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INTERACTION OF PRIVATE LAW RULES IN REGULATION OF FAMILY RELATIONS

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Abstract

The article analyses the interaction of basic private law branches of the Russian law: family, civil and international (transboundary) private law and, in particular, its sub-branch of international (transboundary) family law that concerns regulation of family-marital relations. In the process of such interaction, there is comprehensive regulation of intra-family relations which constitute the subject matter of family law. The interaction between family law and civil law is due to the genetic link between these private law branches. There is a special relationship between family law and international (transboundary) family law, since both regulate family relations. The authors do not accept the division of international law into public and private branches, which is only characteristic of national law with a certain degree of convention and is not typical for all legal systems. At the same time, interstate relations a foreign element is involved in may also be regulated by the provisions of international treaties of the Russian Federation, which according to the Constitution of the Russian Federation, are considered to be a constituent part of the Russian legal system with priority over Russian legal norms. The article emphasizes the supreme force of the Russian Constitution, which determines the fact that the Constitutional Court of the Russian Federation exercises control over interpretation of international treaties by intergovernmental bodies and international courts from the point of view of conformity of such interpretation with the Russian Constitution.

Keywords: International family law, sub-branch law

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1. Introduction

The most important values that international law protects are peace and cooperation between states as well as human rights. In this context the interaction of international and national law is of great importance.

2. Problem Statement

The problem of correlation of international and national law is especially relevant in view of the changes in the Russian legislation introduced on approved amending the Russian Constitution by nationwide voting on July 1, 2020.

The recognition of the supreme legal force of the Russian Constitution requires a clearer understanding of how to regulate inter-state relations between private individuals in accordance with international treaties of the Russian Federation.

3. Research Questions

The subject of this article is the analysis of interaction of international law and the main branches of Russian private law: family law, civil law, international private law and its sub-branch – international (transboundary) family law that concerns regulation of family-marital relations.

Further improving legal regulation of family, motherhood and childhood institutions is essential, which is proven by the fact that the main part of the Russian President's Address to the Federal Assembly of 2021 was devoted to the country's development and demographic problems. The measures aimed to support the population and mentioned in the Address are mostly concerned with mother and child support.

4. Purpose of the Study

The purpose of this research is to briefly analyze the interaction between family law, civil law and private international law what concerns regulating family and marital relations, with the focus on the importance of international law in such regulation.

5. Research Methods

General cognitive methods (sociological, systemic, structural and functional) and special scientific methods (technical-legal analysis, specification and interpretation) are used in this research.

6. Findings

There is a legal opinion that both international and national laws are divided into public and private. It seems incorrect to apply to international law the division into public and private law, and to refer to international law as public law. Firstly, even in domestic law this division is increasingly disputable. The original grounds for denying such a division in modern law are offered by Akinfeev and

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Vorontsov (2020). They are trying to find the true meaning of the terms "public", "private", "civil" and "civil law" by comparing modern ideas about them with the initial meanings of ancient Roman law. In their opinion, all written law in accordance with the Digests is private, and therefore the reference of modern authors to Ulpian, who, as you know, proposed such a division, is not justified (Akinfeev & Vorontsov, 2020, p. 227).

Without going into controversy regarding the meaning of these terms in ancient Roman law, it should be noted that Ulpian "rather means two different positions in his studies, rather than one of the classifications of law" (Garcia Garrido, 2005, p. 148).

Nevertheless, modern jurisprudence has adopted the division of law into public and private. The modern meaning of these terms is based on the difference between private and public interests, which accordingly suggests different ways of legal regulation. However, there are practically no scholars who would deny the existence of a public law component in private law branches, and in modern law the private law component in public branches is becoming more and more noticeable (Maksimenko, 2008). It should also be noted that the division of law into private and public is accepted in jurisprudence. In the law itself, this terminology is not used, except in the title of Section VI of the Civil Code of the Russian Federation ("International Private Law"). Therefore, it seems to be incorrect to refute the modern meaning of these categories, comparing them with the categories of ancient law.

