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LAWS APPLICABLE TO SUCCESSION RELATIONS UNDER UKRAINIAN PRIVATE INTERNATIONAL LAW: CURRENT STATE AND PERSPECTIVES

The paper examines the conflict of laws regulation of succession relations in Ukrainian Private International Law. It reveals the problems of the application of dualistic approach to conflict of laws regulation of succession relations and its wrong expansion to the determination of the law, applicable to form of wills by Ukrainian courts. Besides, it analyses the approaches for characterization of the terms of connecting factors, used in the Law of Ukraine on Private International Law. It defined the problem of the use of alternative connecting factors to the capacity for making or revocation of a will. It has been concluded that the imperfection of conflict of laws regulation of succession relations may be overcome if Ukraine follows the approaches of the EU Succession Regulation.

Key words: *Law applicable to succession. – Law applicable to the form of a will. – Last place of residence of the deceased. – International succession law.*

1. INTRODUCTION

According to the statistics international mobility of Ukraine's people is growing.[1] Many of them leave their relatives and their property in Ukraine. Therefore, one can observe the development of international succession relations involving Ukrainian citizens and their property. In this connection, the determination of the law applicable to international succession relations is especially significant. The analysis

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1 O. Malynovska (ed.), *Migration in Ukraine: Facts and Figures*, International Organization for Migration Mission in Ukraine, Kyiv, 2016, 10.

of case law shows that the Ukrainian courts often refuse to recognize the wills, made abroad as valid, because their form do not correspond to the requirements of Ukrainian law. Therefore, it is necessary to investigate, why Ukrainian courts apply domestic law to the form of wills made abroad in spite of the fact that the conflict of laws rules, applicable to the form of wills, provide several alternative connecting factors and do not require mandatory application of Ukrainian law to this issue.

The conflict of laws regulation of succession relations depends on the interpretation of the terms of their connecting factors. The successful application of the conflict of laws method depends on the characterization of the terms of conflict of laws rules. Thus, the paper will focus on the possible ways of interpretation of the terms of conflict of laws rules, applicable to succession relations in Ukraine. To solve the problems arising out of imperfective conflict of laws regulation of succession relations, it will compare the conflict of laws regulation of succession in Ukraine with the approaches of the EU Succession Regulation – the newest and the most comprehensive instrument in the sphere of cross-border succession.

2. GENERAL CHARCTERISTIC OF CONFLICT OF LAWS RULES APPLICABLE TO SUCCESSION RELATIONS IN UKRAINE

Conflict of laws rules that regulate international succession relations can be found in international treaties of Ukraine[2] and the Law of Ukraine on Private International Law (hereinafter referred to as the Law of Ukraine on PIL).[3]

2 These include Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions of 1961, as well as some treaties on legal assistance e.g. the Treaty between Ukraine and Czech Republic on legal assistance in civil matters, *Official Bulletin of Ukraine*, No 31, 2006, the Treaty between Ukraine and the Republic of Poland on legal assistance and legal relations in civil and criminal matters, *Official Bulletin of Ukraine*, No 47, 2006, the Treaty between Ukraine and Romania on legal assistance and legal relations in civil matters, *Official Bulletin of Ukraine*, No 65, 2007, and others.

3 Law of Ukraine on Private International Law, June 23, 2005, *Bulletin of Verhovna Rada of Ukraine*, No 32, 2005.

These sources follow the dualistic approach in conflict of laws regulation of succession relations. Consequently, under most of the treaties on legal assistance the succession of movable property is governed by the law of the country of citizenship of the deceased at the moment of death.[4] The law applicable to the succession of immovable property is determined as *lex rei sitae*.[5]

The Law of Ukraine on PIL provides conflict of laws rules applicable to the succession of: movable property, which is not a subject of state registration in Ukraine; immovable property; movable property, subject of state registration in Ukraine. In the first case the succession is governed by the law of the country, where a deceased had his last place of residence.[6] The succession of immovable property is governed by *lex rei sitae*.[7] Movable property, subject to state registration in Ukraine, is inherited under the law of Ukraine.[8]

