UDC 347.1+347.61/64

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PROBLEMS OF APPLICATION OF NORMS OF THE CIVIL CODE OF UKRAINE AND OTHER NORMATIVE-LEGAL ACTS TO REGULATION OF FAMILY RELATIONS

Abstract. *The article reveals some aspects of the application of the norms of the Civil Code of Ukraine (CC of Ukraine) and other normative legal acts of the national legislation to the regulation of family relations.*

The purpose of the article is to study the problems of applying the norms of these acts on the example of individual family deals.

The author, basing on the understanding of family law as an independent sphere of Ukrainian law, shares the opinion of a number of Ukrainian scholars that the norms of the CC of Ukraine apply to the regulation of family relations in a subsidiary manner, not directly.

It is noted that court practice does not always adhere to the provision of Part 1 of Art. 9 of the CC of Ukraine, according to which the provisions of the CC of Ukraine are applied to the regulation of family relations, if they are not regulated by other acts of legislation. Such a misunderstanding of the correlation between the norms of the CC of Ukraine and the Family Code of Ukraine (FC of Ukraine), while applying their provisions to the regulation of family relations, concerns, in particular, the peculiarities of recognizing as invalid family deals due to the absence of consent in relations regarding the exercise of the joint common property of the spouses; concerning the management of the juvenile child property; regarding the conclusion of a marriage contract before registration of a marriage, if its party is a juvenile person, etc.

Particular attention is paid to the parents', other legal representatives or the child's consent, the absence of which is not recognized by the FC of Ukraine as a ground for invalidating the contracts on patronage over the child, on the placement of children to the foster family, on the organization of the activity of the family-type orphanage. The peculiarity of these treaties is that, in their legal nature and essence, these treaties are not family-law in the narrow sense, and therefore, according to the author's point of view, the can be recognized as invalid on the grounds provided by the CC of Ukraine.

The presence of a number of legal acts of family law, a large number of norms, as well as a part of the norms of the FC of Ukraine, is of a public nature. It confirms the conclusion that family law cannot be recognized as a subsphere of civil law, as a private law, but it is independent sphere of Ukrainian law, which contains both private law (predominantly) and public law (serving family relations) norms.

Key words: *Civil Code of Ukraine; Family Code of Ukraine; subsidiary application of norms; invalidity of family deals.*

Formation of modern views of Ukrainian legal scholars on the application of the norms of the Civil Code of Ukraine and other normative legal acts to the regulation of family relations was in some way influenced by the last codification of civil law, during which the norms of family law were planned to be codified in Book 6 of the Civil Code of Ukraine under the name "Family Law" but later Book 6 was withdrawn from the Civil Code and on January 10, 2002, the Family Code of Ukraine was adopted, which was originally planned to be put into force on January 1, 2003. However, since the Family Code of Ukraine was to some extent related to the Civil Code, which at that time had not yet been adopted, the Law on December 26, 2002 transposed its coming into force and provided that the Family Code of Ukraine would come into force at the same time as the Civil Code of Ukraine (hereinafter – CC of Ukraine).

That paper is aimed at studying the problems of applying the norms of the CC of Ukraine and other normative-legal acts of national legislation to family relations.

Due to the deletion of Book 6 from the draft of the CC of Ukraine and the adoption of a separate Family Code, it is quite natural a question arisen on filling the vacuum in the legal regulation of family relations that was caused by it.

Not all personal non-property and property relations between spouses, parents and children, other family members and relatives have been sufficiently fully regulated by the Family Code (hereinafter – FC of Ukraine).

The legislator found a way out of the situation through predicting in Art. 8 of the FC of Ukraine the possibility of subsidiary application of the relevant norms of the CC of Ukraine to the mentioned relations, however, in the case if such regulation does not contradict with the essence of family relations.

The inclusion of this article to the FC of Ukraine has caused ambiguous commentary on its provisions in the legal literature.

