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# INSTITUTION OF LEGAL SUCCESSION OF A STATE IN ENSURING THE CONSTITUTIONAL RIGHT OF CITIZENS TO SOCIAL PROTECTION (ON THE EXAMPLE OF COOPERATION BETWEEN UKRAINE AND MONGOLIA)

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## Abstract

The purpose of the research is to evaluate the institution of legal succession of the state in relations between Mongolia and Ukraine in the mechanism of ensuring the constitutional right of citizens to social protection (pension). The research is based on the idea of constitutionalism and statehood and their ability to ensure the rights of citizens who worked on the territory of other states, guaranteed by the Constitution of Ukraine. The methodological toolkit of the study consisted of the following methods: the method of objectifying the needs of citizens in exercising the constitutional right to a pension; legal modeling of ways to resolve a dispute on the protection of pension rights; combination of the methods of chronological arrangement and historical and legal analysis; methods of comparative legal analysis and comparison of acts of national legislation and international law, and other. Results: were determined the range of international legal acts that form the institution of legal succession of the state in relations between Mongolia and Ukraine in the field of social security, and was clarified the legal status of the identified acts – thereby to established the boundaries of the institution of legal succession; were determined subjects (public authorities) responsible for citizens' informational access to international agreements on social (pension) security issues; were outlined general features of the dispute resolution model in court regarding the exercising in Ukraine of the constitutional right to pension provision of a citizen who worked in Mongolia.

**Keywords:** constitutional right, judicial process, legal dispute, legal succession, pension provision, presumption of continuity, social protection.

## Introduction

In the civil society of a democratic state governed by the rule of law, the sphere of social protection and pension provision is the most vulnerable and dependent on many economic, political, socio-demographic factors, in particular due to the aging of the population (Zhou, 2019), the imbalance between those who work and those who are retired (Amaglobeli, Dabla-Norris & Gaspar, 2020), the regime of emergency situations (epidemic, war, cataclysms, etc.).

The constitutional law states that every citizen has the right to social protection, which includes the right to support in case of full, partial or temporary loss of working capacity, loss of a breadwinner, unemployment due to circumstances beyond their control, as well as in old age and in other cases provided for by law. Pensions, other types of social payments and assistance, which are the main source of livelihood, must ensure a standard of living not lower than the subsistence minimum established by law (Article 46) (Ukraine, VRU, 1996).

Despite the constitutional certainty of the specified guarantee to citizens for pension provision, various complex legal situations arise in law enforcement practice caused by non-observance (improper observance) of this constitutional guarantee by state bodies. Accordingly, in order to properly restore their right to social protection, affected citizens turn to both national executive bodies and judicial bodies. However, due to the

ambiguity and complexity of national legislation, the uncertainty of the status of individual international treaties, authorized state bodies quite often ignore the relevant demands of citizens, assuming illegal inaction or actions, making illegal decisions, and court processes last for many years to restore social justice (terms for consideration of disputes regarding the restoration of pension rights in courts of three instances reach up to 6-8 years).

One of such problematic situations is the disputes that arise between citizens of Ukraine and the bodies of the Pension Fund of Ukraine regarding the inclusion of the periods of work of such citizens in another country (namely, Mongolia) to the pension (insurance) length of service and the establishment of pension amounts taking into account wages and deductions in this country.

As practice shows, the nature of such disputes is caused primarily by the ambiguous perception by all participants in the disputes of international agreements that were concluded even before the declaration of independence of Ukraine (before 1991) and, accordingly, by different understanding of the limits of the institution of legal succession of the state in relations that arise taking into account international treaties concluded by the Union of Soviet Socialist Republics (which included the Ukrainian Soviet Socialist Republic) and the Mongolian People's Republic.

One should agree that there are quite a lot of scientists in the scientific community who have studied the issue of legal succession of Ukraine in relation to bilateral treaties of the former USSR, for example, V. Denisov and A. Melnyk, who studied the problems of legal succession in relation to bilateral treaties of the former USSR in relations between Ukraine and Austria (Denisov & Melnyk, 2002), N. Nogovitsyna, who researched the international legal aspects of legal succession of Ukraine in the context of the current state of development of this institute. The author highlighted the issue of legal qualification of territorial changes in the USSR and the status of former Soviet republics; investigated the peculiarities of legal succession of Ukraine regarding the territory and border, treaties and membership in international organizations, state property, archives and debts, the consequences of legal succession of states for citizenship and the rights of private individuals. Based on the analysis of doctrinal and conventional provisions, modern practice, the scientist proposed new approaches to legal succession, which are designed to help overcome certain shortcomings of the existing mechanism of international legal regulation of the consequences of territorial changes of states (Nogovitsyna, 2006). A. Melnyk analyzed the peculiarities of the development of legal succession of states in modern international law, disclosed the legal content of legal succession and the legal essence of its categories; highlighted the peculiarities of the international legal regulation of legal succession of states regarding multilateral law-establishing treaties, the meaning of the "presumption of continuity" in the field of legal succession; considered the issue of international legal regulation of legal succession of Ukraine in relation to international treaties of the USSR, provided a list of multilateral treaties of the USSR valid for the country (Melnyk, 2005).

