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International and National in Contemporary Private Law

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Abstract: Private international law as a branch of law still causes discussions regarding its subject, nature and sources. Therefore, all these as yet unresolved problems, having practical importance and theoretical interest, still require attention. The study is carried out using such methods as synchronous and diachronic comparative legal, historical, legal-linguistic, dialectical-materialistic, descriptive, analysis and synthesis. The present article is devoted to the main trends in the development of private international law in modern conditions from the point of view of the ratio of domestic (national) and inter-state (international and supranational) regulation. A brief historical overview provides the key to a better understanding of the current state of affairs. The competition of several factors contributing to the internationalization and nationalization of private law is one of the objects of exploration in the article. The development of private law is characterized by mutually contradictory trends, which, on the one hand, show the strengthening of the internationalization of legal regulation, and on the other hand, reflect the consolidation of the nationalization of legal means of streamlining the interaction of individuals and legal entities. The interweaving of factors (of legal and meta-legal nature) that feed both one and the other trend is specifically studied.

Keywords: private international law; procedural law; substantive law; jurisdiction; conflict of laws; private law regulation; private deals with foreign element

1. Introduction

Private law, as it is well known, has occupied and occupies a significant place in the legal system of each country and worldwide in general. Foreign elements have been obviously involved in private law relations from the very beginning, although the term "private international law" itself is less than 200 years old. In spite of the transboundary character of private law relations, the national regulation of them is broadly used, which requires coordination of the application of domestic and foreign law in each particular state. In addition, the international nature of certain private law relations entails the need for their regulation, which goes beyond one state. The ratio of national and international regulation changes over time, and one of the objectives of this publication is to consider such a ratio.

At present, international relations in the economic, social, cultural and other fields are developing more and more actively. This leads to an increase in the role of legal regulation of such relations both at the national and international levels. Meanwhile, in different countries there is often a dissimilar approach to the regulation of such relations, which are largely of a private nature. The resolution of problems generated by diversity in the legal regulation of these relations in various countries is carried out by means of private international law. The problematics of private international law cannot help attracting the attention of specialists, both practitioners and theoreticians, in the field of law due to its relevance and complexity. In particular, the interweaving of national and international means of regulation of interaction of persons having different citizenship or/and country of residence, or of deals made in one country and carried out in another, or of the movement of goods abroad, or of the setting up an enterprise by a foreigner, etc., requires the most thorough consideration of all factors. And it is necessary to take into account that, although trade with foreigners has been known since the early stages of human development, apparently since the time trade appeared, the ratio of international and national components of

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private law throughout history has changed, having an impact on the situation in this field today. One of the aims of this article is to clarify the main trends in the development of the correlation of factors influencing international and national components of regulation in modern private international law.

The complexity and intricacy of the various questions of the application of the laws and the enforcement of judgments of different states, especially in the case when the foreign law referred to by the law of the given state refers back to the law of this given state. Certain legal provisions in force in this or that state cannot be applied for principle reasons in some other states, giving rise to the well-known concept of ordre public (public policy). The desire to overcome some of these problems led states to agreements. However, it additionally tangles a question of sources of private international law as some international agreements are overlapping and not all the states have joined the same agreements. The complexity of the composition of private international law generates disputes about its subject, nature and sources among scholars and practitioners since it has both academic interest and applied value. However, it is impossible to review all these problems in a relatively short paper, and, therefore, they won't be explored in the present publication despite being its inherent background.

As already mentioned, the term "private international law" has been known for less than 200 years, while the history of the phenomenon denoted by this term is much longer, i.e., the phenomenon was comprehended as it was in its sufficiently developed state. Such an epistemological problem needs special research, which is beyond the objectives of the present publication, but the pre-history of discovered private international law should not and cannot be disregarded.

So, the present article is based on a study aimed at clarifying whether "private international law" is really international or part of national law and ascertaining factors contribute to the internationalization, on the one hand, and domestication, on the other hand, of private law in the current situation, as well as finding out some of the main trends of the private law evolution in modern times.

The literature on private international law is huge, and it is impossible even to enumerate in the short introduction the authors of publications (some of them, nevertheless, are cited in this article) dealing with different issues in this field; however, very little if any attention is paid to the ratio of national and international components within private international law, though some of its aspects are noted in certain works, which shows the relevance of the topic, but as a rule, they are mentioned casually and non-systemically, which demonstrates the need for an extensive and comprehensive study specially devoted to the problems raised.

Following the advice of one of the reviewers, I describe the main research methods, while explaining my attitude to "private international law" as a phenomenon, an institution and a subject of exploration in the context of the correlation of international and national within it. Despite focusing primordially on today's situation and current trends in the development of factors having impact on the ratio of national and international private law, it is evident that for better understanding of what is really brand new and what is just further development of trends inherent to the very nature of private law, it is essential to overview briefly its genesis and early evolution. Therefore, a historical sketch on national and international private law precedes the study of mutually opposing trends in the modern development of private international law under the influence of factors both contributing to and hindering its internationalization and nationalization. After examination of the mentioned factors, a vision of main tendencies in the nowadays private international law development is presented in the context of international and national interaction. The paper is wrapped up with certain conclusions.

2. Methods of Studying

The comparative legal method is understood as a technique for studying juridical phenomena and institutions, which consists in juxtaposing them in order to find out similar-

ities and differences. By comparing two or more objects, one can reveal or refute their belonging to one class, detect potentiality and variability of the development of elements of one object on the basis of watching the evolution of similar elements of another object or other objects, identify the roots (common or separate) of these objects and their elements and assess changeability of these objects and their elements under these or that circumstances. One of the main tasks in using this method is to determine truly significant criteria for comparison, reflecting essential features of the objects. This paper compares the presentations of private international law and its institutions in legal acts of a number of states and international instruments and their interpretations by the courts and scholars of several countries.

The synchronous comparison deals with phenomena and institutions existing simultaneously in different parts of the world, and the diachronic comparison gives a possibility to observe the same phenomena and institutions but in successive epochs (both are used in the present study). The legal comparative method is an effective tool of exploration; however, it has limitations in its application. Thus, the comparative method requires having at least two objects, while in many cases there is an interest in one object. Then, the comparative method gives a perception about what is going on rather than why it is going on. This presupposes the use of other methods of studying.

The historical method permits attention to be focused on a single object taken in its origin and development under the impact of economic, social, cultural, ideological, religious, psychological and other factors, which altogether in their aggregate constitute the concrete historical situation in each moment in every territory, bearing in mind that these or that significant characteristics of private international law and its institutions are rooted in its evolution. So, the historical method allows us to trace the involvement of private international law and its institutions in the life of society, the impact of such a life on them, and the reverse influence of law on this life in the course of time, as well as to detect modifications as a response to emerging and re-emerging societal challenges. That is why the historical method is used in the article both to the distant past and to modernity. In the article, economic, social, demographic and other factors are addressed to the extent possible and acceptable for a relatively small text. Nevertheless, the consideration of private international law in a historical context is not enough for its full understanding; therefore, other methods of studying should be recurred.

The dialectical method gives an efficient tool to discover the source of evolution of the phenomenon (in this case private international law and its institutions), the regularities of its development and the engine and directions of its movement. The dialectical method has a long history, and many eminent thinkers have developed it in their works. As André Lalande noted, "the term [dialectic] has been used in so many different senses that it can only be employed meaningfully after one has indicated with precision in which sense it is to be taken" (Lalande [1923] 1962, p. 227). That is why certain explanations are needed.

The inner contradiction of phenomena and processes inherent to them as two sides of the same coin induces the movement to the deletion of existing contradictions, which leads to such modifications of phenomena and processes that they are transmuted into new ones with new inner contradictions requiring further motion. This is a very general and simplified scheme of the dialectical approach to development. Although Karl Popper criticized dialectic for the alacrity "to put up with contradictions" (Popper [1937] 1963, pp. 311, 316), Nicholas Rescher reasonably retorted: "This is an almost perverse misunderstanding of the matter because what dialectical theorizing in all its guises has always maintained is that whenever contradictions and such-like conflicts of consistency come up this must be removed, eliminated, and transcended" (Rescher 2007, p. 5). Friedrich Engels in his classical work on dialectical materialism "Dialectics of Nature" wrote that the laws of dialectics could be reduced in main to three: the law of the transformation of quantity into quality and vice versa, the law of the interpenetration of opposites, the law of the negation of the negation (Engels [1934] 1986, p. 62. Originally in German: "das Gesetz des Umschlagens von Quantität in Qualität und umgekehrt; das Gesetz von der Durchdringung der

Gegensätze; das Gesetz von der Negation der Negation". (Marx and Engels [1925] 1962, S. 348)). These laws make the mechanism for the emergence, existence and development of phenomena and processes.

There are plenty of immanent contradictions in the sphere of private law in general and private international law in particular, among them are these: between conservatism and rigidity of law and the need for regulatory plasticity based on the flexibility of private (civil) turnover, between the difference of the statuses of persons participating in private (civil) turnover and the objective necessity of equality of rights, obligations and responsibility of private law contracting parties for the stability of such turnover, between the national legal systems of countries, etc. Examination of the motion towards the removal of the mentioned and other contradictions reveals the mechanism for modifying law in a changing world. It has been studied how individual episodes have multiplied, becoming common practice and evoking new or renewed institutions. The mutual negation of national regulations in countries has caused international regulation, which is the negation of national regulation, and the implementation of international regulation at the national level is the negation of international regulation, etc. Attention in the article is paid to the consideration of opposites (in their unity and struggle) within the private international law contemporary development.

Thus, the dialectical method provides knowledge of the fundamental mechanism of being in general and of the being of private international law in particular, but it is applicable to the macro level research, while for the micro level study other methods serve.

