O‘ZBEKISTON RESPUBLIKASI SUDYALAR OLIY KENGASHI HUZURIDAGI SUDYALAR OLIY MAKTABI HUZURIDAGI ILMIY DARAJALAR BERUVCHI PhD.37/27.02.2020.Yu.107.01 RAQAMLI ILMIY KENGASH ASOSIDAGI BIR MARTALIK ILMIY KENGASH

O‘ZBEKISTON RESPUBLIKASI SUDYALAR OLIY KENGASHI HUZURIDAGI SUDYALAR OLIY MAKTABI

ISANOV XOLMUROD RUZIYEVICH

Fors-major – fuqarolik-huquqiy kategoriya sifatida: nazariya va amaliyot

12.00.03 – Fuqarolik huquqi. Tadbirkorlik huquqi. Oila huquqi. Xalqaro xususiy huquq

Yuridik fanlar doktori (DSc) dissertatsiyasi
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Contents of the Doctoral (DSc) dissertation abstract

Оглавление автореферата диссертации доктора наук (DSc)

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Fan doktori (Doctor of Science) dissertatsiyasi mavzusi O‘zbekiston Respublikasi Oliy ta’lim, fan va innovatsiyalar vazirligi huzuridagi Oliy attestatsiya komissiyasida B2021.1.DSc/Yu152 raqam bilan ro‘yxatga olingan.

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Dissertatsiya himoyasi O‘zbekiston Respublikasi Sudyalar oliy kengashi huzuridagi Sudyalar oliy maktab huzuridagi ilmiy darajalar beruvchi PhD.37/27..02.2020.Yu.107.01 raqamli ilmiy kengash asosidagi Bir martalik ilmiy kengashning 2024-yil 19 aprel kuni soat 15:30 dagi majlisida bo‘lib o‘tadi (Manzil: 100097, Toshkent shahar, Chilonzor tumani, Cho‘ponota ko‘chasi, 6-uy. Tel.: (99855) 501-01-89; faks: (99855) 501-01-89; e-mail: tm_devon@mail.ru).

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KIRISH (yuridik fanlar doktori (DSc) dissertatsiyasi annotatsiyasi)

Dissertatsiya mavzusining dolzarbligi va zarurati. Dunyoda tez-tez sodir bo‘layotgan turli-tuman tabiiy ofatlar va ijtimoiy, iqtisodiy, harbiy, siyosiy vaziyatlar oqibatlari tufayli yuzaga kelayotgan fors-major holatlari nafaqat insonlar hayoti, sog‘ligi va turmush tarzi, balki iqtisodiy munosabatlarga ham salbiy ta’sir ko’rsatmoqda. Birlashgan Millatlar Tashkilotining Tabiiy ofatlar xavfini kamaytirish bo‘yicha Byurosi (UNISDR, Jeneva) ma’ruzasiga ko‘ra, “so‘nggi 20 yil mobaynida er yuzida tabiiy ofatlar soni ikki hissaga oshishi natijasida dunyo iqtisodiyoti 3 trillion AQSh dollari miqdorida zarar ko‘rgan”[1]. “Har yili o‘rtacha 1,4 million respublikamiz aholisiga ham tabiiy ofatlar oqibatlari ta’siri natijasida 3 milliard AQSh dollariga yaqin miqdorda zarar etkaziladi”[2]. Tabiiy ofatlar va halokatli hodisalar natijasida yuzaga kelgan fors-major holatlari salbiy oqibatlarini kamaytirish hamda iqtisodiy munosabatlar ishtirokchilarining huquqlari va qonuniy manfaatlarini himoya qilish mazkur sohaning dolzarbligini ko’rsatadi. Bu esa, murakkab vaziyatlar tufayli yuzaga kelgan fors-major holatlari bilan bog’liq munosabatlarni huquqiy tartibga solishning samarali mexanizmlarini yaratishni talab etadi.

Jahonda, jumladan anglo-sakson, roman-german va islom huquqi tizimi mamlakatlarida fors-major holati kategoriyasi ham ilmiy kategoriya, ham qonunchilik segmenti, ham sud amaliyoti kategoriyasi sifatida mavjud. U barcha mamlakatlarda kutilmagan vaziyatlar taqozosiga ko‘ra mushkul ahvolda qolgan subyektlarni adolat va insof asosida himoya qilish funksiyasini muvaffaqiyatli bajarmoqda. Shu bois, fors-major holatiga oid xorijiy davlatlar qonunchiligi, huquqni qo’llash va sud amaliyoti, shuningdek xalqaro amaliyotni o’rganish, bu borada qonun hujjatlari va huquqni qo’llash amaliyotida uchraydigan muammolarning ilmiy-nazariy va amaliy yechimini topishda muhim ahamiyat kasb etadi.

Respublikamizda qonun ustuvorligini ta’minlash, sud-huquq tizimini isloh qilish, fors-major holatlari bilan bog’liq munosabatlarni huquqiy tartibga solish borasida keng qamrovli dasturiy tadbirlar amalga oshirilmoqda. Jumladan, “O‘zbekiston–2030” strategiyasida[3] “Qonun ustuvorligini ta‘minlash, xalq xizmatidagi davlat boshqaruvini tashkil etish” ustuvor yo‘nalishi bo‘yicha muhim vazifalar nazarda tutilgan. Mamlakatimiz milliy huquq doktrinasida, jumladan sivilistika nazariyasida ham fors-major holati kategoriyasining huquqiy tabiati bo‘yicha yaxlit va mukammal paradigma ishlab chiqilmagan. Uning huquqiy va nohuquqiy manba sifatidagi xususiyatlari to‘liq tahlil etilmagan. Huquqni qo‘llash va sud amaliyotida fors-major holati kategoriyasiga nisbatan yagona yondashuvlar

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[1]Доклад Бюро ООН по сокращению риска бедствий (UNISDR) «ООН: Изменение климата увеличивает число природных катастроф». https://universe-tts.su/main/klimat/86817-oon-izmenenie-klimata-uvelichivaet-chislo-prirodnyh-katastrof.html;

[2] https://mineconomy.uz/uz/news/view/4105.

[3]O‘zbekiston Respublikasi Prezidentining 2023-yil 11-sentyabrdagi PF-158-sonli Farmoni. https://old.lex.uz/docs/6600413.

va talqin etishlar amaliyoti shakllanmagan. Xususan, fors-major holatlari doirasini kengaytirilgan yoxud cheklangan holda belgilash holatlari kuzatiladi. Ko'rsatib o'tilganlar mamlakatimizda fors-major holati institutini takomillashtirish bilan bog'liq ilmiy-nazariy va amaliy muammolar dolzarbligi hamda mazkur muammolarni hal etishga qaratilgan ilmiy-amaliy taklif va tavsiyalar ishlab chiqish zarurati borligidan dalolat beradi.

O'zbekiston Respublikasining Fuqarolik kodeksi (1996), Mehnat kodeksi (2022), Bojxona kodeksi (2016), Soliq kodeksi (2019), O'zbekiston Respublikasi Prezidentining 2019-yil 5-apreldagi F-5464-sonli "O'zbekiston Respublikasining Fuqarolik qonunchiligini takomillashtirish chora-tadbirlari to'g'risida"gi Farmoyishi, O'zbekiston Respublikasi Vazirlar Mahkamasining 2022-yil 28-oktyabrdagi 625-sonli "Yengib bo'lmaydigan kuchlar (fors-major) holatlarini tasdiqlash bo'yicha davlat xizmatlarini ko'rsatishning ma'muriy reglamentini tasdiqlash haqida"gi qarori, O'zbekiston Respublikasi Prezidentining 2023-yil 11-sentyabrdagi PF-158-sonli "O'zbekiston–2030" strategiyasi to'g'risida"gi Farmoni va sohaga oid boshqa normativ-huquqiy hujjatlarda belgilangan vazifalarni amalga oshirishga ushbu tadqiqot ishi muayyan darajada xizmat qiladi.

Tadqiqotning respublika fan va texnologiyalari rivojlanishining ustuvor yo'nalishlariga mosligi. Mazkur dissertatsiya respublika fan va texnologiyalar rivojlanishining I."Axborotlashgan jamiyat va demokratik davlatni ijtimoiy, huquqiy, iqtisodiy, madaniy va ma'naviy-ma'rifiy rivojlantirshda innovatsion g'oyalar tizimini shakllantirsh va ularni amalga oshirish yo'llari" ustuvor yo'nalishiga muvofiq bajarilgan.

Dissertatsiya mavzusi bo'yicha xorijiy ilmiy tadqiqotlar sharhi[4]**.** Fors-major holatining huquqiy asoslarini takomillashtirish bo'yicha ilmiy tadqiqotlar dunyoning etakchi ilmiy markazlari va universitetlarida, jumladan University of Washington, University of Pennsylvania (Amerika Qo'shma Shtatlari); Oxford University (Buyuk Britaniya); University of British Columbia (Kanada); University of Brussels (Belgiya); Victoria University of Wellington (Yangi Zelandiya); M.V.Lomonosov nomidagi Moskva davlat universitetida, O.E.Kutafin nomidagi Moskva davlat yuridik universitetida, Yevropa universitetining Sankt-Peterburgdagi huquqni qo'llash muammolari institutida, Samara milliy tadqiqotlar universitetida (Rossiya Federatsiyasi); Toshkent davlat yuridik universitetida, O'zbekiston Respublikasi Sudyalar oliy kengashi huzuridagi Sudyalar oliy maktabida (O'zbekiston) olib borilmoqda.

Jahonda fors-major holati huquqiy asoslarini takomillashtirishga oid amalga oshirilgan ilmiy-tadqiqot ishlari natijasida, jumladan quyidagilarga erishilgan: standart tijorat shartnomalarida boshqarib bo'lmaydigan hodisalar xavfini taqsimlash va fors-major holatlariga oid shartlar asoslantirilgan (University of Pennsylvania); shartnoma huquqida fors-major holatlari va majburiyatlarning vijdonan ijro etilishi asoslantirilgan (University of Washington); Pandemiya

[4]Dissertatsiya mavzusi bo'yicha xorijiy ilmiy tadqiqotlar sharhi https://www.upenn.edu; https://www.cambridge.org; https://search.ufl.edu; https://www.ox.ac.uk; https://www.uchicago.edu; https://www.princeton.edu; http:www.tsul.uz/ va boshqa manbalar asosida amalga oshirilgan.

oqibatlari va Xitoy Xalq Respublikasining fors-major holatiga oid fuqarolik qonunchiligi ishlab chiqilgan (Oxford University); avtotransportda yuk tashishning fors-major holatlari bilan bog‘liq masalalari ochib berilgan (University of British Columbia); xalqaro munosabatlarda pandemiya oqibatlari tufayli yuzaga kelgan fors-major holatlari bilan bog‘liq muammolar asoslantirilgan (University of Brussels); fuqarolik huquqida shartnoma maqsadlariga taraflarning erishib bo‘lmaslik (frustratsiya) va fors-major holatlari ishlab chiqilgan (Victoria University of Wellington); tizimli xavf-xatarlarni fors-major holatlari sifatida normativ malakalash muammolari asoslantirilgan (M.V.Lomonosov nomidagi Moskva davlat universiteti); xalqaro xususiy huquqda “covid” davrida fors-major holatlarini huquqiy tartibga solish xususiyatlari ochib berilgan (O.E.Kutafin nomidagi Moskva davlat yuridik universiteti); fors-major holatlari va tadbirkorlik tavakkalchiligi qiyosiy-huquqiy tahlili amalga oshirilgan (Yevropa universitetining Sankt-Peterburgdagi huquqni qo‘llash muammolari instituti); fors-major holatlariga oid shartlar va vaziyatning jiddiy o‘zgarishi asoslantirilgan (Samara milliy tadqiqotlar universiteti); fors-major holatiga oid xalqaro huquqiy hujjatlarning xalqaro arbitrajda qo‘llanishi masalalari asoslantirilgan (TDYU), shuningdek fors-major holatini huquqiy tartibga solish muammolari tahlil qilinib, unu takomillashtirishga doir takliflar ishlab chiqilgan.

Muammoning o‘rganilganlik darajasi. Dissertatsiya mavzusi O‘zbekiston Respublikasida fuqarolik huquqi fani nuqtai nazaridan etarli darajada o‘rganilmagan. Fors-major holatini huquqiy tartibga solish bilan bog‘liq ayrim muammolar mamlakatimiz olimlari – H.Rahmonqulov, I.Zokirov, O.Oqyulov, M.Barotov, I.Rustambekov, Q.Mehmonov asarlarida ilmiy tahlil etilgan[5]. Shuningdek, N.Imomov, N.Egamberdieva va N.Ashurovalar (zarar etkazishdan kelib chiqadigan majburiyatlar, zarar etkazishdan kelib chiqadigan majburiyatlarning kelib chiqishi, ularning alohida turlari va o‘ziga xos xususiyatlari, zarar etkazishdan kelib chiqadigan majburiyatlar uchun fuqarolik-huquqiy javobgarlik asoslari va shartlari) va V.R.Topildiyev (majburiyatlarni buzganlik uchun javobgarlik asoslari va qarzdorni javobgarlikdan ozod etish asoslari) tomonidan fuqarolik-huquqiy javobgarlik masalalari bo‘yicha tadqiqotning muayyan bir qismi sifatida o‘rganilgan[6].

Fors-major holatini huquqiy tartibga solishning nazariy va amaliy jihatlari xorijiy mamlakatlar olimlari – L.A. Di Mattco, T.Rauh, J.Denver, F.Bortolotti, A.Kenneth, A.Adams, M.Rüscher, H.W. Sullivan, Jr. Steven Paul Barra, Agnieszka Ason, Michal Meidan, N.Bechteler, E.E Pirvis, Ye.A.Pavlodskiy, O.S.Ioffe, Ya.O.Alimova, I.V.Galkin, O.S.Yeraxtina, A.S.Komarov va N.P.Korshunova kabi olimlar tomonidan tadqiq qilingan[7].

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[5]Mazkur olimlar asarlarining to'liq ro'yxati dissertatsiyaning foydalanilgan adabiyotlar ro’yxatida ko’rsatilgan.
[6]Mazkur olimlar asarlarining to'liq ro'yxati dissertatsiyaning foydalanilgan adabiyotlar ro’yxatida ko’rsatilgan.
[8]Mazkur olimlar asarlarining to'liq ro'yxati dissertatsiyaning foydalanilgan adabiyotlar ro’yxatida ko’rsatilgan.

Yuqorida nomlari ko‘rsatib o‘tilgan olimlarning ilmiy tadqiqotlari fors-major holatlari bilan bog‘liq munosabatlarning muayyan nazariy va amaliy qirralariga bag‘ishlangan. Tadqiqot ishlarining ayrimlari esa, ma’lum bir ijtimoiy-iqtisodiy munosabatlardan kelib chiqqan holda tayyorlanganiga e’tibor qaratilib, ulardan mazkur izlanishga kompleks huquqiy tartibga solish yondashuvi nuqtai nazardan dissertatsiya manbasi sifatida ijodiy foydalanildi. Shu bilan birga, mazkur manbalar tahlili mamlakatimizda fors-major holatlari bilan bog‘liq munosabatlarning nazariy va amaliy masalalariga bag‘ishlangan alohida kompleks tadqiqot olib borilmaganini ko‘rsatdi.

Dissertatsiya mavzusining dissertatsiya bajarilgan oliy ta’lim muassasasining ilmiy-tadqiqot ishlari bilan bog‘liqligi. Dissertatsiya O‘zbekiston Respublikasi Sudyalar oliy kengashi huzuridagi Sudyalar oliy maktabi ilmiy tadqiqot rejasiga kiritilgan va ilmiy tadqiqotning ustuvor yo’nalishlari doirasida amalga oshirilgan.

Tadqiqotning maqsadi fors-major holatining mazmun-mohiyati va uni tartibga solishning fuqarolik-huquqiy mexanizmlarini rivojlantirishga oid ustuvor yo‘nalishlar bo‘yicha fuqarolik-huquqiy ilmiy asoslarini ishlab chiqishdan iborat.

Tadqiqotning vazifalari:

O‘zbekistonda javobgarlikdan ozod etish yoki javobgarlikni istisno etishning asosi sifatida fors-major holatiga oid huquqiy ta’limotlar va ularning tarixiy shakllanish bosqichlarini yoritib berish;

fors-major holati tushunchasi, mazmun-mohiyati va belgilarini tahlil qilish va uning ilmiy ta’rifini ishlab chiqish;

fors-major holatining huquqiy tabiati va milliy huquq tizimida tutgan o‘rnini huquqiy kategoriya sifatida tadqiq etish;

fors-major holatlarini tasniflash va ularning shartnoma majburiyatlari bajarilishiga ta’sir ko‘rsatishi hamda delikt majburiyatlar bo‘yicha fuqarolik-huquqiy xususiyatlarini ochib berish;

fors-major holatiga oid xorijiy davlatlar qonunchiligi va sud amaliyoti hamda xalqaro amaliyotni tahlil qilish;

fors-major holatiga oid milliy qonunchilik va sud amaliyotining hozirgi holatini tahlil qilish;

fors-major holati mavjudligini baholash muammolarini ilmiy-amaliy tadqiq qilish va uni baholashning adolatli mezonlarini ishlab chiqish;

fors-major holatiga oid qonun hujjatlarini sud amaliyotida qo‘llash muammolarini ilmiy-amaliy tadqiq qilish va ularni hal etish bo‘yicha taklif va tavsiyalar ishlab chiqish;

fors-major holatiga oid milliy qonunchilikni ilmiy-nazariy va amaliy jihatdan tahlil qilish va uni takomillashtirish bo‘yicha taklif va tavsiyalar ishlab chiqish.

Tadqiqotning obyektini fors-major holatini milliy va xalqaro-huquqiy tartibga solish bilan bog’liq ijtimoiy-huquqiy munosabatlar tashkil etadi.

Tadqiqotning predmetini fors-major holatini huquqiy tartibga solishga oid normativ-huquqiy hujjatlar, huquqni qo‘llash va sud amaliyoti, xorijiy mamlakatlar

qonunchiligi va tajribasi hamda yuridik fanda mavjud bo‘lgan konseptual yondashuvlar, ilmiy-nazariy qarashlar tashkil etadi.

Tadqiqotning usullari sifatida uni amalga oshirish jarayonida ilmiy bilishning mantiqiy-yuridik, formal, qiyosiy-huquqiy, tizimli tahlil, statistik, shuningdek sotsiologik so‘rovlar kabi usullardan foydalanildi.

Tadqiqotning ilmiy yangiligi quyidagilardan iborat:

fors-major holatiga nisbatan turlicha yondashuv va talqin etishlarni bartaraf etish maqsadida, uning favquloddalik, muqarrarlik, taraflar nazoratidan tashqari to‘siq va nisbiylik belgilari mazmun-mohiyatini belgilab beruvchi O‘zbekiston Respublikasining “O‘zbekiston Respublikasi Fuqarolik, Mehnat, Soliq va Bojxona kodeksiga o‘zgartish va qo‘shimchalar kiritish to‘g‘risida”gi Qonun loyihasi ishlab chiqilgan hamda uning qabul qilinishi zarurati asoslantirilgan;

fuqarolik huquqiy munosabatlarda adolat va insofni qonunlarda mujassamlashtirish haqida sivilistika doktrinasi tamoyillarini hisobga olish, fors-major holatining huquqiy va nohuquqiy nazariyasi asoslari, normativ negizi mavjudligi investitsion muhit jozibadorligini oshirishi va xorijiy rezidentlar ishonchini mustahkamlashi asoslantirilgan;

fors-major holati mavjudligini baholashning adolatli mezonlarini belgilash maqsadida, yuzaga kelgan fors-major holatining favquloddalik, muqarrarlik, taraflar nazoratidan tashqari to‘siq va nisbiylik kabi belgilari, uning adolatli mezonlari sifatida tatbiq etilishi lozimligi asoslantirilgan;

sudlarda majburiyatlarni bajarmaganlik yoki lozim darajada bajarmaganlik uchun javobgarlikni belgilash bilan bog‘liq ishlarni ko‘rishda fors-major holatiga oid qonun hujjatlarining to‘g‘ri va bir xilda qo‘llaishini ta’minlash maqsadida, O‘zbekiston Respublikasi Oliy sudi Plenumining “Sudlar tomonidan fors-major holatiga oid qonun hujjatlarini qo‘llashning ayrim masalalari to‘g‘risida”gi qarori loyihasi ishlab chiqilgan va uning qabul qilinishi zarurati asoslantirilgan;

respublika hududida fors-major holatlarini yuzaga keltirishi mumkin bo‘lgan har qanday tabiiy ofatlar va texnogen xavfli vaziyatlarni prognoz qilish natijasida olingan ma’lumotlarni bir joyga to‘plash, saqlash va ularni tezkor ravishda yetkazib berish bo‘yicha maxsus xizmat – Yagona davlat raqamli axborotlar Markazi (YaDRAM) faoliyatini tashkil etish, ushbu “YaDRAM” mustaqil markaziy ijroiya organi sifatida O‘zbekiston Respublikasi Vazirlar Mahkamasi organlari tizimida faoliyat ko‘rsatishi va to‘plangan ma’lumotlarni raqamli axborot-kommunikatsiya tizimlari orqali barcha xalq xo‘jaligi sohalari, shu jumladan har bir fuqaro va tadbirkorlik subyektlariga tezkor ravishda manzilli yetkazib berishni ta’minlash, shuningdek Yagona davlat raqamli axborotlar Markazi (YaDRAM) faoliyatini tashkil etish va amalga oshirishga qaratilgan normativ-huquqiy hamda metodik baza yaratish zarurati asoslantirilgan.

