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IMPROVING THE LEGAL REGULATION OF OBLIGATION RELATIONS IN INTERNATIONAL PRIVATE LAW

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Abstract. *This article considers issues related to the need for the development and adoption of a separate code of Private International Law for the Republic of Uzbekistan, with the aim of regulating international private legal relations. It is proposed to include a dedicated chapter on "Obligatory Law" in the Code, which would cover the regulation of both contractual and non-contractual relations. An analysis of the legal acts of foreign countries in the field of Private International Law has been conducted. Based on this analysis, proposals and recommendations for improving the legislation of the Republic of Uzbekistan have been developed. Particular attention is paid to recommendations on the exclusion from the Civil Code of the Republic of Uzbekistan of the mandatory written form requirement for foreign economic transactions, which in turn will allow to conclude transactions through electronic means of communication and the use of artificial intelligence. Of course, except for cases requiring mandatory state or notarial registration. It is proposed to supplement the Code with provisions that determine the applicable law in cases where the parties have not made an explicit choice. In particular, this applies to various types of foreign economic transactions, such as guarantee contracts, distribution contracts, agency contracts, escrow contracts, factoring, and forfeiting, as well as contracts concluded within the framework of Internet auctions, Internet contests or Internet exchanges and contracts involving consumers. The necessity of determining the scope of the law applicable to obligations arising from the infliction of harm as well as expanding the definition of the applicable law arising from various obligations arising from the infliction of harm is substantiated.*

Keywords: *obligatory relations, contractual relations, non-contractual relations, foreign economic transactions, applicable law, obligations due to infliction of harm.*

XALQARO XUSUSIY HUQUQDA MAJBURIYAT MUNOSABATLARINI HUQUQIY TARTIBGA SOLISHNI TAKOMILLASHTIRISH

Imamova Dilfuza Ismailovna,
Jahon iqtisodiyoti va diplomatiya universiteti
Fuqarolik huquqi va xalqaro xususiy huquq
fanlari kafedrasi professor v.b., yuridik fanlar nomzodi

Annotatsiya. *Ushbu maqolada xalqaro xususiy huquq munosabatlarini tartibga solish maqsadida O‘zbekiston Respublikasida xalqaro xususiy huquqning alohida kodeksini ishlab chiqish va qabul qilish zarurati bilan bog‘liq masalalar muhokama qilindi. Kodeksda shartnomaviy va shartnomadan tashqari munosabatlarni tartibga solishni o‘z ichiga olgan “Majburiyatlar huquqi” bobini alohida ajratib ko‘rsatish taklif etildi. Xorijiy davlatlarning xalqaro xususiy huquq sohasidagi huquqiy hujjatlari tahlil qilindi. Tahlillar asosida O‘zbekiston Respublikasi qonunchiligini takomillashtirish bo‘yicha taklif va tavsiyalar ishlab chiqildi. O‘zbekiston Respublikasi Fuqarolik kodeksidan tashqi iqtisodiy bitimlarning yozma shakliga qo‘yiladigan majburiy talabni chiqarib tashlash bo‘yicha tavsiyalarga alohida e’tibor qaratildi, bu esa o‘z navbatida, bitimlarni elektron aloqa vositalari va sun’iy intellektdan foydalangan holda tuzish imkonini beradi. Albatta, majburiy davlat yoki notarial ro‘yxatdan o‘tishni talab qiladigan hollar bundan mustasno. Kodeksni tomonlar tegishli tanlovni amalga oshirmagan hollarda amaldagi qonunchilikni belgilashga oid qoidalar bilan to‘ldirish taklif etilmoqda. Xususan, bu kafillik shartnomasi, distribyutorlik shartnomasi, agentlik shartnomasi, eskrou shartnomasi, faktoring, forfeyting kabi tashqi iqtisodiy bitimlarning har xil turlariga, shuningdek, onlayn auktsionlar, onlayn tanlovlar yoki onlayn birjalar doirasida tuzilgan, iste’molchilarni o‘z ichiga olgan shartnomalarga taalluqli. Zarar yetkazishdan kelib chiqadigan majburiyatlarga nisbatan qo‘llanadigan huquq doirasini belgilash, shuningdek, amaldagi qonunchilik ta’rifini zarar yetkazilishi natijasida yuzaga keladigan turli majburiyatlarni hisobga olgan holda kengaytirish zarurati asoslab berilgan.*

