

**TOSHKENT DAVLAT YURIDIK UNIVERSITETI
HUZURIDAGI ILMIY DARAJALAR BERUVCHI
DSc.07/30.12.2019.Yu.22.01 RAQAMLI ILMIY KENGASH**

TOSHKENT DAVLAT YURIDIK UNIVERSITETI

XATAMJONOVA GULSANAM YASHARJON QIZI

**XALQARO XUSUSIY HUQUQDA ERK MUXTORIYATI
(PARTY AUTONOMY) PRINSIPI VA UNING CHEKLOVCHI
XUSUSIYATLARI**

12.00.03 – Fuqarolik huquqi. Tadbirkorlik huquqi.
Oila huquqi. Xalqaro xususiy huquq

**Yuridik fanlar bo'yicha falsafa doktori (PhD) dissertatsiyasi
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KIRISH (falsafa doktori (PhD) dissertatsiyasi annotatsiyasi)

Dissertatsiya mavzusining dolzarbligi va zarurati. Zamonaviy dunyoda globallashuv va xalqaro savdoning kengayishi sharoitida erk muxtoriyati prinsipi tomonlarga o'z manfaatlarini uyg'unlashtiruvchi maqbul tartibga solish imkonini yaratadi. Ushbu konseptsiya – erk muxtoriyati prinsipi o'z dolzarbligini yo'qotmagan holda bir necha yuz yillar davomida ishlab chiqilgan va doimiy ravishda yangilanib kelgan. Bunobarin, xalqaro xususiy-huquqiy munosabatlarning muayyan sohalarini tartibga solishda nodavlat tartibini ham tanlash huquqi milliy va xalqaro hujjatlarda o'z aksini topmoqda. Mazkur jarayonda erk muxtoriyati prinsipi kollizion huquqning asosiy tamoyili sifatida tobora kengroq e'tirof etilmoqda.

Xususan, Yevropa Ittifoqi (EU), Xitoy [Laws Applicable to Foreign-Related Civil Relations 43-44], Rossiya [Russian Civil Code, 1212], Germaniya [EGBGB 29-30], Turkiya [Turkish PIL Code, 26-27], Ruminiya [Romanian PIL Act, 101-102], va Yaponiya [Japanese PIL Act, 11-12] xalqaro xususiy huquqiy munosabatlarni tartibga soluvchi qonunchiligida erk muxtoriyati prinsipining e'tirof etilishi bunga misol bo'la oladi. Odat huquqi mamlakatlari hisoblanuvchi Buyuk Britaniya (UK) [English Arbitration Act], Kanada [Canadian Commercial Arbitration], Hindiston [Indian Arbitration Act] va Janubiy Afrika Respublikalarida [Southern Arbitration Act] ham tashqi iqtisodiy bitimlarda taraflarga avtonom huquqlar taqdim etuvchi prinsip sifatida tan olingan. Mazkur tamoyil xalqaro xususiy huquqiy munosabat ishtirokchilariga o'zaro huquqiy munosabatlardan kelib chiqadigan nizolar bo'yicha huquq va majburiyatlarni tartibga soluvchi huquqiy tizimni erkin tanlash huquqini beradi.

Jahonda erk muxtoriyati prinsipini odatiy mamlakat ommaviy manfaatlaridan kelib chiqib tushunish (State-sovereignist perspective) dan taraflarning manfaatlariga asoslanib tushunish (Party-sovereignist) ham rivojlanib bormoqda. Mamlakatlar qonunchiligi tomonidan taraflarning huquq tanlovidagi ayrim cheklolarning qisqarishi, xususan taraflar va ularning nizolari hamda ular tanlagan huquq o'rtasida bog'liqlik (reasonable connection) mavjud bo'lishi lozimligi talabi, shuningdek taraflar ularning nizolari uchun qo'llaniladigan huquq sifatida mamlakat huquqi sanalmaydigan huquq (non-state laws) dan foydalanish imkoniyati mavjudligi erk muxtoriyati prinsipining mamlakat qonunchiligiga "qaramligi"ni kamaytiradi. Taraflar tomonidan mamlakat huquqi sanalmaydigan huquq (non-state laws) ni shartnoma uchun tanlay olish taraflarning irodasi endilikda huquqiy munosabatni biror bir huquqiy tizimga bog'lovchi omil sifatida emas, balki nodavlat normalarni "qo'llaniladigan" huquqqa aylantiruvchi asos sifatida qaraladi. Shuningdek iqtisodiy nuqtayi nazardan huquqiy munosabatlarda "zaif" taraf huquqlarini himoya qilish tamoyilini rivojlantirilishi (special protections for weaker parties) va shu tamoyil asosida munosabatlarning hal etilishi ham erk muxtoriyati prinsipining zamonaviy aks ettirilishidir. Shu o'rinda Dj. Bill Garvard universiteti proessori, "Birinchi nizo (konflikt) huquqi Yig'ni" muallifining fikri o'rinli: "huquqiy munosabatlarga nisbatan huquqni tanlash - huquqning funksiyasidir va taraflarga qo'llaniladigan huquqni tanlash huquqini