According to Yu. S. Chervonyi, Z. V. Romovska points of view, it is about subsidiary application of the norms of the CC of Ukraine to individual family relations regulation, in particular, in connection with the enlarging of the sphere of their regulation through the contract, as well as for the purpose of legislative economy[1].

However, according to I. V. Zhilinkova point of view on the subsidiary ap-

[1] *Науково-практичний коментар Сімейного кодексу України: пер. з рос.* / С. В. Ківалов, Ю. С. Червоний, Г. С. Волосатий та ін.; за ред. Ю. С. Червоного (Юрінком Інтер 2008) 24–25

plication of the norms of the CC of Ukraine to family relations, it could be spoken only in the case of recognition of family law as an independent sphere of law. If family law is recognized as a subsphere of civil law, the array of civil law norms is recognized as the only one with internal division into separate subspheres[1].

It is difficult to agree with such a statement, if we are basing on the content of Part 1 of Art. 9 of the CC of Ukraine, according to which, the provisions of the CC of Ukraine are applied to the family relations regulation, *unless they are regulated by other acts of legislation.*

Thus, the recognition of the institution of custody and guardianship as a civil law institution caused the application of the provisions of Chapter 6 of the CC Ukraine (Articles 55–79 of the CC of Ukraine) to custody and guardianship relations. Other examples of subsidiary application of the CC of Ukraine to family relations can be given.

Subsidiary application of the CC of Ukraine norms to the personal non-property and property family ones, some scholars explain by the fact that civil and family law refer to private law. In particular, such an opinion was expressed by Yu. S. Chervonyi[2]. In our view, such an argumentation is not undoubtable and convincing, since the question on the private-law nature of family law cannot be recognized as uniquely solved and accepted. Moreover, as it can be explained, for example, provided for in Art. 9 of the CC of Ukraine the possibility of applying the provisions of the CC of Ukraine to relations arising in the areas of natural resources usage and environmental protection, as well as to labor relations or in the sphere of commerce. It is unlikely that the relevant spheres of law can be recognized as private law ones.

The literature suggests that the subsidiary application of the provisions of the CC of Ukraine to family relations does not mean that it is possible in regard to all types of family relations. In particular, V. I. Borisova believes that such application is possible only to *property* relations of family members and relatives. As for the personal *non-property* relations of family members, it is impossible to apply the norms of the CC of Ukraine for their regulation[3]. In this regard, it is quite reasonable a question arises on the right to family life, the right to choose a place of residence and to freedom of movement (Part 1 of Article 270 of the CC of Ukraine), to exercise personal non-property rights in the interests of juvenile, minors by parents (adoptive parents), caretakers?

It should be noted that in a number of cases, the FC of Ukraine contains a direct link to the CC of Ukraine. For example, Art. 12 of the FC of Ukraine

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[1] Ромовська З. В. *Сімейний кодекс України: Науково-практичний коментар* (Правова єдність 2009) 461

[2] *Науково-практичний коментар Сімейного кодексу України: пер. з рос.* / С. В. Ківалов, Ю. С. Червоний, Г. С. Волосатий та ін.; за ред. Ю. С. Червоного (Юрінком Інтер 2008) 97

[3] *Сімейне право України: підручник* / Л. М. Баранова, В. І. Борисова, І. В. Жилінкова та ін.; за заг. ред. В. І. Борисової та І. В. Жилінкової (Юрінком Інтер 2011) 44

stipulates that the periods established by the FC of Ukraine calculated in accordance with the Civil Code of Ukraine. According to Part 2 of Art. 20 of the FC of Ukraine in cases of statute of limitation usage to claims arising from family relations, the statute of limitations shall be applied by the court in accordance with the CC of Ukraine, unless otherwise is provided by the FC of Ukraine.