Tadqiqotning amaliy natijalari quyidagilardan iborat:

sivilistika nazariyasi va doktrinasi asosida fors-major holati fuqarolik muomalasi ishtirokchilari xohish-irodasi va xatti-harakatlariga bog‘liq bo‘lmagan, to‘satdan sodir bo‘lgan va oldindan bashorat qilish, muayyan sharoitlarda oqibatlari oldini olish yoki bartaraf etish mumkin bo‘lmagan favqulodda va muqarrar hodisa natijasida majburiyatlar buzilishi va aybsiz zarar yetkazilishiga olib keladigan holat

ekanligi asoslantirilgan hamda fors-major holatiga oid qonun hujjatlarini takomillashtirish bo‘yicha takliflar ishlab chiqilgan;

respublikamizda fors-major holati bilan bog‘liq munosabatlar ham qonunchilik hujjatlari, ham ish muomalasi odatlari bilan huquqiy tartibga solinayotganligini tahlil qilish asosida fors-major holatini huquqiy tartibga solishning gibrid (aralash) tizimini takomillashtirishga doir taklif va tavsiyalar ishlab chiqilgan;

fors-major holatining favquloddalik, muqarrarlik, taraflar nazoratidan tashqari to‘siqligi, nisbiyligi kabi belgilari mazmun-mohiyatini ochib berish va ularni baholovchi mezonlar sifatida tatbiq etish asosida fors-major holatiga nisbatan yondashuvlarni birxillashtirishga xizmat qiluvchi baholashning adolatli mezonlari ishlab chiqilgan;

fors-major holatlari bo‘yicha “status-kvo”ni qo‘llashda huquqbuzilishlarga, jumladan kontragentlarning asossiz boyib ketishiga yo‘l qo‘yilmasligi va asosiy majburiyatlarni bajarishdan ozod qilinmasligi tahlil qilinib, taraflar o‘rtasida zararlarning taqsimlanishi o‘zaro kelishuv yoki sud tartibida “adolatli taqsimlash” va “teng taqsimlash” tamoyillari asosida amalga oshirilishi taklif etilgan;

fors-major holatlariga o‘xshash holatlar sifatida yuzaga kelgan, lekin haqiqiy bo‘lmagan va majburiyatlarning bajarilishiga to‘sqinlik qilishiga qaramasdan, javobgarlikdan ozod etishning asosi sifatida tan olinmaydigan “kvazi fors-major holati” tushunchasi milliy huquq tizimiga kiritilishi va ushbu tushuncha qonunchilikning barcha tarmoq turlari doirasida keng qo‘llanilishi bo‘yicha taklif ishlab chiqilgan;

davlat organlari va ular mansabdor shaxslari, shu jumladan tergovga qadar tekshiruvni amalga oshiruvchi organlar, surishtiruv, dastlabki tergov, prokuratura organlari va sudning tadbirkorlik subyektlariga nisbatan qonunga xilof harakatlari natijasida tadbirkorlik subyektlari va kontragentlar o‘rtasida tuzilgan shartnoma majburiyatlarini bajarishning qiyinlashishi yoki buzilishi tufayli aybsiz zarar yetkazilganlik hodisasi yuridik fakt sifatida fors-major holati deb topilishi taklif etilgan;

fors-major holati o‘zaro huquq va majburiyatlar bilan bog‘liq bo‘lgan huquq subyektlari o‘rtasidagi huquqiy munosabatlarga ta’sir ko‘rsatadigan va muayyan huquqiy oqibatlarni keltirib chiqaradigan yuridik fakt bo‘lganligi sababli, fuqarolik qonunchiligining fors-major holatiga oid huquq normalari nafaqat tadbirkorlik faoliyati subyektlariga, balki fuqarolik muomalasining barcha ishtirokchilariga nisbatan bir xilda qo‘llanishi taklif etilgan;

fors-major holatlari oqibatida yetkazilishi mumkin bo‘lgan zararlarni zamonaviy ilm-fan va texnika vositalaridan samarali foydalangan holda minimallashtirishga qaratilgan chora-tadbirlarni amalga oshirish bo‘yicha qarzdorning xatti-harakatlari mazmun-mohiyati tahlil qilinib, milliy huquq tizimiga fors-major holatiga “insofli asosda qarshi turish” tushunchasi kiritilishi va qarzdorning fors-major holatiga “insofli asosda qarshi turish” xatti-harakatlari “oqilonalik” “ehtiyotkorlik”, “g‘amxo‘rlik” va “qat’iyatlilik” tamoyillari asosida amalga oshirilishi taklif etilgan;

respublika hududida fors-major holatini yuzaga keltirishi mumkin bo‘lgan tabiiy ofatlar va texnogen xavfli vaziyatlarni prognoz qilish natijasida olingan ma’lumotlarni bir joyga to‘plash, saqlash va ularni yetkazib berish bo‘yicha maxsus xizmat, ya’ni Yagona davlat raqamli axborotlar Markazi (YaDRAM) tuzilishi va u mustaqil markaziy ijroiya organi sifatida O‘zbekiston Respublikasi Vazirlar Mahkamasining organlari tizimida faoliyat ko‘rsatishi, to‘plangan ma’lumotlarni raqamli axborot-kommunikatsiya tizimlari orqali xalq xo‘jaligi sohalari, shu jumladan har bir fuqaro va tadbirkorlik subyektiga tezkor ravishda manzilli yetkazib berilishi taklif etilgan.

Tadqiqot natijalarining ishonchliligi. Tadqiqot natijalari milliy qonunchilik normalari, xalqaro standartlar, rivojlangan xorijiy davlatlar qonunchligi va sud amaliyoti, ijtimoiy so‘rovlar, statistik ma’lumotlar tahliliga asoslangan hamda tadqiqot jarayonida foydalanilgan nazariy yondashuvlar rasmiy manbalardan olingan.

Tadqiq etilayotgan mummo bo’yicha sudlar tomonidan 2020-2022-yillarda ko’rilgan ishlar o’rganilgan va 1368 nafar O‘zbekiston Respublikasi Huquqni muhofaza qilish akademiyasi professor-o‘qituvchilari, tinglovchilari, tayanch doktorant va doktorantlari, mustaqil izlanuvchilari o‘rtasida so’rovnomalar o‘tkazilib, natijalar tahlil qilingan va umumlashtirilgan. Xulosa, taklif va tavsiyalar aprobatsiyadan o’tkazilib, ularning natijalari yetakchi milliy va xorijiy nashrlarda e’lon qilingan. Vakolatli davlat organlari tomonidan natijalarning joriy qilinishi bo’yicha dalolatnomalar bilan tasdiqlangan.

Tadqiqot natijalarining ilmiy va amaliy ahamiyati. Tadqiqot natijalarining ilmiy ahamiyati undagi ilmiy-nazariy xulosalar, taklif va tavsiyalar kelgusi ilmiy faoliyat, qonun ijodkorligi, huquqni qo‘llash va sud amaliyoti, qonun hujjatlarining tegishli normalarini sharhlash, milliy qonunchilikni takomillashtirishda, shuningdek tadqiqot natijalaridan yangi ilmiy tadqiqotlar olib borish imkonini berishi bilan izohlanadi.

Tadqiqot natijalarining amaliy ahamiyati mavzuni tadqiq etish natijasida shakllantirilgan ilmiy qoida, xulosa va tavsiyalardan Fuqarolik, Mehnat, Soliq, Bojxona kodeksini, Oliy sud Plenumining qarorlarini takomillashtirishda foydalanish imkonini yaratishi, natijalar huquqni qo’llash amaliyoti va ilmiy tadqiqot ishlarini, “Fuqarolik huquqi” va “Xo’jalik (tadbirkorlik) huquqi” fanlarini nazariy jihatdan boyitishda namoyon bo’ladi.

Tadqiqot natijalarining joriy qilinishi. Fors-major – fuqarolik huquqiy kategoriya sifatida: nazariya va amaliyot bo‘yicha olingan xulosa, taklif va tavsiyalar asosida:

fors-major holatiga nisbatan turlicha yondashuv va talqin etishlarni bartaraf etish maqsadida, uning favquloddalik, muqarrarlik, taraflar nazoratidan tashqari to‘siq va nisbiylik belgilari mazmun-mohiyatini belgilab beruvchi O‘zbekiston Respublikasining “O‘zbekiston Respublikasi Fuqarolik, Mehnat, Soliq va Bojxona kodeksiga o‘zgartish va qo‘shimchalar kiritish to‘g‘risida”gi qonun loyihasi qabul qilinishi yuzasidan takliflar O‘zbekiston Respublikasi Vazirlar Mahkamasining 2022-yil 28- oktyabrdagi 625-son qarori bilan tasdiqlangan “Yengib bo‘lmaydigan kuchlar (fors-major) holatlarini tasdiqlash bo‘yicha davlat xizmatlari ko‘rsatishning

ma’muriy reglamenti”ni ishlab chiqishda foydalanilgan (O‘zbekiston Respublikasi Bosh vaziri kotibiyati Axborot-tahlil va yuridik ta’minlash departamentining 5-dekabr 2023-yildagi 12-15-124-sonli dalolatnomasi). Mazkur taklif fors-major holatlari bilan bog‘liq munosabatlarni huquqiy tartibga solishni takomillashtirishga xizmat qilgan;

fuqarolik huquqiy munosabatlarda adolat va insofni qonunlarda mujassamlashtirish haqida sivilistika doktrinasi tamoyillarini hisobga olish, fors-major holatining huquqiy va nohuquqiy nazariyasi asoslari, normativ negizi mavjudligi investitsion muhit jozibadorligini oshirishi va xorijiy rezidentlar ishonchini mustahkamlashi yuzasidan takliflar O‘zbekiston Respublikasining “Favqulodda holat to’g’risida”gi konstitutsiyaviy qonuni qabul qilinganligi munosabati bilan O‘zbekiston Respublikasining ayrim qonun hujjatlariga qo’shimchalar va o’zgartish kiritish haqida” 2022-yil 2-martdagi O‘RQ-756-sonli Qonuni 3-moddasida o’z aksini topgan va O‘zbekiston Respublikasining ”Tadbirkorlik faoliyati erkinligining kafolatlari to‘g‘risida”gi qonuni 42-moddasini ishlab chiqishda foydalanilgan (O‘zbekiston Respublikasi Oliy Majlisi Qonunchilik palatasi Byudjet va iqtisodiy islohotlar qo‘mitasining 19-dekabr 2023-yildagi 04/ 1-13-34-sonli dalolatnomasi). Mazkur taklif fors-major holatlari bilan bog‘liq tadbirkorlik faoliyatiga oid qonun hujjatlarini takomillashtirishga xizmat qilgan;

fors-major holati mavjudligini baholashning adolatli mezonlarini belgilash maqsadida, yuzaga kelgan fors-major holatining favquloddalik, muqarrarlik, taraflar nazoratidan tashqari to‘siq va nisbiylik kabi belgilari, uning adolatli mezonlari sifatida tatbiq etilishi yuzasidan takliflar O‘zbekiston Respublikasi Vazirlar Mahkamasining 2023-yil 7-iyundagi 231-son qarori bilan tasdiqlangan “Mahalliy xo‘jalik shartnomalari doirasida yuzaga keladigan yengib bo‘lmaydigan kuch (fors-major) holatlarini tasdiqlash tartibi to‘g‘risida”gi nizomni ishlab chiqishda foydalanilgan (O‘zbekiston Respublikasi Bosh vaziri kotibiyati Axborot-tahlil va yuridik ta’minlash departamentining 5-dekabr 2023-yildagi 12-15-124-sonli dalolatnomasi). Mazkur taklif fors-major holatlari bilan bog‘liq munosabatlarni huquqiy tartibga solishni takomillashtirishga xizmat qilgan;

sudlarda majburiyatlarni bajarmaganlik yoki lozim darajada bajarmaganlik uchun javobgarlikni belgilash bilan bog‘liq ishlarni ko‘rishda fors-major holatiga oid qonun hujjatlarining to‘g‘ri va bir xilda qo‘llaishini ta’minlash maqsadida, ishlab chiqilgan O‘zbekiston Respublikasi Oliy sudi Plenumining “Sudlar tomonidan fors-major holatiga oid qonun hujjatlarini qo‘llashning ayrim masalalari to‘g‘risida”gi qarori loyihasi va uning qabul qilinishi yuzasidan takliflar O‘zbekiston Respublikasi Oliy sud Plenumining qarorini ishlab chiqishda foydalanilishi ma’lum qilingan (O‘zbekiston Respublikasi Oliy sudi fuqarolik ishlari bo‘yicha sudlov hay’atining 2023-yil 6-oktyabrdagi 9069-sonli dalolatnomasi). Mazkur taklif fors-major holatiga oid huquqni qo’llash amaliyotini takomillashtirishga xizmat qilgan;

respublika hududida fors-major holatlarini yuzaga keltirishi mumkin bo‘lgan har qanday tabiiy ofatlar va texnogen xavfli vaziyatlarni prognoz qilish natijasida olingan ma’lumotlarni bir joyga to‘plash, saqlash va ularni tezkor ravishda yetkazib berish bo‘yicha maxsus xizmat – Yagona davlat raqamli axborotlar Markazi

(YaDRAM) faoliyati tashkil etilishi, ushbu “YaDRAM” mustaqil markaziy ijroiya organi sifatida O‘zbekiston Respublikasi Vazirlar Mahkamasi organlari tizimida faoliyat ko‘rsatishi va to‘plangan ma’lumotlarni raqamli axborot-kommunikatsiya tizimlari orqali barcha xalq xo‘jaligi sohalari, shu jumladan har bir fuqaro va tadbirkorlik subyektlariga tezkor ravishda manzilli yetkazib berilishini ta’minlash, shuningdek Yagona davlat raqamli axborotlar Markazi (YaDRAM) faoliyatini tashkil etish va amalga oshirishga qaratilgan normativ-huquqiy hamda metodik baza yaratilishi yuzasidan takliflar O‘zbekiston Respublikasi Vazirlar Mahkamasining 2023-yil 29-apreldagi 171-son qarori bilan tasdiqlangan “O‘zbekiston Respublikasi Favqulodda vaziyatlarning oldini olish va bunday vaziyatlarda harakat qilish davlat tizimi to‘g‘risida”gi nizomni ishlab chiqishda inobatga olingan (O‘zbekiston Respublikasi Bosh vaziri kotibiyati Axborot-tahlil va yuridik ta’minlash departamentining 19-dekabr 2023-yildagi 12-15-128-sonli dalolatnomasi). Mazkur taklif fors-major holatlari bilan bog‘liq munosabatlarni huquqiy tartibga solishni takomillashtirishga xizmat qilgan.

Tadqiqot natijalarining aprobatsiyasi. Tadqiqot natijalari 3 ta xalqaro va 6 ta respublika miqiyosidagi ilmiy-amaliy anjumanda muhokamadan o‘tkazilgan.

Tadqiqot natijalarining e’lon qilinganligi. Dissertatsiya mavzusi bo‘yicha jami 22 ta ilmiy ish, jumladan, milliy jurnallarda 8 ta, xalqaro jurnallarda 5 ta, ilmiy anjumanlarda 9 ta, shuningdek 1 ta monografiya chop etilgan.

Dissertatsiyaning tuzilishi va hajmi. Dissertatsiya tarkibi kirish, to‘rtta bob, xulosa, foydalanilgan adabiyotlar ro‘yxati va ilovalardan iborat bo’lib, uning hajmi 232 betni tashkil qiladi.

DISSERTATSIYANING ASOSIY MAZMUNI

Dissertatsiyaning **kirish qismida** mavzuning dolzarbligi va zarurati, tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yo‘nalishlariga mosligi, dissertatsiya mavzusi bo‘yicha xorijiy ilmiy tadqiqotlar sharhi, muammoning o‘rganilganlik darajasi, dissertatsiya mavzusining dissertatsiya bajarilayotgan oliy ta’lim muassasasining ilmiy tadqiqot ishlari bilan bog‘liqligi, tadqiqotning maqsad va vazifalari, obyekti va predmeti, usullari, ilmiy yangiligi va amaliy natijasi, tadqiqot natijalarining ishonchliligi, ilmiy va amaliy ahamiyati, joriy qilinishi, aprobatsiyasi, natijalarning e’lon qilinganligi, dissertatsiyaning hajmi va tuzilishi yoritilgan.

Dissertatsiyaning birinchi bobi **“Fors-major holati genezisi va huquqiy tavsifi”** deb nomlanib, unda fors-major holatiga oid huquqiy ta’limotlar va ularning tarixiy shakllanish bosqichlari, fors-major holati tushunchasi, uning mohiyati va belgilari hamda fors-major holatining huquqiy tabiati va milliy huquq tizimida tutgan o‘rni bilan bog‘liq masalalar tahlil qilingan.

Ushbu bobning “Fors-major holatiga oid huquqiy ta’limotlar va ularning tarixiy shakllanish boqichlari” deb nomlangan birinchi paragrafida muallif tomonidan ilmiy adabiyotlarni tahlil qilish asosida fors-major holatini huquqiy tartibga solishning tarixiy shakllanish bosqichlari, jumladan bundan uch ming yil avvalgi zardushtiylik dini davridan bugungi kunga qadar yoritib berilgani holda, har

bir tarixiy davrda fors-major holati bilan bog‘liq munosabatlarni huquqiy tartibga solishning o‘ziga xos xususiyatlari ochib berilgan.

Bundan uch ming yil avvalgi davrlarda hozirgi O‘zbekiston hududida vujudga kelgan zardushtiylik dinining tartib-qoidalari bayon etilgan “Avesto” kitobida ezgulik va halollik har qanday ijtimoiy munosabatlarni huquqiy tartibga solishning bosh tamoyili va asosiy qoidasi sifatida qabul qilingan bo‘lib, shaxs o‘z majburiyatlarini bajarmaganligi yoki lozim darajada bajarmaganligi tabiiy ofatlar oqibati, ya’ni fors-major holati tufayli kelib chiqqanda, u javobgarlikdan ozod etilgan. Xususan, zardushtiylik dini qoidalari asosida ikki xil majburiyat tan olingan bo‘lib, birinchidan, tantanali ravishda qasam ichish – “varuna”ga ko‘ra shaxsning biron iqtisodiy majburiyatni olishi yoki olmasligi tushunilgan va ikkinchidan, ushbu ichilgan qasam bitim yoki shartnoma hisoblanib, unga ko‘ra taraflar o‘zaro manfaatdorlik jihatidan ma’lum bir iqtisodiy munosabatlar to‘g‘risida kelishuvga erishgan. Ushbu ikkala holda ham kelishish natijasida olingan majburiyatning kuchi taraflar tomonidan ichilgan qasamda yashiringan bo‘lib, bu kuch ilohiy deb hisoblangan va ilohiy kuch o‘zaro shartlashgan taraflarga hamkorlik qiladi, ya’ni o‘z so‘ziga qat’iy bo‘lgan tarafni qo‘llab-quvvatlaydi yoki qasami va so‘zida turmagan tarafni jazolaydi, deb hisoblangan. Shu sababli, shartnomaviy munosabatlarga kirishgan va o‘zaro majburiyatlarga ega bo‘lgan taraflar tabiiy ofatlar oqibatlari, ya’ni fors-major holati tufayli majburiyatlarni bajara olmaganlik holati ilohiy kuchning xohish-irodasi deb hisoblangan va bunday holatlarda majburiyatni bajara olmagan taraf (qarzdor) ikkinchi taraf (kreditor) oldida o‘zining aybi yo‘qligi to‘g‘risida qasam ichishi talab etilgan. Ichilgan qasam uni ichgan taraf (qarzdor)ning o‘z majburiyatini bajarmaganligi uchun javobgarlikdan ozod etishning asosi sifatida qabul qilingan va ushbu qoidalar o‘sha davrlarda odat huquqi me’yorlari ko‘rinishida bo‘lgani holda, keyinchalik jamiyatning rivojlanib borishi natijasida yozma ravishdagi fuqarolik (xususiy) huquqiy munosabatlarni keltirib chiqargan.

Fors-major genezisi dastlab miloddan uch ming yil avvalgi zardushtiylik davrida boshlangan, ya’ni ushbu davrda fors-major holatiga oid qoidalar dastlab odat huquqi me’yorlari ko‘rinishida mavjud bo‘lgan va keyinchalik miloddan avvalgi 753-367-yillar mobaynida qadimgi Rim xususiy huquqining majburiyat huquqi instituti tarkibida shakllangan hamda fors-major holati konsepsiyasi hozirgi zamon huquq tizimlariga Rim huquqidan kirib kelgan.

Hozirgi O‘zbekiston hududida VII asr oxirlaridan XIX asrning ikkinchi yarmigacha ijtimoiy munosabatlar islom huquqi me’yorlari asosida tartibga solingan va ushbu huquq tizimi o‘zining taraqqiyoti natijasida Rim xususiy huquqi singari halqaro ahamiyat kasb etib borgani holda, islom huquqida majburiyat munosabatlari halollik, adolatlilik, insoflilik va ahdga sodiqlik tamoyillari asosida tartibga solingan hamda unda tabiiy ofatlar oqibatida, ya’ni fors-major holatida majburiyatlarni bajarmaganlik uchun javobgarlikdan ozod qiluvchi huquqiy normalar mavjud bo‘lgan.

Fors-major holati bilan bog‘liq munosabatlar XIX asr oxirlaridan XX asr boshlarigacha, ya’ni aralash (dualistik) huquq davrida islom huquqi va Chor

Rossiyasi qonunchiligi bilan tartibga solingan va bu RSFSR Grajdanlik kodeksi 1923-yil 1-yanvardan boshlab amalga kiritilgunga qadar davom etgan.

RSFSR Grajdanlik kodeksi asosida qabul qilingan O‘zbekiston SSRning Grajdanlik kodeksida (O‘zbekiston Respublikasi Fuqarolik kodeksi 1995-yilda qabul qilinib, 1996-yil 1-apreldan kuchga kirgunga qadar) fors-major holatiga oid normalar nazarda tutilmagan. Biroq, ushbu kodeksda javobgarlikning asosi ayb ekanligi belgilangan bo‘lib, qarzdor tomonidan majburyatlar har qanday holatda, shu jumladan fors-major holati tufayli buzilganda va uning aybsizligi isbotlanganda, javobgarlikdan ozod qilingan. Shunday qilib, fors-major holatiga oid huquqiy normalar faqat mustaqillik yillarida, jumladan 1996-yil 1-apreldan kuchga kirgan O‘zbekiston Respublikasi Fuqarolik kodeksining 333-moddasida o‘z aksini topgan bo‘lib, fors-major holati javobgarlikdan ozod qilishning asosi sifatida belgilab berilgan.

Fors-major holatining tarixiy shakllanish bosqichlari – odat huquqi me’yorlari davri (miloddan avvalgi X asrdan boshlab), qadimgi (arxaik) Rim huquqi davri (miloddan avvalgi 753-367-yillar), Rim klassik huquqi davri (miloddan avvalgi I asr oxirlaridan milodiy III asr oxirlarigacha), islom huquqi davri (milodiy VII asr boshlaridan XIX asrning oxirlarigacha), aralash huquq davri, ya’ni Chor Rossiyasi va islom huquqi davri (XIX asr oxirlaridan XX asr boshlarigacha), sovet huquqi davri (1923-1996-yillar) va mustaqil O‘zbekiston davlati fuqarolik huquqi (1996-yildan hozirgacha) davridan iborat.

O‘zbekiston mustaqilligi davrida fors-major holatiga oid qonunchilikning yaratilishi va rivojlanib borishi, xususan 1996-yil 1-apreldan e’tiboran Fuqarolik kodeksining amal qilishi bilan fors-major holatini huquqiy tartibga solish sohasida tegishli tizim yaratilib, fors-major holatiga oid huquqiy normalar bir qator qonun va qonun osti hujjatlarida belgilab berilgan.

