

IMPORTANCE OF APPLICATION OF UNIDROIT PRINCIPLES IN THE REPUBLIC OF UZBEKISTAN AND ITS PLACE IN THE LEGISLATIVE SYSTEM

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ABSTRACT

Today, due to the wide-ranging economic, political and cultural relations of New Uzbekistan with the countries of the world, due to the need to develop such relations, it is necessary to develop new legislative norms in the spirit of the new international law. In this regard, one of the main goals of the current government is to make changes in the legislative system of the Republic of Uzbekistan, to enrich the national legislation with the legal norms of international law. As a result, a number of new laws and changes were made in the following years. Since 2016, the Government of the Republic of Uzbekistan has been implementing significant political, legislative, judicial, economic, and social reforms with the aim of developing the country, enhancing its investment climate, and improving the lives of its citizens at a much more rapid pace than before.

KEYWORDS: *National Legislation, International Law, Domestic Law, “UNCITRAL Model Law”, Investors, The Tashkent International Arbitration Center, Unidroit Principles, Neutral State Law, Civil Code, Transaction, Freedom Of Contract.*

INTRODUCTION

One important aspect of the legislative reforms is the introduction of new laws based on modern practical legislation, which, in some cases, would be based on internationally-respected, high-quality model laws. As part of this process, Uzbekistan has recently adopted a new Law on International Commercial Arbitration (No. O’RQ-674) (the “ICA Law”), which is in line with the UNCITRAL Model Law on International Commercial Arbitration 1985, with amendments as adopted in 2006 (the “UNCITRAL Model Law”). Indeed, the UNCITRAL Secretariat has already recognized the ICA Law as being based on (i.e., compliant with) the text of the UNCITRAL Model Law. [1]

After its passage by the Uzbek Parliament, the ICA was signed by the President of Uzbekistan on 16 February 2021. Pursuant to Article 56 of the ICA Law, the ICA Law will come into force in

Uzbekistan six months from the date of its official publication (17 February 2021). The ICA Law will co-exist with the current Law on Arbitration Courts (No. O'RQ-64) (the "Domestic Arbitration Law"), which came into effect on 1 January 2007 and will continue to apply to domestic arbitrations in Uzbekistan.

The ICA Law will help establish Uzbekistan as a reliable seat for dispute resolution in the Central Asia region and beyond. It is also an important development for Uzbekistan in that it will help Uzbekistan attract foreign investment for infrastructure, human capital, and tourism development, among other sectors. The ICA Law will also help improve investor confidence and the business climate, reduce the cost of doing business, and improve Uzbekistan's international standing in various indices and rankings. [2]

In addition, as a result of many years of closed policy, the Uzbek government, now open to the world, needed to create legislation aimed at reform to increase its attractiveness in the context of global trade. As a result, in 2019, a new version of the "Law on Investments and Investment Activity" was adopted. This is an example of a guarantee given to investors around the world. Prior to that, a number of investors had brought their investments to the Republic of Uzbekistan, and some of them had disagreed with the government and had been sued in the International Court of Arbitration. The adoption of this law is expected to help restore the confidence of international investors in Uzbekistan.

The Tashkent International Arbitration Center has also been established in the Republic of Uzbekistan. This is one of the most important things the new government has done. This was done in accordance with the Presidential Decree of November 6, 2018 "On the establishment of the Tashkent International Arbitration Center (TIAC) under the Chamber of Commerce and Industry of the Republic of Uzbekistan".

The main goal of the Center is to establish mechanisms for resolving disputes through arbitration, based on modern and international standards. In addition, the Tashkent International Arbitration Center will cooperate with leading foreign arbitrators and exchange experience in resolving disputes through international arbitration. During its existence, foreign arbitrators will be involved in resolving existing disputes and will train specialists in international arbitration, including out-of-court settlement of investment disputes. [3]

The International Arbitration Center provides consulting services to local and foreign business entities, in particular to foreign investors, in the field of investment prevention, including the prevention of disputes between the parties.