Application of the FC of Ukraine to family relations is also provided for in Part 1 of Art. 9 of the CC of Ukraine, according to which "the provisions of this Code shall be applied to the regulation of… family relations, unless they are regulated by other acts of legislation". Therefore, it is difficult to agree with the statement that the norms of the CC of Ukraine are applied to the regulation of family relations not subsidiary, but directly[1]. It is enough to read again carefully Part 1 of Art. 9 of the CC of Ukraine to make the opposite conclusion.

It would seem that the determination of the procedure of application of the CC of Ukraine to the family relations regulations in Art. 9 of the CC of Ukraine should serve as a benchmark aimed at ensuring optimal legal regulation of family relations, but the court practice shows some misunderstanding of the norms of the two codes while applying their provisions to the regulation of family relations.

In particular, this concerns the peculiarities of recognizing as invalid family deals on the grounds of consent's absence.

In the FC of Ukraine the term "consent" is used in many cases for different legal relations: marriage (Art. 24, 40 of the FC of Ukraine), personal non-property rights and responsibilities of spouses (Article 54 of the FC of Ukraine), rights and obligations of spouses maintenance (art. 77 of the FC of Ukraine), personal non-property rights and responsibilities of parents and children (art. 145, 146, 148, 149, 160, 161, etc. of the FC of Ukraine), adoption (art. 201 , 217–222, etc. of the FC of Ukraine), custody and caretaking (Art. 244 of the FC of Ukraine), etc.

In this case, the absence of consent in some cases causes the invalidity of certain actions (for example, the invalidity of adoption – Art. 236, 237 of the FC of Ukraine), in others – serves as an obstacle to the conclusion of the relevant agreements (on patronage over a child – Art. 253, 254 of the CC of Ukraine, on setting of children to foster family – Articles 256^3 , 256^4 of the FC of Ukraine, on organization of activity of family type orphanage – Articles 256^7 , 256^8 of the FC of Ukraine).

The consent on the exercise of some rights is of particular significance in the context of the issue of our study: the right of joint common ownership of spouses (Article 65 of the CC of Ukraine) on the management of the property of the child (Article 177 of the CC of Ukraine), as well as in other legal relations, the basis of which is relevant

[1] Жилінкова І. В. Регулювання майнових відносин у сім'ї: тенденції розвитку цивільного та сімейного законодавства, *Правова система України: історія, стан та перспективи: у 5 т. – Т. 3: Цивільно-правові науки. Приватне право* / за заг. ред. Н. С. Кузнєцової (Право 2008) 461

contract (for example, marriage contract – Article 92 of the FC of Ukraine).

A common feature that unites these types of legal relations is a contract (deal) concluded (done) by one person with the consent of another, which is one of the conditions for the validity of these contracts (deals).

It would seem that a common feature that unifies these deals should also determine the common (the same) for each deal legal consequences of failure to comply with the requirement of consent presence. However, in reality, these legal consequences are different.

Let's take a closer look at them.

1. As established by Art. 63 of the FC of Ukraine, the wife and the husband have equal rights to ownership, usage and disposal of property belonging to them on the right of joint common ownership, unless otherwise is provided for by the agreement between them.

Taking it into account, Part 1 of Art. 65 of the FC of Ukraine establishes that the wife and the husband dispose the property, which is the object of joint common ownership of the spouses, by mutual consent.

Basing on it, while concluding contracts, one of the spouses is considered to be acting with the consent of the other spouse (Part 2 of Article 65 of the FC of Ukraine).

The norms given almost exactly coincide with the provisions of Part 1 and 2 of Art. 369 of the CC of Ukraine on the exercise of the right of joint common property, but the main difference is that, as it is set by Part 2 of Art. 68 of the FC of Ukraine, the disposal of property, which is the object of the right of joint common ownership, is carried out by the co-owners only by mutual consent, according to the CC of Ukraine *after the dissolution of marriage* [emphasis added. – T. B.]. Thus, the provisions of Art. 369 of the CC of Ukraine cannot be applied to relations concerning the exercise of the right of joint common ownership of spouses.