Mazkur bobning “Fors-major holati tushunchasi, uning mohiyati va belgilari” deb nomlanuvchi ikkinchi paragrafida o‘rganilayotgan masala bo‘yicha olimlarning fikrlari tahlil qilingan. Xususan, muallif tadqiqotchi olimlar (A.A.Alekseev, Ye.A.Pavlodskiy, O.S.Ioffe, M.M.Agarkov, E.E.Pirvis, A.P.Fokov, O. Oqyulovlar)ning fikrlarini tahlil qilish asosida fors-major holati tushunchasi va uning mohiyatini ochib berib, fors-major holatiga quyidagi mualliflik ilmiy ta’rifini bergan: “Fors-major holati – huquqiy munosabatlar ishtirokchilari xohish-irodasi va xatti-harakatlariga bog‘liq bo‘lmagan, to‘satdan sodir bo‘lgan va oldindan bashorat qilish, muayyan sharoitlarda oqibatlari oldini olish yoki bartaraf etish mumkin bo‘lmagan favqulodda va muqarrar hodisa natijasida aybsiz majburiyatlarning buzilishi va zarar etkazilishiga olib kelgan holat”.

Bundan tashqari tadqiqotchi tomonidan fors-major holatining tasodifiylik, noodatiylik, favquloddalik, muqarrarlik, to‘satdanlik va tashqi xarakter kabi belgilarining o‘ziga xos xususiyatlari ilmiy-amaliy jihatdan asoslantirib berilgan.

Ushbu bobning “Fors-major holatining huquqiy tabiati va milliy huquq tizimida tutgan o‘rni” deb nomlanuvchi uchinchi paragrafida muallif tomonidan huquqiy munosabatlar tizimida javobgarlikdan ozod etish yoki javobgarlikni istisno etishning asosi sifatida fors-major holatining huquqiy tabiati va milliy huquq tizimida tutgan o‘rni atroflicha yoritib berilgan.

Tadqiqotchi milliy qonunchilikdagi fors-major holatiga oid munosabatlarni tartibga soluvchi huquqiy normalar tahlilidan kelib chiqqan holda, quyidagi xulosalarni ilgari surgan:

Birinchidan, fors-major holati fuqarolik huquqining majburiyat instituti tarkibida shakllangan va fuqarolik muomalasi ishtirokchilari xohish-irodasi va xatti-harakatlariga bog‘liq bo‘lmagan, to‘satdan sodir bo‘lgan va oldindan bashorat qilish, muayyan sharoitlarda oqibatlari oldini olish yoki bartaraf etish mumkin bo‘lmagan favqulodda va muqarrar hodisa natijasida majburiyatlarning buzilishi va aybsiz zarar etkazilishiga olib kelgan holat ekanligi hamda majburiyatlarni bajarmaganlik yoki lozim darajada bajarmaganlik uchun fuqarolik-huquqiy javobgarlikdan ozod qilish yoki javobgarlikni istisno qilishning asosi bo‘lganligi bois, unga avvalo fuqarolik-huquqiy kategoriya sifatida qaralishi lozim.

Ikkinchidan, fors-major holati huquqiy munosabatlar tizimida huquqiy munosabatlar ishtirokchilarining xohish-irodasi va xatti-harakatlariga bog‘liq bo‘lmagan, to‘satdan sodir bo‘lgan va oldindan bashorat qilish, muayyan sharoitlarda oqibatlari oldini olish yoki bartaraf etish mumkin bo‘lmagan favqulodda va muqarrar hodisa natijasida majburiyatlarning buzilishi va aybsiz zarar etkazilishiga olib kelgan holat ekanligi hamda majburiyatlarni bajarmaganlik yoki lozim darajada bajarmaganlik uchun javobgarlikdan ozod qilish yoki javobgarlikni istisno qilishning asosi bo‘lganligi bois, umumhuquqiy kategoriya sifatida qaralishi lozim.

Uchinchidan, fors-major holati barcha huquq sohalari doirasida majburiyatlarni bajarmaganlik yoki lozim darajada bajarmaganlik uchun javobgarlikdan ozod qilish yoki javobgarlikni istisno qilishning asosi bo‘lgan umumhuquqiy kategoriya ekanligi bois, milliy huquq tizimida kompleks huquqiy konstruksiya sifatida qaralishi lozim.

Bundan tashqari tadqiqotchi tomonidan fors-major holatiga shaxsning muayyan harakatlarni amalga oshirishga xalaqit qilgan yoki aksincha, shaxsni muayyan harakatlarni qilishga majbur qilgan yoxud qarzdorning kreditor oldidagi majburiyatini bajarishda to‘sqinlik qilgan va uning xohish-irodasi, ixtiyoridan tashqari hodisa yoki vaziyat sifatida qarash lozimligi ilmiy-amaliy jihatdan asoslantirib berildi.

Dissertatsiyaning ikkinchi bobi “**Fors-major holatlarining tasnifi va ularning fuqarolik-huquqiy xususiyatlari”** deb nomlanib, unda fors-major holatlari bir qancha mezonlar asosida tasniflanib, ularning shartnoma majburiyatlarining bajarilishiga taъsir ko‘rsatishi va delikt majburiyatlar bo‘yicha fuqarolik-huquqiy xususiyatlari tadqiq etilgan.

Ushbu bobning birinchi paragrafi “Fors-major holatlarining tasnifi”ga bag‘ishlangan bo‘lib, unda o‘rganilayotgan masala bo‘yicha hozirgi zamon xalqaro amaliyotda fors-major holatiga oid yondashuvlar va olimlarning fikrlari tahlil qilingan. Jumladan, Xalqaro Savdo Palatasi (ICC) tomonidan xalqaro tijorat amaliyoti bo‘yicha 2020-yilda yangi tahrirda ishlab chiqilgan “Fors-major holatlari va vaziyatlarning jiddiy o‘zgarishi to‘g‘risida pisandalar” va tadqiqotchi olimlar (V.I.Sergeev va D.Chernenkolar)ning fikrlarini tahlil qilish asosida fors-major

holatlarini barcha huquq sohalariga tegishli bo‘lgan umumhuquqiy kategoriya sifatida bir qancha mezonlar asosida tasniflash bo‘yicha takliflar berilgan:

Birinchidan, huquqiy munosabatlar ishtirokchilari xohish-irodasiga bog‘liqligiga ko‘ra, hodisalar va xatti-harakatlar;

Ikkinchidan, юridik fakt sifatida ma’lumligiga ko‘ra, umume’tirof etilgan faktlar va sudda isbotlanishi shart bo‘lgan faktlar;

Uchinchidan, huquqiy tartibga soladigan huquq sohasiga ko‘ra, ommaviy huquq, xususiy huquq, xalqaro ommaviy huquq, xalqaro xususiy huquq sohasiga tegishli;

To‘rtinchidan, huquqiy oqibatlarni yuzaga keltirishiga ko‘ra, javobgarlikdan ozod qilish, majburiyatni bekor qilish, shartnomani o‘zgartishi yoki bekor qilish, majburiyatni bajarishni yoki da’vo muddati o‘tishini to‘xtatib turish, o‘zaro kelishuv bitimini tuzish;

Beshinchidan, salbiy oqibatlarni yuzaga keltirish darajasiga ko‘ra, xalqaro (global yoki mintaqaviy, milliy (davlat yoki lokal), mahalliy (viloyat yoki tuman), xususiy (alohida korxona yoki yuridik shaxlar);

Oltinchidan, etkazilgan zarar miqdoriga ko‘ra, ko‘p bo‘lmagan miqdordagi zarar, ko‘p miqdordagi zarar, juda ko‘p miqdordagi zarar;

Yettinchidan, yuzaga kelish sohasiga ko‘ra, ma’muriy-huquqiy (favqulodda holatning joriy qilinishi, davlat tomonidan normativ-huquqiy hujjatlarning qabul qilinishi, davlat organlari va ular mansabdor shaxslarining qonunga xilof xatti-harakatlari va boshqalar), ijtimoiy, iqtisodiy, siyosiy, harbiy (ish tashlashlar, epidemiyalar, iqtisodiy sanksiyalar, diplomatik aloqalarning to‘xtatilishi, urushlar yoki harbiy harakatlar kabilar), tabiiy-iqlim (zilzila, suv toshqinlari, sunami, tayfun va shu kabilar), texnogen hodisalar (avariyalar, portlashlar, suv to‘g‘onlarining buzilishi va boshqalar).

Tadqiqotchi tomonidan berilgan fors-major holatlarining tasnifi milliy, xorijiy davlatlar yoki xalqaro huquqni qo‘llash amaliyotida fors-major holati sifatida tan olingan barcha hodisalar yoki xatti-harakatlarni qamrab olmasligi mumkinligi, ya’ni bunda har bir fors-major holatining yuzaga kelishi bevosita insonlarning xohish-irodasi va xatti-harakatlariga bog‘liq bo‘lmagan, to‘satdan sodir bo‘lgan va oldindan bashorat qilish, muayyan sharoitlarda oqibatlari oldini olish yoki bartaraf etish mumkin bo‘lmagan favqulodda va muqarrar alohida hodisa yoki xatti-harakat sifatida namoyon bo‘lishi inobatga olinishi lozim.

Ikkinchi bobning ikkinchi paragrafi “Fors-major holatlarining fuqarolik-huquqiy xususiyatlari”ga bag‘ishlangan bo‘lib, unda tadqiqotchi majburiyatlarning bajarilishiga bevosita ta’sir ko‘rsatadigan fors-major holatlar sifatida tabiiy ofatlar, harbiy harakatlar va urushlar, terrorchilik harakatlari, uchinchi shaxslarning yashirin xarakterdagi harakatlari va majburiyatlarning bajarilishiga bevosita ta’sir ko‘rsatmaydigan fors-major holatlar sifatida ish tashlash (zabastovka)lar, davlat hokimiyati organlari tomonidan normativ-huquqiy hujjatlarning qabul qilinishi kabi hodisalarning fuqarolik-huquqiy xususiyatlarini yoritib bergan. Xususan, tabiiy ofatlar oqibatida etkazilgan zararlarga oid statistik hisobotlar va tadqiqochi olimlar (N.P. Korshunova, D. Chernenko, Z.V.Gradoboeva, Ye.V.Passek, S.A.Ivanov, V.Tomsinov, N.M.Golovin, Sh.I.Budman, Ye.A.Pavlodskiy, M.I.Braginskiy,

I.Vlasyuklar)ning fikrlarini tahlil qilish asosida tabiiy ofatlar, harbiy harakatlar va urushlar, terrorchilik harakatlari ish tashlash (zabastovka)lar, davlat hokimiyati organlari tomonidan normativ-huquqiy hujjatlarning qabul qilinishi kabi voqea-hodisalar oqibatlari fors-major holatini yuzaga keltirishi ilmiy-amaliy jihatdan asoslantirilgan.

Ikkinchi bobning “Delikt majburiyatlarda fors-major holatlari” deb nomlangan uchinchi paragrafida o‘rganilayotgan masala bo‘yicha olimlarning fikrlari va mahalliy davlat hokimiyati organlarining qarorlari (huquqiy aktlar sifatida) tahlil qilingan. Xususan, dissertant tadqiqotchi olimlar (V.A.Belov, M.P.Redin, O.Oqyulov, Ye.M.Kondratevalar)ning fikrlari va Qashqadaryo, Surxondaryo, Xorazm viloyati hokimlarining qarorlarini tahlil qilish asosida delikt majburiyatlar bo‘yicha fors-major holatlarining fuqarolik-huquqiy xususiyatlari atroflicha ochib berilib, davlat hokimiyati organlari va ular mansabdor shaxslarining qonuniy yoki g‘ayriqonuniy harakatlari hamda tergovga qadar tekshiruvni amalga oshiruvchi organlar, surishtiruv, dastlabki tergov, prokuratura organlari va sudning qonunga xilof harakatlari oqibatida tadbirkorlik subyektlari bilan kontragentlar o‘rtasidagi shartnoma majburiyatlarini bajarishning qiyinlashishi yoki buzilishi tufayli aybsiz zarar etkazilishi fors-major holati sifatida qaralishi lozimligi ilmiy-amaliy jihatdan asoslantirib berilgan.

Dissertatsiyaning uchinchi bobi **“Fors-major holatiga oid xorijiy davlatlar fuqarolik qonunchiligi va sud amaliyoti hamda xalqaro amaliyot”** deb nomlanib, unda roman-german, anglo-sakson va islom huquqi tizimlariga kiruvchi xorijiy davlatlarning fors-major holatiga oid fuqarolik qonunchiligi va sud amaliyoti, shuningdek fors-major holatlarini xalqaro huquqiy tartibga solishning o‘ziga xos xususiyatlari ilmiy-nazariy va amaliy nuqtai nazardan tahlil etilgan.

Ushbu bobning “Xorijiy davlatlarning fors-major holatiga oid fuqarolik qonunchiligi tahlili” deb nomlangan birinchi paragrafida Rossiya Federatsiyasi, Belarus Respublikasi, Qozog‘iston Respublikasi, Fransiya Respublikasi, Germaniya Federativ Respublikasi, Xitoy Xalq Respublikasi, Buyuk Britaniya qirolligi, AQSh, Saudiya Arabistoni, Birlashgan Arab Amirliklari va Misr Arab Respublikasi davlatlarining fors-major holatiga oid fuqarolik qonunchiligi tahlil qilinib, ushbu davlatlarda fors-major holatini fuqarolik-huquqiy tartibga solishning o‘ziga xos xususiyatlari ochib berildi. Jumladan, roman-german huquq tizimi davlatlari fuqarolik qonunchiligida fors-major holati tushunchasi umumiy qoida tariqasida belgilanganligi va majburiyatlarni bajarmaganlik yoki lozim darajada bajarmaganlik uchun javobgarlikdan ozod etishning asosi sifatida qabul qilinishi, anglo-sakson huquq tizimi davlatlari fuqarolik qonunchiligida fors-major holati tushunchasi mavjud emasligi va unga huquqiy kategoriya sifatida qaralmasligi, umumiy qoidaga ko‘ra shartnoma taraflaridan biri majburiyatni bajarmasdan (breach of contract) uni buzganligi uchun javobgarlikka tortilishi mumkinligi, shuningdek uni bajarilishiga to‘sqinlik qilgan fors-major holati javobgarlikdan ozod etishning huquqiy vositasi sifatida qabul qilinishi mumkinligi, islom huquqi tizimi davlatlari fuqarolik qonunchiligida esa, fors-major holati shartnoma majburiyatlari bajarilishini (to‘liq yoki qisman) imkonsiz qiladigan hodisa sifatida fuqarolik huquqi, odat huquqi,

islom huquqi (shariat) normalari va adolat tamoyillari asosida majburiyatlarni bajarmaganlik yoki lozim darajada bajarmaganlik uchun javobgarlikdan ozod etishning asosi sifatida qabul qilinishi mumkinligi ilmiy-nazariy va amaliy jihatdan asoslantirilgan.

Mazkur bobning ”Fors-major holatiga oid xorijiy davlatlarning sud amaliyoti” deb nomlangan ikkinchi paragrafida Rossiya Federatsiyasi, Belarus Respublikasi, Qozog‘iston Respublikasi, Fransiya Respublikasi, Germaniya Federativ Respublikasi, Xitoy Xalq Respublikasi, Buyuk Britaniya qirolligi, AQSh, Saudiya Arabistoni, Birlashgan Arab Amirliklari va Misr Arab Respublikasi kabi xorijiy davlatlarning fors-major holatiga oid sud amaliyoti tahlil qilingan. Xususan, roman-german huquq tizimi davlatlari sud amaliyotida fors-major holatining mavjudligi fuqarolik qonunchiligi normalari va shartnoma shartlariga asoslanib aniqlanishi hamda shu asosda javobgarlik masalasi hal etilishi, anglo-sakson huquq tizimi davlatlari sud amaliyotida fors-major holati bilan bog‘liq masala faqat shartnomada fors-major holatiga oid shartlar nazarda tutilgan va majburiyatni bajarishga imkon bermaydigan holatlar yuzaga kelganda, javobgarlikdan ozod etilishidan manfaatdor tarafning talabi bilan ko‘rib chiqilishi va majburiyatni bajarmagan tarafni fors-major holati yoki boshqa holat asosida javobgarlikdan ozod etish yoki da’voni rad etish masalasi sud tomonidan mustaqil hal qilinishi, islom huquqi tizimi davlatlari sud amaliyotida fors-major holati bilan bog‘liq nizolarni hal etishda asosan fiqh me’yorlari va shariat qoidalari asosida qabul qilinib, qit’a huquq tizimi an’analariga xos ravishda kodifikatsiya qilingan kodekslar va shartnoma shartlari hamda adolat tamoyillariga asoslangan holda sud tomonidan qaror qabul qilinishi mumkinligi ilmiy-amaliy jihatdan asoslab berilgan.

Uchinchi bobning ”Fors-major holatlarining xalqaro huquqiy tartibga solinishi va xalqaro arbitrajda qo‘llanilishi” deb nomlangan uchinchi paragrafida fors-major holatlarining xalqaro huquqiy tartibga solinishi va ularga oid xalqaro-huquqiy hujjatlarning xalqaro arbitrajda qo‘llanilishi masalalari ilmiy-nazariy va amaliy tahlil qilingan. Xususan, Xalqaro arbitraj sudlari tomonidan Birlashgan Millatlar Tashkilotining “Tovarlar xalqaro oldi-sotdi shartnomalari to‘g‘risida”gi Konvensiyasi, “Xalqaro tijorat shartnomalarining tamoyillari – UNIDRUA”, “Evropa shartnoma huquqining tamoyillari yoki Lando tamoyillari”, “Evropa xususiy huquqining model qoidalari”, “Qarama-qarshi savdo to‘g‘risida xalqaro shartnomalar tuzish bo‘yicha qo‘llanma” va Xalqaro Savdo Tashkilotining (ICC) “Fors-major holatlari va vaziyatlarning jiddiy o‘zgarishi to‘g‘risida pisandalar” kabi xalqaro-huquqiy hujjatlarning qo‘llanishi asosida shartnoma majburiyatining bajarilishiga to‘sqinlik qilgan har qanday vaziyat, agar shartnoma majburiyatini bajarmagan taraf uni bajarmasligi o‘z nazoratidan tashqari to‘siq natijasi ekanligi, shartnomani tuzishda bunday to‘sqinlik va uning oqibatlarini ko‘ra olmaganligi, shuningdek to‘siqning oldini olish yoki bartaraf etish imkoni bo‘lmaganligini isbotlagan taqdirda, uni fors-major holati asosida javobgarlikdan ozod etish to‘g‘risida qaror qabul qilinishi mumkinligi ilmiy-amaliy jihatdan asoslantirilgan.

Dissertatsiyaning to‘rtinchi bobi **”Fors-major holati huquqiy asoslarini takomillashtirish tendensiyalari”** deb nomlanib, unda O‘zbekistonda fors-major holatiga oid qonunchilik va sud amaliyotining hozirgi holati, fors-major holatini

baholashning adolatli mezonlari va uni huquqiy tartibga solish mexanizmlarini takomillashtirish istiqbollari masalalari ilmiy-nazariy va amaliy jihatdan tadqiq etilgan.

Ushbu bobning ”O‘zbekistonda fors-major holatiga oid qonunchilik va sud amaliyotining hozirgi holati” deb nomlangan birinchi paragrafida qayd etilishicha, hozirgi yangi O‘zbekistonda adolat va qonun ustuvorligi tamoyillari mamlakat taraqqiyotining eng asosiy va zarur sharti sifatida belgilanib, sud-huquq sohasida keng ko‘lamli demokratik islohotlar amalga oshirib borilayotgan bir paytda fors-major holatlari bilan bog‘liq munosabatlar asosan fuqarolik qonunchiligi yoxud qonunchilikning boshqa tarmoq turlari, jumladan mehnat, soliq, bojxona qonunchiligi va boshqa normativ-huquqiy hujjatlar bilan tartibga solib kelinayotganligi va ushbu qonunchilik hujjatlarida fors-major holati umumiy qoida tariqasida belgilab berilganligi, uning legal ta’rifi, belgilari va uni adolatli baholash mezonlariga oid normalar mavjud emasligi, shu bilan birga, hozirgi sud amaliyotida shartnoma majburiyatlarini bajarmaganlik yoki lozim darajada bajarmaganlik uchun javobgarlikni belgilash bilan bog‘liq nizolarni hal etishda fors-major holatiga oid qonun hujjatlarining qo‘llanishida turlicha yondashuvlar mavjudligi ilmiy-amaliy jihatdan asoslantirib berildi.

To‘rtinchi bobning ”Fors-major holatini baholashning adolatli mezonlari” deb nomlanuvchi ikkinchi paragrafida qayd etilishicha, huquqni qo‘llash amaliyotida qarzdor uchun majburiyatni bajarishda “qiyinchilik tug‘diradigan” va uning “oqilona nazoratidan tashqarida”gi to‘siqlarni ajratish imkonini beruvchi xalqaro huquqning birxillashtirilgan yagona qoidalarini o‘zida aks ettirgan – Birlashgan Millatlar Tashkilotining “Tovarlar xalqaro oldi-sotdi shartnomalari to‘g‘risida”gi Konvensiyasi, Xalqaro tijorat shartnomalari tamoyillari (UNIDRUA), Xalqaro Savdo Palatasining “Fors-major holatlari va vaziyatning jiddiy o‘zgarishi to‘g‘risida pisandalari” ish muomalasi odatlari sifatida qo‘llanishi lozimligi ko‘rsatilib, ushbu xalqaro-huquqiy hujjatlar asosida fors-major holatini baholashning adolatli mezonlari ishlab chiqilgan. Jumladan, fors-major holatini baholashning adolatli mezonlari sifatida yuzaga kelgan holatning favquloddaligi – taraflarning oqilona sinchkovligi va ehtiyotkorligi mavjud bo‘lgan holda, uni oldindan ko‘rish yoki bilish mumkin emasligi, ya’ni taraflar faoliyati xavf-xatarlari doirasidan tashqarida to‘satdan paydo bo‘lgan tahdid ekanligi; salbiy oqibatlar vujudga kelishining muqarrarligi – taraflar bunday oqibatlarning oldini olishga imkon beradigan choralar ko‘rishini asosli ravishda kutish mumkin emasligi, ya’ni ko‘riladigan har qanday zamonaviy chora-tadbirlarning natija bermasligi; yuzaga kelgan holatning taraflar nazoratidan tashqari to‘siqligi – majburiyatning bajarilmasligi uni bajarmagan tarafning nazorati ostida bo‘lmagan to‘siq tufayli yuzaga kelganligi va ayni ushbu to‘siq yuzaga kelgan holatning natijasi ekanligi; fors-major holatining nisbiyligi – uning yuzaga kelish joyi, vaqti, sharoitlari, jumladan tadbirkorlik faoliyatini amalga oshirish sharoitlari va muayyan shartnoma munosabatlarining boshqa holatlari asosida kompleks baholashdan iborat ekanligi ilmiy-nazariy va amaliy jihatdan asoslantirilgan.

