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Case Note

RESOLVING CONFLICTS OF LAW DURING JUDICIAL PROCEEDINGS: AN EMPIRICAL STUDY OF UKRAINE

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ABSTRACT

Background: *Law is a key regulator of social relations. Its systemic nature is fundamental for proper, clear and comprehensive regulation of legal relations. As an integral system, law has its own logic, structure, order and purpose. This purpose is to properly regulate social relations, ensure law and order, and qualitatively and consistently satisfy the rights, obligations and interests of participants in legal relations. However, legal regulation is not without its flaws. One major issue of legal regulation is gaps in the law, where certain social relations lack proper legal regulation due to a lack of specific legislative or legal approaches. Other flaws include conflicts between laws, legislative gaps, qualified silence of the legislator, "darkness" of legal norms, and a "seeming" need for legal regulation and other legal phenomena similar in nature. This article addresses how judges resolve conflicts of law in the course of judicial proceedings, namely the construction of a mechanism to resolve conflicts within national legislation to ensure the right to a fair trial. This issue is of particular importance in the context of the war in Ukraine because, unlike in the relatively stable judicial practice of resolving disputes that arise in a society where there is no war, today, the courts now face unprecedented cases, such as those involving military medical commissions decisions, financial support of military personnel, and new wartime criminal prosecution. Additionally, judges must navigate the procedural norms for the administration of justice in wartime, which are changing rapidly.*

The study identifies specific cases of conflict in law, particularly in issues related to mobilisation. It highlights how inconsistencies in current legislation and the lack of uniform approaches to overcoming them often prevent citizens from exercising their rights. This situation directly contradicts the Sustainable Development Goals in terms of building peaceful and inclusive societies for sustainable development, ensuring access to justice for all, and building effective, accountable, and inclusive institutions at all levels.

The authors of the article highlight the growing importance of legal principles in resolving conflicts within the law. Foundational concepts like the rule of law, legal certainty, and legality are recognised grounds for judicial decision-making. Accordingly, this allows courts to interpret conflicts in specific areas of legislation – such as tax legislation in favour of the taxpayer, child rights in favour of children, and labour law in favour of employees. Consequently, similar claims may be resolved differently depending on their subject matter. To support this analysis, the authors analysed 150 decisions of Ukrainian judges, studied the concept of conflicts, formulated a refined definition, assessed the role of judicial law-making in resolving legal conflicts, and developed a mechanism for addressing conflicts in law by judges.

Methods: *The authors employed a general dialectical analysis approach grounded in the doctrine of society and thinking, along with the historical method, to analyse the development of legal norms and institutions in different historical periods. This approach provides insights into their origins, evolution and impact on the modern legal system. Methods of analysis and synthesis of information were also utilised. To support the authors' conclusions, relevant empirical information, including court decisions from the Unified State Register of Court Decisions, were referenced. A total of 150 court decisions containing collisions from 2015 to 2024 were analysed, 22 of which were cited in this article.*

Results and Conclusions: *Conflicts in law are defined as subjectively caused phenomena involving the confrontation of several norms or their totality, resulting in the inability to apply legal norms effectively, clearly, and consistently to regulate social relations. A definition of conflicts in law from a judicial perspective is also proposed: they are contradictions within legal regulation, a negative legal phenomenon that a judge, with the authority vested in them, must resolve in a manner that upholds fundamental principles of law during the administration of justice.*

1 INTRODUCTION

In applying current legislation, Ukrainian courts face problems due to imperfections and gaps within national legislation, often requiring them to draw on the fundamental legal principles and the ideological intent behind legal norms to resolve cases. This is particularly evident in cases that relate to family, labour, and military law, as well as in cases involving public legal relations. When making substantive decisions, courts frequently encounter conflicts from variations in the strength, specialisation or date of adoption of normative legal acts. Resolving these conflicts not only forms a crucial part of the court's reasoning but serves as a means to achieve fair justice.

For Ukraine, resolving legal conflicts in the administration of justice is of particular importance. First, the country continues to transition its legislation from Soviet-era to national legislation, with many pre-independence regulations still partially or entirely outdated and in need of replacement. Secondly, Ukraine's current legislation is not devoid of various types of collisions that have arisen both as a result of the involvement of multiple

bodies in drafting normative legal acts and the sheer accumulation of such acts – some of which suffer from poor drafting quality. Thirdly, it is almost impossible to resolve conflicts at the administrative level, and most often, going to court is the only effective way to protect the rights of individuals and legal entities.

This article provides examples of specific cases of collisions and outlines the author's proposed vision to solve them. The aim is to establish uniform, scientifically grounded conclusions that will enable judges to apply a systematic, algorithmic approach to overcoming simple and complex collisions within current legislation by judges in the administration of justice.

2 CONFLICTS IN LAW

Scholars perceive conflicts in law ambiguously. In his work, *Legal Technique*, German philosopher Rudolf von Jöring pointed out that even the most precise law may be challenging for judges to apply, as it often lacks the clarity necessary for straightforward application to particular cases. He argues that technical imperfections reflect the broader imperfection of law as a whole.[1] In the context of conflicts, it should be noted that laws with such defects may lead to conflicts that make formal application by judges impossible.

Conflicts in law are generally perceived by the scientific community and practitioners as a certain negative phenomenon. The inability to clearly apply the rules of law in the system of civil law causes various conflict situations, including discrepancies in interpretation and law enforcement, which can lead to poor quality of court decisions. Accordingly, judges play a crucial role in finding the right approach to resolving conflicts to ensure the establishment of democracy and equality in applying laws. A high-quality court decision, where the law is applied reasonably, impartially, and in accordance with the case circumstances, is one of the main criteria for the quality of justice.

Some, however, see conflicts in law as a positive phenomenon, suggesting they reflect that social relations and state-legal mechanisms are developing.[2] Such a position can be justified by the fact that conflicts are virtually impossible to avoid in legislative evolution and a natural result of the legal system's progressive development along a certain established path.

