

Ukraine-Romania judicial cooperation in civil matters: twenty years of signing the agreement

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Abstract

The extraordinary session of the Verkhovna Rada of the Ukrainian SSR on August 24, 1991 proclaimed the independence of Ukraine and the creation of an independent Ukrainian state, the Act of Independence of Ukraine. Since then, Ukraine, as a sovereign, independent, independent State, has been creating legal relations between states, finding not only reliable partners, but also friends. One of these countries is Romania. This article examines the issue of the Agreement on Legal Assistance between Ukraine and Romania, which was signed in 2002, and implementing this act in the judicial system of Ukraine - through judicial cooperation, recognition of judicial decisions and participation of Romanian citizens in trials in Ukraine.

Keywords: *judiciary; judicial cooperation; civil procedure; recognition and enforcement of judgments; court.*

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1. Introduction

Ensuring effective judicial cooperation between Ukraine and Romania and increasing mutual trust to the judiciary of both states are very important today and an extremely important task on Ukraine's European integration path. Among the main types of judicial cooperation in civil matters are recognition of judgments, service of documents and taking of evidence, which are the objects of our attention in this paper. In order to deepen and improve mutual cooperation in the field of legal relations and legal assistance in civil matters, in 2002, shortly after the declaration of independence by Ukraine, the Agreement between Ukraine and Romania on legal assistance and legal relations in civil matters (hereinafter –

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Ukraine-Romania Agreement or Agreement) was signed⁴. Therefore, the agreement regulates the legal relations of the two states in the areas of private law and public law. In particular, the Agreement addresses the following issues: the status of a person, restrictions on legal capacity or recognition of a person as incapacitated, recognition of a person as missing, deceased, and establishing the facet of death. It is worth noting that the issues of family legal relations are revealed, in addition matters of marriage, personal property and non-property rights of spouses, divorce. A significant number of articles are devoted to the issue of adoption, legal relations between parents and children, custody, and care. Attention was drawn to the issue of defining immovable and movable property, the form of an agreement for compensation for damages under tortious obligations. Issues of inheritance, as well as recognition and enforcement of decisions and dispute resolution are covered.

Over the past decades, relations between Ukraine and Romania have grown significantly and continues to grow. According to the State Statistics Service of Ukraine, at the end of 2021, the volume of trade between Ukraine and Romania amounted to 2,340.02 million dollars. USA (2020 – 1,764.8 million USD), of which exports – 1,543.6 million USD. USA (2020 – 1,080.9 million USD) and import 796.3 million USD. USA. (2020 - 683.8 million USD).

The main articles of Ukrainian export were: ferrous metals - 16.1% of the total volume, electric machines - 14.6%, ores, slag and ash - 13.4%, wood and wood products - 8.3%, mineral fuels - 6.8%, fertilizers – 4.8% and footwear – 4.5%.⁵ The main items of import of Romanian goods to Ukraine were: means of land transport other than railways - 18.8% of the total volume of imports, electric machines - 17.0%, nuclear reactors, boilers - 6.4%, wood - 6.1%, fuel mineral products - 5.4%, pharmaceutical products - 4.2%.⁶

In view of the above, it seems necessary to analyze in detail the peculiarities of judicial cooperation in civil and economic cases between Ukraine and Romania, as well as, if necessary, deepen and expand the scope of the relevant Agreement on legal assistance and legal relations between our states⁷.

Among the main issues regarding the recognition of decisions of Romanian courts in Ukraine, which were investigated, the peculiarities of the execution of court orders of Romanian courts by Ukrainian courts regarding the delivery of documents and the transfer of evidence in civil cases, the recognition and enforcement of decisions of Romanian courts on the territory of Ukraine, the

⁴ Agreement between Ukraine and Romania on legal assistance and legal relations in civil cases, ratified by Law No. 2822-IV of September 7, 2005, which entered into force for Ukraine on October 30, 2006, URL: https://zakon.rada.gov.ua/laws/show/642_02_9#Text, consulted on 1.11.2022.

⁵ Trade and economic cooperation URL: <https://romania.mfa.gov.ua/spivrobotnictvo/202-torgovelyno-jekonomichne-spivrobotnictvo-mizh-ukrajinoju-ta-rumunijeju>, consulted on 1.11.2022.

⁶ Ibid.

⁷ For other changes at the Ukrainian legislative level see Nadiia Shulzhenko and Snizhana Romashkin, *Legalization of Gambling in Ukraine*, „Perspectives of Law and Public Administration”, Volume 9, Issue 2, December 2020, p. 183.

procedure for determining the jurisdictional body that is authorized consider disputes. The conclusions suggest ways to deepen and expand the scope of judicial cooperation between Ukraine and Romania.

2. Recognition of foreign courts' decisions in Ukraine

In Ukraine, the peculiarities of the recognition and enforcement of decisions of foreign courts are provided for by the Law of Ukraine "On Private International Law" and Chapter VIII of the Civil Procedure Code of Ukraine.

According to Art. 81 of the Law of Ukraine "On International Private Law", the decisions of foreign courts in cases arising from civil, labor, family and economic legal relations, judgments of foreign courts in criminal cases in the part related to compensation for damage and caused losses can be recognized and enforced, and as well as decisions of foreign arbitrations and other bodies of foreign states, whose competence includes consideration of civil and economic cases that have entered into legal force and are subject to recognition and enforcement on the territory of Ukraine in accordance with international treaties of Ukraine or on the principle of reciprocity by agreement *ad hoc* (arbitration, specially created for consideration of a specific case) with a foreign state⁸.

Article 462 of the Civil Code of Ukraine stipulates that the decisions of a foreign court (a court of a foreign state, other competent bodies of foreign states, whose competence is the consideration of civil cases) are recognized and enforced in Ukraine, if their recognition and enforcement is provided for by an international Agreement, the consent of which is binding granted by the Verkhovna Rada of Ukraine, or on the principle of reciprocity.

