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## INTERNATIONAL JOURNAL OF ADVANCED RESEARCH (IJAR)

Article DOI:10.21474/IJAR01/13008  
DOI URL: <http://dx.doi.org/10.21474/IJAR01/13008>



### RESEARCH ARTICLE

#### SOME ISSUES OF LEGAL REGULATION OF THE INSTITUTION OF SETTING THE CONTENT OF FOREIGN LAW (BASED ON UZBEKISTAN LEGISLATION)

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#### Manuscript Info

##### Manuscript History

Received: 10 April 2021  
Final Accepted: 14 May 2021  
Published: June 2021

##### Key words:-

Applicable Law, Conflict Of Laws,  
Choice Of Law, Foreign Law, Setting  
The Content Of Foreign Law, Renvoi,  
Refer To Foreign Law, Private  
International Law

#### Abstract

This article analyzes some theoretical and practical issues of setting the content of foreign law. In accordance with the analysis conducted, the author considers that further improvement of the national law of the Republic of Uzbekistan in respect of application and setting the content of foreign law would be expedient. In particular, the author suggests that the Civil Procedural Code of the Republic of Uzbekistan should be supplemented with relevant norms, with consideration of adoption of the separate Law "On Private International Law".

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#### Introduction:-

The institution of setting the content of foreign law is closely related to the problems of conflict of laws and is reviewed among the general issues of private international law.

When a foreign legal order is acknowledged as competent, the specific questions arise on the definition of the general concepts of the law of another state, setting its content, and specifics of its interpretation and application.

It should be noted that the private international law contains a presumption of foreign law application. The necessity of setting its content is also summarized. Thus, when the content of foreign law is set, the following problems appear:

- who should set the content of foreign law?;
- how to define this content;
- what kind of legal consequences can occur if the content of foreign law is not set. [8]

According to the general conceptual approach in understanding of the foreign law, it is indicated that the court sets the content of foreign law ex officio on its own initiative and by virtue of the duty assigned to it by law. The court applies the foreign law as the system of legally binding prescriptions. It is the court should clarify the content of foreign regulations, but not the parties referring to the foreign law in support of their claims. The purpose of setting the content of the foreign law is to determine the legal framework for a future court decision, but not to identify the actual circumstances that are important for consideration of the case. [8]

Among the existing multilateral international treaties specifically devoted to the regulation of relevant relations, we first should mention the European Convention on Information on Foreign Law of 1968, [6] signed by more than 40 States as parties, and the Inter-American Convention on Proof of and Information on Foreign Law of 1979, signed by more than 10 countries (the Republic of Uzbekistan is not a party to neither convention). Some states have

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entered into the bilateral treaties: for instance, the Agreement on Cooperation for Exchange of Information on Legal Systems between Spain and Mexico of 1984.

According to the European Convention on Information on Foreign Law, the Contracting Parties shall share information on their civil and commercial laws and procedures and their judicial system when they have judicial proceedings relate to foreign law.

Each Contracting Party shall establish or designate two authorities: the "receiving institution", with task to receive requests for information from another Contracting Parties and handle those requests; and the "forwarding institution", with task to receive requests for information from its judicial authorities and forward them to the competent receiving institution abroad. The names and addresses of those authorities shall be communicated by the Secretary-General of the Council of Europe to all states-parties to the Convention.

With this, the convention can be signed by the state which is not member of the Council of Europe, meaning that the Republic of Uzbekistan can accede to it. In this respect, it is possible to review the country's accession to this convention, especially given the comment of the national scientists that accession to those documents and implementation of the EU experience in the CIS countries would be expedient. [17]

Currently, the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters [10] can be considered as the international treaty on exchange of information during foreign law application by the courts. Unfortunately, currently, there is no international treaty regulating directly the issues on exchange of information on the content of effective foreign law and the practice of its application, accepted by majority of global legal community, and having the states from various continents as the parties to it.

It is also necessary to mention such an informal set of laws as the Principles of Transnational Civil Procedure, developed by joint efforts of the International Institute for Unification of Private Law (UNIDROIT) and the American Institute of Law for international commercial disputes settlement, including international commercial arbitration [5; 2]. Article 22 of those Principles is devoted, in particular, to the problem of setting the content of foreign law and is an example of what attempts have been taken to harmonize the approaches existing in the procedural law of civil continental and common law countries when this document was being developing. Thus, it was the court that was entrusted with the task to set the content of foreign law, with this, there were also sufficient grounds to appoint an expert examination on the issues of setting the content of foreign legal norms, and the parties also had the opportunity to submit expert opinions on foreign law. [9]

The studied principles provide proper judicial protection to the foreign persons during administration of justice, guarantee them the same rights as possessed by the citizens and legal entities of the state where the dispute is settled. The principles of international civil procedural law are the basis for international cooperation between the states in respect of civil proceedings, and they also establish the standards for civil proceedings arising from legal relations complicated by a foreign element.

### **Results And Discussions:-**

In the Republic of Uzbekistan, the issues of setting the content of foreign legal norms are regulated by several sources of different branches of law.

