

## **National legal acts that regulate state participation in international private law relations**

Abduqodirov Abdurauf Bahodir o'g'li

Master student of international commercial law department

Tashkent State University of Law

tel.: +998 93 789 90 05, e-mail: [mustread@mail.ru](mailto:mustread@mail.ru)

*Annotatsiya:* ushbu maqolada muallif xalqaro xususiy huquqiy munosabatlarda davlat ishtirokining muhim jihatlari xorijiy davlatlarning qonunchiligi bilan qiyosiy tahlil etgan. Maqolada tashqi iqtisodiy faoliyatga oid qonunlardagi mavjud kamchiliklar ko'rsatilgan va ularni bartaraf etish bo'yicha ma'lum bir takliflar olg'a surilgan. Ayniqsa, davlat immuniteti masalasiga alohida e'tibor qaratilgan. Maqola xalqaro xususiy huquq yo'nalishida ilmiy izlanishlar olib borayotganlar bilan bir qatorda ushbu sohaga qiziquvchi o'quvchilar uchun ham mo'ljallangan.

There is no doubt that state is a subject not only of international public law relations, but also a subject of international private law relations. When state participates with other states, it has same rights and obligations and save its sovereignty in any situation. If one state should follow some obligations according to international agreement or just enter to international organization to be member, it does not mean that state will lose own sovereignty. Such situation is also happen in international private law. However, there is a wide difference between national and international acts of international public law and international private law.

In any case of state participation in international private law is provided both national and international legal documents. However, initially each state writes it in national legal foundation of state participation which related to international private law such as civil code. Therefore, firstly we will discuss

Uzbekistan national legal acts with comparison other states which related to state participation in relations of international private law.

Participation of the Republic of Uzbekistan in this sphere (in international private law) is written in the article of 1178 (“The rules of this section apply to civil-law relations with a foreign element with the participation of the state on general grounds, unless otherwise provided by law” [1].) and this article is similar with national legislation of other members of Commonwealth of Independent States. The reason is that all members of this international organization accepted article 1214 of Model Civil Code of CIS [4] which adopted in 1993. It means that it will be useless, if we compare this rule with other members of CIS.

However, there are other national legal acts which regulate some essential matters of state participation in international private law. According to the article of 127 of Civil Code of Russian Federation, responsibility of the Russian Federation and the subjects of the Russian Federation the participation with foreign legal entities, citizens and states are determined by the law on the immunity of the state and its property [5]. Only after 21 years Parliament of Russian Federation adopted law On Jurisdictional Immunities of a Foreign State and Property of a Foreign State in the Russian Federation [6].

It is important to recall that, “the legislation of the Russian Federation was based on the concept of absolute immunity of the state, while the practice of foreign economic activity of the Russian Federation shows that there is a tendency to apply the concept of limited immunity. According to this concept, a foreign state, its bodies and organizations, as well as their property, do not enjoy immunity with respect to claims arising from the commercial activities of these entities” [9]. Also, this action was passed in Uzbekistan early 2000s, unfortunately, that actions was only draft law on State immunity and some attempts in order to its adoption was unsuccessful, despite of its importance in

international private law [8, c.110]. Especially, if this law will adopt, it will play crucial role for attracting foreign investment.

Actually, Uzbekistan national acts are not so fully write about private law terms which influence to state relations in international private law. However, Uzbekistan as a subject of international private law may act in different types of this relation and conclude so many acts in order to take profit as legal entity. There are two agreements on product sharing between Uzbekistan and LukOil Company on gas and oil [10]. But, the law on Agreement on product sharing does not tell us anything and even state immunity [3]. Nevertheless, state immunity can influence to the relationship that happens dispute between state and foreign investor.

Such law also adopted by Russian parliament in 1995 and this law clearly explained state position on state immunity: In agreements concluded with foreign citizens and foreign legal entities, the refusal of the state may be provided in accordance with the legislation of the Russian Federation from judicial immunity, immunity in relation to the preliminary securing of the claim and the enforcement of the judicial and (or) arbitral award. From this article is clear that Russian Federation ready to reject own state immunity, only based on agreement on product sharing [7, c.32].

Also, Uzbekistan has own position on state immunity and this rule is written only in Economic procedural code of the Republic of Uzbekistan (article 224). According to this rule, Uzbekistan will guarantee on rejecting state immunity for foreign state when the filing of a lawsuit against a foreign state in the economic court, involving him as a third party to participate in the case. It means that without consent by competent authority of foreign state, Uzbekistan never impose an arrest to foreign property and never use this property as compulsory execution of a decision of the economic court [2]. However, Uzbekistan always holds absolute state immunity and even this article gives this

right to state that unless provided by law whether international treaties of the Republic of Uzbekistan.

State participation in relations of international private law can change indirectly form to directly form. This process may happen when the state on the basis of the contract concluded by it, has undertaken a guarantee (guarantee) for the obligations of the legal entity, or the specified legal entity has undertaken a guarantee (guarantee) for the obligations of the state. In most cases, state submits legal guarantee to foreign investor as well as provide safety of foreign investment in order to show investment climate. Therefore, such guarantee usually is written in national legal acts which regulate relationship between host state and foreign investor with foreign capital.

For instance, according to the national legislation of law on foreign investments, the state, government bodies and state authorities in the field are responsible only for the obligations undertaken in the relevant contracts with foreign investors, signed by persons whose credentials are confirmed in the order established by the legislation of the Republic of Uzbekistan. Besides, it should not be considered as discrimination when government of the Republic of Uzbekistan can give additional guarantees to foreign investors. Thus, state participation in relations of international private law depends on not directly to those laws, but depends on agreement which signed between legal entity and foreign investor that state takes responsibilities for legal entity.

To sum up, it is clear that there are some problems on national legal acts that regulate the role of state participation in international private law relations. Such problems include: uncertain position of Uzbekistan on state immunity, lack of legal base on conception of state immunity and different position of national legal act which relevant to protection of foreign capital. Those issues can be tackled by apply to foreign practice on these matters, especially, the USA, England which in reality they have case law on state immunity. Because, there is no any benefit to use national legislation of member of CIS as they have similar

rule. Moreover, it is time to adopt law on State immunity as it can be serve as legal guarantee when state attract foreign capital to a wide range of sphere of socio-economic life.

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