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RESPONSIBILITY AND LIABILITIES IN CONSEQUENCE OF HARM IN PRIVATE INTERNATIONAL LAW

RESPONSABILIDAD Y RESPONSABILIDADES COMO CONSECUENCIA DEL DAÑO EN EL DERECHO INTERNACIONAL PRIVADO

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ABSTRACT

For many years there was a traditional conflict-binding - the country's right of place of causing harm. At the same time, with the complication of relations in society, new offenses arose, to which it is now difficult to apply traditional binding. Modern trends in literature are called alternative: the victim can choose the law of the place of occurrence of harm or the law of the place where the offense was committed. In this article, we have analyzed the modern approach, which consists in the consistent rejection of the territorial linkage of the element of a tort legal relationship, since these circumstances may be undefined for finding the legal space to which the entire relationship is tied.

The article analyzes judicial practice, identifies the problems of choice, the law applies t relations in the field of harm.

Keywords:

Law, harm, offense, private international law, tort.

RESUMEN

Durante muchos años hubo un conflicto tradicional vinculante: el derecho de lugar del país de causar daño. Al mismo tiempo, con la complicación de las relaciones en la sociedad, surgieron nuevas ofensas, a las cuales ahora es difícil aplicar la vinculación tradicional. Las tendencias modernas en la literatura se llaman alternativas: la víctima puede elegir la ley del lugar de ocurrencia del daño o la ley del lugar donde se cometió el delito. En este artículo, hemos analizado el enfoque moderno, que consiste en los siguientes enlaces. También describe la práctica judicial, identifica los problemas de elección, la ley se aplica a las relaciones en el campo del daño.

Palabras clave:

Ley, daño, ofensa, derecho internacional privado, agravio.

INTRODUCTION

Obligations arising from non-contractual relations include obligations arising from the infliction of harm. These obligations are usually called tort obligations, because they arise not from a contract, but from illegal actions (delicts).

Violation of safety rules in the application of modern vehicles, with the massive movement of people from one country to another leads to a significant increase in accidents and disasters of various kinds and scale, which, in turn, entails the emergence of tort relations with the so-called foreign element. Unfortunately, there are more than enough examples of this kind.

Damage may be caused to a foreign citizen in Russia, for example, as a result of a traffic accident caused by a Russian or a foreign driver, as a result of a collision of ships in different countries in the open sea.

The law of the place of causing harm regulates non-contractual legal relations, based on the legal fact of causing damage to the person or property. This attachment formula means that the law of the state in whose territory the damage was caused applies to tort relations. The most difficult question in connection with the application of this attachment formula is the question of what is the place of the harmful action or place of manifestation of harmful consequences as the place of damage? The answer to this question is given differently in the law-enforcement practice of states. The countries of the Anglo-Saxon system of law have traditionally understood the place where the harmful action took place under the place of damage, and the countries of the Romano-German legal system are the place of manifestation of harmful consequences. However, to date, these provisions have changed in connection with the development of European law within the European Union.

Now the interpretation of the European Court, given to them in the case Bier v. Mines de Potasse d'Alsace. The Court, interpreting the provision of Article 5 § 3 of the Brussels Convention of 1968 on the jurisdiction and enforcement of judgments in civil and commercial matters, explained that the place of infliction of harm should be understood as the place where the act underlying the tort was committed, both and the place of manifestation of harmful consequences. Russian legislation currently applies a very specific approach to this issue (Russian Federation. State Duma, 1994). It is a question of the law of the country where the action or other circumstance that served as the basis for the claim for compensation for harm was applied to the obligations arising from the infliction of harm. In the event that, as a result of such an act or other circumstance, harm has occurred in another country, the law of that country may be applied if the harm-bearer foresaw or should have anticipated the occurrence of harm in that country. To the obligations arising, as a result, of causing harm abroad, if the parties are citizens or legal entities of the same country, the law of this country is applied. In the event that the parties to such an obligation are not citizens of the same country but have a residence in the same country, the law of that country is applied.

According to Article 1221 of the Civil Code of the Russian Federation, to the demand for compensation for damage caused by defects in the goods, work or service, at the choice of the victim, the following applies:

1. The law of the country where the seller or manufacturer of the goods or other damage causer has his residence or principal place of business.
2. The law of the country where the victim has it' s domicile or principal place of business.
3. The law of the country where the work was performed, the service was rendered, or the law of the country where the goods were purchased.

