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PECULIARITIES OF REGULATION OF VARIOUS TYPES OF NON-CONTRACTUAL OBLIGATIONS IN THE FIELD OF INTERNATIONAL PRIVATE LAW

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Rudenko O.V., Vaitsekhovska O.R. Peculiarities of regulation of various types of non-contractual obligations in the field of international private law.

The article reveals certain types of non-contractual obligations (NCO) in the field of private international law (PIL). The common features and differences between certain types of NCO in Ukraine and other countries of the Romano-Germanic legal family through the usage of the comparative legal method are described. The article reveals such types of obligations in PIL as: tort/delict obligations; obligations arising out of unjust enrichment; obligations arising out of damage caused by a product, work, service; culpa in contrahendo; negotiorum gestio. The article substantiates that NCO arise, first of all, between persons who are not in a contractual relationship, or between persons who are bound by a contract, but the damage is not caused in connection with a violation of contractual obligations. The article reveals the main provisions of conflict regulation of NCO. The issue of refusal to use the general collision binding of the place of harm (*lex loci delicti commissi*) is being studied. Nowadays, instead of that collision binding, which was originally used for each type of non-contractual obligation, several alternative collision bindings are used. In addition to the law of the place where the tort was committed, the article also reveals the features of using such collision bindings as the citizenship of the parties or the place of residence of the parties of the legal relationship, the place of release of the goods, the place of registration of the vehicle, etc. The article highlights some aspects of the recent reform of civil legislation and PIL, in particular. The root cause of the reform and renewal of domestic legislation in various areas, which is caused by the European integration processes taking place in Ukraine in recent years, is revealed. The article substantiates the active recodification of civil legislation introduced by the Government of Ukraine, aimed at eliminating certain shortcomings and contradictions in national civil legislation and harmonizing it with the legislation of the European Union. The article places special emphasis on the need to update national legislation and bring it into line with European standards for democratization and liberalization of all spheres of life.

Key words: private international law, obligations, non-contractual obligations, collision bindings, tort/delict obligations; obligations arising out of unjust enrichment; obligations arising out of damage caused by a product, work, service; culpa in contrahendo; negotiorum gestio.

Руденко О.В., Вайцеховська О.Р. Особливості регулювання окремих видів позадоговірних зобов'язань в міжнародному приватному праві.

У статті розкриваються окремі види позадоговірних зобов'язань у сфері міжнародного приватного права. На основі порівняльно-правового методу описано спільні риси та відмінності між

окремими видами позадоговірних зобов'язань в Україні та інших країнах романо-германської правової сім'ї. У статті розкриваються такі види зобов'язань у міжнародному приватному праві, як: деліктні зобов'язання; зобов'язання, що виникають із безпідставного збагачення; зобов'язання, що виникають через шкоду, заподіяну товаром, роботою, послугою; переддоговірна відповідальність; дія в чужому інтересі без доручення. У статті обґрунтовується, що позадоговірні зобов'язання виникають насамперед між особами, які не перебувають у договірних відносинах, або між особами, пов'язаними договором, але завдані збитки не пов'язані з порушенням договірних зобов'язань. У статті висвітлюються основні положення колізійного регулювання позадоговірних зобов'язань. Опрацьовується питання відмови від використання загальної колізійної прив'язки місця заподіяння шкоди (*lex loci delicti commissi*). В даний час замість даної колізійної прив'язки, яка першочергово використовувалася для кожного типу позадоговірних зобов'язань, використовуються кілька альтернативних колізійних прив'язок. Крім права місця скоєння правопорушення, у статті розкриваються особливості використання таких колізійних прив'язок, як особистий закон фізичних осіб – сторін правовідносин (з його підтипами: закон громадянства, закон доміцилю), місце випуску товару, місце реєстрації транспортного засобу та інші. В статті висвітлюються деякі аспекти нещодавньої реформи цивільного законодавства та міжнародного приватного права, зокрема. Розкривається першопричина реформування та оновлення вітчизняного законодавства в різних сферах, що зумовлено євроінтеграційними процесами, що відбуваються в Україні протягом останніх років. В статті обґрунтовується запроваджена Урядом України активна рекодифікація цивільного законодавства, що спрямована на усунення певних недоліків і протиріч у національному цивільному законодавстві та гармонізацію його із законодавством Європейського Союзу. Особливий акцент в статті робиться на необхідності оновлення національного законодавства та приведення його у відповідність до європейських стандартів, що до демократизації та лібералізації всіх сфер життя.

