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INTERNATIONAL AGREEMENTS AS SOURCES OF CIVIL LAW OF UKRAINE

Summary. *The article is devoted to the features and functional purpose of such sources of civil law of Ukraine as international treaties.*

Based on the analysis of the theory of civil law, scientific approaches to understanding of the concept and system of sources of civil law, the relationship between the concepts of "international legal act" and "international treaty" are studied. The scientific work considers the characteristics and features of international treaties as sources of civil law of Ukraine, their role in the regulation of civil relations and their place in the system of national law.

It is concluded that the current transformational changes that take place in Ukrainian society are inextricably linked with European integration processes and the need to bring the components of the legal system of Ukraine in line with the principles, norms and standards of European law. Objective strengthening of the role of international treaties in the settlement of not only international but also domestic civil relations necessitates a thorough conceptual study of the legal nature of international treaties, their place in the system of regulations of Ukraine and the relationship with civil law, which in its turn is an extremely important and, at the same time, difficult task. In this

regard, it is quite logical to intensify the scientific discourse concerning the place of international treaties in the system of national law in different states. At the same time, while not denying the certainly important role played by international treaties in the settlement of civil legal (private) relations, we emphasize that the key to the effective functioning of the mechanism of legal regulation of public relations in this area is the need to achieve balance at interpenetration and interplay of principles and norms of domestic and international law as interdependent systems.

Key words: *civil law, international treaty, source of law, sources of civil law, civil legislation.*

Statement of the problem. The issue of the sources of law, of course, is at the heart of legal science, because research in this area, on the one hand, reach the level of legal understanding, and, on the other hand, have practical significance. At the present stage of development of legal science, the interest in the issue of sources of law is not decreasing. In particular, the tendency to increase of the diversity of sources of law, expansion of understanding of the source of civil law, the increase of the role of different, other than legal acts, sources of civil law (natural law, international treaties, customs, arbitrage practice, etc.) highlights the need to study a number of issues related to sources of modern civil law of Ukraine, including their role (functional purpose) in the settlement of various social relations and the relationship between them.

Analysis of recent researches and publications. Theoretical and practical problems of development of the doctrine of sources of law, in particular, definition of the concept, system and types of sources of law were the subject of research of such Ukrainian and foreign scholars as T. Anakina, L. Andrusiv, N. Atamanova, D. Bobrova, A. Biryukova, T. Bodnar, V. Borisova, M. Braginsky, T. Blaschuk, M. Vasylenko, S. Vasiliev, A. Hryniak, S. Hrynko, N. Golubeva, O. Dzera, A. Dovgert, I. Zabokrytsky, V. Zavgorodniy, V. Ivanov,

I. Kalaur, T. Kashanina, Y. Kovaleva, L. Korchevna, V. Kossak, S. Komarov, L. Krasitskaya, O. Kryvovyaz, V. Luts, R. Maidanyk, G. Mykhailyuk, A. Mazur, A. Minchenko, O. Merezhko, V. Nersesyants, D. Nikolyuk, N. Onishchenko, S. Panchenko, N. Parkhomenko, O. Pervomaisky, S. Pogribny, O. Pidopryhora, V. Reznikova, Z. Romovska, T. Rosik, O. Sidorenko, K. Smirnova, R. Stefanchuk, T. Strybko, O. Titarchuk, N. Fedorchenko, E. Kharitonov, N. Khimchuk, V. Khudoba, O. Shchokina, O. Shtefan, J. Chorna, O. Yavorska and others. At the same time, this field remains attractive for research, as it occupies one of the main places in theoretical and legal science and provokes a number of scientific discussions.

Formulation purposes of article (problem). The purpose of the article is to study the features and functional purpose of international treaties as sources of civil law of Ukraine on the basis of the analysis of the theory of civil law.

The main material. On first approach to this problem it is possible to see that cardinally opposite opinions concerning the understanding of sources of law are not evident. However, professor A. Dovgert notes that the doctrine and practice of sources of law in general and civil law in particular raise many complex questions, answers to which depend on the understanding of law as such, the particular legal system, the particular historical period, etc [1, p. 12].

From the standpoint of legal science in the most general form the sources of civil law are understood as the external forms of expression and consolidation of civil law [2, p. 51; 3, p. 90]. That is, the dominant is the formal-legal (special-legal) approach, in which the sources of civil law usually include acts of civil legislation, international treaties of Ukraine, legal custom. At the same time, as professor R. Maidanyk rightly points out, in modern Ukrainian civil law there is a tendency to an expanded interpretation of the concept of sources of civil law as a form of expression of legal provisions through which legal norms become binding. The scientist emphasizes that the specific feature of the sources of civil (private) law is due to the existence of an extended range of rule-making

subjects, which include not only subjects of public law (state and municipal bodies), but also subjects of private law (individuals and legal entities). etc.) [4, p. 54]. It should be noted that in recent years in civil law science attention has been increasingly focused on the feasibility of liberalizing the range of sources of civil law and the justification of expanding the range of sources of civil law taking into account the needs of the current condition of development of law and the state [1, p. 12; 2, p. 51; 4].

In modern scientific works devoted to a comprehensive study of the sources of civil law, the main features of the latter include the following: 1) the focus on the legal regulation of personal non-property and property relations; 2) different forms of consolidation of norms, i.e. not only in writing but also orally; 3) diversity of types; 4) legal equality of participants regarding the right to choose the source of law; 5) they can arise at the will of the participants of civil relations, except in the cases established by law [5, p. 37].