The choice of the victim, provided for in sub-clause 2 or 3 of clause 1 of Art. 1221 of the Civil Code of the Russian Federation, can only be recognized if the harm-bearer does not prove that the goods arrived in the country concerned without his consent.

If the victim has not exercised the right of choice granted to him by this article, the law subject to application is determined in accordance with Article 1219 of the Civil Code of the Russian Federation (Russian Federation. State Duma, 1994).

On the basis of the law subject to application of obligations arising as a result of causing harm, it is determined:

1. The ability of a person to bear responsibility for the harm caused.
2. The imposition of liability for harm on a person who is not the cause of harm.
3. Grounds for liability.
4. Grounds for limitation of liability and exemption from liability.
5. Ways of compensation for harm.
6. The amount and amount of compensation for harm (Russian Federation. State Duma, 1994).

In literature it was noted that in many countries, conflicts of laws in the area of obligations due to causing harm are solved on the basis of one of the oldest beginnings of private international law - the law of the place of the offense (lex loci delicti commissi). The choice of the right to

place a tort as the leading conflict rule is enshrined in the laws of Austria, Hungary, Germany, Greece, Italy, Poland, Scandinavian countries, as well as in international treaties, for example, in the Code of Bustamante in 1928.

A manifestation of modern approaches was the combined application of the law of the place of commission of the offense and other conflict of laws rules referring to the laws of citizenship, place of residence of the parties, place of registration of the vehicle. These trends are traced in the development of foreign legislation, in international contractual practice.

The parties may at any time after the occurrence of the event that caused the injury, agree on the application of the law of the court.

Thus, when solving the conflict of laws issue with regard to tort obligations, a choice is made between two main options: the application of the law of the country of the malicious act or the country of the victim, i.e. persons who have been harmed. Traditionally, the law of the place of causing harm is applied, but the application of this principle under the laws of a number of countries is adjusted by the possibility of applying the law of the country of the victim if it provides the best opportunities for compensation for harm.

In a number of states, the victim is given the opportunity to choose between filing a claim on the basis of a tort obligation and a claim on the basis of a contract. With the development of insurance systems, the sphere in which it is allowed to file directly claims of victims to insurers of civil liability is expanding, if allowed by the law applicable to the obligation as a result of the injury, or the law to which the insurance contract is subordinate.

DEVELOPMENT

For many years there was a traditional conflict-binding - the country's right of place of causing harm. At the same time, with the complication of relations in society, new offenses arose, to which it is now difficult to apply traditional binding.

Modern trends in literature are called alternative: the victim can choose the law of the place of occurrence of harm or the law of the place where the offense was committed.

Marysheva N.I. notes that in many countries in legislation and jurisprudence the law of the place of causing harm is combined with other rules. It is noted that in this combination there may be pegs - the law of the court, the law of citizenship, the flag of the ship, the place of registration of the vehicle. According to the researcher's observation, very often the binding is applied to the law of the country with which the relationship has a close relationship.

Accordingly, we conclude that the current approach consists in the consistent rejection of the territorial linkage of the element of a tort legal relationship, since these circumstances may be undefined for finding the legal space to which the entire relationship is tied.

In 2013, Section VI of Part 3 of the Civil Code of the Russian Federation has undergone changes. Thus, new approaches, identified in special international acts.

In particular, the basis for the changes was the Regulation (EC) of the European Parliament and of the Council of 11 July 2007 on the law subject to non-contractual obligations (Rome II).

The main conflict principle was the law of the country where the harm was done (the law of the country where the action or other circumstance that served as the basis for the claim for compensation for harm (as follows from paragraph 1 of Article 1219 of the Civil Code of the Russian Federation, this principle does not exclude the use of other special conflict rules when certain conditions are met.

First of all, it was this article that was changed (Russian Federation. State Duma, 1994).

1. The general rule is that the obligations arising from the injury are applied to the law of the country where the action or other circumstance that served as the basis for the claim for compensation for harm took place.

If the consequences of harm are manifested in another country, then the law of the country in which such negative consequences were manifested may well be applicable. The binding can be changed if the person guilty of causing harm has foreseen or should have foreseen the occurrence of harm in this country.

Researchers note that from the content of paragraph 1 of Art. 1219 of the Civil Code of the Russian Federation follows that in order to take into account the actual circumstances of a particular case, it is possible to use two conflict bindings.