Ключові слова: міжнародне приватне право, зобов'язання, позадоговірні зобов'язання, колізійні прив'язки, деліктні зобов'язання; зобов'язання, що виникають із безпідставного збагачення; зобов'язання, що виникають через шкоду, заподіяну товаром, роботою, послугою; переддоговірна відповідальність; дія в чужому інтересі без доручення.

Problem statement. The activation of the processes of migration of citizens of different countries, the development of integration processes in different states, the social activity of the population, determined the relevance of the study of conflict issues of NCO in our time. Thus, the results of harmful events that occur in one country very often manifest themselves in another country or even in several countries. The most frequent cases of NCO in our time are environmental disasters that require compensation for victims of damage, cases of need for compensation for harm caused to consumers by defects in goods manufactured in other countries, an increase in the number of cases of compensation for harm associated with traffic accidents outside victim's country.

The **purpose of the article** is a brief overview of the field of non-contractual obligations with a special emphasis on relatively new types of non-contractual obligations, such as: obligations against harm due to defects in goods, work or services; liabilities due to unjust enrichment; obligations arising from unfair competition; obligations arising from the conclusion of a contract in bad faith.

The **present state of the study.** Among domestic scientists, some aspects of non-contractual obligations were studied by A.S. Dovgert, S.D. Grynko, G.V. Yeromenko, B.P. Karnaukh, T.S. Kivalova, V.A. Kosynska, A.V. Kostruba, O.O. Otradnova, S.D. Rusu, R.B. Shishka, I.O. Troshchenko. Foreign scientists also played an important role in the development of the doctrine of various types of non-contractual obligations, namely: A. Dickinson, B. Durham, N. Jansen, X. Kramer, A. Scott, M. Zhang.

Main paragraph. NCO are characterized by certain specificity and, at the same time, they are quite heterogeneous. Liabilities arising from infliction of harm, that is, tort liabilities are the main type of non-contractual liabilities. At the same time, in our time, relatively new types of NCO have become widespread, such as: obligations from causing harm due to shortcomings in a product, work or service; liabilities due to unjust enrichment; obligations arising from unfair competition and restriction of competition; obligations arising from negotiating a contract in bad faith.

The relevance of the study is also increasing due to the recent reform of civil law and, in particular, PIL. This is primarily due to the fact that in Ukraine in recent years there have been European integration processes, which are the primary reason for reforming and updating domestic legislation in various

fields. The active recodification of civil legislation introduced by the government, which is currently taking place, is aimed at eliminating certain shortcomings and contradictions in national civil legislation and harmonizing it with the legislation of the European Union [1, P. 27]. The key requirement of the Association Agreements between Ukraine and the European Union on June 27, 2014 [2] is to update the national legislation and bring it into line with European standards, which will logically lead to Ukraine's rapprochement with the European Union, as well as to the democratization and liberalization of all spheres of life. Reforms of the private law system of Ukraine are aimed at improving the mechanism of legal regulation of public relations, improving the quality of legislation, rooting the principle of the rule of law and legal certainty as its defining element. The purpose of today's reform of civil legislation is to eliminate significant and fundamental shortcomings of the mechanism of legal regulation [3, P. 10].

Some attention has been paid to the issues of NCO in the literature. However, studies were conducted in relation to certain types of obligations, most often torts / delicts. In this article, the issues of NCO are studied in a comprehensive manner, considering the new legislation.

The article analyzes the current domestic legislation, the legislation of individual foreign states, the doctrine, in particular of European countries and "supranational" European law, as well as international treaties regulating NCO in PIL. The paper deals with topical problems, considering modern trends.

The conducted research aims to help strengthen the legal basis for the participation of national legal entities and individuals in international relations, to bring the methods of appropriate regulation closer to the approaches adopted in the legislation of most countries and in international acts. The study was conducted in relation to the above-mentioned individual types of NCO.

Features of the regulation of NCO in PIL are that both international treaties and domestic legislation are equally applicable here. At the same time, it should be borne in mind that the conflict rule can refer not only to domestic, but also to foreign law, which leads to the need to apply the rules of foreign legislation unfamiliar to judges, and therefore, in practice, certain difficulties often arise. Therefore, the study and application of the legislation of foreign countries in this area is especially important. One of the most important problems of NCO with a foreign element, as well as of all PIL, is also the correlation between the operation of the norms of international treaties and national legislation. The study was conducted considering the ratio of these sources.

The law of obligations regulates the rights and duties arising between individuals and is a branch of private law. It deals with their creation, effects and extinction and specific rights and duties are referred to as obligations. An obligation is a legal bond by which one or more parties are bound to act or refrain from acting.

