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## INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)

Article DOI: 10.21474/IJAR01/11580

DOI URL: <http://dx.doi.org/10.21474/IJAR01/11580>



### RESEARCH ARTICLE

#### SOME ASPECTS OF IMPLEMENTATION OF PRIVATE INTERNATIONAL LAW PRINCIPLES IN CIVIL CODE OF UZBEKISTAN

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#### Manuscript Info

##### Manuscript History

Received: 30 June 2020

Final Accepted: 31 July 2020

Published: August 2020

##### Key words:-

Applicable Law, Choice Of Law,  
Conflict Of Laws, Statute, Principle,  
Private International Law, An  
International Treaty, Civil Code

#### Abstract

This article provides the basic research in international private law principles in accordance with the reforming of Civil Code of the Republic of Uzbekistan. It examines the general provisions and special rules of private international law, which appears as special principles. Concept and classification of principles of private international law are considered in the article as theoretical point of view. In addition, the author attempts to review in more details some of the principles and demonstrate practical aspects and necessity of their implementation in the Civil Code. In conclusion, the author determines that private international law principles are formed and can be divided into general and special ones, and main special principles should be reflected as legal articles in the special Volume of Civil Code. The main purpose of this article is to provide the main doctrines of understanding of international private law principles.

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#### Introduction:-

At the current stage of development of the Republic of Uzbekistan, the legal reforms are focused on the development of law regulating civil relations. In particular, with development of international legal relations the need for application of rules of conflict of laws is appeared, correct application of the principles of private international law in the enforcement practice. This stipulates development of conflict-of-laws principles and improvement of their reflection in the relevant laws of the country.

It shall be noted that Decree of the President of the Republic of Uzbekistan, No. P-5464, dated April 5, 2019, approved the Concept on improvement of the civil laws of the Republic of Uzbekistan, and defined the main priority areas for further improvement of the civil laws of the Republic of Uzbekistan as follows:

systematization and unification of the civil legal standards with their alignment with the best foreign practices, as well as implementation of the advanced international standards in this area;

establishment of effective civil law mechanisms to guarantee that the private property is inviolable, the rights and legitimate interests of individuals and legal entities, especially entrepreneurs are protected;

a clear distinction between the regulatory standards of public and civil law, exclusion of outdated regulations which have lost their sense due to command and control principles of economic management;

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provision of legal regulation of current civil law institutions and forms of economic relations, such as public and private partnership, cluster production, e-Commerce, crypto-currency turnover, privatization of land plots, shared construction and others.

It is expected that improvement of civil laws, in particular development and adoption of a new edition of the Civil Code of the Republic of Uzbekistan, will contribute to:

creation of the legal framework for further liberalization of the economy; reduction of the state interference into the economy; strengthening the protection of the rights of owners and assurance that the role the private property in the economy is prioritized; improvement of the business environment and investment climate; enhancement of the country's position in international rankings; resolution of other challenges.

It shall be noted that the international private law rules included in the volume six of the second part of the Civil Code are basic in nature, and standards regulating civil law relations of an international character can be contained into other legal acts as well. Inter alia, such standards are included in the regulatory legal acts concerning leasing and pledge. Furthermore, the law of Uzbekistan regulates family and labor law relations of an international nature separately. In this respect, it is important to note that the international private law standards of the volume six of the second part of the Civil Code do not contain international civil process law rules, which are not considered in doctrine of Uzbekistan to belong to international private law. They are included in the civil process law standards in the legal system of Uzbekistan.

The international private law rules of the Civil Code are applied to civil law relations of an international character. Although the application of international private law rules of the Civil Code is general, it is still allowed to deviate from them in disputes covered by an international commercial arbitration procedure.

The reform of the Section VI – Application of the private international law standards to civil relations of the Civil Code of the Republic of Uzbekistan is an integral part of the project on fundamental reforming the civil laws of Uzbekistan.

With this, the special attention is given to the principles of private international law, in particular, to such principles as "Remission and reference to the law of a third country", "Consequences of evasion of the law", "Reservation on public order", "Retaliation", "Autonomy of will of the parties" and others.

It shall be noted that the current legislation law of many countries on private international law does not institutionalize the specific basic principles.

