

Law

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**THE ROLE OF INTERNATIONAL LAW AND FOREIGN
LEGISLATION IN THE NOTARIAL PRACTICE OF UKRAINE:
CONTEMPORARY CHALLENGES AND PROSPECTS**

Summary. *In the era of growing globalization and international relations, foreign law and the application of international treaties assume special significance for national legal systems. This article will analyze in detail the legislative regulation of notarial acts in Ukraine with respect to foreign jurisdictions. The urgency of writing this paper arises not only from global trends toward erasing legal boundaries but also from unprecedented challenges posed by martial law, which has led to a mass movement of Ukrainian citizens and a sharp increase in cross-border legal relationships. An overview will therefore be provided regarding the relevant national legislative framework, more specifically about some important provisions under the Law of Ukraine "On Notariate" and under the Law of Ukraine "On International Treaties. It overviews, typifies, and profoundly analyses the principal types of international agreements that apply to notaries' work, with special emphasis placed on bilateral treaties on legal assistance and consular conventions. There are highlighted problem areas of existing law enforcement practice due to the absence of a standing order for international acts and difficulties in their implementation under present-day conditions. In conclusion, findings are formulated regarding the need to*

systematize existing international instruments, develop a unified approach to the conclusion of new treaties, and adapt notarial activities to the digital transformation for the effective protection of the rights and interests of individuals and legal entities. This article will be useful for notaries and legal practitioners specializing in private international law and cross-border transactions, as well as for employees of consulates and ministries.

Key words: *notariate, private international law, foreign legislation, international treaty, legal assistance.*

Introduction. The current stage of human civilization's development is characterized by globalization processes that permeate all spheres of public life, including the legal domain. The strengthening of international trade, the growth of labor migration, the conclusion of transnational marriages, cross-border inheritance, and investment lead to legal relations increasingly extending beyond a single jurisdiction. In these conditions, the notariate, as a crucial institution of preventive, non-judicial justice, is faced with the need to ensure legal certainty and the security of civil transactions complicated by a foreign element.

For Ukraine, this issue has taken on an existential character: the military invasion and the subsequent declaration of a legal state of martial law have initiated a large-scale humanitarian collapse and mass migration—millions of citizens have been forced to seek refuge in the European Union and beyond. As a result, a complex set of specific legal needs has arisen: the certification of powers of attorney and other authorizations for the management of property left in Ukraine; the formalization and protection of inheritance rights under divergent national regimes; the registration of civil status acts and their cross-border verification; the legalization and/or apostillation of documents; ensuring the enforcement of court decisions and notarial acts in foreign jurisdictions; and the resolution of related property, family, and land disputes.

The effective and timely satisfaction of these needs directly depends on the professional competence of Ukrainian notaries—on their ability to navigate the multi-level system of national and private international law, operate with conflict of laws rules, use tools for remote and cross-party notarial cooperation, and adapt their practice to emergency legal regimes and the specifics of the cross-border recognition of documents.

Results and discussion. The fundamental principles of the organization of the notariate in Ukraine are enshrined at the constitutional level. Article 92 of the Constitution of Ukraine establishes that the organization and activities of the notariate are determined exclusively by the laws of Ukraine, which emphasizes the public-law character of notarial activities and their state significance [1]. The central normative act in this sphere is the Law of Ukraine "On Notariate" of September 2, 1993 [2]. Of greatest interest to this study is its Section IV, "Application of Legislation of Foreign States. International Treaties," which serves as the legal foundation for a notary's work with a foreign element.

Article 98 of the Law establishes two key provisions. First, notaries apply the norms of foreign law in accordance with the legislation of Ukraine and international treaties. This means that a notary must not only establish the presence of a foreign element in a legal relationship but also determine the applicable law based on the conflict of laws rules contained in the Law of Ukraine "On Private International Law" [3]. Second, notaries accept documents drawn up in accordance with the requirements of foreign law and may make authentication inscriptions in a foreign form, provided this does not contradict the legislation of Ukraine. The latter condition is a manifestation of the so-called public policy clause (*ordre public*)—a fundamental principle of private international law, according to which a norm of foreign law is not applied if the consequences of its application would be clearly incompatible with the fundamental principles of the state's legal order.