taqdim etish vakolatini berish, demak ularni qonunchilik funksiyasi bilan ta'minlashni anglatadi"¹.

Xalqaro xususiy huquqda taraflar irodasi muxtoriyati, shuningdek uni qo'llash sabablari va cheklovlari masalasi chet el fuqarolari yoki chet el yuridik shaxslari ishtirokidagi yoxud chet el elementi bilan murakkablashgan fuqarolik-huquqiy munosabatlarda (ayniqsa tashqi iqtisodiy shartnomalarga) qo'llanishining o'ziga xos xususiyatlari mavjud.

O'zbekiston Respublikasida erk muxtoriyati qoidasi 1997-yilda kuchga kirgan Fuqarolik kodeksining 1189-moddasida belgilangani tashqi iqtisodiy faoliyatni amalga oshirish bilan bog'liq munosabatlarni tartibga solishga huquqiy zamin yaratdi.

O'zbekiston Respublikasi yuridik va jismoniy shaxslarining, xorijiy davlatlarning yuridik va jismoniy shaxslari, shuningdek xalqaro tashkilotlar bilan o'zaro foydali iqtisodiy aloqalarni o'rnatish va rivojlantirishga qaratilgan tashqi iqtisodiy faoliyat ishtirokchilari tomonidan yuzaga kelishi mumkin bo'lgan har qanday mulkiy harakterdagi munosabat yoxud huquqiy nizolarni hisobga olsak nizolarni sudlarda hal etish ancha mushkul vazifaga aylanib qoladi. Shu boisdan, ushbu taraflarga o'z erklari asosida xalqaro tijorat shartnomalar tuzish, shartnomada taraflar huquqlari va majburiyatlari hamda eng asosiysi nizolar uchun qo'llaniladigan huquqni tanlash imkoniyatini aniq va ravshan belgilash eng to'g'ri yo'ldir. Xususan XXI asrda xalqaro iqtisodiy maydonda chet el elementi bilan murakkablashgan fuqarolik-huquqiy munosabatlarda yangi bosqich "aqlli" xalqaro xususiy-huquqiy shartnomalarning qo'llanilishi doirasi kengayishi reallikka aylandi, xalqaro elektron savdo munosabatlariga raqamli texnologiyalar joriy etilmoqda. Bunda elektron tijorat shartnomalari o'z qo'li bilan imzolangan hujjatlarga tenglashtirildi. Bu kabi "aqlli" shartnomalar xalqaro iqtisodiy maydonda asrimizning yangi bosqichini boshlab berdi va yangi xalqaro xususiy huquqiy masalalarni-raqamli huquq doirasida erk muxtoriyati qoidasini adashmay va tartibli qo'llash tegrasini aniqlashni taqoza qilmoqda.

Mamlakatimiz iqtisodiyotini jahon iqtisodiy tizimiga integratsiyalashuvi uchun kengroq shart-sharoitlar yaratish faoliyati davom etmoqda, shu bois O'zbekiston Respublikasining fuqarolik qonunchiligini takomillashtirish konsepsiyasida fuqarolik qonunchiligi normalarini tizimlashtirish va unifikatsiya qilish, ularni eng namunali xorijiy amaliyotlar bilan uyg'unligini ta'minlash, shuningdek, ushbu sohada ilg'or xalqaro standartlarni implementatsiya qilish vazifasi naqadar dolzarb masala ekanligini ko'rsatib beradi.