Regardless of how we perceive legal conflicts – positively, neutrally or negatively – it is essential to recognise that law, as a regulator of social relations, is effective when its norms are both imperceptible and absolutely accepted by those it governs and sufficiently robust to qualitatively and quickly resolve existing shortcomings and conflicts. Collisions are neither wholly negative nor positive; they are a legal fact that law-making and law

1 Rudolf von Jöring, *Juridical Technique* (FS Schoendorff tr, Typo-Lithography AG Rosen (AE Landau) 1905).

2 YI Lenger, 'Legal Nature of Conflict and Its Features in Municipal Law' (2017) 25 Scientific Bulletin of the International Humanities University: Series Jurisprudence 14.

enforcement agencies face. Accordingly, the ultimate goal to be achieved is more global and significant for society than the problem of conflicts in law, which, while challenging, should not undermine the primary purpose of the law. Accordingly, legal conflicts are a legal fact that require resolution.

As F. A. Hayek pointed out, law is crucial both for rulers and for maintaining order, enabling people to continue their efforts in peace.[3] Analysing this given thesis, it can be assumed that the scientist distinguishes two perspectives on law: 1) that of the ruler (or statesman), in which law serves as a foundational tool and a guarantee of existence and instrument of activity, enabling it to fulfil its tasks effectively and consistently; and 2) the perspective of the ordinary person whether a natural and legal person, a citizen, a foreigner, a stateless individual who resides under the state's laws. For individuals, the law guarantees the opportunity to work and create a material, moral, economic, labour, social, and cultural basis both for their own existence and that of the state. Citizens (population) are not required to be professional lawyers to be able to accurately and qualitatively interpret the content of legislation.

The well-known theorist and philosopher of law R. Dvorkin remarked that while lawyers and judges may have differing views on the nature of legal rights, citizens and statesmen often share similar contradictions in connection with political rights.[4] Accordingly, a conflict of law is not a factor that should adversely affect a person's life. Instead, it should primarily impact the activities of the state and lawyers, creating a certain space for dialogue and resolving conflicts. Such a space can be formed through collaboration between the professional legal community and competent public authorities, particularly in the administration of justice.

3 THE ROLE OF JUDICIAL LAW-MAKING IN RESOLVING LEGAL CONFLICTS

Taking into account the division of power into three main branches established by Art. 6 of the Constitution of Ukraine: legislative, executive and judicial, it should be emphasised that each of them has its own rights and obligations envisaged by the Constitution and legislation to exercise the powers vested in them.

Using the powers established by normative legal acts, public authorities carry out law-making and law enforcement. However, it is impossible to clearly assign clear law-making and law-enforcement functions to each branch of power. While the legislative branch is primarily responsible for law-making, it holds some law-enforcement functions. Similarly, the judiciary, in turn, contains a number of opportunities that can be interpreted as law-making.

3 Friedrich Hayek, *Law, Legislation, and Freedom: A New Exposition of the Broad Principles of Justice and Political Economy*, vol 1: Rules and Order (Sphere 1999).

4 Ronald Dworkin, *Serious View of Law* (A Frolkin tr, Osnova 2000).

In the context of resolving legal conflicts, the issue of judicial law-making is less acute when addressing gaps in law and legislation. Resolving conflicts in law involves finding a rational compromise, and each branch of government, within its competence, should strive to achieve this rational compromise. The Court, as the body with jurisdiction to resolve any legal disputes and administer justice under the Constitution of Ukraine, plays a critical role in addressing conflicts in specific legal relations. Courts are approached to resolve legal disputes, including those where conflicts in law exist due to defects in legal regulation.

It is worth emphasising that due to the distribution of functions among the authorities, the legislative branch has a greater institutional capacity to solve the problems of conflicts in law at the global level, forming and proposing a new legal order to regulate certain social relations.

In administering justice, judges rely on specific rules that can be applied to a particular case under specific circumstances. While judicial law-making is permitted, it often results in less clearly formulated norms, known as "quasi-precedents." These are specific approaches to legal regulation that, while not formal precedents, can serve as a legal basis in cases provided for by law.

In particular, according to the Law of Ukraine *On the Judiciary and the Status of Judges*, the practice of courts of cassation should be taken into account by state authorities and judges of lower instances. In addition, it should be emphasised that there is no clear, consolidated procedure for resolving conflicts. According to the Supreme Court, the Constitution of Ukraine does not establish the priority of application of a particular law, including depending on the subject of legal regulation. Furthermore, there is no specific Ukrainian law regulating the resolution of conflicts between norms of laws with equal legal force.[5]

However, in August 2023, the Law of Ukraine *On Law-Making Activity* was adopted,[6] which includes Art. 66, briefly addressing methods for overcoming conflicts (contradictions and inconsistencies) in legal rules while implementing normative legal acts. However, it must be noted that the article does not fully outline the methods to resolve conflicts, only indicating temporal and hierarchical ways for resolving simple conflicts.

The lack of direct and detailed legislative regulation gives rise to double consequences: on the one hand, it provides the space for judges to make the most appropriate decision, while on the other hand, it increases the responsibility for sound argumentation in adopting decisions and applying legal acts. In fact, when resolving a conflict of law, a judge is free to apply existing legal approaches. The quality of conflict resolution depends on the

5 Case no 240/4937/18 (Supreme Court of Ukraine (Grand Chamber), 18 March 2020) <https://reyestr.court.gov.ua/Review/88952401> accessed 30 September 2024; Case no 580/2371/20 (Supreme Court of Ukraine, 23 September 2020) <https://reyestr.court.gov.ua/Review/91722416> accessed 30 September 2024.

6 Law of Ukraine no 3354-IX of 24 August 2023 'On Law-Making Activity' [2023] Official Gazette of Ukraine 88/5121.

professionalism, experience, and attentiveness of the judge. It is essentially individual in each case, except when applying established practices of resolving typical cases.

