



Some features of the application of the norms of international private law to civil-legal relations to regulate obligations due to harm (delicate liabilities)

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ABSTRACT

The article discusses some features of the legal regulation of obligations as a result of causing harm (tort obligations) in international private law of the Republic of Uzbekistan based on the provisions of the Civil Code of the Republic of Uzbekistan, the articles of the Model Civil Code for the member states of the Commonwealth of Independent States, the provisions of the Agreement on Dispute Resolution, related to the implementation of economic activities (Kiev, March 20, 1992) and the Convention on Legal Assistance and Legal Relations in civil, family and criminal matters (Minsk, January 20, 1993). The article formulates proposals for the improvement of the civil legislation of the Republic of Uzbekistan in the field of regulation of obligations as a result of harm caused by a foreign element.

Keywords:

obligations as a result of causing harm, tort obligations, foreign element, conflict of laws, honor, merits of a citizen, reputation of a legal entity, harmful consequences, autonomy of the will of the parties when choosing the applicable law.

Legal regulation of external relations plays an important role in the development of a modern state. The goal of the Republic of Uzbekistan is to build an open democratic legal state with a steadily developing economy. In a legal democratic state, the highest value is a person, his interests, his rights and freedoms.

The development of modern technology, international road, rail and air traffic, the media, the growth of tourism and international commercial traffic have dramatically increased the possibility of such situations, which are to some extent associated with the emergence of obligations due to harm and conflict of law. In this regard, the legal regulation of obligations due to causing harm, complicated by a foreign element, should become the object of not only regulatory regulation and interpretation by

law enforcement practice, but also serious study and research.

When regulating issues related to the infliction of harm, complicated by a foreign element, numerous difficulties of a conflict order arise. They may arise as a result, for example, of actions such as cross-border damage to the honor, dignity of a citizen or the reputation of a legal entity, harmful consequences caused by the import of poor-quality products from abroad, etc. At the same time, the choice of applicable law is to a large extent complicated by the fact that most legal orders significantly limit or even deny the admissibility in the field of tort legal relations of such an institution, which is widely used in the regulation of contractual relations, as the autonomy of the will of the parties in choosing the applicable law.

The Civil Code of the Republic of Uzbekistan contains a section on private international law (Section VI, Chapter 71) [1], which includes certain novelties in the field of conflict regulation of civil law relations complicated by a foreign element, including in the field of torts (Article 1194 "Liabilities due to injury"). But the norms of the Civil Code contain only general regulation of obligations as a result of causing harm, and conflict issues are subject to further interpretation by the doctrine and law enforcement practice. When studying the legislative material and law enforcement practice, it should be taken into account that the Republic of Uzbekistan is currently not a party to two conventions containing conflict of laws rules in the field of tort relations, namely the Hague Convention on the Law Applicable to Motor Vehicle Accidents of 1971 and the Hague Convention on the Law applicable to manufacturer's liability 1973.

The ever-growing international division of labor, as well as the rapid emergence and development of new forms of entrepreneurial activity, increasingly complicate the localization of civil legal relations using traditional formulas of attachment. The most striking alternative to the "rigid" principles of determining the applicable law is a reference to the law of the country with which the legal relationship is most closely connected. Less common, but also widely known, is the principle of applying the law that is "most favorable" for one of the parties (for example, for the victim in a tort relationship - favor laesi).

New conflict issues arise, among other things, in connection with the expansion of the scope of civil liability without fault, the widespread use of civil liability insurance, "the strengthening of the influence of the conflict principle "autonomy of the will of the parties". These trends can be traced in the development of foreign legislation, in international contractual practice. In addition, the literature points to such changes as "the expansion of the number of "flexible" conflict rules, the spread of the autonomy of the will of the parties in the field of torts." The regulation of these moments is reflected in the works of Burkhanova L.M. [2,3,4,5,6,7,8,9,10,11,12,13,14], Musaev E.T.

[15,16,17,18,19,20,21,22,23,24,25,26,27], Karakhodzhaeva D.M. [28,29,30,31,32,33,34,35,36], Sharakhmetova U.Sh. [37,38,39,40,41,42,43,44], Egamberdiev E.Kh. [45,46,47,48,49,50,51,52,53,54,55,56,57,58,59].

Recently, much attention, both in the doctrine and in judicial practice, has been paid not to the choice of applicable law, but to problems related to the determination of jurisdiction, as well as issues of further enforceability of a judgment.

New trends in the development of private international law, along with the reform of private international law in the Republic of Uzbekistan, make the issue of the need to develop the right guidelines for domestic law enforcement practice, including in the field of regulating obligations from causing harm (tort obligations) complicated by a foreign element, relevant.