Shuningdek, mamlakatimizda raqamli texnologiya bilan bog'liq munosabatlarni rivojlantirish va ularni tartibga solish yuzasidan davlat miqyosida tegishli chora-tadbirlar ko'rilib qonunchilik hujjatlari qabul qilinib kelinmoqda. Xususan, O'zbekiston Respublikasi Prezidentining 2020-yil 5-oktabrdagi "Raqamli O'zbekiston – 2030 strategiyasini tasdiqlash va uni samarali amalga oshirish chora – tadbirlari to'g'risida"gi PF-6079-son Farmoni hamda 2024-yil 14-oktyabrdagi "Sun'iy intellekt texnologiyalarini 2030-yilga qadar rivojlantirish strategiyasi" PQ-

¹ Beale, J. H. A treatise on the conflict of laws / J. H. Beale [Electronic resource] // Constitution Society. — Mode of access: http://www.constitution.org/cmt/jhb/conflict_laws.htm. — Date of access: 19.11.2013.

358-son Qarorini keltirishimiz mumkin.

Kelgusida xalqaro savdo munosabatlarning yanada rivojlanishi, kutilmagan oldindan bashorat qilib bo'lmaydigan holatlarni hisobga oladigan bo'lsak, xalqaro iqtisodiy va savdo munosabatlarning boshqa sohalarida ham erk muxtoriyati prinsipidan tartibli foydalanish imkoniyatlarini topishimiz yuzaga kelishi mumkin bo'lgan sohalar uchun munosib yechim bo'lib xizmat qiladi.

Tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yo'nalishlariga mosligi. Mazkur dissertatsiya respublika fan va texnologiyalar rivojlanishining I. "Axborotlashgan jamiyat va demokratik davlatni ijtimoiy, huquqiy, iqtisodiy, madaniy va ma'naviy-ma'rifiy rivojlantirishda innovatsion g'oyalar tizimini shakllantirish va ularni amalga oshirish yo'llari" ustuvor yo'nalishiga muvofiq bajarilgan.

Muammoning o'rganilganlik darajasi. Erk muxtoriyati prinsipi va erk muxtoriyati prinsipining shartnomaviy munosabatlarda qo'llanilishi masalalari X.A.Rahmonqulov, K.Q.Rashidov, S.Gulyamov, I.Rustambekov, B.B.Samarxodjayev, B.Y.Ergashev, O.Xazratqulov, N.Rahmonqulovalar tomonidan o'rganilgan.

Erk muxtoriyati prinsipining vujudga kelishi va tarixiy taraqqiyoti, prinsipni cheklovchi omillar va mamlakatlarning ommaviy tartibi taraflarning erk muxtoriyatiga ta'sir etishi sohasida xorijlik tadqiqotchi olimlar –F.Bauer, M. Petit J.R., H.Liang, Y.Zhoa, M.Zhaouhua, E.Friedler, B.Berger, J.Savage, J.Delvolve, G.Pointon, J.Rouche, M.Reimman, L.David, H.Gharavi, P.Sanders, S.Sterk, H. Noan, A.Kassis, Rowe V.Williams va boshqa bir qator olimlarning tadqiqot ishlarida o'z aksini topgan.

Erk muxtoriyati prinsipi asosida taraflarning kelishuv asosida huquqni tanlash masalalari, taraflarning shartnomaviy munosabatlari uchun mamlakat huquqi sanalmaydigan huquqni tanlash imkoniyatining mavjudligi va erk muxtoriyati prinsipining xalqaro xususiy huquqda yangidan paydo bo'layotgan "aqlli" shartnomalarda qo'llanilishiga doir masalalar Symeon C. Symenoids, Zheng Sofia Tang, Dr. Giesele Ruhl, Alexander Svallyevlar tomonidan o'rganilgan.

Erk muxtoriyati prinsipining nisbatan "yangi shartnomaviy munosabatlar" deb hisoblanadigan, ya'ni shartnomalarning yangi turi deb baholanuvchi "aqlli" shartnomalar yuzasidan tadqiqotlar ham nemis olimasi Dr. Giesele Ruhl, Simeona Kostova va serbiyalik mutaxassis Alexander Svallyevlar tomonidan olib borildi.