Historical aspect

In the historical and legal context, conflicts in Ukrainian law have their own chronology, which allows them to be systematised in a certain way. D. Belkina characterises the following periods through the prism of changes in the legislation that regulates the above issues: 1) 1991 - 2003; 2) January 2004 - April 2014; 3) from April 2014 onwards.[7]

However, this periodisation is not without its disadvantages. In particular, it is worth paying attention to the fact that it concerns only the selection of such a criterion for classification as amendments to the legislation. In our opinion, when determining the periods of development of legislation on the regulation of relations regarding conflicts in law, the main criterion should be the amendments to the legislation (which eliminate conflicts and gaps). Additionally, it is necessary to consider auxiliary mechanisms – such as principles, legal certainty, and case law – that have expanded the opportunities for resolving conflicts with the democratisation of the Ukrainian state. Given this, analysing the historical components of how judges have addressed conflicts since Ukraine's independence, we propose the following chronological order of legislative development:

1) *from 28 June 1991 (establishment of Ukraine's independence) to 24 August 1996 (adoption of the Constitution of Ukraine).* This period was characterised by particular difficulty, as Soviet legislation was implemented into the legal system of Ukraine through legal succession. Accordingly, justice was administered on the basis of outdated legislation that did not meet the needs of the time and often conflicted with laws adopted by the Verkhovna Rada of Ukraine and decrees of the Cabinet of Ministers of Ukraine (acts with equal legal force to laws). During this period, the rule of law and legal principles had not yet gained the prominence they would later acquire in Ukraine's legal system. Consequently, the only tool for resolving conflicts was the application of conflict-of-law principles. The absence of the Constitution of Independent Ukraine also played a negative role, as there was no higher legal framework to serve as a direct reference point in the administration of justice. Furthermore, conflicts in law enforcement were resolved somewhat ambiguously due to the lack of a unified information base of Ukrainian legislation and the rapid pace at which new legal norms were introduced;

2) *from 24 August 1996 to 2004.* This period was marked by the development of a new legislative framework, including the adoption of new codes of substantive and procedural law and the gradual displacement of Soviet-era legislation. The Constitution of Ukraine established a democratic vector of development for the legal system, providing a solid foundation for forming approaches to resolving legal conflicts.

7 Oleksandr G Kolb (ed), *The Concept and Content of Gaps and Collisions in the Criminal Executive Legislation of Ukraine and Ways to Overcome Them* (Helvetica 2021).

Characterising this period, it is worth mentioning the position of D. Lylak, who stated that as of March 2003, there was not enough legislative regulation in Ukraine. At that time, the share of laws in the legislative system was only 3.8%. According to the author, such a situation gave rise to legal collisions between legal acts and their norms, creating contradictions in the law enforcement activities of courts and law enforcement agencies. Such contradictions inevitably resulted in defects in legal understanding, legal awareness, legal culture and legal behaviour;[8]

3) *from 2004 to 2014.* This period was marked by the entry into force of new codes of substantive law, democratisation and judicial independence, which from 2010 to 2014 was actively destroyed. A significant development was the adoption of the Law of Ukraine, *On the Execution of Judgments and Application of the Practice of the European Court of Human Rights*, which set the vector for the development of the practical application of the rule of law in the administration of justice and, among other things, made it possible to apply the practice of the European Court of Human Rights as a guideline in resolving conflicts;

4) *from 2014 to the present.* An important democratisation process resulted in the revision of Ukraine's judicial system. The practice of precedent decisions of courts of cassation, which should be taken into account by the courts of lower instances in administering justice, and the rule of law consolidated the status of a practical tool. Accordingly, the possibility of judges resolving conflicts has increased significantly.

The historical evolution of conflict resolution in Ukrainian law demonstrates that while legal conflicts cannot be entirely avoided if judges are provided with the necessary means to resolve them, they can be localised and eradicated as much as possible in most cases. Furthermore, reducing the caseload on courts of first instance allows judges to dedicate more attention to each case, facilitating the effective resolution of legal conflicts and the restoration of justice.

Having emphasised the critical role of judges in overcoming the phenomenon under consideration in law, it is important to define **what a conflict in law is and what a conflict in law is for a judge.**

Theoretical aspect

According to J. Lenger, conflicts in law are 1) contradictions and 2) differences between various legal norms and acts. It is necessary to clarify that by acts, the scientist refers to legal acts that regulate a common object of legal regulation.[9]

8 Dmytro D Lylak, 'The Problem of Collisions in the Legislation of Ukraine (Theory and Practice)' (PhD (Law) thesis, VM Koretsky Institute of state and law NAS of Ukraine 2004).

9 Lenger (n 1).

S. Pogrebnyak characterises conflicts in law in two ways: in the narrow sense, as an exclusively internal or formal (formal-logical) contradiction within the legal system, and in the broad sense, as a contradiction between existing legal acts and institutions, the rule of law, and the intentions or actions aimed at changing, recognising or rejecting them.[10]

Analysing the problems of conflicts in penal law, D. Belkina pointed out the importance of the subject component. In her opinion, conflicts in law are formal inconsistencies and contradictions resulting from violations of rule-making and its principles, as well as temporal, hierarchical and substantive errors of the subjects of this type of activity existing in legal practice.[11]

T. Shevchenko emphasises that collisions should be considered in two senses: narrow and broad. In the narrow sense, a conflict in law is a practical category in law enforcement, denoting discrepancies in two or more normative legal acts. In the broad sense, conflicts in law are considered legal conflicts, representing material contradictions in legal regulation and contradictions within the legal system itself.[12]

In studying the conceptual apparatus, S. Vasyliv points out the synonymy of the categories that are found in the scientific literature that address the problem of collisions, including *legal conflict*, *conflict of legislation*, *conflict of legal acts*, *conflict of laws* and *conflict of legislation*.[13] While we can only partially agree with the author, it is important to note that the terms *legal conflict*, *conflict of legislation*, *conflict of legal acts* and *conflict of laws* denote a specific problem that exists in legal regulation. At the same time, *conflict of laws* serves as a broader characteristic of Ukrainian legislation, which inevitably contains legal conflicts.

V. Zvonarev's position that the conflict in law is a contradiction between "available" and "necessary" is quite reasonable. The essence of conflicts on a global scale, according to the author, is the contradiction between positive law and natural law.[14] While such an opinion has the right to exist, it is important to note that conflicts may also arise between two positive laws that align with the purpose of natural law in regulating legal relations. Accordingly, a conflict in law does not necessarily contradict the natural law principles of legal relations.