Besides, both international treaties on legal assistance and the Law of Ukraine on PIL contain special conflict of laws rules, which set a number of alternative connecting factors, applicable to the capacity of making of a will[9] and its form.[10]

4 See for instance Art. 37 (1) of the Treaty between Ukraine and the Republic of Poland on legal assistance and legal relations in civil and criminal matters, Art. 38 (p. 1) of the Treaty between Ukraine and Czech Republic on legal assistance in civil matters, Art. 34 (1) of the Treaty between Ukraine and Romania on legal assistance and legal relations in civil matters.

5 Art. 37 (2) of the Treaty between Ukraine and the Republic of Poland on legal assistance and legal relations in civil and criminal matters, Art. 38 (2) of the Treaty between Ukraine and Czech Republic on legal assistance in civil matters, Art. 34 (2) of the Treaty between Ukraine and Romania on legal assistance and legal relations in civil matters,

6 See Art. 70 of the Law of Ukraine on PIL. This Article does not mention directly 'movable property', but as long as the next article concerns the succession of immovable property and assets subject to state registration in Ukraine, it should be concluded that Art. 70 provides conflict of laws rules, applicable to the succession of movable property, which is not subject to state registration in Ukraine.

7 Art. 71 of the Law of Ukraine on PIL.

8 *Ibid.*

9 Under most treaties on legal assistance the capacity to make or revoke a will as well as the consequences of the defects of the expression of a will are governed by the law of the state of citizenship of the deceased at the moment of making or revocation of the will. See, for instance, Art. 39 (1) of the Treaty between Ukraine and the Republic of Poland on legal assistance and legal rela-

3. THE WRONG APPLICATION OF DUALISTIC APPROACH BY UKRAINIAN COURTS TO THE FORM OF WILLS

The study of case law shows, that the courts apply the dualistic approach in conflict of laws regulation of general succession issues to the form for validity of the wills.[10]

For instance, in one case a court refused to recognize as a valid will, the one which was made by a testator on the territory of Germany in written form, but was not notarized, which is admissible under German law.[11] However, as long as the will concerned immovable property, located on the territory of Ukraine, the court considered that the form of the will should comply with the requirements of Ukrainian law, as long as Art. 71 of the Law of Ukraine on PIL provides that the

tions in civil and criminal matters, Art. 40 (1) of the Treaty between Ukraine and Czech Republic on legal assistance in civil matters.

Art. 72 of the Law of Ukraine on PIL provides that the person's capacity to make or revoke a will are governed by the law of the state where the deceased had his permanent place of residence at the time of making an act or at the time of death.

10 Most treaties on legal assistance provide that the form of making or revocation of the will should correspond either to the law of the state of citizenship of the deceased at the moment of making or revocation a will or to the law of the state where a will was made or revoked. See, for instance, Art. 39 (2) of the Treaty between Ukraine and the Republic of Poland on legal assistance and legal relations in civil and criminal matters, Art. 40 (2) of the Treaty between Ukraine and Czech Republic on legal assistance in civil matters, Art. 36 of the Treaty between Ukraine and Romania on legal assistance and legal relations in civil matters.

Under Art. 72 of the Law of Ukraine on PIL a form and an act of revocation of a will are governed by the law of the state where the deceased had his permanent place of residence at the time of making an act or at the time of death. Nevertheless, the will or an act of its revocation cannot be invalidated because of non-observance of the form requirements, if the form complies with the requirements of the law where the will was made or the law of the state of citizenship or the law of the state of permanent or habitual residence of a deceased at the moment of making of an act or at the moment of death or the law of the state where immovable property is located.