If a foreign state is not a party to an international Agreement or convention, according to which Ukraine undertakes to recognize and enforce foreign court decisions, the relevant request for recognition and enforcement on the territory of Ukraine is not considered, and in the case of their receipt, the court issues a decision to refuse in its adoption based on Clause 1 Part 2 of Art. 186 of the Civil Code of Ukraine. If the proceedings in the case were nevertheless opened, they shall be closed. An exception to this rule will be only cases when, based on the principle of reciprocity, there is an *ad hoc* agreement with a foreign state whose court decision must be enforced in Ukraine.

Recognition of a foreign judgment is not a prerequisite for its execution in the country of recognition. Recognition on the territory of the state of the decisions of the courts of another state means giving these decisions the same legal force as the decisions of the courts of this state, which have gained legal force, they acquire

⁸ Cristina Elena Popa Tache, *Compliance with the legal treatment standards of international investments during the global economic crises. Between yes and no*, in Dalvinder Singh, Cristina Elena Popa Tache, Cătălin-Silviu Săraru (editors), *Looking for New Paths in Comparative and International Law (Contributions to the Conference on Comparative and International Law June 25, 2021, Bucharest - International Conference)*, Adjuris – International Academic Publisher, 2021, pp. 161-171.

the properties of irrefutability, exclusivity, and the award decision is also enforceable, they are binding for officials and state authorities of this country.

Based on the approach to the recognition of the decision of a foreign court embodied in the national legislation of a certain country, the procedural procedure for the recognition and implementation of such decisions is determined.

Civil procedural legislation establishes a special procedure for submitting a petition for permission to enforce a decision of a foreign court⁹.

In accordance with Art. 465 of the Code of Civil Procedure of Ukraine, a petition for permission to enforce a decision of a foreign court is submitted to the court directly by the debt collector (his representative) or in accordance with an international Agreement, the binding consent of which has been given by the Verkhovna Rada of Ukraine, by another person (its representative).

If international treaties, the binding consent of which has been granted by the Verkhovna Rada of Ukraine, provide for the submission of a petition for permission to enforce a decision of a foreign court through the state authorities of Ukraine, the court accepts for consideration the petition received through the state authority of Ukraine.

In addition, when applying to a competent court with a request for permission to enforce a decision of a foreign court, such a request must meet the requirements established by Art. 466 of the Civil Code of Ukraine. Compliance of the stated motion with the requirements of procedural legislation enables the competent court to consider it and decide on granting or refusing to grant such a motion.

Particular attention should be paid to the issue of determining the competent court, which is authorized to consider the request for recognition and enforcement of the decision of a foreign court. Before the 2017 changes, the Civil Code of Ukraine lacked a distinction between the definitions of "decision of a foreign court" and "decision of international commercial arbitration." After the introduction of changes to the Civil Code of Ukraine, a logical and clear distinction between these concepts took place. According to Art. 464 of the Civil Procedure Code of Ukraine, the issue of granting permission for enforcement of a decision of a foreign court is considered by the court at the place of residence (stay) or location of the debtor. If the debtor does not have a place of residence (residence) or location on the territory of Ukraine, or his place of residence (residence) or location is unknown, the issue of granting permission to enforce the decision of a foreign court is considered by the court at the location of the debtor's property in Ukraine.

As for the recognition and enforcement of international commercial arbitration decisions, in accordance with Art. 23 of the Civil Procedure Code of Ukraine, cases regarding the recognition and granting of permission to enforce decisions of international commercial arbitration are considered:

⁹ An international comparison can be seen in Lenio Luiz Streck and Luã Nogueira Jung, *Libre Convencimiento Judicial y Verdad: Crítica Hermenéutica a Las Teorías De Ferrajoli, Taruffo y Guzmán*, „Cadernos de Dereito Actual” n° 20. Núm. Extraordinario (2023), p. 120.

- 1) if the place of arbitration is located on the territory of Ukraine - by the general appellate courts at the place of arbitration;
- 2) if the place of arbitration is located outside Ukraine - by the general court of appeals, the jurisdiction of which extends to the city of Kyiv.

Many international treaties provide for mutual recognition and enforcement of the decisions of the courts of the Contracting Parties, in particular treaties between Ukraine and more than 50 states (Lithuania, Poland, Estonia)¹⁰ etc.

In accordance with these agreements, court decisions are recognized and enforced mutually, and the review of applications for granting permission for enforcement is carried out by the court of the Contracting Party, on the territory of which enforcement will be carried out.

Judicial cooperation is crucially important for effective economic relations¹¹. It is also worth noting that Ukraine is a party to the 1965 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters,¹² and the Convention of March 18, 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters¹³. In March 2016, we signed the Convention of June 30, 2005 on Choice of Court Agreements¹⁴.

Ukraine is not a party to the 1968 Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters and the Lugano Convention on Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters, but in 2020 signed Ukraine is making efforts to solve the problem of the possibility of recognition and enforcement of court decisions. decisions at the universal level, in particular, by signing the Convention of July 2, 2019 on the recognition and enforcement of foreign judgments in civil or commercial matters¹⁵, which Ukraine ratified on July 1, 2022¹⁶.

¹⁰ See more in Izarova Iryna, *Strengthening Judicial cooperation in civil matters between the EU and neighboring countries: the example of Ukraine and the Baltic states*, „Baltic Journal of Law & Politics”, Volume 12, No. 2, 2019, pp. 115-133. 10.2478/bjlp-2019-0014.

¹¹ About judicial cooperation and the principle of mutual recognition in the EU see more in Groza Anamaria, *The principle of mutual recognition: from the internal market to the European area of freedom, security and justice*, „Juridical Tribune - Tribuna Juridica” Vol. 12, Iss. 1, pp. 89-104. 10.24818/TBJ/2022/12/1.07.

¹² Convention on the Service of Judicial and Extrajudicial Documents Abroad in Civil or Commercial Matters 1965 <https://assets.hcch.net/docs/f4520725-8cbd-4c71-b402-5aae1994d14c.pdf>, consulted on 1.11.2022.

