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The Process of Unification of Private International Law in EU Countries

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Abstract: The convergence of law within integration groups has its own peculiarities. In our opinion, the legal system that emerged within the European Community, and later the European Union, should be recognized as the most detailed and complex in this regard. Examining the process of creating a single legal space within the European Union, it should be noted that the convergence of legislation was not the main goal of EU members from the outset. Rather, this issue had only functional significance: convergence of legislation was carried out only in areas necessary for the formation of a single market. This article analyzes the process of unification of private international law in creating a unified legal framework in the European Union and the significance of EU regional documents in regulating private international legal relations.

Keywords: unified legal space, integration groups, unification, Private International Law, Rome I, Rome II, Rome III, Rome IV.

Introduction. Three of the most important objective regularities in creating a common legal space within integration groups are:

Firstly, the convergence of legislation cannot be carried out only in separate areas of law. The structure of a unified economic mechanism necessitates the unification and harmonization of a wide range of legal complexes, both public and private.

Secondly, the acceleration of integration processes inevitably leads to the deepening and expansion of efforts to bring legislation closer together.

Thirdly, while striving for integration, states are not always ready to abandon rules based on the established system of internal connections in national legislation. Sometimes, the desire to preserve identity and protect the established system of economic relations motivates states to avoid or even obstruct excessively radical changes. Therefore, when forming a common legal framework, the interests of both the integration association as a whole and its member states must be taken into account.

These three patterns are clearly observed in the history of creating the unified law of the European Union. In general, the EU legal system can be represented by the following scheme: it is based on

primary law - the founding treaties of the European Communities and the European Union. Secondary law, or EU "legislation," consists of regulations, directives, and decisions. A special place in the EU legal system is occupied by legal principles (primarily, general principles of law) and EU case law (the sources of EU case law are the decisions of the Court of Justice of the European Communities and the Court of First Instance) [3; P-120].

Research results. It should be noted that international private law was not a subject of unification and harmonization within the EU for a long time. The authors of the 1957 Treaty establishing the European Economic Community, which proclaimed the creation of a common market, did not pay special attention to developing a legal mechanism for regulating operations and transactions that this treaty was meant to facilitate. It did not define any measures regarding the unification and harmonization of contract law or the issues of private international law. Only Article 220 of this treaty, as an exception, called upon member states to "enter into negotiations with each other with a view to securing for the benefit of their nationals the simplification of formalities governing the reciprocal recognition and enforcement of judgments of courts or tribunals and of arbitration awards" (Article 293 in the 1997 Amsterdam Treaty) [2; P-96]. As can be seen from the content of this article, the problem of unification and harmonization of conflict of laws was the subject of intergovernmental negotiations among member states and was not within the competence of the Community. However, it became clear that the creation of a common legal space within integration groups has objective regularities and is not always predetermined solely by the desire and readiness of the participating states to create a single legal framework. This article analyzes this process.

Analysis of the research results. In September 1967, the Permanent Representative of Belgium to the Commission of the European Economic Community approached the Commission with a proposal to codify conflict of laws norms based on the Benelux project, with the participation of experts from member states, on behalf of its government and the governments of Luxembourg and the Netherlands. In February 1969, in an address to government experts, the Commission's Director General for Internal Market and Approximation of Legislation emphasized that the differences in legal systems and the absence of unified conflict of laws norms hindered the free movement of persons, services, and capital between the Community member states, which was the main goal of its establishment [2; P-150].

In October 1969, government experts from the Community countries, except for Germany, agreed to join forces on the harmonization of law, focusing primarily on the following areas:

- the law applicable to movable and immovable property;
- the law applicable to contractual and non-contractual obligations;
- the law applicable to the form of legal documents and their proof;
- General issues of private international law - renvoi, characterization, application of foreign law, public policy, legal capacity, representation.

The results of this meeting were summarized by the Directorate-General for Internal Market and Approximation of Legislation and submitted to the Commission with a proposal to approach the states with an initiative to begin work on preparing a draft convention on unified law in specific areas of private international law. The Commission agreed to this proposal, and in January 1970, a group of experts was formed to prepare a draft or drafts in the field of private international law on the above-mentioned issues, which were distributed among the states as follows:

- law applicable to movable and immovable property - Germany;
- law applicable to contractual and non-contractual obligations - Italy;
- law applicable to the form of legal documents and their proof - France;

- General issues of private international law - renvoi, characterization, application of foreign law, public policy, legal capacity, representation - Benelux countries.

