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COLLISION PRINCIPLES IN LABOR RELATIONS COMPLICATED BY A FOREIGN ELEMENT: EXPERIENCE OF UZBEKISTAN AND FOREIGN COUNTRIES

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Abstract:

Various scientific debates are taking place today not only at the national level but also within the framework of international organizations on the role of countries, international organizations on issues of legal regulation of foreign citizens' activities, foreign labor migration and its legal regulation. The main reason for this is sharp increase of labor migration process in the world in recent years, growing aspirations of foreign citizens in carrying out activities in other countries, as well as involvement of foreign professionals in working in other countries as the result of attracting foreign investment, signing bilateral agreements of employment on the basis of the principle of reciprocity between the two states. Bringing national legislation on human rights in accordance with international standards, development of foreign economic activity of enterprises and organizations entail the emergence and increase of labor relations with so-called foreign element. Based on this, in this article, different aspects of collision-legal regulation of labor relations with complicated foreign element are covered and analyzed. In this, the author pays attention to the types and importance of collision norms governing international labor relations, as well as the principle of autonomous will as a method of collision-legal regulation of labor relations.

Keywords: Foreign element, collision norm, the principle of autonomous will, free choice of rights (lex volutatis); law at the place of work (lex loci laboris); flag act (lex flagi); law of the country of institution, business travelers' (lex loci delegationis) and others.

The Republic of Uzbekistan is open to the outside world, as a democratic state has established equal and mutually beneficial cooperation with countries in the world and international organizations since the early days of independence. The main purpose of such cooperation is ensuring human rights, to provide effective protection of social and economic rights of our citizens outside of the country. One of such processes is the establishment of manufacturing and industrial enterprises in the world, emergence of population migration as the result of their development. So, creation of adequate legal conditions for not only citizens of the Republic of Uzbekistan, but also for foreign citizens on freely conducting activities is one of the most important tasks today.

The importance of regulation of labor relations, complicated by a foreign element is determined by the duty of a democratic legal state to provide and protect the rights of any person, including a foreign citizen or stateless person conducting labor relations in the territory of that state.

This situation sets the task not only in the legal regulation of foreign labor migration, reviewing requirements for foreign labor migrants, but also legal activities of foreign citizens carrying out their work in the country, resolving regulatory issues relating to the right of the state on their social protection, on determining the place of international labor organizations on effectively addressing issues of regulating this labor.

In the West in recent decades, so-called collision labor law is actively developing, ie norms and structures indicating the law of a country using labor laws of different countries in cases of conflicts are being developed [1, p. 22].

Collision problem arises when laws of two or more countries can qualify for the regulation of the same attitudes and choices must be made on the basis of applying collision rules. It is clear that the use of only the collision norm can not solve the controversial issue on merits. Collision norm just refers only to substantive norms of national legislation of the country. Thus, the final solution of the problem in connection with the conflict of laws in different countries requires the use of not only collision norms, but also material-legal rules.

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Relations of private nature falling within the scope of private international law also relate to labor relations associated with foreign rule of law, but only to the extent that their legal regulation is carried out using the categories of private law (contractual obligations, legal capacity, indemnification, limitation of actions). The system of norms governing such relations constitutes an independent branch of IPL – international private labor law, consisting of substantive rights and collision regulations [2, p. 122]. International private labor law is a special regulation of labor relations associated with foreign legislation [3].

Labor relations complicated by a foreign element are included in the subject of international private law. This statement is confirmed by the statements of such prominent scholars as: Kh.R.Rakhmankulov, M.M.Boguslavskiy, V.Y.Ergashev, S.Khamraev, I.S.Peretersky, L.A.Luntz, V.P.Zvekov, S.N.Lebedev, N.A.Khaustova, G.K.Dmitrieva. These authors define the subject of international private law as civil-legal relations (in the broad sense), complicated by a foreign element [4, p. 448; 5, p. 218; 6, p. 545-562; 7, p. 282.].

We should agree with the opinion of N.A.Khaustova on inclusion labor relations into the subject of international private law. She claims that it is possible for the following reasons: firstly, this is private law relationship in the regulation of which the categories of civil law are used (agreement, law and legal capacity, indemnification, autonomy of the parties' will, etc.); secondly, this is relationship of an international character [8, p. 42-45].

