем. Проаналізовано окремі статті Угоди про асоціацію, що стосуються міжнародного приватного права. Особливу увагу приділено питанню євроінтеграційних процесів та їх безпосереднього впливу на систему міжнародного приватного права в Україні та механізм його правового регулювання. Предметом детального аналізу є мета, особливості та механізм адаптації національного права в контексті євроінтеграційних змін. Детально досліджено питання визнання та виконання українських судових рішень у цивільних та господарських справах у країнах Європейського Союзу і навпаки в рамках українського та європейського права з огляду на концепцію вільного обігу судових рішень. Основні принципи визнання та виконання судових рішень, особливі умови та вимоги проаналізовано відповідно до Брюссельського регламенту I bis. Підстави для відмови у визнанні та виконанні судових рішень вивчаються згідно з Брюссельським регламентом I bis та Законом України «Про міжнародне приватне право». Особливу увагу приділено питанню інших правових механізмів (конвенцій) для забезпечення вільного обігу судових рішень (наприклад, Конвенція Лугано). Викладено авторську точку зору щодо впровадження окремих правових інструментів для забезпечення автоматичного визнання та виконання судових рішень між Україною та Європейським Союзом.

**Ключові слова:** європейська інтеграція, визнання та виконання судових рішень, автоматичне визнання, Брюссельський регламент I bis, адаптація законодавства України, міжнародне приватне право, Конвенція Лугано.

**Introduction.** Nowadays Ukraine is going through the most difficult period in the history of its independence. Notwithstanding the full-scale invasion of Russian troops which caused not only destruction, but also a humanitarian crisis in dozens of regions and cities, Ukraine continues European integration processes and intends to become the EU Member State after the victory in the war.

While providing characteristics of the current state of Ukrainian legal system, it is impossible not to mention the European integration which has been launched since 2014 and caused full renewal of national legislation. Moreover, it is worth noting all these processes are not related to particular branches of law (civil law, commercial law, administrative law etc.) and respective legislation: we are talking about deep structural revision of the role of the law as a tool to regulate legal social relations, changing the general approach and increasing the importance of basic law principles (primarily the accent is made on rule of law principle and its constituent elements). At the same time private international law is not an exception: having a special subject of legal regulation and specific methods, private international law being at the same time both domestic and international law requires special approach to revision and adaptation with regard to the EU integration process. Moreover, of particular

scientific interest is the issue of adapting private international law of Ukraine to European legal mechanism on recognition and enforcement of judgments in order to ensure their free circulation in civil and commercial matters.

**Analysis of recent research and publications.** It should be noted that certain problems of the legislation on private international law with regard to EU integration were analyzed by such outstanding scientists as V. I. Kisil, A. S. Dovgert, R. A. Maidanik, N. S. Kuznetsova and others. However, unfortunately, today the doctrine of private international law does not provide a clear vision of the importance of European integration processes for further development of private international law legislation in Ukraine.

Therefore, **the purpose of this article** is to highlight and analyze particular legal mechanisms to ensure recognition and enforcement of Ukrainian judgments in civil and commercial matters in the EU and vice versa.

**Main part.** To start with, it should be mentioned that an association between the European Union and its Member States, of the one part, and Ukraine, of the other part, is established with the aim, among others, to enhance cooperation in the field of Justice, Freedom and Security with the aim of reinforcing the rule of law and respect for human rights and fundamental freedoms (art. 1 (2)(e) of the Association agreement between the European Union and its

Member States, of the one part, and Ukraine, of the other part as of May, 29, 2014) [1].

Article 24 of the mentioned above Agreement enshrines mutual obligations of the Parties to further develop judicial cooperation in civil and criminal matters, making full use of the relevant international and bilateral instruments and based on the principles of legal certainty and the right to a fair trial. When it comes to civil matters in particular, further EU-Ukraine judicial cooperation should be established on the basis of the applicable multilateral legal instruments, especially the Conventions of the Hague Conference on Private International Law in the field of International Legal Cooperation and Litigation as well as the Protection of Children [1].

All mentioned above demonstrates once again the importance of legal mechanism to ensure free circulation of judgments in civil and commercial matters between Ukraine and the EU.

