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FEATURES OF CONFLICT OF LAW REGULATION OF RELATIONS THAT ARISE DUE TO DEFECTS IN GOODS, WORKS OR SERVICES

Sanavbar Tagaeva[*] and Gulshan Bodurova[**]

Abstract: The article discusses issues related to the definition of designated liabilities, arising out of the injury in respect of defects in goods, works or services in the system of non-contractual relations. Special attention is given to conflict-of-laws regulating these relations. Objective: in the framework of private law regulation to highlight the Institute's "damages, cause due to defects in goods, works or services" in a special kind of non-contractual obligations, in turn, has a number of specific features. Methods: this article uses the General scientific methods of scientific knowledge and methods. Among them are: analysis, synthesis, comparison, formal-legal and techno-legal. Results: reviewed and discussed individual features of relations arising from the causing of harm due to defects of goods, works or services in light of private law regulation. Correlation between the reporting obligations with contractual obligations and torts. Conclusions: the characteristic features of relations arising due to defects of goods (works, services), allowing to distinguish the institution as a specific Institute of non-contractual obligations.

Keywords: Damages; defects in goods, works or services; - contractual commitment; conflict regulation; contract; tort.

INTRODUCTION

The institution of "damages, cause due to defects in goods, works or services" (in the Civil code of the Republic of Tajikistan "the Responsibility for the damage caused to the consumer") in light of the private law regulation has a specific legal nature. We are talking about the special nature of these relationships and their interactions with other species non-contractual obligations, as well as their intersection with the contractual obligations.

In fact, as a non-contractual commitment dealt with the relationship mostly stem from contractual obligations. Having specific rules of conflict of laws, conflict of laws distinct from the regulation of tort legal relations arising from the infliction due to defects in goods or services, considered as a particular manifestation of tort. In these respects, prevail peremptory norms of legal regulation, whereas the majority of other civil-legal relations are dispositive. Perhaps these and other features inherent in the obligations of the injury resulting from defects of goods, works or services, make relevant conflict of law regulation of these relations.

* PhD, associate Professor, Head of department of international and comparative law, Russian-Tajik (Slavonic) University, Dushanbe, Tajikistan

** Lecturer in international and comparative law, Russian-Tajik (Slavonic) University, Dushanbe, Tajikistan

DISCUSSION

The existence of peremptory norms in the regulation of relations arising out of harm resulting from defects of goods, works or services is manifested in the activities of the state on streamlining of market relations. In fact, the state's interest in regulating other kinds of cross-border non-contractual obligations is also seen in many of the legislative norms designed to regulate the legal relations. But in these respects, government certain standards to streamline these relations. This can be reached by analyzing only the title of the article to regulate conflict-of-laws – the legal component of the considered relations "liability for damages...", apparently, necessarily implies the approach of adverse consequences for a manufacturer of goods, persons, services rendered or performed certain work. That's the essence of the imperative components of these relations, what is normal for market relations, the functioning of which really interested the state. Relations in the sphere of goods, works and services, including the compensation of harm related to their disadvantage, are perhaps, one of the links in a huge device called market, the smooth and lawful functioning of which, including the market of foreign countries and foreign manufacturers and consumers, "borne by the" state.

An important symptom characterizing the legal nature of these relationships is the linkage with contractual obligations. As you know, contracts are an agreement between two or more parties on establishment, modification or termination of civil rights and obligations (paragraph 1 of article 420 of the civil code). In fact, as correctly stated in the legal literature, the contractual relations are a single expression, expresses the common will of the parties (Sergeev & Tolstoy, 1999). It turns out that the relations arising from the causing of harm due to defects of goods (works, services) is impossible to predict, and the "United will" of the parties, which establishes certain rights and obligations in such relations is simply impossible, given the fact that the damage from the occurrence of these relations apply and the manufacturer of the goods (the person providing the service or performed the work) and the consumer, and the contractual relationship is intended to meet the interests of the parties. But at the same time, a little bit different situation can be traced in the sphere of private law regulation such definitions. We believe that the issue of conflict-law regulation of relationship in question have a contractual and non-contractual nature.

It should be noted that when the collision regulation of the relationship of the injury to the consumer there is a deviation from application of the main connecting factor applicable to torts - *lex loci delicti commissii*. H. Koch, W. Magnus, P. Winkler von Morenfels in this aspect, consider the accessory Statute, tort obligations to the contractual Statute (Koch, Magnus & Winkler von Morenfels, 2003). In fact, the authors suggest that this situation of Affairs would help to address fragmentation in collisional – legal regulation of relations resulting from defects of goods, works

and services. The inapplicability to them of the main connecting factor is *lex loci delicti commissii*, and close the contractual relationship, from which follow non-contractual relationship, it is better to bind it to a contractual relationship, or rather to establish a direct relationship it would seem non-contractual obligations from the contractual obligations.