At the same time, the dynamics of the emergence of disputes in Ukraine in the process of solving issues related to the inclusion of work experience in Mongolia to the pension length of service actualizes the need to study key aspects of this problem (table 1).

**Table 1.** Information on disputes resolved by courts of first instance

<b>Year</b>	<b>The number of decisions of the court of first instance on the resolution of the dispute</b>	<b>The number of regions (oblasts of Ukraine) where the dispute is considered</b>
2018	9	7
2019	8	7
2020	7	5
2021	6	6
2022	9	7
(as of		

September 30)		
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Source: compiled by the authors based on materials from the Unified State Register of Court Decisions (as of September 30, 2022).

Taking into account the above, **the purpose of the research** is to evaluate the institution of legal succession of the state in relations between Mongolia and Ukraine in the mechanism of ensuring the constitutional right of citizens to social protection (pension).

To achieve this purpose, the researchers set the following research **tasks**: 1) to determine the range of international legal acts that form the institution of legal succession of the state in relations between Mongolia and Ukraine in the field of social security, and to clarify the legal status of the identified acts – thereby to establish the boundaries of the institution of legal succession; 2) to determine subjects (public authorities) responsible for citizens' informational access to international agreements on social (pension) security issues; 3) to outline general features of the dispute resolution model in court regarding the exercising in Ukraine of the constitutional right to pension provision of a citizen who worked in Mongolia.

## Methodology

The research is based on the idea of constitutionalism and statehood and their ability to ensure the rights of citizens who worked on the territory of other states, guaranteed by the Constitution of Ukraine. The scope of researched issues is outlined by constitutional and legal, labor and international legal relations. The methodological toolkit of the study consisted of the following methods: the method of objectifying the needs of citizens in exercising the constitutional right to a pension; legal modeling of ways to resolve a dispute on the protection of pension rights; combination of the methods of chronological arrangement and historical and legal analysis of changes in the institution of legal succession of the state in the relations between the former USSR and the Mongolian People's Republic and modern Ukraine and Mongolia; methods of analysis and generalization for the study of international acts; methods of comparative legal analysis and comparison of acts of national legislation and international law; statistical method, which allowed one to reveal the tendency for the disputes to appear in the researched area. The set of these and other methods used in the research was based on an interdisciplinary scientific and applied approach to the study of phenomena, processes and mechanisms of legal regulation, in particular: constitutional law, labor law, administrative proceedings, international public law, and social security law.

The methodological toolkit of the study is determined by the circumstances of a number of court cases, which can be presented as a typical model of a legal conflict on similar grounds. The key characteristics of this model are as follows (Supreme Court, 2021, 2022): 1) parties to the conflict: a) a pensioner is a citizen, a resident of Ukraine (hereinafter – a Pensioner); b) territorial body of the Pension Fund of Ukraine (hereinafter referred to as the Body); 2) the subject of the conflict: a) the Body's refusal to include the period of work on the territory of Mongolia in the insurance (pension) length of service of the Pensioner; b) the Body's refusal to recalculate the pension including the corresponding period of work and wages for such period; 3) disputed periods of length of service: 1998-2002, 2003-2008; 4) place and grounds of work: Mongolia, limited liability company, educational institution, employment contract; 5) conflict resolution period: 2013-2021, 2016-2022; 6) chronology of resolution of the dispute by the authorized bodies: the pension fund body rejected the Pensioner's claim, the court of first instance satisfied the Pensioner's claim, the court of appeal canceled the decision of the court of first instance and rejected the Pensioner's claim, the court of cassation instance canceled the decision of the court of appeal and satisfied the Pensioner's claim).

## Results and Discussions

### Ukraine as the legal successor of the rights and obligations under the international treaties of the USSR

After the collapse of the USSR, the issue of legal succession became one of the urgent problems for the sovereign states who are the former members of the Union. In general, the institution of legal succession constitutes a large array of norms of international and national law, which Ukraine seeks to resolve in

accordance with international legal standards. The Declaration of State Sovereignty of Ukraine determines that the Ukrainian SSR, as a subject of international law, carries out direct communications with other states, concludes agreements with them, exchanges diplomatic, consular, and trade missions, participates in the activities of international organizations; acts as an equal participant in international communication, actively contributes to the strengthening of general peace and international security, directly participates in the pan-European process and European structures. Ukraine recognizes the superiority of universal human values over class values and the priority of universally recognized norms of international law over the norms of domestic law (Ukraine, VRU, 1990).

However, the recognition by the state that the provisions of a certain multilateral agreement are binding for the state is only the first step towards their implementation. Having become the legal successor of a certain array of contractual obligations, the newly formed state faces an array of potentially inconsistent systems of norms that are codified in treaties that form certain autonomous legal orders in various sectors of international cooperation. The norms of each of the autonomous legal orders in this situation are special, and the norms of legal succession will act as general for them. But the problem is that, theoretically, being subordinated to *jus cogens* norms and obligations under the UN Charter, the norms of various autonomous legal orders compete in real situations and require the determination of their subordination in each specific case.

Of course, each state, recognizing the binding nature of a particular international treaty in one form or another, conducts an analysis of its compliance with the national legislation, which includes the entire array of international treaties that have already become an integral part of it. However, firstly, the obligations of states under international law apply not only to contractual obligations, and secondly, by ratifying or otherwise recognizing the binding nature of an international treaty, a state, especially a state with an unestablished legal tradition, faces a potentially inexhaustible array of situations that can be qualified through legal norms from different sources, which, in turn, can be conflicting in a specific situation.

