ACADEMICIA: An International Multidisciplinary Research Journal
ISSN: 2249-7137 Vol. 12, Issue 04, April 2022 SJIF 2022 = 8.252
A peer reviewed journal

IMPORTANCE OF COMPENSATION LAW IN PRIVATE INTERNATIONAL LAW AND PROBLEMS IN COMPENSATION

Akmal Akramov*; Ermamat Normatov**

*Lecturer,
Tashkent State University of Law,
Tashkent, UZBEKISTAN
Email id: akmal@mail.ru

**Student,
Tashkent State University of Law,
Tashkent, UZBEKISTAN

DOI: 10.5958/2249-7137.2022.00286.5

ABSTRACT

This research provides information on the importance of international conventions and documents enacted by international organizations and local countries in private international law on compensation and the operation of those laws. It also provides solid evidence of the problems and various inconsistencies that have arisen through this legislation. On the other hand, the problems that arose were freely answered by law and theory.

KEYWORDS: *UNIDROIT Principle, Definition Of Compensation, Public Benefit, Calculation Of Compensation, The Issue Of Interest, Domestic Legislation, Civil Law Regulation.*

INTRODUCTION

In addition to the rules adopted by national authorities to regulate the field of disputes in private international law, treaties, model laws and other documents have been enacted by international organizations. A number of international organizations are engaged in the development of multilateral international private law treaties, model laws and other documents aimed at harmonizing the private law of different jurisdictions. There are also bilateral agreements on private international law. These include the Hague Conference on Private International Law, the International Institute for the Unification of Private Law (UNIDROIT) and the European Union. Of course, these international organizations have adopted various international norms within their jurisdiction and within their member states. Also, the issue of compensation has been widely explained and the legal basis has been established in the international documents adopted so far. **[1]**

Since the beginning of the twentieth century, the Hague Conference on Private International Law has concluded many multilateral conventions covering family law, commercial law, civil procedure and other areas. In 2015, it also adopted non-binding Principles on the Selection of Law in International Trade Agreements. At present, the international conventions and documents enacted by the Hague Conference have been ratified by many Member States and Member States. Of course, these norms have helped to easily resolve various problematic disputes arising in private international law and to find a quick solution to the problem. **[2]**

UNIDROIT is an intergovernmental organization that seeks to modernize and harmonize private law, in particular commercial law. It carries out its work through multilateral conventions (treaties), model laws, principles and guidelines, and its main goal is to modernize, harmonize and regulate private, in particular, commercial law between states and groups of states. is to study the needs and methods of coordination and to formulate uniform legislation, principles and rules to achieve these goals. **[3]**

In particular, UNIDROIT is known for discussing the Cape Town Convention System, one of the most successful commercial law systems in history. Designed to enhance the security of the purchase and financing of high-value equipment, the Cape Town Convention on the International Interest in Mobile Devices was adopted in 2001 and is currently supported by more than 80 Contracting States and 1 Regional Economic Integration Organization (EU). **[4]**

The Convention on the International Interest in Mobile Devices (the Cape Town Convention) is considered one of the most influential developments in the law of commercial agreements over the past 50 years and has the potential to bring billions of dollars in economic benefits to Contracting States. The Convention itself is a basic agreement that extends its activities to specific sectors through the adoption of additional protocols. **[5]**

Like the laws of most countries, Contracts for the International Sale of Goods (CISG), UNIDROIT Principles and PECL (The Principles of European Contract Law) are binding on international organizations if the respondent fails to comply with its contractual obligations. indicates that the vogar may recover the full amount of damages, including lost profits. An important difference between the three is that CISG does not allow legal compensation for non-pecuniary damage, while UNIDROIT principles and PECL stipulate that non-pecuniary damage must be legally enforced. Also, as with the laws of many countries, the CISG, UNIDROIT principles, and PECL should be able to predict how much damage the plaintiff has suffered. **[6]**

We know that there are principles and rules for dealing with legal disputes that have a foreign element in private international law: for example, a cross-border divorce case or a transnational commercial dispute. In the legal system of England and Wales, which have the most developed legislation in the world, the terms "private international law" and "conflict of law" are interchangeable concepts. and playback. The legislation of each country under private international law may differ sharply from the legislation of another country, but each jurisdiction has its own rules based on private international law. **[7]**

In private international law, each state has relevant provisions to address the issue of compensation from the domestic legal system. For example, the norms of private international law for a particular jurisdiction may be established by several separate laws or acts, or in a civil law jurisdiction may occupy part of the Civil Code and other codes. In 2017, Professor Elgar published an invaluable new collection of foreign private international law rules. (Encyclopedia of Private International Law) is a collection of encyclopedias of private international law that currently includes translations of laws in 79 different jurisdictions. In addition, the Encyclopedia, which brings together 195 authors from 57 countries, sheds light on the current state of private international law around the world and provides a unique insight into how science and the impact of globalization and regional integration will affect it. **[8]**