¹³ Convention of March 18, 1970 on the taking of evidence abroad in civil or commercial matters, <https://assets.hcch.net/docs/dfed98c0-6749-42d2-a9be-3d41597734f1.pdf>, consulted on 1.11.2022.

¹⁴ Convention of 30 June 2005 on Choice of Court Agreements, <https://assets.hcch.net/docs/510bc238-7318-47ed-9ed5-e0972510d98b.pdf>, consulted on 1.11.2022.

¹⁵ Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters https://zakon.rada.gov.ua/laws/show/973_001-19#Text, consulted on 1.11.2022.

¹⁶ Izarova Iryna, *Enhancing judicial cooperation in civil matters between the EU and Ukraine: first steps ahead* in A. Trunk and N. Hatzimihail (eds.), *EU Civil Procedure Law and Third Countries: Which Way Forward?*, Nomos, Hart Publishing, 2021, 336 p., pp. 191-212.

2.1 Peculiarities of Romania courts' decisions recognition in Ukraine

Article 40 of the Agreement on Legal Assistance between Ukraine and Romania establishes that the Contracting Parties shall mutually recognize and implement, in accordance with the provisions of this Agreement, the final decision of the justice institutions in civil cases, in criminal cases in terms of compensation for damages, including their provisions on court costs.

On the territory of the Contracting Parties, the decisions of institutions of guardianship and care, institutions of registration of acts of civil status and other competent institutions in civil cases that do not require execution by their nature are also recognized without special proceedings.

Historically, Ukraine and Romania, in addition to stable economic ties, also had common territories, which gradually changed and today their boundaries are fixed in international legal acts and recognized by both countries. We are all familiar with the territory of Ukraine, which is called Bessarabia, and the ethnic settlers of these territories should know their historical heritage. In terms of this issue, the law enforcement practice of Ukraine is quite interesting. Thus, during the consideration of the application to establish the fact of birth in the city of Reni, Izmail District, Bessarabia, Kingdom of Romania (today - the city of Reni, Odesa Region, Ukraine), the appellate court ruled that this court decision is grounds for renewal by the registration authority act record of the applicant's birth, indicating the information about his birth - the city of Reni, Izmailsky District, Bessarabia, Kingdom of Romania (today - the city of Reni, Odesa Region, Ukraine). As reasons for making this decision, the court noted that the purpose of establishing a fact that has legal significance is to determine the applicant's ancestral origin, as well as to obtain the necessary documents for obtaining Romanian citizenship.

According to the Law of Romania "On Citizenship", ethnic Romanians living on the territory of another state have the right to apply for Romanian citizenship. Persons who are descendants of persons who lost their Romanian citizenship because of historical events are considered to have Romanian roots and therefore can apply for Romanian citizenship. According to Art. 319 of the Civil Procedure Code of Ukraine, the court's decision to establish a fact that has legal significance must contain information about the fact established by the court, the purpose of its establishment, as well as the evidence based on which the court established this fact.¹⁷

The cases of collection of alimony for child maintenance are common. In cases of collection of alimony for a child, immediate execution is established by Ukrainian courts. Thus, satisfying the claim of the plaintiff, who is a citizen of Ukraine, against a citizen of Romania for the collection of alimony, the local court allowed immediate execution in its decision.¹⁸

¹⁷ Resolution of the Odessa Court of Appeal dated 04.06.2020 No 510/1475/19. URL: <https://reyestr.court.gov.ua/Review/89697249>, consulted on 1.11.2022.

¹⁸ Decision available at: <https://reyestr.court.gov.ua/Review/105408106>, consulted on 1.11.2022.

It should be noted that the Agreement contains only general provisions regarding the scope of legal assistance (Article 4), the procedure for serving documents (Article 9), confirmation of service (Article 10), as well as the procedure for distributing costs (Article 11), establishing an address at the participant's request, as well as assistance in establishing the address of persons who are in their territory. If a case is filed in the court of one of the Contracting Parties regarding the receipt of alimony from a person who is in the territory of another Contracting Party, the justice institution of that Contracting Party shall, upon application, provide assistance in establishing the place of work and the number of wages of the person obliged to pay alimony.

In particular, immediate execution by the court was allowed in the case at the request of the Main Directorate of the DPS in Chernivtsi Region, interested parties: Joint-Stock Company "First Ukrainian International Bank", Private Enterprise "Expo Tour" regarding the bank's disclosure of information containing bank secrecy, as in accordance with Part 3 of Article 350 and Clause 6 of Part 1 of Article 430 of the Code of Civil Procedure of Ukraine, the court allows immediate execution of decisions in cases of bank disclosure of information containing banking secrets to legal entities and individuals.¹⁹

The above follows from the first part of Article 42 of the Agreement, namely: the procedure for the execution of decisions is regulated by the legislation of the Contracting Party, on the territory of which the execution must be carried out.

The question of the implementation of decisions that have not entered into force is quite debatable. There is currently no similar decision in the Unified State Register of Court Decisions of Ukraine.

I would like to pay special attention to what exactly is a civil case, in the sense of this normative legal act²⁰. Therefore, according to the sixth paragraph of point 1.3. Instructions, civil case (for sections II-III, VI-VIII of the Instructions) - a case considered by a court under the rules of civil, economic or administrative proceedings, as well as a case regarding civil, family, labor, economic legal relations, which is considered by other competent authorities.²¹

In view of the above, we draw your attention to the decision of the Second Administrative Court of Appeal dated 26.11.2018 on the claim of the Limited Liability Company "Litpol-Ukraine" to the Ministry of Economic Development and Trade of Ukraine, the State Fiscal Service of Ukraine, the third party, the Main Department of the Federal Tax Service in the Kharkiv region about recognition as

¹⁹ Decision available at: <https://reyestr.court.gov.ua/Review/106840238>, consulted on 1.11.2022.

²⁰ In Ukraine, there is a differentiation of courts and a separate link of economic courts, see more D. Prytyka, *Justice in Commercial Matters: History of Development and Novelties of Ukrainian Reform* (2018) „Access to Justice in Eastern Europe”, No. 1 (1), pp. 35-61.