11 See R. Zimmermann, "Testamentary Formalities in Germany", *Comparative Succession Law: Volume I: Testamentary Formalities* (eds. K. G. C. Reid, M. J. de Waal, R. Zimmermann), Oxford University Press, Oxford 2011, 197–210.

succession of immovable property is governed under the law of the state, where it is located.[12]

In another case a court stated that a form of the will, made by Ukrainian citizen on the territory of Poland, which concerned objects of immovable property, a part of which was located on the territory of Poland, and another part – on the territory of Ukraine, should correspond to the rules of the Treaty on legal assistance between Ukraine and Poland and the requirements of Ukrainian legislation as to the validity of wills concerning the objects, located on the territory of Ukraine and the rules of Polish legislation concerning the objects located on the territory of Poland.

To substantiate the decision the court referred to the provisions of both instruments, which provide that succession of immovable property is governed by the law of the state, where immovable property is located. It also cited the provisions of both sources, which specify that the correspondence of the form of a will to the law of the state, where it was made, is enough for the will to be valid. However, the court did not draw proper conclusions from the latter provisions.[13]

Meanwhile, they mean that the form of a will may comply only with the provisions of Polish law, even if it concerned the objects, located on the territory of Ukraine. And certainly, the court should not refer to the Law of Ukraine on PIL, as long as an international treaty, which regulates the same issues, exists.[14]

In the other case, the court declared the will, made in Israel that concerned immovable property, located in Ukraine, as invalid as long as it did not comply with the requirements of Ukraine's legislation as to the form of the will, although its form corresponded to the law of Israel. In doing so, the court referred to Art. 71 of the Law of Ukraine on PIL, which provides *lex rei sitae* for the succession of immovable property, and Article 31 of the same Law, which contains general conflict of laws rules, applicable to the form of transactions and provides

12 Decision of Storozynetskyy Local Court from January, 17, 2017, Case No 723/1983/16-c, available at: *http://reyestr.court.gov.ua*, 4.9.2018.

13 Decision of Shevchenkivskyy Local Court of Lviv from June, 17, 2011, Case No 2–26/11, available at: *http://reyestr.court.gov.ua*, 4.9.2018.

14 The international treaties have primacy over the national legislation of Ukraine. See Art. 19 (2) of the Law of Ukraine On International Treaties of Ukraine, June, 29, 2004, *Bulletin of Verhovna Rada of Ukraine*, No 50, 2004.

lex rei sitae for the form of transaction concerning the immovable property.[15] Certainly, this decision cannot be supported as long as both Ukraine and Israel participate in the Convention on the Conflicts of Laws Relating to the Form of Testamentary Dispositions of 1961,[16] and thus by virtue of Art. 1 (a) of the Convention the will cannot be declared as invalid if its form complies with the requirements of the law of the state, where the testator made it.

Thus, the Ukrainian courts expand the dualistic approach of conflict of laws regulation of succession relations to the form of wills, which violates the international agreements in which Ukraine participates and the Law of Ukraine on PIL. Partially, this situation is caused by the fact that the Law of Ukraine on PIL does not determine the scope of the law applicable to succession relations.

4. THE DIFFICULTIES OF APPLICATION OF DUALISTIC APPROACH TO SUCCESSION OF SOME OBJECTS

Besides, the general difficulties of application of dualistic approach, which are inevitable if the succession is governed by different laws, in Ukraine it may be more complicated when the estate includes some special objects the legal nature of which is disputable. Among them are unauthorized premises and premises the construction of which is not completed. On the one hand they possess all features of immovable property,[17] on the other hand before the completion of the construction a person is considered as an owner of the materials and equipment, used in construction,[18] which cannot be referred to immovable property. As long as the completion of the construction consists in

15 Decision of Darnytskyy Local Court of Kyiv from June, 07, 2011, Case No 2–324/11, available at: *http://reyestr.court.gov.ua*, 4.9.2018.

16 Convention of 5 October 1961 on the Conflicts of Laws Relating to the Form of Testamentary Dispositions. Status table, available at: *https://www.hcch.net/en/instruments/conventions/status-table/?cid=40*, 4.9.2018.

