Mahamadkhujaeva Munisaxon
TSUL, 2nd course master student
International Commercial (Private) Law specialty

Some rules of international private law which may influence to state relations

Despite of legal system, the last century some national parliaments approved Laws on international private law, in other words terms of international private law separated from civil codes or other laws, moreover they were more improved than civil codes. Actually, those laws are named differently such as international private relations, international private and procedural law, conflict of laws and most common name is international private law. But, content is more important than name of law. After learning more than 30 international private laws from different continents, we may classify and systemize in order to have some exact solutions for Uzbek national legislation.

Initially, we should mention that there is no any complicated scientific opinion on general concepts of international private law. Before, debate general concepts of international private law, first of all, we should find answer that what does mean international private law itself. After that, also we should mention some most used and at the same time unknown terms of international private law. The principle of international private law– the circumstances of the case, in contact with foreign countries, considered private law respect according to the rule of law, which is indicated in this Act or any other legal regulations[1]. Among other foreign legislations only this article of "Law on international private law of Liechtenstein" can give definition to "international private law". Of course, this definition may disputable, anyway this still unique answer.

Scholars speak about foreign element (international element) and also, national legislation writes in so many articles the term foreign element. "This Act contains provisions on the definition of the rule of law that apply to personal, family law, labor and social legal, property and other civil– law relations with an international

[1]Law on International Private Law of Liechtenstein-1996, art 1

element"[2]. Just this article is one example that used term foreign element or in other words international element.

There was founded only two definition of foreign element in Ukraine and Albania`s national legislation. For instance, here is an example from Ukraine`s legal act: foreign element– a sign that characterizes private law relations regulated by this law, and manifested in one or more of these forms: at least one party is a legal alien face stateless person or foreign legal entity; legal entity located on the territory of foreign state; legal fact that affects the appearance, change, or termination of legal relations, or has had a place on the territory of a foreign state[3]. Interestingly, this article is same as theory that mentioned by scientists.

The term most closed connection is one of problem of international private law. According to the Slovenia` Law on International Private Law, if the court found the case in non– important relationship with foreign legislation, in this situation court apply to the most closed connection legislation. Terms non– important relationship and most closed relationship is opposite meanings, but, this does not give definition to most closed relationship or just write it as principle in Law (in other places are used only the words Law instead of Law on International Private law) as Austria`s national legislation. If courts cannot find exact legislation to the cases and they are forced to use this term, but it will remain as a big issue for governmental organization, especially courts and other organizations till national parliaments make, approve definition and using mechanism, procedural rules of the term most closed relationship. Because, it is an unknown term.

By learning more than 30 states` laws on international private law we may divide into two groups based on they have regulation sphere or not. For the first group include Austria, Germany, Italy and Uzbekistan (Civil code of Uzbekistan) that in those countries` legal acts there are no regulation sphere, aim of law, they just jumped to collision of laws. It may be interesting that why in the beginning of laws should written regulation sphere and aim. Answer is very simple that if there

[2]Law on International Private Law of Macedonia-12.07.2007 № 87/07, art 1
[3]Law on International Private Law of Ukraine-01.09.2005 № 32, art 1

is no aim and sphere, so court cannot apply to collision rules, because, collision of law is based on regulation sphere.

Montenegro, Czech, Azerbaijan, Slovenia may example for the second group states. In that states law`s concrete written regulation sphere. "This Act contains provisions on the definition of the rule of law that apply to personal, family law, labor and social legal, property and other civil– law relations with an international element. This act also contains rules on the jurisdiction of courts and other authorities of the Republic of Slovenia for the adoption of decisions regarding specified in paragraph. 1of this article legal, procedural rules, as well as provisions on the recognition and enforcement of foreign court and arbitration decisions, other legislative mandates"[4]. As you see, this article of Law on International Private and Procedural Law show that law regulate not only material, but also regulate procedural and enforcement rules.

Admittedly, second group states laws` are similar. If we compare both groups, the second group has two benefits. First benefit is that regulation material sphere is exact. In the modern world, when parliaments have not law which law on governmental organizations may have problem with recognition and enforcement of foreign courts` decision which based on foreign legislation due to different national legal system (terms, rules may be different such as public order, public interest, unknown or different terms). So, if they have law on this subject, it will solve problems which mentioned above– this is second benefit that regulation recognition and enforcement sphere concrete.

As term most closed connection, term foreign element general concepts of international private law have some discussion themes such as reference and remission. International Private Laws around the world show that scholars may classify the both terms, because these terms have a lot of interesting and opposite sites which may influence to sort out disputes and protect subject`s rights.

