ABSTRACT

The urgency of the study is determined by the necessity of a systematic study of the state of copyright protection, in particular due to the constant development of the information sphere. The issue of protection of intellectual property rights (and, in particular, copyright) on the Internet is constantly a subject of discussion among legal scholars. It is indicated that access to the Internet is important for a modern person to develop his personality. Providing access to the Internet has become a necessity for many aspects of the life of a modern person. The Internet is an unlimited source of information. The situation has become especially important with the wide access of the population to artificial intelligence: ChatGPT, Bard, etc. The purpose of the study is to cover the general aspects of the legal regulation of copyright on the Internet.

It is emphasized that Ukraine ranks first among European states in the number of copyright violations on the Internet. Technological progress, on the one hand, has improved the situation regarding copyright protection, but on the other hand, it has caused new challenges that should to be solved. Historically, copyright arose as a means of protecting the rights of creators of literary and artistic works. Nowadays, the sphere of copyright application covers the results of a significant number of types of creative activity. Individual examples related to conflicts in the sphere of resolving issues of copyright infringement are given. The adoption of the Digital Millennium Copyright Act in the United States of America is mentioned as one of the first legislative acts related to the protection of copyright on the Internet. An analysis of national legislation on copyright protection (general and special norms) was carried out. It is emphasized that the norms of the copyright institute, enshrined in the Civil Code of Ukraine, do not determine the specifics of copyright protection for objects placed on the Internet.

It is summarized that in order to solve challenges in the field of copyright protection on the Internet in Ukraine, it is necessary to: strengthen control over compliance with the Ukrainian legislation in the field of copyright protection; to implement effective copyright protection mechanisms on the Internet; to adapt the legislation of Ukraine to rapid changes in social conditions.

Keywords: *copyright, copyright protection, Internet, Internet piracy, civil law.*

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THE LAW APPLICABLE TO OBLIGATIONS ARISING OUT OF TORTS IN ROMANIAN AND UKRAINIAN PRIVATE INTERNATIONAL LAW

Катерина Хмеленко, Космін Дарієску. ПРАВО, ЩО ЗАСТОСОВУЄТЬСЯ ДО ЗОБОВ'ЯЗАНЬ З ДЕЛІКТІВ У РУМУНСЬКОМУ ТА УКРАЇНСЬКОМУ МІЖНАРОДНОМУ ПРИВАТНОМУ ПРАВІ. Сучасна правова співпраця України та Румунії базується на результатах партнерства держав у минулому. Актуальність дослідження пояснюється підвищенням рівня зацікавленості правників обох держав у дослідженні міжнародного приватного права (сімейне, спадкове, право тощо), викликаного посиленням співпраці України та Румунії у сфері транспорту, торгівлі, судноплавства, захисту біженців тощо після початку російсько-української війни у 2014 році. Метою статті є визначення законодавства, що застосовується до деліктних зобов'язань,

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беручи до уваги як уніфіковані правила вибору права, передбачені міжнародним договором про правову допомогу в цивільних справах, так і законодавчі норми, що застосовуються в обох державах (норми національного права). У роботі були використані як загальнонаукові методи дослідження (аналіз, синтез, аналогія), так і спеціально-юридичні, серед них порівняльно-правовий метод.

У статті автори акцентують увагу на стані дослідження деліктних зобов'язань у міжнародному приватному праві в Україні та Румунії. Пояснюють відмінність законодавства щодо вибору права в Україні та Румунії. Проводять аналіз положень Договору між Україною та Румунією про правову допомогу та правові відносини в цивільних справах від 30 січня 2002 року. Описують особливості застосування статей 48, 49 та 50 Закону України "Про міжнародне приватне право", положень Регламенту Рим II та Цивільного кодексу Румунії. Крім того, науковці обгрунтовують історичний зв'язок співпраці України та Румунії впродовж століть. Основні висновки дослідження полягають у визначенні конкретних норм законодавства на основі детального аналізу законодавства обох держав.

Ключові слова: *міжнародне приватне право, делікти, законодавство України, законодавство Румунії, договір між Україною та Румунією, Рим II.*

Relevance of the study. The Romanian and Ukrainian peoples have a long history of coexistence and collaboration. Thus, the Romanian Petro Mohyla, Metropolitan of Kyiv, played a major role in Ukrainian cultural life of the 17th Century, by reforming the Orthodox Church in Ukraine, by printing an impressive corpus of theological scholarship and by establishing, in 1632, the Kyivan Mohyla Academy (the largest Orthodox center of scholarship and education in Eastern Europe [1]. Vasile Lupu, Prince of Moldavia (1634-1654), supported Bohdan Khmelnytsky in 1652 in his plans to create a Danube League. Vasile Lupu gave his daughter (Roksana) in marriage to Tymish Khmelnitsky. Petro Mohyla supported Vasile Lupu in establishing, in 1640, the Slavic-Latin College in Iași. In 1642 a common synod of the Moldavian and Ukrainian Orthodox Churches was held in Iași in order to establish a common blueprint for fighting against Protestantism [2].

