

CONFLICTING ISSUES OF PROPERTY RIGHTS IN COMPLEX RELATIONS WITH FOREIGN ELEMENTS

Akramov Akmaljon Anvarjon ugli

Senior Lecturer of the Private

International Law Department, Tashkent State University of Law,

a.akramov@tsul.uz

Lawyerjon191919@gmail.com

Kahhorova Durдона Ulugbek kizi

Student of Tashkent State University of Law

durdonakahhorova0135@gmail.com

ABSTRACT

This research paper discusses the concept of property rights, what are property rights contracts and their types, as well as the legal systems used in the property sector and their importance. Also, this article discusses conflicts of law arising in property right relations, problems related to the choice of jurisdiction, and problems related to the protection of material rights. Issues related to the right to property are compared in different legal systems. After studying the legal documents, normative legal documents, and practical court cases of foreign countries, proposals are made for the further development of national legislation.

Key words: *Property rights, conflict of law, national legislation, hierarchy, internationalization of economic turnover, lawsuit hinges, lex fori, private international law.*

КОНФЛИКТНЫЕ ВОПРОСЫ ПРАВ СОБСТВЕННОСТИ В СЛОЖНЫХ ОТНОШЕНИЯХ С ИНОСТРАННЫМИ ЭЛЕМЕНТАМИ

Акромов Акмалжон Анваржон угли

Старший преподаватель кафедры Международного частного права

Ташкентского государственного юридического университета

a.akramov@tsul.uz

Lawyerjon191919@gmail.com

Каххарова Дурдона Улугбек кизи

студентка Ташкентского государственного

юридического университета

durdonakahhorova0135@gmail.com

АННОТАЦИЯ

В данной научной статье рассматривается понятие права собственности, что такое договоры о праве собственности и их виды, а также правовые системы, используемые в сфере собственности, и их значение. Также в статье рассматриваются коллизии права, возникающие в отношениях по поводу права собственности, проблемы, связанные с выбором юрисдикции, и проблемы, связанные с защитой материальных прав. Сравниваются вопросы, связанные с правом собственности, в различных правовых системах. После изучения правовых документов, нормативных правовых актов и практических судебных дел зарубежных стран даются предложения по дальнейшему развитию отечественного законодательства.

Ключевые слова: *Право собственности, коллизионное право, национальное законодательство, иерархия, интернационализация экономического оборота, судебные петли, lex fori, международное частное право.*

外国の要素との複雑な関係における、相反する財産権の問題。

アクマルジョン・アクラモウ

タシケント国立法科大学

国際法学科主任講

国際私法部主任講師

Lawyerjon191919@gmail.com

ドゥルドナ・カッハロワ

タシケント国立法科大学の3年の学生

urdonakahhorova0135@gmail.com

概要: この研究論文では、財産権の概念、財産権契約とは何かとその種類、財産権分野で用いられる法制度とその意義について論じている。また、財産権関係で生じる法の抵触、裁判管轄の選択に関する問題、実体的権利の擁護に関する問題についても論じている。異なる法制度における財産権に関する問題を比較する。諸外国の法律文書、規制法、実践的な裁判例を研究した上で、国内法のさらなる発展のための提案を行う。

キーワード: 所有権、法の抵触、国内法、ヒエラルキー、経済回転の国際化、司法のループ、lex fori、国際私法

INTRODUCTION

The entry of the world community into the 21st century is characterized by complex and profound changes in relations between states. Recent studies have shown that changes in the world will follow the path of formation of a multipolar world. The movement of property in conditions of increasing interdependence of states requires the streamlining of international economic and legal relations and cooperation between states in the field of regulation and protection of foreign property.

In recent decades, with the transition of a number of Eastern European countries to the principles of openness in the organization of society and the natural consequence of this expansion of the geographical sphere of mutual influence, within the framework of which the integration of persons, capital, property and rights to it takes place, the institution of property rights in international relations has become immeasurably more widespread than earlier. The institution of property rights has gone beyond national borders and has been enshrined in international legal acts. Through the development of uniform international standards in the field of property rights, at this stage there is a convergence of national legal systems and the unification of the property rights regime. This not only has a beneficial effect on the development of economic relations between subjects of different countries and the internationalization of economic turnover, but also contributes to the fulfillment of the task of a common humanitarian space with common legal values and means for their protection.¹ In this context, the right of property also acts as a “natural” human right, occupies one of the leading places in the hierarchy of subjective rights and becomes a basic humanitarian value. For the first time in history, the right to private property is enshrined in international legal documents: the Universal Declaration of Human Rights of 1948,² the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, etc.