The legal-linguistic method is used as the law is expressed in texts, which can be oral or written. Marcus Galdia, for example, argues that "legal discourse assembles both forms of legal communication" (Galdia 2022, p. 264). He proposes his own vision of what he calls pragmatic legal linguistics: "Methodically, it offers a tool for the analysis of the legal language that corresponds to the reality of language used in legal settings" (Galdia 2022, p. 274). Be that as it may, the legal-linguistic method addresses lexical, grammatical (morphological and syntactic), stylistic, semantic, semiotic features of a particular language identified in legal texts, which reveal the sense and meaning of the content of these legal texts. This method is applied to explore legal texts of official documents, such as normative acts, judgments, etc., or official speeches in court, parliament, etc., as well as of doctrinal works, taking into account that legal doctrine influences the drafting and construing of official documents. In the article this method is turned to while official and doctrinal texts are cited; meanwhile, lengthy reasoning is avoided in view of the limited volume of the publication. Despite the usefulness of this method, it is not enough to utilize it solely while examining private international law comprehensively, since law cannot be reduced to texts (official and doctrinal, oral or written), and this method itself is not aimed at the exploration, for instance, of functioning of law in the society, of the mechanism of law enforcement, etc. Thus, other methods of studying help to overcome these limitations.

The descriptive method is widely used in the article. A mere description of an object under consideration affords some knowledge about it: in the course of describing, certain perception as a whole is obtained and details are indicated. If something new is being examined, such a description is a source of information about it, and if something already known is being studied, such a description reminds a researcher and other people what the subject of exploration is. Each researcher can see the nuances of the subject of research in his own way, so the description allows everyone to understand the specific vision of the researcher. Thus, the descriptive method succors to clarify the objectives of the study and, thereby, better organize it. In the meantime, the description demonstrates a superficial vision of the object under consideration, and such a vision might be misleading in certain aspects, and that is why the use of this method should be added with deeper exploration with the help of other methods.

The method of analysis and synthesis consists of two interconnected actions: decomposing a complex object under consideration into smaller parts for their more attentive study separately and drawing up these examined smaller parts back into the single whole to

better understand its systemic functioning as a complex interlinked inside. Theoretically, each of these two actions may be reviewed severally, but since research is directed at a complex object, and not at its constituent elements, it is impossible to stop only at breaking down and studying the components, and without putting back together the examined components, for a new exploration of the whole the goal of the research will not be achieved because the characteristics of the whole cannot be reduced to a simple sum of the characteristics of its parts. Therefore, analysis and synthesis are two stages of one method, which runs through the entire article. Nevertheless, this method is focused predominantly on the structure of the object under consideration (in this case on private international law) and the correlation between the attributes of the whole and the attributes of its parts, and this is not sufficient for a comprehensive study of a multifaceted object. The plurality of methods is an important condition for achieving meaningful research results.

The use of some other methods (such as deontic logic or intuition) has also had an impact on the study, but they have not been applied in the course of writing the article as intensively as those mentioned above.

3. Some Clarifications on the Subject of Study

So, the present publication deals with private international law, meanwhile, it is defined differently by different authors. That is why I believe it is important to point out my understanding of private international law to better comprehend my attitude toward the object of my study and my conclusions. One of the most common definitions is the following: "International private law or private international law is a set of rules of procedural law that regulates the relationships between physical and judicial persons of different nationalities. It determines which legal system and the law of which jurisdiction will apply to a legal dispute among private individuals involving a foreign element. It is also called as conflict of laws. The three branches of international private law are jurisdiction, choice of law, and foreign judgments"[1]. I referred to this definition for two reasons. The first one is that it is given on a website specially designated to definitions in the US Law, and as such is supposed to be one of the most common and used. The second reason consists of its clearness and unambiguity. I believe that it is important to pay attention to the interchangeability of the terms "international private law" and "private international law". Such interchangeability is emphasized in the given definition and I shall use both terms in the present publication as identical. Defining legal terms on this site, they also try to take into consideration certain nuances of their use. Thus, it is said "international private law or private international law" to show that there might be a slight difference in dealing with the order of words, but the essence of the meaning is the same.

Of course, legal scholars and practitioners use such legal databases as Westlaw or LexisNexis, but these databases are adapted first of all for searches of pieces of legislation, case law, jurisprudence, commentaries or specific publications. However, it is not an easy task to find there a general, commonly used legal definition, while the cited website serves specially as a kind of legal guidebook for those who are interested to know the meaning of broadly used legal terms. That is why the mentioned site is also intensively visited. So, a request for "private international law" on the LexisNexis website gives its definition in the English law: "The branch of English law known as private international law (PIL) (or the conflict of laws, in contradistinction to both the ordinary local or domestic law of England and public international law) is concerned with cases having a foreign element. By a 'foreign element' is meant a connection with some system of law other than English law. The conflict of laws rules are part of the domestic laws of a particular jurisdiction and can differ from one jurisdiction to another. When events or transactions involving civil and commercial matters are not confined within the borders of a single country, the domestic legal systems of the different countries involved may have substantive laws that govern the subject matter of the legal dispute in very different ways. PIL rules allow for some

[1] https://definitions.uslegal.com/i/international-private-law/ (accessed on 13 August 2022).

necessary adjustment between these different substantive laws"[2]. While the second of two given definitions refers to private international law as a branch or part of the domestic law of a country, then the first, not paying attention to its norms' internal or international character, focuses on private international law as procedural law rules.

Meanwhile, the term private international law was coined by Joseph Story[3], who did not limit his concept to procedural law only. He wrote in particular: "The jurisprudence, then, arising from the conflict of the laws of different nations, in their actual application to modern commerce and intercourse, is a most interesting and important branch of public law. …This branch of public law may, therefore, be fitly denominated private international law, since it is chiefly seen and felt in its application to the common business of private persons, and rarely rises to the dignity of national negotiations, or of national controversies" (Story 1846, p. 13). So, according to J.Story's notion, "private international law" is the *jurisprudence*, arising from the conflict of laws of different nations, in their actual application to modern commerce and intercourse.

That signifies that originally private international law has been understood as jurisprudence, which is normally perceived as (first) the science or philosophy of law; (second) a body or system of law(s); (third) a branch of law; (fourth) the decisions of courts (*Random House Kernerman Webster's College Dictionary* 2010, p. 391) or limited to only three first meanings (*Collins English Dictionary, Complete and Unabridged* 2014, p. 518) or even to two first (*American Heritage Dictionary of the English Language* 2016, p. 403). It is clear from the context of the J.Story's book that his definition of private international law is not aimed at the description or identification of the science or philosophy of law.

"Jurisprudence" as a body or system of law might be considered to comprise acts approved by a parliament or other state body in their application and enforcement, i.e., pieces of legislation and judicial decisions adopted on their basis. From this point of view those definitions of jurisprudence, which mention court decisions separately in addition to a system or body of law, divide in smaller fractions possible understanding of jurisprudence. Indeed, it is impossible to understand the meaning of provisions of pieces of legislation in isolation of their interpretation and application by judicial and other bodies if such provisions have been applied. So, one is supposed to consider taking into account both pieces of legislation and court rulings while defining and studying certain jurisprudence.

In the light of what has been said, the J.Story's definition of the private international law as the jurisprudence, arising from the conflict of laws of different nations, in their actual application to commerce and intercourse, cannot be reduced to only a set of rules of procedural law, which regulates the relationships between natural and legal persons of different nationalities, and is needed to have rules of substantive law, regulating the same relationships, included too. It is clear, because the mentioned conflict of laws may be resolved not only by procedural means of choice of an applicable national law in a specific case, but by a positive supranational regulation of commerce and intercourse, which supersedes all national laws applicable in a specific case, resolving thus a conflict of laws of different nations by surmounting any national regulation. Such supranational regulation may be realized by means of international treaties or acts of bodies of international organizations and unions, set up and empowered in a proper way by interested States.

As in the definition taken from the LexisNexis Website, certain authors underline a domestic (in their opinion) nature of private international law. It is considered an inner-state law extended beyond the national borders. Brazilian lawyer Luiz Henrique Alves da Cunha serves as a reminder of this concept, having written: "There would be internal acts of States, which, as if jumping over their frontiers, would have international effect. It is the case of the Law on the Introduction of our Civil Code, containing provisions of Pri-

[2] https://www.lexisnexis.co.uk/legal/guidance/private-client-private-international-law-summary-of-main-principles (accessed on 23 August 2022).

[3] Judge and Professor of Law J. Story introduced in the use the term "private international law" and defined it in his famous book entitled "Commentaries on the Conflict of Laws, Foreign and Domestic … ", published for the first time in 1834.

vate International Law"[4]. It is an important note because one of the characteristic features of private international law is highlighted, namely the role of domestic sources of private international law, as well as domestic means of international private law provisions enforcement. However, sources of law themselves do not characterize any branch of law, which is defined by specificity of relationships subject to regulation within such a branch of law.

Such an approach to the private international law as to a branch of a domestic law of a state might seem to be supported by legislation of states. For example, the Swiss law on international private law in its Article 1.1 reads: "This Law regulates in international relations: a. the jurisdiction of the Swiss courts or authorities; b. the applicable law; c. the conditions for the recognition and enforcement of foreign judgments; d. bankruptcy and the contract of succession; e. arbitration"[5]. Another example is the law of the People's Republic of China on the Application of Law to Civil Legal Relations Complicated by a Foreign Element, which explains its subject-matter as follows: "Article 1. This Law is formulated in order to clarify the application of the law to civil relations related to foreign citizens, reasonable resolution of civil disputes related to foreign affairs, and protection of the legitimate rights and interests of the parties"[6]. In the meantime, both states are guided in resolving these issues not only by their internal statutes and regulations, but also by international treaties (for example, both states are parties to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958, International Convention to Facilitate the Importation of Commercial Samples and Advertising Materials of 7 November 1952, Customs Convention on Containers of 2 December 1972, and many others). The Swiss law, by the way, in its Article 1.2 says directly about the role of international treaties in the regulation of the areas provided for by this Law: "2. International treaties are reserved"[7]. And the Belgian Private International Law Code (Article 2) provides for the priority of international and supranational acts in matters of private international law (Patrick Wautelet points out the subsidiary mission, in his words "vocation *subsidiare*", of the Code (Wautelet 2005, p. 13)): "Subject to the application of international treaties, European Union law or provisions contained in specific laws, this law governs, in an international situation, the jurisdiction of the Belgian courts, the determination of the applicable law and the conditions the effectiveness in Belgium of judicial decisions and for-

[4] (Alves da Cunha 1980, p. 15). The original text in Portuguese: "Seriam atos internos dos Estados, os quais como que saltando por cima de seus fronteiras, teriam eficácia internacional. É o caso da Lei de Introdução de nosso Código Civil, contendo disposições de Direito Internacional Privado".