Raqamli texnologiyalarni qo'llash asridagi "yangi tashqi iqtisodiy shartnomalar" doirasida O'zbekiston Respublikasi qonunchiligiga oid ilmiy-nazariy tadqiqot ishlari keng doirada olib borilmaganligi e'tiborga loyiq.

Dissertatsiya tadqiqotining dissertatsiya bajarilgan oliy ta'lim muassasasining ilmiy-tadqiqot ishlari rejalari bilan bog'liqligi. Xalqaro xususiy huquqiy munosabatlarda erk muxtoriyati prinsipining ahamiyatini yanada mustahkamlash va "aqlli" shartnomalar sohasida ushbu prinsipning o'ziga xos yo'nalishini tartibga solishga mo'ljallangan mazkur tadqiqot Toshkent davlat yuridik universitetining huquqiy asoslarni rivojlantirish va raqamli iqtisodiyot xalqaro xususiy huquqiy munosabatlarni barqarorlashtirishga bag'ishlangan tadqiqot rejalari doirasida bajarilgan.

Tadqiqotning maqsadi. Xalqaro xususiy huquqiy munosabatlarda erk muxtoriyati prinsipini belgilash va erk muxtoriyati prinsipini chet el elementi bilan murakkablashgan fuqarolik-huquqiy munosabatlarga nisbatan cheklovchi omillarining aniq chegarasini ilmiy tavsif berish orqali ilmiy asoslangan xulosa va tavsiyalar ishlab chiqishdan iborat.

Tadqiqotning vazifalari:

xalqaro xususiy huquqda erk muxtoriyati prinsipining tarixiy tarkib topishi, rivojlanishi va ushbu prinsipning bugungi kunda qo'llanilish darajasini qiyosiy tahlil asosida o'rganish;

chet el elementi bilan murakkablashgan fuqarolik-huquqiy munosabatlarga nisbatan qo'llanilishi lozim bo'lgan huquqni erk muxtoriyati (party autonomy) prinsipi doirasida taraflarning huquqni tanlashdagi erkinligini tahlil etish;

xalqaro xususiy huquqiy munosabatlarda erk muxtoriyati (party autonomy) prinsipining xalqaro tijorat arbitraji qonunchiligi tizimida o'rnini aniqlash;

chet el fuqarolari yoki chet el yuridik shaxslari ishtirokidagi arbitraj kelishuvlarining mohiyati, maqsadi, vazifalari va taraflarning arbitraj kelishuvini tuzishdagi erkinligini xalqaro xususiy huquqiy qonunchilik asoslarini tahlil etish;

chet el fuqarolari yoki chet el yuridik shaxslari ishtirokidagi arbitraj jarayonlarini tashkil etish orqali hal etilishi mumkin bo'lgan holatlarning (arbitrability) umumiy tahlilini amalga oshirish;

xalqaro xususiy huquqiy munosabatlarda erk muxtoriyati prinsipini qo'llanishining cheklovchi qoidalarini o'rganish;

xalqaro xususiy huquqiy munosabatlarda erk muxtoriyati prinsipini cheklovchi qoidalari eng avvalo, ijtimoiy axloq, boshqa shaxslarning huquq va erkinliklarini himoya qilish, jamoat xavfsizligini hamda ommaviy tartibini ta'minlash maqsadida cheklash ta'sirini baholash;

chet el elementi bilan murakkablashgan fuqarolik-huquqiy munosabatlarga nisbatan qo'llanilishi lozim bo'lgan huquq erk muxtoriyati prinsipi asosida taraflar uchun avtonom huquqlarining to'la kafolati bo'la olish yoki bo'la olmaslik masalasining nazariy va amaliy jihatlarini o'rganish;

O'zbekiston Respublikasida xalqaro tijorat arbitrajini rivojlantirish istiqbollari qoidalariga oid qonunchilikni takomillashtirish yuzasidan takliflar ishlab chiqish.

Tadqiqotning obyekti xalqaro xususiy huquqda taraflar erki irodasi muxtoriyati, shuningdek uning cheklovlarini qo'llash sabablari bilan bogliq ijtimoiy munosabatlardir.