But, the Romanian-Ukrainian relations took dramatical turns from time to time. For instance, Ivan Pidkova (Ioan Potcoavă), a fearless Cossack ataman invaded Moldavia, in 1577, and toppled Prince Petru Șchiopu. Ivan became the new prince. His reign was short-lived, being outcast by an Ottoman and Walachian army [3]. In 1681, George Duca, Prince of Moldavia became hetman of the Cossacks, when those entered under Ottoman control. Duca's rule as hetman lasted until the defeat of Ottomans in the siege of Vienna (1683), when hetman Kunitsky toppled him. Kunitsky even managed to depose Duca from Moldavian throne, imposing his protegee, Ștefan Petriceicu [4]. In the 20th Century, Romanian-Ukrainian relations were strained by the simultaneous struggle of the two peoples to build unitary nation states (disputes arose on the control of Bukovina, Maramureș and Bessarabia) [5].

In the 21th Century, despite Hague litigation over Snake Island, the russian aggression over Ukraine has shown that cooperation with Romania is more important than futile disputes ignited by nationalism. Thus, since February 10, 2022, nearly 4 million Ukrainian refugees have transited Romania [6]. Romanian road remains one of the most important trade routes for Ukraine during this turbulent time. Thus, Ukrainian wheat is exported in such large quantities through Romania that it has caused distortions on the Romanian grain market, causing discontent among Romanian producers [7]. In March 2023, Romania was Ukraine's largest supplier of diesel, overtaking Poland [8]. The port of Constanta is Ukraine's main sea gateway to the world until the deepening of the Bystroye canal is completed, although its use is stifled by the enemy's maritime supremacy [9].

Recent publications review. In Ukrainian legal literature the issue of the law applicable to torts in Private International Law is not popular among researchers. From our point of view this situation creates some difficulties for the development of this legal field in the country. But some scientists, such as K. Manuilowa and A. Lebedeva drew attention to this topic. Thus, A. Lebedeva highlighted that Rome II Regulation, in comparison with Ukrainian Private International Law, establishes a multifaceted mechanism of conflict-of-laws regulation [10]. K. Manuilova also comments on Regulation Rome II [11].

In Romanian legal literature, the matter of the law applicable to torts is treated, extensively, according to E.U. Regulation no. 864 of 2007 (Rome II Regulation), implicitly referred to in Article 2641 Civil Code. In respect of the law governing the liability for personal injury (not covered by Rome II Regulation), all the scholars analyze the provisions of Article 2642 Civil Code. Two scholars distinguish themselves by a different treatment: R. Ion approaches the question of the law applicable to torts only from the perspective of the

European Regulation, neglecting the provisions of the Civil Code [12], and C. Dariescu, while presenting Article 2641 of the Civil Code and the essential provisions of the Regulation, omits to present Article 2642 of the Civil Code [13]. Only S. Alexandru presents rules provided by international treaties on liability for torts in special fields such as: liability for nuclear damage (Vienna Conventions of 21 September 1988 and 12 September 1997), for failure to manage radioactive waste safely (Vienna Convention of 5 September 1997) and for transboundary pollution (MARPOL 73/78, United Nations Convention on the Law of the Sea, Montego Bay, 1982, London Convention of 30 November 1990, etc.) [14]. None of the scholars draws a parallel with Ukrainian private international law, nor do they pay attention to the choice-of-law rule on torts in the treaty on legal assistance in civil matters concluded with Ukraine.

The article's objective is to determine the law applicable to obligations born of torts, considering both the uniform choice-of-law rules of the international treaty of assistance in civil matters as well as the statutory rules enforced in the two states.

Discussion. *The Uniform Choice of Law Rules of the Treaty of January 30, 2002 between Romania and Ukraine.* Between Romania and Ukraine there is a treaty regarding legal assistance and legal relations in civil matters (the Treaty of January 30, 2002). It has been enforced since October 30, 2006 [15]. In Part II (Special Provisions), Section I (Choice-of-law Rules), there is Article 33, entitled Tort Liability. According to paragraph 1, compensations for damages resulting from legal relations arising out of torts are regulated by the legislation of the contracting party on whose territory the damaging act took place. Paragraph 2 provides for the legislation of the contracting party whose citizenship is shared by both the person who caused the damage and the person who suffered the damage. The laws designated for in paragraphs 1 and 2 do not apply when other rules of multilateral international conventions (regulating the same matter and to which the two contracting parties are members) provide otherwise (paragraph 4).