17 Immovable property includes plots of land as well as objects, located on the plot of land, the movement of which is impossible without their devaluation or change of their special purpose. See Art. 181 of the Civil Code of Ukraine, January, 16, 2003, *Bulletin of Verhovna Rada of Ukraine*, No 40, 2003.

18 *Ibid.*, Art. 331.

its entry into service, which is complicated and for many Ukrainians expensive, there are a lot of houses, which have not been entered into service, although actually they are used as immovable property.

Inconvenience, which creates the dualistic approach in conflict of laws regulation of succession relations may be overcome if Ukrainian legislator looks at the EU Succession Regulation,[19] Art. 21 which provides a monist approach as to the determination of the law applicable to succession. However, one can predict that in cases of succession of plots of agricultural land, located in Ukraine, the foreign law will be restricted by the mandatory rules of the Land Code of Ukraine, which provide that agricultural lands cannot be transferred to the ownership of foreigners, stateless persons, foreign legal entities and states. If such lands were inherited, they have to be alienated within one year from the moment of the acceptance of inheritance.[20]

The wrong application of the conflict of laws rules applicable to succession as whole to the form of wills may be prevented if the Law on PIL determines the scope of the law, applicable to succession as whole, as Art. 23 of the EU Succession Regulation does.

5. THE INTERPRETATION OF THE 'LAST PLACE OF RESIDENCE' AND 'PERMANENT PLACE OF RESIDENCE' OF THE TESTATOR

As it was already mentioned, the Law on PIL offers several connecting factors, applicable to succession relations: 1) 'law of the state, where a deceased had his last place of residence' (applicable to the succession of movable property); 2) 'law of the state, where a deceased had his permanent place of residence at the moment of making a will or an act of its revocation or at the moment of death' (applicable to the form of will or act of its revocation and capacity of its making or revocation); 3) 'law of the state, where a deceased had his habitual place of

19 Regulation (EU) No 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions, and acceptance and enforcement of authentic instruments in matters of succession**,** and on the creation of a European Certificate of Succession, *OJ* L 201, 27 July 2012.

20 Land Code of Ukraine, October 25, 2001, *Bulletin of Verhovna Rada of Ukraine*, No 3, 2002.

residence at the moment of making a will or an act of its revocation or at the moment of death (applicable to the form of a will and an act of its revocation).

However, the Law of Ukraine on PIL does not interpret the terms, used in these connecting factors. Therefore, most probably that they will be interpreted under other legal instruments of Ukrainian law, as long as Art. 7 (1) of the Law on PIL provides that characterization should be made under Ukrainian law.

In principle, there is a possibility to characterize the terms of the conflict of laws rule taking into consideration the laws of a foreign state if the notions or rules, which are to be interpreted, are unknown to Ukrainian law (Art. 7 (2) of the Law of Ukraine on PIL. However, as long as the Civil Code of Ukraine in several rules uses the terms 'last place of residence of the deceased', 'permanent place of residence of a natural person', it is more likely that they will be interpreted under Ukrainian law.

There are no cases in Ukrainian case law, in which courts interpreted the term 'last place of residence of the deceased' for the purposes of the Law of Ukraine of PIL. However, there are many cases, where they interpreted this term, while applying Art. 1221 of the Civil Code of Ukraine, which provides that the place of opening of the inheritance is the place of the last residence of the deceased.

In some cases, the courts understood the last place of residence of a deceased, as a place of registration[21] of the deceased.[22] However, the practice when the court determined the last place of residence of the deceased as the place of actual living, which did not coincide with the place of his or her registration, can also be found in case law.[23]

21 The Administrative law of Ukraine obliges Ukrainian citizens as well as foreigners, who permanently or temporary resides in Ukraine, register their place of residence in a particular territorial administrative unit of Ukraine. See the Law of Ukraine on the Right to Freedom of Movement and Choice of Place of Residence in Ukraine, December, 11, 2003, *Bulletin of Verhovna Rada of Ukraine*, No 15, 2004.