Even today, after 30 years of independence, the problem of binding nature of contractual instruments of the former USSR for Ukraine remains without a proper solution. Despite certain steps taken during this time by the competent authorities of Ukraine, *the authorized bodies of Ukraine continue to receive requests, including requests from foreign countries, regarding the provision of clarifications on the subject of validity for Ukraine of certain treaties to which the USSR was a party.* This state of affairs is a clear indicator of the imperfection of the existing domestic legal mechanism for establishing the binding nature of treaties of the former USSR, as well as determining their place in the legal order of Ukraine.

Proclaiming state sovereignty on July 16, 1990, the Ukrainian SSR acquired the status of a subject of international law, which communicates directly with other states, concludes treaties with them, and acts as an equal participant in international communication.

After the declaration of Ukraine's independence, the issue of the effect of international treaties ratified in times of the USSR on the territory of Ukraine became relevant. Therefore, on December 10, 1991, the Law "On the Effect of International Treaties on the Territory of Ukraine" was adopted, which established that international treaties concluded and duly ratified by Ukraine constitute an integral part of the national legislation of Ukraine and are applied in the manner provided for the norms of the national legislation.

The 1978 Vienna Convention on Succession of States in Respect of Treaties, which Ukraine joined in 1992, and which entered into force in 1996, is worthy of attention in resolving issues of legal succession in relation to treaties of the former USSR.

At the supranational (international) level, the issue of the conclusion and operation of international treaties is regulated by the Vienna Convention on the Law of Treaties of May 23, 1969 (in force for Ukraine (Ukrainian SSR) since June 13, 1986). It is worth pointing out the general standards of the operation of international treaties, enshrined in the Vienna Convention on the Law of Treaties of May 23, 1969. It is known, that the Ukrainian SSR joined this agreement together with the USSR with a number of reservations (which are not directly related to issues of derogation from contractual obligations) and with a statement that the Ukrainian SSR "reserves the right to take any measures to protect its interests in the event of non-compliance by other states with the provisions of the Vienna Convention" (SC Ukrainian SSR, 1986). It should be noted that the provisions of the Vienna Convention of 1969 are binding only in relation to interstate treaties concluded by the participating states after the entry into force of the 1969 Convention for these states.

The first domestic law that implemented the provisions of the Vienna Convention on the Law of Treaties of 1969 into the national legal order of Ukraine is the Law of Ukraine "On International Treaties of Ukraine" of December 22, 1993 № 3767-XII (expired as of September 3, 2004).

Instead, from the same date (that is, August 3, 2004), the Law of Ukraine "On International Treaties of Ukraine" of June 29, 2004 № 1906-IV entered into force. So, from a formal point of view, currently the Law of Ukraine "On International Treaties of Ukraine" of June 29, 2004 № 1906-IV (hereinafter – the Law № 1906-IV) can be considered as the main domestic normative legal act in the field of conclusion, implementation and termination of international treaties of Ukraine.

According to international and national legislation, an *international treaty of Ukraine* is an international agreement with a foreign state or other subject of international law, concluded in writing and regulated by international law, regardless of whether such an agreement is set out in one or more related documents or from its specific name (treaty, agreement, convention, pact, protocol, etc.) (Article 2 of the Vienna Convention on the Law of Treaties of 1969 (hereinafter referred to as the Vienna Convention of 1969), Article 2 of the Law № 1906-IV).

International treaties in force, whose binding nature has been recognized by the Verkhovna Rada of Ukraine in the form of ratification, and treaties that do not require ratification and are approved in the form of a decree of the President of Ukraine or a resolution of the Cabinet of Ministers of Ukraine, are a part of the national legislation of Ukraine (part one of Article 9 of the Constitution of Ukraine, part one of Article 3, Article 12, Article 19 of the Law № 1906-IV). In this regard, when applying international treaties of Ukraine during the administration of justice, the courts should take into account that not only the international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine but also those international treaties whose binding nature has been recognized in other forms agreed by the parties, for example, by "signature", "acceptance", "approval" and "accession" by means of which the state expresses its consent to be bound by the treaty internationally (subitem b of item 1 of Article 2 of the Vienna Convention of 1969, Article 8 of the Law № 1906-IV) (HSCU, 2014) should be considered as a part of national legislation.

As follows from the provisions of the Law № 1543-XII, international treaties concluded by the Ukrainian SSR before the declaration of independence of Ukraine, according to which Ukraine as the legal successor state of the Ukrainian SSR continues to exercise international rights and obligations (Article 6) (Ukraine, VRU, 1991) are also a part of the legal system of Ukraine.

Ukraine is also the successor of the rights and obligations under the international treaties of the USSR, which do not contradict the Constitution of Ukraine and the interests of the republic (Ukraine, VRU, 1991, Art. 7).

From the general principles of the rule of law and legality, it is considered that when applying international treaties of Ukraine during the administration of justice, in particular, the courts must take into account that the current international treaties of Ukraine are subject to conscientious observance by Ukraine in accordance with the norms of international law (Ukraine, VRU, 2004, Part 1 of Art. 15).