Before moving on to the question that is the subject of our study, it is worth focusing on the issue of the system of sources of civil law, which has long been accompanied by active scientific discussions. Thus, in the educational literature, the sources of civil law traditionally in the vast majority include the legal act, legal contract, legal custom. Also in Ukraine the practice of the European Court of Human Rights is recognized as a source of civil law [2, p. 53]. Having analyzed the modern system of sources of civil law of Ukraine, O. Kryvovyaz reflects the latter as follows: sources of law are divided into the basic (primary) and the derivative (secondary), the basic, in turn, are divided into formal (Constitution of Ukraine, civil legislation, legal contract) and informal (custom and principles), and the derivative ones include court precedent, civil contract, unilateral juristic act and doctrine [6, p. 63]. According to R. Maidanyk, the system of sources of civil law consists of primary and derivative sources of civil law. The primary (basic) sources of civil law include legislation, regulations, legal customs, general legal grounds (principles) of civil law, moral

principles of society. Derivative (secondary) sources of civil law are judicial precedents (of national and international courts) and sources of internal regulation (self-regulation) of civil relations by their participants – civil contract and unilateral juristic act in cases specified by law, local civil act (statutes, regulations, etc.) [4, p. 60].

It should be noted that the role of international treaties in the regulation of civil relations is rapidly increasing. As A. Dovgert rightly points out, this state reflects the processes of globalization of all aspects of life, the processes of legal unification and harmonization. International treaties increasingly contain rules that govern not the international (interstate or international private) relations, but the domestic civil relations [1, p. 14].

There is a tendency in legislation and legal doctrine to equate the concepts of "international legal act" and "international treaty". However, one should agree with scientists who do not share this position. In particular, S. Panchenko notes that the international treaty is always an agreement between two or more subjects of international law aimed at establishing mutual rights and obligations, but the international legal act can be created unilaterally and, unlike international treaty, can have not mandatory, but recommendatory nature. The scientist emphasizes that the international legal act is a broader concept and covers the concept of an international treaty [5, p. 101-102].

The legal literature expresses different views on the nature and relationship of the norms of international law with the norms of domestic law. Some authors believe that the sources of international law should be classified as a variety of sources of domestic law. Other authors take the opposite position, according to which the norms of international law occupy an autonomous position in the legal system of states in terms of their origin, method of formation [7, p. 328-330]. It should be noted that according to the Civil Code of Ukraine, the current international agreement governing civil relations, the consent to which was given by the Verkhovna Rada of Ukraine, is the part of the

national civil legislation of Ukraine (Part 1 of Article 10). If the current international treaty of Ukraine, concluded in the manner prescribed by law, contains rules other than those established by the relevant act of civil law, the rules of the relevant international treaty of Ukraine (Part 2 of Article 10) apply [8]. At the same time, A. Biryukova notes that there is no legal subordination between domestic law and international law, these are two different systems of law operating in the relevant areas [3, p. 91]. While examining the relationship between civil law and international treaties, A. Dovgert concludes that not all types of international treaties have priority over the Civil Code of Ukraine. In certain cases, the provisions of the Civil Code of Ukraine can be eliminated only by international treaties, which are enacted through the relevant law of Ukraine (law on ratification, accession or acceptance) [1, p. 16]. While clarifying the legal nature of international treaties of Ukraine as sources of civil procedural law and their place in the system of sources of civil procedural law and legal acts of Ukraine as a whole, V. Khudoba came to the conclusion that international treaties as "priority" regulators of domestic relations become the sources of civil procedural law only in relation to the issues for which the international treaty of Ukraine establishes rules that differ from those provided by civil procedural law [7, p. 92].

Having analyzed the international and national legislation which defines the concept of international treaty, as well as theories (dualistic and monistic) that justify the place of international treaties in the system of national law in different states, S. Panchenko identifies the following features of an international treaty as source of law: 1) it is an agreement (arrangement); 2) it comes from a custom; 3) it is governed by international law; 4) it concerns issues of international legal cooperation; 5) its participants are states, or states and international organizations that have international legal subjectivity; 6) it establishes rights and responsibilities between participants; 7) it is concluded in the form and manner prescribed by the requirements of international and

national law; 8) it takes effect in the manner prescribed by law; 9) the mandatory performance by its participants; 10) its standards are designed for multiple use; 11) has (in the vast majority of countries) priority over the norms of national legislation [5, p. 109-110].

The distinct feature of international agreements as sources of civil law, according to A. Biryukova, is that they:

- firstly, serve the ideas of Ukraine's integration into the internal market of the European Union;
- secondly, are a framework for improving the domestic legislation and bringing it into line with international standards and is applied to the regulation of civil relations directly, if the contract does not require the introduction of a special act;
- thirdly, are a kind of guide on the way to building a democratic civilized society. This applies to the principle of prohibition of deterioration of the legal status of foreign individuals and legal entities in comparison with national subjects of law;
- fourthly, international treaties are sources of civil law only in relation to issues for which the international treaty of Ukraine establishes other rules than those provided by civil law [3, p. 92].

It should be noted that most leading experts in the field of civil law emphasize the increasing role of international treaties in the settlement of civil relations in Ukraine.

Insights from this study and perspectives for further research in this direction. The current transformational changes taking place in Ukrainian society are inextricably linked with European integration processes and the need to bring the components of the legal system of Ukraine in line with the principles, norms and standards of European law. Objective strengthening of the role of international treaties in the settlement of not only international but also domestic civil relations necessitates a thorough conceptual study of the legal

nature of international treaties, their place in the system of regulations of Ukraine and the relationship with civil law, which in its turn is an extremely important and, at the same time, difficult task. In this regard, it is quite logical to intensify the scientific discourse concerning the place of international treaties in the system of national law in different states. At the same time, while not denying the certainly important role played by international treaties in the settlement of civil legal (private) relations, we emphasize that the key to the effective functioning of the mechanism of legal regulation of public relations in this area is the need to achieve balance at interpenetration and interplay of principles and norms of domestic and international law as interdependent systems.

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