The law of obligations is the main division of Roman (and any other) civil law. It regulates property relations in the sphere of production and civil circulation. The subject of the law of obligations is a certain behavior of the obligated person, his positive or negative actions.

In the sources of Roman law, obligation is defined as a legal fetter that compels us to do something according to the laws of our state. The essence of an obligation is not to make some bodily object or some servitude ours, but to bind another before us in such a way that he gives us something, does or presents something. An obligation is a legal relation, in by virtue of which one party (the creditor) has the right to demand that the other party (the debtor) give (dare), do (facere) or provide (praestare) something. The debtor is obliged to comply with the creditor's demand.

An obligation is a complex legal structure, a legal relationship, the parties to which are the creditor and the debtor, and the content of which is the rights and obligations of the parties. The party entitled to demand is called the creditor, and the party obliged to fulfill the requirement of the creditor is called the debtor. The content of the creditor's claim is his right to certain behavior of the debtor, which can be expressed in any positive or negative action. Therefore, the subject of an obligation is always an action that has legal significance and generates legal consequences.

In the Institutes of Justinian the most precise Roman classification of obligations was featured. All obligations were classified as obligations arising from contracts (*ex contractu*), those arising from delicts (*ex maleficio*), those arising from quasi-contracts (*quasi ex contractu*), and those arising from quasi-delicts (*quasi ex maleficio*).

Obligations arising out of the will of the parties are called *voluntary* (conventional), and those imposed by operation of law are called *involuntary* (obediential), which can be further distinguished into certain types and categories.

The interpretation of the concept of a non-contractual cross-border obligation, which is not the same in different states, should, in order to qualify the relevant legal relations, be carried out autonomously,

as a concept covering obligations aimed at bringing to responsibility and not related to contractual obligations.

When distinguishing between contractual and NCO, in order to determine the applicable law, first of all, the question should be raised: whether this obligation is contractual or closely related to contractual. If there is a close connection with the contract, the obligation is predominantly qualified as contractual. Accordingly, when qualifying an obligation as contractual is not possible, the obligation must be treated as non-contractual.

Currently, non-contractual obligations are an independent group of civil legal obligations, and therefore, the obligations included in this group have common features that allow, firstly, to combine them, and secondly, to distinguish them from obligations that arise from civil law contracts. A common feature that allows non-contractual obligations to be separated into an independent group of civil legal obligations is the absence of contractual relations between the subjects of these obligations. That is, the basis for the emergence of such obligations is not an agreement parties (contract), and unilateral acts, causing damage, unjust enrichment and other unilateral acts. Based on of this, non-contractual obligations can be defined as obligations, the basis of which are legal facts other than the contract [4, P. 210].

The main legally significant features of non-contractual cross-border obligations that affect the qualification of the latter are: private law nature; unilaterally binding character; the basis for the occurrence is a violation of the property and non-property rights of the victim; occurrence in the absence of an agreement between the parties of an obligation; independence from the will of the parties; malicious character; cross-border nature, i.e. the presence of a foreign element in the relationship; complexity and heterogeneity [5].

Early natural lawyers have developed a comprehensive theory of NCO. This theory was developed within the concept of restitution and comprised large parts of modern tort law and unjustified enrichment [5, P. 3].

There are three basic fundamental theoretical elements which generate this theory.

The first one was theological, Christian: it was the Augustinian principle that a sin cannot be forgiven unless the sinner has given back what had been taken away (was originally based on the Biblical prohibition against theft).

The second fundamental element is of philosophical nature. It is the Aristotelian concept of corrective justice, which was introduced by Albertus Magnus (1200–1280) and Thomas Aquinas (1225–1274). The duty to make restitution was not only directed against the Lord, but primarily against one's fellow-citizens, and it was intellectually oriented towards the idea of equality: the wrongdoer had to make good all damage caused, and to restore all gains; yet, the victim should not get more than he had lost.

The third fundamental element was based on the idea, established by the leading early natural lawyer Francisco de Vitoria (1483–1546), that all restitution is based on the infringement of individual (property) rights. Not all interference with another person's interests would give rise to a duty to make restitution; it was always necessary that the claimant's sphere of protected interests had been infringed. Hence, legal conception of property rights and legally protected interests became the basis of restitution and non-contractual liability.

That theory cannot simply be transplanted into modern law because a 16th century natural-law theory is dead history. Yet, this theory strongly influenced the works of Hugo Grotius (1583–1645) and Samuel von Pufendorf (1632–1694), who accepted the three fundamental principles underlying this theory and initiated a revolution of private law in Europe.