At the same time, it should be noted that Ukraine, as a newly formed subject of international law, faced a number of problems at the stage of legal succession after the termination of the existence of the USSR, including clarifying the status of international treaties concluded by the predecessor states. Significant difficulties in solving this problem were caused by the actual absence of unified principles and norms in the international law that would clearly regulate the legal consequences of legal succession. Despite the completed codification of this legal matter with the adoption of the Vienna Convention on Succession of States in Respect to Treaties in 1978, as well as despite the considerable amount of literature devoted to this topic, legal succession continues to be one of the most controversial and complex institutions of modern international law (Melnyk, 2004).

### **Indicator factors for determining the validity of international treaties of successor countries**

The adoption of the special Law of Ukraine "On Legal Succession of Ukraine", as well as the conclusion of relevant agreements within the framework of the Commonwealth of Independent States (CIS) contributed to clarifying the status of international treaties of the former USSR to some extent, however, *as practice shows, these acts can hardly be considered sufficient grounds for the automatic recognition of their validity by Ukraine* (Melnyk, 2004). Unfortunately, this conclusion remains relevant to this day.

As it is known, the adopted Law № 1543-XII was aimed, first of all, at gaining support of the international community for the recognition of Ukraine's independence, and, on the one hand, it is characterized by a mainly declarative nature (for the sake of being understood by the international community), on the other hand, the Law lacks clear technical and legal norms, which would regulate the procedure for registration of the consequences of legal succession, as well as the implementation of international treaties of the former USSR into national legislation.

Andrii Melnyk reasonably states that *the rather contradictory practice in the field of legal succession in relation to bilateral and multilateral treaties of the former USSR also does not allow one to conclude with due confidence about the binding force of mentioned treaties, especially those in respect of which no formal steps were taken to confirm or terminate their validity* (Melnyk, 2004). The researcher proposed to carry out their verification from the point of view of the principles of international contract law as one of the options for finding criteria that are optimally sufficient to establish the fact of the preservation or termination of the validity of ex-USSR treaties. These principles include *achieving the purpose of the treaty or its implementation; expiration of the treaty; the occurrence of the canceling condition provided for in the treaty; treaty novation; inconsistency of the territorial scope of the treaty, etc.*

In case of ascertaining the potential applicability of one or another treaty of the former USSR according to the parameters outlined above, the *tacit agreement of the parties, resulting from the actual behavior or other conclusive actions of Ukraine and the corresponding counterparty state*, is the key factor by which its validity should be determined.

As for the considerable number of so-called "forgotten" treaties of the ex-USSR, in respect of which there is no conduct of the parties at all, Andrii Melnyk suggests that it is appropriate to proceed from the *presumption of their continuity* (which means the automatic transfer of rights and obligations of the predecessor state to the successor state), i.e. the assumption of their continued validity until the contrary is proven. This approach is enshrined in Article 34 of the Vienna Convention of 1978, which stipulates the following conditions for its application:

1) when part or parts of the territory of the state are separated and form one or more states, regardless of whether the predecessor state continues to exist:

a) any treaty that was valid at the time of the succession of states with respect to the entire territory of the predecessor state shall remain in force with respect to each successor state formed in this way;

b) any treaty that was valid at the time of the succession of states only with respect to that part of the territory of the predecessor state, which became the successor state, remains valid only with respect to this successor state;

2) item 1 does not apply if:

a) the respective states have agreed otherwise; or

b) it follows from the treaty or it is otherwise established that the application of this treaty with respect to this successor state would be incompatible with the object and purposes of this treaty or would fundamentally change the terms of its operation.

### **Agreement on cooperation in the field of social security between the USSR and the Mongolian People's Republic as a "forgotten" treaty**

Among such *"forgotten" treaties*, there is the *Agreement on Cooperation in the Social Security Sphere (hereinafter – the Agreement on Social Security) signed on April 6, 1981 between the USSR and the Mongolian People's Republic*, which was ratified on December 2, 1981 and entered into force on January 28, 1982.

This Agreement applies to all types of social security of citizens established or to be established by the legislation of the Contracting Parties. Under this Agreement, social security in the field of pension security refers to all types of security provided to citizens by state bodies of both states in the event of old age or disability *pensions*, as well as in connection with the loss of a breadwinner. That is, according to the subject of regulation, it is a special international agreement for the relations we are studying.

In accordance with Article 1 of the Agreement, the legislation of the Contracting Party in whose territory the citizen resides shall be applied during the implementation of social security, unless otherwise provided for in the Agreement.

After the collapse of the USSR, the *Treaty on Friendly Relations and Cooperation* was concluded between Ukraine and Mongolia, which was ratified by Verkhovna Rada Resolution № 2994-XII on February 5, 1993, in particular, regarding the further expansion and deepening of mutually beneficial cooperation in the political, scientific and technical, trade, economic, cultural, humanitarian, informational *and other spheres on a long-term basis* and exchange of experience on transition to a market economy (Article 3).