22 Decision of Malovyskivskyy Local Court of Kirovohradskyy Region from March, 14, 2013, Case No 392/206/13-c, available at: *http://reyestr.court.gov.ua*, 4.9.2018; Decision of Malovyskivskyy Local Court of Kirovohradskyy Region from June, 14, 2014, Case No 392/2044/13-c, available at: *http://reyestr.court.gov.ua*, 4.9.2018; Decision of Sviatoshynskyy Local Court of Kyiv from July, 11, 2016, Case No 759/5892/16-c, available at: *http://reyestr.court.gov.ua*, 4.9.2018.

23 Decision of Kirovskyy Local Court of Kirovohrad from April, 26, 2017, Case No 404/2192/17, available at: *http://reyestr.court.gov.ua*, 4.9.2018.

Thus, the interpretation of the 'last place of residence of the deceased' for internal succession relations is controversial.

In a number of cases the courts interpreted the term 'permanent place of residence of the natural person'. In succession matters this issue is often analyzed, because the heir, who resided with the deceased permanently, accepts the inheritance automatically and do not need to submit an application regarding the acceptance of inheritance to the notary.[24] In most of these cases, the courts considered that a person has a permanent residence in the place, in which he or she actually lives, notwithstanding the place of registration of a person.[25] As long as in all these cases the courts did not analyze the period of living, it should be concluded that the permanent place of residence for the purposes of regulation of internal succession relations in Ukraine does not depend on this issue.

The place of habitual residence of the natural person, has not been investigated by Ukrainian courts for regulation of private relationships.

There were several suggestions regarding the determination of the permanent place of residence of the natural persons for the purposes of the Law of Ukraine on PIL in doctrine. For instance, prof. Kysil offered to determine the place of residence taking into consideration the provisions of the Law of Ukraine on the Right to Freedom of Movement and Choice of Place of Residence in Ukraine.[26] This Law distinguishes the 'place of residence' from the 'place of presence' of natural persons. The first term is determined as a dwelling or special social institution, located on the territory of a territorial administrative unit, where a person lives. The second term is not connected with a dwelling or special social institution, but only with the period of living in a particular territorial administrative unit (less than 6 months).

In our opinion it is impossible to use the definitions, given by the Law of Ukraine on the Right to Freedom of Movement and Choice of

24 Arts. 1268, 1269 of the Civil Code of Ukraine.

25 Decision of Kharkiskyy Local Court of Kharkiskyy Region from March, 20, 2017, Case No 635/816/17, available at: *http://reyestr.court.gov.ua*, 4.9.2018; Decision of the High Specialized Court of Ukraine for Civil and Criminal Cases from November, 11, 2015, Case No 6–48327sv14, available at: *http://reyestr.court.gov.ua*, 4.9.2018.

26 V. Kysil, "Mizhnarodne spadkove pravo" (International Succession Law), *Mizhnarodne Pryvatne Pravo: pidruchnyk (International Private Law: Handbook)* (eds. A. S. Dovhert, V. I. Kysil), Alerta, Kyiv 2014, 348.

Place of Residence in Ukraine, for the purposes of the Law on PIL, as long as it determines the abovementioned terms only within the limits of a particular territorial administrative unit of Ukraine.

Another suggestion was to determine the place of the last place of residence in the conflict of laws rules, applicable to the succession relations in the Law of Ukraine on PIL according to Art. 29 of the Civil Code of Ukraine. This point of view also can not be supported, as long as the Civil Code of Ukraine defines the 'place of residence of a natural person' as the particular premises, where a person lives permanently, temporary of predominantly. However, Art. 72 of the Law of Ukraine on PIL makes the conflict of laws regulation of the capacity to make or revoke a will and its form dependent on the permanent place of residence of the deceased, thus the definition which combines permanent and temporary residence is not helpful.