Secondly, the subjects of international law are equal sovereign states that develop common rules of conduct on the basis of common agreement by concluding various conventions. In international law, there are no relations of authority and subordination between states, which are typical for the subjects of public law branches of national law, where the subjects are not in a position of legal equality with each other. The misappropriation by one state of the right to dictate its will to other sovereign states must be regarded as international law violation. International law is a unique legal structure that protects the interests of the world community as a whole and every individual living on Earth. Thirdly, interpreting international law as public law leads to a logical conclusion about the existence of private international law in the system of international law, while modern international (transboundary) private law is considered by most Russian law specialists as a Russian law branch. Using the term "transboundary private law" would eliminate that problem of international law dualism.

It is unlikely that such two legal structures as international law and private international law can be placed in the same row or could be considered as a uniform legal system (international law, in the broad sense). The only thing they have in common is the term "international" which refers to different characteristics. International law is an independent legal system and regulates inter-state relations, while private international law is a part of the Russian legal system and is one of its branches. It regulates private relations that arise at an international level.

The only problem is that in the latter case there is simply no better and more appropriate name for private international law. Equally successful, for example, is the term "private transboundary law". Whereas international law is inter-state law and does not belong to any particular state.

At the same time, the states that have established a treaty-based communication method also set international communication standards for their entities (physical and legal persons) in a number of treaties.

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The state fulfils its obligations under its international treaties by implementing (from Latin impleo – to fill, to fulfill) their norms in the legal system of Russia, declaring them at the constitutional level as a part of this system (the Constitution of the Russian Federation, Art. 15, Par. 4). The text of the Article 15, Par. 4 of the Constitution is reproduced practically in all sectoral codes of the Russian Federation, including Article 6, Paragraph 1 of the Family Code and Article 7 of the Civil Code of the Russian Federation.

The norms of international origin with private law content, with the consent of the state, are designed to regulate relations between private persons in their international communication. These norms acquire the status of a kind of (quasi) national norms with priority over national norms.

The implementation of such rules does not transform international norms into national norms, as some proponents of the transformation theory believe. Implemented international norms retain their identity. They do not turn into national norms but form an independent part of the Russian legal system.

Many scholars, both those who deny the transformation theory and its supporters do not recognize the transformation of international norms into national legal norms either. International legal rules are a part of the legal system of Russia, but not a part of the Russian law system because Russian doctrine distinguishes these two categories (Sinyukov, 1994).

Since international organizations and international courts have recently often adopted groundless politically motivated decisions against the Russian state, Russia has amended the Russian legislation accordingly by Federal Law 429-FZ of December 8, 2020.

In particular, Article 5 of Federal Law 101-FZ of 15 July 1995 "On International Treaties of the Russian Federation" was amended. According to this addition (Art. 5, Par. 4, if international bodies adopt decisions interpreting international treaties in contradiction with the Constitution of the Russian Federation, the decisions shall not be executed in Russia. Such a contradiction is specified by the Constitutional Court of the Russian Federation.

Federal Law 427-FZ of December 8, 2020 amended Article 7 of the Russian Civil Code. Articles 6 and 165 of the Family Code were also amended by Federal Law 5-FZ of February 4, 2021. The different wording of the additions draws attention. Unlike the Civil Code, the Family Code does not allow the interpretation of international treaties of the Russian Federation not only contradicting the Constitution of the Russian Federation but also contradicting the principles of law, order and morality. This divergence can be explained by the fact that intra-family relations, more than in any other branch of law, are regulated not only by law but also by the norms of morality and ethics.

The right to resolve the issue of the possibility of executing decisions of interstate bodies and international courts (in the status of an interstate body) adopted on the basis of the provisions of international treaties of the Russian Federation (entered into force for the Russian Federation) in their interpretation from the point of view of the compliance of such an interpretation with the Constitution of the Russian Federation is granted to the Constitutional Court of the Russian Federation.

Interaction of norms of family, civil and international private law in the regulation of family and marriage relations.

The rules of civil law have a subsidiary function vis-à-vis the rules of family law since their application is permitted either by analogy or in the absence of family law rules (Articles 4 and 5 of the

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Family Code). The texts of these articles show that family law takes precedence in regulating family relations as long as such application is possible, unless it contradicts the essence of family relations. The absence of contradictions is recognized in scientific research as a basic condition for the application of civil law norms to family relations that are not regulated by family law, which sets the task of defining the content of the concept of "the essence of family relations" (Shershen, 2020).