## **Results And Discussions:-**

### **(the main approaches in defining the principles of international private law)**

The field of law as called Private International Law deals with private-law relationships and civil proceedings having international implications. Marriage or a contract entered into by the parties who are citizens and/or habitual residents of different countries are examples of such situations; a tort is committed or the resulting damage arises in a country other than those where the parties habitually reside; an object pledge is challenged, etc. [1]

Three kinds of problem are dealt by the conflict rules. They relate to direct jurisdiction; to choice of law; and to foreign judgements. Rules on direct jurisdiction define the circumstances in which the courts of one country are competent, and should be willing, to entertain proceedings in respect of disputes which have some connection with another country. Such rules are applicable by a court in order to determine its own jurisdiction to entertain proceedings instituted before it. Rules on choice of law select from the connected countries the one whose law is to supply the substantive rules to be applied in determining the merits of the dispute. Rules on foreign judgements define the circumstances in which a judgment given by a court of one country is to be recognized or enforced in another country [2].

When principles of private international law are studied they are defined by different approaches, for instance some authors indicated such principles as:

1. the principle of priority of universal interests and values;
2. the principle of non-discrimination to foreign partners during trade and economic relations;

3. the principle of non-interference into internal affairs of each other;
4. the principle of cooperation;
5. the principle of good faith performance of obligations arising from generally recognized standards of international law, as well as concluded treaties;
6. the principle of peaceful settlement of disputes, etc. [3]

These principles mainly represent the principles of public international law or emerging international economic law [4]. As a rule, they do not relate directly to private law. The principles of private international law shall reflect the features of regulation in this particular area.

The private international law can be divided into the principles of regulation of international private law relations and the principles governing certain groups of such relations.

The general principles of private international law can include as follows:

1. The principle of national (domestic) jurisdiction of private law relations with a foreign party.

This principle means that the territorial sovereign authority only, i.e. the state, shall regulate such relations. Such relations are regulated on the supranational, international legal (in the narrow sense of this word) level. International legal acts (treaty, custom, as well as doctrine, business practice and precedent) are permitted with the sanction of the territorial authority only.

2. The principle of conflict regulation of private law relations with a foreign party.

Such relations are regulated either by the national or foreign general civil law in accordance with this principle. The conflict-of-laws principle is the basis of private international law and exist in it only but not in any other branch of law. The possibility and necessity of application of foreign civil law by a national court of general jurisdiction is the fundamental idea of private international law. It is the foundation to build the entire legal framework of private international law.

3. The principle of unconditional application of foreign law in accordance with the conflict-of-laws rule. This principle means that:

a) the foreign law shall be applied in accordance with the conflict-of-laws rule as the duty but not as the right of the court;

b) the foreign law is applied in accordance with the conflict-of-laws rule regardless on the will of the parties, i.e. it is mandatory for the court even when the parties agreed to refer to the national law of the country of the court;

c) the foreign law shall be applied without reciprocation, i.e. it does not require for the state in question to apply the law of court of the country in similar cases;

d) non-application or improper application of foreign law entails the same consequences as non-application or improper application of the rules of national court;

e) application of foreign law can be refused on the grounds expressly prescribed by law only.

4. The principle of autonomy of the will of the parties (the disposition principle).

The autonomy of the will of the parties is one of the key ideas of private international law, which have an independent regulatory and law-creating sense. The principle of autonomy of the will of the parties is understood that the science and practice recognize for the parties to the legal relationship to be able to select directly the applicable law, with legal institutionalization law. This possibility is provided to the parties for contractual relations exclusively.

It is understood that the principle of autonomy of the will of the parties and the disposition principle in respect of the private international law are phenomena of the same process.

5. The principle of a single application of the conflict-of-laws rule.

The problem of consistent application of the conflict-of-laws rule of the national court and foreign conflict-of-laws rule was called as "the problem of remission and the reference to the law of a third country" in the theory of private international law. In accordance with the provisions of this principle, any reference to foreign law shall be treated as a reference to the substantive law but not to the conflict-of-laws of the country in question, unless it is prescribed specifically otherwise. An exception is possible for some conflict-of-laws relating to the personal status of individuals.

The principle of a single application of the conflict-of-laws rule means that the court normally applies the conflict-of-laws rule of its national law only. Further, with applying the foreign law, the court refers not to its conflict-of-laws rule, but to the substantive law directly governing the relevant property (personal non-property) legal relation. Exceptions to this rule are possible in cases prescribed by law only.