Therefore, based on the implementation of the principle of "presumption of continuity" concerning Ukraine (Article 34 of the Vienna Convention of 1978) or continuity of law in the process of legal succession of international contractual obligations of the former USSR state, as well as taking into account the fact of concluding the Treaty on Friendship and Cooperation between Ukraine and Mongolia, it can be considered that the Agreement on Social Security between the USSR and the Mongolian People's Republic is valid in the relations between the successor state (Ukraine) and the counterparty state (Mongolia) until the states agree otherwise.

In the matter of legal succession in relation to international treaties, Ukraine proceeds from the principle of continuity of contractual relations as is defined by Article 34 of the Vienna Convention of 1978, and this has been repeatedly highlighted before the world community. Taking into account the above, the position of Ukraine on the raised issue should be determined by the presumption of legal succession of Ukraine regarding the international treaties of the former USSR in the field of social security between Ukraine and Mongolia.

Part 1 of Article 9 of the Constitution of Ukraine establishes that current international treaties, the binding consent of which has been given by the Verkhovna Rada of Ukraine, are the part of the national legislation of Ukraine.

In addition, this norm is duplicated by the Law № 1906-IV (Ukraine, VRU, 2004). If the international treaty of Ukraine, which entered into force in accordance with the established procedure, provides for other rules than those defined in the corresponding act of the legislation of Ukraine, then in accordance with the second part of Article 19 of the Law № 1906-IV, the rules of the international treaty shall be applied.

In accordance with the Article 14 of the Law № 1906-IV, international treaties enter into force for Ukraine after it has given its consent to the binding nature of the international treaty in accordance with this Law in the manner and within the terms stipulated by the treaty, or in another way agreed upon by the parties. Ukraine's consent to be bound by an international treaty can be given by signing, ratifying, approving, accepting the treaty, accessioning to the treaty (Ukraine, VRU, 2004, Part 1, Art. 8). Ukraine's consent to the binding of an international treaty for it can be given in another way, agreed upon by the parties (Ukraine, VRU, 2004, Part 2, Art. 8).

It should be emphasized that the Law of Ukraine "On International Treaties of Ukraine" of December 22, 1993 № 3767-XII (expired on June 29, 2004) referred to the methods of entry into force of international treaties: ratification (Article 7), approval (Article 9), acceptance (Article 10) or accession (Article 11).

Legal analysis and mutual comparison of the above norms allows one to hypothesize that the norms of *the Law of Ukraine "On Legal Succession"* (Article 7 of which actually provides for the automatic "entry into force" of international treaties of the USSR, which do not contradict the Constitution of Ukraine and the interests of the republic), *are not harmonized with the Law of Ukraine "On International Treaties of Ukraine"* (both its previous version of 1993 and the current version of 2004), since the latter does not *provide* in the system of international treaties of their type, which entered into force in the order of legal succession, and also does not provide *for such a method of entry into force of international treaties contracts in national legislation as legal succession*.

*From a formal and legal point of view, all international treaties, including those to which the former USSR was a party, which have not passed the implementation procedure established by the Law on International Treaties, cannot be considered part of the internal law of Ukraine.*

*At the same time, analyzing the provisions of the Vienna Convention of 1969, which obviously have a prevailing status over the norms of domestic legislation, it can be stated that for issues of compliance with treaties, the following matters are important:*

firstly, Art. 26 "Pacta sunt servanda" Every treaty in force is binding upon the parties to it and must be performed by them in good faith;

secondly, Art. 27 (Internal law and observance of treaties) - a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. This rule is without prejudice to article 46 (United Nations, 1969).

Also the provisions of the Vienna Convention of 1969 are important and they define, in particular:

*validity and continuity in force of treaties* - the termination of a treaty, its denunciation or the withdrawal of a party, may take place only as a result of the application of the provisions of the treaty or of the present Convention. The same rule applies to suspension of the operation of a treaty (Art. 42).

*loss of a right to invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty.* A State may no longer invoke a ground for invalidating, terminating, withdrawing from or suspending the operation of a treaty under articles 46 to 50 or articles 60 and 62 if, after becoming aware of the facts:

(a) it shall have expressly agreed that the treaty is valid or remains in force or continues in operation, as the case may be; or

(b) it must by reason of its conduct be considered as having acquiesced in the validity of the treaty or in its maintenance in force or in operation, as the case may be (United Nations, 1969, Art.45).

Thus, based on the specified provisions of the Vienna Convention of 1969, it can be concluded that neither the adoption of the Law of Ukraine "On International Treaties of Ukraine" (1993), nor the Constitution of Ukraine (1996), nor the Law of Ukraine "On International Treaties of Ukraine " (2004) did not serve as grounds for invalidity or termination of the treaty, withdrawal from it or suspension of its operation by Ukraine.

### **Official publication of international treaties as a prerequisite for their application**

Another aspect that should be taken into account when resolving a dispute and applying international treaties regarding the inclusion of length of service in a foreign country (in this case it is Mongolia) to pension experience is the official publication of such treaties.

On the one hand, the provisions of Ukrainian legislation determine that the entry into force of an international treaty for Ukraine *is not directly related* to the moment of official publication or registration of such a treaty (Ukraine, VRU, 2004, Art. 14). On the other hand, it is the constitutional law of Ukraine that requires the obligation to inform the population of laws and other regulatory acts defining the rights and duties of citizens (these include international treaties), and failure to fulfill such an obligation leads to the recognition of the relevant treaties as invalid ones (Ukraine, VRU, 1996, Art. 57).