Mazkur bobning ”Fors-major holatini huquqiy tartibga solish mexanizmlarini takomillashtirish istiqbollari” deb nomlangan uchinchi paragrafida O‘zbekiston Respublikasida fors-major holati bilan bog‘liq munosabatlarni huquqiy tartibga solish bo‘yicha bir qator takomilga etmagan masalalar mavjudligi va bular asosan fors-major holatining fuqarolik qonunchiligi yoxud qonunchilikning boshqa tarmoq turlari doirasida mukammal va atroflicha tartibga solinmaganligi, jumladan fuqarolik, mehnat, soliq, bojxona qonunchiligida fors-major holatining tushunchasi, belgilari va uni baholashning birxillashtirilgan mezonlaridan foydalanilmayotganligi, shuningdek huquqni qo‘llash amaliyotida majburiyatlarni bajarmaganlik yoki lozim darajada bajarmaganlik uchun javobgarlikni belgilashda fors-major holatiga oid qonun hujjatlarining to‘g‘ri va bir xilda qo‘llanishi bo‘yicha ayrim takomilga etmagan masalalar mavjudligi tahlil qilingan.

Tadqiqotchining fikricha, O‘zbekiston Respublikasida fors-major holatini huquqiy tartibga tartibga solishning gibrid (aralash) tizimiga o‘tilganligi va uni takomillashtirish, jumladan fuqarolik qonunchiligida fors-major holatiga oid huquqiy normalarning dispozitivlik tamoyili asosida belgilab berilishi va ushbu normalar fuqarolik muomalasining barcha ishtirokchilariga nisbatan bir xilda tadbiq etilishi, milliy huquq tizimiga fors-major holatiga “insofli asosda qarshi turish” tushunchasi kiritilishi va qarzdorning fors-major holatiga “insofli asosda qarshi turish” xatti-harakatlari “oqilonalik” “ehtiyotkorlik”, “g‘amxo‘rlik” va “qat’iyatlilik” tamoyillari asosida amalga oshirilishi, shuningdek milliy huquq tizimiga “kvazi – fors-major holati” tushunchasi kiritilishi va ushbu tushuncha qonunchilikning barcha tarmoq turlari doirasida keng qo‘llanilishi, fors-major holati oqibatida etkazilgan zararlarning taraflar o‘rtasida taqsimlanishi o‘zaro kelishuv yoki sud tartibida “adolatli taqsimlash” va “teng taqsimlash” tamoyillari asosida amalga oshirilishi, yuzaga kelishi mumkin bo‘lgan fors-major holatlari to‘g‘risidagi ma’lumotlarni bir joyga to‘plash, saqlash va ularni tezkor etkazib berish uchun maxsus xizmat – Yagona davlat raqamli axborotlar Markazi (YaDRAM) tuzilishi lozimligi ilmiy-nazariy jihatdan asoslab berilgan.

Fors-major holatiga oid qonunchilikni takomillashtirish va sud amaliyotida fors-major holatiga oid qonun hujjatlarining to‘g‘ri va bir xilda qo‘llanishi bo‘yicha tavsiyalar ishlab chiqilgan. Jumladan, birinchidan fuqarolik, mehnat, soliq va bojxona qonunchiligi yoxud qonunchilikning boshqa tarmoq turlari doirasida fors-major holatini tartibga soluvchi normalariga tegishli o‘zgartirish va qo‘shimchalar kiritilishi lozimligi, ikkinchidan, fors-major holatiga oid qonun hujjatlarining to‘g‘ri va bir xilda qo‘llanilishi bo‘yicha sud amaliyoti takomillashtirilishi lozimligi ilmiy-nazariy va amaliy jihatdan asoslantirilgan.

Dissertant fikricha, O‘zbekiston Respublikasi Fuqarolik kodeksi 330-moddasining uchinchi qismiga qo‘shimchalar kiritilib, u “Basharti, qonunda yoki shartnomada boshqacha tartib nazarda tutilgan bo‘lmasa, tadbirkorlik faoliyatini amalga oshirishda majburiyatni bajarmagan yoki lozim darajada bajarmagan shaxs majburiyatni lozim darajada bajarishga engib bo‘lmaydigan kuch, ya’ni favqulodda va muayyan sharoitlarda oldini olib bo‘lmaydigan vaziyatlar (fors-major) tufayli imkon bo‘lmaganligini isbotlay olmasa, javobgar bo‘ladi. Vaziyatning favquloddaligi uning muayyan sharoitda paydo bo‘lishi noodatiy

ekanligini va qarzdorning xohish-irodasiga bog‘liq bo‘lmagan holda to‘satdan paydo bo‘lgan obyektiv to‘siq sifatida majburiyatlarning bajarilishini imkonsiz qilganligini, shuningdek uning muayyan sharoitlarda oldini olib bo‘lmaydigan vaziyat ekanligi qarzdorning barcha oqilona va qonuniy harakatlari yuzaga kelgan to‘siqlarni bartaraf etish uchun etarli bo‘lmaganligi va uning yuz berishi shubhasiz ekanligini ko‘rsatadi” degan tahrirda bayon qilinishi, mazkur kodeksning 991-moddasi yangi uchinchi qism bilan to‘ldirilib, u “Tergovga qadar tekshiruvni amalga oshiruvchi organlar, surishtiruv, dastlabki tergov, prokuratura organlari va sudning qonunga xilof harakatlari natijasida tadbirkorlik subyektlarining qonunga xilof tarzda hukm etilganligi, jinoiy javobgarlikka tortilganligi va ehtiyot chorasi sifatida qamoqqa olinganligi, agar tadbirkorlik subyektlari va kontragentlar o‘rtasida tuzilgan shartnoma majburiyatlarini bajarishning qiyinlashishi yoki buzilishi tufayli aybsiz zarar etkazilishiga olib kelgan va agar shartnomada boshqacha tartib nazarda tutilmagan bo‘lsa, ushbu qonunga xilof harakatlar tadbirkorlik subyektlarining javobgarligini istisno etishning asosi hisoblanadi” degan tahrirda bayon qilinishi, O‘zbekiston Respublikasi Mehnat kodeksi 334-moddasining ikkinchi qismiga qo‘shimchalar kiritilib, u “Ish beruvchi aybi bo‘lgan taqdirda majburiyatni bajarmaganligi yoki lozim darajada bajarmaganligi uchun, agar qonun yoki shartnomada boshqacha tartib belgilanmagan bo‘lsa, javob beradi. Ish beruvchi majburiyatni lozim darajada bajarish uchun o‘ziga bog‘liq bo‘lgan hamma choralarni ko‘rgan bo‘lishiga qaramasdan, majburiyatni lozim darajada bajarishga engib bo‘lmaydigan kuch, ya’ni favqulodda va muayyan sharoitlarda oldini olib bo‘lmaydigan vaziyatlar (fors-major holati) tufayli imkon bo‘lmagan bo‘lsa, u aybsiz deb topiladi. Fors-major holati ish beruvchining xohish-irodasi va xatti-harakatlariga bog‘liq bo‘lmagan, to‘satdan sodir bo‘lgan va uni oldindan bashorat qilish, oldini olish yoki bartaraf etish mumkin bo‘lmagan, favqulodda va muqarrar hodisa bo‘lib, uning favquloddaligi muayyan sharoitda paydo bo‘lishi noodatiy ekanligini va ish beruvchining xohish-irodasiga bog‘liq bo‘lmagan holda to‘satdan paydo bo‘lgan obyektiv to‘siq sifatida majburiyatlarning bajarilishini imkonsiz qilganligini, uning muayyan sharoitlarda oldini olib bo‘lmaydigan vaziyat ekanligi esa, ish beruvchining barcha oqilona va qonuniy harakatlari yuzaga kelgan to‘siqlarni bartaraf etish uchun etarli bo‘lmaganligi va uning yuz berishi shubhasiz ekanligini ko‘rsatadi” degan tahrirda bayon qilinishi, mazkur kodeksning 338-moddasi yangi uchinchi qism bilan to‘ldirilib, u “Bartaraf etib bo‘lmaydigan kuch (fors-major holati) deganda yuzaga kelgan vaziyatning favquloddaligi, ya’ni muayyan sharoitda noodatiyligi va xodimning xohish-irodasiga bog‘liq bo‘lmagan holda to‘satdan paydo bo‘lganligi, shuningdek xodimning zamonaviy bilimi va tajribasi asosida qilgan barcha oqilona va qonuniy harakatlari yuzaga kelgan vaziyatni bartaraf etish uchun etarli bo‘lmaganligi tufayli aybsiz zarar etkazilganligi tushuniladi” degan tahrirda bayon qilinishi, O‘zbekiston Respublikasi Soliq kodeksi 215-moddasi birinchi qismining birinchi bandiga qo‘shimchalar kiritilib, u “1) soliqqa oid huquqbuzarlik belgilari bo‘lgan qilmishning tabiiy ofat yoki boshqa favqulodda va bartaraf etib bo‘lmaydigan holatlar oqibatida sodir etilganligi. Bunda yuzaga kelgan holatning favquloddaligi uning muayyan sharoitda

paydo bo‘lishi noodatiy ekanligini va soliq to‘lovchining xohish-irodasiga bog‘liq bo‘lmagan holda to‘satdan paydo bo‘lgan obyektiv to‘siq sifatida soliq to‘lovlari bo‘yicha majburiyatning bajarilishini imkonsiz qilganligini, shuningdek uning muayyan sharoitlarda bartaraf etib bo‘lmaydigan holat ekanligi esa, soliq to‘lovchining barcha oqilona va qonuniy harakatlari yuzaga kelgan to‘siqlarni bartaraf etish uchun etarli bo‘lmaganligi va uning yuz berishi shubhasiz ekanligini ko‘rsatadi. Mazkur holatlar hammaga ma’lum faktlarning mavjudligi, ommaviy axborot vositalarida e’lon qilingan ma’lumotlar va isbotlash uchun maxsus vositalar talab etilmaydigan boshqa usullar bilan aniqlanadi;” degan tahrirda bayon qilinishi, O‘zbekiston Respublikasi Bojxona kodeksining 14-moddasi yangi ikkinchi qism bilan to‘ldirilib, u “Engib bo‘lmaydigan kuch (fors-major) holatining favquloddaligi uning muayyan sharoitda paydo bo‘lishi noodatiy ekanligini va shaxsning xohish-irodasiga bog‘liq bo‘lmagan holda to‘satdan paydo bo‘lgan obyektiv to‘siq sifatida majburiyatning bajarilishini imkonsiz qilganligini, shuningdek uning muayyan sharoitlarda bartaraf etib bo‘lmaydigan holat ekanligi esa, shaxsning barcha oqilona va qonuniy harakatlari yuzaga kelgan to‘siqlarni bartaraf etish uchun etarli bo‘lmaganligi va uning yuz berishi shubhasiz ekanligini ko‘rsatadi” degan tahrirda bayon etilishi hamda O‘zbekiston Respublikasi Oliy sudi Plenumining “Sudlar tomonidan fors-major holatiga oid qonun hujjatlarini qo‘llashning ayrim masalalari to‘g‘risida”gi qarori qabul qilinishi zarurligi asoslantirib berilgan.

XULOSA

Fors-major – fuqarolik-huquqiy kategoriya sifatida: nazariya va amaliyot mavzusida o’tkazilgan tadqiqot natijasida quyidagi nazariy, amaliy va qonunchilikni takomillashtirishga qaratilgan taklif, tavsiya va xulosalar ishlab chiqildi:

I. Ilmiy-nazariy xulosalar:

1.1. Fors-major holatining milliy huquq tizimida tutgan o‘rni tahlil qilinib, u javobgarlikdan ozod qilish yoki javobgarlikni istisno qilishning asosi sifatida fuqarolik huquqining majburiyat huquqi instituti tarkibida shakllangan fuqarolik huquqiy kategoriya ekanligi va huquqiy munosabatlar tizimida umumhuquqiy kategoriya ekanligi to‘g‘risida konseptual asoslar ishlab chiqilib, ular o‘rtasidagi o‘zaro bog‘liqlik va uyg‘unlik ochib berilib, fors-major holati milliy huquq tizimida kompleks huquqiy konstruksiya ekanligi ilmiy-nazariy jihatdan asoslantirildi.

1.2. Mualliflik yondashuvi asosida fors-major holatining ilmiy ta’rifi ishlab chiqilib, u huquqiy munosabatlar ishtirokchilarining xohish-irodasi va xatti-harakatlariga bog‘liq bo‘lmagan, to‘satdan sodir bo‘lgan va oldindan bashorat qilish, muayyan sharoitlarda oqibatlari oldini olish yoki bartaraf etish mumkin bo‘lmagan favqulodda va muqarrar hodisa natijasida majburiyatlarning buzilishi va aybsiz zarar yetkazilishiga olib kelgan holat ekanligi ilmiy-nazariy jihatdan asoslantirildi.

1.3. Fors-major holatini huquqiy tartibga solishda ilk marotaba gibrid (aralash) huquqiy tartibga solish fenomeni mohiyati va huquqiy tabiati tadqiq etilib, sivilistika nazariyasi boyitildi. O‘zbekiston Respublikasida fors-major holatlari bilan bog‘liq munosabatlar ham qonunchilik, ham ish muomalasi odatlari bilan huquqiy tartibga

solib kelinayotganligi, huquqiy tartibga solishning ushbu gibrid (aralash) tizimiga o‘tilganligi to‘g‘ri yondashuv ekanligi va uni takomillashtirish lozimligi ilmiy-nazariy va amaliy jihatdan asoslantirildi.

1.4. Fors-major holatiga oid huquqiy normalar turli huquq sohalarida amal qiladi. Biroq, fors-major holati tushunchasi, belgilari va uni adolatli baholash mezonlari biror-bir huquq sohasida mavjud emas. Bu o‘z navbatida fors-major holatining mazmun-mohiyatini tushunish va uni baholash bo‘yicha turlicha talqinlarni yuzaga keltiradi. Hozirda fuqarolik, mehnat, soliq, bojxona huquqi va boshqa huquq sohalarida fors-major holatiga oid mavjud bo‘lgan normalar o‘rtasida o‘zaro umumiylik bo‘lishi bilan birga, ziddiyatlar ham mavjud. Jumladan, fuqarolik huquqida fors-major holatiga oid huquqiy norma “tadbirkorlik faoliyatini amalga oshirishda majburiyatni bajarmagan yoki lozim darajada bajarmagan shaxs majburiyatni lozim darajada bajarishga yengib bo‘lmaydigan kuch, ya’ni favqulodda va muayyan sharoitlarda oldini olib bo‘lmaydigan vaziyatlar (fors-major) tufayli imkon bo‘lmaganligini isbotlay olmasa, javobgar bo‘ladi” deb belgilangan bo‘lsa, mehnat huquqida “zarar bartaraf etib bo‘lmaydigan kuch oqibatida yuzaga kelgan hollarda xodimning moddiy javobgarligi istisno etiladi” deb belgilangan yoki bojxona huquqida “tabiat hodisalari yoki yuridik va jismoniy shaxslarning xohish-irodasi hamda xatti-harakatlariga bog‘liq bo‘lmagan boshqa holatlar sababli kelib chiqqan, shuning oqibatida mazkur shaxslar qabul qilgan majburiyatlarini bajara olmaydigan favqulodda va oldini olib bo‘lmaydigan, kutilmagan holatlar yengib bo‘lmas kuch ta’siri hisoblanadi” deb belgilangan. Huquq sohalari o‘rtasidagi bunday farqlanish fors-major holatiga oid kompleks huquqiy konstruksiyaning mohiyatidagi birlik va uzviylikka salbiy ta’sir ko‘rsatadi. Shu asosda fors-major holati fuqarolik huquqining majburiyat instituti tarkibida shakllangan fuqarolik huquqiy kategoriya ekanligi tahlil qilinib, uning huquqiy munosabatlar tizimida umumhuquqiy kategoriya va milliy huquq tizimida kompleks huquqiy konstruksiya mohiyatidagi birlik va uzviylikni ta’minlash maqsadida, fors-major holati qaysi huquqiy munosabat bilan bog‘liq bo‘lishidan qat’iy nazar, uning tushunchasi, belgilari va baholash mezonlari fuqarolik huquqi normalari asosida belgilanishi lozimligi ilmiy-nazariy jihatdan asoslantirildi.

1.5. Fors-major holatini to‘g‘ri va obyektiv baholashda, uning favquloddaligi, muqarrarligi, taraflar nazoratidan tashqari to‘siqligi va nisbiyligi kabi belgilari mavjudligi inobatga olinishi lozim. Fors-major holatini baholashning adolatli mezonlari sifatida uning belgilarini tadbiq etish maqsadga muvofiq.

Fors-major holatini baholashning adolat mezonlarini tahlil qilish asosida, ularning mazmun-mohiyati ochib berildi:

- yuzaga kelgan holatning favquloddaligi – taraflarning oqilona sinchkovligi va ehtiyotkorligi mavjud bo‘lgan holda, uni oldindan ko‘rish yoki bilish mumkin emasligi, ya’ni taraflar faoliyati xavf-xatarlari doirasidan tashqarida to‘satdan paydo bo‘lgan tahdidligi;

- salbiy oqibatlar vujudga kelishining muqarrarligi – taraflar bunday oqibatlarning oldini olishga imkon beradigan choralar ko‘rishini asosli ravishda

kutish mumkin emasligi, ya’ni ko‘riladigan har qanday zamonaviy choralarning natija bermasligi;

- yuzaga kelgan holatning taraflar nazoratidan tashqari to‘siqligi – majburiyatning bajarilmasligi uni bajarmagan tarafning nazorati ostida bo‘lmagan to‘siq tufayli yuzaga kelganligi va ayni ushbu to‘siq yuzaga kelgan holat natijasi ekanligi;

- yuzaga kelgan holatning nisbiyligi – uning yuzaga kelish joyi, vaqti, sharoitlari, shuningdek tadbirkorlik faoliyatini amalga oshirish sharoitlari va muayyan shartnoma munosabatlarining boshqa holatlari asosida kompleks baholanishi.

1.6. Ijtimoiy xarakterdagi harbiy harakatlar, urushlar, terrorchilik harakatlari, uchinchi shaxslarning yashirin harakatlari, ish tashlashlar (zabastovkalar), shuningdek yuridik xarakterdagi davlat hokimiyati organlari tomonidan (qonuniy va noqonuniy) normativ-huquqiy hujjatlarning qabul qilinishi kabi voqea-hodisalar fors-major holati sifatida majburiyatlarning buzilishi va aybsiz zarar yetkazilishiga olib keladigan fuqarolik-huquqiy xususiyatlari ilmiy-nazariy va amaliy jihatdan asoslab berildi.

1.7. Delikt majburiyatlar bo‘yicha davlat organlari va ular mansabdor shaxslari, jumladan tergovga qadar tekshiruvni amalga oshiruvchi organlar, surishtiruv, dastlabki tergov, prokuratura organlari va sudning tadbirkorlik sub’yektlariga nisbatan qonunga xilof harakatlari oqibatida tadbirkorlik sub’yektlari va kontragentlar (uchinchi shaxslar) o‘rtasida tuzilgan shartnoma majburiyatlarini bajarishning qiyinlashishi yoki buzilishi tufayli aybsiz zarar yetkazilganlik holatini yuridik fakt sifatida fors-major holati deb topish to‘g‘risidagi tadbirkorlik sub’yektlarining da’vo talablari sudlar tomonidan qanoatlantirilishi lozimligi ilmiy-nazariy va amaliy jihatdan asoslantirildi.

1.8. Sud tomonidan manfaatdor taraf (qarzdor)ning “davlat hokimiyati organlari tomonidan normativ-huquqiy hujjatning qabul qilinishi”, shuningdek “davlat organlari va ular mansabdor shaxslari, shu jumladan tergovga qadar tekshiruvni amalga oshiruvchi organlar, surishtiruv, dastlabki tergov, prokuratura organlari va sudning tadbirkorlik sub’yektlariga nisbatan qonunga xilof harakatlari”ni yuridik fakt sifatida fors-major holati deb topish to‘g‘risidagi talablari qanoatlantirilmagan hollarda, manfaatdor taraf (qarzdor) o‘zining konstitutsiyaviy huquqlaridan to‘liq foydalangan holda “insofli asosda qarshi turish” tamoyili asosida sudning keyingi instansiyalariga boqichma-bosqich murojaat qilishi yoki kreditor bilan javobgarlikdan ozod qilinishi to‘g‘risida kelishuvga erishishi lozimligi ilmiy-nazariy va amaliy jihatdan asoslantirib berildi.

1.9. Fors-major holatiga oid normalarning dispozitivlik tamoyili asosida belgilanishi afzalliklari, jumladan bunda shartnoma taraflari o‘zaro ishonch asosida tavakkalchiliklar (xavf-xatarlar salbiy oqibatlarini o‘z zimmasiga olish)ni taqsimlash orqali fors-major holatlariga oid shartlarni kelishib olishi, bu fors-major holatlari bo‘yicha sud amaliyotini barqarorlashtirishga xizmat qilishi tahlil qilinib, fuqarolik qonunchiligida fors-major holatiga oid huquqiy normalar dispozitivlik tamoyili asosida belgilab berilishi to‘g‘ri va samarali ekanligi ilmiy-nazariy jihatdan asoslantirildi.

1.10. O‘zbekiston Respublikasining fuqarolik qonunchiligida fors-major holatiga oid huquqiy normalar faqat tadbirkorlik faoliyati sub’yektlariga nisbatan tatbiq etilishi belgilanganligi, fors-major holati o‘zaro huquq va majburiyatlar bilan bog‘liq bo‘lgan huquq sub’yektlari o‘rtasidagi huquqiy munosabatlarga ta’sir ko‘rsatadigan va muayyan huquqiy oqibatlarni yuzaga keltiradigan yuridik fakt ekanligi va javobgarlikdan ozod qilish yoki javobgarlikni istisno qilishning asosi sifatidagi fuqarolik-huquqiy kategoriya ekanligi tahlil qilinib, fuqarolik qonunchiligining fors-major holatiga oid huquq normalari fuqarolik muomalasining barcha ishtirokchilariga nisbatan tatbiq etilishi va bir xilda qo‘llanishi lozimligi ilmiy-nazariy va amaliy jihatdan asoslantirildi.

1.11. Fors-major holatlariga o‘xshash holatlar – haqiqiy bo‘lmagan fors-major holati sifatida yuzaga keladigan va majburiyatlarning bajarilishiga to‘sqinlik qilishiga qaramasdan, javobgarlikdan ozod qilish yoki javobgarlikni istisno qilishning asosi sifatida tan olinmaydigan holatlar ekanligi tahlil qilinib, milliy huquq tizimiga “kvazi fors-major holati” tushunchasi kiritilishi va ushbu tushuncha fuqarolik qonunchiligi, shuningdek qonunchilikning boshqa tarmoq turlari doirasida keng qo‘llanilishi lozimligi ilmiy-nazariy va amaliy jihatdan asoslantirildi.

1.12. Fuqarolik huquqiy munosabatlarda adolat va insofni qonunlarda mujassamlashtirish haqidagi sivilistika doktrinasining tamoyillarini namoyon bo‘lishi hisobga olinishi, fors-major holatining huquqiy va nohuquqiy nazariyasi asoslari hamda normativ negizi mavjudligi mamlakatimizda investitsion muhit jozibadorligini oshirishi va xorijiy rezidentlar ishonchini mustahkamlashi asoslantirildi.