Tadqiqotning predmetini xalqaro xususiy huquqiy munosabatlarda erk muxtoriyati (party autonomy) prinsipi va uning cheklanishini tartibga solishga oid nazariy-huquqiy yondashuvlar va konsepsiyalar; milliy va xorijiy mamlakatlar xalqaro xususiy huquqqa doir qonunchiligi hamda tadqiqot mavzusiga oid ilmiy-nazariy adabiyotlar va amaliyot, sud va hakamlik qarorlari tashkil etadi.

Tadqiqotning usullari. Tadqiqot olib borishda umumlashtirish, induksiya, deduksiya, tizimli yondoshuv, qiyosiy-huquqiy tahlil, aniqlashtirish, statistika va amaliyot materiallarini o'rganish kabi usullar qo'llanilgan.

Tadqiqotning ilmiy yangiligi quyidagilardan iborat:

xalqaro tijorat arbitrajiga taraflarning kelishuviga binoan tijorat xususiyatiga

ega bo'lgan ham shartnomaviy, ham shartnomadan tashqari barcha munosabatlardan yuzaga keladigan nizolar berilishi mumkinligi asoslab berilgan;

arbitraj kelishuvi shartnomaning arbitraj sharti yoki alohida kelishuv tarzida tuzilishi mumkinligi asoslari aniqlab berilgan;

tafirlar arbitraj sudi tomonidan muhokamaning yuritilishi tartib-taomili to'g'risida o'z xohishiga ko'ra kelishib olishi mumkinligi asoslab berilgan;

tafirlar arbitraj muhokamasida foydalaniladigan til yoki tillar to'g'risida o'z xohishlariga ko'ra kelishib olishi, bunday kelishuv mavjud bo'lmaganda, muhokamada qo'llanilishi kerak bo'lgan tilni yoki tillarni arbitraj sudi belgilashi asoslantirib berilgan.

Tadqiqotning amaliy natijalari quyidagilardan iborat:

Xalqaro xususiy huquqda erk muxtoriyati (party autonomy) prinsipi va uning cheklovchi xususiyatlari bo'yicha tadqiqotdan olingan ilmiy natijalar asosida:

Erk muxtroiyati prinsipi xalqaro xususiy huquqning markaziy prinsipi sifatida Fuqarolik kodeksining umumiy qismida alohida moddasi sifatida kiritilishi lozimligi asoslab berildi;

Fuqarolik kodeksining 1164-moddasi ommaviy tartib to'g'risidagi izohning huquqiy ta'rifi bilan to'ldirilishi lozimligi asoslab berildi;

“Xalqaro tijorat arbitraji to'g'risida”gi Qonunning 4-moddasi xalqaro tijorat arbitrajiga tafirlarning kelishuviga binoan tijorat xususiyatiga ega bo'lgan ham shartnomaviy, ham shartnomadan tashqari barcha munosabatlardan yuzaga keladigan nizolar berilishi mumkinligi asoslab berilgan asoslab berildi;

“Xalqaro tijorat arbitraji to'g'risida”gi Qonunning 12-moddasi arbitrajga taalluqlik to'g'risidagi tushuncha bilan to'ldirilishi zaruriyati asoslab berildi.

Tadqiqot natijalarining ishonchliligi. Tadqiqot ishida qo'llanilgan usullar, uning doirasida foydalanilgan nazariy ma'lumotlar rasmiy manbalardan olinganligi, milliy va xalqaro normativ huquqiy hujjatlar va dasturlar, shuningdek milliy va xorijiy taniqli olimlar va tadqiqotchilarning maqolalari, tadqiqotlaridan foydalanish, erk muxtoriyati (party autonomy) prinsipi va uning cheklovchi xususiyatlari xalqaro xususiy huquqdagi zamonaviy tendensiyalardagi o'rnini o'rganishda izchil va takrorlanadigan natijalar, aniqlangan tamoyillar va tekshirilgan ma'lumotlarga bilan izohlanadi.