It is also important to note that the contractual nature of relations is reflected in the fact that they are always, in all circumstances arise from the contracts whether they are concluded orally or in writing. As noted by M.Z. Rakhimov: “the Agreement is particularly important in the field of relations connected with ensuring the proper quality of goods” (Rakhimov, 1990). Further, the author rightly notes that in order to reduce the production of substandard goods need to improve the relationship of the parties on a contractual basis (Rakhimov, 1990). Contractual nature of these obligations applies in the case of transboundary harm as a result of defects of goods (works, services). In cases where, for example, manufacturing may take place in one country, selling in another, and the consumption or use of the third, the contractual relationship, even before the time of the injury, are formed between the manufacturer and the seller, between the manufacturer and the supplier, between the seller and the buyer. Most of these contractual legal relations subsequently, if found flaws in the product itself, caused some damage to the buyer, derive the relationship non-contractual character most directly associated with the original contract. This trend is currently found in some acts which have a large specific weight. In particular, article 5 of EU Regulation “On the law to be applied to non-contractual obligations” in 2007. (“Rome II”) (“Regulation (EU) No 864/2007 of the European Parliament and of the Council of 11 July 2007 on the law applicable to non-contractual obligations (Rome II)”, 2007) provides that the applicable law in the event of harm caused by production, is the law of the country with which the harm is clearly a closer relationship, which in turn may be based on previously concluded between the parties to the contract.

The civil code of the Russian Federation in a new wording also provides for contractual obligations of the injury. In particular, part 3 of article 1219 of the civil code provides that if the obligation of the injury is closely connected with the contract (but only if the contract is concluded under the implementation by the parties of enterprise activity), such obligation arising from the contractual relations are governed by the law of the country applicable to the contract. But whether we are talking in this article about causing of harm due to defects of goods (works, services)? In the article 1095 of the civil code provides that liability for damage caused by defects of goods, works or services set only if the purchase of goods (performance of work or provision of services) necessary for consumer purposes and not for use for business purposes. Specified same connecting factor provided for in the event the parties are engaged in business activities. In the comment to GK the Russian Federation under the editorship of T.E. Abova provides that part 3 of article

1219 is applied to the relations of the harm as a result of defects of goods (works, services). The latter provides that the victim (it is about the "affected" referred to in article 1221, containing the conflict of law regulation of legal relations) for the purpose of applying conflict of laws rules does not have to be a consumer in terms of article 1095 of the civil code, i.e. it can acquire the goods (work, service) not only in consumer applications (Abova, Boguslavsky & Svetlanova, 2004). Without specifying this position, the authors admit the possibility of applying conflict rules when the product you purchased (the service provided or work accomplished) for purposes related to the business purpose of the victim. But this position, despite the widespread application of conflict-of-laws principles, which in this situation of Affairs is the victim, meets a dissimilar assessment of the doctrine of international private law. In particular, this assumption finds sharp criticism from G.K. Dmitrieva. The author consistently proves that the application of conflict rules to relations arising from defects of goods (works, services) is possible only in case of acquisition of the goods (performance of works or rendering of services) only in consumer applications (Dmitrieva, 2002). This is also the position of A.V. Bankovsky, relating conflict of laws regulation of these relationships, only the consumer purposes of the victim (Bankovsky, 2017). Indeed, it is very important to note that the scope of conflict rules contained in article 1221 of the civil code must fully comply with the substantive regulation of these obligations stipulated in this case in the article 1095 of the civil code, and there are no grounds for broad interpretation of the mentioned legal relations when conflict of laws regulation. At this ratio, the substantive and conflict-of-laws – legal norms regulating the same relations, but different in scope and circle of people, lies, in our opinion, the answer to the question posed above. That is, in this regard, we believe that the collision regulations, as provided in part 3. 1219 GK to relations of the injury arising from defects in goods (works or services) does not apply, since the rules said article is designed on the business nature of the contract, whereas the relationship in question is aimed solely at the consumer victim.