1.13. Fors-major holatlari oqibatida yetkazilishi mumkin bo‘lgan zararlarni zamonaviy ilm-fan va texnika vositalaridan samarali foydalangan holda minimallashtirishga qaratilgan chora-tadbirlarni amalga oshirish bo‘yicha qarzdorning xatti-harakatlari mazmun-mohiyati tahlil qilinib, milliy huquq tizimiga fors-major holatiga “insofli asosda qarshi turish” tushunchasi kiritilishi va qarzdorning fors-major holatiga “insofli asosda qarshi turish”ga qaratilgan xatti-harakatlari “oqilonalik” “ehtiyotkorlik”, “g‘amxo‘rlik” va “qat’iyatlilik” tamoyillari asosida amalga oshirilishi lozimligi ilmiy-nazariy va amaliy jihatdan asoslantirildi.

1.14. Fors-major holatlari bo‘yicha “status-kvo”ni qo‘llashda huquqbuzilishlarga, jumladan kontragentlarning asossiz boyib ketishiga yo‘l qo‘yilmasligi, shuningdek taraflar asosiy majburiyatlarni, xususan pul majburiyatlarini bajarishdan ozod qilinmasligi tahlil qilinib, fors-major holatlarida taraflar o‘rtasida zararlarning taqsimlanishi o‘zaro kelishuv yoki sud tartibida “adolatli taqsimlash” va “teng taqsimlash” tamoyillari asosida amalga oshirilishi va ushbu tamoyillar amaldagi qonunchilik hujjatlariga kiritilishi lozimligi ilmiy-nazariy jihatdan asoslab berildi.

1.15. Respublika hududida yuzaga kelishi mumkin bo‘lgan har qanday tabiiy ofatlar va texnogen xavfli vaziyatlarni prognoz qilish natijasida olingan ma’lumotlarni bir joyga to‘plash, saqlash va ularni tezkor ravishda yetkazib berish bo‘yicha maxsus xizmat, ya’ni Yagona davlat raqamli axborotlar Markazi (YaDRAM) faoliyati tashkil etilishi, ushbu “YaDRAM” mustaqil markaziy ijroiya

organi sifatida O‘zbekiston Respublikasi Vazirlar Mahkamasining organlari tizimida faoliyat ko‘rsatishi va to‘plangan ma’lumotlarni raqamli axborot-kommunikatsiya tizimlari orqali xalq xo‘jaligi barcha sohalari, shu jumladan har bir fuqaro va tadbirkorlik sub’yektiga tezkor ravishda manzilli yetkazib berilishini ta’minlash lozimligi, shuningdek Yagona davlat raqamli axborotlar Markazi (YaDRAM) faoliyatini tashkil etish va amalga oshirishga qaratilgan normativ-huquqiy hamda metodik baza yaratilishi zarurligi ilmiy-amaliy jihatdan asoslantirildi.

1.16. Fuqarolik-huquqiy javobgarlikni belgilashda fors-major holatining o‘ziga xos xususiyatlarini tahlil qilish asosida, uning huquqiy oqibatlari ochib berildi:

- agar, fuqarolik-huquqiy javobgarlikning asosi ayb bo‘ladigan bo‘lsa, unda fors-major holatida qarzdor javobgarlikdan ozod qilinadi;

- agar, fuqarolik-huquqiy javobgarlikni istisno etishning asosi aybsizlik bo‘ladigan bo‘lsa, delikt majburiyatlar bo‘yicha javobgarlikni belgilashda faoliyati tevarak atrofdagilarga oshiqcha xavf tug‘diradigan yuridik shaxslar va fuqarolar oshiqcha xavf manbai yetkazgan zarar fors-major holati yoki jabrlanuvchining qasddan qilgan harakati oqibatida yuzaga kelganligi isbotlangan va zarar yetkazgan shaxsning xatti-harakatlari bilan zarar o‘rtasida sababiy bog‘lanish bo‘lmasa, unda fors-major holatida qarzdorning javobgarligi istisno etiladi;

- agar aybning bo‘lishi yoki bo‘lmasligidan qat’iy nazar javobgarlik belgilangan bo‘lsa, unda fors-major holati ahamiyatga ega emas va hech qanday huquqiy oqibat tug‘dirmaydi.

1.17. Fors-major holatini huquqiy tartibga solish mexanizmining samaradorligi bevosita huquqni qo‘llovchilar, shu jumladan sudyalar tomonidan huquq normalarining to‘g‘ri, aniq va bir xilda talqin qilinishi, ya’ni ularning huquqiy ongi va huquqiy madaniyati darajasiga bog‘liqligi, sudyalar korpusi fors-major holatining mazmun-mohiyati, uning yuridik tabiati va ushbu holatlarga oid qonun normalarini qo‘llashni to‘la anglab yetishi lozimligi tahlil qilinib, O‘zbekiston Respublikasi Sudyalar oliy kengashi huzuridagi Sudyalar oliy maktabining o‘quv dasturlariga fors-major holati bo‘yicha mavzular kiritilishi, sudyalar uchun qisqa muddatli o‘quv kurslari tashkil etilishi va tadbirkorlar uchun o‘quv qo‘llanmalari nashr etilishi lozimligi ilmiy-amaliy jihatdan asoslantirildi.

1.18. Fors-major holati bilan bog‘liq munosabatlarni huquqiy tartibga solishga oid ta’limotlar tizimli tahlil qilinib, fors-major holatining huquqiy asoslari dastlab bundan uch ming yil avvalgi zardushtiylik dini davrida odat huquqi me’yorlari, keyinchalik huquqiy norma ko‘rinishida qadimgi Rim xususiy huquqining majburiyat huquqi instituti tarkibida shakllanganligi va fors-major holati konsepsiyasi hozirgi zamon huquq tizimlariga Rim huquqidan kirib kelganligi, keyingi davrlarda islom huquqi, chor Rossiyasi huquqi va islom huquqi normalari asosida aralash huquq, sovet davri huquqi, milliy qonunchilik genezisida amal qilganligi ilmiy-nazariy jihatdan asoslantirildi.

II. O‘zbekiston Respublikasining qonun hujjatlarini takomillashtirish bo‘yicha bo‘lgan taklif va tavsiyalar:

2.1. O‘zbekiston Respublikasi Fuqarolik kodeksi 333-moddasining uchinchi qismini quyidagi qo‘shimcha bilan to‘ldirish maqsadga muvofiq: “Vaziyatning

favquloddaligi uning muayyan sharoitda paydo bo‘lishi noodatiy ekanligini va qarzdorning xohish-irodasiga bog‘liq bo‘lmagan holda to‘satdan paydo bo‘lgan obyektiv to‘siq sifatida majburiyatlarning bajarilishini imkonsiz qilganligini, shuningdek uning muayyan sharoitlarda oldini olib bo‘lmaydigan vaziyat ekanligi qarzdorning barcha oqilona va qonuniy harakatlari yuzaga kelgan to‘siqlarni bartaraf etish uchun etarli bo‘lmaganligi va uning yuz berishi shubhasiz ekanligini ko‘rsatadi”. Chunki, ushbu moddaning fors-major holati belgilari mazmun-mohiyatini ochib beruvchi norma bilan to‘ldirilishi, qonun hujjatlarining huquqni qo‘llash amaliyotida turlicha talqin etilishiga yo‘l qo‘ymagan holda, to‘g‘ri va bir xilda qo‘llanishiga olib keladi.

2.2. O‘zbekiston Respublikasi Fuqarolik kodeksining 991-moddasi quyidagi uchinchi qism bilan to‘ldirish maqsadga muvofiq: “Tergovga qadar tekshiruvni amalga oshiruvchi organlar, surishtiruv, dastlabki tergov, prokuratura organlari va sudning qonunga xilof harakatlari natijasida tadbirkorlik subyektlarining qonunga xilof tarzda hukm etilganligi, jinoiy javobgarlikka tortilganligi va ehtiyot chorasi sifatida qamoqqa olinganligi tadbirkorlik subyektlari va kontragentlar o‘rtasida tuzilgan shartnoma majburiyatlarini bajarishning qiyinlashishi yoki buzilishi tufayli aybsiz zarar etkazilishiga olib kelgan va agar shartnomada boshqacha tartib nazarda tutilmagan bo‘lsa, ushbu qonunga xilof harakatlar tadbirkorlik subyektlarining javobgarligini istisno etishning asosi hisoblanadi”. Ushbu normaning kiritilishi tadbirkorlik subyektlari sifatida fuqarolarga nisbatan tergovga qadar tekshiruvni amalga oshiruvchi organlar, surishtiruv, dastlabki tergov, prokuratura organlari va sudning qonunga xilof tarzda qo‘llagan huquqiy ta’sir choralari oqibatida ularning uchinchi shaxslar (kontragentlar) oldidagi majburiyatlarini bajara olmaganligi va aybsiz holda zarar etkazganligi uchun javobgarlikdan ozod bo‘lish huquqlarini ta’minlaydi. Zero, jamiyatning bugungi huquqiy ongi va huquqiy madaniyati darajasi tadbirkorlik subyektlarining huquqlari va qonuniy manfaatlarini adolat, insoflilik, halollik, oqilonalik, qonuniylik tamoyillariga qat’iy rioya etgan holda ishonchli himoya qilinishini taqozo etmoqda.

2.3. O‘zbekiston Respublikasi Mehnat kodeksining 334 va 338-moddasini quyidagi qo‘shimchalar bilan to‘ldirish maqsadga muvofiq: “Fors-major holati shaxsning xohish-irodasi va xatti-harakatlariga bog‘liq bo‘lmagan, to‘satdan sodir bo‘lgan va uni oldindan bashorat qilish, oldini olish yoki bartaraf etish mumkin bo‘lmagan, favqulodda va muqarrar hodisa bo‘lib, uning favquloddaligi muayyan sharoitda paydo bo‘lishi noodatiy ekanligini va shaxsning xohish-irodasiga bog‘liq bo‘lmagan holda to‘satdan paydo bo‘lgan obyektiv to‘siq sifatida majburiyatlarning bajarilishini imkonsiz qilganligini, uning muayyan sharoitlarda oldini olib bo‘lmaydigan vaziyat ekanligi esa, shaxsning barcha oqilona va qonuniy harakatlari yuzaga kelgan to‘siqlarni bartaraf etish uchun etarli bo‘lmaganligi va uning yuz berishi shubhasiz ekanligini ko‘rsatadi”. Ushbu moddalarni fors-major holati tushunchasi va uning belgilari mohiyatini belgilab beruvchi norma bilan to‘ldirilishi O‘zbekiston Respublikasi Fuqarolik va Mehnat kodeksining normalarini bir-biriga moslashtirgan holda, ularning turlicha talqin qilinishini oldini oladi hamda huquqni

qo‘llash amaliyotida fors-major holatiga oid qonun hujjatlarining to‘g‘ri va bir xilda qo‘llanishiga olib keladi.

2.4. O‘zbekiston Respublikasi Soliq kodeksi 215-moddasi birinchi qismining birinchi bandi quyidagi qo‘shimcha bilan to‘ldirish maqsadga muvofiq: “Fors-major holati shaxsning xohish-irodasi va xatti-harakatlariga bog‘liq bo‘lmagan, to‘satdan sodir bo‘lgan va uni oldindan bashorat qilish, oldini olish yoki bartaraf etish mumkin bo‘lmagan, favqulodda va muqarrar hodisa bo‘lib, uning favquloddaligi muayyan sharoitda paydo bo‘lishi noodatiy ekanligini va shaxsning xohish-irodasiga bog‘liq bo‘lmagan holda to‘satdan paydo bo‘lgan obyektiv to‘siq sifatida majburiyatlarning bajarilishini imkonsiz qilganligini, uning muayyan sharoitlarda oldini olib bo‘lmaydigan vaziyat ekanligi esa, shaxsning barcha oqilona va qonuniy harakatlari yuzaga kelgan to‘siqlarni bartaraf etish uchun etarli bo‘lmaganligi va uning yuz berishi shubhasiz ekanligini ko‘rsatadi”. Ushbu moddaning fors-major holati tushunchasi va uning belgilari mohiyatini belgilovchi mazkur norma bilan to‘ldirilishi, soliq munosabatlari bilan bog‘liq huquqni qo‘llash amaliyotida fors-major holatiga oid qonun hujjatlarining to‘g‘ri va bir xilda qo‘llanishiga olib keladi.

2.5. O‘zbekiston Respublikasi Bojxona kodeksining 14-moddasini quyidagi qo‘shimcha bilan to‘ldirish maqsadga muvofiq: “Fors-major holati shaxsning xohish-irodasi va xatti-harakatlariga bog‘liq bo‘lmagan, to‘satdan sodir bo‘lgan va uni oldindan bashorat qilish, oldini olish yoki bartaraf etish mumkin bo‘lmagan, favqulodda va muqarrar hodisa bo‘lib, uning favquloddaligi muayyan sharoitda paydo bo‘lishi noodatiy ekanligini va shaxsning xohish-irodasiga bog‘liq bo‘lmagan holda to‘satdan paydo bo‘lgan obyektiv to‘siq sifatida majburiyatlarning bajarilishini imkonsiz qilganligini, uning muayyan sharoitlarda oldini olib bo‘lmaydigan vaziyat ekanligi esa, shaxsning barcha oqilona va qonuniy harakatlari yuzaga kelgan to‘siqlarni bartaraf etish uchun etarli bo‘lmaganligi va uning yuz berishi shubhasiz ekanligini ko‘rsatadi”. Ushbu moddaning fors-major holati tushunchasi va uning belgilari mohiyatini belgilovchi mazkur norma bilan to‘ldirilishi, bojxona munosabatlari bilan bog‘liq huquqni qo‘llash amaliyotida fors-major holatiga oid qonun hujjatlarining to‘g‘ri va bir xilda qo‘llanishiga olib keladi.

III. Fors-major holatiga oid qonun hujjatlarini qo‘llash amaliyotini takomillashtirish bilan bog‘liq taklif va tavsiyalar:

3.1. Fors-major holati tufayli qarzdorning javobgarlik masalasini hal etishda vakolatli organlar tomonidan berilgan fors-major holati mavjudligini tasdiqlovchi hujjatlar (sertifikat va xulosalar) sudga taqdim etilgan bo‘lishiga qaramasdan, majburiyatlarni bajarmagan qarzdor javobgarlikdan ozod qilinishi uchun fors-major holatining mavjudligi va davomiyligi, fors-major holati va majburiyatlarni bajarishning mumkin emasligi yoki uni bajarishning kechiktirilishi o‘rtasida bevosita sabab-oqibat bog‘liqlik mavjudligi, ya’ni majburiyaning bajarilmasligi fors-major holati oqibati ekanligi, fors-major holati yuzaga kelishida qarzdorning ishtiroki yo‘qligi va bunday holat uning beparvoligi tufayli yuzaga kelmaganligi, ya’ni subyektiv sabablarning yo‘qligi, yuzaga kelishi mumkin bo‘lgan xavf-xatarlarning oldini olish (zararlarni minimallashtirish) bo‘yicha qarzdor tomonidan oqilonalik, ehtiyotkorlik, g‘amxo‘rlik va qat’iyatlilik bilan insofli asosda qarshi turilgan holda barcha choralarning ko‘rilganligi va fors-major holati to‘g‘risida

kreditor o‘z vaqtida xabardor qilinganligi kabi holatlar isbotlanishi lozim. Qarzdorning aybsizligi faqat uning o‘zi tomonidan isbotlansa, sud fors-major holatiga oid qonun hujjatlarini qo‘llash asosida uni javobgarlikdan ozod qilishi yoki aks holda, uning javobgarlikdan ozod etish to‘g‘risidagi da’vosini qanoatlantirishni rad qilishi lozim.

3.2. Hozirga qadar sudlar tomonidan fors-major holatiga oid qonun hujjatlarining to‘g‘ri va bir xilda qo‘llanishi bo‘yicha tushuntirishlar berilgan O‘zbekiston Respublikasi Oliy sudi Plenumining qarori qabul qilinmagan. Biroq, fors-major holatiga oid milliy qonunchilik va sud amaliyotining hozirgi holati, shuningdek jamiyatning huquqiy ongi va huquqiy madaniyati darajasi O‘zbekiston Respublikasi Oliy sudi Plenumining “Sudlar tomonidan fors-major holatiga oid qonun hujjatlarini qo‘llashning ayrim masalalari to‘g‘risida”gi qarori qabul qilinishi zarurati mavjudligini ko‘rsatadi. Chunki, hozirgi davrda sodir bo‘layotgan turli-tuman tabiiy ofatlar, ijtimoiy, iqtisodiy, harbiy, siyosiy voqea-hodisalar va pandemiya oqibatlarida tadbirkorlik subyektlari tomonidan shartnoma majburiyatlarini bajarmaslik yoki lozim darajada bajara olmaslik holatlari tez-tez uchrab turganligi bois, bunday holatlarda tadbirkorlik subyektlarining javobgarligi bilan bog‘liq ishlarni adolatli va qonuniy hal etishda fors-major holatiga oid qonun hujjatlarining to‘g‘ri va bir xilda qo‘llanishi bo‘yicha sudlarga tegishli tushuntirishlar berilishi maqsadga muvofiq. Shundan kelib chiqib, mazkur qarorning loyihasi ishlab chiqildi.

ONE-TIME SCIENTIFIC COUNCIL ON THE BASIS OF THE SCIENTIFIC COUNCIL NUMBER PhD.37/27.02.2020.Yu.107.01 OF THE HIGHER SCHOOL OF JUDGES IN THE PRESENCE OF THE SUPREME COUNCIL OF JUDGES OF THE REPUBLIC OF UZBEKISTAN

HIGHER SCHOOL OF JUDGES IN THE PRESENCE OF THE SUPREME COUNCIL OF JUDGES OF THE REPUBLIC OF UZBEKISTAN

ISANOV KHOLMUROD RUZIYEVICH

FORCE MAJOR AS A CIVIL-LEGAL CATEGORY: THEORY AND PRACTICE

12.00.03 – Civil law. Business law.
Family law. International private law.

ABSTRACT
of doctoral (Doctor of Science) dissertation on legal sciences

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INTRODUCTION (abstract of DSc thesis)

The actuality and relevance of the dissertation theme. The force majeure situations that occur due to the consequences of various natural disasters and social, economic, military, and political situations that occur frequently in the world have a negative impact not only on people's lives, health, and lifestyle, but also on economic relations. is doing. According to the report of the United Nations Office for Disaster Risk Reduction (UNISDR, Geneva), over the past 20 years, the world economy has suffered losses in the amount of 3 trillion US dollars as a result of the doubling of the number of natural disasters on earth[8]. Every year, an average of 1.4 million inhabitants of our republic are affected by the consequences of natural disasters, causing damage in the amount of 3 billion US dollars[9]. Reducing the negative consequences of natural disasters and catastrophic events and protecting the rights and legal interests of participants in economic relations shows the relevance of this field. This requires the creation of effective mechanisms for legal regulation of relations related to force majeure situations caused by complex situations.

In the world, including Anglo-Saxon, Romano-Germanic and Islamic countries, the category of force majeure exists as a scientific category, a legal segment, and a category of judicial practice. It successfully fulfills the function of protecting subjects who are in a difficult situation due to unforeseen circumstances in all countries on the basis of justice and fairness. Therefore, it is important to study the legislation, law enforcement and judicial practice of foreign countries regarding force majeure, as well as international practice, to find a scientific-theoretical and practical solution to the problems encountered in the legislation and law enforcement practice.

Comprehensive program measures are being implemented in our republic to ensure the rule of law, reform the judicial system, and legal regulation of relations related to force majeure. In particular, the "Uzbekistan-2030" strategy[10] envisages important tasks in the priority direction "Ensuring the rule of law, organizing public administration at the service of the people". In the doctrine of national law of our country, including the theory of civil studies, a comprehensive and perfect paradigm has not been developed regarding the legal nature of the category of force majeure. Its characteristics as a legal and non-legal source have not been fully analyzed. The practice of uniform approaches and interpretations regarding the category of force majeure has not been formed in law enforcement and judicial practice. In particular, there are cases of defining the scope of force majeure situations in an expanded or limited manner. It indicates the urgency of the scientific-theoretical and practical problems related to the improvement of the force majeure institute and the need to

[8]Report of the United Nations Office for Disaster Risk Reduction (UNISDR) “UN: Climate change increases the number of natural disasters.” https://universe-tts.su/main/klimat/86817-oon-izmenenie-klimata-uvelichivaet-chislo-prirodnyh-katastrof.html;

[9] https://mineconomy.uz/uz/news/view/4105.

[10] Decree of the President of the Republic of Uzbekistan dated September 11, 2023 No. PF-158. https://old.lex.uz/docs/6600413.

develop scientific-practical proposals and recommendations aimed at solving these problems.

Civil Code of the Republic of Uzbekistan (1996), Labor Code (2022), Customs Code (2016), Tax Code (2019), Decree of the President of the Republic of Uzbekistan dated April 5, 2019 No. F-5464 "Civil Code of the Republic of Uzbekistan Decree of the Cabinet of Ministers of the Republic of Uzbekistan No. 625 dated October 28, 2022 "On the measures to improve the legislation" "On Approving the Administrative Regulations", the Decree of the President of the Republic of Uzbekistan dated September 11, 2023 No. PF-158 "On the Strategy of Uzbekistan-2030" and other normative legal documents related to the field This research works to a certain extent to fulfill the specified tasks.

Compliance of the research with the priorities of the development of science and technology of the republic. This dissertation is in accordance with the priority direction of the republican science and technology development I. "Formation of a system of innovative ideas and ways of their implementation in the social, legal, economic, cultural and spiritual-educational development of the information society and the democratic state" done.

Review of foreign scientific research on the subject of the dissertation[11]**.** Scientific studies on the improvement of the legal basis of force majeure are carried out in leading scientific centers and universities of the world, including University of Washington, University of Pennsylvania (United States of America); Oxford University (Great Britain); University of British Columbia (Canada); University of Brussels (Belgium); Victoria University of Wellington (New Zealand); at the Moscow State University named after M.V. Lomonosov, at the Moscow State Law University named after O.E. Kutafin, at the Institute of Law Enforcement Problems of the European University in St. Petersburg, at the Samara National Research University (Russian Federation); It is conducted at the Tashkent State Law University, the Higher School of Judges under the Supreme Council of Judges of the Republic of Uzbekistan (Uzbekistan).