10 Stanislav P Pogrebnyak, 'Collisions in the Legislation of Ukraine and Ways to Overcome Them' (PhD (Law) thesis,Yaroslav Mudryi National Law University 2001).

11 Dina Belkina, 'Legal Gaps and Collisions in the Criminal Executive Legislation of Ukraine: Concept and Content' (2020) 43(3) Jurnalul juridic national: teorie și practică 77.

12 TV Shevchenko, 'Legal Collision: Theoretical and Legal Aspect' (2013) 3 Law and Society 13.

13 SS Vasyliv, 'On the Development of the Institute of Jurisdiction Over the Consideration of Cases on Administrative Offenses' (2015) 813 Bulletin of Lviv Polytechnic National University: Series Juridical Sciences 15.

14 Valentyn Zvonarov, 'Collisions in Law: Theoretical and Methodological Approaches to Definition and Classification' (2021) 6 New Ukrainian Law 84, doi:10.51989/NUL.2021.6.11.

The Ministry of Justice of Ukraine points to three primary forms of manifestation of conflicts in law: 1) inconsistency between existing normative legal acts; 2) their contradictions regarding one subject of regulation; and 3) a contradiction between two or more rules of law regarding the regulation of the same issue.[15]

Thus, summing up the analysis of scholars' opinions on conflicts in law, we will formulate their key characteristic features:

1) conflicting nature - the confrontation between several norms or their totality;
2) subjective nature of their occurrence - collisions are based on the decisions of certain subjects;
3) consequences - the inability to qualitatively, clearly and consistently apply legal norms to regulate social relations.

We consider it necessary to support the opinions expressed and clarify the definition of conflicts in law with the help of the features we have formulated in this study. Thus, conflicts in law are subjectively caused phenomena consisting of the confrontation of several norms or their totality, which leads to the impossibility of qualitatively, clearly and consistently applying legal norms to regulate social relations.

Practical aspect

To illustrate conflicts in law for a judge, we will turn to some examples of judicial practice where courts addressed such conflicts. Notably, the issue of conflicts in law has been repeatedly considered by the Supreme Court. In a 2024 Resolution, the Court identified a conflict between the provisions of the Tax Code of Ukraine and the Resolution of the Cabinet of Ministers of Ukraine No. 89 in terms of the possibility of carrying out control measures by conducting certain types of inspections in the period from the date of entry into force of such a resolution to the last calendar day of the month (inclusive), in which the quarantine, established by the Cabinet of Ministers of Ukraine on the entire territory of Ukraine to prevent the spread of COVID-19, ended.

The Supreme Court has repeatedly resolved the above conflict. In particular, it addressed the impact of procedural violations resulting from the conflict of rules on the legitimacy of tax notification decisions adopted based on the results of relevant tax audits. The Supreme Court's rulings on this matter include those in cases No. 420/22374/21, No. 540/5445/21, No. 160/14248/21, dated 28 December 2022; case No. 160/24072/21, dated 12 October 2022; case No. 600/1741/21-a, dated 28 October 2022; and case No. 640/16093/21, dated 1 September 2022.[16]

15 Letter of the Ministry of Justice of Ukraine no 758-0-2-08-19 of 26 December 2008 'Regarding the Practice of Applying Legal Norms in the Event of a Collision' <https://zakon.rada.gov.ua/laws/show/v0758323-08#Text> accessed 30 September 2024.

16 Case no 460/16388/21 (Administrative Court of Cassation of the Supreme Court of Ukraine, 28 May 2024) <https://reyestr.court.gov.ua/Review/119466584> accessed 30 September 2024.

The dissenting opinion of Judge V.I. Krat in the 2024 Resolution of the Supreme Court is noteworthy.[17] In his analysis, the judge noted that the panel of judges should have referred the case to the Grand Chamber of the Supreme Court due to the necessity of deviating from the conclusions made in the resolutions of the Grand Chamber of the Supreme Court of 13 October 2020 (case No. 447/455/17, proceedings No. 14-64цс20) and 21 August 2019 (case No. 569/4373/16-ц proceedings No. 14-298цс19). The judge argued that this deviation was required because the case presented an exceptional legal issue, and referring it to the Grand Chamber would be necessary to promote the development of law and ensure the formation of a unified law enforcement practice.[18]

The Resolution itself addressed a conflict between the norms of the Housing Code of Ukraine and the Civil Code of Ukraine regarding the use of residential premises. The case involved a dispute between former spouses, where one spouse owned a residential building and the land on which it stood as personal private property, while the other spouse, initially residing in the house as a family member, continued to occupy it even after the dissolution of the marriage and the family relations ended.

The Joint Chamber of the Cassation Criminal Court of the Supreme Court drew attention to the fact that the principle of the rule of law requires judicial action in cases where contradictory norms of the same hierarchical level coexist. In such situations, courts of different types of jurisdiction are required to apply the classical formulas (principles) of legal practice: "the later law takes precedence over the older one" (*lex posterior derogat priori*); "the special law takes precedence over the general law" (*lex specialis derogat generali*); and "a general later law does not take precedence over a special older one" (*lex posterior generalis non derogat priori speciali*).

In its Decision No. 5-p(II)/2020, dated 18 June 2020, the Constitutional Court of Ukraine noted that failure to apply these formulas (principles) when required results in the erosion of the effectiveness of the rule of law. The imperative to uphold the rule of law requires the simultaneous application of all three classical formulas.[19]

Accordingly, it is necessary to determine separately what conflicts in law represent for a judge. The characteristic factors in this case are:

1) the complexity of resolving the case;
2) possible impact on the quality of the court decision.

17 Case no 200/1057/24 (Administrative Court of Cassation of the Supreme Court of Ukraine, 30 September 2024) <https://reyestr.court.gov.ua/Review/122007861> accessed 30 September 2024.