With regard to judicial practice, there is no problem using the linkage law of the place of injury.

Thus, in one of the cases, a Russian citizen was injured in a traffic accident by a foreign legal entity. Harm was caused in the territory of the Russian Federation, and the court on this basis considered the issue of recovery of damages under Russian law.

As a condition for the application of the law of the place of causing harm is the foresight of the guilty person

of the consequences in this country. In the article, as we can see, there is the possibility of applying the law of the country to the place of the onset of consequences, but the possibility does not mean an obligation for the court, although the harm-bearer could foresee the onset of the consequences elsewhere.

The question arises: who will prove the necessity of applying the law of the country the place of occurrence of consequences? In the literature on this subject, there are two points of view.

The first is that the burden of proof must be placed on the plaintiff, not on the delinquent.

The second position based on the assumption that the prediction of the harm-bearer must be presumed. At the same time, as noted in the comment of the Civil Code of the Russian Federation, allows to interpret this prediction based on the interests of the "weak" side of the victim, the respondent can object to the application of the law of another country and prove the opposite.

In addition, it is important to answer the question: who initiates recognition applicable law of the place of harm? In the literature, this question answered in the following way: the injured party, as well as the court on its own initiative, can initiate recognition as applicable to the law of the place of harm.

An interesting answer to the question, what kind of evidence can be put in the basis of the requirements for the application of the law of the place of harm? This can be, for example, information about the presence of delinquent reliable information about the route, the weather conditions, due to which delivery was difficult, etc.

In one of the cases, the person applied to the court with a claim for recovery of damage in connection with the fact of causing harm, as well as on collecting interest based on the norms of Art. 413 MWC of the RF. The controversial obligation arose as follows: a tanker carrying the flag of Russia carrying fuel oil, hitting a storm, broke off. In turn, this led to a spill of the substance, and the nearby water area, respectively, was polluted.

The judicial act notes that the weather phenomenon was not spontaneous and threatening, and even more so the tanker's captain was aware in advance of possible cataclysms in this territory. The captain hoped that the weather would change, and no serious consequences would follow.

Proceeding from this, the captain does not take preventive measures to avoid the crash. This means that there is no ground for releasing the owner of the ship from liability for damage from pollution of the water area - point 2 of Art. 3 of the International Convention on Civil Liability for Oil Pollution Damage, 1992, art. 317 Merchant Shipping Code of the Russian Federation.

The court, analyzing art. 1219 of the Civil Code of the Russian Federation, noted that since the question of calculating interest by the 1992 Convention is not affected, it must be resolved in accordance with national law, taking into account the principle of the law of the place of harm.

In another case, the court, analyzing that the international treaties of the Russian Federation, the law of the state to be applied in consequence of a tort in the administration of justice, the applicable law is not defined, decided that, by virtue of Art. 1186 Civil Code of RF, paragraph 1 of Art. 1219 of the Civil Code of the Russian Federation it is necessary to apply Russian legislation (on the territory of the Russian Federation, a foreign citizen was harmed).

2. When the parties to a tort obligation have a residence or activity in one country, the law of that country applies.

It also determines the applicable law, if the parties, although they have a residence or activities in different countries, but are citizens or legal entities of one country.

In the literature noted, that earlier the choice of the applicable law was placed mainly in dependence on the nationality of the parties. Exceptions were cases of harm caused by an existing contract.

For example, a traffic accident occurred in Finland. Citizens of the Russian Federation became its participants. One of the cars was badly damaged. One of the participants was found guilty of the incident, and his civil liability was insured. The victim was sent a claim with a demand to transfer the amount of insurance compensation, which the guilty person transferred to a smaller amount. The victim later appealed to the court.

Since the incident took place in Finland, the court of first instance applied Finnish law. In the study of paragraph 2 of Art. 1219 of the Civil Code of the Russian Federation stated that the norm refers to non-contractual obligations. In this case, it can not be applied, since the issue of payment of insurance compensation, which is derived from the contract, and not from causing harm, is being investigated.

3. The parties have the right, by mutual agreement, independently to determine the applicable law. The rules of art. 1219 Civil Code of RF will be used in the absence of such.