In June 1972, a draft convention on the law applicable to contractual and non-contractual obligations was submitted by the group of experts for presentation to the governments of the participating states. This draft also addressed issues regarding the form of legal documents and the law applicable to their proof, as well as the interpretation of unified norms and their relationship with other unified conflict of laws norms [2; P-150].

The accession of Great Britain, Ireland, and Denmark to the European Economic Community in 1973 required the inclusion of new members in the Committee of Permanent Representatives and the expert group. This necessitated a certain revision of the draft convention.

In March 1978, the group of experts decided to limit the developing convention to issues related to contractual obligations. In their opinion, the convention that should be developed first needed to regulate this issue. Thus, it was decided to develop a convention on the law applicable to non-contractual obligations at a later stage.

On June 19, 1980, final negotiations took place at a Council meeting in Rome, and the number of ratifications required for the entry into force of the convention was set at seven. The convention was signed on the same day by Belgium, Germany, France, Ireland, Italy, Luxembourg, and the Netherlands (the Convention entered into force in 1991).

On June 17, 2008, the European Parliament and the Council adopted Regulation 593/2008 ("Rome I"), which was intended to replace the Rome Convention and is called the Regulation on the Law Applicable to Contractual Obligations. According to Article 29 of the Regulation, it has been applicable since December 17, 2009, but Article 26 of the Regulation has been applicable since June 17, 2009. Article 26 stipulates that by June 17, 2009, EU member states must submit to the Commission a list of conventions on the conflict-of-laws regulation of contractual obligations for the purpose of their subsequent denunciation. Paragraph 2 of Article 2 of the Regulation stipulates that any reference to the Rome Convention shall be understood as a reference to the Regulation.

If we examine the content of the 1980 Rome Convention, its specificity is primarily related to its scope of application. According to Article 1 of the Convention, it applies to contractual obligations in any situation involving a choice between the laws of different countries, meaning it is not limited to subjects from participating states. According to M.P. Bardina, "The Convention applied by EU courts and arbitrations does not limit its scope to agreements between subjects belonging to these states. It applies to all relations arising from the contract, including those where one or both parties belong to third countries" [1; P-115].

In addition to the law applicable to contractual obligations, the Convention also establishes conflict-of-law rules defining the legal capacity of individuals and the law applicable to assignment and subrogation. Furthermore, the Convention reflects several general provisions relating to the general part of private international law (for example, renvoi (Article 15), public policy clause (Article 16)).

The replacement of the 1980 Rome Convention with the EU "Rome I" Regulation was a logical step towards converting international conventions developed within the EU framework into legal instruments such as Regulations, which constitute secondary EU law; the Rome Convention was the last such document in the field of private international law. The main reasons for this process were: the possibility of uniform interpretation of regulations by the European Court of Justice, and the mandatory application of unified conflict rules by new EU members. The reason for converting the Convention into a Regulation rather than an EU Directive is that Regulations are directly applicable and binding in EU member states. Directives, on the other hand, can be

modified at the national level. Regulations effectively achieve the necessary level of legal unification within the EU.

According to Article 249 (3) of the Treaty on European Union, directives apply to individuals only after their transformation into national legal orders, and consequently, they are not considered EU law norms under private international law. According to Article 288 of this Treaty, regulations have direct effect and can be applied to citizens of member states without any transformative documents. Their scope is determined by the regulations themselves, not by national conflict rules. Almost all EU regulations expand their scope through corresponding conflict-of-law rules, which may encounter certain contradictions with the general principles of private international law.

As a result of converting the Rome Convention into the EU's "Rome I" Regulation, the issue of amending its content arose. Today, one of the main issues almost always discussed in developing unification conflict documents is finding a balance between strict conflict-of-law rules and judicial discretion in choosing the applicable law.

The changes made to the "Rome I" Regulation reflect the ongoing process of searching for this balance. These efforts are most evident in the process of formulating rules on choosing the applicable law when the parties have not selected it. While Article 4 of the Rome Convention, entitled "Applicable Law in the Absence of Choice," prioritized the principle of closest connection, Article 4 of the "Rome I" Regulation primarily establishes rules defining the law applicable to specific contracts - sale of goods, provision of services, rights in rem in immovable property, tenancies of immovable property, and others (paragraph 1). If this does not lead to the desired result, it is necessary to refer to the concept of "characteristic performance," which connects the determination of the applicable law with the habitual residence of the party required to effect the characteristic performance of the contract (paragraph 2). If it is clear from all the circumstances of the case that the contract is manifestly more closely connected with another country, the law of that country shall apply (paragraph 3). Paragraph 4 of this Article provides for the possibility of resorting to the principle of closest connection in cases where the applicable law cannot be determined by the connecting factors applicable to specific contracts (paragraph 1) or the principle of characteristic performance (paragraph 2) [4], [5].