18 Case no 761/32982/21, Dissenting opinion of judge Krat VI (Civil Court of Cassation of the Supreme Court of Ukraine, 14 August 2024) <https://reyestr.court.gov.ua/Review/121029293> accessed 30 September 2024.

19 Case no 554/2506/22 (Criminal Court of Cassation (Joint Chamber) of the Supreme Court of Ukraine, 15 April 2024) <https://reyestr.court.gov.ua/Review/118558563> accessed 30 September 2024.

Thus, conflicts in law represent a form of contradiction within legal regulation, a negative legal phenomenon that a judge must qualitatively, in compliance with the basic principles of law, resolve in the process of administering justice.

Conflicts in law are divided into temporal, substantive, and hierarchical.[20] Some scholars recognise the presence of complex collisions. Here is a breakdown of these types:

1) Temporal collisions occur when one legal relationship is governed by several normative legal acts with the same legal force, but one of the acts comes into force later than the other.
2) Substantive conflicts arise when there are several normative legal acts, institutions or norms of the law of equal legal force, where one act is considered general and the other special in relation to the regulation of these legal relations.
3) Hierarchical collisions involve collisions between acts of several bodies regulating the same legal relations but with differing legal forces. Examples include conflicts between a Resolution of the Cabinet of Ministers of Ukraine and the Law of Ukraine, a Resolution of the Cabinet of Ministers of Ukraine, and decisions made by local self-government bodies.

Complex conflicts are rather rare and occur when several types of conflicts arise regarding the regulation of certain legal relations. For instance, they may combine substantive and hierarchical collisions or temporal and substantive conflicts. Such conflicts are characterised by the absence of an obvious solution for determining the correct legal regulation.

One example of the existence of complex conflicts was given by the Supreme Court of Ukraine in 2015.[21] The case was considered in the court of administrative jurisdiction and involved legal relations in the field of social security. In this case, temporal and substantive collisions were present. The court considered both the issue of the validity of the law over time and the issue of a special law. In resolving this conflict, the court emphasised that the norms of the special law should take precedence in regulating the relations, even though the special law provisions were adopted earlier.

In this context, it should be noted that more than 60% of the cases analysed in our study relate to the consideration of disputes on social security. This is due to significant legislative changes in the field of social security and pensions, including the establishment of new rules for the calculation of payments and various pensions; the number of disputes and facts of conflicts has increased.

An example of a complex conflict is also found in the 2021 Resolution of the Grand Chamber of the Supreme Court. In this Resolution, the court conducted a systematic analysis of the legislation that regulates the conditions, grounds and procedure for

20 Shevchenko (n 12).

21 Case no 753/22929/14-a (Supreme Court of Ukraine, 23 June 2015) <https://reyestr.court.gov.ua/Review/46570809> accessed 30 September 2024.

compensation for damage caused by unlawful decisions, actions or inaction of regulatory authorities and their officials (officers), as outlined in Art. 114 of the Tax Code of Ukraine. The court identified the presence of a complex conflict, which involved an internal contradiction with the provisions of the Tax Code of Ukraine regarding the amount of damages, as well as in the contradiction of the norms of law of the Tax Code of Ukraine and those of the Commercial and Civil Codes of Ukraine. This conflict specifically concerned the possibility of compensating legal expenses incurred for attorney services during the out-of-court settlement.[22]

Thus, complex conflicts arise when two or more conflicts– temporal, substantive or hierarchical – combine within the same legal relationship, leading to a dispute that the court must resolve.

In times of war, courts continue to consider cases related to legal relations that were typical in peacetime while also considering the impact of martial law. However, full-scale aggression has led to changes in the regulations governing mobilisation, military service, and the administration of justice under martial law. These regulations often change, leading to collisions.

For example, in 2024, the Seventh Administrative Court of Appeal addressed a case involving financial support for military personnel, specifically the calculation of one-time financial assistance upon dismissal from military service. Referencing the Grand Chamber of the Supreme Court, the court noted that establishing the procedure and conditions for the payment of monthly additional monetary remuneration set by a by-law cannot narrow or deny the right to receive such remuneration as established by a law of supreme legal force. Hierarchical conflicts of normative legal acts are overcome by applying a norm enshrined in a normative legal act with the highest legal force. In this case, the legal regulation of disputed legal relations, the provisions of Law No. 2011-XII and Resolution No. 889 are applicable, not Instructions No. 595 and 550. The provisions of Law No. 2011-XII also establish the right of military personnel to receive one-time financial assistance upon discharge from military service. For the above reasons, the provisions of Instruction No. 260 were deemed inapplicable, particularly in terms of restricting the inclusion of monthly additional monetary remuneration from which the one-time financial support is calculated.[23]

Regarding procedural legislation under martial law, it is necessary to give an example where the court notes the conflict of norms of the Criminal Procedure Code. In 2024, the investigating judge of the Znamensky City District Court of the Kirovohrad region pointed out that in accordance with paragraph 2 of Pt. 1 of Art. 615 of the Criminal Procedure Code

22 Case no 910/11820/20 (Supreme Court of Ukraine (Grand Chamber), 16 November 2021) <https://reyestr.court.gov.ua/Review/101829998> accessed 30 September 2024.

23 Case no 240/8441/24 (Seventh Administrative Court of Appeal, 30 September 2024) <https://reyestr.court.gov.ua/Review/121973008> accessed 30 September 2024.

of Ukraine, in the event of the imposition of martial law and if there is no objective possibility for the investigating judge to exercise his powers (provided for in Arts. 140, 163, 164, 170, 173, 206, 219, 232, 233, 234, 235, 245-248, 250 and 294), such powers are exercised by the head of the relevant prosecutor's office, at the request of the prosecutor or investigator agreed upon by the prosecutor.