To characterize the procedure for publication and clarification of the authorized entity (state authority) responsible for the official publication and provision of citizens' informational access to international acts on social (pension) security issues, one should proceed from the content of a number of laws and by-laws.

Thus, in accordance with the provisions of the part 1 of Article 21, Article 22 of Law № 1906-IV, Clause 4 of the Decree of the President of Ukraine of June 27, 1996 № 468/96 "On the Unified State Register of Regulatory Legal Acts", current international treaties of Ukraine firstly are published in "Collection of Current International Treaties of Ukraine" and other official printed publications of Ukraine, secondly, are registered in the Ministry of Foreign Affairs of Ukraine and in the Ministry of Justice of Ukraine and, thirdly, are included in the Unified State Register of Regulatory Legal Acts.

According to the Regulation № 228, the Ministry of Justice of Ukraine is entrusted with the function of state registration of normative legal acts of ministries, other central bodies of executive power, as well as other bodies whose acts are subject to state registration in accordance with the legislation; maintain the texts of legislative acts in a controlled state, keep their records and carry out storage; *keep records and carry out storage of valid international treaties of Ukraine*; ensure maintenance of the Unified State Register of Regulatory Legal Acts, provide information from it (Ukraine, CMU, 2014, Subitems 8, 16, 17 of item 4).



The Unified State Register of Normative Legal Acts and the implementation of legal informatization of Ukraine provides for the inclusion of the following acts:

- 1) normative legal acts issued starting since from *the date of adoption of the Act of Declaration of Independence of Ukraine* (August 24, 1991), – valid, published and unpublished, including those with restrictive stamps, laws of Ukraine, resolutions of the Verkhovna Rada of Ukraine, decrees and orders of the President of Ukraine, decrees, resolutions and orders of the Cabinet of Ministers of Ukraine, decisions and conclusions of the Constitutional Court of Ukraine, orders of the Prosecutor General of Ukraine of normative and legal content registered in the Ministry of Justice, normative and legal acts of ministries, other central bodies of executive power, as well as other bodies, acts which, in accordance with the legislation, are subject to state registration, the National Bank, *as well as international treaties of Ukraine*;
- 2) normative legal acts issued before the adoption of the Act of Declaration of Independence of Ukraine (August 24, 1991), which have not lost their validity and do not contradict the legislation of Ukraine;
- 3) temporary normative legal acts with a term of validity of one year or more and with a term of validity of less than one year in case of its subsequent extension (Ukraine, CMU, 2001).

Regarding the inclusion procedure of normative legal acts in this Register, it should be noted that, firstly, the texts of international treaties of Ukraine indicating the date of signing, the date of ratification (approval), the date of entry into force and the term of validity of a treaty are submitted by the Ministry of Foreign Affairs to the Ministry of Justice within seven working days from the date of their entry into force (item 8 of Order № 376); secondly, normative legal acts are submitted to the Ministry of Justice on electronic and paper media. A copy of the normative legal act shall be signed by the responsible person and certified by the seal of the body that issued it, a copy of the international treaty of Ukraine, namely Ministry of Foreign Affairs (item 10 of Order № 376); thirdly, the Ministry of Foreign Affairs also provides the Ministry of Justice with information on the denunciation, amendments to international treaties of Ukraine in compliance with the requirements of item 10 of this Regulation (item 11 of Order № 376); fourthly, normative legal acts included in the Register are maintained by the Ministry of Justice in a control state (Ukraine, CMU, 2001, item 15).

However, the results of the thematic analysis of this Register indicate the absence of an the Agreement on Social Security.

A systematic analysis of the provisions of the current legislation allows us to set up a hypothesis concerning the reasons for the absence of this agreement in the Register, namely:

*firstly*, this treaty was concluded *before the adoption of the Act of Declaration of Independence of Ukraine* (August 24, 1991);

*secondly*, this treaty is not an international treaty of Ukraine itself as an independent subject of international law in the context of the understanding of this concept by the Law of Ukraine "On International Agreements of Ukraine", since, as was already noted, it did not go through the implementation procedure and does not fall under the concept of international treaties of Ukraine (international treaties of Ukraine are concluded with foreign states and international organizations on behalf of: Ukraine; the Government; ministries and other central bodies of state executive power (Article 2 of Law № 3767-XII), or

international treaties of Ukraine are concluded: by the President of Ukraine or by his order - on behalf of Ukraine; by the Cabinet of Ministers of Ukraine or by its order - on behalf of the Government of Ukraine; by ministries and other central bodies of executive power, state bodies - on behalf of ministries, other central bodies of executive power, state bodies (Part 1, Article 3 of Law № 1906-IV);

*thirdly*, current normative legal acts do not provide for inclusion in the Register of Acts of the former USSR and creation of a list of acts regulating the procedure for registration of control copies of normative acts and interstate agreements.

Regarding the last thesis, a caveat (counterargument) should also be given, since this Register contains a number of laws adopted during the existence of the USSR, for example, The Labor Code of Ukraine of 1971 (Ukraine, VRU, 1971), the Housing Code of Ukraine of 1983 (Ukraine, VRU, 1983), the Code of Ukraine on Administrative Offenses of 1983 (Ukraine, VRU, 1984).