However, the inconsistency of Art. 65 of the FC of Ukraine and Art. 369 of the CC of Ukraine does not end, because the wife, the husband has the right to appeal to the court to recognize the contract as invalid due to be concluded by the spouse without one's consent, if this agreement goes beyond the limits of small household one (Part 2 of Art. 65 FC of Ukraine).

Thus, the ground for invalidation of a contract on the disposal of property that is the object of joint common ownership rights concluded by one *spouse is the absence of consent of the other spouse*. The invalidation of the said contract due to other grounds should be carried out in accordance with the provisions of Art. 215 of the CC of Ukraine.

Without paying attention in that paper to the question on the form and notary verification of such consent, we note that if the concept of small household contract by analogy of the law the definition can be used of the concept of small household deal, contained in Part 1 of Art. 31 of the CC of Ukraine, then the question on what contract can be considered as a contract on valuable property, neither the CC of Ukraine nor the FC of Ukraine gives an answer.

Court practice, ignoring the direct reference in Part 2 of Art. 65 of the FC of Ukraine on the invalidation of a contract concluded by one spouse without the consent of the other, proceeds from the fact that "the disposal of joint property without the consent of the other spouse can be a ground for invalidation of such a contract only if the court finds that the spouse who concluded the joint property contract and the third party counterpart of such contract acted in bad faith, in particular that the third party knew or should have known, according to the conditions of the case, that the property was owned by the spouse under the joint common ownership right, and a spouse who concluded the contract, has not received the consent of the other spouse".

Thus, the reference by the Supreme Court of Ukraine to the principle of integrity while hearing cases of invalidation of contracts concluded without the consent of another spouse, is characteristic of a number of its resolutions (on 07.10.2015, on 30.03.2016, on 07.09.2016, on 22.02.2017 etc.).

In our view, such a motivation is no longer tenable since the spouse who concludes the agreement without the consent of the other spouse can no longer act in good faith. Regarding the behavior of the counterparty of the contract, the legislator does not take it into account at all while determining the basis for the contract's invalidation in accordance with Art. 65 of the FC of Ukraine.

Therefore, the court's reference to integrity, as one of the principles of civil law (although such a basis is set by Article 7 of the FC of Ukraine is also inherent to family law), according to which the parties to the contract should act, in this case is groundless.

To this we should add that, basing on the content of Part 3 of Art. 202 of the CC of Ukraine, it can be stated that the consent of one spouse to conclude a contract by the other spouses on the disposal of property that is the object of their joint common ownership, causes only the right of another person to conclude such a contract, but does not result in any obligations for him/her. Such consent may create obligations for the other spouse only in cases provided for by the law or by an agreement with those persons.

It should be noted that the mentioned in that paper provisions and conclusions also cover the exercise of the right of joint common ownership of property acquired during the cohabitation of a man and a woman who live as unified family but are not married to each other or to any other marriage.

2. According to the general rule established by Part 1 of Art. 177 FC of Ukraine, parents manage property belonging to a juvenile child without special authority.

While committing a deal by a parent of a minor child, it is considered that he/she acts with the consent of the other parent. We believe that there is every reason to qualify such consent as a unilateral deal as in the previous case.

The second parent has the right to appeal to the court for a recognizing of invalidity of the deal as concluded without one's consent, if this deal goes beyond the limits of small household one

(paragraph 1 of Part 6, Article 177 of the FC of Ukraine).

Attention should be paid to the inaccuracy of the wording of the norm on invalidation of deal, since *a concluded deal* means a bilateral or multilateral deal – a contract. If we keep in mind all the deals, so it means that they are being *done*. Therefore, the language in paragraph 1 of Part 6, Article 177 of the FC of Ukraine should refer to the invalidation of a *deal which was done* without the consent of one of the parents.

Art. 177 of the Civil Code of Ukraine does not answer the questions on the legal consequences of the commission by parents of the minor children deals, provided for in Part 2 of the mentioned article, regarding ones property rights without the permission of the guardianship and custody bodies.