The question of the balance of liabilities arising from defects of goods, works or services with tort obligations, it is necessary to refer to the classification of tort obligations (in some cases and non-contractual obligations in General), proposed by some researchers in the field of private international law. It is important to note that the majority of authors are inclined to believe that the relationship of the injury resulting from defects of goods (works, services) is a special kind of tort obligation. In particular, V.P. Mozolin obligations from infliction of harm is divided into General (General tort) and special (the special delict). If General obligations of the injury include General grounds of harm to the person and property of a citizen, as well as legal entities, the special torts provide for a special (specific) cases or variations of the injury to which the author, along with liability for the harm caused by activity creating increased danger to others, etc. also include liability for damage

caused by defects of goods, works and services (Mozolin, 2007). A slightly different classification follows G.K. Dmitrieva. The author cross-border non-contractual obligations into obligations from causing harm, that is, tort liabilities and other non-contractual relationships, which include obligations from unjust enrichment, unfair competition and obligations arising from the causing of harm due to defects of goods, works or services (Dmitrieva, 2010). The same approach to classification of cross-border non-contractual obligations and adheres to N.I. Marysheva. The author identifies direct obligations tort and other non-contractual obligations: liability for damage caused by defects of goods, works or services; obligations arising from unfair competition; unjust enrichment and obligations arising from unilateral transactions (Marysheva, 2005).

With the opinion of the authors it is difficult to accept, because if an obligation arising from unjust enrichment and unfair competition constitute an independent type of cross-border non-contractual obligations, as due to its accessory nature, as well as direct harm to the consumer to separate the liabilities arising from the infliction of harm due to defects of goods, works and services from the tort legal relations is not possible. There is no need to consider them separately for the simple reason that by nature of the obligation arising from the causing of harm due to defects of goods (works, services) follow the Statute and tort liabilities. This trend is also reflected in the civil legislation of the Republic of Tajikistan. In particular, part 2 of article 1227 of the civil code provides that if the aggrieved party in the relationship not used the right choice of a certain order specified in part 1 of this article, the law applicable shall be determined in accordance with article 1225 of the civil code, the law to be applied to the obligations of the injury. It turns out, the legislator relates the considered kind of legal relationship to tort obligations. In this aspect, it is also important to note that the relationship of the injury resulting from defects of goods (works, services) fully applies and the Statute of tort obligation.

H. Koch, W. Magnus, P. Winkler von Mohrenfels believe that the classification of certain types of violations of international tort law, including the division of responsibility for the quality of product from other types of tort liabilities, contributes to the modification of the Statute General obligations of the injury (Koch, Magnus & Winkler von Morenfels, 2003). Further, the authors believe that such a division is fraught with legal uncertainty and risk of dispersal (Koch, Magnus & Winkler von Morenfels, 2003). We believe that “legal uncertainty” as such in the field of conflict of laws regulation would be created in the case of not distinguish these definitions. Then would arise the problem of choice of law as “General” torts and “special” torts in this situation of Affairs would have found conflict regulation of only one article devoted to torts. In this regard, the ratio of obligations from infliction of harm due to defects of goods (works, services) and obligations of the injury as the General and the particular has been more than appropriate, and meets the requirements of modern times.

It is important to note that the legal nature of these relations in the light of conflict-law regulation constitute also the special nature of the application of the Institute of autonomy of will. Pursuing the goal of protecting the interests of the aggrieved party, here the autonomy of the will presented much wider. Granting the victim, the possibility of the specified selection, said V.P. Zvekov, increases the level of legal protection and creates certain guarantees for a fair solution to the collision problem (Abova, Boguslavsky & Svetlanova, 2004; Zvekov, 2007).

As previously noted, in this relationship there is no use of the main connecting factor is *lex loci delicti commissii*, i.e. to apply not only the law of the place of Commission of the actions which have entailed causing of harm, and in this case the place of production of goods, rendering services, or performing specific work. In particular, article 1227 of the civil code provides that in the legal relationships of consumer choice using one of the following orders:

(a) the law of the country where the place of residence of the consumer or place of business of the consumer;

(b) the law of the country where the place of residence or the location of the producer or entity, the services rendered;

(c) the law of the country where the consumer purchased the goods, where the labor was performed or it was the service provided.

Next part 2 of this article specifies that if an aggrieved party does not exercise the right of choice of these legal systems, then the applicable law shall be determined in accordance with article 1225, providing for conflict regulation of obligations due to infliction of harm. The latter, in turn, also contains provisions on autonomy of the will (part 3 of article 1225). In fact, it turns out that if the victim does not exercise the right of choice conferred on it by article 1227 of the civil code, then, upon the occurrence of the circumstance leading to injury, and the victim and the tortfeasor could agree on the application of the applicable law the law of the forum. In this case, the granting of limited autonomy of the will (the choice is possible only after the onset of injury), as indicated in the legal literature, is justified because the assumption of a pre-selection could cause abuse on the part of suppliers and distributors of goods and services (Bankovsky, 2017). Indeed, the assumption of pre-selection in the relationship of the injury to the consumer is contrary to the very nature of these obligations. After all, it is assumed that the manufacturer produces quality products, a person providing a particular service and perform some work acting in good faith and not intended to harm the consumer. In this aspect, the assumption of pre-selection, in our opinion, suggests that the harm itself from these actions is an inevitable factor that puts some crack in the normal course of civil law and private law relations.