Tadqiqot natijalarining ilmiy va amaliy ahamiyati. Tadqiqot natijalarining ilmiy ahamiyati undagi ilmiy xulosa va takliflardan “erk muxtoriyati” prinsipi va uning cheklovchi xususiyatlari yuzasidan ilmiy tadqiqotlar olib borishda, shuningdek “Xalqaro xususiy huquq”, “Xalqaro tijorat arbitraji”, “Fuqarolik huquqi” kabi yuridik fanlarni o'qitish va metodik tavsiyalar tayyorlashda foydalanish mumkin. Shuningdek, normativ-huquqiy hujjatlardagi kamchiliklarni bartaraf etish va bo'shliqlarni to'ldirish bilan ushbu sohadagi hujjatlarni boyitadi.

Amaliy jihatdan u xalqaro tijorat shartnomasi tafirlarning shartnomalari va “aqlli” shartnomalari uchun prinsipni qo'llashda samarali huquqiy yechim va texnologik chora-tadbirlarni amalga oshirish bo'yicha amaliy tushunchalarni taqdim etadi.

Tadqiqot natijalarining joriy qilinishi. Xalqaro xususiy huquqda erk muxtoriyati (party autonomy) prinsipi va uning cheklovchi xususiyatlari bo'yicha

tadqiqotdan olingan ilmiy natijalar asosida:

xalqaro tijorat arbitrajiga taraflarning kelishuviga binoan tijorat xususiyatiga ega bo'lgan ham shartnomaviy, ham shartnomadan tashqari barcha munosabatlardan yuzaga keladigan nizolar berilishi mumkinligiga oid taklif O'zbekiston Respublikasining "Xalqaro tijorat arbitraji to'g'risida"gi qonunning 4-moddasi ikkinchi xatboshisida aks etgan (O'zbekiston Respublikasi Oliy Majlisi Senatining 2025-yil 20-fevraldagi 2-son dalolatnomasi). Mazkur taklif xalqaro tijorat arbitrajiga tegishli bo'lgan nizolar doirasini aniqlashga yordam bergan;

arbitraj kelishuvi shartnomaning arbitraj sharti yoki alohida kelishuv tarzida tuzilishiga doir taklif O'zbekiston Respublikasining "Xalqaro tijorat arbitraji to'g'risida"gi qonunning 12-moddasi birinchi xatboshisida aks etgan (O'zbekiston Respublikasi Oliy Majlisi Senatining 2025-yil 20-fevraldagi 2-son dalolatnomasi). Mazkur taklif taraflarda arbitraj kelishuvi tuzish erkinligini kengaytirishga xizmat qilgan;

taraflar arbitraj sudi tomonidan muhokamaning yuritilishi tartib-taomili to'g'risida o'z xohishiga ko'ra kelishib olishi mumkinligiga oid taklif O'zbekiston Respublikasining "Xalqaro tijorat arbitraji to'g'risida"gi qonunning 34-moddasi birinchi xatboshisida aks etgan (O'zbekiston Respublikasi Oliy Majlisi Senatining 2025-yil 20-fevraldagi 2-son dalolatnomasi). Mazkur taklif xalqaro tijorat arbitrajiga tegishli tartib-taomil qoidalarini taraflar tomonidan aniqlashtirish imkoniyatini bergan;

taraflar arbitraj muhokamasida foydalaniladigan til yoki tillar to'g'risida o'z xohishlariga ko'ra kelishib olishi, bunday kelishuv mavjud bo'lmaganda, muhokamada qo'llanilishi kerak bo'lgan tilni yoki tillarni arbitraj sudi belgilashiga oid taklif O'zbekiston Respublikasining "Xalqaro tijorat arbitraji to'g'risida"gi qonunning 36-moddasi birinchi xatboshisida aks etgan (O'zbekiston Respublikasi Oliy Majlisi Senatining 2025-yil 20-fevraldagi 2-son dalolatnomasi). Mazkur taklif arbitraj muhokamasida qo'llaniladigan til taraflar tomonidan kelishuv asosida tanlash mumkinligiga xizmat qilgan.

Tadqiqot natijalarining aprobatsiyasi. Tadqiqot natijalari 1 ta xalqaro va 1 ta respublika miqyosida o'tkazilgan ilmiy-amaliy konferensiyalarda muhokamadan o'tgan.

Tadqiqot natijalarining e'lon qilinganligi. Tadqiqot mavzusi bo'yicha jami 10 ta ilmiy ish, shu jumladan OAKning dissertatsiya asosiy ilmiy natijalarini chop etishga tavsiya etilgan nashrlarda 3 ta maqola, 5 tasi xorijiy nashrlardagi maqola va 2 tasi xalqaro va respublika ilmiy-amaliy anjumanlarda chop etilgan.