²¹ Instruction on the procedure for the implementation of international agreements on the provision of legal assistance in civil cases on the delivery of documents, obtaining evidence and recognition and enforcement of court decisions, approved by the order of the Ministry of Justice of Ukraine, the State Judicial Administration of Ukraine 27.06.2008 № 1092/5/54, <https://zakon.rada.gov.ua/laws/show/z0573-08#Text>, consulted on 1.11.2022.

illegal and cancellation of the order, recognition of actions as illegal. This resolution clearly describes the stages of recognition of the decision of the court of Romania regarding the satisfaction of the petition for the execution of the decision of the Economic Court of the Kharkiv region in accordance with the Agreement between Ukraine and Romania on legal assistance.²²

Ukrainian legislation, in addition to the Agreement, provides for a regulatory act regarding the procedure for processing orders for the delivery of documents, obtaining evidence, taking other procedural actions, as well as requests for the recognition and enforcement of court decisions for the implementation of current international treaties of Ukraine on the provision of legal assistance in civil cases. This Instruction on the procedure for the implementation of international treaties on the provision of legal assistance in civil cases regarding the delivery of documents, obtaining evidence and the recognition and enforcement of court decisions, approved by the order of the Ministry of Justice of Ukraine, the State Judicial Administration of Ukraine on 27.06.2008 No. 1092/5/54, registered in to the Ministry of Justice of Ukraine on July 2, 2008 under No. 573/15264 (hereinafter - the Instruction), is used in the case of an international agreement on the provision of legal assistance in civil cases, valid in relations between Ukraine and a foreign state.

The issue of court mandates in the order of providing legal assistance in civil cases between Ukraine and Romania is regulated by the said Agreement, in particular, according to Articles 3 and 4 of the Agreement, legal assistance covers the execution of procedural actions provided for by the legislation of the requested Contracting Party, in particular, questioning of parties, witnesses, experts, carrying out examinations, judicial examination, delivery and forwarding of judicial and extrajudicial documents. When providing legal assistance, the justice institutions of the Contracting Parties communicate with each other through the Ministry of Justice of Ukraine and the Ministry of Justice of Romania, unless otherwise provided for in this Agreement.

A key aspect in the process of implementing this issue is the proper translation of procedural documents and the appropriate procedure for serving such documents.

Thus, according to the decision of the District Court of Mykolaiv dated January 13, 2020, it was noted that since the defendant in this case is a citizen of Romania, the civil case is considered in accordance with the Agreement between Ukraine and Romania. In accordance with the Agreement, an order to carry out certain procedural actions was sent to Romania. Documents drawn up during the assignment were received from the Main Territorial Administration of Justice in Mykolaiv Oblast. Along with this, the documents are drawn up in the language of the requesting Contracting Party and sent without translation into the language of the second Contracting Party. Thus, by this decision, to respect the rights and freedoms of a foreign citizen, the Territorial Department of the State Judicial

²² Decree available at <https://zakononline.com.ua/court-decisions/show/86030920>, consulted on 1.11.2022.

Administration of Ukraine in Mykolaiv Oblast was instructed to carry out a proper translation of procedural documents.²³

In another case, the Dnipro District Court, refusing to comply with the order of the Romanian court to hand over court documents to the representative of the company "Limited Liability Company Interstatch Ukraine", received for execution from the Central Interregional Department of the Ministry of Justice (Kyiv), notes the following. Pursuant to the first part of Article 500 of the Civil Procedure Code of Ukraine, the courts of Ukraine carry out orders from foreign courts to provide legal assistance regarding the delivery of subpoenas or other documents, questioning of parties or witnesses, conducting an examination or on-site inspection, and performing other procedural actions transferred to them in accordance with the procedure established by an international agreement whose binding consent has been given by the Verkhovna Rada of Ukraine, and if an international agreement has not been concluded - through diplomatic channels.

According to Article 499 of the Code of Civil Procedure of Ukraine, the content and form of a court mandate to provide legal aid must meet the requirements of an international Agreement, the binding consent of which has been given by the Verkhovna Rada of Ukraine, and if it has not been concluded - the requirements of parts two to four of this article.

In accordance with the second part of Article 1 of the Agreement, citizens of one Contracting Party have the right to freely and without hindrance apply to the court, the prosecutor's office in Ukraine and the bodies of the Ministry of Public Affairs in Romania, the notary authorities in Ukraine and public notaries in Romania (hereinafter referred to as "judicial institutions") and in other institutions of the second Contracting Party, whose competence includes civil cases, may appear in them, initiate motions, file lawsuits and carry out other procedural actions on the same terms as citizens of this Contracting Party.

Pursuant to Article 5 of the said Agreement, the request for legal assistance and its appendices shall be made in the language of the requesting Contracting Party, and certified copies of the translation into the language of the second Contracting Party shall also be attached to them. The translation is certified by a notary public or an official of the requesting institution of justice, or a diplomatic mission or consular institution of the requesting Contracting Party. To process a request for legal assistance, justice institutions can use forms in two languages. These forms are approved by the joint consent of the ministries of justice of both Contracting Parties.

As can be seen from the materials of the submitted mandate, which have arrived for execution, it contains only a package of documents, which is drawn up in the language of the requested party, which deprives the court of the opportunity to study their content and execute the mandate in accordance with the requirements provided by the Instruction on the Procedure for the Execution of International Treaties on the Provision of Legal assistance in civil cases regarding the delivery of

²³ Decision of the District Court of Mykolaiv dated 13.01.2020 in case No. 487/1847/18. URL: <https://reyestr.court.gov.ua/Review/86907369>, consulted on 1.11.2022.

documents, obtaining evidence and recognition and execution of court decisions, approved by the order of the Ministry of Justice of Ukraine and the State Judicial Administration of Ukraine dated June 27, 2008 No. 1092/5/54²⁴.

In the accompanying letter of the Central Interregional Department of the Ministry of Justice (Kyiv) dated March 31, 2021, it is stated that explanations regarding the execution of the order are attached to this letter together with a package of foreign court documents, but the order materials do not contain such explanations.

