



ISU

INTERNATIONAL SCIENTIFIC UNITY



**XVIII INTERNATIONAL SCIENTIFIC  
AND PRACTICAL CONFERENCE  
«Innovations in Scientific  
Research: World Experience  
and Realities»**

**April 10-12, 2024  
Riga, Latvia**

**ISBN 978-617-8427-10-8**

UDC 01.1

XVIII International scientific and practical conference «Innovations in Scientific Research: World Experience and Realities» (April 10-12, 2024) Riga, Latvia. International Scientific Unity, 2024. 231 p.

ISBN 978-617-8427-10-8

The collection of abstracts presents the materials of the participants of the International scientific and practical conference «Innovations in Scientific Research: World Experience and Realities».

The conference is included in the Academic Research Index ReserchBib International catalog of scientific conferences.

The materials of the collection are presented in the author's edition and printed in the original language. The authors of the published materials bear full responsibility for the authenticity of the given facts, proper names, geographical names, quotations, economic and statistical data, industry terminology, and other information.

The materials of the conference are publicly available under the terms of the CC BY-NC 4.0 International license.

ISBN 978-617-8427-10-8



© Authors of theses, 2024  
© International Scientific Unity, 2024  
Official site: <https://isu-conference.com/>

3. Про забезпечення прав і свобод внутрішньо переміщених осіб: Закон України від 20.10.2014 р. № 1706-VII Верховна Рада України : веб-сайт URL: <https://zakon.rada.gov.ua/laws/show/1706-18#Text> (дата звернення: 31.03.2024).

4. Авраменко С. М. Звернення до суду з цивільним позовом в умовах воєнного стану XVIII Міжнародна науково-практична конференція «Advancing in research, practice and education», EDITORIAL BOARD, Флоренція, Італія, 2022.

## **DIVORCE BETWEEN A MAN AND A WOMAN WHO ARE CITIZENS OF DIFFERENT COUNTRIES: THE EUROPEAN EXPERIENCE**

**Shebanits Diana**

Candidate of Historical Sciences, Associate Professor

Department of Law

d.shebanic@mu.edu.ua

**Shebanits Vitalii**

Second year undergraduate

Specialty Law

vsebanic@gmail.com

Mariupol State University, Ukraine

Ukraine's ongoing European integration processes facilitate the free movement of Ukrainian citizens across European countries. In addition, foreign nationals, especially before the war, often chose Ukraine for temporary or permanent residence. In recent years, many families have been formed where one of the spouses is a foreigner, or where Ukrainian citizens marry foreigners while in Europe.

Most marriages turn out to be happy, but there are also cases of divorce.

National laws of different countries define the process of divorce in different ways, which creates legal uncertainty for those persons who are in cross-border unions and limits their freedom of contract. At present, modern family law in the European Community allows couples from other countries to know in advance which law will apply to their possible divorce. This increases flexibility and autonomy in the free choice of application of the law. This situation provides an incentive for spouses to deal with the consequences of a possible divorce in advance and encourages so-called amicable divorces.

Therefore, when spouses decide to dissolve their marriage, they usually bring a case in court. In the European Union, it is not uncommon for spouses wishing to dissolve their marriage to be citizens of different EU member states or to have lived in different countries. Therefore, in most European countries, along with the institution of divorce, there is often an institution of separation, which in turn precedes divorce. In addition, it should be noted that the separation of spouses does not

automatically terminate the marriage, but it does terminate the obligation to live together and subsequently entails the division of the property of the husband and wife [1, p. 82].

The European Union has procedural rules that determinate which court should issue a divorce decree, which in turn allows the divorce to be recognized as valid in other countries of the European Community. The principles of European Union Family Law governing divorce take into account the interests of children and spouses. Thus, the analysis of such principles allows us to point out that divorce by mutual consent of the spouses is more acceptable than divorce on the initiative of one of the spouses.