In our point of view, the interpretation of the notion of the 'last place of residence of the deceased' or other connecting factors of the Law of Ukraine on PIL, applicable to succession relations, should not be based on the provisions of the Civil Code of Ukraine, or any other act of Ukrainian legislation, applicable to internal relationships, as long as they do not allow to clarify these notions for international relationships. Rather, the Law on PIL should include its own criteria for determination of these notions. Besides, the 'last place of residence of the deceased' may be occasional and thus may lead to the application of the law, which has no connection with the succession.

In this sense, the concept of habitual residence of the deceased, used in the EU Succession Regulation looks more appropriate, although it does not include the definition of this notion, however, recitals 23–24 of the Preamble to the Regulation, which specify some directions to its understanding,[27] allow the researchers to identify its essential features.[28]

27 As follows from these provisions, the determination of habitual residence of the deceased depends on the duration and regularity of the presence of the deceased in a particular state; close and stable connection with the state; in some cases, the nationality of the deceased or location of all main estates should be taken into consideration.

28 For instance, that a place of habitual residence is a place of vital interests of the deceased. See P. Lagarde, "Introduction paras. 23–26", *EU Regulation on Succession and Wills Commentary* (eds. U. Bergquist, D. Damascelli, R. Frimston, P. Lagarde, F. Odersky, B. Reinhartz), Verlag Dr. Otto Schmidt KG, Köln 2015, 30.

Besides, for exceptional cases the EU Succession Regulation provides a possibility to determine the law, applicable to succession relations as the law of the state, with which a deceased was manifestly more closely connected at the time of death.[29]

In principal, the Law of Ukraine on PIL also allows to govern the relationships by the law of the state, with which the relationships are more closely connected, if all the circumstances of the case show that the relationships have a slight connection with the state, determined under the conflict of laws rules of this Law. However, it is a general rule, applicable to all relationship, that is why it, unlike the rule of the EU Succession, does not specify the moment by which the relationships should be determined as those that are more closely connected with a particular state. Besides, in our point of view it would be easier to find the law of the state, with which a deceased was more closely connected, rather than a law to which succession relationships are more closely connected. It is obvious, that in a latter case one should consider more circumstances of the case.

6. POTENTIAL PROBLEMS WITH THE COFLICT OF LAWS REGULATION OF THE CAPACITY TO MAKE OR REVOKE A WILL

The Law of Ukraine of PIL combines the conflict of laws regulation of the form of wills and the capacity for their making or revocation, which offers to govern these issues alternatively: under the law of the state, where a deceased had his or her last place of residence at the moment making or revocation of a will or at the moment of death.[30] However, the second sentence of Art. 72, which ensures the principle *favour testamenti* concerns only the form of a will. Thus, the conflict of laws regulation of the capacity to make or revoke a will is vague, as long as it may be governed by one of the abovementioned laws and there is no rule, which specifies that the will is valid, if a deceased had a capacity to make or revoke a will at least under one of these laws.

By comparison, the EU Succession Regulation contains separate conflict of laws rules, applicable to the form of a will and the capacity of its making or revocation, and determines the law, applicable to the

29 Art. 21 (2), Recital 25 of the EU Succession Regulation.

30 See *op. cit.* note 9.

capacity (as one of the issues of substantive validity) for making, modification or revocation of a will as the law 'which, under this Regulation, would have been applicable to the succession of the person who made the disposition if he or she had died on the day on which the disposition was made'. Taking into consideration the provisions of Art. 21 of the Regulation, it may be either the law of the state, where a deceased had his habitual place of residence at the moment of making the will or its modification or revocation as a law of the state, whose nationality a deceased possessed at the time of making a respective act, if he or she exercised the right, given by Art. 22 of the EU Succession Regulation and chose a law, applicable to the will.