Verschraegen's book, Private International Law, which contains several translated laws, is also considered essential to private international law. Bea Verschraegen's book, in particular, contributes to changes in European integration and the foundations of the conflict of laws. The book is intended to answer questions related to European and Austrian private international law. Existing monographs also cover private international law in the jurisdictions of Belarus, Brazil, Costa Rica, the Czech Republic, Hungary, Israel, Japan, South Africa, Sweden, Turkey and other countries. In addition, this book includes expert reviews and analysis of laws, regulations, and case law applicable to transnational issues in different jurisdictions, as well as a separate guide for each jurisdiction. **[9]**

The role and nature of private international law have changed dramatically in recent decades. With the steady growth of global and regional interdependence, the practical importance of science has increased. The changes in the legislative system at the national, international and, most importantly, regional levels have been enormous. Because each state has tried to bring its legislation in line with international norms and ensure that it does not contradict. As a result, we can see that the Republic of Uzbekistan is also a party to international conventions. For example, the Republic of Uzbekistan has signed all international norms and the Convention on Contracts for the Sale of International Goods (CISG) and other international documents signed at the Hague Conference. **[10]**

From the above theoretical studies, we can see that the importance of the legal norms related to compensation in private international law is determined by international law. Because in today's age of technology, human relations have developed day by day, showing the importance of the norms of international law. Practical research at the international level shows that in the case of compensation, the plaintiff loses his money in order to ensure full recovery of his money from the defendant, as well as to cover the damages as interest. there is a practice of suing the defendant. The laws of most countries, as well as international conventions and laws related to compensation, such as the CISG and UNIDROIT principles, provide for the payment of compensation interest. Several countries prohibit the payment of interest, primarily for religious reasons. However, even some of these countries have allowed it in certain commercial operations. Courts and arbitral tribunals that resolve transnational contract disputes also typically set compensation rates. The practice is so widespread that the obligation to pay interest as part of damages has now become an accepted international legal principle. **[11]**

In international private law, the above norms related to compensation are not the solution to all the problems that currently arise. This is because the relations in private international law are formed between foreign citizens and foreign legal entities of some countries. That is, the relationship that takes place in the territory of several states requires different legal actions between the subjects. It is also clear that the relationship between the subjects of private international law is diverse and that several international conventions, documents and norms are insufficient to regulate these relations.

Nowadays, the development of modern technology has further developed the virtual relationship of a citizen of one state with a citizen of another state. This process leads to the creation of new laws and new norms of private international law and the regulation of these processes. In such cases, we know that the convention and international documents mentioned at the beginning of

this article may not be a necessary solution to the existing problems, and as a result, various conflicts may arise. The problems we identified are:

First, the calculation of compensation and damages is always a particular challenge in litigation. This is more common in international litigation, where different legal systems, languages and traditions come together. There are a number of sharp contradictions in international law, especially in international conventions and documents, in matters of damage assessment and in determining the percentage to be recovered from the defendant. We will be able to explore different objections and opinions on the issue of compensation and damages in the generally accepted general principles or methodologies. These ideas and decisions often exacerbate the problem by not being sufficiently grounded or consistent. On the other hand, in international practice, there is a great need for more accurate and predictable than compensation and damage assessments. As an example, conflicts are growing day by day due to the strengthening of international economic relations - public and private. Knowing how the rights and property of the parties would be assessed in such a situation posed a number of challenges, especially by the courts. Therefore, it should be possible to at least make an approximate assessment of the outcome of the international trial in order to calculate the possible damage. **[12]**

Second, although all countries vary from jurisdiction to jurisdiction, there are restrictions imposed by the state to recover damages for breach of contract. The most common limitation is that the plaintiff can only indemnify for damages incurred as a direct result of a breach of contract and that can be seen as a probable consequence of the breach. Many countries also prevent the plaintiff from recovering damages that could have been prevented by his actions. Some jurisdictions also limit the recovery of damages that are not in the evidence but can be proven with confidence. That is, international conventions do not provide for judicial recovery of benefits that a plaintiff may receive from his or her own funds. The study shows that while most countries provide for the payment of lost profits in the event of a breach of contract, the requirements for recovering them vary from country to country. In general, it is more difficult to obtain lost profits in countries with civil rights, as most of these countries require a high level of evidence to recover them. This means that the court has consistently denied such benefits.

Third, at the moment, there is a lot of objection from the current legislation on the issue of interest by the plaintiff. This is because the timeframe for setting interest rates varies from state to state, and in most countries, interest is calculated from the date of default. Exactly what constitutes a default, but the concept of default in the legislation of one state is different from the legislation of another state. In general, in the event of a breach of contract between the parties, the defendant will automatically start calculating the interest until the date on which the defendant fails to meet its obligations. If such a date is not specified in the agreement of the parties, the prevailing opinion is that the plaintiff will not start collecting interest until he has demanded enforcement. However, courts and arbitration differ in the time over which interest is calculated. Some set interest from the time the plaintiff was deprived of the money (e.g., from the date the contract was terminated), while others set interest from the date of receipt of the notice of liability or from the date of filing the claim, i.e., the application for arbitration interest is calculated from the date of issue. The situation we are considering can, of course, adversely affect the rights and obligations of the plaintiff. International law and domestic law need to address the gap in the law to address this issue. **[13]**