At the same time, according to Paragraph 20-7 of Section XI of the Transitional Provisions of the Criminal Procedure Code of Ukraine, introduced by the Law of Ukraine dated 15 March 2022 No. 2137-IX, during the state of emergency or martial law on the territory of Ukraine, temporary access to items and documents (specified in Paras. 2, 5, 7, 8 of Pt. 1 of Art. 162) can only be granted based on a resolution of the prosecutor, agreed upon with the head of the prosecutor's office. This provision, however, does not specifically address situations where the investigating judge is unable to exercise his/her powers. Thus, there is currently a conflict of law, ambiguous interpretation and application of these provisions of the Criminal Procedure Code of Ukraine.[24]

4 MECHANISMS FOR RESOLVING CONFLICTS IN LAW

Each conflict in law has slightly different causes, consequences, and a specific legal nature. Accordingly, approaches to solving them differ.

In most cases, legal conflicts cannot be resolved without the involvement of law-making and law enforcement entities. Exceptional circumstances can be considered when certain events and legal facts governed by conflicting legal rules cease to exist, eliminating the need for further legal regulation. In such cases, the relevant legal relations may no longer require application.

Authorities operate within the limits of powers granted to them by law, forming the most transparent and clear strategies for resolving legal conflicts. As such, these authorities have established practices for overcoming conflicts in law by applying the legal tools available, thereby forming a legal mechanism for conflict resolution.

The evolution of this mechanism is ongoing within modern national legal doctrine. For instance, Y. Lenger has formulated the components of this mechanism, defining it as a set of elements and legal tools aimed at overcoming conflicts. These components include the subjects of resolution, conflict of laws rules and principles, conflict-of-laws relations, methods and procedures for resolution, and the final act of resolution.[25]

24 Case no 389/2948/24 (Znamianka City District Court of Kirovohrad Oblast, 24 September 2024) <https://reyestr.court.gov.ua/Review/121917560> accessed 30 September 2024.

25 YuI Lenher, 'Mechanism for Resolving Legal Conflicts in Municipal Law, its Elements' (2017) 78 Actual Problems of State and Law 81.

We believe that the mechanism for judges to resolve conflicts in law is not merely a set of elements but also a defined procedural process. In essence, the mechanism for resolving conflicts, consisting of specific elements, serves as a means that can be applied by the court during the law enforcement process.

The most common ways to resolve conflicts in law are based on the application of conflict of laws principles, which Roman lawyers originally formed. These include, but are not limited to:

1) in case of temporal collisions, acts issued later are applied;
2) in case of substantive collisions between general and special acts, special acts shall be applied as a general rule;
3) in case of contradiction of acts of different legal force, acts of higher legal force shall be applied.

The Constitutional Court of Ukraine states that:

> " … The principle of the rule of law requires judges to apply conflict-of-laws principles in situations where conflicting rules of the same hierarchical level coexist. The rule of law, accordingly, presupposes the requirement to apply the following principles: 1) "the later law takes precedence over the older one" (lex posterior derogat priori); 2) "the special law takes precedence over the general law" (lex specialis derogat generali); (3) "A general law that is later does not take precedence over a special older law" (lex posterior generalis non derogat priori speciali). If the court does not apply these formulas (principles) in circumstances that require it to apply them, then the principle of the rule of law (the rule of law) loses its effectiveness."[26]

Given the fundamental importance of principles such as the rule of law and its components (legality, legal certainty, non-discrimination, prohibition of arbitrariness, respect for human rights), the question arises: what should be the solution when the application of the principles of conflict resolution in law leads to a violation of general legal principles?

Considering the role of legal principles in ensuring an objective, complete, fair decision of cases, the judge must, in addition to checking the possibility of applying a particular conflict-of-laws principle, also ensure that the application of certain rules does not worsen the situation of a person seeking to protect their rights, freedoms, and legitimate interests. Accordingly, general law principles prevail in resolving conflicts of law.

Confirmation of the need to apply general legal principles when resolving conflicts in law can be found in the 2022 decision of the District Administrative Court of Kyiv. In this decision, the court pointed out that the conflict in law related to social security must be

26 Decision no 5-p(II)/2020 case no 3-189/2018(1819/18) (Constitutional Court of Ukraine, 18 June 2020) [2020] 55-2/1729.

resolved in compliance with the principle of the rule of law in terms of recognising a person, his rights and freedoms as the highest values that determine the content and direction of the state. The court must also acknowledge the discretion of the state to determine the procedure and amount of guarantees, considering its financial and economic capacity, while ensuring a fair balance between the interests of the individual and society without violating the essence of the relevant rights.[27]

This position is echoed in other court decisions, such as in cases No. 240/14861/21, No. 240/14213/21, and No. 240/20356/21.[28]

In its 2022 decision, the Rivne District Administrative Court noted that a conflict of law should be resolved in compliance with the rule of law, in the sense that a person, his rights and freedoms are determined by the highest social values that determine the content and direction of the state. Therefore priority cannot be given to the norm that narrows the relevant rights, as this will violate a fair balance between the interests of the individual and society and negate the essence of the relevant rights.[29]

The importance of resolving conflicts in law and the role of the court in such matters is reflected in the Resolution of the Sixth Administrative Court of Appeal in case No. 640/24589/19, dated 19 March 2020. The court addressed the issue of recognising illegal actions and the lack of competence, highlighting the court's pivotal role in overcoming conflicts in law. The court noted that competence disputes may arise due to differing interpretations of the law, leading to overlapping powers of public authorities. In such cases, the court's role is to resolve legislative conflicts and eliminate the consequences of redundant or overlapping powers.[30]

The Eighth Administrative Court of Appeal, in its Resolution in case No. 1340/3445/18, dated 11 February 2019, considered the issues of declaring the order illegal and reinstating at work and emphasised the importance of compliance with the quality of the law.[31] If the law does not meet the quality criterion, the procedures that are most favourable for him/her should be applied to the person in whose legal relations conflicts of laws have arisen. In the

27 Case no 320/10182/21 (District Administrative Court of Kyiv, 31 January 2022) <https://reyestr.court.gov.ua/Review/103015945> accessed 30 September 2024.

28 Case no 240/14861/21 (Zhytomyr District Administrative Court, 28 January 2022) <https://reyestr.court.gov.ua/Review/103009499> accessed 30 September 2024; Case no 240/14213/21 (Zhytomyr District Administrative Court, 28 January 2022) <https://reyestr.court.gov.ua/Review/103009511> accessed 30 September 2024; Case no 240/20356/21 (Zhytomyr District Administrative Court, 27 January 2022) <https://reyestr.court.gov.ua/Review/103009172> accessed 30 September 2024.