## **Subject manager of public information on international treaties**

When determining the appropriate subject manager of public information on international treaties, it should be taken into account that in accordance with item 1 of the Regulation on the Ministry of Foreign Affairs of Ukraine, approved by the Resolution No. 281 of the Cabinet of Ministers of Ukraine of March 30, 2016 (hereinafter - Regulation No. 281), the Ministry of Foreign Affairs of Ukraine (hereinafter referred to as the MFA) is the central body of the executive power, the activities of which are directed and coordinated by the Cabinet of Ministers of Ukraine. The MFA is the main body in the system of central bodies of executive power, that ensures the formation and implementation of state policy in the field of foreign relations.

The Ministry of Foreign Affairs, in accordance with the tasks assigned to it, among others:

submits to the President of Ukraine or the Cabinet of Ministers of Ukraine, in particular together with other central bodies of the executive power, *suggestions regarding the conclusion, termination or suspension of international treaties of Ukraine*, and also approves the submission of such suggestions by the specified bodies (subitem 23, item 4);

*keeps the register of international treaties of Ukraine*, keeps the original texts of international treaties of Ukraine, documents of international organizations, their certified copies and official translations, as well as other materials on foreign policy issues (subitem 24, item 4);

carries out *general supervision over the implementation of international treaties* of Ukraine, including by other parties, ensuring the realization of the rights arising from such treaties for Ukraine, makes suggestions to the President of Ukraine or the Cabinet of Ministers of Ukraine regarding taking the necessary measures to ensure the implementation of international treaties of Ukraine;

*controls the authenticity of texts of draft international treaties* of Ukraine in Ukrainian and foreign languages (subitem 26, item 4);

carries out *the exchange of ratification instruments and the transfer of instruments on ratification of international treaties* of Ukraine to depositories (subitem 27, item 4);

issues *authorizations for the conclusion of international treaties of Ukraine* and participation in the work of international organizations (subitem 28, item 4);

ensures *the publication of international treaties of Ukraine* in the Ukrainian language (subitem 29, item 4);

provides *official translation of Ukraine's multilateral international treaties* into Ukrainian (subitem 30, item 4);

performs *the functions of the depository of multilateral international treaties*, if, in accordance with the terms of the treaties, such functions are assigned to Ukraine (subitem 31, item 4);

makes *a submission for registration of international treaties* of Ukraine to the UN Secretariat (subitem 32 item 4).

In accordance with the order of the Ministry of Foreign Affairs of July 23, 2020 № 276, which approved the Exemplary List of Types of Public Information, which is managed by the Ministry of Foreign Affairs of Ukraine, the authority of this state body, in particular, concerns international treaties of Ukraine, namely:

information on the signing, extension, termination or denunciation of international treaties of Ukraine, their entry into force;

information on the instruments of ratification, accession, acceptance or approval of international treaties of Ukraine;

Unified Register of International Treaties of Ukraine;

the list and texts of international treaties of Ukraine, which are kept in the archive of the Ministry of Foreign Affairs of Ukraine (Ukraine, MFA, 2020).

Determining the authorized administrator of information about international treaties in 2014, the Plenum of the High Specialized Court of Ukraine for Civil and Criminal Cases noted that in case of reasonable doubts

related to the validity of an international treaty for Ukraine or the composition of its member states, for clarification on disputed issues, courts in the form of a written request should contact the Ministry of Foreign Affairs of Ukraine, which carries out registration of international treaties of Ukraine and general supervision of their implementation, keeps their originals or duly certified copies (Ukraine, HSCU, 2014).

Under modern conditions, the practice of appeals by various bodies to the Ministry of Foreign Affairs in order to obtain relevant information about the validity of international treaties and the absence of changes to the legislation confirmed the relevance of the stated position of the Plenum. And the result of such appeals with the simultaneous dissemination of relevant information for the target category of the population (for example, on taxation issues) is, in particular, letters from the State Tax Service regarding international treaties on the avoidance of double taxation. Thus, the State Tax Service of Ukraine, in letter № 1852/7/99-00-09-02-02-07 of February 4, 2020, published a list of international treaties on the avoidance of double taxation that are in force in 2020: "The State Tax Service of Ukraine informs that, according to the information *received from the Ministry of Foreign Affairs of Ukraine*, as of January 1, 2020, international treaties on the avoidance of double taxation entered into force...". In this letter, it is also stated that "according to Art. 7 of the Law of Ukraine "On Legal Succession of Ukraine" Ukraine applies the treaties of the USSR on the avoidance of double taxation, which are in effect before the entry into force of the new treaties. The treaties of the USSR are valid in Ukraine's relations with Spain, Malaysia and Japan" (Ukraine, STS, 2020).