6. The principle of priority of the standards of the international legal treaty over the standard of national law.

This principle means that in case of conflict (contradiction) between the standards of an international legal treaty and domestic law, the standard of an international legal treaty shall apply.

The principle of priority of an international treaty is of paramount importance in the international private law. It is not based on the "international politeness" or other ideological constructions, but such fact obvious for a lawyer that the standard of an international legal contract in the private law is always a special standard in relation to the general rules of national law. As such, the standard of an international legal treaty by no means has to be "in compliance with civil law", but on the contrary, it is normal to have a provision where such a standard does not coincide or contradicts the rules of a national legal act. Otherwise, it makes no sense to enter into an international legal treaty, whose normal purpose is to provide additional benefits and privileges to the subjects (individuals, legal entities) of the state in question, or to apply to them the rules other than those already prescribed by national law.

It shall be noted that there is a discussion in the scientific periodicals on the meaning of the international legal standards, as well as generally recognized principles of international law in the national legal system [4]. It seems that in case of private law, it is possible and necessary to clearly establish and legislate the principle in question, since all the objections raised about the relationship between an international legal treaty and national law relate to the public law exclusively. As for private international law, firstly, there are no political, economic, financial and other "contraindications" to the direct application of an international legal treaty, and secondly, implementation of an international legal treaty in the field of private law is possible only if its priority over domestic law is recognized.

As it is understood, each special section (institution) of private international law has its own special principles in addition to the general principles of private international law listed above. Special principles are the basic principles, fundamental ideas grounding the legal regulation of the relevant group of relations. Thus, the basis of the regulation of the personal status of subjects, property rights, contractual relations, non-contractual obligations, inheritance, copyright, labor, marriage and family, as well as procedural law are the special principles of private international law, permeating the whole relevant system of regulation.

In international experience, it should especially be dwelled on the project, which were undertaken by private international law scholars of 10 East and Southeast Asian jurisdictions to harmonize the region's private international law rules or principles and finalized in 2017 as The Asian Principles of Private International Law (APPIL). Containing principles on choice of law, international jurisdiction, the recognition and enforcement of foreign judgements, and the judicial support of international commercial arbitration, they are the first harmonization effort in Asia based on comparative analyses of the private international law of the 10 participating APPIL-Jurisdictions. Being the first "voice of Asia" in private international law, they may serve as a model for national and regional instruments and thus may be used by the private international law legislators of Asian jurisdictions to interpret, supplement and enact their own private international law statutes; and may even be applied by state courts and arbitral tribunals, albeit not as legally binding instrument but as "soft law". They will mainly function as a private international law model law [6].

The principles of national sectors and sub-sectors can reflect political, moral, ethical and economic categories, constitutional bases of regulation of the relevant relations (for example, when it comes to marriage and family law it is said about the principles of voluntary marriage, mutual respect of spouses, equality of husband and wife, etc). These principles are not fundamental for private international law. It does not mean that voluntariness, equality, mutual respect, etc. are not legally significant at all in relations with a foreign party. The matter is that the international private law primarily regulates the issues of the legal system selection, whether it is national or foreign, and if it is a foreign one, what exactly. The issue of the applicable law is addressed through other principles not the by subsequent substantive regulation. It shall be noted that in the literature, the main connecting factors are often also specified as conflict principles [7] and from this point of view, it is difficult to define the principle and rule of the conflict in some cases. In this connection, the principles of private international law are rather designated as doctrinal concepts.

### **Conclusion:-**

Based on our point of view reviewed herein, the special principles of private international law should include a fundamental conflict basics recognized by the doctrine of private international law, institutionalized in the form of general rules in the law and applied in practice, including the cases when the law does not have the direct references. Among the number of conflict-of-laws rules governing a particular institution of private international law, the main conflict-of-laws rules (principles) are clearly distinguished, while the remaining statutory factors are nothing more than an exception to the general rule.

Thus, it shall be noted that the fundamental principles of the private international law that apply to the most relations of the international private law, shall be reflected in the law, in particular in the framework of the reform of the Civil Code of Uzbekistan and be clearly stated to ensure its correct application.

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