In the mentioned case, the court came to the conclusion that the order of the Romanian court to deliver court documents to the representative of the company "Limited Liability Company Interstatch Ukraine" does not meet the requirements of the international agreement, since the relevant order was not accompanied by a duly certified translation of the package of documents of the Romanian court into Ukrainian, which deprives the court is able to establish information about the existence of a court decision of a foreign court on the execution of a court order on the territory of Ukraine, the name of the court to which the court order was directed, the parties to the case, their procedural status and the subject of the civil case in respect of which the court order was directed, which actually makes it impossible for the court to establish a clear list procedural actions to be taken to fulfill the assignment and other data on the essence of the assignment²⁵

According to the content of Part 3 of Art. 499 of the Code of Civil Procedure of Ukraine, a court order for the provision of legal assistance shall be drawn up in the Ukrainian language. A certified translation in the official language of the relevant state is attached to the court order, unless otherwise established by an international Agreement, the binding consent of which has been granted by the Verkhovna Rada of Ukraine.

As an example, we consider it expedient to cite the Decision of the Chernivtsi Court of Appeal dated 23.03.2022 following a lawsuit by the Agricultural Cooperative "Kolos" which appealed to the court to declare the title documents for immovable property invalid and annul, annul the decision of the state registrar on the state registration of ownership of immovable property, state registration of ownership of real estate, termination of ownership of a share in real estate, inducement to implement a settlement agreement. During the trial, it was established that the defendant is a citizen of Romania, which deprives the court of the opportunity to independently perform procedural actions on the delivery of documents to the defendant.

And therefore, the court decided to apply to the competent authority of

²⁴ In order for Ukraine to get closer to membership, it is necessary to comply with European standards and principles, not in words. It is already necessary to carry out reforms and change the country, at least at the legislative level - see in Danylo Globa, Iryna Pidpala, Olena Kozhushko, Olena Tkalia, Artem Sakhno, *Implementação da Política Anticorrupção da Ucrânia Nas Condições de Adesão À União Europeia: Aspectos Administrativos e Legais*, „Lex Humana”, vol. 15, n .2, 2023, p. 125.

²⁵ Decision of the Dniprovskyi District Court of Kyiv dated 12.05.2021 in case No. 758/4380/21. URL: <https://reyestr.court.gov.ua/Review/96869973>, consulted on 1.11.2022.

Romania with a court order to deliver to the Defendant, who is a citizen of Romania and lives at the address: the city of Suceava, Suceava County, a copy of the decision of the Chernivtsi Court of Appeal on opening proceedings in the case dated February 28, 2022, a copy of the decision of Chernivtsi of the Court of Appeals on the opening of proceedings in the case dated February 28, 2022, the decree of the Chernivtsi Court of Appeals on the opening of proceedings in the case dated February 28, 2022 on the appointment of the case for consideration, copies of the appeals and the materials attached to them, copies of the notice on the consideration of the case.

It is worth noting that the proper notice of the person involved in the case the party against whom the decision was made, rests with the court hearing the case in accordance with the right to be heard by the court, as well as the right of everyone to a fair trial. Until proven otherwise, the court is deemed to have properly notified the person, and such requirements limit the rights of applicants seeking enforcement of a judgment in another state. It should be considered that the person-applicant, who applies to the court with a demand for recognition of a court decision passed in his favor on the territory of another state, is a creditor who has already suffered from the violation of his rights and for whose protection a court decision was issued.

In view of this, we consider it expedient to transfer the burden of proving the fact of improper notification of the party about the judicial review of the case to the debtor based on the adopted court decision, which is presented for recognition and execution. Moreover, in accordance with the requirements of paragraph 3, part 1 of Article 50, the court is obliged to check whether the party was not deprived of the opportunity to protect its rights, and in the case of limited procedural capacity - of proper representation, and in particular, the party that did not participate in the proceedings case, received a summons to the court session in a timely and proper manner. These, as well as other factual circumstances of the case, are clarified during the consideration of the application by implementing the principle of competition - in the event of a different decision or improper notification, the other party will declare it.

The issue of granting a petition for the recognition of a judgment of a foreign court in Ukraine is decided in accordance with the provisions of the Code of Civil Procedure and the corresponding agreement between states: according to the first part of Article 468, such a petition is not granted in cases provided for by international treaties, the binding consent of which has been given by the Verkhovna Rada of Ukraine .

In the Agreement between Ukraine and Romania, there is no differentiation in which case court decisions are recognized or not. As already mentioned, according to Article 40 of the Agreement, it is axiomatically stated that the final decisions of the courts are executed by both parties.

2.2 Peculiarities of the execution of court orders by the courts of Romania regarding the collection of evidence in the practice of Ukrainian courts and the sending of court orders to the courts of Romania

Regarding the issue of gathering evidence, it is worth noting that Articles 87, 88 of the Code of Civil Procedure establish the following.

A court considering a case or an application for providing evidence, in the event of a need to collect evidence outside its territorial jurisdiction, instructs the relevant court to take certain procedural actions.

Within the framework of the Hague Convention on Civil Procedure, Ukraine should receive assistance from a number of countries that have signed it. In addition, in accordance with the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters dated November 15, 1965, such a convention is applied in Ukraine's relations with a number of countries that have signed this Convention, wishing to create appropriate means so that judicial or non-judicial documents to be served abroad were brought to the attention of their recipients in a timely manner, taking care to improve the organization of legal mutual assistance by simplifying and speeding up the procedure.

Thus, by the resolution of the Baraniv District Court of Zhytomyr Region dated 08.08.2022 on the dissolution of marriage, having established that the Defendant is a citizen of Romania, for the purpose of gathering evidence, instructed the competent court of Romania to interrogate the latter regarding the plaintiff's stated demands for dissolution of the marriage, to hand him a copy of the statement of claim from attached documents and find out whether he recognizes the claims, in accordance with the requirements of the Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters.

The decision on a judicial power of attorney is immediately executed by the court to which it is addressed, according to the rules of this Code, which establish the procedure for taking relevant procedural actions.