[5] Bundesgesetz über das Internationale Privatrecht (IPRG) // https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/1988/1776_1776_1776/20210101/de/pdf-a/fedlex-data-admin-ch-eli-cc-1988-1776_1776_1776-20210101-de-pdf-a.pdf (accessed on 25 August 2022). The original text in German: "Art. 1. 1. Dieses Gesetz regelt im internationalen Verhältnis: a. die Zuständigkeit der schweizerischen Gerichte oder Behörden; b. das anzuwendende Recht; c. die Voraussetzungen der Anerkennung und Vollstreckung ausländischer Entscheidungen; d. den Konkurs und den Nachlassvertrag; e. die Schiedsgerichtsbarkeit". The original text in French has somepeculiarities, but is as authentic as the German one: "Art. 1. 1. La présente loi régit, en matière international: a. la compétence des autorités judiciaires ou administratives suisses; b. le droit applicable; c. les conditions de la reconnaissance et de l'exécution des décisions étrangères; d. la faillite et le concordat; e. l'arbitrage"—Loi fédérale sur le droit international privé (LDIP) // https://fedlex.data.admin.ch/filestore/fedlex.data.admin.ch/eli/cc/1988/1776_1776_1776/20210101/fr/pdf-a/fedlex-data-admin-ch-eli-cc-1988-1776_1776_1776-20210101-fr-pdf-a.pdf (accessed on 25 August 2022).

[6] 中华人民共和国涉外民事关系法律适用法 (2010 年10 月28 日第十一届全国人民代表大会常务委员会第十七次会议通过) // http://www.gov.cn/flfg/2010-10/28/content_1732970.htm (accessed on 25 August 2022). The original text in Chinese: 第一条。为了明确涉外民事关系的法律适用，合理解决涉外民事争议，维护当事人的合法权益，制定本法。

[7] Bundesgesetz . . . op. cit., the original text in German is "2. Völkerrechtliche Verträge sind vorbehalten", and in French is "2. Les traités internationaux sont réservés".

eign authentic instruments in civil and commercial matters"[8]. Indeed, some international instruments substitute national legal acts in regulation of certain private law issues.

Thus, the 1980 United Nations Convention on Contracts for the International Sale of Goods is one of the examples of such a replacement of domestic regulation by an international instrument in the sphere of private international law; 95 States (including Switzerland, China and Belgium) were parties to the mentioned Convention by the end of 2022, though some of them with certain reservations[9]. "This Convention applies to contracts of sale of goods between parties whose places of business are in different States" (Article 1[1]) (*United Nations Convention on Contracts for the International Sale of Goods* 2010, p. 1) and provides for quite detailed regulation of international trade: the formation of the contract (11 Articles), the general issues of the sale of goods (5 Articles), the specific obligations of the seller (23 Articles), the specific obligations of the buyer (13 Article), the passing of risk (5 Articles), provisions dealing in a common way with the obligations of the seller and the buyer (18 Articles). The volume of the article does not allow for a detailed debriefing of this Convention, and the article is not aimed at such a debriefing. In the meantime, it is important to note that the Convention is intended to "promote uniformity in its application", which is to be reflected in its interpretation (Article 7[1]) (*United Nations Convention on Contracts for the International Sale of Goods* 2010, p. 3) (i.e., the uniformly interpreted Convention is to be applied instead of national laws), although some questions are not covered by the Convention (the validity of the contract, the effect which the contract may have on the property in the goods sold or the liability of the seller for death or personal injury caused by the goods to any person, etc.). In addition, it is not the unique international instrument regulating this or that cross-border private law issue.

International instruments are incorporated into the national legal order of all states who are parties to them, albeit in different ways, from the proclamation of their direct application by the domestic administrative and judicial bodies to the verbatim repetition of the texts of those instruments in specially approved statutes. Since the Convention is domestically implemented, it can be considered part of the national legislation. John Honnold, for instance, argues that the Convention on Contracts for the International Sale of Goods might be applied by a court of a state, which is not a party to this Convention, if the law of that state in the relevant case refers to the law of another state being the party to the Convention, as the Convention is the applicable act and forms part of the law of the state involved (Honnold 1991, pp. 88–89). Even if for such a reason one can recognize a domestically implemented international instrument as part of national law, it is obvious that this part of national law cannot be amended unilaterally, but only by the willful decision of all parties to the relevant international instrument, to wit, an international instrument implemented at the national level does not cease to be international.

The 1980 United Nations Convention on Contracts for the International Sale of Goods is not the first international instrument in this field. It has replaced two international instruments of 1964: the Hague Convention relating to a Uniform Law on the Formation of Contracts for the International Sale of Goods and the Hague Convention relating to a Uniform Law on the International Sale of Goods, the beginning of the elaboration of which has

[8] Loi portant le Code de droit international privé/Wet houdende het Wetboek van internationaal privaatrecht on the official Website: https://etaamb.openjustice.be/fr/loi-du-16-juillet-2004_n2004009511/https://etaamb.openjustice.be/nl/wet-van-16-juli-2004_n2004009511 (accessed on 10 December 2022). The original text in French and in Flemish: "Sous réserve de l'application des traités internationaux, du droit de l'Union européenne ou de dispositions contenues dans des lois particulières, la présente loi régit, dans une situation internationale, la compétence des juridictions belges, la détermination du droit applicable et les conditions de l'efficacité en Belgique des décisions judiciaires et actes authentiques étrangers en matière civile et commerciale"/"Onder voorbehoud van de toepassing van internationale verdragen, van het recht van de Europese Unie of van bepalingen in bijzondere wetten, regelt deze wet voor internationale gevallen de bevoegdheid van de Belgische rechters, de aanwijzing van het toepasselijk recht en de voorwaarden voor de uitwerking in België van buitenlandse rechterlijke beslissingen en authentieke akten in burgerlijke zaken en in handelszaken".

[9] https://uncitral.un.org/en/texts/salegoods/conventions/sale_of_goods/cisg/status (accessed on 9 December 2022).

been laid in 1930 at the International Institute for the Unification of Private Law (Rome)[10]. Nowadays, there are a number of international documents, including both international treaties (multilateral and bilateral) and soft law acts developed and adopted within the United Nations Commission on International Trade Law (UNCITRAL), the International Institute for the Unification of Private Law (UNIDROIT), the World Trade Organization (WTO), the World Intellectual Property Organization (WIPO), the International Labour Organization (ILO), etc. It is impossible even to enumerate all international acts in this field in this relatively short article. The replacement of the national legal regulation of the cross-border private law relationships with international regulation is another way to resolve the problem of differences in the national law systems of the sundry states, alternative to the choice of the national law of a particular state.

So, the sources of the private international law cannot be reduced to only domestic legal acts and include international instruments too. If an issue is regulated by an international treaty, there is no need to opt between national laws and resolve a conflict of laws, because the international treaty's provisions are to be applied, but it is still within private international law, as persons of different national belonging are involved in the affair.

Some authors emphasize that the essence of private international law is to resolve the conflict of laws. Thus, Canadian lawyers Jean-Louis Baudouin and Yvon Renaud classified private international law as the following: "Also known as 'conflict of laws' law, the Private International Law focuses on the relationships between a citizen or a national of one country and citizens or the Law of another country"[11]. So, in this citation, although the "conflict of laws" is mentioned, the subject matter of this branch of law is described in general terms as a regulation of relationships between citizens of different states. These Canadian lawyers continued their comments, speaking about private international law: "One of its important roles is to determine the law applicable to certain situations where several domestic laws may conflict"[12]. As one can notice, they are talking about only one role, among other roles, not reducing the international private law as a whole to exclusively determine the applicable law to a specific case.

In addition, a conflict of laws may characterize the internal legal situation in certain complex compound states, as a federal state, for instance, where constituent entities have separate legal regulations of sundry issues and persons originating from different constituent entities enter into legal relationships diversely regulated in each of these entities. It is not by chance that J.Story referred his ideas and conclusions in the field of the conflict of laws also to the United States of America, having written in connection with the conflict of laws and his understanding of the private international law the following: "To no part of the world is it of more interest and importance, than to the United States, since the union of a national government with already that of twenty-six distinct states, and in some respects independent states, necessarily creates very complicated private relations and rights between the citizens of those states, which call for constant administration of extra-municipal principles" (Story 1846, p. 13). It is interesting to note that J.Story considered private international law to be a branch of public law (as it is shown in the first quotation above); however, the issues, which are under private international law, relate to the private but not public law: property law, succession, marriage, divorce, intellectual property rights, law of obligations, etc.

Taking all this into consideration, it has become obvious that it is not surprising to read a definition of private international law made by French lawyer Serge Braudo: "Private international law consists of the whole of principles, usages or conventions, which

[10] Explanatory Note by the UNCITRAL Secretariat in (*United Nations Convention on Contracts for the International Sale of Goods* 2010, Op. cit., p. 33).

[11] (Baudouin et Renaud 1993–1994, p. XV). The original text in French: "Également connu sous le nom de droit des "conflits des lois", le droit international privé s'intéresse principalement aux rapports entre le citoyen ou ressortissant d'un pays et les citoyens ou le droit d'un autre pays".

[12] Ibid. The original text in French: "L'un de ses rôles importants est de déterminer le droit applicable a certaines situations où plusieurs droits internes peuvent entrer en conflit".

govern the legal relations established between persons regulated by the laws of different States. International agreements define the status and rights of natural or legal persons when they are no longer in their national territory or when the conventions they have concluded between them involve relations of an international nature"[13].