DISCUSSION AND RESULTS

Property rights: The modern institution of property rights is undergoing significant changes. The range of issues that move from the internal competence of states to the field of international regulation is expanding; property rights are no longer characterized by the sign of absoluteness to the extent that it was recognized in the classical liberal model. There are also significant changes in the structure of

¹ <https://www.dissercat.com/content/mezhdunarodno-pravovoe-regulirovanie-investitsionnykh-otnoshenii-teoriya-i-praktika>

² <https://www.dissercat.com/content/nyu-iorskaya-konventsia-1958-goda-o-priznanii-i-privedenii-v-ispolnenie-inostrannykh-arbit>

property rights, in the powers of the owner, the process of convergence of the proprietary and obligatory concepts of property rights is developing, new types of property appear that have the characteristics of a product (information, know-how, etc.), etc. In general, there is an evolution of the institution of property law towards a broader understanding of it, which is reflected in international acts, in the practice of international judicial bodies, in particular in the practice of the European Court of Human Rights and in international legal doctrine.³

Property law, which is the central link of the property law system, does not cease to attract the attention of researchers both in our country and abroad. However, in general, the nature and genesis of property rights, in particular, property relations complicated by the foreign element, conflict issues in them, and many aspects of legal protection of foreign property remain insufficiently studied in the science of international law. Before talking about conflicting issues with property law, it is appropriate to talk about the concept of conflicting law.

Conflict of law. Conflict of law is the term mainly used in the US, Canada and, more and more frequently, the UK. In circumstances when there is a foreign element, private international law can be informally characterized as a branch of national law that is administered by the court of the particular nation or land. For cases when the facts of the dispute include a foreign element, international private law provides rules of jurisdiction, choice of law and regulation, and execution of foreign judgments. The goal of choice of law must be to find the most appropriate governing law based on the parties' needs for fairness and convenience.⁴ The choice of law rules of the *lex fori* (the law of the court in which a proceeding is brought) will be applied once the jurisdiction of a cross-border dispute has been identified.⁵ International private law standards are based on linking criteria that are used to establish whether parties are physically present or if their activities are materially related to certain jurisdictions and laws. When a case contains a foreign element and Private International Law is used to resolve the dispute, two basic concerns occur. The first issue is to decide on the procedural law, and the second is to decide on the substantive law. The laws that control the court's procedure in civil, criminal, and administrative cases are known as procedural laws. The Procedural Law ensures that the legal process is followed correctly.⁶ Substantive law is the body of law that

³ <https://www.dissercat.com/content/nyu-iorkskaya-konventsia-1958-goda-o-priznanii-i-privedenii-v-ispolnenie-inostrannykh-arbit>

⁴ Clarkson, C. M., Clarkson, C. M., & Hill, J. (2011). *The conflict of laws*. Oxford University Press, USA.

⁵ Currie, B., & Schreter, H. H. (1959). *Unconstitutional Discrimination in the Conflict of Laws: Privileges and Immunities*. *Yale LJ*, 69, 1323.

⁶ Davies, D. J. (1937). *The Influence of Huber's De Conflictu Legum on English Private International Law*. *Brit. YB Int'l L.*, 18, 49.

governs the legal relationships between citizens of a state, or between citizens of a state and the state itself. As a result, it is possible to say that substantive laws describe people's rights and responsibilities, whereas procedural law establishes the procedures for enforcing such rights and responsibilities (or liabilities and obligations). The outcome of the lawsuit hinges on how these statutes are applied. In terms of procedural law, domestic law is applied. As a result, the debate is limited to the topic of substantive law, and the selection of substantive law is critical to achieving the goals of justice. The eminent American Judge Justice Cardozo has stated that this clash of laws is one of the most perplexing problems in legal science.⁷ Many judges become perplexed when faced with the application of Private International Law.

Subjects of property relations when complicated with a foreign element include individuals, legal entities, and in some cases states. For example, when building a building for an embassy in a foreign country, renting a plot of land and a residential building, the state itself participates as a subject of property relations. In this case, the agreements are concluded on behalf of this or that country by its embassy. It should be noted that there are specific features in the application of the law of each country regarding the creation and cancellation of property rights in property relations established between different countries. Therefore, ownership of property can be established according to the contract of sale. Termination of ownership of property is a unilateral decision by the owner to decide the fate of the property, purchase of property from him, confiscation of property based on a court decision, nationalization (nationalization) or requisition of property based on the principles.

According to the contract of sale, the right of ownership of the property, which is its object (object), is acquired from the seller to the buyer, unless the parties have determined another time, from the moment of its handover. From this moment, the seller's ownership rights to the property will be void. If the property is seized based on a court decision, the ownership rights of the owner of the property will be canceled from the moment of the decision. Therefore, in whichever country the property was located at the time of seizure based on the purchase agreement or the court decision, the creation or cancellation of ownership rights to it is also determined by the law of that country. As we know, international private law has its own characteristics in the regulation of international trade agreements and other international civil legal relations, which is mainly manifested in the use of collision

⁷ Brilmayer, R. L., Goldsmith, J. L., O'Connor, E. O. H., & Vázquez, C. (2019). *Conflict of Laws: Cases and Materials*. Aspen Publishers.