Obviously, in that case the deal may be recognized as invalid on the claim of the guardianship and custody body on the grounds provided for in Art. 215 of the CC of Ukraine, in particular, basing on the fact that the deal done by the parents (adoptive parents) cannot contravene the rights and interests of their juvenile, minor or disabled children (Part 6 of Article 203 of the CC of Ukraine).

3. Of particular interest in the context of the issue of our research is the conclusion of a marriage contract before the registration of marriage, ifs party is a minor person. The conclusion of such an agreement requires the written consent by ones parents or guardian, verified by a notary (Part 2 of Article 92 of the FC of Ukraine). In our opinion, this consent should also be considered as a unilateral deal.

Considering the marriage contract as a family legal agreement, we believe that the provisions of Art. 103 of the Civil Code of Ukraine, which provides for the possibility of recognizing a marriage contract at the request of one spouse or other person, the rights and interests of which are violated by this contract, as invalid on the grounds established by the CC of Ukraine, should not extend to the cases of lack of written consent, which is set in Part 2 Article 92 of the FC of Ukraine.

In this regard, we consider it appropriate to supplement Art. 92 of the Civil Code of Ukraine with part 3 of the following content:

"3. The parents (one of them) or the guardian have the right to apply to the court to claim the recognizing of the marriage contract as invalid, which was concluded before the registration of the marriage by a minor without the written consent of one's parents or guardian verified by a notary."

4. Separately, it is necessary to pay an attention to the consent (of parents, other legal representatives or the child), the absence of which is not recognized by the FC of Ukraine as a ground for invalidation of agreements on patronage over a child, on setting children for a foster family, on organizing activities of a family-type orphanage.

However, such a consent, as a unilateral deal, is aimed at acquiring by the parties of the said agreements the right to conclude them.

The peculiarity of these agreements is that, despite the placement of norms

on them in the FC of Ukraine, by their legal nature and essence, these agreements (despite the contrary statement[1]) are not family-law in the narrow sense, because are concluded: a patronage agreement for a child – with the participation of the guardianship authority and the patronage educator (participation in the specified contract of parents or legal representatives of the child, which is stipulated by the Model agreement on patronage over the child, is not provided by the FC of Ukraine, and therefore we are considered only as a fact of confirmation of their consent in accordance with Part. 2, Art. 254 Code of Ukraine); the agreement on the setting a children into foster family – with the participation of foster parents and the body that made the decision on establishing a foster family; agreement on the organization of activities of a family-type orphanage – with the participation of the caregivers and the body that has decided to establish a family-type orphanage.

Therefore, it is quite justified the absence in the FC of Ukraine of norms regarding the recognition of these contracts as invalid. It is obvious that such contracts can be recognized as invalid on the grounds provided by the CC of Ukraine.

While adopting the CC of Ukraine, the legislator declared that the Code on Marriage and Family of Ukraine had lost its validity, except for Section V "Acts of Civil Status", which retained its validity in the part that did not contradict the CC of Ukraine until the adoption of a special law.

Adoption of a special law, according to which the registration of acts of civil status is provided, including – marriage, divorce, adoption, deprivation and restoration of civil rights – is also provided for by Art. 49 of the CC of Ukraine.

Such a special law – the Law of Ukraine "On State Registration of Civil Status Acts"[2] was adopted on July 1, 2010. According to Part 1 of Art. 1 of this Law, it regulates the relations related to the state registration of civil status acts, amending civil status records, their updating and annulment, defines the principles of activity of state registration bodies of civil status acts.