In Russia the most common attitude to international private law, developed even in the Soviet times and maintained now, comprises substantive and procedural legal norms regulating property, family and labor relationships, in which natural persons and entities are acting, when foreign element(s) is(are) involved. For example, one of the eminent scholars, Professor Lazar Lunts, wrote in his three volumes "Course of the International Private Law" that international private law as a branch of law and a branch of legal studies is a domain of relationships of the civil law nature in a broader sense (property legal relations, family legal relations, labor legal relations), arising in the international life (Lunts 1973, p. 12). It is worth pointing out that in the Russian legal language traditionally the term "private law", except for "private international law", is and has been used rarely, while the term "civil law" has almost the same meaning as "private law", especially "civil law in a broader sense", which, along with regulation and legal definition of persons (natural and legal), property, and obligations, encompasses also family and labor regulation, by contrast, is and has been utilized widely and intensively in legal theory and practice. In any case, discussions around a definition of private international law and its subject still go on and issues are still relevant, that is why my position is supposed to be outlined to make my further reflections and reasoning better understood.

So, I use the term "private international law" or "international private law" in the meaning of a branch of law, which comprises substantive and procedural rules, including those aimed at the resolution of the conflict of laws, dealing with national regulation of relationships within the private sphere complicated by the foreign element, and international regulation of private law issues of a cross-border nature.

4. Historical Evolution as a Background for the Current Situation

4.1. At the Origins of Private Law and the Involvement of a Foreign Element

Historically, in ancient times, since the advent of legal regulation of various issues, including those which we actually refer to as private law, customs and statutes granted all rights only to full members of those communities or subjects of those monarchies where such customs had been admitted and such laws had been adopted. So, the ancient world in the very beginning knew only national regulation of inter alia private law issues. Nevertheless, archaeological findings in many parts of the world show that often in ancient times tools were made of raw material, the deposits of which were located at a very remote distance from the location of the tools themselves, and this evidences that trade between tribes, chiefdoms and communities probably originated almost earlier than trade relations inside such tribes, chiefdoms and communities. Phoenicia, composed of autonomous cities, was one of the first nations building its wealth by engaging itself in vast international trade (Imbert 1965, pp. 30–33), which required legal regulation of trade and other related private law issues. That is why one can suppose that Phoenician cities could have had developed (for their epoch) regulation in the sphere of the private law. In the meantime, unfortunately, there is not enough information from reliable sources regarding Phoenician law to make substantiated conclusions.

Then let us turn to Ancient Greece, where international commerce was developed on a big scale, and we have much more information about Greek law (than about Phoenician law). In reality, we know that Ancient Greece consisted of many polises-cities, and each polis (in Greek πόλις) had its own legal system. However, certain legal institutions and

[13] (Braudo n.d.) The original French text: «Le droit international privé est constitué par l'ensemble des principes, des usages ou des conventions qui gouvernent les relations juridiques établies entre des personnes régies par des législations d'États différents. Des Accords internationaux définissent le statut, les droits des personnes physiques ou morales lorsqu'elles ne se trouvent plus sur leur territoire national ou lorsque les conventions qu'elles ont concluent entre elles mettent en cause des relations de nature internationale».

characteristic legal features were common to all or to a majority of polises' legal systems. This permits us to make several generalizations.

Thus, the full rights belonged only to citizens ("citizen in Greek is "πολίτης") of a polis, while not only foreigners, but also permanently living non-citizens were deprived of many rights, including certain rights in the field, which is now understood as private law. Permanently living non-citizens and their descendants were called metoecs (in Greek μέτοικοι), which might be translated as immigrants. For example, metoecs (see details: Thumser 1885, pp. 45–68) had no right to possess real estate, no right to file a case in a court (although a special official—archon-polemarch (in Greek ἄρχων πολέμαρχος)—served as a judge in litigations between metoecs and between metoecs and citizens), nor a right to address to polis's bodies or officials. That is why each metoec was obliged to select a protector, who was called "prostates" (in Greek πρoστάτης) and who addressed to officials or bodies on behalf of a respective metoec. A protector (prostates) served as a middleman between a metoec and polis's bodies or officials. In certain cases, in Athens, for instance, a protector (prostates) should have brought a metoec before the judge as a party to litigation (plaintiff or defendant) and then the metoec acted on his own. A metoec, who had not selected a protector (prostates) was subject to punishment (his property might be confiscated).

Nevertheless, some polises entered into treaties between themselves, determining jurisdiction in the event of litigation between merchants from different cities or states and granting the right of suit to foreign merchants, arrived from a respective polis. Aristotle wrote that this right was derived from ἀπό συμβόλων κοινωνῆσιν (Aristoteles 1831, p. 1275a, 10), which might be translated as "conventional fellowship" or "treaty communion"[14], while such a suit was called αἱ ἀπό συμβόλων δίκαι or δίκαι συμβόλαιαι, which might mean "a claim based on a treaty" or "a treaty claim".

As we can see, national regulation for national actors in the sphere of private law prevailed in Greece in the epoch of Antiquity. Meanwhile, the first sprouts of private international law appeared in Ancient Greece over the course of time. Coleman Phillipson pointed out "that certain rudiments of private international law were recognized in Greece. Fuller development was impossible, on account of the very conditions of private and public life in antiquity, the conception of exclusive citizenship, the imperfect notion of comity and of balance of power, the comparatively small international intercourse, coupled with national instability, and, subsequently, absorption of the conquered races by the «barbarous» conquerors, and the consequent severance of the continuity of organic development" (Phillipson 1911, p. 192). At the same time, life itself led to the recognition of the need to regulate, to some extent, relations between persons of different nationalities in the sphere of private law. This was facilitated by the fact that in the very beginning foreigners were also Greeks, but from other polises or persons from Hellenistic States, i.e., persons close in culture, including legal culture.

4.2. Private Law in the Conditions of Multiplicity of Personal Statuses and Regulatory Particularism

The next step was made in the epoch of Ancient Rome. Since early Roman history, only citizens ("citizen" in Latin is "cives") enjoyed full rights in all spheres, including private. The word "civil" in the term "civil law" (in Latin ius civile) is derived from the Latin word "civitas", which means "community" (Roman community in this case), which was analogous to the Greek word "polis". Another meaning of "civitas Romana" is Roman citizenship and this meaning was used as a synonym of "ius Quiritium", although there were certain nuances[15]. Non-citizens in Ancient Rome should have had a patron (patronus in Latin) to have his/her rights protected including in case of litigation. A non-citizen, who

[14] William Ellis translated these words as "mutual agreement", see (Aristotles 1912).

[15] For example, Pliny wrote to Trajan: "Ago gratias, domine, quod et ius Quiritium libertis necessariae mihi femine, et civitatem Romanam Harpocrati, iatraliptae meo, sine mora indulsisti" ("I thank you, Sir, for having so promptly granted my request and for your bestowal of full citizenship on the freedwomen of a lady who

had a patron, had the status of a client (cliens in Latin) in relation to the patron and had certain duties and obligations towards the patron. The dependence of a client on a patron in Ancient Rome was stronger than a dependence of a metoec on a prosates in Ancient Athens. With the expansion of the ancient Roman state appeared different types of citizenship, which were built in a hierarchy (for instance, Roman citizenship and Latin citizenship). Herewith, an attitude of the Roman State to foreigners was characterized by greater liberality than an attitude of Greek polises, though in the early period an outlander was called in Latin "hostis" (analogous to Greek ξένος), which had two meanings: "foreigner" and "enemy". Gradually, the concept of peregrine was formed (in Latin "peregrinus" singular and "peregrini" plural), which lost that connotation of hostility. The free dwellers of Roman provinces, who did not have a Roman or Latin citizenship, had a status of peregrines. A certain hierarchy of statuses of peregrines formed over the course of time depending on their communities. For instance, Greeks were considered to be closer to Romans than many other populations. With the advent of the office of a praetor, empowered to administer the affairs of peregrines, the beginning of the ius gentium was marked. As it is well known the ius gentium was dedicated to the resolution of controversies between citizens and peregrines.

Peregrines were not foreigners in the strict meaning of this word. They were not citizens, but they were subjects of the Roman state. They could not be considered immigrants, because they lived in the Roman state, despite not having come to the Roman state; this was the Roman state that "came" to them by conquering their own states or tribes. That is why ius gentium in Ancient Rome was not an international law in the modern sense; however, in the Middle Ages ius gentium was laid in the foundation of international law. In 212, the emperor, whose nickname (agnomen in Latin) was Caracalla (official name is Marcus Aurelius Severus Antoninus Augustus), adopted the Antonine Constitution (Constitutio Antoniniana in Latin), according to nearly all freemen throughout the Roman State acquired citizenship. As a result of this, on the one hand, provincialisation of Roman law was deepening, because its rules had to be adapted to provincial circumstances to be applied in cases, in which Roman citizens (now the majority of provincial population) were involved. On the other hand, one could state a step back to nationalization (as a process opposite to internationalization) of Law, as the number of Roman citizens subject to Roman law's regulation, application and enforcement immediately augmented, while participation of foreign elements decreased.

In the meantime, Rome concluded treaties with neighboring states to mutually recognize and protect the rights of citizens staying abroad for trade or other purposes, as well as to establish jurisdiction in case of controversies between Roman citizens and aliens. It contributed to internationalization of the private law in that epoch.

By the way, some scholars see in Roman law and, above all, in Roman private law, the source of the formation and development of international law until the 20th century. For instance, Hersch Lauterpacht argued that many norms and concepts of international law derive from private law. See: (Lauterpacht 1927). Other scientists approach this issue more cautiously, as Randall Lesaffer, for example: "Today, Roman law only holds a place in international law from the perspective of history" (Lesaffer 2005, p. 57). But still, everyone recognizes the importance of Roman law for international law.