Kalit so‘zlar: *majburiyat munosabatlari, shartnoma munosabatlari, shartnomadan tashqari munosabatlar, tashqi iqtisodiy bitimlar, amaldagi qonunchilik, yetkazilgan zarar uchun majburiyatlar.*

СОВЕРШЕНСТВОВАНИЕ ПРАВОВОГО РЕГУЛИРОВАНИЯ ОБЯЗАТЕЛЬСТВЕННЫХ ОТНОШЕНИЙ В МЕЖДУНАРОДНОМ ЧАСТНОМ ПРАВЕ

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Аннотация. *В данной статье рассмотрены вопросы, связанные с необходимостью разработки и принятия отдельного кодекса международного частного права Республики Узбекистан с целью урегулирования международных частноправовых отношений. Предлагается в кодексе отдельно выделить главу «Обязательственное право», которая будет включать в себя урегулирование договорных и внедоговорных отношений. Проведён анализ правовых актов ряда зарубежных стран в области международного частного права. На основании проведённого анализа разработаны предложения и рекомендации по совершенствованию законодательства Республики Узбекистан. Особое внимание уделено рекомендациям по исключению из Гражданского кодекса Республики Узбекистан обязательного требования к письменной форме для внешнеэкономических сделок, что в свою очередь позволит заключать сделки посредством электронных средств связи и с использованием искусственного интеллекта, конечно, за исключением случаев, требующих обязательной государственной или нотариальной регистрации. Предлагается дополнить кодекс положениями, касающимися определения применимого права в случаях, когда стороны не сделали соответствующий выбор. В частности, это касается различных видов внешнеэкономических сделок, таких как договор гарантии, дистрибьюторский договор, агентский договор, договор условного депонирования (эскроу), факторинг, форфейтинг, а также договоры, заключаемые в рамках онлайн-аукционов,*

онлайн-конкурсов или электронных бирж, и договоров с участием потребителей. Обосновывается необходимость определения сферы действия права, применимого к обязательствам, возникающим вследствие причинения вреда, а также расширения определения применимого права, вытекающего из различных обязательств вследствие причинения вреда.

***Ключевые слова**: обязательственные отношения, договорные отношения, внедоговорные отношения, внешнеэкономические сделки, применимое право, обязательства вследствие причинения вреда.*

Introduction

Currently, Uzbekistan is carrying out reforms related to the improvement of civil legislation and has adopted the concept approved by the Decree of the President of the Republic of Uzbekistan dated April 5, 2019 № R-5464. On the basis of this concept in the part of international private law relations, taking into account the experience of foreign countries, the works related to the improvement of Section VI of the Civil Code of the Republic of Uzbekistan, namely international private law relations are carried out.

It should be noted that the issues related to the regulation of international private law relations in the national legislation of countries are reflected in special codes on international private law, in the Civil Code, or in special laws on international private law, and European countries adopted special regulations governing these relations.

Having analyzed the legislation of most foreign countries in terms of international private law, international judicial practice and problems arising in practice, we came to the conclusion that it is necessary to improve the obligatory relations in the international private law of our country.

Since to date the civil legislation of the Republic of Uzbekistan requires cardinal changes in terms of improving the obligatory and other international private law relations, it indicates the need for their codification, i.e., the adoption of the Code of International Private Law of the Republic of Uzbekistan. Thus, for example, as correctly notes N.H. Rakhmankulova, one of the distinctive features of the modern process of codification of international private law is the application of unification of international private law [1, p. 83]. At the stage of national legal implementation, the legislator streamlines its internal disparate legal norms and simultaneously adapts international unified norms to the national legislation in order to achieve greater uniformity in the legal regulation of cross-border private law relations [2, p. 44].

The basis for the application of foreign law is the relevant indication in the foreign economic transaction, which serves as a basis for the application of foreign law in cases where the conflict of laws rules contained in the contract indicate such application in view of the specific circumstances [3, p. 61].

Materials and methods

This article uses scientific-theoretical views of legal scholars as well as comparative legal methods and analysis of legal acts in the field of private international law.