Inclusion of norms governing labor relations connected with foreign law, the system of IPL is highlighted by the majority of scientists: "General terms and provisions of international private law are applied to labor relations with a foreign element" [6, 546]. Employment relationship with a foreign element along with civil-legal relations are included into the subject of international private law [9]. Even the concept of a narrow interpretation of the subject of IPL taking into account the complex nature of this sphere of law allows to include norms on labor relations of individuals in its subject [10].

Collision regulation of international labor relations involves the use of general categories of collision rights, but only with significant reservations. As a rule, labor relations in the territory of a state shall obey its law. However, the state may agree to the withdrawal of the rule on application to the employment contract of its domestic law and allow the use of foreign law. The latter should have a close relationship with these labor relations, not to worsen position of an employee in comparison with local legislation and not to violate the mandatory norms of labor law [11].

The following basic collision principles in the field of labor relations complicated by a foreign element are developed: freedom of choice of law (autonomy of will – lex voluntatis); law of the place of work (lex loci laboris); law of the place of the employer; law of the ship's flag (lex flagi); law of citizenship of the employer (lex patriae, lex nationalis); law of the country of the contract on employment (lex loci contractus).

In each country, the legislation establishes the principle according to which international labor relations will be governed. Let us discuss some of them in detail.

Collision-legal regulation of international labor relations affects only private law aspects of this relationship, first of all, issues of employment contract. An employment contract is a contract, and autonomy of the will as a general collision factor of all contractual obligations is widely applied to it.

Collisional formula "law on agreement", i.e. autonomy of the parties' will – lex voluntatis is applied in regulating international labor relations in majority countries. According to this collision factor, the parties of the employment contract give the choice of applicable law. However, taking into account the nature of employment relationship, the choice of rights of a country by the parties of the labor contract to be applied, is limited. The legislation of the most countries provides for the parties' agreement on the applicable law in conclusion of any employment contract as a civil-legal agreement (Spain, Czech Republic, Liechtenstein, Germany) [12, p. 158-192.].

Thus in some countries, this right of choice is made by the parties without restriction (Australia, Canada). In others, restrictions remain on the freedom of choice of law by certain limits focused on protecting the interests of the weaker party – the employee. For example, in the German Civil Code, principles of autonomy of the will is basic in international law of employment contracts. Choice of law is allowed and can be performed both by parties, and by means of a collective agreement. However, its effect is essentially limited by mandatory norms of national law. Thus, the principle of autonomy of the will should not deprive workers of protection providing them with national law. Action of law determined by selection of members of the labor contract can be restricted by the requirement that the worker was not deprived of protection afforded by the pre-start of lex loci laboris, i.e. the law of the place of work.

"Protective" clauses, like the above are characteristic of the legislation in France, Belgium, as well as some Latin American countries. Law of Georgia in 1998, formulating "peremptory norms of social protection" prescribes to consider the choice of law as ineffective if it ignores the mandatory norms adopted

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for protection of workers and employees from discrimination. This rule is subject to application also in respect of employment contracts if they are agreed or signed in a country where workers and employees have a place of residence and where such protective clauses exist. "Protective" clause is also included in the Law of Estonia 2002 [12, p. 158-192.].

In the absence of choice of law by the parties, labor relations shall be regulated by the law of the country of a place of usual execution of labor activities by the employee (lex loci laboris). Collision factors "the law of the place of work" (lex loci laboris) – is the most common approach in determining the law applicable to the labor relations. Thus, the Article 10.6 of the Civil Code of Spain states, "obligations resulting from a labor contract shall be governed by the law of the place where the services are provided". According to the Article 67 of the Code of International private law in Tunisia, "employment contract is regulated by the law of the state where the employee usually carries out his activities". [12, p. 158-192.].

Now let us closer consider the legal basis of the legal status of foreigners in the Republic of Uzbekistan, and their activities. Article 23 of the Constitution of the Republic of Uzbekistan states: "Foreign citizens and stateless persons, during their stay on the territory of the Republic of Uzbekistan, shall be guaranteed the rights and freedoms in accordance with the norms of international law. They shall perform the duties established by the Constitution, laws, and international agreements signed by the Republic of Uzbekistan" [13]. These norms apply to the sphere of labor relations of foreign citizens and stateless persons. This means that the legislation of the Republic of Uzbekistan is based on the application of principle of the national treatment in the field of labor relations.