Dissertatsiyaning tuzilishi va hajmi. Dissertatsiya tarkibi kirish, uchta bob, xulosa, foydalanilgan adabiyotlar ro'yxatidan iborat. Dissertatsiya hajmi 127 betni (foydalanilgan adabiyotlar ro'yxatidan tashqari) tashkil etadi.

DISSERTATSIYANING ASOSIY MAZMUNI

Dissertatsiyaning **kirish** qismida tadqiqot mavzusining dolzarbligi va zarurati, tadqiqotning respublika fan va texnologiyalari rivojlanishining asosiy ustuvor yoʻnalishlariga muvofiqligi, tadqiq etilayotgan muammoning oʻrganilganlik darajasi, dissertatsiya mavzusining dissertatsiya bajarilayotgan oliy taʼlim muassasasining ilmiy-tadqiqot ishlari bilan bogʻliqligi, tadqiqotning maqsad va vazifalari, obyekti va predmeti, usullari, tadqiqotning ilmiy yangiligi va amaliy natijasi, tadqiqot natijalarining ishonchliligi, tadqiqot natijalarining ilmiy va amaliy ahamiyati, ularning joriy qilinganligi, tadqiqot natijalarining aprobatsiyasi, natijalarning eʼlon qilinganligi, dissertatsiyaning hajmi va tuzilishi haqida maʼlumotlar yoritib berilgan.

Dissertatsiyaning **“Erk muxtoriyati (party autonomy) prinsipining xalqaro xususiy huquqdagi ahamiyatining nazariy-metodologik asoslari”** deb nomlangan birinchi bobida erk muxtoriyati prinsipining tarixan tarkib topishi, rivojlanishi va turli mamlakatlar qonunchiligida aks ettirilishi, erk muxtoriyati prinsipining xalqaro tijorat arbitrajidagi ahamiyati va ifodasi hamda erk muxtoriyati prinsipini cheklovchi xususiyatlari tahlil qilingan. Erk muxtoriyati prinsipi lugʻaviy jihatdan tahlil qilinib uning asosini taraflarning erk-irodasi tashkil etilishi toʻxtamiga kelingan. Prinsipning dastlabki qadimiy ildizi Qadimgi Misr qonunchiligiga borib taqalishi, keyinchalik esa Qadimgi Rimda Rim fuqarolarining oʻzlari amal qiladigan huquqni tanlab olishi mumkinligi konsepsiyasining vujudga kelib rivojlanishiga olib kelganligi tadqiq etilgan. Prinsipning keyingi rivojiga fransuz huquqshunosi Sharl Dyumulyen hissa qoʻshganligi hamda u tomonidan ilgari surilgan fikr bugungi kunga qadar biz tushunadigan erk muxtoriyatining asosi ekanligi qayd etiladi. Erk muxtoriyati prinsipi niderland huquqshunosi Huber tomonidan, nemis huquqshunosi Savigny tomonidan, esa italyan olimi Mancini tomonidan tadqiq qilinganligi lekin ushbu olimlarning barchasi erk muxtoriyatini hududiy faktorlar bilan bogʻlaganligi hamda ayrim oʻrinlarda shartnoma erkinligi prinsipi bilan bir xil tarzda tushunganliklari xulosasiga kelinadi. XX asrga kelib nemis huquqshunosi Vilgelm Haudek erk muxtoriyati prinsipini shartnoma erkinligi prinsipidan mustaqil boshqa prinsip ekanligi hamda prinsipning asosini taraflarning irodasi tashkil etilishi xulosasiga kelib prinsipni yangi bosqichini boshlab berganligi yoritib beriladi.

Tadqiqotchi tomonidan erk muxtoriyati prinsipining mohiyati, turli mamlakatlar qonunchiligida aks ettirilishining oʻziga xos jihatlari va erk muxtoriyati prinsipining rivojlanishi, yaʼni hozirgi kunga qadar shakllanishiga xissa qoʻshgan xalqaro hujjatlar sinchkovlik bilan oʻrganilib prinsipning rivojlanishidagi taