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RESEARCH ARTICLE

INTERNATIONAL CIVIL PROCESS AS AN INTEGRAL PART OF PRIVATE INTERNATIONAL LAW

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Abstract

This article examines various opinions regarding the international civil procedure as part of private international law and concludes that international civil procedure is directly related to the definition of applicable law, and that substantive regulation of private law relations complicated by a foreign element is generally impossible in practice without addressing both conflict of laws and procedural problems.

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Introduction:-

Development of international relations results to disputes of a private legal nature complicated by a foreign element. Such disputes are resolved by the state courts, but they their own specifics related to the determination of jurisdiction, applicable law, assurance of recognition and enforcement of the decision.

As Prof. Rustambekovindicates, the international civil procedure is a doctrinal concept designating a system of norms regulating the activities of the court and other jurisdictional authorities when civil law cases complicated by a foreign element are settled. With this, he states that there is no generally accepted definition of international civil procedure. It is also noted that the educational literature mainly defines the international civil procedure as a set of procedural issues related to the protection of the rights of foreigners in the courts. As a result, the author highlights the following range of issues that are part of the subject of international civil procedure:

- procedural rights and obligations of foreign persons (foreign citizens, stateless persons, foreign legal entities, organizations that are not recognized as legal entities by the foreign law);
- definition of international jurisdiction;
- procedure and methods of court orders enforcement;
- recognition and enforcement of foreign court decisions;
- setting the content of foreign law;
- notarial activities;
- providing legal assistance in civil and commercial cases. [9]

Seeing of the mentioned above, the educational literaturesometimes quotes an opinion that international civil procedure can also include the issues of dispute resolution by the arbitral tribunals, including consideration of disputes by the international commercial arbitration.

However, the international civil process is a system of rules governing the activities of state jurisdictional authorities. Arbitral tribunal and international commercial arbitration are not part of the state judicial system, and are

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the alternative methods of dispute resolution. In this regard, those courts are equal by status despite their common features of procedural issues and the same categories of cases.

Results and Discussions:-

The relevant problems in the science of law are usually attributed to the private international law or to its component – the international civil procedure, since each of them is closely related to questions on proper application of the law (i.e., problems of conflict of laws) or questions on a personal civil legal capacity. [7] These problems should be attributed to the science of private international law (as its special subsection), since they are all closely related to other issues of regulating civil, family and labor relations containing a foreign element and occurring in the conditions of international life.

With this, some researchers suggest that the study of issues of international civil procedural law under the private international law does not exclude the possibility that the international civil procedural law can turn into a separate branch of scientific knowledge. [15]

Yet in general, the field of private international law science is broader than the field of private international law as a branch of domestic law, since it covers the study of not the norms and relations of civil law only, but also the norms of international civil procedure, which remain in the field of civil procedure as a branch of domestic law, and designation of issues of international civil procedure as an independent legal discipline entails significant difficulties: the issues of international civil procedure can be examined sufficiently and comprehensively only as part of private international law as a single branch of law. [4]

As G.K. Matveev indicates, the field of private international law includes the rules regulating the issues of international civil procedure, which are more convenient to study (and teach) in conjunction with conflict of laws rules from a methodological point of view. [5]

Some scholars state that international civil procedure refers to private international law as a branch of law.

Thus, M.N. Kuznetsov indicates that it would be more correct to attribute the norms of international civil procedure and the set of relations regulated by these norms to the private international law as a branch of law, without separating them from private international law as a branch of jurisprudence, as a science. The procedural nature of these norms does not contradict with their international civil law (synonym: private law) nature. These are different qualities of the same legal phenomenon, which can often combine in practice, as we have understood. It is significant in this regard that the latest codifications of private international law almost always contain a huge number of procedural rules. [3]

L.P. Anufrieva includes international civil procedure into the scope of private international law based on the criterion of commonality of the object: they regulate relations that legally manifest their connection with the legal order of various countries. This author speaks about the artificiality and inconsistency of the prevailing theory that attributes the international civil procedure to the civil procedural law, and notes that in cases related to international civil procedure, the court's activities are based not on procedure only, but also on substantive rules of law, and, above all, the rules of private international law. A convincing example is the rules on the foreign law application by the court and the setting its content, which are sometimes qualified by scholars as procedural categories, but in fact, they have a general legal character, that is, the nature of general provisions of private international law, and thus emphasize their substantive nature. [1]

In the end, L.P. Anufrieva comes to the conclusion that international civil procedure should be included into the private international law as a branch of international civil process law, and that it is impossible to separate private international law and international civil procedure into different branch "haven" not in the future only, but in the existing conditions. [1]

National authors, in particular such as H. Rakhmankulov [12], S. Gulyamov [13], I. Rustambekov [14], N. Rakhmankulova [8], suggest that international civil procedure is a part of private international law.

In our opinion, it is righteous to consider the international civil procedure as the part of private international law, given that international civil procedure is directly related to the definition of applicable law, and in practice, the

substantive regulation of private law relations complicated by a foreign element is usually impossible without addressing both conflict of laws and procedural problems.

Thus, we can agree with the opinion that issues of international procedural law are closely related to issues of conflict of laws, and practical considerations do not justify distinction these issues from private international law. [6] M.M. Boguslavsky thinks that "Modern private international law cannot be considered as a conflict of laws law only, it should be understood as a set of rules governing civil law relations (in the broad sense of the word) with a foreign or international element, a set that includes both substantive and procedural rules". [2]

A rather large number of universal and regional international conventions have been adopted on issues of international civil procedure. The universal conventions are as follows: the Hague Convention on Civil Procedure of 1954; the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 1965; the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters of 1970, the Hague Convention on Choice of Court Agreements. Commentary and Documents of 2005.

An example of regional cooperation between States in international civil procedure is the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Cases of 1993, the Protocol to this Convention of 1997; the Convention on Legal Aid and Legal Relations in Civil, Family and Criminal Matters of 2002 (the Chisinau Convention); the Agreement on the Procedure for Resolving Disputes Related to the Implementation of Economic Activities of 1992, the Agreement on the Procedure for Mutual Enforcement of Decisions of Arbitration, Economic and Economic Courts in the Territories of the CIS Member States of 1998.

For the member states of the European Union, unification of the rules on international civil procedure resulted to the adoption of two parallel conventions (so called due to their similar content): the Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 1968 and the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 1988. The fundamental difference between the Lugano Convention and the Brussels Convention is the possibility of any state – non-member of the European Free Trade Association to accede to the Lugano Convention. According to the authors, the EU experience is promising for implementation in the CIS countries. [10]

Conclusion:-

It should be noted that international civil procedure is part of private international law doctrinally, but modern international trends in development of this institution are moving towards its distinction into a separate branch of law.

Thus, in recent years, it was a work at the international level to develop international regulation in the field of international civil procedure. In particular, the 22nd Session of the Hague Conference on Private International Law (HCCH) adopted the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters, dated July 02, 2019 [11]

The objective of the Convention is to increase access to justice and simplify the multilateral trade and investment by introducing a unified set of basic rules for recognition and enforcement of foreign judgments in civil and commercial matters, and to facilitate the effective recognition and enforcement of such judgments.

Despite a separate legal regime, the 2019 Convention supplements the previously adopted 2005 Choice of Court Convention. Nevertheless, the 2019 Convention is much broader in coverage, as it creates rules for judicial decisions not only in cases where decisions were made on the basis of choice of court agreements.

Thus, there is a certain unification and attempts to regulate conventionally the international civil procedure at the international level.

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