With regard to the special legislation of the Republic of Uzbekistan, at the present time, neither Labor nor the Civil Code does not contain collision norms that would regulate international labor relations. For example, the Article 11 of the Labor Code of the Republic of Uzbekistan contains general collision normative requirements based on the criteria of territoriality of the national treatment in regulating international labor relations. In accordance with this article, legislation on labor apply to foreign citizens and stateless persons working in the territory of the Republic of Uzbekistan under the labor contract with the employer. The Article 12 of the Labor Code of the Republic of Uzbekistan prescribe the procedures that in enterprises owned fully or partially by a foreign legal person and individuals and located on the territory of the Republic of Uzbekistan shall apply labor legislation of the Republic of Uzbekistan [14].

As it can be seen, the current legislation of Uzbekistan, including the Labor Code of the Republic of Uzbekistan left the solution of collision issues on labor relations of private law nature unattended. The Labor Code of the Republic of Uzbekistan contains only general collision normative requirement regulating labor relations. There is share of administrative and legal regulation, as well as desire of the legislator to protect the interests of the employee in labor relations (as the weaker party in labor relationship) and to protect against possible abuse by the employer. Thus, provisions of domestic legislation does not fully suggest a collision method of legal regulation to be applied in regulating international labor relations.

Meanwhile, the legislative practice of foreign countries resolve these issues in accordance with special laws on international private law (Austria, Hungary, Poland, Romania, Czech Republic) or in the Civil Code (Albania, Germany, Canada). [15, p. 311] This gap in legal regulation of external collision should be filled by introducing appropriate collision normative requirements into the Labor Code of the Republic of Uzbekistan. For replenishment of the gap of collision regulation of labor relations, it is proposed to introduce chapter on **"Application of norms of international private law to labor relations"** into the Labor Code of the Republic of Uzbekistan. It is advisable to formulate the collision principle of autonomy of the will to labor relations with a foreign element, as this principle allows to fully meet the interests of both the employee and the employer. At the same time this principle should be limited with the scope of prohibition on deterioration of the worker compared to mandatory norms of the law of the country, of the worker's citizenship. If the will of the parties of the employment contract is not identified, then the right will be applied to the employment contract – the right of the country in which the employee commonly carries out his work under the contract, even if he is temporarily performing his/her activities in another country, or if there is no country – law of the country, where the company that hired an employee, is situated. If the circumstances show that, the contract is more closely connected with another country, it becomes a subject to the application of the law of that country.

The following proposals and conclusions were prepared on the basis of the study:

firstly, labor relationship with a foreign element are the subject of international private law, as this is relationship of a private law nature (civil and labor relations are united by common principles of private law regulation: equality and legal autonomy of the parties, dispositive regulation, contractual nature of origin, etc.). Allocation of international private labor

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law as a subsector of international private law, possibly as follows: 1) on the subject of regulation – labor relations with a foreign element of private law nature. These relationships are united by common principles of private law regulation: equality and legal autonomy of the parties, dispositive regulation, contractual nature of origin and termination of a relationship, indemnification, etc. 2) on the method of legal regulation. International private law and international private labor law are united by common methods of legal regulation, namely, by collision or substantive law.

secondly, analyzing provisions of the national legislation and judicial practice of foreign countries, it can be concluded, according to which the autonomy of the will, which is one of the fundamental principles of international private law and labor law applied with some degree of caution.

thirdly, the Labor Code of the Republic of Uzbekistan does not provide for a choice of the right to the parties of the labor contract. For replenishment of the gap of collision regulation of labor relations, it is proposed to introduce chapter on **"Application of norms of international private law to labor relations"** into the Labor Code of the Republic of Uzbekistan. Initial position in this chapter must be based on the following: parties of labor relations decide themselves what the national system of labor law should be applied to the relationship. In other words, the parties themselves elect their national law for the contract. If the will of the parties of the employment contract is not identified, then the right will be applied to the employment contract – the right of the country in which the employee commonly carries out his work under the contract, even if he is temporarily performing his/her activities in another country, or if there is no country – law of the country, where the company that hired an employee, is situated. If the circumstances show that, the contract is more closely connected with another country, it becomes a subject to the application of the law of that country.

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