On the other hand, there is another problematic aspect of interest. In most countries, interest on the amount owed is calculated at the rate of the legislation applicable through the selection of legislation, unless the agreement of the parties provides for the payment of interest at a different rate. Interest payment agreements are usually enforced unless they violate public policy, such as usury laws. Unfortunately, statutory rates often do not change over the years, and as a result, as a result of the devaluation of money, the compensation rate set for lost losses does not accurately reflect the percentage. From this we can see that the different interest rates lead to the loss of the plaintiff and the unfairness of the courts. In international practice, only in the United States do legal interest rates range from 6 percent to 15 percent, and international law clearly recognizes that interest on losses on non-monetary obligations under Unidroit Article 7.4.10 can be calculated from the time of breach and interest rates ranged from 3 percent to 31 percent.When these fixed interest rates are flexible interest rates and applied by the courts, the value of the money is assumed and the plaintiff's claim for compensation is settled fairly. **[14]**

Fourth, there are a number of problems in the selection and application of conflict-of-law norms in international private law. For example, in the process of applying the conflict rule, there is the problem of classifying the legal concept used to interpret this norm. In the law of different countries, these concepts do not always coincide in their content. For example, in France the term of action is considered as a concept of civil law, in the United Kingdom, the United States and Finland as a concept of procedural law. Currently, such a classification is gradually being abandoned in the UK and the US. If a French court classifies a statute of limitations according to English law and not according to its own law, then it cannot apply the rules of English law to the statute of limitations. The doctrine of many Western countries is that the classification of legal concepts should be carried out according to the law of the court until the problem of the choice of law is resolved, that is, before the application of the conflict rule. However, if a conflict-of-law foreign law is to be applied, then any classification can only be based on the legal system from which the conflict-of-law norm is derived. It is clear that in order to apply the conflict rules, it is first necessary to better understand the applicable norm, and it is important to select judges and arbitrators who can apply this norm.

We try to find a number of solutions to the problems that arise through legislation. Because there is a solution to any problem and we can implement it by strengthening and developing the law. The first solution is to accede all countries to international conventions, such as the CISG and UNIDROIT. Of course, I believe that this process should be carried out at the request of countries. Only then will member states be able to live up to their commitments. The second solution is to harmonize the domestic legislation of the countries with the international conventions and international documents and, if possible, not to create special norms in practice. If the domestic laws of states that comply with international norms are applied, the problems will be easy and no law will be contradicted. The third solution is to improve the work process of international arbitrators and local courts. This means that the legal knowledge and skills of arbitrators and judges need to be enriched by domestic law and international conventions. This will allow them to resolve the issue quickly and easily.

REFERENCES

1. Rahmonkulov HR, Boboyev HB, Rustamboyev MKh, Okyulov O, Rakhmanov AR. Private international law. A textbook for universities. Tashkent: TSU Publishing House, 2002, p.488
2. Gulyamov S. Analysis of Knowledge Management System in Scientific research center under Uzbekistan Academy of Science. Архив научных исследований, 2020;(11).
3. Gulyamov S, Yusupov S. Issues of Legal Regulation of Robotics in the Form of Artificial Intelligence. European Multidisciplinary Journal of Modern Science, 2022;5:440-445.
4. Gulyamov S, Rustambekov I, Khujayev S. Topical Issues of Improvement of Banking System and Legislation in Uzbekistan.
5. Gulyamov S, Bakhramova M. Digitalization of International Arbitration and Dispute Resolution by Artificial Intelligence. World Bulletin of Management and Law, 2022;9:79-85.
6. Boltayev, F. M., & Gulyamov, S. S. (2021). Investment Activity In The Republic Of Uzbekistan: Problems And Pragmatic Solutions. Студенческий вестник, (17-7), 80-82.
7. Younas A, Akramov A. The Essence, Significance and Legal System of the Legal Aspects of the Contract of Trust Management of Property. International Journal of Development and Public Policy, 2021;1(6):170-175.
8. Akramov A. Supporting Small Businesses and Private Entrepreneurs in the Jewelry Industry In The Country And Development Challenges And Solutions. Экономика: анализы и прогнозы, 2020;(3-4):120-125.
9. Akramov A. Prospectives of Trust Management of Property in Uzbekistan. The American Journal of Political Science Law and Criminology, 2020;2(11):143-150.
10. Akramov A, Mirzaraimov B, Akhtamova Y. Foreign experience related to the legislation and practice of trust management of property in business activities. ΛΌГОΣ, 2020;12-14.
11. Basedow J, Rühl G, Ferrari F, de Miguel Asensio P. Encyclopedia of Private International Law, Edward Elgar Publishing, Cheltenham 2017, 4184p.
12. Verschraegen on Private International Law in Austria. Available at: https://conflictoflaws.net/News/2020/08/ Verschraegen on Private International Law in Austria
13. Private International Law: IALS Library Guides. Available at: https://libguides.ials.sas.ac.uk/ private international law
14. CISG Advisory Council Opinion No 14. Available at: https://www.cisgac.com/cisgac-opinion-no14/