Firstly, we divide into four groups of reference to applicable law. They are non– reference, non– limited reference, conditional reference and limited

[4]Law on International Private Law and Process of Slovenia-28.07.1999, art 1

reference. It is interesting that in Tunis, South Korea`s international private laws are not exist term reference, so this group is called non– reference to applicable law. Of course, specific rules may open meaning of the term, however if this term is not written, so we may understand that reference is totally banned.

Liechtenstein, Azerbaijan, Serbia, Ukraine, Taiwan`s Laws on international private law can be example for non– limited reference states that means those countries national legislation permit to reference without limits and conditions. "If under this Act shall apply the law of another State, are taken into account its provisions on applicable law– for the non– limited reference"[5] like this written art 6 of Law of Serbia.

Sometime states permit to reference, but with some conditions. If the elements of case apply to foreign legislation, Italy, Venezuela, Thailand` law are required some conditions for using reference. Conditions may be foreign state recognize remission, result of reference should not be against public order or not against meaning of reference. "In cases where the subsequent articles refer to foreign law, must be taken into account dispatch of foreign private international private law to the law of another State: if a) the right of such a state recognizes remission; b) reference is made to the law of Italy. So, this group is called conditional reference states"[6].

Last group like mixing version second and fourth groups. Because, they permit to reference, but in some circumstances are prohibited refer to foreign legislation. Only two states Montenegro and Albania are examples for limited reference states. In general, subject free when they apply to foreign legal act. However, even they have right to choose foreign legislation, in some situations this right is limited by law. For instance, "the reference to the law of Montenegro or to the rights of third States is not permissible, when it comes to: the legal status of legal persons and organizational forms with no legal responsibility; forms of transactions, choice of applicable law; maintenance obligations, the contractual relationships, non–

[5]Project of Law on International Private Law of Serbia-2014, art 6
[6]Law on Reform of the Italian system of International Private Law of Italy-1995 № 218, art 13

contractual relationships"[7]. Actually, exclude the first group, we may call all of them as a limited reference states. Because, in most cases, subjects have right apply to foreign law.

One of the general concepts of international private law – remission also divided into four parts as a reference. As a rule, in this classification first of all we pay attention to non– remission or unknown remission states. South Korea, North Korea and Serbia can be examples for the non– remission or unknown remission states. Article 34 called reference and remission, but text of article does not give using rules of remission or does not submit meaning of remission.

Just only one state – Austria is in the second part and its national legislation permit use remission one time (one time remission). If a foreign rule of law sends back, then apply Austrian substantive rules (rules of law, excluding reference rules); in the case of a subsequent reference defining, in compliance with following reference are the substantive rules of law, which, for its part, does not send further, or respectively, to which reference is made for the first time back[8].

"Contact remission to the law of the Republic of Uzbekistan and the reference to the law of a third country are taken in cases of application of foreign law in accordance with Article 1168, parts of first, by the third and the fifth article 1169, articles 1171 and 1174 of this Code"[9]. From this article it is clear that Uzbek legislation permit remission as Austria, but this remission only for Uzbek legislation, not to again send to the state which reference is first made.

Third part is called permanent remission. States which include this part every time permit to remission, but it can be with some conditions or with only back to itself, not back foreign legal system which reference is made. That`s why this part also consist of two subsections. Montenegro and Liechtenstein`s law constantly permit to remission without additional conditions. For instance, according to the Montenegro law, "if the conflict rules of foreign country contain a remission to the law of Montenegro or to the right of third State, the applicable substantive law,

[7]Law on International Private Law of Montenegro-09.07.2014 № 01-1973/2, art 4
[8]The Federal Law on International Private Law of Austria-1978, par 5
[9]O`zbekiston Respublikasining Fuqarolik Kodeksi (II Qism)– 29.08.1996 № 265 – I, 1161 m

respectively, of Montenegro or the substantive law of a third State"[10]. This is first subsections that called permanent remission back to itself without conditions.

Italy, Georgian, Azerbaijan, Ukraine, Macedonia, Slovenia, Hungary, Germany are states which permit to permanent remission back to itself with conditions (second subsection). Conditions are different, so they can be not opposite meaning of reference, for specific case. Prime example for this subsection is article 9 of Ukraine` law: "in cases relating to personal and family status individual, remission to the law of Ukraine allowed"[11].

In the fourth part that called non– remission means that permit remission neither back which reference is made, nor third country. National legislation of those states do not consider what will happen when they reject the remission based on their legal act. Author research show that only Tunis is an example for this part with this article of Law of Tunis: "Except for opposing provisions of the law, remission is not allowed (regardless of) whether or not it leads to the use of Tunisian law or the law of another state"[12].

[10] Law on International Private Law of Montenegro-09.07.2014 № 01-1973/2, art 4
[11]Law on International Private Law of Ukraine-01.09.2005 № 32, art 9
[12]Code on International Private Law of Tunis-1998, art 35