First of all, the Republic of Uzbekistan is a party to the Kiev Agreement [1], Minsk [3] and Chisinau [4] conventions, and to a number of bilateral treaties on judicial assistance, which served as the basis to reach the agreements for the competent authorities of the contracting parties to submit information on laws effective in their states and the practices of its application.

The rules on setting the content of foreign law are contained by the Economic Procedural Code of the Republic of Uzbekistan (Articles 13 and 14), the Civil Code of the Republic of Uzbekistan (Article 1160) and the Family Code of the Republic of Uzbekistan (Article 238), i.e. both in procedural and substantive laws. At the same time, the Civil Procedural Code of the Republic of Uzbekistan does not have the relevant regulations, and the courts of general jurisdiction have to refer to the Article 1160 of the Civil Code and Article 238 of the Family Code in certain cases, despite the fact, that they also regulate the disputes arising from labor and other legal relations by virtue of Article 26 of the Civil Procedure Code of the Republic of Uzbekistan.

Currently, it can be stated that, firstly, the norms on setting the content of foreign law are reflected in the procedural and in the substantive laws, and, secondly, the Civil Procedural Code of the Republic of Uzbekistan is not regulated sufficiently, which creates a problem in the law enforcement practice of civil courts when, for example, it is proceeded a dispute arisen from an employment contract subjected to foreign law, the employee of which is a citizen of Uzbekistan, given that the Labor Code of the Republic of Uzbekistan does not contain the necessary provisions.

Such legal regulation of the institution setting the content of foreign law cannot be called as satisfactory.

Indeed, the problem of setting the content of foreign law is closely related to such fundamental issues of private international law as the conflicts of laws or determination which law can be applied to legal relations complicated by a foreign element.

The special relationship of conflict of laws, substantive and procedural rules in private international law should be highlighted, since the substantive regulation of private law relations complicated by a foreign element is impossible without addressing the conflict of laws and a number of procedural issues, and it is important to have an idea of the general mechanism of these rules interaction to assess correctly the consequences that a particular action or decision may lead to.

In addition, a few other points should be noted as well.

First, the application of foreign legal norms and setting their content occurs not in the process of consideration of disputes by the courts only. Other authorities also apply foreign law and set its content, for instance, civil registration authorities, notaries and arbitrators of international commercial arbitration (which, as is known, is not included into the judicial system of the state). [14]

Second, we should remember that the it was the legislator who chose the way of fixing the norms on setting the content of foreign law both in the source of procedural law (the Economic Procedural Code and the Civil Procedural Code of the Republic of Uzbekistan), and in the sources of substantive law (the Civil Code of the Republic of Uzbekistan).

Some foreign countries that have adopted a single act on private international law, have separate articles of the relevant law regulating the setting the content of foreign law, with this, it is important to emphasize, that such articles are part of the general provisions of the private international law. [16]

Third, the mentioned above gives us a possibility to say that the rules on setting the content of foreign law have no unambiguous legal nature: obviously, they are applicable in the resolution of cases of a certain category by the courts, but, with this, it is not reasonable to state that their essence is applicable to civil proceedings only, since, as we found out, application of foreign law and setting its content is not the exclusive prerogative of the court, which is confirmed (what is important) by the law in effect.

Therefore, the rules on setting the content of foreign law are part of both international civil procedure and private international law at the same time, referring by their nature to its general provisions.

It seems that a single legal act on private international law, containing the norms of international civil procedure, would be preferable legally and practically, which is also noted by some authors, [15] since it is much more convenient to "operate" with a single source regulating comprehensively all legal aspects of private law relations complicated by a foreign element, than to deal with several legal documents, with the norms that can both duplicate each other or contain contradictions. [13]

Due to the fact that certain categories of disputes complicated by a foreign element, namely, disputes related to contractual and other civil (commercial) relations arising in the course of foreign trade and other types of international economic relations, can be resolved not by the state courts only, but by arbitration courts as well, we will review the issues of the sources of legal regulation of setting the content of foreign legal norms applied by the international commercial arbitration.

As a rule, national law on international commercial arbitration and the regulation of institutional arbitration authorities enables to arbitrators to refer either to the conflict of laws rules that they consider as applicable, or to determine the applicable substantive law directly (voiedirecte) if the parties failed to reach an agreement on the applicable law. [7]

The law exempts the arbitrators from the obligation to follow the national conflict of laws rules, yet it does not grant them the right to choose directly the applicable law. The arbitral tribunal settle the dispute in accordance with such rules of law as the parties have chosen as applicable to the merits of the dispute, but if the parties have not chosen anything, the arbitral tribunal applies the law determined in accordance with those conflict of laws rules that it considers as applicable.