As a result of scientific and research work on improving the legal bases of force majeure in the world, the following were achieved, including: the distribution of the risk of uncontrollable events in standard commercial contracts and the conditions related to force majeure (University of Pennsylvania); force majeure and conscientious performance of obligations in contract law (University of Washington); Consequences of Pandemic and Civil Law of Force Majeure of the People's Republic of China (Oxford University); issues related to force majeure in motor vehicle transportation (University of British Columbia); problems related to force majeure situations caused by the consequences of the pandemic in international relations (University of Brussels); in civil law, the parties' failure to achieve the goals of the contract (frustration) and force majeure (Victoria University of Wellington); problems of regulatory qualification of systemic risks as force majeure (Moscow

[11]Review of foreign scientific research on the topic of the dissertation https://www.upenn.edu; https://www.cambridge.org; https://search.ufl.edu; https://www.ox.ac.uk; https://www.uchicago.edu; https://www.princeton.edu; Based on http :www.tsul.uz/ and other sources .

State University named after M.V. Lomonosov); features of legal regulation of force majeure cases in international private law during "covid" (Moscow State Law University named after O.E. Kutafin); comparative legal analysis of force majeure and entrepreneurial risk (Institute of Law Enforcement Problems of the European University in St. Petersburg); conditions related to force majeure and serious change of situation (Samara National Research University); issues of application of international legal documents on force majeure in international arbitration (TDYuU) were justified, as well as problems of legal regulation of force majeure were analyzed and suggestions for its improvement were developed.

Level of study of the problem. The topic of the dissertation has not been adequately studied in the Republic of Uzbekistan from the point of view of the science of civil law. Some problems related to the legal regulation of force majeure are scientifically analyzed in the works of our country's scientists - H. Rahmonkulov, I. Zokirov, O. Oqyulov, M.Barotov, I. Rustambekov, Q. Mehmonov[12]. Also, N.Imomov, N. Egamberdieva and N.Ashurova (obligations arising from damage, origin of obligations arising from damage, their special types and characteristics, bases of civil liability for obligations arising from damage and conditions) and V.R. Topildiyev (basis of liability for breach of obligations and grounds for releasing the debtor from liability) as a specific part of the research on civil-legal liability issues[13].

Theoretical and practical aspects of legal regulation of force majeure state of foreign scientists - L.A. Di Mattco, T. Rauh, J. Denver, F. Bortolotti, A. Kenneth, A. Adams, M. Rüscher, H.W. Sullivan, Jr. Researched by scientists such as Steven Paul Barra, Agnieszka Ason, Michal Meidan, N. Bechteler, E. E. Pirvis, Ye. A. Pavlodsky, O. S. Ioffe, Ya. O. Alimova, I. V. Galkin, O. S. Erakhtina, A. S. Komarov and N. P. Korshunova[14].

Scientific studies of the above-mentioned scientists are devoted to certain theoretical and practical aspects of relations related to force majeure. Attention was drawn to the fact that some of the research works were prepared based on certain socio-economic relations, and they were creatively used as a source of the dissertation from the point of view of the complex legal regulatory approach to this research. At the same time, the analysis of these sources showed that in our country, a separate comprehensive study devoted to the theoretical and practical issues of relations related to force majeure cases was not conducted.

The connection of the dissertation topic with the research work of the higher educational institution where the dissertation was completed. The topic of the dissertation was approved at the meeting of the Higher School of Judges under the Supreme Council of Judges of the Republic of Uzbekistan on November 19, 2020 (report No.1) and included in the research program.

[12] The full list of the works of these scientists is shown in the list of used literature of the dissertation.
[13] The full list of the works of these scientists is shown in the list of used literature of the dissertation.
[14] The full list of the works of these scientists is shown in the list of used literature of the dissertation.

The purpose of the research is to develop the civil-legal scientific foundations of the essence of the force majeure situation and the priorities for the development of the civil-legal mechanisms of its regulation.

Tasks of research:

Elucidate the legal doctrines of force majeure and the stages of their historical formation as a basis for exemption from liability or exclusion of liability in Uzbekistan;

to analyze the concept, essence and signs of force majeure and develop its definition;

researching the legal nature of force majeure and its place in the national legal system as a legal category;

classification of force majeure situations and their impact on the performance of contractual obligations, as well as disclosure of civil-legal features of delict obligations;

analysis of legislation and judicial practice of foreign countries and international practice regarding force majeure;

analysis of the current state of national legislation and judicial practice regarding force majeure;

scientific and practical research of the problems of assessing the existence of a force majeure situation and development of fair criteria for its assessment;

scientific-practical research of the problems of application of force majeure legislation in judicial practice and development of proposals and recommendations for their solution;

consists of analyzing the national legislation on the state of force majeure from a scientific-theoretical and practical point of view and developing proposals and recommendations for its improvement.

The object of the study is social-legal relations related to national and international legal regulation of force majeure.

The subject of the research is the normative legal acts on the legal regulation of the force majeure situation, the application of law and judicial practice, the legislation and experience of foreign countries, as well as the conceptual approaches and scientific-theoretical views available in legal science.

As research methods, logical-legal, formal, comparative-legal, systematic analysis, statistical, as well as sociological research methods of scientific knowledge were used during its implementation.

The scientific novelty of the research is as follows:

it is justified that in order to eliminate different approaches and interpretations regarding force majeure circumstances, the meaning and essence of its signs of emergency, inevitability, obstacles beyond the control of the parties and relativity are revealed and a draft law of the Republic of Uzbekistan “On amendments and additions to the Civil, Labor , Tax and Customs Codes of the Republic of Uzbekistan” and the need for its adoption is justified;

it is justified that taking into account the reflection in the laws of the principles of the doctrine of civil law on justice and honesty in civil relations, the presence of

the basis of legal and non-legal theory, the regulatory framework of force majeure increases the attractiveness of the investment environment and strengthens the confidence of foreign residents;

it is justified that in order to determine fair criteria for assessing the presence of force majeure, such criteria as emergency, inevitability, obstacle beyond the control of the parties and relativity should be used as fair criteria;

it is justified that in order to ensure the correct and uniform application of the legislation on force majeure in the consideration of cases related to the determination of liability for failure to fulfill obligations or improper failure to fulfill obligations in the courts, a draft resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan “On some issues of application of the legislation on force” has been developed - major circumstances” and the need for its adoption is justified;

it is justified that a special service should be organized for the collection, storage and prompt delivery of information obtained as a result of forecasting any natural disasters and man-made hazardous situations that may cause force majeure on the territory of the republic - the activities of the Unified State Digital Information Center (YADRAM), which acts as an independent central executive body in the system of bodies of the Cabinet of Ministers of the Republic of Uzbekistan and collects information through digital information and communication systems for all sectors of the national economy, including citizens and business entities, the need to create a regulatory legal and methodological framework aimed at ensuring prompt targeted delivery , as well as the organization and implementation of the activities of the Unified State Digital Information Center (YADRAM).

The practical results of the research are as follows:

based on the theory and doctrine of civil science, force majeure is a situation that does not depend on the will and actions of the participants in civil transactions, occurred suddenly and cannot be predicted in advance, and the consequences cannot be prevented or eliminated under certain conditions. it is substantiated that as a result of an extraordinary and unavoidable event, it is a situation that leads to a breach of obligations and innocent damage, and suggestions for improving the legislation on the force majeure situation have been developed;

based on the analysis of the legal regulation of relations related to the force majeure situation in our republic, both by legislative documents and business practices, proposals and recommendations were developed to improve the hybrid (mixed) system of legal regulation of the force majeure situation;

based on revealing the essence of the signs of force majeure, such as emergency, inevitability, obstacle beyond the control of the parties, and relativity, and applying them as evaluation criteria, fair evaluation criteria have been developed that serve to unify approaches to force majeure;

in cases of force majeure, violations in the application of the "status quo", including unjust enrichment of counterparties and exemption from the performance of basic obligations, are analyzed, and the distribution of damages between the parties is determined by mutual agreement or court. it is proposed to be implemented on the basis of the principles of "fair distribution" and "equal distribution";

the introduction of the concept of "quasi force majeure" into the national legal system, which occurs as circumstances similar to force majeure, but is not valid and, despite the fact that it prevents the fulfillment of obligations, is not recognized as a basis for exemption from liability, and this concept is included in all legislation a proposal for widespread use within the network types was developed;

difficulty in fulfilling contractual obligations concluded between business entities and counterparties as a result of illegal actions of state bodies and their officials, including pre-investigation bodies, investigation, preliminary investigation, prosecution bodies and courts against business entities or it was suggested that the event of innocent damage due to its violation should be recognized as a force majeure situation as a legal fact;

since force majeure is a legal fact that affects the legal relations between legal entities related to mutual rights and obligations and causes certain legal consequences, force majeure of civil law it was suggested that legal norms related to the situation should be uniformly applied not only to subjects of business activity, but also to all participants of civil transactions;

the content and essence of the actions of the debtor in the implementation of measures aimed at minimizing the damage caused by force majeure with the effective use of modern science and technology are analyzed, and the force majeure situation is "honest" in the national legal system. it was proposed to introduce the concept of "resisting on the basis" and to "resist the force majeure situation" of the debtor on the basis of the principles of "reasonableness", "prudence", "care" and "perseverance";

a special service for collecting, storing and delivering information obtained as a result of forecasting natural disasters and man-made dangerous situations that may cause force majeure in the territory of the republic, that is, the Unified State Digital Information Center (YaDRAM) structure and it operates as an independent central executive body within the system of bodies of the Cabinet of Ministers of the Republic of Uzbekistan, the collected data through digital information and communication systems in the spheres of the national economy, including every citizen and business It was suggested that the subject be quickly delivered to the address.

Reliability of research results. The results of the research are based on the analysis of national legal norms, international standards, legislation and judicial practice of developed foreign countries, social surveys, statistical data, and the theoretical approaches used in the research process are taken from official sources.

On the subject under investigation, the cases heard by the courts in 2020-2022 were studied, and among 1368 professors and teachers of the Law Enforcement Academy of the Republic of Uzbekistan, students, basic doctoral students and doctoral students, and independent researchers. Surveys were conducted, the results were analyzed and summarized. Conclusions, proposals and recommendations were approved, and their results were published in leading national and foreign

publications. It was approved by the competent state bodies with documents on the implementation of the results.

Scientific and practical significance of research results. The scientific significance of the research results is explained by the fact that the scientific-theoretical conclusions, proposals and recommendations contained in it will enable future scientific activity, law-making, law enforcement and judicial practice, interpretation of the relevant norms of legal documents, improvement of national legislation, as well as new scientific research based on the research results.

The practical significance of the research results is that it is possible to use the scientific rules, conclusions and recommendations formed as a result of researching the topic in improving the Civil, Labor, Tax, Customs Code, the decisions of the Plenum of the Supreme Court, the results are used in the practice of applying the law and scientific research works, "Civil Law" and " It is manifested in the theoretical enrichment of economic (entrepreneurial) law".

Implementation of research results. Force majeure as a civil legal category: based on conclusions, suggestions and recommendations based on theory and practice:

proposals that in order to eliminate different approaches and interpretations regarding force majeure circumstances, the meaning and essence of its signs of emergency, inevitability, obstacles beyond the control of the parties and relativity are disclosed and a draft law of the Republic of Uzbekistan “On Amendments and Additions to the Civil Code” is developed , Labor, Tax and Customs Codes of the Republic of Uzbekistan” were reflected in the development of the “Administrative Regulations for the provision of public services for the approval of force majeure circumstances”, approved by Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 625 dated October 28, 2022. (Act of the Department of Information Analysis and Legal Support of the Secretariat of the Prime Minister of the Republic of Uzbekistan dated December 5, 2023 No. 12-15-124). These proposals served to improve the legal regulation of relations related to force majeure.

proposals on how to take into account the reflection in laws of the principles of the doctrine of civil law on justice and honesty in civil relations, the presence of a basis for legal and non-legal theory, a regulatory framework for force majeure increases the attractiveness of the investment environment and strengthens the confidence of foreign residents, are reflected in Article 3 Law of the Republic of Uzbekistan “On introducing additions and changes to some legislative acts of the Republic of Uzbekistan in connection with the adoption of the constitutional law “On a state of emergency” ZRU No. 756 dated March 2 and were used in the development of Article 42 of the Law of the Republic of Uzbekistan “On guarantees of freedom of entrepreneurial activity” dated 2 March 2022. No. ZRU-756 (Act of the Committee on Budget and Economic Reforms of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan dated December 19, 2023 No. 04/1-13-34). These proposals served to improve regulatory documents relating to business activities related to force majeure;

proposals that in order to determine fair criteria for assessing the presence of force majeure, such criteria as emergency, inevitability, an obstacle beyond the control of the parties and relativity should be used as fair criteria, and these signs should be introduced as fair criteria for assessing the presence of force - majeure circumstances were reflected in the development of the Regulation “On the procedure for approving force majeure circumstances arising within the framework of local business agreements”, approved by Resolution of the Cabinet of Ministers of the Republic of Uzbekistan No. 231 dated June 7, 2023. (Act of the Department of Information Analysis and Legal Support of the Secretariat of the Prime Minister of the Republic of Uzbekistan dated December 5, 2023 No. 12-15-124). These proposals served to improve the legal regulation of relations related to force majeure.

proposals that in order to ensure the correct and uniform application of the legislation on force majeure in the consideration of cases related to the determination of liability for failure to fulfill obligations or improper failure to fulfill obligations in the courts, a draft resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan “On some issues of application of legislation” has been developed on force majeure circumstances" and the need for its adoption, will be used in the development of the draft Resolution of the Plenum of the Supreme Court of the Republic of Uzbekistan "On some issues of application by courts of the legislation on force majeure circumstances" (Act of the Judicial Collegium for Civil Cases of the Supreme Court of the Republic of Uzbekistan dated October 5, 2023 year No. 9069). These proposals served to improve law enforcement practice in force majeure circumstances;

proposals for organizing the activities of the Unified State Digital Information Center (USDIC) - a special service for the collection, storage and prompt transmission of information obtained as a result of forecasting any natural disasters and dangerous man-made situations that may arise on the territory of the republic were used in the development of the Regulations approved by the Cabinet Resolution Ministers of the Republic of Uzbekistan dated April 29, 2023 No. 171 “On measures for the effective organization of the activities of the state system of warning and action in emergency situations of the Republic of Uzbekistan.” (Act of the Department of Information Analysis and Legal Support of the Secretariat of the Prime Minister of the Republic of Uzbekistan dated December 19, 2023 No. 12-15-128). These proposals served to improve the legal regulation of relations related to force majeure.

Approval of research results. The results of the research were discussed at 3 international and 6 national scientific-practical conferences.

Publication of research results. A total of 22 scientific works on the topic of the dissertation were published, including 8 in national journals, 5 in international journals, 9 in scientific conferences, as well as 1 monograph.

The structure and scope of the dissertation. The content of the dissertation consists of an introduction, four chapters, a conclusion, a list of used literature and appendices, and its volume is 232 pages.

THE MAIN CONTENT OF THE DISSERTATION

Introductory part of the dissertation , the relevance and necessity of the topic, the compatibility of the research with the main priority directions of the development of republican science and technology, the review of foreign scientific research on the topic of the dissertation, the level of research of the problem, the topic of the dissertation with the scientific research work of the higher educational institution where the dissertation is being carried out connection, goals and objectives of research, object and subject, methods, scientific novelty and practical result, reliability of research results, scientific and practical significance, implementation, approval, publication of results, size and structure of the dissertation are covered.

The first chapter of the dissertation is called **"The genesis and legal description of force majeure"** and it contains legal doctrines related to force majeure and the stages of their historical formation, the concept of force majeure, its essence and signs, and the legal nature of force majeure and national law. issues related to its role in the system were analyzed.

In the first paragraph of this chapter, entitled "Legal doctrines on force majeure and their historical development aspects", the author, based on the analysis of scientific literature, describes the stages of the legal regulation of force majeure, that is, from the time of Zoroastrianism three thousand years ago to the present day. in each historical period, specific features of the legal regulation of relations related to force majeure are revealed.

of the Zoroastrian religion, which appeared in the territory of modern Uzbekistan three thousand years ago, virtue and honesty were accepted as the main principle and basic rule of legal regulation of any social relations, and a person he is exempted from liability when his failure to fulfill or improperly fulfill his obligations is caused by the consequences of natural disasters, i.e., force majeure. In particular, two types of obligations are recognized based on the rules of Zoroastrian religion, firstly , taking a solemn oath - according to "varuna" it is understood whether a person takes any economic obligation or not, and secondly , this sworn oath is considered an agreement or contract, and The parties have reached an agreement on certain economic relations in terms of mutual interest. In both these cases, the force of the obligation obtained as a result of the agreement is hidden in the oath taken by the parties, which is the force It was considered divine and the divine power cooperates with the mutually conditioned parties, that is, it supports the party that is strict to its word or punishes the party that does not keep its oath and word. Therefore, the inability of the parties who entered into contractual relations and have mutual obligations to fulfill their obligations due to the consequences of natural disasters, that is, force majeure, is considered the will of divine power, and in such cases, the party who cannot fulfill the obligation (the debtor) is the second an oath to the party (creditor) about his innocence asked to drink. The sworn oath was accepted as the basis for the release of the party (debtor) from responsibility for failure to fulfill his obligations, and these rules were in the form of customary law norms in those times, and later, as a result of the development of society, written citizenship caused (private) legal relations.

The genesis of force majeure in the territory of present-day Uzbekistan began in the Zoroastrian period three thousand years before Christ, that is, during this period, the rules regarding force majeure existed first in the form of customary law norms, and later in 753-367 BC over the years, it was formed within the institution of the law of obligations of ancient Roman private law, and the concept of force majeure entered the modern legal systems from Roman law.

From the end of the 7th century to the second half of the 19th century in the territory of present-day Uzbekistan, social relations were regulated on the basis of the norms of Islamic law, and as a result of this legal system, as a result of its development, it gained international importance like Roman private law. regulated on the basis of the principles of honesty and faithfulness to the covenant, and it contained legal norms exempting from liability for failure to fulfill obligations due to natural disasters, that is, in case of force majeure.

Relations related to force majeure were regulated by Islamic law and the legislation of Tsarist Russia from the end of the 19th century to the beginning of the 20th century, that is, in the period of mixed (dualistic) law, and this continued until the Civil Code of the RSFSR was implemented on January 1, 1923.

The Civil Code of the Uzbek SSR adopted on the basis of the Civil Code of the RSFSR (before the Civil Code of the Republic of Uzbekistan was adopted in 1995 and entered into force on April 1, 1996) does not provide for the norms of force majeure. However, this Code stipulates that the basis of responsibility is fault, and the debtor is released from liability in case of violation of obligations in any case, including due to force majeure, and when his innocence is proven. Thus, the legal norms regarding force majeure were reflected only in the years of independence, including in Article 333 of the Civil Code of the Republic of Uzbekistan, which came into force on April 1, 1996, and force majeure is defined as the basis for exemption from liability. .

Stages of the historical formation of force majeure - the period of customary law norms (from the 10th century BC), the period of ancient (archaic) Roman law (753-367 BC), the period of classical Roman law (from the end of the 1st century BC to the 3rd century AD to the end of the century), the period of Islamic law (from the beginning of the 7th century to the end of the 19th century AD), the period of mixed law, that is, the period of Tsarist Russia and the period of Islamic law (from the end of the 19th century to the beginning of the 20th century), the period of Soviet law (1923-1996) and independent The state of Uzbekistan consists of the period of civil law (from 1996 to the present).

During the period of independence of Uzbekistan, the creation and development of legislation on force majeure, in particular, with the implementation of the Civil Code from April 1, 1996, an appropriate system was created in the field of legal regulation of force majeure, and legal norms on force majeure are a number of laws and regulations. specified in the documents.

In the second paragraph of this chapter, known as "The concept of force majeure, its essence and signs", the opinions of scientists on the subject under study are analyzed. In particular, the author analyzes the opinions of research scientists

(A.A. Alekseev, E.A. Pavlodsky, O.S. Ioffe, M.M. Agarkov, E.E. Pirvits, A.P. Fokov, O. Okyulov). based on the concept of force majeure and its essence, he gave the following author's definition of force majeure: "Force majeure is a sudden and predictable event that does not depend on the will and actions of the participants in legal relations, under certain conditions a situation that resulted in the violation of innocent obligations and damages as a result of an extraordinary and unavoidable event, the consequences of which cannot be prevented or eliminated."

In addition, the researcher has scientifically and practically justified the specific characteristics of force majeure, such as randomness, unusualness, emergency, inevitability, suddenness and external nature.

In the third paragraph of this chapter, known as "Legal nature of force majeure and its role in the national legal system", the author describes in detail the legal nature of force majeure and its role in the national legal system as a basis for exemption from responsibility or exclusion of responsibility in the system of legal relations.

The researcher made the following conclusions based on the analysis of the legal norms regulating relations regarding force majeure in the national legislation:

First, the force majeure situation is formed as part of the institution of obligations of civil law and is not dependent on the will and actions of the participants of the civil transaction, as a result of an extraordinary and unavoidable event that occurred suddenly and whose consequences cannot be prevented or eliminated in certain circumstances. it should be considered as a civil legal category first of all, since it is a situation that led to the violation and innocent damage and is the basis for exemption from civil liability or exclusion of liability for non-fulfillment or improper fulfillment of obligations.

Secondly, force majeure is a violation of obligations and innocent damage as a result of an extraordinary and unavoidable event that does not depend on the will and actions of the participants of legal relations, occurred suddenly and cannot be predicted in advance, and the consequences of which cannot be prevented or eliminated under certain conditions. It should be considered as a general legal category, as it is the situation that led to the delivery and is the basis for exemption from responsibility or exclusion of responsibility for non-fulfillment or improper fulfillment of obligations.

Thirdly, since force majeure is a general legal category that is the basis of exemption from liability or exclusion of liability for non-fulfilment or improper fulfillment of obligations within all legal fields, it should be considered as a complex legal construction in the national legal system.

In addition, it is scientific and practical that the force majeure situation should be considered by the researcher as an event or situation that prevented a person from carrying out certain actions or, on the contrary, forced a person to do certain actions, or prevented the debtor from fulfilling his obligations to the creditor, and is beyond his will, control, or control. justified.

The second chapter of the dissertation is called **"Classification of force majeure cases and their civil-legal characteristics"**, in which force majeure cases

are classified based on several criteria, their impact on the fulfillment of contractual obligations and civil-legal characteristics of delict obligations are researched.

The first paragraph of this chapter is devoted to "Classification of force majeure cases", in which the approaches and opinions of scientists regarding force majeure cases in contemporary international practice are analyzed. In particular, based on the analysis of the opinions of research scientists (V.I.Sergeev and D.Chernenko) on the new edition of the International Chamber of Commerce (ICC) on "Force majeure situations and serious changes in circumstances" developed in 2020 There are suggestions for classifying force majeure cases as a general legal category that applies to all areas of law based on several criteria:

First, events and actions depending on the will of the participants of legal relations ;

Second, generally recognized facts and facts that must be proven in court , as they are known as legal facts ;

Third, according to the field of legal regulation, public law, private law, international public law, international private law;

Fourth, release from liability, cancel the obligation, change or cancel the contract, suspend the fulfillment of the obligation or expiration of the claim period, conclude a mutual agreement agreement, according to the legal consequences ;

Fifth, according to the level of negative consequences, international (global or regional, national (state or local), local (province or district), private (individual enterprise or legal entities);

Sixth, according to the amount of damage caused, not a lot of damage, a lot of damage, extremely lots of damage;

Seventh , according to the field of occurrence, administrative-legal (introduction of a state of emergency, adoption of regulatory legal documents by the state, illegal actions of state bodies and their officials, etc.), social, economic, political , military (such as strikes, epidemics, economic sanctions, suspension of diplomatic relations, wars or military operations), natural-climatic (earthquakes, floods, tsunamis, typhoons, etc.), man-made events (accidents, explosions, water violation of mines, etc.).