Results of the research

Taking into account the legislation of many foreign countries, such as Hungary, Georgia, Estonia, the Czech Republic [4] and others, it is recommended to allocate a separate chapter entitled “Law of Obligations”. This chapter should include sections covering forms of transactions, regulation of contractual and non-contractual relations. All this will make it possible to streamline and systematize the norms

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regulating obligatory relations, similarly to what is done in the general part of the Civil Code of the Republic of Uzbekistan.

The section "Law of Obligations" in private international law covers a wide range of issues related to obligations between parties from different countries and regulates the following aspects: contractual obligations – scope of applicable law, determination of the applicable law to a contract by agreement of the parties or in the absence thereof, as well as to a contract on creation of a legal entity with foreign participation; non-contractual relations – obligations from unilateral acts, obligations due to infliction of harm, scope of applicable law, applicable law to a contract on creation of a legal entity with foreign participation; non-contractual relations – obligations from unilateral acts, obligations due to infliction of harm, scope of applicable law, applicable law to a contract on creation of a legal entity with foreign participation.

Analysis of research results

In turn, the legal regulation of contractual and non-contractual relations in the international private law of the Republic of Uzbekistan requires amendments and additions taking into account the foreign experience of countries. For example, very often there are problems related to the requirement to the form of a foreign economic transaction if the party to the transaction is Uzbekistan. For example, Uzbekistan ratified the Vienna Convention of 1980 without a reservation regarding its form, but the national legislation stipulates a mandatory written form of foreign economic transactions according to Part 2 of Article 1181 of the Civil Code of the Republic of Uzbekistan.

Article 1189 of the Civil Code of the Republic of Uzbekistan provides for the choice of law by agreement of the parties to the contract. This norm testifies to the necessity of fixing one of the general principles of private international law "autonomy of the will of the parties" and the principle of contractual relations of freedom of choice. Since the principle of "autonomy of the will of the parties" is a general principle regulating other international private law relations, it should be reflected in the general provisions, but only to provide for the right of freedom of choice of the applicable law to the parties to the contract. This norm is also reflected in the Rome I Regulation "On the Law Applicable to Contractual Obligations" [4] and the legislation of other foreign countries. The choice of law by the parties will allow the parties not only to choose not only the law of any country, but also the application of international treaties and norms of international trade custom, such as the UNIDROIT Principles, INCOTERMS, etc.

Currently, the conclusion of foreign economic transactions in virtual space and the use of artificial intelligence have not yet found their international legal regulation [5, p. 9]. The use of various information technologies, in particular blockchain, the conclusion of smart contracts, and the determination of their applicable law is an urgent problem today, given the situations that have arisen around the world.

In connection with the lack of legal regulation of the definition of the distribution agreement in the legislation of the Republic of Uzbekistan and in order to consolidate and develop distribution relations, it is proposed to make additions to the Civil Code of the Republic of Uzbekistan, in particular, to introduce a new chapter regulating the distribution agreement, providing for the concept of the distribution agreement, the specifics of conclusion, termination, and liability of the parties to the distribution agreement, sub-distribution, etc. [6, pp. 88–89, as well as definitions of the applicable law.

Article 1190 of the Civil Code of the Republic of Uzbekistan in relation to

the cases of absence of choice of law by agreement of the parties identifies a number of types of contracts in relation to which the choice of applicable law of the country is determined. But despite this, some types of contracts are not reflected in this article. Based on the experience of foreign countries, international judicial and arbitration practice, there is a need to settle other types of contracts not reflected in this article, but the most common in international contractual practice. In order to eliminate gaps associated with the lack of regulation of other types of contracts, as well as taking into account the legislation of most foreign countries (the USA, Belgium, Estonia, Canada, Russia, etc.) in the field of private international law in relation to contracts, international legal acts and norms of non-state regulation (international trade customs) are proposed to reflect the definition of the applicable law in relation to the contract of guarantee, distribution contract, agency contract, escrow contract, factoring contract [7, p. 103]. The application of national law to an international franchise agreement may be only due to the application of the parties' autonomy of will or due to the effect of the law applicable in the absence of the parties' agreement on the applicable law [8, p. 269]. Regulation (EC) No 593/2008 on the law to be applied to contractual obligations ("Rome I") also identifies some specific types of contracts in the absence of choice of law, such as a contract for the sale of products, a commercial concession contract, and others.