29 Case no 460/15449/21 (Rivne District Administrative Court, 26 January 2022) <https://reyestr.court.gov.ua/Review/103019063> accessed 30 September 2024.

30 Case no 640/24589/19 (Sixth Administrative Court of Appeal, 19 March 2020) <https://reyestr.court.gov.ua/Review/88334654> accessed 30 September 2024.

31 Case no 1340/3445/18 (Eighth Administrative Court of Appeal, 11 February 2019) <https://reyestr.court.gov.ua/Review/79791797> accessed 30 September 2024.

event that national legislation has allowed for ambiguous or multiple interpretations of the rights and obligations of individuals, the court noted that the national authorities are obliged to apply the most favourable approach for individuals. That is, the resolution of conflicts in legislation is always interpreted in favour of the person.[32]

The principle of *lex superior derogat inferiori* ("a law of greater force repeals a law of inferior force") is exemplified in the Resolution of the Sixth Administrative Court of Appeal in case No. 620/3546/18, dated 5 February 2019, where it is defined as a concretisation of the principle of legality in law enforcement.[33] In this case, the court considered the conflict between the provisions of the Code of Administrative Procedure of Ukraine and the Tax Code of Ukraine regarding compliance with the procedure of administrative appeal before filing a claim. Acknowledging the conflict, the court ruled that the norms of the Tax Code of Ukraine should be applied, as it functions as a special law in relation to the general law, which in this case is the Code of Administrative Procedure of Ukraine.[34]

In its resolution on the case concerning the place of residence of minor children with one of the parents (case No. 805/2089/18-a, dated 25 September 2018), the Donetsk Administrative Court of Appeal emphasised the importance of prioritising the best rights of the child in the event of any legal conflict, incompleteness, vagueness or contradiction of the legislation governing disputed legal relations. Referring to Article 3 of the Convention on the Rights of the Child of 1995, the court noted that the child's welfare should take precedence over any conflicting legal provisions.[35]

In another significant ruling (case No. 236/2685/17, dated 15 August 2018), the Donetsk Administrative Court of Appeal addressed the obligation of the city council to approve technical documentation regarding the normative monetary valuation of state-owned agricultural land. The court underscored the state's duty to adopt legislation with a clear legal definition of disputed legal relations that ensures the protection and exercise of rights while avoiding legal gaps and conflicts. The court also stressed the importance of a systematic interpretation of the legislation in resolving disputes, emphasising the principle of legal determination and the need for legal clarity in addressing conflicts in law.[36]

In its ruling in case No. 876/5686/17, dated 11 July 2017, the Lviv Administrative Court of Appeal considered an appeal regarding the defendant's inaction in failing to address the plaintiff's application and pay one-time financial assistance to a disabled person of the

32 ibid.

33 Case no 620/3546/18 (Sixth Administrative Court of Appeal, 5 February 2019) <https://reyestr.court.gov.ua/Review/79785433> accessed 30 September 2024.

34 ibid.

35 Case no 805/2089/18-a (Donetsk Administrative Court of Appeal, 25 September 2018) <https://reyestr.court.gov.ua/Review/76697682> accessed 30 September 2024.

36 Case no 236/2685/17 (Donetsk Administrative Court of Appeal, 15 August 2018) <https://reyestr.court.gov.ua/Review/75928838> accessed 30 September 2024.

second group of a disease related to the defence of the Motherland. The court noted that the defendant's refusal was not based on the insufficiency of the documents submitted by the plaintiff for the payment but rather justified by a conflict of certain provisions of legislative acts.[37] The court recognised this situation as a quasi-conflict, stemming from the lack of a clear position or necessary documents on the defendant's part.

In its resolution in case No. 638/92/17 of 25 May 2017, the Kharkiv Administrative Court of No. 638/92/17 on 25 May 2017 referenced the European Court of Human Rights's decision in the case of *Kechko vs. Ukraine* (No. 63134/00, dated 8 November 2006). In this case, the ECHR highlighted the procedure for resolving conflicts in budgetary legislation. The European Court notably did not consider Ukraine's position on the conflict of two normative legal acts – the general law establishing budgetary assistance and the specific Law of Ukraine *On the State Budget of Ukraine* – should be resolved in favour of the latter as the special law. The ECHR held that state authorities could not justify the non-fulfilment of financial obligations by citing budgetary constraints. This stance aligns with the Court's earlier judgment in case No. 59498/00 *Burdov v. Russia*, reinforcing that financial limitations cannot excuse a failure to fulfil state obligations.[38]

In its resolution in case No. 501/531/16-a on 23 February 2017, the Odesa Administrative Court of Appeal analysed the legal standing of international treaties within Ukraine's legal system, noting that the precedence of international treaties over conflicting domestic laws grants Ukrainian courts rather broad powers when choosing a source of law to resolve a specific dispute.[39] In this case, when resolving a dispute that arose in legal relations on the enforcement of decisions, the court drew attention to the fact that according to the practice of the European Court of Human Rights, an effective remedy provided for by Art. 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms, should ensure the restoration of the violated right; in case of impossibility of such restoration, it must guarantee that the individual can receive appropriate compensation. The court underscored this as a guiding framework for resolving conflicts related to the legal force of the act in question.

37 Case no 876/5686/17 (Lviv Administrative Court of Appeal, 11 July 2017) <https://reyestr.court.gov.ua/Review/67703902> accessed 30 September 2024.

38 Case no 638/92/17 (Kharkiv Administrative Court of Appeal, 25 May 2017) <https://reyestr.court.gov.ua/Review/66789408> accessed 30 September 2024.

39 Case no 501/531/16-a (Odesa Administrative Court of Appeal, 23 February 2017) <https://reyestr.court.gov.ua/Review/65111117> accessed 30 September 2024.

