35. JURISPRUDENCE

SOURCES OF INTERNATIONAL PRIVATE LAW: CONCEPT AND GENERAL CHARACTERISTICS

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Abstract. Internal reforms in the country, European integration processes, and the expansion of Ukraine's ties with foreign states (in trade, scientific-technical, or cultural spheres) contribute to the search for new approaches to international cooperation, which in turn heightens attention to the development of international law as a whole. It is well known that the legal regulation of any branch of law or legal relations is impossible without the operation of the institution of sources of law. Despite numerous studies on sources of law and their types, certain issues remain underexplored– particularly the specific features of sources of private international law and their place in the hierarchy of forms of expression of legal norms. In the modern world, situations increasingly arise where citizens of one state enter into legal relations with citizens of another– for example, by concluding contracts or marriages, inheriting property abroad, or opening businesses in another country. In all such cases, there is a need to determine which court has jurisdiction to hear the dispute, as well as how foreign judgments should be recognized and enforced. Sources of private international law play a key role in establishing the legal framework that ensures

stability and fairness in resolving disputes. The absence of clear regulation or gaps in these sources can lead to legal uncertainty in the application of law.

Key Words: private international law, sources of law, international treaties, international customs, dual nature of sources, national legislation, legal customs, hierarchy of sources, primacy of international norms

Purpose and Objectives of the Study. The term "sources of law" is understood as the external form and method of objectification of legal norms; the activity of subjects of legal relations, as a result of which their needs and interests are satisfied; political, economic, social, cultural, and other factors that generate or objectively condition the emergence of legal norms; a peculiar force that creates law, etc. This list is not exhaustive, so it can be argued that there are difficulties in its interpretation. O. Skakun notes that the concept of "source of law" should be understood in material, ideological, institutional, and legal (formal-juridical) senses [1, p. 2].

Under the term "sources (forms) of law" one should understand the officially documented forms of expression and fixation of legal norms, issued on behalf of the state or officially recognized by it, which confer upon them legal and generally binding character. It should be noted that in private international law, as well as in the general theory of law, there exists another position that distinguishes different meanings of the terms "source of law" and "form of law". In addition to the formal-legal understanding of sources of law presented above, there is also a material-legal interpretation, according to which they are understood as the socio-economic conditions of society's life that determine the methods and means of exercising state power and act as the law-creating force. The source of law in the formal-legal sense is the method of external (officially recognized) expression of norms, which imparts to those norms the quality of being legal (juridical) [2, p. 20].

In private international law, the following forms (sources of law) are applied: international treaties, as well as legal customs; domestic legislation; judicial and arbitral practice. Legal doctrine is also considered a source of law, although doctrinal provisions are not a universally recognized source of law. In the legal system of Ukraine, the forms of private international law officially recognized are international treaties, domestic legislation, and legal customs. Judicial and arbitral practice, as well as legal doctrine, are not officially recognized forms (sources) of private international law in Ukraine [3, p. 26].

Private international law has various sources, which can be classified into primary, auxiliary, and supplementary ones. Primary sources form the basis for determining legal norms and principles. Auxiliary sources complement the primary sources by providing additional explanations and interpretations. Supplementary sources do not possess direct legal force, but they may be of significant importance for understanding and applying the law [4, p. 13].

The primary sources include international treaties and customs. Auxiliary sources of private international law encompass general principles of law,

decisions of international organizations, as well as decisions of international courts and arbitral bodies. Supplementary sources consist of doctrines and scholarly research, resolutions and declarations of international organizations that are of a recommendatory nature, and national legislation. In legal doctrine, it has repeatedly been noted that the main distinctive feature of the sources of private international law lies in their dual character. On the one hand, the sources include international treaties and international customs; on the other hand – norms of national legislation and judicial practice of individual states, as well as customs in the field of trade and navigation. This duality of sources implies the possibility of dividing private international law into two parts. In both cases, the subject of regulation remains the same – namely, civil-law relations of an international character. Among the sources of private international law, one should also include such a method of non-state regulation of cross-border private-law relations as international trade customs, which possess an objective character and are independent of national law. [4, p. 14].

The system of sources of private international law establishes the rules by means of which issues related to the choice of applicable law for specific international private relations are resolved. Each source has its own characteristics and weight, and the choice of a particular source depends on the context and the specific circumstances of the case. The application of the system of sources of private international law enables the resolution of issues concerning the choice of law, the recognition and application of foreign legal norms in international private relations [4, p. 17].

In conclusion, private international law has a complex system of sources that combines elements of international and national law. The primary sources – international treaties and customs – provide universal regulation of civil-law relations with a foreign element. Auxiliary sources (general principles of law, decisions of international courts) and supplementary sources (doctrine, recommendatory acts, national legislation) complement the primary ones, contributing to interpretation and filling gaps. In Ukraine, the officially recognized sources are international treaties, domestic legislation, and legal customs; judicial practice and doctrine do not have the status of binding sources. Article 9 of the Constitution of Ukraine enshrines the priority of ratified international treaties over national legislation (except for the Constitution itself). The dual nature of sources is an objective feature of the branch, allowing flexible combination of international standards with national specifics. In the context of European integration and the growth of cross-border relations, an effective system of sources ensures legal certainty, fairness, and protection of the rights of subjects.

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