Issues of inheritance relations involving foreigners are regulated by Article 99, which establishes that actions to protect the inherited property of a foreigner in the territory of Ukraine, or property due to a foreigner after the death of a Ukrainian citizen, as well as the issuance of a certificate of the right to inheritance, are carried out in accordance with the legislation of Ukraine. This norm is aimed at protecting the state's sovereignty over property located within its territory.

Article 100, which regulates the procedure for accepting documents drawn up abroad, is key for practical activities. As a general rule, such documents are accepted by notaries subject to their consular legalization. Legalization is a procedure for confirming the authenticity of a signature, the status of the official who signed the document, and, in some cases, the authenticity of the seal on the document. However, this complex and multi-stage procedure is significantly simplified if an international treaty that abolishes the requirement of legalization is in force between Ukraine and the state of the document's origin. The most important such treaty is the Hague Convention of October 5, 1961, Abolishing the Requirement of Legalisation for Foreign Public Documents [4]. For the member countries of this convention, the authenticity of a document is confirmed by affixing a special stamp—an apostille. Ukraine is a party to this convention, which substantially simplifies the circulation of documents with more than 100 countries worldwide [5].

Finally, Article 103 of the Law "On Notariate" enshrines the fundamental principle of the supremacy of international law. If an international treaty of Ukraine establishes rules for notarial acts different from those contained in the legislation of Ukraine, then the rules of the international treaty shall apply when performing notarial acts. This norm corresponds with Article 9 of the Constitution of Ukraine, according to which existing international treaties, the consent to be bound by which has been given by the Verkhovna Rada of Ukraine, are part of the national legislation. Thus, in their activities, a notary is obliged to apply

international treaties as sources of law with direct effect. The legislative framework is systematized in Figure 1.



Fig. 1. Organization and Activity of the Notariate in Ukraine

Source: compiled by the author

International treaties regulating notarial activities can be conditionally divided into two large groups.

The first group consists of bilateral and multilateral treaties on legal assistance in civil, family, and criminal matters. The typical structure of such treaties includes sections on the scope of legal assistance, the procedure for communication between central competent authorities (usually the Ministries of Justice), requirements for the content and form of a request for legal assistance, and provisions on the validity of documents. These treaties solve a crucial task—they equate documents issued in the territory of one contracting state with the official documents of the other, exempting them from the need for legalization or apostillation. An example of such an agreement is the Chişinău Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 2002, which is in force within the CIS [6]. Such treaties significantly simplify procedures for citizens regarding inheritance, recognition of court decisions, and formalization of personal rights in the territories of the member states.

The second, no less important group, is consular conventions. These international treaties define the legal status of consular posts and the list of functions performed by consular officials. One of the key consular functions is the performance of notarial acts. In accordance with the provisions of the Vienna Convention on Consular Relations of 1963 and numerous bilateral conventions, a consul is authorized to certify transactions (except for transactions with real estate in the host country), draw up and certify wills and powers of attorney, accept documents and valuables for safekeeping, and perform other actions in the interests of citizens of their state [7]. Thus, the consul acts as a "foreign notary," providing citizens with access to notarial services outside their country. This is especially important for Ukrainians temporarily abroad, including in countries where the procedures of the local notariate may be complex, expensive, or incomprehensible. A comparison of the two types is presented in Figure 2.