The first legal act in this area was Council Regulation (EU) No 347/2000 of 30 July 2000 on jurisdiction, recognition and enforcement of judgments in divorce proceedings and proceedings involving parental responsibility (the «Brussels II regulation»). Soon after, the «Brussels II *bis*» Regulation was adopted – Council Regulation (EU) No 2201/2003 of 27 November 2003 on jurisdiction, recognition and enforcement of judgments in family matters and proceedings involving parental responsibility and repealing Regulation No 1347/2000. However, at a regular meeting of the EU Council held in Luxemburg on 5-6 June 2008, it was concluded that there was no common view on the harmonization of family law. On 12 July 2010, the Council of Europe decided to develop cooperation in cases arising from divorce. The Council's decision enhanced cooperation resulted in Regulation (EU) No 1259/2010 of the European Parliament and the Council of Europe of 20 December 2010 on cooperation in enforcement of laws involving divorce and family separation («Rome III»). The Rome III contains mechanisms for limiting the effect of the conflict of laws method of regulation. According to Art. 11, no retroactive reference is allowed, and according to Art.12, the application of the provisions of law chosen by virtue the Rome III regulation may be refused if such application is clearly incompatible with the public policy of the law of the country of the court [1, p. 83; 3].

Some scholars note that the provisions contained in Rome III are quite new and progressive for the family law of Ukraine. As of today, the national family legislation of Ukraine, in particular the Family Code, does not contain a provision on divorce of Ukrainian citizens from foreign citizens or stateless persons, as well as marriages between foreign citizens, foreign citizens and stateless persons, stateless persons, at least one of whom has a permanent residence permit in Ukraine. However, it is also worth mentioning that this provision is partially regulated by a special Law on Private International Law, in particular Article 63 and 64. Thus, spouses who do not have a common personal law may choose the law that will apply to the termination of the marriage if the spouses do not have a common place of residence or if the personal law of neither of them coincides with the law of the personal law of one of the spouses. The agreement on the choice of law is terminated if the personal law of the spouses becomes common law [2].

Some scholars argue that it is currently advisable to provide for the possibility of conflict-of-laws regulation of the divorce process in the Family Code of Ukraine, which would be in line with current trends in private international law. We share this opinion. Therefore, first, the spouses should be given the opportunity to make a free

choice in applying the right to divorce, which is limited by the law of permanent residence of the spouses at the time of filing a claim with the court, the law of citizenship of one of the spouses at the time of the court proceedings or the law most closely related to the relationship, This may be the law of the spouses' nationality, depending on certain objective factors, such as:

- the spouses' residence on the territory of one or different states;
- single citizenship;
- ownership of real estate abroad, etc.

Scholars emphasise that, given the importance of regulated relations that are directly related to the individual, an agreement on applicable law should be concluded in writing with subsequent notarization. At the same time, we consider it necessary to provide for the possibility of making changes and adjustments to such an agreement at any time [1, p. 84].

In addition, national scholars emphasise the urgent need to abandon the only currently possible rigid unilateral conflict-of-laws bidding upon divorce in Ukraine. We share the opinion of the legal scholarly community that the national legislator has the opportunity to use the positive experience of the hierarchically structured the Rome III regulation of subsidiary conflict of laws.

Therefore, given the above, it can be stated that in order to limit the autonomy of the spouses' will for national family law, the current Family Code of Ukraine should enshrine the following hierarchical bindings that should be applied in the absence of an agreement of the parties on the applicable law in divorce, namely:

- the right of joint residence of the spouses at the time of filing a claim with the court;
- the law of the state of nationality of one of the spouses at the time of the court proceedings;
- the law of the closest connection; the law of the country of the court.

This decision will have a positive impact on the national legislation of Ukraine, emphasize its approximation to the EU norms, and allow for better consideration of actual circumstances of the case when divorcing spouses.

### References

1. Plyushko D. S., 2020. Regarding the analysis of the experience of EU countries in the legal regulation of the consequences of the termination of marriage between a man and a woman who are citizens of different countries. Information technologies in the conditions of renewal of civil legislation: Mater. All-Ukrainian round table (Odesa, June 13, 2020 / Under the general editorship of O. I. Kharitonova, E. O. Kharitonova. Odesa: Phoenix. P. 82-85.
2. On private international law: Law of Ukraine No. 2709-IV dated 06/23/2005 URL: <https://zakon.rada.gov.ua/laws/show/2709-15#Text> (Accessed on 25.01.2024)
3. Council Regulation (EU) №1259/2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation. URL: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:343:0010:0016:en:PDF> (Accessed on 25.01.2024).