In both cases, the applicable law for the capacity of making a will is determined for the time of its making (modification or revocation) which is fully justifiable, as long as one of the tasks of this Regulation is 'to ensure legal certainty for persons wishing to plan their succession in advance'.[31]

In our opinion, the Law of Ukraine on PIL may follow the approach of the EU Succession Regulation to clarify the ambiguities of conflict of laws rules of the capacity of making a will or an act of its revocation. Thus, the conflict of laws rule concerning the form of a will and the capacity of its making or revocation should be separated. The connecting factor, applicable to the capacity of making or revocation of a will should provide the application of the law of the state, where a deceased had his or her habitual residence at the moment of making or revocation of a will, respectively. If the deceased chose a law, applicable to the will, the capacity for its making or revocation should be determined as the law of the state of the deceased nationality at the moment of making a will or an act of its revocation respectively.

7. CONCLUSIONS

The conflict of laws regulation of testamentary succession with foreign element under Ukrainian law has the following features: 1) it follows dualistic approach; 2) the application of dualistic approach might be complicated if the estate includes unauthorized premises or premises, the construction of which was not completed; 3) the Law of

31 Recital 48 of the Preamble to the EU Succession Regulation.

Ukraine on PIL as well as international treaties of Ukraine provide special conflict of laws rules, applicable to the form of wills, and thus it should not be governed by the law, determined under the general conflict of laws rules, applicable to other issues of succession; 4) the courts of Ukraine wrongly expend the scope of conflict of laws rules, applicable to the succession of immovable property, to the form of wills that provide succession of immovable property and therefore violate the principle *favour testementi*; 5) the law of Ukraine does not specify the scope of the law, applicable to succession relations; 6) the conflict of laws rules of the Law of Ukraine of PIL do not determine the terms of connecting factors, applicable to succession relations; 7) the use of the rules of Ukrainian law, applicable to internal relations, is inappropriate for interpretation of the terms of connecting factors applicable to succession relations under the Law of Ukraine on PIL; 8) the conflict of laws regulation of the capacity to make or revoke a will is combined with the regulation of the form of wills, which leads to uncertainty regarding the law, applicable to the capacity to make or revoke a will.

The problems of conflict of laws regulation of succession relations may be overcome if the Law of Ukraine on PIL follows the approaches of the EU Succession Regulation and provides: 1) a monist approach in conflict of laws regulation of succession relations; 2) 'place of habitual residence of the deceased' as a main connecting factor, applicable to succession if a deceased has not chosen a law of his or her nationality in the will; 3) in exceptional cases – the law of the state, with which a deceased had the closest connection at the moment of death; 4) determination of the scope of the law, applicable to succession relations.

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PRAVO MERODAVNO ZA NASLEDNE ODNOSE PREMA UKRAJINSKOM MEĐUNARODNOM PRIVATNOM PRAVU: TRENUTNO STANJE I PERSPEKTIVE

U ovom radu se istražuje regulativa sukoba zakona u pogledu naslednih odnosa u ukrajinskom međunarodnom privatnom pravu. U njemu se ukazuje na probleme primene dualističkog pristupa u regulativi sukoba zakona kod naslednih odnosa i neispravnog proširenja na utvrđivanje prava merodavnog za formu testamenta od strane ukrajinskih sudova. Osim toga, analiziraju se pristupi u vezi sa kvalifikacijom tački vezivanja, koje koristi ukrajinski Zakon o međunarodnom privatnom pravu. U tom smislu se definiše problem korišćenja alternativnih tački vezivanja za sposobnost opoziva testamenta. Zaključuje se da nesavršenost regulative sukoba zakona u domenu naslednih odnosa može da se prevaziđe ako Ukrajina bude usvojila pristupe EU Pravilnika o nasleđivanju.

Ključne reči: *Pravo merodavno za nasleđivanje. – Pravo merodavno za formu testamenta. – Poslednje prebivalište ostavioca. – Međunarodno nasledno pravo.*