In the late Roman Empire, several peoples settled down on its territory as allies (an ally in Latin is *foederātus*) under treaties or as conquerors of certain imperial territories without consent. It served as the basis for legal pluralism in Europe in the early Middle Ages, alongside Roman law, which was still in force for the former Roman citizens, law systems of kingdoms, set up by these peoples, had an effect. Expansion at a large scale of conflict of laws in the early Middle Ages was held back by a low level of development of market relations. But by the 11th century the problem of conflict of laws was obvious for lawyers

is my intimate friend, and the Roman citizenship upon Harpocras, my ointment-doctor"), cited from (Pliny the Younger 1963, p. 311) (letter 6 to Trajan).

and was acute for European countries and regions with the development of regional, interregional, and supraregional markets, traveling of free people in search of jobs or education, and religious pilgrimage. Thus, Italy consisted of several cities-states; Germany—of many kingdoms, duchies, counties, episcopacies, cities-republic. France, although formally a kingdom, had serious distinction on a provincial level in legal regulations, which were based upon local customs, acts issued by the king's vassals, and jurisprudence of territorial judicial bodies. A provincial variety of legal regulations in France was preserved even after overcoming feudal separatism. Further stirring up of international trade, based on the increase of goods manufacturing, geographical discoveries and the development of transportation led to the increased need to advance legal regulation of private relationships, containing foreign element, and stable resolution of conflict of laws.

4.3. The Discovery of Private International Law and Movement to the Present Situation

The barest necessity of a profound study of the specified above issues dealing with regulatory particularism and conflict of laws, generalization of jurisprudence and conclusions, made on legal provisions exploration and their application outcomes, and elaboration of theory fit to practice resulted in issuing of a series of publications at the end of 18th and at the beginning of 19th century. See details: (Lorenzen 1934, pp. 15–19). However, it was with the publishing of the above-mentioned book by Joseph Story in 1834 that private international law was realized as an original branch of law and a branch of legal studies. Since that time, private law issues containing foreign elements have been getting more and more complicated, which has required the deepening and widening of regulation in this field by the adoption of national pieces of legislation and especially by the conclusion of international treaties.

In the 20th century, worldwide intergovernmental organizations appeared to act, among other things, in the field of harmonization and unification of regulation within the framework of private international law (UNIDROIT, for example, set up in 1926 as part of the League of Nations and re-founded in 1940 as an international organization).

Nevertheless, it appeared that it was easier to achieve harmonization and then unification of these norms in the field of private law at the regional-international level. And the need for such harmonization and unification at the regional level is higher due to the process of integration of states. Thus, in the 20th century, international bodies and organizations with supranational regulatory powers were established. For example, the European Economic Community (EEC) since its creation in 1957 was aimed at supranational regulation of many legal relationships referring to private law. French scholar Paule Reuter wrote in 1962: "The EEC covers all aspects of economic life: products, services, capital, labour, legislation and taxation. …The treaty only lays down principles by which the Member States will have to get inspired in order to draw up within the community the «regulations» which will be implemented by them"[16].Notably, almost five years after the signature of the Rome Treaty on the European Economic Community, P. Reuter put the term "regulation" in quotation marks as if it was not anything, which could really regulate something, while today it is obvious that regulation within the European Union is a powerful normative instrument of legal relationships of regulamentation in different fields of social life, including private law issues. In other parts of the world, economic integrations have been set up too. Among them, the Eurasian Economic Union has been functioning since 2015.

Some other processes in the development of private international law, which have led to today's state of affairs, have been unfolding too.

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[16] (Reuter 1962, p. 302). The French original text: "La C.E.E. porte sur tous les facteur de la vie économique: produits, services, capitaux, main d'œuvre, législation, fiscalité. …Le traité ne pose guère que des principes dont les Etats aurons à s'inspirer pour élaborer au sein de la Communauté les «règlements» qui les mettrons en œuvre".

5. Mutually Opposing Trends Affecting the Evolution of Private International Law

5.1. Propaedeutic Remarks

As one can see in history and in the contemporary epoch, there have been and there are two trends which are opposing each other: internationalization of regulation of private law issues and nationalization of it in the meaning of strengthening of inner-state regulation of the mentioned issues accompanied by the refusal or reduction of the application of international instruments and/or foreign legal provisions, non-admittance by courts and/or other state bodies of documents issued abroad, non-recognition, and, as a result, non-enforcement of foreign courts' rulings and/or international arbitration awards. The first trend prevails in general; however, the second trend deters the first one and in certain historical circumstances may cause temporary rolling away from internationalization. Before proceeding to the consideration of the factors contributing to a particular trend, let us pay attention to the Luca Mezzetti comment made in connection with his analysis of consolidation factors: "And there is a certain ease in the doctrine to label as "factor" any type of variable of the consolidation, disregarding the nature of "assisting element" that should instead distinguish the factors. At this point, it would be better to distinguish between factors that determine consolidation and elements that influence consolidation. The empirical revelation would risk turning out to be subject to particularism, a version of it from jurisdiction to jurisdiction, but would be such as to bring about theoretical progress. It doesn't go without saying that factors would be also the determinants of consolidation"[17].Bearing in mind what has been said about factors as such, let us review the main legal and metalegal factors, which provide both opposing trends in the evolution of private international law.

So, let us turn to the factors influencing the internationalization and nationalization of private law.

5.2. Current Factors Promoting Internationalization and Impeding Nationalization of Private Law

These factors are: internationalization of economic life; development of means of communication and transportation; increasing mobility of population; integration of states; human rights evolution; mutual approach of legal systems and law reception; flexibility in the use of means of dispute resolution.

Internationalization of economic life. Although there is no commonly shared definition of internationalization, the process itself is recognized by all economists. A brief overview of different internationalization approaches in economics is given by Paul Westhead, Mike Wright and Deniz Ucbasaran (Westhead et al. 2007, pp. 281–82). Summing up different theories and concepts, old and new, it is enough to take into consideration that the internationalization of economic life signifies an expansion of economic activities beyond national borders. The present work doesn't imply an analysis of reasons for it as well as its forms and consequences. What is important to point out here is the fact that the internationalization of economic life requires adequate legal support. Globalization, considered a new stage of internationalization, developed at the turn of the 20th and 21st centuries. The evolution of globalization was undermined by a financial and economic crisis, which burst out in 2008 and continued as a recession in a sluggish mode with certain oscillations until now. This has slowed globalization (in particular, countries have begun to introduce protective measures), but has not stopped internationalization.

Development of means of communication and transportation. It is well known that the internet is intensively used as a means of communication in trade, banking, etc., including in transnational transactions. The use of the internet, which is becoming more and more so-

[17] (Mezzetti 2003, p. 97). Original Italian text is: "Ed esiste una certa facilità in dottrina ad etichettare come "fattore" ogni tipo di variabile del consolidamento, trascurando la natura di "elemento fautore" che invece dovrebbe distinguere i fattori. Meglio sarebbe, a questo punto, scriminare tra fattori che determinano il consolidamento ed elementi che influenzano il consolidamento. La rivelazione empirica rischierebbe di rivelarsi soggetta a particolarismo, di variante da ordinamento a ordinamento, ma sarebbe tale da apportare progresso teorico. Non va da sé che i fattori siano anche le determinanti del consolidamento".

phisticated, needs constant improvement of legislation. Such projects as a transcontinental speedy railway and mixed transport corridor from the Far East and South-East Asia to the Western Europe need modern legal regulation of international and transnational nature.

Increasing mobility of population. According to the International Organization for Migration data in 1970, a number of international migrants globally made 84,460,125 people or 2.3% of the world's population, in 1980—101,983,149 people or 2.3% of the world's population, in 1990—152,563,212 people or 2.9% of the world's population, in 2000—172,703,309 people or 2.8% of the world's population, in 2010—221,714,243 people or 3.2% of the world's population, in 2015—243,700,236 people or 3.3% of the world's population (*World Migration Report 2018* 2017, p. 15), and in 2020—280,598,105 people or 3.6% of the world's population (*World Migration Report 2022* 2021, p. 23). Within 50 years, the number of migrants in absolute figures in the world increased almost three times, and its portion of the world population rose from 2.3% to 3.6%. More and more people live in foreign countries. This means that the provisions of international law relating to strangers do not lose their relevance. Moreover, people born in one country living in another in many cases "import" family relations established in conformity with foreign law, can inherit foreign property and leave legacy to heirs abroad, etc. Becoming widespread, such relations require appropriate international regulation.

Integration of States. Bela Balassa defines economic integration in a book, which might be considered classical, published for the first time in 1962, as following: "We propose to define economic integration as a process and as a state of affairs. Regarded as a process, it encompasses measures designed to abolish discrimination between economic units belonging to different national states; viewed as a state of affairs, it can be represented by the absence of various forms of discrimination between national economies" (Balassa 2013, p. 1). In any case, economic integration is linked to the regulation of private law issues.

The forms of economic integration are classified: "a free-trade area, a customs union, a common market, an economic union, and complete economic integration" (Balassa 2013, p. 2). These forms could be considered stages of integration. Of course, it is not necessary that all integrations go through all these stages, but if states seek to deepen integration, they move from stage to stage. The above enumerated forms (stages) could be added by a political union, which is the highest form (stage) of integration.

As it was noticed earlier, bodies, set up within integration and empowered with a supranational regulatory mandate, contribute to the development of international private law. For instance, Hans-Michael Wolffgang shows the following hierarchy of sources of customs law in the European Union (EU), and the same hierarchy can be built within other branches of law: the Community Law level (the EU Customs Code—Customs Code Implementing Regulations—Exemption from customs duty regulation—Provisional regulations—Regulations on International Carriage of Goods by Road), the National (State) Law level (Customs Administration Law—Value Added Tax Law—NATO Troops Statute—Customs by-law regulations—Import Excise Duty-Exemption By-Law Regulation—Import Value Added Tax Exemption By-Law Regulation—Service instructions) (Witte and Wolffgang 2009, p. 20). It is a general scheme of correlation of sources of law and it may vary depending on each specific branch.