The classification of force majeure given by the researcher may not cover all events or actions recognized as force majeure in the practice of national, foreign countries or international law, that is, the occurrence of each force majeure situation is directly caused by people manifested as an extraordinary and inevitable individual event or behavior, independent of will and behavior, sudden and predictable, the consequences of which cannot be prevented or eliminated under certain conditions should be taken into account.

The second paragraph of the second chapter is devoted to " Civil-legal features of force majeure situations" , in which natural disasters, military actions and wars, acts of terrorism, as force majeure situations that directly affect the fulfillment of the researcher's obligations , Covert actions of third parties and force majeure that do not directly affect the fulfillment of obligations , such as strikes (zabastovka), adoption of regulatory legal documents by state authorities, and civil-legal

characteristics of such events . In particular, statistical reports on damages caused by natural disasters and research scientists (N.P. Korshunova, D. Chernenko, Z.V.Gradoboeva, Ye.V. Passek, S.A.Ivanov, V. Tomsinov, N. M. Golovin, Sh. I. Budman, Ye. A .Pavlodsky, M.I.Braginsky, I.Vlasyuk) based on the analysis of the opinions of natural disasters, military actions and wars, terrorist actions, strikes (zabastovka), the adoption of regulatory legal documents by state authorities, the consequences of force majeure its occurrence is scientifically and practically justified.

The second chapter is entitled "Cases of force majeure in delict obligations " . in the third paragraph, the opinions of scientists and the decisions of local state authorities (as legal acts) on the studied issue are analyzed. In particular, based on the analysis of the opinions of doctoral research scientists (V.A.Belov , M.P.Redin, O. Oqyulov, Ye.M. Kondratevalar) and the decisions of the governors of Kashkadarya, Surkhondarya, and Khorezm regions, the civil-legal features of force majeure cases regarding delict obligations are detailed. , legal or illegal actions of state authorities and their officials, as well as the difficulties or violation of contractual obligations between business entities and counterparties due to the illegal actions of the bodies that carry out the pre-investigation investigation, investigation, preliminary investigation, prosecutor's office and the court It has been scientifically and practically justified that damage should be considered as a force majeure situation .

The third chapter of the dissertation is entitled **"Civil legislation and judicial practice of foreign countries regarding force majeure and international practice"**, and it contains civil legislation and judicial practice of foreign countries regarding force majeure, which are part of the Roman-Germanic, Anglo-Saxon and Islamic law systems, as well as special features of the international legal regulation of force majeure situations are analyzed from a scientific-theoretical and practical point of view.

of this chapter entitled "Analysis of the civil legislation of foreign states on force majeure", the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan, the Republic of France, the Federal Republic of Germany, the People's Republic of China, the Kingdom of Great Britain, the United States, Saudi Arabia, the United The civil legislation of the Arab Emirates and the Arab Republic of Egypt regarding the state of force majeure was analyzed, and the specific features of the civil-legal regulation of the state of force majeure in these countries were revealed. In particular, the concept of force majeure is defined as a general rule in the civil legislation of the countries of the Romano-Germanic legal system and is accepted as the basis for exemption from liability for non-fulfilment or improper fulfillment of obligations, the absence of the concept of force majeure in the civil legislation of the countries of the Anglo-Saxon legal system and it should not be considered as a legal category, as a general rule, one of the parties to the contract may be held liable for breach of contract, as well as force majeure, which prevented its performance, may be accepted as a legal means of exemption from liability, and in the civil legislation of the countries of the Islamic law system, force majeure as an event that makes the performance of contractual obligations (completely or partially) impossible is

excluded from liability for non-performance or improper performance of obligations based on the norms of civil law, customary law, Islamic law (Sharia) and principles of justice the fact that it can be accepted as the basis of release is substantiated from a scientific-theoretical and practical point of view.

"Court practice of foreign countries regarding force majeure" of this chapter in the second paragraph called The case law of foreign countries such as the Russian Federation, the Republic of Belarus, the Republic of Kazakhstan, the Republic of France, the Federal Republic of Germany, the People's Republic of China, the Kingdom of Great Britain, the United States, Saudi Arabia, the United Arab Emirates and the Arab Republic of Egypt has been analyzed. . In particular, in the judicial practice of the countries of the Romano-Germanic legal system, the existence of force majeure is determined based on the norms of civil law and the terms of the contract, and the issue of liability is resolved on this basis . In the case of cases where conditions related to force majeure are provided and do not allow the fulfillment of the obligation, it should be considered at the request of the party interested in the release from liability and the issue of releasing the party who did not fulfill the obligation from liability or rejecting the claim based on the force majeure or other circumstances independent decision by the court, Islam In the judicial practice of the states of the legal system, in resolving disputes related to the force majeure situation, the court is based on the codes and contract conditions and the principles of justice, adopted mainly on the basis of fiqh norms and Sharia rules, and codified in the traditions of the continental legal system. the possibility of making a decision has been substantiated scientifically and practically.

of the third chapter entitled "International legal regulation of force majeure cases and their use in international arbitration", the issues of international legal regulation of force majeure cases and the application of international legal documents related to them in international arbitration are analyzed scientifically, theoretically and practically. . In particular, the United Nations Convention "On Contracts for the International Sale of Goods", " Principles of International Commercial Contracts - UNIDRUA", "Principles of European Contract Law or Lando Principles" , "Model Rules of European Private Law" by International Arbitration Courts ", "Guide to the conclusion of international agreements on countertrade" and the International Trade Organization (ICC) "Notes on Force Majeure and Significant Change of Circumstances" any situation that prevented the fulfillment of the contractual obligation based on the application of legal documents, if the non-fulfillment of the contractual obligation was the result of an obstacle beyond his control, he was unable to see such an obstacle and its consequences when concluding the contract, as well as it is scientifically and practically justified that in case it is proved that it was not possible to prevent or eliminate the obstacle, a decision can be made to release him from responsibility based on the force majeure situation .

The fourth chapter of the dissertation is called **"Tendencies of improving the legal basis of force majeure"** and it contains issues of the current state of legislation and judicial practice regarding force majeure in Uzbekistan, fair criteria for

assessing force majeure and prospects for improving its legal regulation mechanisms. researched from a scientific-theoretical and practical point of view.

of this chapter entitled "The current state of legislation and judicial practice regarding force majeure in Uzbekistan" , it is noted that the principles of justice and the rule of law in the current new Uzbekistan are defined as the most basic and necessary conditions for the country's development, and are widely used in the field of judicial law. while large-scale democratic reforms are being implemented, relations related to force majeure are mainly regulated by civil legislation or other branches of legislation, including labor, tax, customs legislation and other regulatory legal documents, and these legislative documents - the fact that the state of force majeure is defined as a general rule, there are no norms regarding its legal definition, signs and criteria for its evaluation, at the same time, in the current judicial practice, it is important to resolve disputes related to the determination of liability for non-fulfillment or improper fulfillment of contractual obligations - the existence of different approaches to the application of legal documents related to the state of major was scientifically and practically justified.

of the fourth chapter , known as "Fair criteria for assessing force majeure" , it is noted that in the practice of law enforcement, it is possible to distinguish between obstacles that "cause difficulties" for the debtor in fulfilling his obligations and obstacles that are "beyond his reasonable control". which reflects unified unified rules of law - the United Nations Convention on Contracts for the International Sale of Goods, the Principles of International Commercial Contracts (UNIDRUA), the International Chamber of Commerce's "Force Majeure Circumstances and Serious Change of Circumstances" It is shown that the "Pisandali on Change" should be used as business practices, and based on these international legal documents, fair criteria for assessing the force majeure situation have been developed. In particular, as the fair criteria for assessing the force majeure situation, the emergency of the situation is the fact that it cannot be foreseen or known in the presence of reasonable care and caution of the parties, that is, it suddenly appeared outside the scope of the risks of the parties' activities. being a threat; the inevitability of negative consequences - the parties cannot reasonably be expected to take measures to prevent such consequences, that is, any modern measures taken will not be effective; obstacle of the situation beyond the control of the parties - failure to fulfill the obligation was caused by an obstacle beyond the control of the party that did not fulfill it, and this obstacle is the result of the situation; The relativity of the force majeure situation consists of a comprehensive assessment based on the place, time, conditions of its occurrence, including the conditions of the implementation of business activities and other circumstances of specific contractual relations, scientifically, theoretically and practically justified.

"Prospects of improving the mechanisms of legal regulation of force majeure" of this chapter in the third paragraph, there are a number of undeveloped issues regarding the legal regulation of relations related to force majeure in the Republic of Uzbekistan, and these are mainly not perfectly and comprehensively regulated within the framework of civil legislation or other types of legislation of force majeure, including the non-use of the concept, signs and unified criteria of force

majeure in civil, labor, tax, and customs legislation, as well as the correctness of force majeure legislation in determining liability for non-fulfilment or improper fulfillment of obligations in the practice of law enforcement and it is analyzed that there are some imperfect issues regarding its uniform application.

According to the researcher, now in the Republic of Uzbekistan, a hybrid (mixed) system of legal regulation of force majeure has been adopted and its improvement, including the establishment of legal norms regarding force majeure in civil legislation based on the principle of dispositiveness, and these norms apply to all participants in civil transactions. relatively uniform application , introduction of the concept of "reasonable resistance" to the force majeure situation in the national legal system, and "reasonableness", " prudence", "care" and implementation based on the principles of "perseverance" , as well as the introduction of the concept of "quasi-force majeure" into the national legal system and the wide application of this concept in all branches of legislation, the distribution of damages caused by force majeure between the parties to be carried out on the basis of the principles of "fair distribution" and "equal distribution" by mutual agreement or court procedure , to collect, store and quickly deliver information about possible force majeure situations The need to create a special service - the Unified State Digital Information Center (YaDRAM) has been scientifically and theoretically justified.

force majeure and the correct and uniform application of legislation on force majeure in court practice. In particular, firstly , changes and additions should be made to the norms regulating the force majeure within civil, labor, tax and customs legislation or other types of legislation, and secondly, the correctness and The need to improve judicial practice on uniform application is justified from a scientific-theoretical and practical point of view.

According to the dissertation, additions have been made to the third part of Article 330 of the Civil Code of the Republic of Uzbekistan , which states that "A person who has not fulfilled or improperly fulfilled an obligation in the course of business activity, unless otherwise provided by law or contract, shall be able to fulfill the obligation properly shall be liable if he cannot prove that it was impossible due to force majeure, i.e. extraordinary and unavoidable circumstances (force majeure). The emergency of the situation means that it is unusual for it to appear in certain circumstances and that it is an objective obstacle that suddenly appeared without the will of the debtor, making it impossible to fulfill obligations, as well as a situation that cannot be prevented in certain circumstances. that all reasonable and legal actions of the debtor are not sufficient to eliminate the obstacles that have arisen and that it is certain that it will happen" as a result of the illegal actions of the investigating authorities, investigation, preliminary investigation, prosecutor's office and the court, the business entities were convicted, prosecuted and imprisoned as a precautionary measure, if it is difficult to fulfill the contractual obligations concluded between the business entities and the counterparties which resulted in damage without fault due to its occurrence or violation, and unless otherwise provided for in the contract, illegal actions are the basis for excluding the responsibility of business entities", added to the second part of Article 334 of the

Labor Code of the Republic of Uzbekistan additions are made, it states that "The employer shall be liable for non-fulfilment or improper fulfillment of obligations in case of fault, unless otherwise stipulated by law or contract. Despite the fact that the employer has taken all measures within his power to properly fulfill the obligation, force majeure cannot be overcome to fulfill the obligation properly, i.e. extraordinary and in certain circumstances unavoidable situations (if it was not possible due to force majeure), he is considered innocent. A force majeure situation is an extraordinary and unavoidable event that does not depend on the will and actions of the employer, occurred suddenly and cannot be predicted, prevented or eliminated in advance. , that its emergency is unusual for it to appear in certain circumstances, and that it is an objective obstacle that suddenly appeared, independent of the will of the employer, that made it impossible to fulfill obligations, a situation that cannot be avoided in certain circumstances and the fact that all the reasonable and legal actions of the employer were not sufficient to eliminate the obstacles that have arisen and that its occurrence is beyond doubt" is stated, Article 338 of this Code is supplemented with a new third part, "Force majeure" means the emergency of the situation, i.e. the unusual nature of the situation and the fact that it suddenly appeared without the employee's will, as well as the employee's current knowledge and it is understood that damage was caused without fault due to the fact that all reasonable and legal actions taken on the basis of experience were not sufficient to eliminate the situation" code Amendments were made to the first clause of the first part of Article 215, which reads as follows: "1) the act, which has the characteristics of a tax offense, was committed as a result of a natural disaster or other extraordinary and irremediable circumstances. In this case, the emergency of the situation is that it is unusual for it to appear in certain circumstances, and the fulfillment of the obligation to pay taxes as an objective obstacle that appeared suddenly, independent of the taxpayer's will. made it impossible, as well as the fact that it cannot be eliminated in certain circumstances, it shows that all the reasonable and legal actions of the taxpayer were not enough to eliminate the obstacles that arose and that it will undoubtedly occur. These cases are determined by the existence of publicly known facts, information published in the mass media and other methods that do not require special means of proof; 14 of the Customs Code of the Republic of Uzbekistan is supplemented with a new second part, which states that "The emergency of the situation of insurmountable force (force majeure) is an objective obstacle that appears suddenly, regardless of the person's will, that is unusual for its occurrence in certain conditions. that made the fulfillment of the obligation impossible, as well as the fact that it is a situation that cannot be eliminated under certain conditions, it shows that all reasonable and legal actions of a person are not enough to eliminate the obstacles that have arisen and that its occurrence is indisputable" and the Plenum of the Supreme Court of the Republic of Uzbekistan " The necessity of the adoption of the decision by the courts on some issues of the application of the legislation on force majeure was justified.

CONCLUSION

Force majeure as a civil-legal category: as a result of the research conducted on the topic of theory and practice, the following proposals, recommendations and conclusions aimed at improving the theoretical, practical and legislation were developed:

I. Scientific and theoretical conclusions:

1.1. Analyzing the role of force majeure in the national legal system, developing conceptual grounds that it is a civil legal category formed within the institution of the law of obligations of civil law as a basis for exemption from responsibility or exclusion of responsibility, and that it is a general legal category in the system of legal relations. came out, revealed the interdependence and harmony between them, and scientifically and theoretically substantiated the fact that force majeure is a complex legal construction in the national legal system.

1.2. On the basis of the author's approach, a scientific definition of force majeure was developed, which is the obligation as a result of an extraordinary and unavoidable event that does not depend on the will and actions of the participants of legal relations, occurred suddenly and cannot be predicted in advance, the consequences of which cannot be prevented or eliminated under certain conditions. It was scientifically and theoretically justified that it was a situation that led to violation and innocent damage.

1.3. The essence and legal nature of the phenomenon of hybrid (mixed) legal regulation was studied for the first time in the legal regulation of the force majeure situation, and the theory of civility was enriched. It was scientifically, theoretically and practically justified that relations related to force majeure situations in the Republic of Uzbekistan are regulated by legislation and business practices, that the transition to this hybrid (mixed) system of legal regulation is the right approach and that it should be improved.

1.4. Legal norms regarding force majeure apply in different areas of law. However, the concept of force majeure, signs and criteria for its assessment do not exist in any field of law. This, in turn, creates different interpretations for understanding the essence of the force majeure situation and its assessment. Currently, existing norms regarding force majeure in the fields of civil, labor, tax, customs and other legal fields are common, but there are also conflicts. In particular, the legal norm regarding the force majeure situation in the civil law is "a force that cannot be overcome to fulfill the obligation properly by a person who has not fulfilled or improperly fulfilled the obligation in the implementation of business activities, i.e. emergency and circumstances that cannot be prevented under certain conditions (force majeure)) is defined as "he shall be responsible if he cannot prove that it was impossible due to the and other circumstances that do not depend on the will and actions of natural persons, and as a result of which these persons are unable to fulfill their obligations, extraordinary and unavoidable, unexpected circumstances are considered to be the influence of force majeure ” is marked. Such a distinction between legal fields has a negative impact on the unity and integrity of the complex legal structure regarding force majeure. On this basis, it was analyzed that the state

of force majeure is a civil legal category formed within the institution of the law of obligations of civil law, and in order to ensure the unity and integrity of the general legal category in its system of legal relations and the essence of a complex legal construction in the national legal system, with which legal relationship is the state of force majeure regardless of its connection, it was scientifically and theoretically justified that its concept, signs and evaluation criteria should be defined on the basis of civil law norms.

1.5. In the correct and objective assessment of the force majeure situation, it is necessary to take into account the presence of signs such as its urgency, inevitability, obstacle beyond the control of the parties, and relativity. It is appropriate to apply its signs as fair criteria for assessing the force majeure situation.

Based on the analysis of the justice criteria for assessing the force majeure situation, their essence was revealed:

- the emergency of the situation - in the presence of reasonable care and caution of the parties, it cannot be foreseen or known, that is, the threat that suddenly appeared outside the scope of the risks of the activities of the parties;

- the inevitability of negative consequences - it is impossible to reasonably expect that the parties will take measures to prevent such consequences, that is, any modern measures taken will be ineffective;

- the obstacle of the situation beyond the control of the parties - the fact that the non-fulfillment of the obligation was caused by an obstacle beyond the control of the party that did not fulfill it, and that this obstacle is the result of the situation;

- the relativity of the situation - a comprehensive assessment based on the place, time, conditions of its occurrence, as well as the conditions of the implementation of business activities and other circumstances of specific contractual relations.

1.6. Violation of obligations as a force majeure event, such as military actions of a social nature, wars, acts of terrorism, covert actions of third parties, strikes (zabastovka), as well as the adoption of normative legal documents by state authorities (legal and illegal) of a legal nature and the civil-legal features that lead to innocent damage were scientifically, theoretically and practically substantiated.

1.7. Business entities and counterparties (third parties) as a result of illegal actions against business entities by state bodies and their officials, including pre-investigation bodies, inquiry, preliminary investigation, prosecutor's office and court It has been scientifically, theoretically and practically substantiated that the demands of business entities to declare the situation of innocent damage as a legal fact of force majeure due to the difficulty or violation of the contractual obligations concluded between them should be satisfied by the courts.

1.8. By the court of the interested party (debtor) "acceptance of the normative legal document by the state authorities", as well as "state bodies and their officials, including the bodies that carry out the pre-investigation investigation, inquiry, preliminary investigation, prosecutor's office and the business sub of the court In cases where the requirements to recognize "illegal actions against objects" as a force majeure situation as a legal fact are not satisfied, the interested party (debtor) using his constitutional rights in full, on the basis of the principle of "opposition on a fair basis" of the court It was scientifically, theoretically and practically justified that he

should apply to the next instances step by step or reach an agreement with the creditor on release from responsibility.

1.9. The advantages of determining the norms of force majeure based on the principle of dispositiveness, including the fact that the parties to the contract agree on the terms of force majeure by sharing risks (assuming the negative consequences of risks) on the basis of mutual trust, this is a force majeure It was analyzed that it serves to stabilize the judicial practice in cases, and it was scientifically and theoretically justified that it is correct and effective to determine the legal norms regarding the force majeure situation in the civil legislation on the basis of the dispositive principle.

1.10. In the civil legislation of the Republic of Uzbekistan, it is established that the legal norms related to the force majeure situation are applied only to the subjects of entrepreneurial activity, the force majeure situation is related to the legal relations between the legal subjects related to mutual rights and obligations. It is analyzed that it is a legal fact that affects and creates certain legal consequences, and that it is a civil-legal category as the basis for exemption from responsibility or exclusion of responsibility, and the application of legal norms of civil legislation regarding force majeure to all participants of civil transactions and the fact that it should be used in the same way was justified from a scientific-theoretical and practical point of view.

1.11. It is analyzed that situations similar to force majeure are situations that arise as an invalid force majeure situation and, despite the fact that they prevent the fulfillment of obligations, are not recognized as a basis for exemption from responsibility or exclusion of responsibility, and "quasi" is introduced into the national legal system. The introduction of the concept of "force majeure situation" and the need for this concept to be widely used within the framework of civil legislation, as well as other branches of legislation, were scientifically, theoretically and practically justified.

1.12. It was justified that the manifestation of the principles of the doctrine of civics about the incorporation of justice and fairness in laws in civil legal relations, the legal and non-legal theory of force majeure and the existence of a normative basis will increase the attractiveness of the investment environment in our country and strengthen the trust of foreign residents.

1.13. The content and essence of the actions of the debtor in the implementation of measures aimed at minimizing the damage caused by force majeure with the effective use of modern science and technology were analyzed, and the force majeure situation was defined as "honest" in the national legal system. the introduction of the concept of "resisting on the basis" and the actions of the debtor aimed at "resisting the force majeure situation on an honest basis" should be carried out on the basis of the principles of "reasonableness", "prudence", "care" and "perseverance". justified theoretically and practically.

1.14. In the case of force majeure, it was analyzed that violations of the "status quo" should not be allowed, including unjust enrichment of counterparties, as well as that the parties should not be exempted from fulfilling their main obligations, in particular, monetary obligations. It was scientifically and theoretically justified that

the distribution of damages should be carried out on the basis of the principles of "fair distribution" and "equal distribution" by mutual agreement or judicial procedure, and these principles should be included in the current legal documents.

1.15. A special service for the collection, storage and rapid delivery of information obtained as a result of forecasting any natural disasters and man-made dangerous situations that may occur in the territory of the Republic, i.e. the Unified State Digital Information Center (YaDRAM) activity is organized, this "YaDRAM" operates as an independent central executive body within the system of bodies of the Cabinet of Ministers of the Republic of Uzbekistan and collects data through digital information and communication systems in all areas of the national economy, including the need to ensure rapid address delivery to every citizen and business entity, as well as the need to create a normative-legal and methodical base aimed at organizing and implementing the activities of the Unified State Digital Information Center (YaDRAM) was scientifically and practically justified.

1.16. Based on the analysis of the specific features of the force majeure situation in the determination of civil liability, its legal consequences were revealed:

- if the basis of civil liability is guilt, then in case of force majeure the debtor is released from liability;

- if the basis for the exclusion of civil legal responsibility is innocence, when determining liability for delict obligations, legal entities and citizens whose activities cause excessive danger to others around them, the damage caused by force majeure or the intentional act of the victim if it is proved that it occurred as a result of his actions and there is no causal connection between the actions of the person who caused the damage and the damage, then the liability of the debtor is excluded in case of force majeure;

- if liability is determined regardless of the presence of fault or not, then force majeure is not important and does not cause any legal consequences.