According to Article 2557, paragraph 3 of the Romanian Civil Code, the provisions of Book VII (Private International Law) are applicable to the extent that the international conventions to which Romania is a party, the law of the European Union or the provisions of the special laws [16]. So, from the point of view of Romanian authorities the choice-of-law rules of Article 33 of the Treaty of January 30, 2002, take precedence over the rules of Articles 2641 and 26 Civil Code (explained in the next section), whenever there is a litigation arisen of torts with a foreign element indicating Ukraine.

Ukrainian law hierarchy is different compared to Romanian one. It is explained by Romanian membership in the European Union. So that the main legal act in Ukraine is a Constitution, on the second place – international agreements (ratified by Verkhovna Rada), and only then – codes and laws. According to art.3 of Law no. 2709-IV of 2005 [17], if an international treaty to which Ukraine is a party lays down rules other than those established by this Law, the rules laid down in this international treaty shall apply. Therefore, the treaty that is essential for our research is the Treaty between Ukraine and Romania "On Legal Assistance and Legal Relations in civil matters" of January 30, 2002, ratified by Law no. 2822-IV of September 7, 2005 [18].

The Statutory Choice of Law Rules on Torts in Romania and Ukraine. At present, in Romania, the statutory provisions of Private International Law are to be found in the Civil Code, in the Civil Procedure Code [19] (Book VII of both acts) and in the Insolvency Code (Title III) [20]. As we have already mentioned, these statutory provisions are enforced in default of special provisions included in international treaties, EU regulations or special Romanian statutes (see Article 1065 Civil Procedure Code and Article 275 Insolvency Code).

The statutory choice-of law rules are provided in Article 2641 Civil Code. According to paragraph 1, the law applicable to non-contractual obligations shall be determined in accordance with the rules of the European Union law. According to paragraph 2, in matters not covered by the rules of the European Union, the law which governs the substance of the pre-existing legal relationship between the parties shall apply, unless otherwise provided by international conventions or special provisions. So, the Romanian statutory choice-of-law rule on torts refers to the EU Regulation no. 864 of 2007 (Rome II Regulation). Only in cases not covered by this regulation, the law that governs the pre-existing relationship between parties will prevail. In conclusion, in the majority of litigation generated by civil wrongs, Romanian courts will apply Articles 4 and 14 of Rome II Regulation.

According to Article 4 of Regulation (EU) no. 864 of 2007, the European uniform choice-of-law rule on torts, the obligations arising out of delict is governed by the law of the

member state where the damage occurs (*lex loci damni*). When both the person claimed to be liable and the person who suffered the damage have their habitual residence in the same state, when the damage occurs, the law of that state will apply. If the obligations born by tort have manifestly stronger connections with the law of another state than those of the place of damage or of the common habitual residence of the parties, the law of that third state will apply. The regulation gives an example of "a manifestly stronger connection with another country": a pre-existing legal relationship between parties, such as a contract closely connected with the delict. Article 14 makes room for *lex voluntatis* on torts matter. Thus, the parties are allowed to choose the law that governs the non-contractual obligation generated by delict, by an agreement concluded after the damaging event. But, if the parties are professionals, they are allowed to conclude such an agreement before the occurrence of the damaging event. The choice should be clear (or demonstrated with certainty by the circumstances) and it should not prejudice the rights of others (case in which the choice should be refuted because of the *fraude a la loi*). If all the relevant elements of the situation, at the time when the damaging event occurred, were located in another state than that whose law was designated by the parties, the mandatory provisions of that other state will carve out the chosen law. When the parties designated the law of a non-EU state, while all the relevant elements of the situation, at the time when the damaging event occurred, are placed in one or more EU member states, the EU mandatory rules will have the same carving effect over the law chosen by the parties. These EU rules served as a model for the Ukrainian legislator in drafting Article 49 paragraphs 2 and 4 of Law no. 2709-IV of 2005.

According to Article 2642 of the Civil Code, the law applicable to liability for injury to personality (through mass media or any public means of information) will be, at the choice of the injured party: the law of his habitual residence, the law of the state where the harmful result occurred or the law of the perpetrator's habitual residence. The law of the injured person's habitual residence or the law of the harmful result may apply only if the tortfeasor could reasonably have foreseen that the effects of the personal injury would occur in one of the two states. The right of reply against injury to personality is subject to the law of the state where the publication appeared or the broadcast was transmitted.