At the same time, in the context of the subject of our research, it is worth noting the debatableness, from the point of view of reliability of information on current international treaties, which is posted by individual branch state bodies. In particular, the Ministry of Finance of Ukraine maintains a section on the official website with information on current international treaties on the avoidance of double taxation, among which it is worth highlighting agreements signed during the times of the USSR (for example, the Convention between the Government of the USSR and the Government of Spain on the Avoidance of Double Taxation of Income and Property of August 07, 1986 and the Convention between the Government of the USSR and the Government of Japan on the avoidance of double taxation with respect to taxes on income of November 27, 1986) (Ukraine, MF, 2022), which, however, are not included in the Register of the Ministry of Foreign Affairs. The situation is similar on the official website of the State Tax Service of Ukraine, which contains information on current bilateral intergovernmental agreements (conventions) on the avoidance of double taxation, among which is the Agreement between the Government of the USSR and the Government of Spain on the Avoidance of Double Taxation of Income and Property of August 07, 1986 Convention between the Government of the USSR and the Government of Japan on the avoidance of double taxation in relation to taxes on income of November 27, 1986 and the Agreement between the Government of the USSR and the Government of Malaysia on the avoidance of double taxation in relation to taxes on income of July 01, 1988 (Ukraine, STS, 2022), which are also not included in the Register of the Ministry of Foreign Affairs, which question the specified information. Also, on the official website of the State Nuclear Regulatory Inspectorate of Ukraine, the heading "International conventions and agreements" contains, for example, the Agreement between the USSR and the United States of America on underground nuclear explosions for peaceful purposes of May 28, 1976 (Ukraine, SNRI, 2020). The analysis of the specified and official websites of other state bodies gives grounds for the following conclusions: on the one hand, each sectoral state body tries to place on its official websites (publicize) thematic international treaties and acts in the sphere of their state administration; on the other hand, the relevance and validity of certain international agreements is questionable. Such an approach, given the practice of citizens' communication with such state bodies, does not contribute to the receipt of proper and reliable public information and to a certain extent leads to the wrong path when using information obtained from such sites for the exercise of one's constitutional rights, freedoms and interests.

This additionally confirms our conclusion about the importance to know exactly the responsible entity, that is empowered by the state with the function of officially posting up-to-date information about current international treaties and is responsible for it, and to whom the law directs to contact in the established manner.

## Conclusions

The National Institution of Legal Succession of the State and, in particular, the legal mechanism for establishing the binding nature of international treaties of the former USSR is imperfect in Ukraine as one of the legal successor states, and therefore requires additional regulatory updating, including in terms of determining the place of such treaties in the legal system of Ukraine, taking into account constitutional prescriptions.

It is considered necessary to improve the Law of Ukraine "On Legal Succession" by developing and introducing changes and additions on the procedure for registering the consequences of legal succession and implementing international treaties of the former USSR into the legislation of Ukraine.

The agreement between the Union of Soviet Socialist Republics and the Mongolian People's Republic on cooperation in the field of social security of April 6, 1981 (entered into force on January 28, 1982) should be classified as one of the so-called "forgotten" international treaties and according to the principles of "presumption of continuity" and "Continuity of contractual relations" shall be considered valid in relations between Mongolia and Ukraine until the states agree otherwise. None of the acts adopted in independent Ukraine in the field of international relations (in particular, the Laws of Ukraine "On International Treaties of Ukraine" 1993, 2004) and the Constitution of Ukraine of 1996 did not determine the grounds for invalidity or termination of this Agreement, withdrawal from it or suspension its actions by Ukraine. Accordingly, on the basis of the provisions of this Agreement, persons who have worked on the territory of Mongolia during the period of validity of this Agreement should be included in the pension (insurance) experience for the appointment of a pension (exercise of the constitutional right to a pension in Ukraine).

The Ministry of Foreign Affairs of Ukraine, which is entrusted by the state, among others, with the function of administering the Unified Register of International Treaties, is the proper manager of public information on issues of international treaties, including treaties on the legal succession of Ukraine from each specific international treaty of the USSR.

The organization of access of citizens and other subjects to the specified Register is inappropriate for users due to its closedness and absence on the Ministry's official website. It is considered necessary to open access to the specified Register, in particular to the list of international treaties that do not constitute a state secret, providing the population with the exercise of their right to familiarize themselves with current legal acts and at the same time ensuring the legal requirement for the validity of such treaties. In addition, determining the place of current international treaties in the system of legal acts of the state, it is suggested to make additions to the structure of the Unified State Register of Normative and Legal Acts, including current international treaties of the former USSR.

In the course of the study, the practice was revealed when, along with the Ministry of Foreign Affairs of Ukraine, other central bodies of executive power also post information on current international treaties and acts on their official websites, which leads to ambiguous perception and the consequences of its use (including conflicting bureaucratic) by citizens in the course of realizing their constitutional rights, freedoms and interests. Since the Ministry of Foreign Affairs of Ukraine is the only state body authorized to officially post up-to-date information on current international treaties, in order to regulate the activities of sectoral state bodies regarding the use and posting of information on current international treaties in the relevant field and to improve citizens' awareness of the authorized manager of such information, it is considered appropriate to implement for all power entities that post this information on their websites, the obligation to indicate in the appropriate headind, for example, the following text: "Information on the list and validity of international treaties agreed with the Ministry of Foreign Affairs of Ukraine, letter dated \_\_.20 \_\_, № \_\_".

When resolving a dispute on issues of social (pension) provision of citizens, caused by the application of a bilateral agreement between the USSR and other country (in particular, Mongolia), it is considered necessary for the courts to investigate the validity of such an agreement by making a corresponding request to the Ministry of Foreign Affairs of Ukraine, or by studying the relevant information in case materials of this state body at the request of the parties to a dispute.

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