Currently, a phenomenon is observed in the area under study: there is some "politicization" of rule-making, associated primarily with the activities of international organizations such as the Hague Conference, the Council of Europe, UNCITRAL or UNIDROIT, as well as with the strengthening of the influence of international law on domestic legal institutions. The possibility of independent expression of the will of representatives of certain countries is also significantly reduced by the fact that, most often, many problems of private international law are not considered at the domestic level as vital. This often leads to ignoring the possibility of the "right of veto" when it comes to the adoption of a particular document aimed at further unification and harmonization of private international law, including in the area under study, that is, in tort obligations. The formation of a common market in the world led to the creation of a system of uniform regulation of the choice of law in the field of contractual obligations. A lot of work at the world level is being carried out towards the harmonization of conflict regulation in the field of obligations from causing harm (tort obligations).

This is explained by the fact that the settlement of the conditions that determine contractual obligations is generally important for the development of economic relations, including the successful development of commercial turnover. However, tort relations, firstly, more often affect the interests of the least economically protected subjects of law - individuals. In this regard, the study of the problems of regulation of tort relations at the present stage acquires a special social significance. Secondly, the economic component of the problem of tort relations complicated by a foreign element is also rapidly increasing. Due to the development of international trade and cross-border provision of services, cases of cross-border harm due to defects in goods, work or services are becoming more frequent. Finally, it is generally recognized that at the present stage of development, society is faced with the possibility of man-made disasters on an unprecedented scale, the economic and social consequences of which on an international scale can be unprecedented. This circumstance cannot but affect the importance of researching and resolving issues related to the regulation of obligations from causing harm, complicated by a foreign element.

It should be noted that the similarity of the conflict-of-laws regulation of obligations from causing harm to most countries of the Commonwealth of Independent States is explained by the fact that many of them have chosen the path of using Section VII "Private International Law" of the Model Civil Code for the States Members of the Commonwealth of Independent States as a recommendatory act for the CIS countries adopted on February 17, 1996 by the Inter-Parliamentary Assembly of the CIS Member States. However, the conflict regulation of tort obligations in some CIS countries has a number of features. In the Republic of Uzbekistan, the general provisions on causing harm are regulated by the norms of Chapter 57 of the Civil Code, which contains the concepts of harm caused to the life and health of a citizen; due to defects in goods, works and services; as well as compensation for non-pecuniary damage. Obligations resulting from

causing harm with the participation of a foreign element are regulated by the norms of the Civil Code of the Republic of Uzbekistan - chapter 71 "Conflict rules" § 6 "Extra-contractual obligations". But directly the provisions relating to the regulation of tort relations are defined in Article 1194 of the Civil Code "Obligations as a result of causing harm."

The rights and obligations under the obligations arising from the infliction of harm are determined by the law of the country where the action or other circumstance took place that served as the basis for the claim for compensation for harm [1]. These provisions of Article 1194 of the Civil Code, formulated as a general conflict of law rule on the choice of law applicable to a tort obligation complicated by a foreign element, corresponds to the well-known and widely used conflict principle *lex loci delicti commissi* - a reference to the law of the place where the tort was committed. The legislator considers the place of committing a tort to be the place where the harmful action was committed by the tortfeasor.

The place of action or other circumstance that served as the basis for a claim for compensation for harm, depending on the specific circumstances of the case, should be understood as the location of the injured person at the time of the occurrence of harm, if the harm was caused to the person of the victim, or the location of his property at the time of the harm, if damage to property.

The provisions of Article 1194 of the Civil Code of the Republic of Uzbekistan also apply to the definition of the law governing compensation not only for property damage caused to a person, but also for moral damage. In addition, the meaning of this article covers cases of compensation for causal harm not only by the tortfeasor, but also by some other persons, that is, the emergence of an obligation as a result of causing harm is not always due to the commission of an offense by the debtor. As an example of one of the possible exceptions of this kind, article 988 of the Civil Code of the Republic of Uzbekistan can be cited, which allows the court to impose the obligation to compensate for harm caused in a state of

emergency on the person in whose interests the tortfeasor acted.

In accordance with the provisions of the civil legislation of the Republic of Uzbekistan, tort obligations are governed by the conflict of law binding *lex loci delicti commissi* - the law of the country where the action or other fact took place that served as the basis for the claim for damages.