It is also very important to note that the analysis of norms of national legislation in the sphere of establishing liability for harm caused to the consumer owing to

lacks of the goods, works or services in light of private law regulation limited to the establishment of traditional conflict bindings, or rather alternative conflict rules, characteristic for the countries of the former Soviet Union and to most other legal systems. In particular, the use of a victim selection opportunities provided by the legislator these legal systems is reflected in the Civil code of the Russian Federation, the Civil code of Kazakhstan, 1999, the 1994 Law "On General principles of the Civil code of Estonia" (Makovsky, Zhiltsov & Muranov, 2000) etc.

It is important to note that the domestic legislator establishing conflict-of-laws regulation of this species of tort liabilities does not take into account different variations as the circumstances and conduct of the parties in these legal relations.

In particular, the legislation of some countries provides that the granting the victim the possibility of choosing their domestic law (the law of the country where the place of residence or place of business of the consumer) or the choice of law of the country where you purchased the goods, performed work or rendered service is limited to certain conditions. In particular, this choice is allowed if the tortfeasor can prove that the goods are received in the corresponding country without its consent. A similar provision is contained in the Civil code of the Russian Federation, in the Swiss law on private international law 1987, the Romanian law 1992 This limitation of the applicable law, we believe it is well justified, because it aimed at protecting the interests of bona fide manufacturer and seller, as under the ban delinquent on the distribution of goods in a particular country, for the execution of works or rendering services on the territory of a particular state is a prerequisite to believe that the harm caused by defects in goods, works or services for reasons of fairness cannot and should not be construed by the law of the country of the place of residence or main place of business of the victim or by the law of the country where was the performed work, rendered services or purchased goods.

It is also important to note that the obligations of the injury arising from defects in goods, works and services constitute the entire agreement with the consumer is weak party contractual relationships with a special legal regime. As previously noted, do in this kind of relationship the consumer is always a weakness. Harm the disadvantages of goods, works and services is caused against his will, he only uses the final product for consumption. A type of legal relations perhaps also includes consumer contracts in the field of international tourism with a "foreign element" in which one side is the tourist – consumer. The latter uses, orders of services for personal, family and other needs not connected with entrepreneurial activities, while this relationship arises out of a previously signed contract.

CONCLUSION

Summing up, it should be noted that:

1. The obligations of the infliction of harm due to defects of goods, works or services shall prevail peremptory norms of legal regulation, whereas in most other civil law relations is dominated by the dispositive norm.
2. In light of the collisional-legal regulation of obligations tort resulting from defects of goods (works, services), being a kind of non-contractual obligations arising from contractual obligations. The inapplicability to them of the main connecting factor is *lex loci delicti commissii*, and close the contractual relationship, from which follow non-contractual relationship, it is better to bind it to a contractual relationship, or rather to establish a direct relationship it would seem non-contractual obligations from the contractual obligations.
3. A set of specific characteristics, and distinct from the torts conflict of laws regulation allows to speak about the legal relationship as special kind of tort legal relations. But because of its accessory nature, as well as direct harm to the consumer to separate the liabilities from each other is impossible. You must balance the obligations associated with the occurrence of harm due to defects of goods, rendering of services and execution of works with the obligations arising owing to infliction of harm as the particular and the General, because by nature of the obligation arising from the causing of harm due to defects of goods (works, services) follow the Statute and tort liabilities.
4. The legal nature of these relations in the light of conflict-law regulation constitute also the special nature of the application of the Institute of autonomy of will. Pursuing the goal of protecting the interests of the aggrieved party, here the autonomy of the will presented much wider.

So, disclosure of the legal nature of relations arising from the causing of harm due to defects of goods, works or services in light of private law regulation through the prism of specific features inherent in these relationships, allow to fully characterize the conflict law nature of considered relations in the light of private law regulation, and that based on the data characteristics to perform the provisions of national laws to regulate such a complicated relationship, complicated by a foreign component. This is especially true today, as continued internationalization and the increasingly strong development of market relations is not the first decade go far beyond individual countries and by their nature require a comprehensive legislative regulation.

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