Ukrainian statutory legislation consists of the Civil Procedure Code of Ukraine, Merchant Shipping Code of Ukraine and Law no. 2709-IV of 2005 "On International Private Law". The umbrella legal act in this field is the last one. According to Art. 48, obligations arising from the action of one party, taking into account the provisions of Articles 49-51 of the same law, are regulated by the law of a state in which such action took place. Article 49 is dedicated to obligations of compensation for damages. According to the article of law:

1) the rights and duties under obligations arising as a result of causing damage are determined by the law of a state in which the action or other fact that became the basis for the claim for damage took place (*lex loci delicti*);

2) the rights and duties under obligations arising from damage caused abroad, if the parties have a place of residence or location in the same state, are determined by the law of that state;

3) the law of a foreign state does not apply in Ukraine if the action or other fact that became the basis for the claim for damage is not illegal under the legislation of Ukraine;

4) parties to an obligation arising from causing damage may choose the law of the forum at any time after its occurrence [17].

The provisions in the paragraph 1 of art.49 of the mentioned Law are the same with those in art. 33 of the Treaty between Ukraine and Romania on Legal Assistance and Legal Relations in civil matters.

Art. 50 of the Law no. 2709-IV of 2005 "On international private law" is more specialized and is dedicated to damage compensation for defects in goods and works (services). This provision gives an opportunity to choose the law, which will be used. Art. 50 is divided into 3 parts: part 1 includes the right of affected person to choose the law of the state of his residence, location or their principal business location (lex domicilii); part 2 includes the right to choose the law of the state of goods manufacturer's or work (services) performer's residence or location; part.3 includes the right to choose the law of the state, where the purchase was made or the work (service) was provided. This solution differs from the provisions of article 5 of the Rome II Regulation applicable in Romania which creates a more intricate system. Thus, non-contractual obligations arising out of damage caused by a defective product are subjected to one of the following laws (arranged in G. Kegel's ladder):

1) the law of the country in which the person sustaining the damage had his or her habitual residence when the damage occurred, if the product was marketed in that country (*lex domicilii*);

2) in default of the law mentioned at point 1, the law of the country in which the product was acquired, if the product was marketed in that country;

3) in default of the law mentioned at point 2, the law of the country in which the damage occurred, if the product was marketed in that country [21].

If the person claimed to be liable could not foresee the marketing of the product in the above mentioned states, the law of (her) his habitual residence will apply. If both parties have their habitual residence in the same state, the law of that state will govern, according to article 4 paragraph 2 of the regulation. We can notice similarities, though there is a focus on product markering in the EU Regulation. According to article 5 paragraph 2 of the Rome II Regulation where it is clear from all the circumstances of the case that the tort/delict is manifestly more closely connected with a country other than that indicated in paragraph 1, the law of that other country shall apply. A manifestly closer connection with another country might be based in particular on a preexisting relationship between the parties, such as a contract, that is closely connected with the tort/delict in question.

Conclusions. The provisions of the Treaty between Romania and Ukraine on Legal Assistance and Legal Relations in civil matters (January 30, 2002) should be the cornerstone of legal sources used for solving any legal conflict between Ukrainian and Romanian citizens in the field of private international law. Under the provision of Article 33 of the Treaty of January 30, 2002, the law applicable to the compensation for the damages arising out of torts is the law of the state where the delict took place. If both parties involved have Romanian or Ukrainian nationality, the law of that state shall apply. These conflictual solutions will not be enforced if otherwise provided by multilateral treaties on the matter, where Romania and Ukraine are parties.

Conflict of Interest and other Ethics Statements

The authors declare no conflict of interest.

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ABSTRACT

In the article the authors focus on the state of research on tort obligations in private international law in Ukraine and Romania. They explain the differences in the choice of law legislation in Ukraine and Romania. They analyze the provisions of the Treaty between Ukraine and Romania on Legal Assistance and Legal Relations in Civil Matters of January 30, 2002.

The authors describe the specifics of application of Articles 48, 49 and 50 of the Law of Ukraine "On Private International Law", the provisions of the Rome II Regulation and the Romanian Civil Code. In addition, the researchers substantiate the historical connection between Ukraine and Romania's cooperation over the centuries. The main conclusions of the study are to identify specific legal provisions based on a detailed analysis of the legislation of both countries.

Keywords: *International private law, torts, Ukrainian law, Romanian law, treaty between Ukraine and Romania, Rome II.*