As noted in the literature, this approach reflects the principle of autonomy of will and corresponds to the approaches

of a number of advanced states. In addition, the parties are not limited in the choice of law, and can choose any, although earlier in this regard, the parties to the tort obligation were limited. When can such an agreement be concluded? It seems that immediately after the incident, a tort.

For example, the French Court of Cassation in the case of compensation for damage caused by a traffic accident authorized the parties to apply the French law they agreed upon when the Hague Convention on the Law Applicable to Road Traffic Accidents should have applied the law of Djibouti.

According to Karl Kreiser, the German law contains the provision that the parties are free to choose the right. Moreover, they should not prove the close relationship of the chosen right with the legal relationship. They note that the courts allow agreement of the parties on the applicable law, both written and made "in an implied way".

In the Swiss law, the legislator gives freedom to the parties to a tortious relationship - they have the right to consent to the application of the law of the court at any time after the occurrence of the event that led to the injury (Article 132 of the Swiss law on private international law). The decision of the question of the possibility of preliminary choice by the parties of the law depends on the applicable procedural law of the canton. And the right of the canton determines the time frame within which it is possible to choose the right by the parties.

4. The Civil Code of RF now has a new standard - Art. 1220.1 Civil Code of the Russian Federation. It establishes the possibility to present claims within the framework of tort relations directly to the insurer. In this case, such an opportunity should be allowed by law, subject to application to the tort obligation or under the law to be applied to the insurance contract.

The EU Regulation contains a similar rule in Art. 18. In particular, in one of the cases, the court, in resolving the dispute, applied Art. 1220.1 and p. 1 of Art. 1219 Civil Code of the Russian Federation (Russian Federation. State Duma, 1994). This was justified by the fact that a tortious relationship arose in the aftermath of a traffic accident that took place in Sevastopol (by the date of consideration of the case - already the territory of the Russian Federation). But this is an appellate instance, in the first instance - it was the territory of another state.

The court applied at the appeal stage the norms of Russian law, that is, by the law of the state, where the action took place, which became the basis for the claim.

In the second half of the twentieth century, in some countries of a market economy, the value of consumer claims for deficiencies in goods delivered from another country increased.

The main features in this field of definition of applicable law can be summarized as follows: first, often in these cases the place of manufacture of products or the provision of services does not coincide with the place of occurrence of the consequences of the poor quality of the product (for example, medicine); secondly, the law can be applied, the application of which is provided for in relations between the producer and the buyer (under the contract of sale of goods).

Regarding liability for damage caused by deficiencies of the goods, in 1973 the Hague Convention on the Law to be Liable for the Harm Caused by the Product was concluded (valid for France, Norway, the Netherlands, Spain, Finland and some other states). Russia does not participate in this Convention. In addition, the European Agreement was concluded in Strasbourg in 1977, containing substantive rules in this area.

In determining the law to be applied, the 1973 Convention lists a number of factors, the establishment of which will help determine the rule of law that will serve as "the right of tort". The law of the state of the ordinary location of the victim will be appropriate if it is at the same time either the place of the main activity of the manufacturer, which caused the damage to the goods, or the place where the victim got the goods. In cases where there is no coincidence, the principle of the law of the place of causing harm is applied if the victim has his usual place of residence in the given country, or the person causing the harm is the place of main activity or the product is purchased by the consumer. In situations where this is not the case, the law of the country in which the person responsible for the product conducts its normal business activity applies, unless the victim chooses to base his claim on the law of the place of injury. Along with this, regardless of the applicable law, the requirements relating to the lawful distribution of the product and the legislation of the country where the goods were in circulation will be taken into account.

Attention should be paid to the fact that a number of EU directives on consumer protection have been adopted, which are then embodied in the internal legislation of the EU member states.

Conflict rules on the application of law to claims for compensation for harm caused by deficiencies in a product, work or service, were first incorporated into Russian legislation in the field of private international law in 2001.

However, decisions of this kind could not replace the gaps in legislation. The inclusion in the third part of the Civil Code of the Russian Federation of special provisions aimed at protecting the rights of consumers is connected with the expansion not only of international trade in goods, but also the provision of services.

CONCLUSIONS

Thus, we see that the Russian legislator, reforming the third part of the Civil Code of the Russian Federation, the section on tortious obligations, unifies and harmonizes the norms of Russian and international law, which can be assessed exclusively positively for law enforcement practice. The implementation of internationally approved standards will promote the best protection of the rights of parties to extra-contractual relations.

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