One of the international documents to be introduced into the legislation of the Republic of Uzbekistan at this time is the Unidroit Principles. Obviously, given the rapid development of international trade, it is becoming necessary for Uzbekistan to establish international relations. However, differences in laws, cultures, and languages create a number of barriers to the interpretation of obligations arising from international trade agreements by legal entities, which often leads to instability in international trade relations due to a lack of clarity. Thus, the need to standardize the rules for interpreting contracts has become a priority so that the rights and obligations of each party to the contract are clear. In this regard, the Unidroit Principles emerged as a single set of rules and principles for regulating international trade agreements. [4]

The application of Unidroit Principles to the legislation of the Republic of Uzbekistan means that representatives of the Uzbek business community and ordinary citizens will be able to act in accordance with a single standard document at the international level when concluding international trade agreements. This will help them to avoid some of the problems that are often shut down while performing similar actions on their side. For example, one of the most common problems in practice is the choice of law applicable to a commercial contract with a foreigner. It is clear that the foreign applicant does not want the law applicable to the contract to be Uzbek law, and the Uzbek contracting party does not agree that the foreign citizen's law should regulate the contract. It was just one example, and we can cite many such examples. [5]

The main purpose of the Unidroit Principles is to create a common basis for international trade agreements and to ensure their practical application, interpretation and application in different countries to encourage conscientious and fair treatment in international treaty relations. The Unidroit Principles apply the general rules of international trade when the parties agree to regulate their contracts on the basis of such principles. The principles may also be applied when the parties decide not to choose a particular law to regulate their contracts and may be used in the interpretation or supplementation of other general international legal instruments, as well as in the interpretation or supplementation of national legislation. There is nothing to prevent the application of the Unidroit principles to internal agreements concluded between individuals, although these principles are specifically designed for international trade agreements. Nevertheless, any such agreement may be subject to mandatory norms set out in domestic law governing the contract.

Therefore, it is important to harmonize the rules of UNIDROIT with the legislation of the Republic of Uzbekistan. After all, The Principles provide a uniform framework for international commercial contracts thus reducing disputes related thereto. The Principles are however of a persuasive value and they do not override mandatory rules of domestic law. [6]

Given the structural similarities between UNIDROIT principles and many national laws around the world, UNIDROIT principles are often a useful tool in negotiating contracts. Of course, this will be very useful for Uzbekistan, whose legislation is still internationally different from the legislation of other countries, and we can see that it is very important to harmonize the rules of UNIDROIT with the legislation of Uzbekistan.

As the rules of UNIDROIT are a model document for the countries of the world, the current normative acts of the legislation of the Republic of Uzbekistan contain norms similar to its norms. Because of these norms, developed by the Roman Institute, are based on the generalization of many rules that are common to the norms of international private law in many families of law around the world.

The basic relations regulated by Unidroit Principles regulate the relations of private international law. That is why I am talking about the norms of Uzbek law that regulate such relations. Unidroit Principles are widely used in contractual relations, mainly at the international or local level. [7]

Therefore, in order to show the role of Unidroit Principles in the legislation of the Republic of Uzbekistan, we analyze the legislation of Uzbekistan, which regulates commercial contracts. The

main normative document regulating contractual relations in the Republic of Uzbekistan is the Civil Code of the Republic of Uzbekistan.

In particular, Article 105 of the Civil Code establishes a norm on the form of the agreement (contract). According to him, the agreements are made orally or in writing (simple or notarized). Silence is an expression of the will to enter into an agreement in cases provided by law or by agreement of the parties. This norm is also reflected in the Unidroit Principles (Article 1.2)

Nothing in these Principles shall be required to be developed or ratified by contract, declaration or other act. This can be proven by any means, including with witnesses. As we can see this as a comparison between the Unidroit Principles and national legislation, which makes it possible to understand the difference between the two.