Nowadays, NCO (developed within the framework of the theory of restitution) are based on the three basic ideas: of individual responsibility, corrective justice, and the protection of reliance in the integrity of one's rights and in the lawful behavior of one's fellow-citizens.

The distinction between voluntary (or contractual) and non-voluntary (or non-contractual) obligations can be found in all legal systems is based on principle (back to Roman law and philosophy of Aristotle): even if it is doubtful whether contract law is based on the principles of autonomy and free negotiation, contracts are legal instruments for voluntarily exchanging goods and services. NCO, in contrast, are the consequence of non-voluntary events – unwanted at least from the claimant's perspective; and they arise independently of a contractual relation — they must be based on the protection of rights and interests that are independent of a contractual promise.

Nowadays NCO can be divided into five 5 main types: obligations arising out of tort/delict in PIL; obligations arising out of unjust enrichment in PIL; obligations arising out of damage caused by a

product, work, service in PIL; obligations arising out of dealings prior to the conclusion of a contract (*culpa in contrahendo*) in PIL; obligations arising out of an act performed without due authority in connection with the affairs of another person (*negotiorum gestio*) in PIL.

In the second half of the XX c. serious changes have taken place in the conflict-law regulation of tort obligations (initiated by American legal science and judicial practice, which were adopted by the new laws on PIL of European states).

The non-contractual statute, being the competent legal order to be applied to the legal regulation of non-contractual cross-border obligations, should be determined on the basis of the law of the place of occurrence of harm (*lex loci damni*), considering the system of subsidiary conflict of laws principles. The law of the place of occurrence of harm should be defined as the law of the place of origin of the results of causing direct harm (harmful consequences), which serves as the basis for the emergence of non-contractual cross-border obligations. The law of the place of occurrence of harm is a manifestation of the principle of the closest connection in relation to the conflict-of-law regulation of non-contractual cross-border obligations.

The main provisions that characterize the current state of conflict regulation of NCO are: a) Differentiation of conflict regulation: for each type and even subspecies of NCO, their own conflict rules are provided. Different NCO have their own conflict of laws rules (different conflict rules are provided for claims from causing harm, for claims for compensation for harm caused by a traffic accident, for claims for compensation for harm caused by product defects, etc.); b) Rejection of the classical conflict of law principle of the place where the delict (tort) was committed as the only criterion for choosing the applicable law (for each type and subtype of NCO, several alternative conflict-of-law bindings are provided). In addition to the law of the place where the tort was committed (*lex loci delicti commissi*), other conflict criteria are also used, such as the citizenship or place of residence of the parties to the legal relationship, the place of registration of the vehicle, the place of release of the goods into circulation, etc.; c) Liability for non-contractual damage can be regulated by several conflict-of-law bindings: the law of the place where the delict (tort) was committed (*lex loci delicti commissi*); the law of the place where the injury occurs. In other words, if an injury appears in another country, the laws of that country govern (if it is beneficial for the victim) (*lex loci damni*); the law of the place of residence of the parties (if the victim and the tortfeasor have a place of residence in the same state) (*lex personalis*).

The Law of Ukraine “On Private International Law” contains the conflict-of-laws rules regarding several types of non-contractual obligations. For example, obligations arising from the action of one party are regulated by the law of a state in which such action took place (Article 48). Rights and duties under obligations arising as a result of causing damage are determined by the law of a state in which the action or other fact that became the basis for the claim for damage took place. However, parties to an obligation arising from causing damage may choose the law of the forum (*lex fori*) at any time after its occurrence. Rights and duties under obligations arising from damage caused abroad, if the parties have a place of residence or location in the same state, are determined by the law of that state. (Parts 1 and 2 of Article 49). However, the choice of law is wider for the demand for compensation for damage caused to the consumer as a result of defects in goods, works (services): the law of a state in which the affected person’s place of residence, location or principal place of business is located; the law of a state in which the place of residence or location of a manufacturer of goods or a performer of work (service) is located; the law of a state in which the affected person purchased the goods or in which the work was performed (service was provided) for him or her (Article 50).

Conclusions. The models of contractual and NCO have significant features that allow us to conclude that the dichotomy is justified: contractual and NCO. According to the grounds for their occurrence, he singles out obligations from the will of people (expressed in a contract or unilateral obligations) and from compensation to which the law obliges people (“compensation obligations”). Common to the “compensation obligation” is that the obligation in them arises automatically, expressed, as a rule, in money, in compensation for destroyed or consumed property.

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