It is common knowledge that private international law as its objective has to address 3 main legal questions:

- The law of which country is applicable (conflict of laws issue)?

- Which particular court of which country is competent to hear and resolve the dispute?

- How to recognize and enforce a judgment in civil and commercial matters in a foreign country?

Overlooking the first two questions, for the purpose of this article we will concentrate on analysis of legal mechanisms which could be used in the process of Ukrainian legislation adaptation to the EU private international law standards in relation to the last question mentioned above.

It should be stated that the Law of Ukraine “On Private International Law” as of June, 23, 2005 № 2709-IV contains three chapters regulating proceedings with foreign elements:

- Chapter XI. Proceeding in cases involving foreign persons;

- Chapter XII. Jurisdiction and execution of foreign jurisdictions;

- Chapter XIII. Recognition and enforcement of foreign courts judgments [2].

Each chapter has specific legal norms outlining the measures court might take in specific cases. However, the last out of mentioned above 3 chapters addressing the issue of recognition and enforcement of foreign judgments enshrines the provision according to which recognition and enforcement of the foreign court decisions shall be carried out in accordance with the procedure established by the law of Ukraine. This law is the Civil Procedure Code of Ukraine as the main legislation act regulating civil procedure forms and settling the requirements of civil justice to protect affected, unacknowledged or disputed rights, freedoms and interests of physical persons, the rights and interests of legal persons and state interests [3].

The Civil Procedure Code of Ukraine contains a special section with regard to recognition and enforcement of foreign judgments in Ukraine. The national law distinguishes the procedure for recognition of foreign judgment that is subject to enforcement and those which is not (chapter 1 and 2 of Section IX respectively). The general principle is that both foreign judgments could be recognized in Ukraine, if its recognition is provided for by international treaties ratified by the Verkhovna Rada of Ukraine, or according to the principle of reciprocity (art. 471 of the Code). A petition for the recognition of a foreign judgment shall be submitted by an interested person to the court; the following documents shall be attached to the request for recognition of a judgment:

- 1) a duly certified copy of the decision of a foreign court, the recognition of which is requested;

- 2) an official document stating that the decision of a foreign court has entered into force, if this is not stated in the decision itself;

- 3) a certified translation of the listed documents into Ukrainian or a language provided for by international treaties, ratified by the Verkhovna Rada of Ukraine, in accordance with the legislation.

However, it should be stressed that the list of supporting documents is different for the judgments which are subject to enforcement.

For providing comparative analysis it's important to take a look at the grounds for refusing to grant a permission to enforce a foreign court judgment enshrined in the art. 468 of the Code. They are as follows:

- if the decision of a foreign court has not entered into legal force under the legislation of the state in whose territory it was issued;

- if the party against whom the decision of a foreign court was issued was deprived of the opportunity to participate in the legal process due to the fact that it was not properly and timely notified of the proceedings;

- if the decision was made in a case, the consideration of which falls exclusively within the competence of the court or other authorized body in accordance with the law of Ukraine;

- if there is a previously adopted decision of the court of Ukraine in a dispute between the same parties, on the same subject and on the same grounds, which has gained legal force, or if there is a case in the court of Ukraine in a dispute between the same parties, on the same subject and on the same grounds, which was initiated before the opening of proceedings by a foreign court in the case;

- if the deadline for presenting a foreign court decision for enforcement in Ukraine is omitted, as established by international treaties, the binding consent of which has been given by the Verkhovna Rada of Ukraine, and this Code;

- if the subject of the dispute is not subject to judicial review under the laws of Ukraine;

- if the implementation of the decision would threaten the interests of Ukraine;

- if Ukraine previously recognized and granted permission to enforce the judgment of a foreign court in a dispute between the same parties, on the same subject and on the same grounds as the judgment requested for enforcement [3].

At the same time in the EU legal system the main act of procedural civil and commercial legislation governing the interactions among the court systems of the Member States is 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 (hereinafter – the Brussels I bis Regulation) [4]. The provisions of this Regulation should be analyzed in details.