Studying the issue on the application of the norms of the CC of Ukraine to the regulation of family relations, we can not ignore the question on the application to the regulation of these relations and a number of normative acts other than the Law of Ukraine "On State Registration of Civil Status Acts". Thus, a plenty of norms aimed at family relations regulation are contained in the Laws of Ukraine on November 15, 2001 "On Prevention of Domestic Violence"[3], on November

[1] Борисова В. І. Договір у сімейно-правовій сфері, *Актуальні проблеми приватного права: договір як правова форма регулювання приватних відносин: матеріали наук.-практ. конф., присвяч. 95-й річниці з дня народження д-ра юрид. наук, проф., чл.-кор. АН УРСР В. П. Маслова (Харків, 17 лют. 2017 р.)*, (Право 2017) 14–15

[2] Про державну реєстрацію актів цивільного стану: Закон України від 1 липня 2010 р. №2398-VI. URL: http://zakon.rada.gov.ua/laws/show/2398–17 (дата звернення: 12.11.2018).

[3] Про державну реєстрацію актів цивільного стану: Закон України від 1 липня 2010 р. №2398-VI. URL: http://zakon.rada.gov.ua/laws/show/2398–17 (дата звернення: 12.11.2018).

21, 1992 "On State Aid to Families with Children"[1], on April 26, 2001 "On the protection of childhood"[2].

With the entry into force of the Law of Ukraine on June 23, 2005 "On Private International Law"[3], Articles 275–281 were excluded from the FC, and now the peculiarities of the application of the rules of family law to foreigners and stateless persons are determined by the provisions of that law, in particular, by Articles 55–69 of Section IX "Conflicting norms of family law", which allow the regulation of marriage and family relations by the foreign law norms.

The family law acts also include resolutions of the Cabinet of Ministers of Ukraine, in particular:

– on April 26, 2002, No. 564 "On Approval of the Regulation on Family-Type Orphanage"[4];

– on April 26, 2002, No. 565 "On Approval of the Regulation on Foster Family"[5];

– on November 10, 2010, No. 1025 "On Approval of Model Civil Acts Records, Descriptions and Model Forms of State Registration Certificates of Civil Status"[6], etc.

According to the Decree of the President of Ukraine on August 4, 2000 No. 958/2000 "On socio-economic support for the formation and development of the student family"[7], by the decree of the Cabinet of Ministers of Ukraine on March 14, 2001 "Measures of supporting the formation and development of the student family"[8] was approved.

Certain normative legal acts have been approved by the Ministry of Justice of Ukraine, for example, the Rules of state registration of civil status acts in Ukraine, approved by the order of the Ministry of Justice of Ukraine on 18.10.2000 (in the version dated 24.12.2010)[9].

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[1] Про державну допомогу сім'ям з дітьми: Закон України від 21 листопада 1992 р. №2811-XII. URL: http://zakon.rada.gov.ua/laws/show/2811–12 (дата звернення: 12.11.2018).

[2] Про охорону дитинства: Закон України від 26 квітня 2001 р. №2402-III. URL: http://zakon.rada.gov.ua/laws/show/2402–14 (дата звернення: 12.11.2018).

[3] Про міжнародне приватне право: Закон України від 23 червня 2005 р. №2709-IV. URL: http://zakon.rada.gov.ua/laws/show/2709–15 (дата звернення: 12.11.2018).

[4] Про затвердження Положення про дитячий будинок сімейного типу: постанова Кабінету Міністрів України від 26 квітня 2002 р. №564. URL: http://zakon.rada.gov.ua/laws/show/564–2002-п (дата звернення: 12.11.2018).

[5] Про затвердження Положення про прийомну сім'ю: постанова Кабінету Міністрів України від 26 квітня 2002 р. №565. URL: http://zakon.rada.gov.ua/laws/show/565–2002-п (дата звернення: 12.11.2018).

[6] Про затвердження зразків актових записів цивільного стану, описів та зразків бланків свідоцтв про державну реєстрацію актів цивільного стану: постанова Кабінету Міністрів України від 10 листопада 2010 р. №1025. URL: http://zakon.rada.gov.ua/laws/show/1025–2010-п (дата звернення: 12.11.2018).