The examples of EU regulations dealing with international private law issues are the Regulation (EU) No. 593/2008 of the Parliament and of the Council of the 17 June 2008 on the law applicable to the contractual obligations[18], also known as "Rome I", and the Regulation (EU) No. 650/2012 of the European Parliament and of the Council of the 4 July 2012 on the jurisdiction, applicable law, recognition and enforcement of court decisions and the acceptance and enforcement of authentic instruments in matters of succession and the creation of a European Certificate of Succession[19]. The second of these two Regulations has filled the gap in inheritance legislation harmonization within the EU.

[18] *Official Journal of the European Union*. L 177, 4 July 2008.
[19] *Official Journal of the European Union*. L 201, 27 July 2012.

The first of two mentioned regulations has substituted by itself the EU 1980 Rome Convention on the law applicable to the contractual obligations and is enforced in all EU members except for certain members' autonomies, which are not included in the EU territory (Article 24 paragraph 1of the Regulation), as Danish Greenland, for instance. Meanwhile, there is a problem of co-relation of the Rome I, on the one hand, and the 1955 Hague Convention on the Law Applicable to International Sales of Goods and the 1978 Hague Convention on the Law Applicable to Agency, concluded by some EU members, on the other hand. In this respect, it is worth citing Pietro Franzina, who believes that "the conventions concluded by the member States, even if they are an obstacle to a full uniformity of discipline at the Community level, represent an opportunity of cooperation with third countries. For this reason, waiting for the Community to develop its own network of foreign relations in this sector, it is advisable to maintain the benefits offered by the existing conventions, thus avoiding that the member States are obliged to denounce them. This evaluation, conducted *by the institutions*, reflects the importance that *the Community* attaches to "universalist" cooperation achieved by some member States in the field of conflicts of laws, and the desire of *the Community* to keep open the «universalist» cooperation «channels» made in this area. It, of course, deals with an «interim» assessment made by a Community legislator, which, apparently, is aware of the difficulties (and technical timing) of the international cooperation in the field of private international law and, therefore, realizes that the Community—despite the fact that now it has an exclusive external competence in this area, as will be shown,—will not be able to play an immediate role as a global player in mentioned field"[20].

Human rights evolution. Of course, the law, including the international law, of human rights distinguishes from international private law. Nevertheless, such issues as protection of property rights, family rights, labor rights of foreigners, recognition of foreign marriage, recognition of marriage of persons of different nationalities and other issues, stipulated by non-discrimination provisions of core United Nations human rights instruments (the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, International Convention on the Elimination of All Forms of Racial Discrimination, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and others), of regional human rights international multilateral treaties within the Council of Europe, the Organization of American States, the African Union, and others, are relevant for the International private law too. Recommendations given to the states, who are parties to respective international instruments, by bodies, created in accordance with those international instruments, on the basis of consideration of periodic reports and decisions of organs, including judicial organs, on individual complaints (communications) exert influence on national legislations and practice of its application. Thus, there is an impact upon private international law development.

Mutual approaching of legal systems and law reception. International intercourse furthers the exchange of ideas, opinions and information. It creates favorable conditions for law reception. A law reception is a phenomenon known since remote historical times. In any case, a borrowed legal institution is adapted to local conditions because there are no coun-

[20] (Franzina 2009). The original text in Spanish is: "Los convenios concluidos por los Estados miembros, aunque sean un obstáculo para una plena uniformidad de disciplina a escala comunitaria, representan una oportunidad de cooperación con los terceros países. Por lo tanto, esperando que la Comunidad desarrolle su propia red de relaciones exteriores en este sector, es conveniente mantener los beneficios ofrecidos por los convenios existentes, evitando que los Estados miembros estén obligados a denunciarlos. Esta evaluación, realizada *por las instituciones*, refleja la importancia que *la Comunidad* atribuye a la cooperación «universalista» lograda por algunos Estados miembros en el sector de los conflictos de leyes, y el deseo de *la Comunidad* de mantener abiertos los «canales» de cooperación "universalista" realizados en este ámbito. Se trata, por supuesto, de una evaluación «provisional», hecha por un legislador comunitario que, evidentemente, conoce las dificultades (y los tiempos técnicos) de la cooperación internacional en el sector del derecho internacional privado y, que por tanto, se da cuenta de que la Comunidad—a pesar de que ahora dispone de una competencia externa exclusiva en este ámbito, como se mostrará—no podrá desempeñar de inmediato un papel de actor global en este sector".

tries with absolutely identical social, economic, cultural, political and historical ideological conditions. However, there might be a likeness in conditions, and in this situation, a reception of the law might be successful. Otherwise, legal institutions are borrowed formalistically and never work or they might be transformed so drastically that they become unrecognizable. As Professor Jorge Sánchez Cordero aptly observed: "Legal transposition and legal acculturation is a subject that, given its vastness and complexity, forces the spectrum of analysis, on a case-by-case basis, to be more reflective and thought provoking than intensive; this will inevitably raise further questions with only sparing answers" (Sánchez Cordero 2012, p. 14). Legal systems may approach each other through law reception, harmonization and unification of legislation, but also there might be recognition in a country of a foreign for this country's legal system institution.

Thus, in certain European countries and in the USA an institution of Islamic law, which is called "kafala" (transliteration of an Arabic word كفالة), has been recognized in relation to Muslims and Muslim orphans or Muslim children left without the care of their biological parents[21]. It is about a tutelage over a minor (the word "kafala" may be used in other meanings too). Adoption of an orphan is prohibited in Islamic law; nevertheless, there are prescriptions on the tutor's rights and obligations as well as the minor's rights and obligations under such a tutelage. Some Muslim-immigrants in European countries and in the USA had and have minors under their tutelage, and without recognition of the kafala there was no legal basis for their stay with those minors. See: (Rotabi et al. 2017, pp. 16–24); (Duca 2014). This was the reason for the recognition of the kafala as a legal institution and legalizing in this way personal statuses of a minor and his or her tutor (in Arabic كفيل, pronounced as "kafeel"), although the named institution remains alien for the European countries' legal systems.

There are examples of recognition of a foreign court's ruling by a court of another jurisdiction even in the absence of an international treaty regarding such mutual or unilateral recognition. Thus, the Eastern Caribbean Supreme Court (in this case the highest court instance for the British Virgin Islands and some other countries), acting as the Court of Appeal in the *Al-Thani v. Al-Thani* case (BVIHCVAP2021/0001), on 23 March 2022 accepted the enforceability in the British Virgin Islands of a Qatari court decision on a validity of the will and ruled that such validity could not be reconsidered by British Virgin Islands courts, as this would be contrary to the doctrine of res judicata[22]. Actually, this ruling addresses several issues, but for the present topic is essential the mentioned voluntary recognition by a common law court of a foreign court decision based on a Sharia law.

Flexibility in use of means of dispute resolution. Parties of a dispute have a relative freedom in choosing means to resolve. In many cases of mediation, several options of international arbitration tribunals, courts in one of the parties jurisdiction, third jurisdiction courts are at the disposal of parties. Certainly, their choice might be limited by law prescriptions or their contract, but even in this situation, they have the possibility to transfer their case from one institution to another or from one jurisdiction to another. Parties often have the

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[21] Kafala in relation to orphans is understood in a following way: "It must be noted that sponsoring an orphan is not only financially supporting him, but tutelage means assuring the orphan's affairs such as education, instruction, guidance and advice, and fulfilling the needs related to his/her personal life, such as food, drink, clothing, treatment, and so on" (original text reads:

أنه لابد أن يتنبه أن كفالة اليتيم ليست في كفالته ماديا فحسب ، بل تعني الكفالة القيام

بشئون اليتيم من لتربية لتعليمو لتوجيهو لنصحو ، لقيامو بما يحتاجه من حاجات تتعلق

بحياته الشخصية من المأكل لمشربو الملبسو لعلاجو ونحو هذا .)

See at: https://islamonline.net/archive//%3C%D9%88%D8%B5%D9%88%D8%B1%D9%87%D8%A7-%D9%81%D8%B6%D9%84%D9%87%D8%A7-%D8%A7%D9%84%D9%8A%D8%AA%D9%8A%D9%85-%D9%83%D9%81%D8%A7%D9%84%D8%A9%3E/ (accessed on 13 August 2022).

[22] https://www.eccourts.org/sheikha-amena-ahmed-h-a-al-thani-et-al-v-sheikha-aisha-mohammed-ali-abdullah-al-thani-et-al/ (accessed on 13 August 2022).

possibility to choose a law of this or that country to govern their contract and probable future dispute resolution. It is clear that this promotes the development of private international law.

5.3. Current Factors Promoting Nationalization and Impeding Internationalization of Private Law

These factors are: State sovereignty; variety of legal cultures and traditions; difference in levels of economic development of States and regions; difficulties in law enforcement; xenophobia; non-coincidence of interests of societies and populations; rigidness of legal norms and doctrines.

State sovereignty. Sovereignty might be defined as a supreme, full and unique power vested formally into official bodies or a body. Sovereignty is one of the fundamental characteristics of a state. Using its sovereignty, each state promotes the unity of its legal system. Any state represented by its bodies establishes the basics of its legal policy and legislates, recognizes (or doesn't recognize) customs, concludes and denounces international treaties, creates and maintains favorable conditions for legal rules application, adjudicates when legal rules are violated or legal dispute arises, enforces legal rules and judicial decision. Each state accomplishes all the above-mentioned on its own, introducing every time certain specificity ensued from this state's particularities. States are influencing each other more or less, but the final decision is taken by each state itself. Even borrowing legal norms or institutions from abroad or implementing international instruments, states domesticate rules. Ratifying international instruments, states can make reservations and declarations, states' attitudes have an impact on the scope of implementation and application of international regulation and enforcement of international bodies' decisions. States can leave international organizations and unions, thus discontinuing respective regulations. For instance, the USA in October 2017 formally notified the UN's world heritage body UNESCO that the USA was withdrawing its membership from the organization. The withdrawal was set to take effect on 31 December 2018. After the referendum of 23 June 2016, when a majority of United Kingdom voters supported leaving the EU, the United Kingdom of Great Britain and Northern Ireland were due to leave the EU on 29 March 2019 (so-called Brexit). In any case, sovereign states promote national regulation of private law.