Coming back to historical background, this Regulation shall, as between the Member States, supersede the 1968 Brussels Convention, except as regards the territories of the Member States which fall within the territorial scope of that Convention and which are excluded from this Regulation pursuant to Article 355 of the TFEU.

The main rules and requirements governing the recognition and enforcement of foreign judgments are enshrined in Chapter III of the Brussels I bis Regulation. It should be specifically underlined the principle according to which a judgment given in a Member State shall be recognized in the other Member States without any special procedure being required. Any interested party may apply for a decision that there are no grounds for refusal of recognition as referred to in the Regulation (art. 36 of the Brussels I bis Regulation). A party who wishes to invoke in a Member State a judgment given in another Member State shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity and special certificate issued pursuant to Article 53 of the Regulation [4]. The described above approach is known as the principle of automatic recognition.

When it comes to enforcement of judgments the same approach takes place: a judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required. An enforceable judgment shall

carry with it by operation of law the power to proceed to any protective measures which exist under the law of the Member State addressed (art. 39, 40 of the Brussels I bis Regulation).

Of particular interest for us there are provisions of the Brussels I bis Regulation referring to refusal of recognition and enforcement. According to article 45 of the Regulation on the application of any interested party, the recognition of a judgment shall be refused:

- if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State addressed;
- where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

- if the judgment is irreconcilable with a judgment given between the same parties in the Member State addressed;

- if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed;

- if the judgment conflicts with provisions of Section 3, 4 or 5 of the Chapter II with regard to policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant [4].

It is crucial to take into account that under the Brussels I bis Regulations the grounds for refusal of recognition and enforcement are the same: on the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist (art. 46 of the Brussels I bis Regulation).

While analyzing other international instruments to ensure free circulations of foreign judgments it should be stated that the Brussels I bis Regulation enshrines one specific provision which is of particular importance for the aim of this research. Article 71 outlines that the Regulation shall not affect any conventions to which the Member States are parties and which, in relation to particular matters, govern jurisdiction or the recognition or enforcement of judgments. However, with a view to its uniform interpretation, this rule should be applied as follows:

- this Regulation shall not prevent a court of a Member State which is party to a convention on a particular matter from

assuming jurisdiction in accordance with that convention, even where the defendant is domiciled in another Member State which is not party to that convention;

- judgments given in a Member State by a court in the exercise of jurisdiction provided for in a convention on a particular matter shall be recognised and enforced in the other Member States in accordance with this Regulation [4].

Nevertheless, where a convention on a particular matter to which both the Member State of origin and the Member State addressed are parties lays down conditions for the recognition or enforcement of judgments, those conditions shall apply. In any event, the provisions of this Regulation on recognition and enforcement of judgments may be applied.

It should be also stated that the Brussels I bis Regulation shall not affect the application of the 2007 Lugano Convention [5]. This point should be analyzed in details.

Lugano Convention as of December, 21, 2007 is an international treaty on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters concluded between the European Union and Iceland, Norway, Swiss as these countries are not EU Member States and Denmark (as of Danish right to opt out). The legal norms enshrined in Lugano Conventions are similar to those in the Brussels I bis Regulation allowing automatic recognition of judgments given in a State bound by this Convention in the other States bound by it without any special procedure being required. It's important to stress that for states that join the European Union after the conclusion of the Lugano Convention, the Convention applies automatically from their EU accession date. Taking all mentioned above into account the advantages of Lugano Convention ratification for Ukraine are obvious.

**Conclusion.** When it comes to recognition and enforcement of foreign judgments, it should be stated that the procedure and grounds for refusal are similar under the Brussels I bis Regulation and the Law of Ukraine “On Private International Law”. However, the lack of applicable legal instruments makes the recognition and enforcement of judgments between the EU and Ukraine extremely complicated and time consuming. We believe this issue could be solved through Lugano Convention ratification by Ukraine. To our mind, Lugano Convention could be the most realistic and prompt way for Ukraine to establish automatic recognition and enforcement of Ukrainian judgments in civil and commercial matters in the EU (as well as the other way around) and to enhance judicial cooperation. We are sincerely committed to the idea that this can definitely contribute to accelerating Ukraine's European integration and obtaining the status of a Member State.

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