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SYSTEM OF CONNECTING FACTORS OF HAGUE CONVENTION OF 1961 ON COLLISION OF LAWS RELATING TO THE FORM OF TESTAMENTS

One of the most controversial issues in international succession law is a form of testament if the inheritance relationship is complicated by a foreign element.

Thus, the Convention has put a period to the debate about the distinction between “form” and “substance”, clearly fixing the provisions that limit the possibility of drawing up a testament according to some form with regard to age, nationality or other subjective characteristics of the testator belong exclusively to the form, i.e. are conditional components of forms of testamentary dispositions.

In general, this approach ensures comprehensive and predictable solution of issues of formal validity of testamentary dispositions in international circulation.

At the same time, the lack of unified requirements to witnesses or genetic capacity creates difficulties in enforcement activities to determine the validity of testamentary dispositions, since it requires knowledge of internal legal provisions that establish such regulations in accordance with which the testament was drawn up.

It should be noted that the execution of the collision rules established by the Convention does not depend on any requirement of reciprocity. Moreover, its provisions are applicable even if the citizenship of the persons involved or the law to be applied is not citizenship or law of contracting states (Article 6). Given this, I. Medvediev concludes that the requirements of international collision principles of international act completely replace national private international law in contracting states. In this sense, the Convention provides unification of rules of private international law in the contracting states in scope of its action.

In general we can say that Ukraine's accession to the Convention was a step towards harmonization of Ukrainian legislation with the legislation of the EU and many other countries in the world, as well as an additional guarantee of protection of expression and the rights of citizens in the testamentary succession. The main positive aspect of the Convention is that it is formulated in such a way to exclude the negative effect of feedback mechanism reference solution and make it convenient and predictable for the persons concerned.