Variety of legal cultures and traditions. In spite of mutual approaching of legal systems and even elements of their convergences, distinct legal systems have preserved. One of the reasons of the preservation of differences in legal systems is a continuing existence of a variety of legal culture, which is part of general culture, based on values and traditions, predetermining patterns of behavior. Modifications of a legal system are viable only in case of concurrent changes in social life and, respectively, values. Professor Jorge Sánchez Cordero highlights eight types of legal systems (Anglo-American; Roman-Common Law; German-Scandinavian; Franco-Latino-Germanic; Franco-Latino; Islamic; as well as the system of emerging jurisdictions; and a system of 13 unallocated jurisdictions), classified along with jurisdictions[23]. These legal systems should be added by one more: by Traditional Tribal/Community legal system, to which correspond traditional tribal/community jurisdictions, recognized in certain countries. For example, the 1980 Constitution of the Republic of Vanuatu (Article 52) mentions island or village courts and traditional chiefs, whose role should be determined by the government (Constitution of the Republic of Vanuatu 2006, p. 17). The 1991 Constitution of Colombia (Article 246) recognizes jurisdictional powers of traditional bodies of indigenous peoples in accordance with their customs within their territories under the condition of respect to the Constitution and laws (*Constitución Política de Colombia* 2015, p. 60). In the 1993, by Vuntut Gwitchin First Nation Self-Government Agreement with the Government of Canada and the Government of the Yukon the power of the Vuntut Gwitchin First Nation to adopt local laws on the administration of justice was established (Article 13.3.17) (Indian Affairs and Nothern Develop-

[23] Sánchez Cordero, Jorge A. Op. cit., pp. 39–41.

ment 1993, p. 18). Article 13.6.2 of this Agreement specifies: "Negotiations respecting the administration of justice shall deal with such matters as adjudication, civil remedies, punitive sanctions including fine, penalty and imprisonment for enforcing any law of the Vuntut Gwitchin First Nation, prosecution, corrections, law enforcement, the relation of any Vuntut Gwitchin First Nation courts to other courts and any other matter related to aboriginal justice to which the Parties agree" (Indian Affairs and Nothern Development 1993, p. 22). The 2010 Constitution of Angola (Article 223, paragraph 1) provides for recognition of the status, role and function of traditional bodies set up according to customary law, not contradicting the Constitution, but without mentioning specifically a jurisdictional function (*Constituição da República de Angola* 2014, p. 79). The Principles and Guidelines on the Right to a Fair Trial and Legal Assistance in Africa, approved by the African Commission on Human and Peoples' Rights in 2003, have a division "Q" entitled "Traditional Courts"[24]. In the USA, within tribal courts, First Nations try to make their traditions and customs revived, and it's appeared to be a mixed legal system. "By the early 1980s, members of the Navajo Nation Council, judges and the Navajo People sought to revive traditional Navajo justice methods, and the judges began to apply traditional Navajo legal principles in their decisions. They did so in the English language. These decisions gave a great deal of insight into Navajo common law, now the law of preference in our jurisdiction. This initiative later led to re-discovery and revitalization of Navajo style of justice, "Peacemaking" in the English language. Today, Navajo judges are mandated by the newly-enacted Fundamental Laws of the Dine to apply the principles of Navajo values in their decision-making" (Yazzie 2003). The traditional tribal/community legal is a specific one, but the present publication is not aimed at exploring its characteristic features.

Difference in levels of economic development of States and regions. Different levels of the economic development of states and regions lead to the need for distinct legal regulation of private laws issues, which are connected tightly with economic relations. In periods of prosperity, contradictions between states and regions were not so visible, but in periods of economic crises and recession such contradictions have become aggravated. The General Manager of the Bank for International Settlements Agustin Carstens, lamenting "recent measures to reverse globalisation and to retreat to protectionism", recently stated: "After decades of setting rules to liberalise trade, we are seeing moves to rip up that rulebook. After decades of striving to open markets, we are seeing attempts to close them. After decades of increasing international cooperation, we are seeing increasing international confrontation. This is reflected in the United Kingdom's vote for Brexit, nationalist movements in Europe, the shift in US trade policy and the current tariff tit-for-tat" (Carstens 2018, p. 1).

In such periods nationalization of policies and legislation strengthens.

Difficulties in law enforcement. It is difficult to enforce a law adopted in a state outside its national territory, although it might be applied by a foreign court, resolving a conflict of laws. There are well-known obstacles (the difference between languages, distinction in the interpretation of legal terms and institutions, peculiarities of legal cultures in sundry countries, etc.) to effectively enforce court rulings abroad as well awards of international arbitration tribunals. All these problems do not encourage people to be excessively enthusiastic about the internationalization of regulation of private issues.

Xenophobia. Still, prejudices and suspicions in relation to foreigners are encountered; documents issued abroad in certain cases are mistrusted. I have one illustrative example. A woman who was a Russian citizen was married in Russia to a man who was a US citizen. While residing in Russia, the wife adopted a girl. The husband in the beginning expressed an intention to become a step-father but did not finalize a collection of documents and was not recognized as an adoptive parent. In the meantime, the wife got a job in the US, in the state of Nevada. Staying there in 2013, the husband initiated a divorce process, and sought custody rights over the girl, under Nevada Revised Statutes (NRS) Chapter 125 by

[24] *The Principles and Guidelines on the Right to a Fair Trial and legal Assistance in Africa.* Available on http://www.achpr.org/instruments/principles-guidelines-right-fair-trial (accessed on 23 August 2022).

falsely claiming that he was the adoptive parent. In spite of the fact that the wife had all the documents proving her status as the stepmother, and the husband had no documents to prove his claims, the judge believed the husband. By that time, the job contract of the wife was terminated and she left for Moscow with her step-daughter, who was also a Russian citizen by birth. The underlying divorce action was filed by the husband in Russia. A Russian court divorced them and denied the claim by the husband for right of custody over the girl as not founded. But the court in Nevada did not recognize the Russian court ruling. By contrast, the judge did not believe that the wife left Nevada because her contract termination proclaimed her a "fugitive", though she had left when there had been any judicial to leave the state of Nevada (a territory of jurisdiction). The husband left Nevada too. He moved to another state. At the hearings in 2015, the husband was "present by telephone", the wife was represented by her lawyer, but this was considered by the judge as the absence of the wife and she was never invited or allowed to be "present by telephone", which was technically possible[25].

Non-coincidence of interests of societies and populations. Interests of societies and populations of different countries may not coincide for various reasons. For example, countries might be in competition as producers of the same goods in the international market. Such a rivalry does not favor their cooperation in this or that sphere. Interests, especially in the field harmonization of legislation, may not coincide because of differences in basic values. The distinction in the level of economic development of countries with respective populations reflects in non-coincidence of economic interests and prevents the setting up of integration with bodies acquiring supranational powers.

Rigidness of legal norms and doctrines. The stability of legal regulation is important because it ensures the legal predictability of actions and deeds as well as legal certainty. In its turn, the stability of legal regulation requires a certain level of rigidness of legal norms and doctrines, and rigidness attaches these norms and doctrines to a specific set of rules existing as a law of a concrete state and impedes their easy transposition to another national law system.

6. Current Tendencies in Private International Law Evolution

Personalization, and seeking to extend a state's jurisdiction beyond its sovereign territory at the domestic level, and promotion of international arbitration, and regionalization at the international level are actually principal tendencies in private international law issues regulation at the turn of the 20th and 21stcenturies.

Personalization should not be confused with personification, which refers historically to the recognition of the legal personality of an entity. See, for example: (Mark 2006, pp. 1479–87). Personalization reveals itself in increasing individualization of legal regulation of foreigners and deepening concretization of abstract legal norms depending on a series of factors. Thus, personal status of a foreigner is not only recognized, but in case of litigation dealing with his or her personal status issues domestic courts are inclined to apply alien law even though provisions and institutions of such an alien law have not been received or incorporated into the domestic legal system. Earlier in this work, I gave example of recognition of certain institutions of Islamic law dealing with family law, and, therefore, with a personal status, had been recognized in European countries and in the USA. At the same time, it is considered in certain countries that legal provisions should not be very detailed to leave space for their concretization in practice in specific situations and under specific conditions of each case of their application. For instance, the 2002 Brazilian Civil Code, as Judith Martins-Costa has written, is based upon a new concept of the Brazilian private law considered to be a subjective rights system aimed at the promotion of equality of human beings in accordance with a real situation of individuals in their social environment (Hofmeister Martins-Costa 2002, p. 239). So, such an attitude demands taking into consideration the specificity of the social situation of each participant in pri-

[25] A file of the case is in the author's archives.

vate legal relationships, which results in the personalization of private legal relationship regulation including those which have foreign elements.

Personalization deals with both the development of legislation and an increase in the legal awareness of the people themselves and other stakeholders. As it is stated, for instance in the "Decision Concerning Some Major Issues in Comprehensively Moving Forward Governing the Country According to Law", adopted by the Central Committee of the Chinese Communist Party on 29 October 2014: "(4) Strengthen legislation in key areas. Guarantee citizens' rights in accordance with the law, accelerate the improvement of a legal system that reflects fair rights, fair opportunities, and fair rules, guarantee that citizens' personal rights, property rights, basic political rights and other rights are not violated, and ensure that citizens' economic, cultural, social and other rights are implemented, and the protection of citizens' rights is legalized. Enhance the awareness of the whole society to respect and protect human rights, and improve the channels and methods of civil rights relief"[26]. Thus, in personalization in private law, appropriate legal regulation, strengthening of human rights and raising legal awareness are intertwined.