5 CONCLUSIONS

Given the heterogeneity of conflict-of-laws legal relations and their conditional division into simple (temporal, substantive, hierarchical) and complex types, we would like to emphasise that the mechanism for their resolution itself cannot be homogeneous and unified. Accordingly, a simple mechanism must be applied to solve the so-called simple collisions, while complex collisions necessitate a complex mechanism.

A simple conflict arises when a judge encounters one conflict during case resolution. Formulating the mechanism for resolving simple conflicts in law by judges, we propose the following procedure:

1) analyse the problematic legal relations by a judge, determination of the presence of a conflict in law;
2) identify what type of conflict is present in the case;
3) review relevant precedents from courts of cassation;
4) verify the application of the conflict-of-laws principle in specific legal relations;
5) assess the selected conflict-of-laws principle and the possible results of its application through the prism of general legal principles.

A complex conflict, on the other hand, occurs when several conflicts are present in a case. A mechanism for a judge to resolve complex conflicts in law is formulated as follows:

1) analyse the problematic legal relations by a judge, determination of the presence of a conflict in law;
2) identify the specific conflicts involved and how they are imposed in a particular case;
3) consult relevant case law;
4) decide on how to apply the conflict-of-laws principles: whether the resolution of one of the conflicts has priority, whether they should be applied in turn and in what order;
5) verify the chosen conflict-of-law principles for compliance with general legal principles.

In both cases, the judge's ultimate goal is to administer justice by resolving the case and resolving legal conflicts within specific legal relations.

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АНОТАЦІЯ УКРАЇНСЬКОЮ МОВОЮ

Дослідницька стаття

ВИРІШЕННЯ КОЛІЗІЙ ПРАВА ПІД ЧАС СУДОВОГО РОЗГЛЯДУ: ЕМПІРИЧНЕ ДОСЛІДЖЕННЯ В УКРАЇНІ

Оксана Хотинська-Нор* та Кирило Легких

АНОТАЦІЯ

Вступ. *Право є основним регулятором суспільних відносин. Його системний характер має фундаментальне значення для належного, чіткого та всебічного регулювання правовідносин. Як цілісна система право має власну логіку, структуру, порядок і мету. Ця мета полягає у відповідному регулюванні суспільних відносин, забезпеченні правопорядку, у якісному і послідовному задоволенні прав, обов'язків та інтересів учасників правовідносин. Проте правове регулювання не позбавлене недоліків. Однією з основних проблем правового регулювання є прогалини в праві, коли певні суспільні відносини не мають належного правового регулювання через відсутність конкретних законодавчих чи правових підходів. Серед інших недоліків – суперечності між законами, законодавчі прогалини, кваліфіковане мовчання законодавця, «темрява» правових норм, «уявна» потреба правового регулювання та інші правові явища, подібні за своєю природою.*

У цій статті досліджується те, як судді вирішують колізії права під час судового розгляду, а саме про побудову механізму вирішення колізій у національному законодавстві для того, щоб забезпечити право на справедливий суд. Це питання набуває особливого значення в умовах війни в Україні, оскільки, на відміну від відносно стабільної судової практики вирішення спорів, що виникають у суспільстві, де немає війни, сьогодні суди стикаються з безпрецедентними справами, зокрема, пов'язаними з рішеннями військово-лікарських комісій, фінансовим забезпеченням військовослужбовців, новим кримінальним переслідуванням у воєнний час. Крім того, судді повинні орієнтуватися в процесуальних нормах здійснення правосуддя у воєнний час, які швидко змінюються.

Дослідження визначає конкретні випадки колізій законодавства, зокрема в питаннях, пов'язаних із мобілізацією. Підкреслюється, що неузгодженість чинного законодавства та відсутність єдиних підходів до їх подолання часто заважають громадянам реалізувати свої права. Така ситуація прямо суперечить Цілям сталого розвитку з погляду побудови мирних та інклюзивних суспільств для сталого розвитку, забезпечення доступу до правосуддя для всіх та побудови ефективних, підзвітних та інклюзивних інституцій на всіх рівнях.

Автори статті висвітлюють зростання значення правових принципів у вирішенні колізій у межах права. Такі основоположні поняття, як верховенство права, правова визначеність і законність, є визнаними підставами для прийняття судових рішень. Відповідно, це дозволяє судам тлумачити конфлікти в окремих галузях законодавства – наприклад, податкове законодавство на користь платника податків, права дитини на користь дітей, трудове законодавство на користь працівників. Отже, подібні позови можуть вирішуватися по-різному залежно від їх предмета. Для підтвердження цього аналізу автори проаналізували 150 рішень українських суддів, вивчили поняття колізії, сформулювали уточнене визначення, оцінили роль судової правотворчості у вирішенні правових колізій та розробили механізм їхнього вирішення суддями.

Методи. *Для аналізу розвитку правових норм та інститутів у різні історичні періоди автори застосували загальний діалектичний підхід до аналізу, що ґрунтується на вченні про суспільство і мислення, а також історичний метод. Цей підхід дає змогу з'ясувати їхнє походження, еволюцію та вплив на сучасну правову систему. Також були використані методи аналізу та синтезу інформації. Для підтвердження висновків авторів було застосовано відповідну емпіричну інформацію, зокрема судові рішення з Єдиного державного реєстру судових рішень. Загалом було проаналізовано 150 судових рішень, що містять колізії з 2015 по 2024 роки, 22 з яких процитовано в цій статті.*

Результати та висновки. *Колізії в праві визначаються як суб'єктивно зумовлені явища, пов'язані з протистоянням кількох норм або їх сукупності, що призводить до неможливості ефективного, чіткого та послідовного застосування правових норм з метою регулювання суспільних відносин. Запропоновано також визначення колізій у законодавстві з погляду судової практики: це суперечності в правовому регулюванні, негативне правове явище, яке суддя, що має наданими йому повноваженнями, повинен вирішувати у спосіб, що забезпечує дотримання основоположних принципів права під час здійснення правосуддя.*

Ключові слова: *правосуддя, суд, колізія права, судочинство, судова правотворчість, справедливий суд, механізм вирішення колізій.*