The application of the conflict of laws reference of the place of performance "lex loci solutionis," which is enshrined in the national legislation of the states as a subsidiary attachment formula in relation to the acceptance of performance under the contract - paragraph 5 of Article 1125 of the Civil Code of Belarus, paragraph 5 of Article 1113 of the Civil Code of Kazakhstan, paragraph 6 of Article 1219 of the Civil Code of Tajikistan and other countries – is not reflected in the Civil Code of the Republic of Uzbekistan.

Since the most frequent references to the norms of international trade customs, such as INCOTERMS (in various editions), Uniform Rules and Customs for Documentary Credits, Uniform Rules for Collections and others are used in foreign economic transactions, it is proposed to stipulate that their use in the contract and in the absence of any instructions, to consider that the parties have agreed on their application (this norm is reflected in paragraph 11 of Article 1211 of the Civil Code of the Russian Federation [9]).

Since obligatory relations in the International Private Law regulate not only contractual relations, but also non-contractual relations. In the Civil Code of the Republic of Uzbekistan non-contractual obligations include only 4 Articles regulating issues related to obligations from unilateral actions, obligations due to infliction of harm, liability for damage caused to the consumer, and unjust enrichment. On this basis, it is proposed to reflect in the Civil Code of the Republic of Uzbekistan the scope of the law to be applied to obligations arising from the infliction of harm, which is reflected in the Code of Belgium, the Civil Code of Russian Federation, etc.

Some aspects of determining the applicable law in obligations due to infliction of harm are not provided for in the Civil Code of the RUz, such as the definition of the law to be applied to obligations arising from unfair competition and restriction of competition, indemnification of damage to the insurer, environmental damage, multiple liability, infringement of intellectual property rights and others, which require supplementation of the national legislation.

Conclusion

To regulate international private-law relations, a separate code should be adopted,

namely the Code of International Private Law of the Republic of Uzbekistan.

Separate Chapter "Law of Obligations" in the Code, which will include forms of transaction, settlement of contractual and non-contractual relations. Exclude in the Civil Code of the Republic of Uzbekistan the mandatory requirement for the written form of foreign economic transactions [10, p. 29].

To supplement the definitions of the applicable law, in case there is no choice of the applicable law in relation to various types of foreign economic transactions, such as guarantee agreement, distribution agreement, agency agreement, escrow agreement, factoring and forfeiting agreements, Internet auction, Internet contest or Internet exchange agreements, as well as agreements involving consumers.

In order to regulate the determination of the applicable law by the distributor – in the distribution agreement; by the financial agent (factor) – in the contract of financing under assignment of monetary claim [11, p. 117]; by the agent – in the agency contract; to the contract of complex business license (franchising) – the law of the state of permanent location of the franchisee; to the forfeiting contract – the law of the country where the exporter (seller) has its principal place of business. The law of the forfeiter's country should govern the relations arising between the forfeiter and the importer (buyer under the original contract) in the absence of the parties' choice of the applicable law. The law of the seller's country will also apply to the original contract between the exporter and the importer [12, pp. 115–116]. The law of the country of the Internet auction, Internet contest or Internet exchange is the place of receipt of electronic messages by the organizer, in the territory of which the organizer's enterprises are located or incorporated and in the territory of which the electronic message entered the information system controlled by the organizer of the Internet auction, Internet contest or Internet exchange [10, p. 30].

Based on Article 103 of the Belgian Code of International Private Law, in order to clarify the scope of the law to be applied to obligations arising from the infliction of harm, it is proposed to supplement the Code with other grounds, such as the definition of the person obliged to compensate for the harm caused; the amount in which the right to compensation of the injured person can be transferred to his heirs; the limitation and the period of time based on the expiration of the limitation period, including the date of commencement, expiration and suspension of the limitation period; the burden of proof and the rights of the injured person; and the right to compensation.

Taking into account that the Civil Code of the Republic of Uzbekistan does not provide all aspects of determining the applicable law arising from obligations arising from the infliction of harm, which are reflected in the legislation of most foreign countries such as Belgium [13], Russia, Poland, Canada, and other countries, as well as in the Regulation "On the law to be applied to non-contractual obligations" ("Rome II") [14]. It is necessary to supplement the definition of the law to be applied to the obligations arising from unfair competition and restriction of competition, compensation of damage to the insurer, environmental damage, multiple liability, infringement of intellectual property rights, the law to be applied to subrogation, and others.

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