Seeking to extend State's jurisdiction beyond its sovereign territory is realized in several ways. In the field of US Competition Law, for example, the effects test court doctrine allows domestic courts to exercise jurisdiction over foreign offenders and foreign conduct, so long as the economic effects of the anticompetitive conduct are experienced on the domestic market See: (Parrish 2008). The 2010 US Supreme Court ruling in the case of *Morrison v. National Australia Bank*[27] acknowledges application in certain cases of US legislation to foreigners abroad. This ruling is based on an interpretation of the 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act[28], which gives the US Security and Exchange Commission and the US Justice Department extraterritorial jurisdiction. US unilateral restrictions, which are called "sanctions" (such as the 1996 D'Amato-Kennedy [Iran and Libya Sanctions] Act or the 1996 Helms-Burton [Cuban Liberty and Democratic Solidarity] Act), also affect the economic activity of foreign citizens and companies outside the US. Some countries have taken legislative counter-measures (Argentina, for instance[29]). The United States under Donald Trump's Presidency has intensified so-called "sanctions" (as a matter of fact, unilateral restrictions) policy against other countries in 2017–2018. However, even after that, the situation in this area is only getting worse (especially, since 2022). In the 21st century, many European countries have allotted their domestic courts with competence to litigate certain disputes, to which a foreign embassy or even a foreign State is a party, distinguishing between acts of sovereign authority (acta iure imperii), protected by immunity from alien courts' trial, and acts of private-law nature (acta iure gestionis), which might be sued abroad, while previously states and their embassies were considered to be absolutely immune from trial by foreign courts. Russia also decided to join this common trend and adopted Federal Law No. 297-FZ On Jurisdictional Immunities of a Foreign State and Property of a Foreign State in the Russian Federation[30], which entered into force on the 1 January 2016. However, the first case based on the mentioned Federal Law and filed with the Moscow Court in 2016 resulted in the admission by that Court the lack of competence and, thus, dismissal of the case. It is worth pointing out that in spite of the variety of contents of mentioned pieces of legislation in different countries and scopes of regulation, a general tendency is obvious.

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[26] 中共中央关于全面推进依法治国若干重大问题的决定 Available on the Website: http://cpc.people.com.cn/n/2014/1029/c64387-25927606.html (accessed on 29 August 2022). The original text in Chinese: (四) 加强重点领域立法。依法保障公民权利，加快完善体现权利公平、机会公平、规则公平的法律制度，保障公民人身权、财产权、基本政治权利等各项权利不受侵犯，保障公民经济、文化、社会等各方面权利得到落实，实现公民权利保障法治化。增强全社会尊重和保障人权意识，健全公民权利救济渠道和方式。

[27] 561 U.S. 247 (2010).

[28] Pub.L. 111–203.

[29] *Boletín Oficial*. 10 de Septiembre de 1997 (Ley No. 24.871 de 20 de Agosto de 1997, Establecese el marco normativo referido a los alcances de las leyes estranjeras en el territorio nacional).

[30] *Rossiyskaya Gazeta*. Moscow, 6 November 2015, No. 6822(251).

Promotion of international arbitration is characterized by the broadening of the use of arbitration in resolution of different international private law disputes and by increasing the number and variety of issues, which are referred to arbitration courts consideration[31]. In the assessment of James Allsop, Chief Justice of Australia: "The development and widespread use of international commercial arbitration around the globe has been one of the most significant features of international commercial law that developed over the course of the twentieth century" (Allsop 2018, para. 59). The main features of arbitration courts make them fit for commercial dispute resolution; that is why they are promoted, but the present publication is not aimed at arbitration studying.

The differences between commercial international arbitration and investor-state arbitration should not be disregarded. Robert French, former Chief Justice of Australia, noted while discoursing the role of investor-state disputes settlements: "They have general implications for national sovereignty, democratic governance and the rule of law within domestic legal systems" (French 2014, pp. 3–4). Due to the ambiguity of the consequences of their application (which French also mentions), investor-state arbitration reform projects are discussed and elaborated since the end of the second decade of the 21st century. However, consideration of these issues is beyond the scope of this article.

Regionalization in the international regulation of private law issues is connected with inter-state economic integration, which evolves at regional level in several parts of the world, as it has been mentioned earlier in this work. Economic integration is aimed at liberating movement of persons, goods and capitals within the territory formed by integrating States, and it is clear that it deals with issues regulated by private law.

That is why it is logical to promote adequate private law regulation effective within the territory of regional integration. In Latin America, for example, there are the Southern Common Market, known as Mercosur, the Community of Latin American and Caribbean States (CELAC), the Caribbean Community (CARICOM or CC), the Pacific Alliance; in Asia there are the Association of Southeast Asian Nations (ASEAN), the Economic Cooperation Organization (ECO); in Africa there are the Economic Community of West African States (ECOWAS), the Common Market for Eastern and Southern Africa (COMESA), the Economic Community of Central African States (ECCAS), the Arab Maghreb Union (AMU), etc. There are also integrations, which encompass States belonging formally to distinct continents but still making up one region: the Regional Comprehensive Economic Partnership (RCEP)—Asia and Australia, Eurasian Economic Union (EAEU)—Asia and Europe.

The European Union (EU) represents an example of one of the most advanced regional uniform regulations of many private law issues (including family relations in compliance with the Regulation No. 2201/2003 of 27 November 2003[32] and succession relations in accordance with Regulation No. 650/2012 of 4 July 2012[33]). Drawing attention to EU regulations, Patrick Wautelet writes in a reasoned way that they "occupy an increasingly important place in the regulation of private international situations" (Wautelet 2005, p. 14). Indeed, from the very beginning of the European Communities, and then the EU, much attention has been and is being paid to the uniform regulation of many issues relating primarily to the field of private law, initially in the form of conventions, gradually replaced by regulations and directives adopted by EU bodies.

7. Conclusions

The main trend in the history of the evolution of the regulation of private law is a constant increase since ancient times through Middle Ages to the modern period of the international component in it from denying rights of foreigners to granting foreigners equal or almost equal rights with nationals in the private law sphere, and from a complete non-admittance of foreign and international regulations in national legal order to broad imple-

[31] A review of history of arbitration courts and main problems of arbitration means of private law disputes resolution see in a book of Czech authors: (Schelleová and Schelle 2002).

[32] Journal officiel de l'Union Européenne, le 23 décembre 2003, L-338/1.

[33] Journal officiel de l'Union Européenne, le 27 Juillet 2012, L-201. See more: (Popescu 2014).

mentation of international treaties and recognition of a possibility to apply under certain conditions foreign legal provisions and from a refusal of foreign and international court rulings acceptance to their enforcement under certain conditions. As a part of this trend, a relative narrowing of the national component of private issues regulation is observed. Such a narrowing does not mean an absolute decrease in the number or volume of laws dealing with private issues (there might be a certain increase even) but means a voluntary transfer of certain areas of private law regulation from the national level to international or supranational one. Therefore, a general volume of private law issues regulation may increase with its both components—national and international—growing, but the portion of the growing national private issues regulation is reducing in the general (also growing) amount of such regulation in comparison with international (growing too) regulation of private law issues.

Meanwhile, this main trend is opposed by a trend impeding internationalization and promoting nationalization of private law issues regulation, and in certain historical circumstances, it may even prevail. For example, in the period of the Late Roman Empire, when, on the one hand, almost all residents of the Roman state acquired the status of citizens, and on the other hand, a number of neighboring countries reduced to very few, almost all trade and all migrations had inner-state nature, the need in international regulation of the private law issues narrowed considerably, and as matter of fact national regulation of private law issues prevailed. At the very end of the epoch of the Western Roman Empire and early Middle Ages, various tribes invaded the Imperial territory, settled down and created their own kingdoms. In this period, Roman law was still in force and the customary law of invaders was also in force. That is why conflict of laws resolution was needed. Later, in the period of subsistence economy and decline of trade, national regulation played a major role. A revival of trade called into being a reception of Roman law, which had an international or supranational nature in feudal Europe. Then, the codification of customary law, such as Sachsenspiegel (13th century) and others, meant a rise of nationalism. In our days, supranational regulation within integrations is squeezing out international conventions (earlier the example was given as the 2008 EU Regulation No. 593/2008 known as the Rome I substituted the 1980 EU Convention on the law applicable to the contractual obligations). The recession followed the financial and economic crisis of 2008, the COVID-19 pandemic-related restrictions of 2020–2021, other economic restrictions introduced in 2022, and so on, also favors nationalism.

Contradictory trends are observed: receptivity and nationalism in the field of private international law. On the one hand, legal systems are approaching, reception of foreign legal institutions are accomplished, international instruments are implemented, on the other hand, borrowed institutions are adapted, domesticated and sometimes transformed to an unrecognizable state.

The above-mentioned current tendencies in the private international law evolution have been formed largely under the influence of the factors considered, although the impact of each of the factors on a particular tendency is uneven. For example, the personalization of private law has resulted from the dialectic interweaving of the increasing mobility of the population and the human rights evolution, on the one hand, and the variety of legal cultures and traditions and the difficulties in law enforcement, on the other hand. The tendency of seeking to extend the state's jurisdiction beyond its sovereign territory is connected to such factors as sovereignty and xenophobia, on the one hand, and the internationalization of economic life and the development of means of communication and transportation, on the other. The tendency to promote international arbitration has arisen, first of all, due to factors of flexibility in the use of means of dispute resolution and the mutual approaching of legal systems and law reception, on the one hand, and the rigidness of legal norms and doctrines and difficulties in law enforcement, on the other. Finally, the tendency of regionalization in the international regulation of private law has accrued as a result primarily of the integration of states, the internationalization of economic life and the mutual approaching of legal systems and law reception, on the one hand, and the non-

coincidence of interests of societies and populations, the difference in levels of economic development of states and regions and difficulties in law enforcement, on the other.

It is worth noting that among factors promoting internationalization and impeding nationalization of private law three are of legal nature and four lie in the meta-legal sphere, and among factors promoting nationalization and impeding internationalization of private law also three are of legal nature and four lie in the meta-legal sphere, by which I understand phenomena and processes of economic, social, cultural or technical-technological nature.

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