The rights and obligations under obligations arising as a result of causing harm abroad, if the parties are citizens or legal entities of the same state, are determined by the law of this state. This provision proceeds from the principle of combining the interests of the tortfeasor and the victim. This exception to the general rule of part 1 of article 1194 of the Civil Code of the Republic of Uzbekistan is established for cases where both the victim and the tortfeasor are persons of the same country or have a place of residence in the same country. In this case, the tort obligation is subject to the law of that country [1].

Foreign law does not apply if the action or other circumstance serving as the basis for a claim for compensation for harm is not illegal under the legislation of the Republic of Uzbekistan. Issues of obligations from a tort are reflected in international treaties to which the Republic of Uzbekistan has acceded. Thus, in the Agreement on the procedure for resolving disputes related to the implementation of economic activities (Kyiv, March 20, 1992), Article 4 determines that the competent court of a CIS member state has the right to consider the disputes referred to in Article 1 of this Agreement, if on the territory of this member state CIS there was an action or other circumstance that served as the basis for the claim for damages.

Similar provisions are provided for in the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters (Minsk, January 20, 1993). Article 42 provides for the following rules on compensation for harm:

1. obligations to compensate for harm, except for those arising from contracts and other lawful actions, are determined under the legislation of the Contracting Party in whose

territory the action or other circumstance took place that served as the basis for the claim for compensation for harm;

2. if the tortfeasor and the victim are nationals of the same Contracting State, the laws of that Contracting State shall apply;

3. in the cases referred to in paragraphs 1 and 2 of this article, the competent court of the Contracting State in whose territory the act or other circumstance took place, which served as the basis for the claim for damages. The victim may also bring an action also in the court of the Contracting State in whose territory the defendant is domiciled.

Having considered the legal regulation of obligations arising from the infliction of harm abroad, by the norms of the civil legislation of the Republic of Uzbekistan, it can be stated that at the legislative level, the Civil Code of the Republic of Uzbekistan takes into account the main international trends in the development and construction of modern conflict of laws governing tort obligations with the participation of a foreign element. The legal regulation of obligations from causing harm, complicated by a foreign element, in the legislation of the CIS countries is based on national legislation and the use of conflict-of-law bindings that regulate tort relations.

Although non-contractual obligations related to the infliction of harm are regulated by the national legislation, I would also like to make some proposals for improving the legislation in the field of regulation of obligations due to the infliction of harm complicated by a foreign element.

Firstly, due to the fact that a significant proportion of the issues that arise in connection with the definition of the statute of a tort obligation are subject to further interpretation, as well as amendments to the current national legislation, the European Union Regulation on Law can provide significant assistance in this, applicable to non-contractual obligations. In particular, it seems appropriate to accept the main link to the law of the place of occurrence of the harmful result; the use of the autonomy of the will of the parties in choosing the statute of a tort

obligation corresponds to the modern development of private international law.

Secondly, along with this, it seems appropriate to expand the freedom of will of the parties in the field of tort obligations by allowing the parties to choose not only the law of the court, but also another law related to the legal relationship. In some cases, it seems appropriate to give the parties the freedom to choose the law before the harm actually occurs. The conflict rules in the area under study, provided for by the current international treaties with the participation of the Republic of Uzbekistan, including the rules of the Kyiv Agreement of the CIS member states of 1992, do not correspond to the current stage of development of private international law. The norms of the current national legislation of the Republic of Uzbekistan and other countries - members of the CIS are more modern, to a greater extent reflect the progressive trends in the evolution of private international law of recent times. Making changes to the above-mentioned agreements, taking into account the trends in reforming private international law in the Republic of Uzbekistan and other CIS countries, seems relevant.

Thirdly, determining the place where the tort was committed directly affects not only the issue of establishing the statute of a tort obligation, but also the possibility of the victim applying to the court of a particular country. The legislation of many countries, as well as some international treaties, provides for both alternative and exclusive territorial jurisdiction for claims from torts. This circumstance is historically determined by the principle of procedural economy - a claim from a tort can often be brought to the court at the place where the tort was committed, since this creates conditions for obtaining more reliable evidence at the lowest cost. The latest trends in the development of legislation in the area under study indicate that the tendency to recognize the place that plays a decisive role in determining the applicable law, namely the place of occurrence of harmful consequences, is beginning to play an increasingly important role. These moments should be taken into account in

the national legislation of the Republic of Uzbekistan.

Fourth, in relation to cases where the victim and the tortfeasor are in a contractual relationship and the harm is caused in connection with the contract, it is advisable to establish in Article 1194 of the Civil Code of the Republic of Uzbekistan the possibility of applying to the obligation from causing harm the law applicable to such a contract.

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