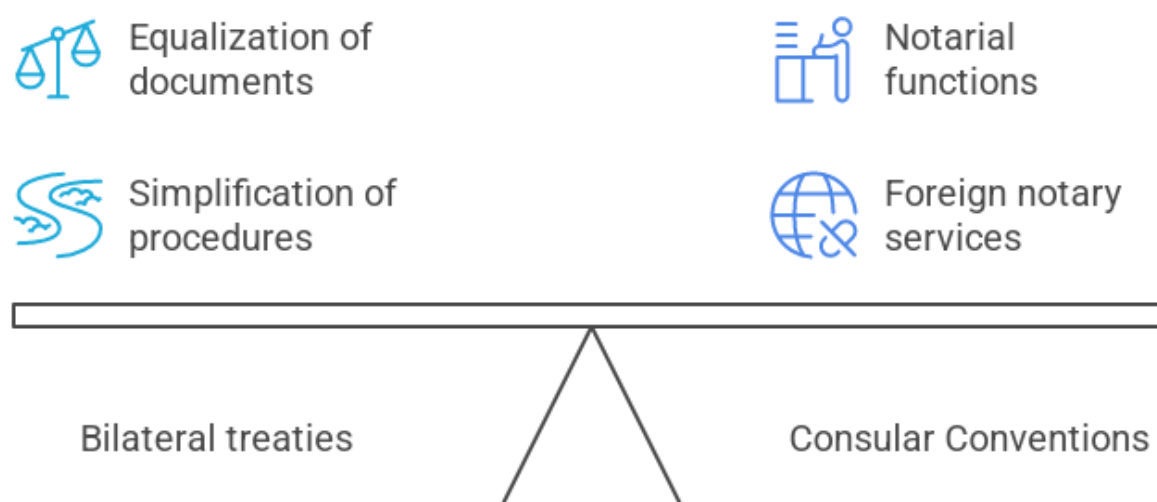


Fig. 2. Comparison of International Treaties on Notarial Activities

Source: compiled by the author

Despite the presence of a fairly developed legal and regulatory framework, a number of systemic problems exist in the sphere of applying foreign and international law in the notariate. First, there is a lack of comprehensive systematization of existing international treaties. In their practical activities, it is

often difficult for a notary to determine which specific international treaty (a bilateral legal assistance treaty, the Hague Apostille Convention, or a consular convention) should be applied in a particular situation with a specific country. Differences in wording, the scope of legal assistance, and requirements for documents in different treaties create a risk of legal error. It is necessary to develop a single, publicly accessible, and regularly updated information base or methodological recommendations for notaries that would systematize all existing international regimes for the recognition of documents and legal assistance for Ukraine by country.

Second, there is a need to unify approaches when concluding new international treaties. Ukraine should develop model treaties on legal assistance and consular conventions to be used as a basis for negotiations with other countries. This would ensure uniformity in legal regulation, avoid contradictions, and simplify subsequent law enforcement practice.

Third, the challenges of our time require the digital transformation of the notariate. The implementation of electronic document management, the possibility of performing certain notarial acts online (e-notary), and joining international electronic apostille systems (e-APP) could radically simplify and accelerate cross-border legal procedures. This is particularly relevant in the conditions of martial law, when the physical presence of a citizen at a notary in Ukraine or at a consulate is difficult. The development of digital technologies in the notariate is not just a convenience but a pressing necessity for the protection of citizens' rights. A summary of recommendations is presented in Table 1.

Table 1

Systemic Problems in the Application of International Law in the Notariate of Ukraine

Problem	Essence of the Problem	Risks	Solutions
Lack of systematization of international treaties	Difficult for a notary to determine which treaty to apply: bilateral, Hague Apostille Convention, consular convention, etc.	Errors in law enforcement, recognition of a document may be challenged	Creation of a single information base or methodological recommendations classifying all treaties in force for Ukraine
Non-uniformity of international treaties	Different countries have different wordings and requirements	Contradictions in regulation, difficulties in negotiations and practice	Development of model treaties on legal assistance and consular conventions for Ukraine
Insufficient digitalization of the notariate	Lack of full-fledged electronic document management and online services (e-notary, e-APP)	Delays in procedures, difficult access for citizens under martial law	Implementation of e-notary, electronic apostille, development of international digital platforms

Source: compiled by the author

Thus, the table reflects the key obstacles in notarial practice when using international law and possible ways to overcome them through the systematization of treaties, unification of approaches, and digitalization.

Conclusion. The legislation of foreign states and international treaties are an integral and increasingly significant part of the system of legal regulation of notarial activities in Ukraine. The effective work of a notary in the modern globalized world is impossible without a deep understanding of the principles of private international law and the ability to apply the norms of international agreements. The legal basis for this is provided by the Constitution of Ukraine, the specialized laws "On Notariate" and "On International Treaties of Ukraine," as well as an extensive network of bilateral and multilateral agreements. However, for this complex system to work effectively and without failure, steps

must be taken to improve it: systematize existing treaties, unify approaches to concluding new ones, and actively implement digital technologies. The successful resolution of these tasks will allow the Ukrainian notariate to adequately respond to the challenges of the time and to provide reliable and accessible legal protection for the citizens of Ukraine, wherever they may be.

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