The application of civil law rules regarding family relations shows that they are genetically linked to each other and that they belong to private law branches. The subject matter of both branches of the law is essentially property and personal non-property relations, although the correlation between the scope of these relations and their additional distinctive characteristics are so significant it is possible to speak of independent branches of law. The close relationship between civil and family law is also due to the fact that for a long time the family issues have been considered by civil law, which developed private law institutes acceptable to all branches of private law, including family law. Family law in Russia did not separate itself from civil law until 1917, when the relevant Soviet decrees and the world's first Family Code were adopted. Even today, family law is still a part of civil law in a number of countries. Some Russian scholars (including those of the Soviet period) still do not recognize family law as an independent branch of law, considering it as a sub-branch in the civil law system.

Private international law is a unique legal structure and is regarded in Russian doctrine as an independent branch of Russian law. Private international law regulates the same generic relations as civil and family law, namely, property and personal non-property relations between private individuals, but foreign constituents involved. The relations that are the subject matter of family law, but include foreign constituents, are regulated by one of the sub-branches of the private international law – international (transboundary) family law. As these relations arise as part of international communication between individuals (complicated with foreign elements included), they become cross-border or, to some extent, (conditionally) "international".

Not only one sub-branch of international (transboundary) family law, but also the general part rules of international private law are engaged in the interaction of private international law and family law.

The main conflict-of-law function of private international law is to determine which state's law should be applicable to regulate the relations between private persons in their international relations. In this case, the final solution as regards social relations, foreign element included, is carried out in two stages. At the first stage, the applicable law is selected by means of conflict-of-law rules of the private international law. At the second stage, the relationship is finally regulated by substantive Russian or foreign family law. Conflict-of-law norms not considered, relations complicated with foreign constituents are governed by the substantive rules of international treaties where such rules fully regulate the relevant relations (Art. 1186, Par.3 of the Russian Civil Code). It must be said that in the sphere of family relations, contracts containing substantive rules are extremely rare. For the most part, contracts in this area contain conflict-of-law rules, which are also due to the differences in family life, depending on the nation.

Moreover, private international law may influence this choice contrary to the conflict-of-law rules in favor of Russian family law, in accordance with the rules of the general part of its system through the

institutions of directly applicable rules (Article 1192 of the Civil Code) and the public order clause (Article 167 of the Family Code, Article 1193 of the Civil Code). The qualification of legal concepts in determining the applicable law in family and marital relations is carried out in accordance with Russian family law. The conclusive regulation of relations takes place under national law (either Russian or foreign).

In jurisprudence, the issue of conflict of laws procedural rules is debated (Shak, 2001). The effective protection of the family rights of citizens in relations containing a foreign element depends to a large extent on the procedural rules of which state are applied to resolve a particular issue. National legislation and international treaties with the help of conflict of laws procedural rules often refer to foreign procedural law. Getman-Pavlova (2018) proposes to consider the use of lex fori in international civil procedure as a principle of conflict, a general conflict of laws binding.

7. Conclusion

It seems incorrect to divide international law into public and private and to refer to international law as public law.

The ambiguous understanding of the same term applied to different legal sub-branches of the Russian law (international law, private international law and family international law) raises the problem of terminological clarification. In particular, it seems more appropriate to apply the term ‘transboundary family law’, at least to family international law as a sub-branch of international private law.

The norms of international treaties with a private law content, which are implemented in the Russian legal system, do not become national norms but form an independent part of the Russian legal system. These norms of international origin acquire the status of a kind of (quasi) national norms with priority over national norms.

Private-law nature of family, civil and international private law, their long historical genetic connection, property and personal non-property nature of social relations between legally equal subjects of these relations that are the main regulation subject determine possible and appropriate interaction between them in family-marital regulation process. Moreover, in the process of interaction between these branches of law, there is comprehensive regulation of family and marriage relations. The main role in this interaction belongs to family law.

Since the Constitution of the Russian Federation is the supreme law in Russia, the decisions of international organizations and courts that contradict the Russian Constitution are not executed on the territory of Russia. The function of controlling the interpretation of international treaty norms by intergovernmental bodies and international courts in terms of their compliance with the Russian Constitution is performed by the Constitutional Court of the Russian Federation.

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