(conflicting) and substantive legal regulation methods.⁸ The conflict norm defined in the Civil Code has a dispositive nature, and it is assumed that the right of priority in the application of the law can be expressed in the contract first of all according to the wishes of the parties. As a general rule, property rights are indefinite. The owner of the property has the right to use his property forever, to dispose of his property right at any time. No one has the right to set a period for the owner to occupy, use and dispose of his property.⁹ At this point, it should be noted that Article 1189 of the Civil Code defines the rights given to the parties to choose the law of one or another country in the regulation of relations arising during the conclusion and execution of the contract. In Article 1190 of this Code, in the event that the parties cannot agree on the choice of law, the rules on the application of the law of which country to the contract for certain types of obligations are strengthened. For example, if the parties have not mutually agreed on the application of the law of which country in the contract of sale, such contract shall be governed by the law of the country where the seller of the property is located. Such an agreement is a gift, lease (lease of property), free use of property, contract, passenger, baggage, freight, transport expedition, loan or other credit, assignment, brokerage, deposit, insurance, surety and pledge contracts. In case of absence, to apply the law of the country of donor, lessor, lender, contractor, carrier, expeditor, creditor, trustee, intermediary, custodian, insurer, guarantor, mortgagor in relation to these contracts will be the basis. It follows from this that if there is no agreement between the parties, the law of which country governs the transaction, the creation or cancellation of the right of ownership in relation to the property will also be determined by the law of that country.

According to Article 187 of the Civil Code, a person who is not an owner, but has honestly, openly and continuously owned real estate for fifteen years or other property for five years as his own, this property acquires ownership rights to the property (a term that gives rise to the right of ownership). Property rights to immovable and other property, subject to state registration, arise from the moment of such registration in the person who has acquired the right to own this property due to the term that gives rise to it.¹⁰ The person who owns the property as his own before receiving the right of ownership due to the term that gives rise to the right of ownership, has the right to own the property by non-owners of the property, as well as on other grounds provided by law or contract. Based on the above, it should be noted that at the time of expiration of the term that creates the right of ownership, in

⁸ Hoshimov V. Xalqaro xususiy huquq bo'yicha oldi-sotdi shartnomasiga nisbatan qo'llaniladigan huquq //Xo'jalik va huquq. 2001-yil, X sll, 43-46-bet

⁹ N Ralimonqulov H. Xususiy mulk va uning daxlsizligi. -T.: «Adolat», 2000-yil, 32-bet;

¹⁰ Fawcett, J., Harris, J., & Bridge, M. (2005). International sale of goods in the conflict of laws. OUP Catalogue.

which country the property is located, the creation of the right of ownership is determined by the law of that country. The fact that the right of ownership to property is established based on the law of the country in which it is located may not cause the right of ownership to become void upon the transfer of this property to another country. Because it is envisaged that the same rule can be applied to the property transferred to him in another country. In this case, it should be recognized that if foreign citizens and legal entities who have material rights to property based on the laws of their countries and brought this property to the Republic of Uzbekistan, according to the Laws of Uzbekistan shall not be deprived of the right of ownership in respect of this property.

International property rights of participants in civil transactions providing private legal protection is important. Protection of property rights is understood in a broad sense, and first of all, it is manifested in the use of special civil legal methods, means and forms. The task of protecting the right to property is to ensure the use of property according to its intended purpose in civil transactions.

In addition, material legal protection helps to restore violated rights and compensate for property damage caused by third parties. Protection of property rights in legal instruments of obligations is carried out when the property interests of the owner, as a party to the transaction, or damage to his property, other than contracts, are caused. Legal means of protection of property are explained by the fact that they are aimed at the protection of the practical whole or separate powers of the owner against various violations of property rights¹¹

In the countries of the Romano-Germanic legal system, special property legal claims are used for this purpose, and in the common law countries, special claims arising from violation of rights (forts) and a number of special physical legal claims are used. In the countries of the Romano-Germanic legal system, there are mainly two substantive legal claims for the protection of property rights - the claim that the claimant owner claims his property from the illegal possession of another person (*actio rei vindicatio*) and the negator claim, possessive claim for the elimination of any violation of rights, even if this violation is not related to deprivation of possession (*actio nedaforia*). Submission of a claim based on the requirements of such

¹¹ Гражданское и торговое право капиталистических государств. Отв. ред. Е.А.Васильев. - М.: Международные отношения. 1993. - С. 220. Иванова Н.Р. Защита права собственности в арбитражном суде. Комментарий арбитражной практики. - М., 1999. - С. 116. Братусь С.Н. Юридическая ответственность и законность. — М.: - 1976. - С. 55. Яковлев В.Ф. Принуждение в гражданском праве // Проблемы современного гражданского права. Сборник статей. Отв. ред. В .Н Л итовкии, В.А.Рахмилович. Городец, - М., 2000. - С. 222.

two different claims, in turn, is aimed at restoring the previous state of the property (status quo).¹²

In the protection of property rights, the law of the country where the property belongs to him is located, indicates that the law of that country applies. The protection of property rights and material rights to immovable property, unlike the protection of movable property, implies the application of the law of the state where the immovable property is located, as well as the law of the Republic of Uzbekistan. An application aimed at protecting the right to real estate is also considered by the court of this country. It can be said that vehicles and other property registered in the state register of the Republic of Uzbekistan, regardless of the territory of the country in which they are located or are located, in relation to such property, Uzbekistan The law of the Republic is applied.

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