Article 354 of the Civil Code deals with freedom of contract. “Citizens and legal entities are free to sign contracts. Coercion to enter into a contract shall not be permitted, except in cases when the obligation to enter into a contract is stipulated by this Code, another law or an obligation undertaken. The parties may also enter into an agreement not provided for by law. [8]

The parties may enter into an agreement (mixed agreement) that includes elements of various agreements. The rules of contracts with elements of a mixed contract shall apply to the relations of the parties to a mixed contract, unless otherwise agreed by the agreement of the parties or the essence of the mixed contract.

The terms of the contract are determined at the discretion of the parties, except as otherwise provided by law.”

In the Unidroit Principles , this rule is reflected in Article 1.1: “The parties are free to enter into a contract and determine its content.”

The principle of freedom of contract is important in the context of international trade. The right of entrepreneurs to freely decide to whom they offer their goods or services and by whom they wish to deliver, as well as their ability to freely negotiate the terms of individual agreements can be determined by an open, market-oriented and competitive international economic order. As for the freedom to determine the content of the contract, first of all, the Principles themselves contain rules that the parties cannot withdraw (see Article 1.5). In addition, there are mandatory rules of national, international or supranational origin, which, if they can be applied in accordance with the relevant rules of private international law, shall prevail over the rules contained in the Principles and the parties may not deviate from them. [9]

According to Article 123 of the Civil Code of the Republic of Uzbekistan, an agreement concluded under the influence of fraud, violence, intimidation, conspiracy of one party's representative with the other party, as well as the citizen himself due to serious circumstances a transaction (complex agreement) that the other party was forced to enter into under extremely unfavorable conditions, for which the other party used it, may be declared invalid by the court at the request of the victim.

Moreover, The Civil Code states, “A transaction entered into in the name of itself (a forged agreement) without the intent to cause legal consequences is not valid in itself.

If the agreement is made under the guise of another agreement (fraudulent agreement), the rules of the agreement, which the parties actually intended, will be applied”.

An alternative principle to the same rule is reflected in Article 1.7 of the Unidroit Principles (Good faith and fair dealing). It stipulates that each Party must act in good faith in international trade. The parties may not exclude or limit this obligation.

Given the structural similarities between Unidroit Principles and many national laws, Unidroit Principles often help to overcome legal barriers in contract negotiations. They are really neutral and do not favor any party. Their choice avoids researching state law, which can be chosen as a neutral law - often costly. The choice of Unidroit Principles is more beneficial than the selection of a randomly selected neutral state law, as randomly selected neutral legislation often leads to unintended consequences. In addition, in many cases, the parties find the Unidroit Principles familiar from their national laws as well as the rules of conduct. In addition, Unidroit Principles are a simple and ready-to-use tool that facilitates the effective development of contracts. [10]

Like many countries in the world, the legal system of Uzbekistan is directly related to the Unidroit Principles. We can take this as an example using the norms set out in the national legislation mentioned above. Today, Uzbekistan, which is expanding its economic, social and cultural ties with countries around the world, is trying to incorporate the Unidroit Principles into its national legislation. Obviously, this will help Uzbekistan to develop relations with foreign countries. As a result, in recent years the Uzbek government has been trying to improve its relations with UNIDROIT and to join various documents adopted by it. For example, in 2021, the Uzbek delegation held a meeting with UNIDROIT members. The fruitful meeting focused on Uzbekistan's consideration of accession to UNIDROIT as a Member State and included presentations covering a number of UNIDROIT instruments such as the UNIDROIT Principles of International Commercial Contracts 2016, the Cape Town Convention and its Protocols, the 1995 UNIDROIT Convention on Stolen or Illegally Exported Cultural Objects, and the UNIDROIT/FAO/IFAD Legal Guide on Contract Farming. A number of UNIDROIT's high priority projects such as the Digital Assets and Private Law Project, and the Best Practices of Enforcement, and further opportunities for cooperation between Uzbekistan and the Tashkent State University of Law and UNIDROIT were also discussed.

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