It should be noted that the law on arbitral tribunals and international commercial arbitration stipulate different rules on the foreign law application. Thus, the Law of the Republic of Uzbekistan "On Arbitration Courts" [11] stipulates that arbitral tribunal shall settle the disputes based on the law of the Republic of Uzbekistan. The Law of the Republic of Uzbekistan "On International Commercial Arbitration" stipulates that the arbitration court shall settle the dispute based on the rules of law that the parties have chosen as applicable to the merits of the dispute. Unless specified otherwise, any indication of the law or system of law of any state shall be interpreted as a direct reference to the substantive law of that state, but not to its conflict of laws rules. The arbitral tribunal applies the law determined in accordance with the conflict of laws rules that it considers as applicable, if the parties have not chosen anything. [12] We can see such a tendency that this kind of arbitration law becomes more international than national. [18; 19]

In this case, the Law of the Republic of Uzbekistan "On International Commercial Arbitration" is based on international practice and grants the right to consider the dispute and make a decision by referring to the foreign law.

It can be stated that the application of foreign law by the international commercial arbitration within the territory of the Republic of Uzbekistan is allowed by virtue of the effective law: the foreign law shall be applied by the arbitral tribunal if it is required either by the agreement between the parties or by the referred conflict of laws rules.

### **Conclusion:-**

In accordance with the analysis conducted, it is considered that further improvement of the national law of the Republic of Uzbekistan in respect of application and setting the content of foreign law would be expedient. In particular, it is suggested that the Civil Procedural Code should be supplemented with the relevant norms, with consideration of a separate Law "On Private International Law" adoption.

Also, based on above, we should agree with the opinion of I. Rustambekov, [20] who notes that further review of combining two laws: the Law "On Arbitration Courts" and the Law "On International Commercial Arbitration" would be expedient, with establishment of a single rule on possibility of foreign law application.

### **References:-**

1. Agreement About procedure for the dispute resolution, connected with implementation of economic activity dated March 20, 1992 <https://cis-legislation.com/document.fwx?rgn=4713>
2. ALI/UNIDROIT Principles of Transnational Civil Procedure <https://www.unidroit.org/instruments/transnational-civil-procedure>
3. Convention on legal assistance and legal relations on civil, family and criminal cases dated January 22, 1993. <https://cis-legislation.com/document.fwx?rgn=26119>
4. Convention on legal assistance and legal relations on civil, family and criminal cases dated October 7, 2002 <https://cis-legislation.com/document.fwx?rgn=4741>
5. Draft Principles of Transnational Civil Procedure with Comments <http://www.unidroit.org/english/principles/civilprocedure/ali-unidroitprinciples-e.pdf>
6. European Convention on Information on Foreign Law. London, 07/06/1968. <https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/062>
7. Fouchard, Gaillard, Goldman. On International Commercial Arbitration / edited by E. Gaillard and J. Savage. – The Hague, Kluwer Law International, 1999. –P. 787-882.

8. Getman-Pavlova I.B. *Mejdunarodnoechastnoe parvo.* –M., 2013. (in Russian)
9. Hazard G.C., Jr. *International Civil Procedure and Transnational Civil Procedure: the Impact of Regional Economic Integration // Uniform Law Review.* –Vol. VIII. 2003. – 1/2. –P. 439-441.
10. Hague Conference on Private International Law and its instruments – <https://www.hcch.net/en/instruments>
11. Law of the Republic of Uzbekistan “On arbitration courts” (Domestic arbitration Law) dated October 16, 2006. №ZRU-64. <https://lex.uz/docs/1072094>
12. Law of the Republic of Uzbekistan “On international commercial arbitration” dated February 16, 2021. №ZRU-674. <https://lex.uz/docs/5294087>
13. Marisheva N.I. *Prinsipiprimeneniya inostrannogopravarossiyskimisudami: prosessualniyaspekt // Jurnalrossiyskogoprava.* 1997. №4. –P. 103-104. (inRussian)
14. Medvedev I.G. *Mejdunarodnoechastnoepravoinotarialnayadeyatelnost.* –M.: Wolters Kluwer, 2005. –P.31-36. (inRussian)
15. *Mejdunarodnoechastnoepravo: Uchebnik / L.P. Anufrieva, K.A. Bekyasheva, G.K. Dmitrieva.* – M.:Prospekt, 2000. –P. 78-79. (inRussian)
16. *Mejdunarodnoechastnoepravo: Inostrannoezakonodatelstvo.* –M.:Statut, 2001. –P. 158-167, 629-672. (inRussian)
17. Rustambekov I. (2020). Some Aspects of Development of Private International Law in the CIS Countries. *LeXonomica*, 12(1), 27-50. <https://doi.org/10.18690/lexonomica.12.1.27-50.2020>
18. Rustambekov I. *Razvitiesposobovalternativnogorazresheniyasporov v Respublike Uzbekistan // Pravo I Jizn.* 2019. №2. P. 51-59. (in Russian)
19. Rustambekov I. *Genesis of Alternative Dispute Resolution Mechanisms in the Republic of Uzbekistan. // Review of law sciences.* November, 2020.
20. Rustambekov I. *Uzbekistan. The new – and first – International Commercial Arbitration Law. ICC Dispute Resolution Bulletin.* 2021. Issue 2. P.28.