1.17. The effectiveness of the force majeure legal regulation mechanism depends on the correct, clear and uniform interpretation of legal norms by those who directly apply the law, including judges, that is, on the level of their legal consciousness and legal culture, the body of judges Having analyzed the essence of force majeure, its legal nature and the need to fully understand the application of legal norms related to these situations, force majeure was included in the educational programs of the Higher School of Judges under the Supreme Council of Judges of the Republic of Uzbekistan. It was justified from a scientific and practical point of view that topics should be included, short-term training courses for judges should be organized, and training manuals should be published for entrepreneurs.

1.18. The doctrines related to the legal regulation of relations related to force majeure were systematically analyzed, and the legal basis of force majeure was initially the norms of customary law during the time of Zoroastrian religion three thousand years ago, and later, in the form of legal norms, ancient Roman private law. It is scientific and theoretical that the law was formed within the institution of the law of obligations and that the concept of force majeure entered the legal systems of the present day from Roman law, and in later periods it was applied in the genesis

of mixed law, Soviet law, and national legislation based on the norms of Islamic law, the law of Tsarist Russia, and Islamic law.

II. Proposals and recommendations on improving the legislation of the Republic of Uzbekistan:

2.1. It is appropriate to supplement the third part of Article 333 of the Civil Code of the Republic of Uzbekistan with the following addition: as an objective obstacle that made the fulfillment of obligations impossible, as well as the fact that it is a situation that cannot be avoided under certain circumstances, that all reasonable and legal actions of the debtor are not sufficient to eliminate the obstacles that have arisen, and that it is certain that it will occur shows". Because this article is filled with a norm that reveals the meaning of force majeure signs, leading to the correct and uniform application of legal documents without allowing different interpretations in the practice of law enforcement. will come.

2.2. Article 991 of the Civil Code of the Republic of Uzbekistan should be supplemented with the following third part: being detained and detained as a precautionary measure, caused innocent damage due to the difficulty or violation of contractual obligations concluded between business entities and counterparties, and unless otherwise stipulated in the contract, illegal actions are the basis for excluding the liability of business entities ". The inclusion of this norm in relation to citizens, as business subjects, is due to the fact that they could not fulfill their obligations to third parties (contractors) as a result of the authorities that carry out pre-investigation investigations, investigations, preliminary investigations, prosecutor's offices, and courts, which are unlawfully used by the court. provides the rights to be exempted from liability. After all, today's level of legal consciousness and legal culture of the society requires that the rights and legal interests of business entities be reliably protected in strict compliance with the principles of justice, fairness, honesty, reasonableness, and legality .

2.3. It is appropriate to supplement Articles 334 and 338 of the Labor Code of the Republic of Uzbekistan with the following additions: It is an extraordinary and inevitable event that cannot be predicted, prevented or eliminated in advance, and its emergency is unusual in certain circumstances and occurs suddenly, independent of the individual's will. as an objective obstacle that made the fulfillment of obligations impossible, and that it is an unavoidable situation under certain circumstances, that all rational and legal actions of a person are not enough to eliminate the obstacles that have arisen, and that it will undoubtedly occur shows". Supplementing these articles with the norm defining the nature of the concept of force majeure and its signs By harmonizing the norms of the Civil and Labor Code of the Republic of Uzbekistan, it prevents their different interpretation and leads to the correct and uniform application of the legislation on force majeure in the practice of law enforcement.

2.4. The first paragraph of the first part of Article 215 of the Tax Code of the Republic of Uzbekistan should be supplemented with the following addition: is an extraordinary and unavoidable event that cannot be predicted, prevented or eliminated in advance, and that its emergency is unusual in certain circumstances

and is sudden, independent of a person's will that as an objective obstacle that appeared, it made the fulfillment of obligations impossible, and that it was an unavoidable situation under certain conditions, that all reasonable and legal actions of a person were not enough to eliminate the obstacles that arose, and that its occurrence is beyond doubt shows". Supplementing this article with this norm defining the nature of the concept of force majeure and its signs will lead to the correct and uniform application of legislation on force majeure in the practice of law related to tax relations. .

2.5. Article 14 of the Customs Code of the Republic of Uzbekistan should be supplemented with the following addition: It is an extraordinary and unavoidable event that cannot be predicted, prevented or eliminated, and the emergency of which is unusual in certain circumstances and has appeared suddenly without depending on the will of the person. as an objective obstacle, it made the fulfillment of obligations impossible, and the fact that it is a situation that cannot be avoided under certain conditions shows that all reasonable and legal actions of a person are not enough to eliminate the obstacles that have arisen, and that its occurrence is beyond doubt" . Supplementing this article with this norm defining the concept of force majeure and its signs will lead to the correct and uniform application of force majeure legislation in the practice of law related to customs relations. .

III. Proposals and recommendations related to the improvement of the practice of applying legislation on force majeure:

3.1. Despite the fact that documents (certificates and conclusions) confirming the existence of force majeure issued by the competent authorities in resolving the issue of the debtor's liability due to force majeure have been submitted to the court, the existence and duration of force majeure in order to release the debtor who has not fulfilled his obligations from liability, force majeure - there is a direct cause-and-effect relationship between the force majeure situation and the impossibility of fulfilling the obligations or the delay in their fulfillment, that is, the non-fulfilment of the obligation is a consequence of the force majeure situation, the absence of the debtor's participation in the occurrence of the force majeure situation, and such a situation that it did not occur due to his negligence, i.e. the absence of subjective reasons, the debtor's reasonableness, care, care and perseverance in preventing possible risks (minimizing damages) it is necessary to prove that all measures have been taken and the creditor has been informed about the force majeure situation. If the debtor's innocence is proved only by him, the court shall release him from liability based on the application of the legislation on force majeure or, otherwise, refuse to satisfy his claim for release from liability.

3.2. Until now, the decision of the Plenum of the Supreme Court of the Republic of Uzbekistan, which gave explanations on the correct and uniform application of the legislation on force majeure by the courts, has not been adopted. However, the current state of national legislation and judicial practice regarding force majeure, as well as the level of legal consciousness and legal culture of society, according to the Plenum of the Supreme Court of the Republic of Uzbekistan "On some issues of the application of legislation by courts regarding force majeure" ” indicates that there is a need to adopt the decision. Due to the fact that, due to various natural disasters,

social, economic, military, political incidents and pandemics, there are frequent cases of non-fulfillment of contractual obligations by business entities or inability to fulfill them properly, in such cases, entrepreneurship is sub It is appropriate to provide relevant explanations to the courts on the correct and uniform application of the laws on force majeure in the fair and legal settlement of cases related to the liability of individuals. Based on this, the draft of this decision was developed.

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ВЫСШАЯ ШКОЛА СУДЕЙ ПРИ ВЫСШЕМ СОВЕТЕ СУДЕЙ РЕСПУБЛИКИ УЗБЕКИСТАН

ИСАНОВ ХОЛМУРОД РУЗИЕВИЧ

ФОРС-МАЖОР – КАК ГРАЖДАНСКО-ПРАВОВАЯ КАТЕГОРИЯ: ТЕОРИЯ И ПРАКТИКА

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АВТОРЕФЕРАТ
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Тема диссертации доктора юридических наук (DSc) зарегистрирована в Высшей аттестационной комиссии при Министерстве высшего образования, науки и инноваций Республики Узбекистан под номером B2021.1.DSc/Ю152.

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Автореферат диссертации размещен на трех языках (узбекском, английском, русском (резюме)) на Информационно-образовательном портале «Ziyonet» (www.ziyonet.uz).

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ВВЕДЕНИЕ (аннотация докторской (DSc) диссертации)

Цель исследования. Разработка сущности и гражданско-правовых научных основ форс-мажорных обстоятельств и приоритетных направлений развития гражданско-правовых механизмов его регулирования.

Объект исследования. Социально-правовые отношения, связанные с национальным и международным правовым регулированием форс-мажорных обстоятельств.

Научная новизна исследования заключается в следующем:

обосновано, что в целях устранения различных подходов и толкований в отношении форс-мажорного обстоятельства раскрыты значение и сущность его признаков чрезвычайности, неизбежности, препятствия, не зависящего от сторон и относительности и разработан проект закона Республики Узбекистан «О внесении изменений и дополнений в Гражданский, Трудовой, Налоговый и Таможенный кодексы Республики Узбекистан» и обоснована необходимость его принятия;

обосновано, что учесть об отражении в законах принципов доктрины цивилистики о справедливости и честности в гражданско-правовых отношениях, наличие основы правовой и неправовой теории, нормативной базы форс-мажора повышает привлекательность инвестиционной среды и укрепляет доверие иностранных резидентов;

обосновано, что для определения справедливых критериев оценки наличия форс-мажорных обстоятельств, в качестве справедливых критерий следует применять такие признаки, как чрезвычайность, неизбежность, препятствие, не зависящее от сторон и относительность;

обосновано, что в целях обеспечения правильного и единообразного применения законодательства о форс-мажорных обстоятельствах в рассмотрении дел, связанных с определением ответственности за неисполнение обязательств или ненадлежащее неисполнение обязательств в судах, разработан проект постановления Пленума Верховного Суда Республики Узбекистан «О некоторых вопросах применения законодательства о форс-мажорных обстоятельствах» и обоснована необходимость его принятия;

обоснована, что должна быть организована специальная служба по сбору, хранению и оперативной доставке информации, полученной в результате прогнозирования любых стихийных бедствий и техногенных опасных ситуаций, которые могут вызвать форс-мажорные обстоятельства на территории республики – деятельность Единого государственного цифрового информационного центра (ЯДРАМ), который действует как самостоятельный центральный исполнительный орган в системе органов Кабинета Министров Республики Узбекистан и осуществляет сбор информации через цифровые информационно-коммуникационные системы для всех отраслей народного хозяйства, включая граждан и субъектов предпринимательства, необходимость создания нормативной правовой и методической базы, направленной на обеспечение оперативной адресной доставки, а также

организации и реализации деятельности Единого государственного цифрового информационного центра (ЯДРАМ).

Внедрение результатов исследования. Научные результаты, полученные в результате исследовательской работы, использовались как:

предложения о том, что в целях устранения различных подходов и толкований в отношении форс-мажорного обстоятельства раскрыты значение и сущность его признаков чрезвычайности, неизбежности, препятствия, не зависящего от сторон и относительности и разработан проект закона Республики Узбекистан «О внесении изменений и дополнений в Гражданский, Трудовой, Налоговый и Таможенный кодексы Республики Узбекистан», нашли отражение в разработке «Административного регламента оказания государственных услуг по утверждению форс-мажорных обстоятельств», утвержденного постановлением Кабинета Министров Республики Узбекистан №625 от 28 октября 2022 года. (Акт Департамента информационного анализа и правового обеспечения Секретариата Премьер-министра Республики Узбекистан от 5 декабря 2023 года № 12-15-124). Эти предложения послужили совершенствованию правового регулирования отношений, связанных с форс-мажорными обстоятельствами.

предложения о том, что учесть об отражении в законах принципов доктрины цивилистики о справедливости и честности в гражданско-правовых отношениях, наличие основы правовой и неправовой теории, нормативной базы форс-мажора повышает привлекательность инвестиционной среды и укрепляет доверие иностранных резидентов, нашли отражение в статье 3 Закона Республики Узбекистан “О внесении дополнений и изменений в некоторые законодательные акты Республики Узбекистан в связи с принятием конституционного закона «О чрезвычайном положении» ЗРУ №756 от 2 марта и использованы при разработке статьи 42 Закона Республики Узбекистан «О гарантиях свободы предпринимательской деятельности» от 2 марта 2022 года. № ЗРУ-756 (Акт Комитета по бюджету и экономическим реформам Законодательной палаты Олий Мажлиса Республики Узбекистан от 19 декабря 2023 года № 04/1-13-34). Эти предложения послужили совершенствованию нормативно-правовых документов, касающихся предпринимательской деятельности, связанных с форс-мажорными обстоятельствами.

предложения о том, что для определения справедливых критериев оценки наличия форс-мажорных обстоятельств, в качестве справедливых критерий следует применять такие признаки, как чрезвычайность, неизбежность, препятствие, не зависящее от сторон и относительность и эти признаки должны быть внедрены как справедливые критерии оценки наличия форс-мажорного обстоятельства нашли отражение в разработке Положения «О порядке утверждения форс-мажорных обстоятельств, возникающих в рамках местных хозяйственных договоров», утвержденного постановлением Кабинета Министров Республики Узбекистан № 231 от 7 июня 2023 года. (Акт Департамента информационного анализа и правового обеспечения Секретариата Премьер-министра Республики Узбекистан от 5 декабря 2023

года № 12-15-124). Эти предложения послужили совершенствованию правового регулирования отношений, связанных с форс-мажорными обстоятельствами.

предложения о том, что в целях обеспечения правильного и единообразного применения законодательства о форс-мажорных обстоятельствах в рассмотрении дел, связанных с определением ответственности за неисполнение обязательств или ненадлежащее неисполнение обязательств в судах, разработан проект постановления Пленума Верховного Суда Республики Узбекистан «О некоторых вопросах применения законодательства о форс-мажорных обстоятельствах» и необходимости его принятия, будут использованы при разработке проекта Постановления Пленума Верховного суда Республики Узбекистан «О некоторых вопросах применения судами законодательства о форс-мажорных обстоятельствах» (Акт Судебной коллеги по гражданским делам Верховного Суда Республики Узбекистан от 5 октября 2023 года № 9069). Эти предложения послужили совершенствованию правоприменительной практики по форс-мажорным обстоятельствам;

предложения об организации деятельности Единого государственного цифрового информационного центра (ЕГЦИЦ) – специальной службы по сбору, хранению и оперативной передаче информации, получаемой в результате прогнозирования любых стихийных бедствий и опасных техногенных ситуаций, которые могут возникнуть на территории республики использованы при разработке Положения, утвержденного Постановлением Кабинета Министров Республики Узбекистан от 29 апреля 2023 года №171 «О мерах по эффективной организации деятельности государственной системы предупреждения и действий в чрезвычайных ситуациях Республики Узбекистан». (Акт Департамента информационного анализа и правового обеспечения Секретариата Премьер-министра Республики Узбекистан от 19 декабря 2023 года № 12-15-128). Эти предложения послужили совершенствованию правового регулирования отношений, связанных с форс-мажорными обстоятельствами.

Структура и объем диссертации. Диссертация состоит из введения, 4-х глав, заключения, библиографии, приложений и её объем сославляет 232 страниц.

E’LON QILINGAN ISHLAR RO‘YXATI
LIST OF PUBLISHED WORKS
СПИСОК ОПУБЛИКОВАННЫХ РАБОТ

I bo‘lim (I часть; I part)

1. Isanov X.R. Fors-major – fuqarolik-huquqiy kategoriya sifatida: nazariya va amaliyot. Monografiya / O‘zbekistonda xizmat ko‘rsatgan yurist, yu.f.d., prof. O.Oqyulovning umumiy tahriri ostida. – Toshkent: “Top Image Media”, 2023. -284 b.
2. Isanov X.R. Fors-major tushunchasi va belgilari. // ODILLIK MEZONI ilmiy-amaliy, huquqiy jurnal. Toshkent-2021. 3-son. 32-35-b. ISSN 2181-9521. (12.00.00; №21).
3. Isanov X.R. Fors-major genezisi va rivojlanish bosqichlari. // ODILLIK MEZONI ilmiy-amaliy, huquqiy jurnal. Toshkent-2021. 6-son. 24-26-b. ISSN 2181-9521. (12.00.00; №21).
4. Isanov Kh.R. The Legal Nature of Force-Majeure. // Available online at www.rajournals.in RA JOURNAL OF APPLIED RESEARCH ISSN: 2394-6709 DOI:10.47191/rajar/v7i11.11 Volume: 07 Issue: 11 November-2021 International Open Access Impact Factor- 7.036 Page no. -2683-2686.
5. Isanov X.R. Fors-major holatlari tasnifi. // ODILLIK MEZONI ilmiy-amaliy, huquqiy jurnal. Toshkent-2022. 3-son. 15-17-b. ISSN 2181-9521. (12.00.00; №21).
6. Isanov Kh.R. Force-Major Status in Tort Liabilities. // International journal of Social Science Research and Review (Germany) http://ijssrr.com editor@ijssrr.com Volume 5, Issue 4 April, 2022 Pages: 102-105.
7. Isanov X.R. Qonunga xilof harakatlarning fors-major holati. // ODIL SUDLOV huquqiy, ilmiy-amaliy jurnal. Toshkent-2022. 9-son. 9-14-b. ISSN 2181-8991. (12.00.00; №3).
8. Isanov Kh.R. Illegal Actions of Bodies of Inquiry, Preliminary Investigation, Prosecutors and the Court as a Force Majeure Circumstance. // International Journal of Multicultural and Multireligious Understanding (Germany) Impact Factor: SJIF 2022 http://sjifactor.com/passport.php?id=18069)= 6.879 Impact Factor -6.879 Pages: 44-49. ISSN 2364-5369.
9. Isanov Kh.R. Civil law and judicial practice of the Russian Federation on force major. // Oriental Renaissance: Innovative, educational, natural and social sciences. VOLUME 2 | ISSUE 10 ISSN 2181-1784 Scientific Journal Impact Factor SJIF 2022: 5.947 Advanced Sciences Index Factor ASI Factor = 1.7 SJIF 2022: 5.947 Area: MultidisciplinaryEvaluated version: online Impact Factor - 5.947 Pages:1236-1244.https://oriens.uz/media/journalarticles/164_Isanov Xolmurod_1236-1244.pdf
10. Isanov X.R. Xorijiy davlatlarda fors-majorga oid sud amaliyoti. // ODILLIK MEZONI ilmiy-amaliy, huquqiy jurnal. Toshkent-2022. 11-son. 8-10-b. ISSN 2181-9521. (12.00.00; №21).

11. Isanov Kh.R. Comparative legal analysis of civil legislation and judicial practice of the Russian Federation and the Republic of Belarus on force major. // Web of Scientist: International Scientific Research Journal -Impact Factor: 7.565 (Indoneziya) ISSN: 2776-0979, Volume 3, Issue 12, Dec., 2022 Platforma sayti: https://wos.academiascience.org/index.php/wos Pages: 905-914.

12. Isanov X.R. Anglo-sakson huquqiy tizimi mamlakatlarining fors-majorga oid sud amaliyoti. // ODILLIK MEZONI ilmiy-amaliy, huquqiy jurnal. Toshkent-2023. 3-son. 17-19-b. ISSN 2181-9521. (12.00.00; №21).

13. Isanov X.R. Fors-major holatiga oid xalqaro-huquqiy hujjatlarning xalqaro arbitrajda qo‘llanilishi. // ODILLIK MEZONI ilmiy-amaliy, huquqiy jurnal. Toshkent-2023. 8-son. 19-22-b. ISSN 2181-9521. (12.00.00; №21).

14. Isanov X.R. Milliy huquq tizimi va yuridik fanda fors-majorning o‘rni. / “Zamonaviiy yuridik ilm-fan va ta’lim: dolzarb muammolar va ularni hal etish yo‘llari” mavzusida o‘tkazilgan xalqaro ilmiy-amaliy konferensiya materiallari. -T.: O‘zbekiston Respublikasi Bosh prokuraturasi Akademiyasi, 2021. 16-24-b.

15. Isanov Kh.R. Classification of force major cases in civil law. Сборник статей LXII Международной научно-практической конференции “World science: problems and innovations”. -Penza (Rossiya): MSNS «Наука и просвещение», 2022. Pages: 105-107.

16. Isanov X.R. Fors-majorni fuqarolik-huquqiy xususiyatlariga ko‘ra tasniflash. / “Fuqarolik va oila huquqi fanining dolzarb muammolari” mavzusida o‘tkazilgan respublika ilmiy-nazariy konferensiya materiallari. -T.:O‘zbekiston Respublikasi Sudyalar oliy kengashi huzuridagi Sudyalar oliy maktabi, 2022. 40-51-b.

17. Isanov X.R. Fors-majorning fuqarolik-huquqiy kategoriya sifatida yuridik tabiati. / “Fuqarolik huquqiy fanlarini rivojlantirish tendensiyalari va fuqarolik qonunchiligini takomillashtirish istiqbollari” mavzusida o‘tkazilgan respublika ilmiy-amaliy konferensiya materiallari. -T.: O‘zbekiston Respublikasi Jamoat xavfsizligi universiteti, 2022. 186-195-b.

18. Isanov Kh.R. judicial practice of Great Britain and the USA on force majeure. Сборник статей III Международной научно-практической конференции «Актуалные вопросы современных научных исследований». -Пенза (Россия): МЦНС «Наука и просвещение», 2023. Pages: 178-180.

II bo’lim (II часть; II part)

19. Isanov X.R. Fors-major holatida shaxs huquqlarini sud orqali himoya qilish muammolari. / “Axborot-kommunikatsiya tizimida shaxs huquqlari himoyalanishining huquqiy asoslarini takomillashtirish” mavzusida o‘tkazilgan respublika ilmiy-amaliy onlayn konferensiyasi to‘plami. -Navoiy: Navoiy davlat pedagogika instituti, 2021.12-17-b.

20. Isanov X.R. Pandemiya sharoitida shaxs huquqlarini himoya qilishning sud amaliyoti muammolari. / “Davlat va jamoat ehtiyojlari uchun yer uchastkalarining olib qo‘yilishi munosabati bilan mulkdorlarga yetkazilgan zararni undirishga oid sud

amaliyotidagi muammolar” mavzusida o‘tkazilgan seminar-trening materiallari. -T.: O‘zbekiston Respublikasi Bosh prokuraturasi Akademiyasi, 2021. 266-271-b.

21. Isanov. X.R. O‘zbekiston huquqiy tizimida fors-major genezisi va rivojlanish bosqichlari. / “Axborot-kommunikatsiya tizimida shaxs huquqlari himoyalanishining huquqiy asoslarini takomillashtirish” mavzusida o‘tkazilgan respublika ilmiy-amaliy onlayn konferensiyasi to‘plami. -Navoiy: Navoiy davlat pedagogika instituti, 2021. 14-21-b.

22. Isanov X.R. Musulmon huquqiy tizimi mamlakatlarining fors-majorga oid fuqarolik qonunchiligi. // SHARQ FALSAFASI ilmiy-uslubiy jurnal. -Toshkent, 3-son, 1-jild dekabr 2022. 1-qism. 48-55-b.

23. Isanov X.R. Davlat organlari va ular mansabdor shaxslarining harakatlari fors-major holati sifatida. / “Shaxs huquqlarini himoya qilishning dolzarb masalalari” mavzusida o‘tkazilgan respublika ilmiy-amaliy konferensiya materiallari. -T.: O‘zbekiston Respublikasi Bosh prokuraturasi Akademiyasi, 2022. 97-112-b.