This scheme of determining the applicable law has been criticized in the literature, especially by representatives of common law: in their opinion, the presented expressions lead to a significant decrease in flexibility in determining the applicable law. However, representatives of civil law countries emphasize that the necessary level of flexibility was maintained by the inclusion of paragraph 3 in Article 4 of the "Rome I" Regulation. However, in our opinion, if the applicable law is not determined by the parties, first of all, determining the solution of the issue based on the principle of the closest connection provides the necessary flexibility in regulating these relations. The procedure established in the regulation, that is, first determining the applicable law for specific types of contracts, in our opinion, leads to a decrease in flexibility, even if the connecting factors themselves, established for these types of contracts, are determined based on the principle of the closest connection. For these types of contracts, first applying the principle of the closest connection, and then defining connecting factors presumed to have the closest connection with the specified type of contract, in our opinion, provides sufficient flexibility.

After the adoption of this Regulation, work resumed on a document to unify conflict-of-laws rules for non-contractual obligations from 1988, which received the name "Rome II." However, the developed document acquired the status of not an international convention, but a European Union Regulation "On the Law Applicable to Non-Contractual Obligations" (according to Article 32 of the Regulation, it came into effect on January 11, 2009) [2; P-151].

The EU also has other legal documents in the field of conflict of laws, namely: Regulation No. 1259/2010 of December 20, 2010, on the Implementation of Enhanced Cooperation in the Field of Law Applicable to Divorce and Legal Separation - Rome III, and Regulation No. 650/2012 on Jurisdiction, Applicable Law, Recognition and Enforcement of Decisions, Acceptance and Enforcement of Authentic Instruments, as well as the Creation of a European Certificate of Succession - Rome IV.

The development of unification rules for international civil procedure has been one of the important political and legal aspects of the EU's activities for several years. The 1968 Brussels Convention on this issue was replaced by the Brussels I Regulation on March 1, 2002. Along with this document, the EU adopted many regulatory legal acts covering practically all areas of international civil proceedings.

The Brussels I Regulation governs issues of international jurisdiction, as well as the recognition and enforcement of court decisions in civil and commercial cases. For Denmark, the provisions of the Brussels I Regulation are applied based on a special agreement between the EU and Denmark, concluded on September 19, 2005, and entered into force on July 1, 2007. The Brussels I Regulation is supplemented by the 2007 Lugano Convention, which extends its provisions with some peculiarities to the EFTA (European Free Trade Association) member states (Iceland, Norway, and Switzerland). The agreement entered into force between the European Union and Norway on January 1, 2009 [4], [5].

The Brussels I Regulation, like the 1968 Brussels Convention, consists of two parts: firstly, a list of jurisdictions - rules defining which judicial bodies within the EU have international, as well as territorial jurisdiction in certain cases; secondly, issues of recognition and enforcement of decisions issued by member states are regulated.

According to paragraph 1 of Article 1 of the Brussels I Regulation, this document, harmonizing the EU's legal order, applies to civil and commercial matters. The broad scope of this rule is limited by the list of exceptions in paragraph 2 of this article: maintenance obligations, family law disputes, all matters of inheritance law, and bankruptcy matters. Currently, these gaps in European civil proceedings are partially filled by "Brussels II" and European Regulation 1346/2000.

According to H. Andreas, "thus, in the near future, the age-old dream of pan-European law with a new positivist image will be realized." The rigid dogmatic notions that conflict of law is national law lose their significance. International private law will henceforth be called so on a full basis, and "international" will be filled with a new meaning as part of the name" [3; P. 154]. In our opinion, this process creates the basis for the transition of private international law from the national legal system to the international legal system within the framework of European countries.

Conclusion. Thus, it is no exaggeration to say that as a result of the preparation of the regulations of the European Union, almost complete regulation of the sphere of private international law has been developed in Europe. It is possible that the conflict of law currently in force in the territory of the European Union could form guidelines for the application of law, which in the future may extend beyond the borders of EU member states and become universally accessible.

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