The Storozhynetsky District Court of the Chernivtsi region in the case of the claim for the recovery of alimony for the maintenance of a child, taking into account the fact that the Defendant is a citizen of Romania, it was decided: To apply to the competent authority (court) of Romania with a judicial mandate to provide legal assistance within the framework of the concluded Agreement between Ukraine and Romania on legal aid and legal relations in civil cases, ratified by Law No. 2822-IV dated September 7, 2005, and the Convention on the Collection of Alimony Abroad dated June 20, 1956 (date of entry into force for Ukraine on October 19, 2006), which is also a Contracting Party and Romania.

To instruct the competent authority (court) of Romania to perform the following procedural actions:

- 1) hand over to the defendant a copy of the decision of the Storozhinetsky District Court of Chernivtsi Region on the opening of proceedings in

the case dated 02.03.2021, a copy of the decision of the Storozhinetsk District Court of Chernivtsi Region dated June 22, 2021 on the court mandate to provide legal aid, a summons (notification) about the date and the time of the trial, a copy of the statement of claim with copies of the documents attached to it. In the absence of the defendant at his address of residence, the subpoena shall be served on an adult member of his family, as well as establish his place of residence or temporary stay, place of work in the manner determined by Romanian legislation, or another address where the subpoena may be served.

- 2) interrogate the defendant on the merits of the claims, including asking the following questions:
 - does the defendant recognize the circumstances of the claim, notified by the plaintiff (in full or in part)? If he admits in part, then in which part?
 - if the claim is not recognized, what evidence can be used to refute the circumstances reported by the plaintiff?
 - what other factual circumstances, which may be important for the resolution of the dispute, can the defendant report? Do you want to provide the court with evidence on the case?
 - does the defendant work and what is his monthly income?
 - does the defendant wish to be present at the hearing of the case in the Storozhynetsk district court of the Chernivtsi region in person or through a representative? If so, on what date and time can he or (his representative) appear before the Storozhinetsk District Court of Chernivtsi region and who will be his representative?
 - if the defendant wishes to be present at the hearing in person or through a representative, by which means of communication (fax, telephone, e-mail, etc.) can he be sent a subpoena?
 - does the defendant object to the consideration of the case in his absence?
 - since the proceedings in the case are suspended for the time of execution of this order, are there any other reasons that make the proceedings in the case impossible and do not entail the suspension or postponement of the proceedings?
- 3) demand from the defendant a duly certified copy of the document certifying his identity as a citizen of the relevant state, which should be sent to the address of the court of the requesting party.

And serve the Defendant with a summons (notice) about the date of the trial.²⁶

After the execution of the order for the provision of legal assistance, all documents drawn up in connection with the execution of this order (confirmation

²⁶ Order of the Storozhynets District Court in Chernivtsi Region of June 22, 2021 in case No. 723/492/21, <https://reyestr.court.gov.ua/Review/97808612>, consulted on 1.11.2022.

of the delivery of documents, protocols and other documents) should be sent to the address of the Storozhinetsk District Court of the Chernivtsi Region.

Yes, the following announcement was posted on the official website of the Voznesensky District Court of the Mykolaiv Region. The Voznesensky City District Court of the Mykolaiv Region received a request from the Main Territorial Administration of Justice in the Mykolaiv Region regarding the provision of international legal assistance in the conduct of procedural actions, namely for the execution of the mandate of the Court of Appeal of the city of Bacău (Romania) on the questioning of citizen "B", who is serving a sentence in the DU "Voznesenska VK-72", by conducting a video conference. A video conference must be held between the Voznesensky District Court of Mykolaiv Region and the Court of Appeal of Bacău (Romania), and the presence of citizen "B" is mandatory.

3. Choosing the method of defence in foreign economic disputes: the Ukrainian-Romanian aspect

Economic interaction between Ukraine and Romania takes place mainly in the field of macroeconomic diplomacy. The infrequency of intergovernmental meetings and the insufficient degree of implementation of their decisions turn European integration reforms into the main factor in increasing trade between states in recent years²⁷.

Ukrainian-Romanian cross-border cooperation takes place, for the most part, through Joint Operational Programs: at the end of 2016, the cross-border cooperation program "Ukraine-Romania 2014-2020" was launched. The Joint Operational Program Romania-Ukraine-Republic of Moldova 2007-2013 (Joint Operational Program Romania-Ukraine-Republic of Moldova 2007-2013) was implemented within the framework of the European Neighborhood and Partnership Instrument (ENPI) program for 2007-2013 (total budget - about 1.1 billion euros). Of the 82 projects worth 34.2 million euros, implemented within the framework of the specified program, 59% (20.2 million euros were allocated for the benefit of Romanian participants) were represented by the Romanian side, Ukraine – only 23% (7.8 million euros were allocated)²⁸.

In addition, existing bilateral international legal acts open wide horizons for further economic cooperation between Ukraine and Romania. Thus, as an example, we can cite the Memorandum of Understanding between the Council of Exporters and Investors under the Ministry of Foreign Affairs of Ukraine and the Union of Bilateral Chambers of Commerce of Romania dated February 23, 2021²⁹.

²⁷ Any of the two strategic alternatives cannot ignore the energy factor, a provocative one, dependent on several parameters and with very large amplitude driving effects on the entire European and international societal picture - see in Miron, D., 2023. *Micro and Macroeconomic Impact of the EU Energy Policies*. „Amfiteatru Economic”, 25(63), p. 294.

²⁸ <http://od.niss.gov.ua/articles/506/>, consulted on 1.11.2022.

²⁹ <https://romania.mfa.gov.ua/spivrobitnictvo/180-dogovirno-pravova-baza-mizh-ukrajinoju-ta-romunijeju>, consulted on 1.11.2022. See about the important role of chambers of commerce Cristina Elena Popa Tache, *Adapting an Efficient Mechanism for Resolving International*

But the existence of such stable economic relations gives rise to possible foreign economic disputes. And in this context, the issue of determining the jurisdictional body authorized to consider such disputes is rather ambiguous. These questions were reflected in numerous works of both domestic and foreign scientists³⁰.