[7] Про соціально-економічну підтримку становлення та розвитку студентської сім'ї: Указ Президента України від 4 серпня 2000 р. №958/2000. URL: http://zakon.rada.gov.ua/laws/show/958/2000 (дата звернення: 12.11.2018).

[8] Про заходи щодо підтримки становлення та розвитку студентської сім'ї: Розпорядження Кабінету Міністрів України від 14 березня 2001 р. №92-р. URL: http://zakon.rada.gov.ua/laws/show/92–2001-р (дата звернення: 12.11.2018).

[9] Про затвердження Правил державної реєстрації актів громадянського стану: наказ Міністерства юстиції України від 18 жовтня 2000 р. №52/5 (в ред. наказу від 24 грудня 2010 р. №3307/5). URL: http://zakon.rada.gov.ua/laws/show/z0719–00 (дата звернення: 12.11.2018).

The presence of these and other normative legal acts of family law, a significant number of which norms, as well as part of the norms of FC Ukraine, has a public character. That confirms the conclusion that family law cannot be recognized as a branch of civil law as a private law, but it is an independent sphere of Ukrainian law that contains both private law (mainly) and public law (which serve family relations) norms[1].

Z. V. Romovska states that transferring from the Civil Procedure Code of Ukraine to the FC of Ukraine the norms on the analogy of law and the analogy of the law is one of the achievements of FC Ukraine. Obviously, that transferring from the Civil Procedure Code of Ukraine is explained by the fact that at that time the CC of Ukraine, which today also contains an article on the analogy of law and the analogy of the law, had not yet been accepted, although the draft of the CC of Ukraine had already contained it.

According to Art. 10 FC of Ukraine, if certain family relations are not regulated by that Code, by other normative legal acts or agreement (agreement) of the parties, the rules of that Code governing such relations (analogy of the law) shall apply to them.

If the analogy of the law cannot be applied to the regulation of family relations, they are regulated in accordance with the general principles of family legislation (analogy of law).

The inclusion of the provisions on the analogy of the law and the analogy of law to the FC of Ukraine confirmed that these categories are not procedural, but primarily material. Therefore, if there is no certain norm in the FC of Ukraine, then it is possible to apply an analogy of the law or an analogy of law. That legal instrument regulates relations that are not directly regulated by the FC of Ukraine.

However, it should be understood that the analogy of the law and the subsidiary application of the norms of the CC of Ukraine on family relations regulation are different legal means of overcoming the gaps in family law, since the analogy of the law applies the rules of one sphere of the law (family one), and in the case of subsidiary application of the norm one sphere of law (civil one) is applied in addition to the norms of another, related sphere of law (family one).

Conclusions. The conducted research of problems of application of norms of the CC of Ukraine and other normative-legal acts of national legislation on family relations regulation allows to formulate such conclusions.

1. Subsidiary nature of the norms of the Civil Code of Ukraine in relation to the FC of Ukraine, despite its importance for the regulation of private relations, should be taken into account in court practice, basing on the imperative norm of Part 1 of Art. 9 of the CC of Ukraine.

2. Recognizing as invalid the agreements on patronage of a child, on setting

[1] Боднар Т. В. К вопросу о месте семейного права в системе права Украины, *Актуальні проблеми цивільного, сімейного та міжнародного приватного права (Матвєєвські цивілістичні читання). Матеріали міжнародної науково-практичної конференції, Київ, 16 вересня 2010 р.)* 37

a children to a foster family, on organization of activities of family-type orphanage, which, in our opinion, do not relate to family-legal agreements, should be carried out on the grounds stipulated by the CC of Ukraine.

3. The presence in the FC of Ukraine and in other normative-legal acts of family law of a significant number of norms of a public character confirms the conclusion that family law cannot be recognized as a sub-sphere of civil law as a private law, but it is an independent sphere of Ukrainian law, containing both private law (mainly) and public law (serving family relations) norms.

Published: Право України. 2019. № 2. С. 119–132.