Both in the national legislation of Ukraine and Romania, and in current international legal acts, this issue is resolved according to various criteria: the place of conclusion of the contract, the place of execution of foreign economic contracts, the location of counterparties and the autonomy of the will of the parties to such contracts.

Yes, according to Art. 38 of the Law of Ukraine "On Foreign Economic Activity", disputes arising between subjects of foreign economic activity, foreign subjects of economic activity in the course of such activity may be considered by the courts of Ukraine, as well as, with the consent of the parties to the dispute, by the International Commercial Arbitration Court and the Maritime Arbitration Commission under the Trade - the Chamber of Industry of Ukraine and other dispute resolution bodies, if this does not contradict the current laws of Ukraine or is stipulated by international treaties of Ukraine.

The reference in this law to the possibility of the parties to the contract to appeal to international commercial arbitration for the resolution of their dispute is not accidental, since the latest global trends in the resolution of foreign economic disputes still indicate that arbitration is preferred over national jurisdictional mechanisms³¹.

Analyzing numerous judicial practices in the context of choosing international commercial arbitration as a method of protection in Ukrainian-Romanian business relations, one can observe the inconsistency of the legal positions of Ukrainian courts.

Before moving on to a more detailed analysis of law enforcement practice, we consider it expedient to provide legal justification for the possibility of resorting to arbitration as an alternative method of dispute resolution. According to paragraph 3 of the motivational part of the Decision of the Constitutional Court of Ukraine in the case on the task of the arbitration court No. 1-пп/2008 dated 10.01.2008 "one of the ways of realizing the right of everyone by any means not prohibited by law is to protect their rights and freedoms from violations and illegal encroachments in the field of civil and economic legal relations, there is an appeal

Investment Disputes to a New Era. Vienna Investment Arbitration and Mediation Rules, „International Investment Law Journal”, Volume 1, Issue 2, July 2021, p. 92.

³⁰ Prytyka Yu. D., Amborsky A.V., *Regarding the concept and components of arbitrability: theoretical analysis*. „Scientific Bulletin of Kherson State University”. Series "Legal Sciences". 2016. Tom. 2. Issue 1. pp. 10-13; Kravtsov Serhii, *The definitive device of the term "international commercial arbitration"*, „Juridical Tribune - Tribuna Juridica”, Volume 12, Issue 3, October 2022, p. 346-367 DOI: 10.24818/TBJ/2022/12/3.03.

³¹ See more about application of foreign law in higher courts practice in Mskhvilidze, Tamar, *Foreign law in higher courts practice. The key characteristics of Georgian private international law*, „Juridical Tribune - Tribuna Juridica”, vol. 11, Special Issue, October 2021, pp. 395-406.

to an arbitration court (paragraph one of paragraph 5 of the motivational part of the Decision of the Constitutional Court of Ukraine in the case of enforcement of decisions of arbitration courts of February 24, 2004 N 3-pn/2004). In accordance with current legislation, the sub-department of the court of general jurisdiction a dispute in the field of civil and economic legal relations may be referred by its parties to an arbitration court, except for cases established by law (Article 17 of the Civil Procedure Code of Ukraine, Article 12 of the Economic Procedure Code of Ukraine, Article 6 of the Law). In order to ensure the implementation of the specified provisions of the Codes, guided by clause 3 parts and the first Article 85 of the Constitution of Ukraine, the Verkhovna Rada of Ukraine adopted the Law regulating the procedure for the formation and operation of arbitration courts in Ukraine. The functioning of arbitration courts in Ukraine is based not only on the principles of national, but also international law.³²

The possibility of the state submitting the parties' disputes in the field of civil and economic legal relations to arbitration courts is recognized as a foreign practice based, among other things, on international law. The general principles of arbitration of these disputes are defined by the European Convention on Foreign Trade Arbitration of April 21, 1961³³ and recommended to states by the Arbitration Rules of the UN Commission on International Trade Law (UNCITRAL) of June 15, 1976.

The practice of the European Court of Human Rights shows that the appeal of individuals and/or legal entities to an arbitration court is legitimate if the refusal of the services of a state court took place at the free will of the parties to the dispute (*Devir v. Belgium* Decision of February 27, 1980)". Legal relations regarding the recognition and enforcement of international commercial arbitration awards in Ukraine are regulated by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of June 10, 1958 (the New York Convention), which entered into force for Ukraine on January 10, 1961.

Thus, based on the above, we consider it expedient to analyze the economic dispute between Romanian and Ukrainian companies, which was considered by the national courts of Ukraine. The subject of consideration of this dispute was improper fulfillment by the Ukrainian company of its obligations under the contract regarding the payment of products supplied by the Romanian company. The peculiarity of the contract between these counterparties was the imposition of a special dispute resolution procedure, which was enshrined in clause 10: "The parties agree to apply reasonable endeavors in order to avoid any disputes or conflicts in their relationships, and if such disputes or conflicts still appear to

³² Decision of the Constitutional Court of Ukraine in the case on the constitutional submission of 51 people's deputies of Ukraine on compliance with the Constitution of Ukraine (constitutionality) of the provisions of paragraphs seventh, eleventh of Article 2, Article 3, paragraph 9 of Article 4 and Section VIII "Arbitration Self-Government" of the Law of Ukraine "On Arbitration Courts" (case on the tasks of the arbitral tribunal) <https://zakon.rada.gov.ua/laws/show/v001p710-08#Text>, consulted on 1.11.2022.

³³ European Convention on Foreign Trade Arbitration of April 21, 1961, <https://ips.ligazakon.net/document/MU61K07U>, consulted on 1.11.2022.

reach a solution by mutual consent. In case the Parties fail to reach a solution by way of bona fide negotiations, the disputes are committed to trial by the Court of Arbitration, Kiev, where the applicable legislation shall be Ukrainian without using the selective rule, and the court procedural language Russian."

The Romanian company appealed to the Economic Court of the Kyiv region with a corresponding lawsuit. By the decision of the Commercial Court of the Kyiv region, the claim was satisfied, despite the existence of an arbitration agreement. During the consideration of the case, the defendant filed a motion to close the proceedings in the case due to the presence of an arbitration clause in the Contract, which states that all disputes must be considered in the Kyiv Arbitration Court. The relevant petition was rejected by the court, since at the time of the appeal to the court, and at the time of the conclusion of the Contract, such a body as the Kyiv Arbitration Court did not exist in Ukraine. Thus, the relevant arbitration clause cannot be fulfilled in connection with the absence of the body that should consider the dispute, therefore it is null and the consideration of the dispute is carried out according to the norms of the current legislation³⁴.

During the review of this decision, the appellate court, satisfying the appeal of the Ukrainian company and closing the proceedings in the case, comes to the following conclusions. Given that the arbitration clause in the contract states the name of the arbitration, in the original language: "Court of Arbitration, Kiev", that is, this phrase can only refer to the International Commercial Arbitration Court at the Chamber of Commerce and Industry (Kyiv), and there is also an indication of the place the conduct of the case, the language of the arbitration and the applicable substantive law, the appellate court came to the conclusion that the arbitration clause set forth in Clause 10.2 of Section 10 of the "Arbitration" contract is enforceable. Summarizing the above, the panel noted that when analyzing the terms of the arbitration clause, the court should interpret minor errors and inaccuracies in the name of the arbitration institutions provided for in the arbitration agreement in favor of international commercial arbitration. But the decision on the enforceability or unenforceability of the arbitration agreement in connection with the presence of errors in the name of the arbitration institution is at the discretion of the court, which decides taking into account all the circumstances of the case. Having analyzed the contract concluded by the parties and established that the parties agreed to an arbitration clause in it, which was not recognized as invalid, meets the requirements of the law and is mandatory for the parties to perform, taking into account that the defendant insists on the consideration of the dispute by the ICAC at the ICC, the panel came to the conclusion that application of the principle of immunity and autonomy of the arbitration agreement³⁵.

Exercising the right to further appeal the court decision, the Romanian company appealed to the court of cassation. The cassation economic court, by its

³⁴ Decision of the Economic Court of Kyiv region dated 17.09.2020, <https://reyestr.court.gov.ua/Review/91938829>, consulted on 1.11.2022.

³⁵ Decision of the Economic Court of Kyiv region dated 17.09.2020, <https://reyestr.court.gov.ua/Review/94515687>, consulted on 1.11.2022.

decision, cancels the decision of the court of appeal and issues a new decision to refer the case to the court of appeal for a new consideration. The Supreme Court believes that the appellate court, closing the proceedings in the case, came to the wrong conclusion that the parties in the contract provided for an arbitration clause, since the arbitration agreement in the form of an arbitration clause set out in clause 10.2 of the contract cannot be enforced, given the fact that it contains shortcomings that prevent the implementation of the arbitration clause and the determination of the will of the parties regarding the transfer of the dispute to arbitration.

The court of cassation notes that the assessment of the presence or absence of an arbitration clause in each specific case is individual and the reference in the contract to the Arbitration Court of the City of Kyiv is not enough to conclude that this dispute is subject to resolution by the ICAC at the ICC.

The text of the contract, written in Russian, states that: "The parties agree to apply reasonable endeavors in order to avoid any disputes or conflicts in their relationships, and if such disputes or conflicts still appear to reach a solution by mutual consent. In case the Parties fail to reach a solution by way of bona fide negotiations, the disputes are committed to trial by the Court of Arbitration, Kiev, where the applicable legislation shall be Ukrainian without using the selective rule, and the court procedural language Russian." That is, from the content of clause 10.2 of the contract, it is not possible to clearly establish the existence of an arbitration clause. At the same time, the resolution of the issue of the enforceability or unenforceability of the arbitration clause in connection with the presence of errors in the name of the arbitration institution is at the discretion of the court, which makes a decision taking into account all the circumstances of the case.

In view of the fact that the arbitration clause provided for in Clause 10.2 of the contract is unenforceable, and based on the principle of the rule of law, the provisions of Articles 21, 22 of the Constitution of Ukraine regarding the inviolability of the constitutional rights of a person and Articles 3, 15 of the Civil of the Code of Ukraine regarding the right of a person to judicial protection of civil law and interest, the Supreme Court considers that the priority in considering this dispute belongs to the commercial court as a body of judicial power, and not to the arbitration court.

Therefore, the conclusion of the appellate court about the existence of legal grounds for closing the proceedings in the case, due to the presence of an arbitration clause in the contract, is incorrect³⁶.

Analyzing this case, it is possible to disagree with the final decision, since the freedom of contract and the free choice of the parties to the contract to consider the possibility of consideration using alternative methods of dispute resolution are an integral part of any democratic society.

³⁶ Decision of the Commercial Court of Cassation dated May 12, 2021 in case 911/1110/20, consulted on 1.11.2022, <https://reyestr.court.gov.ua/Review/96907093>.

4. Concluding remarks and proposals

Considering the conducted research, the following conclusions can be drawn.

Stable economic relations between Ukraine and Romania, which is confirmed by the signing of numerous bilateral and multilateral agreements, indicates the existence of effective legal mechanisms for mutual assistance in all spheres of life (including the legal field). The agreement between Ukraine and Romania on legal assistance and legal relations in civil matters is the main international bilateral act, which regulates the procedure for mutual regulation of certain legal and procedural aspects between these countries. The analysis of law enforcement practice of national courts and legislative acts gives us the opportunity to ascertain several problematic issues during the implementation of methods of legal protection of Romanian citizens in Ukrainian courts. Such issues include the procedure for serving court documents, the issue of translation of court documents, and the selection of the appropriate jurisdictional institution that will be authorized to consider disputes. In our opinion, the possibility of changing the bilateral agreement, defining additional guarantees and mechanisms for protecting the rights and freedoms of both Ukrainian and Romanian citizens in national courts will be considered one of the ways to overcome conflicting issues.

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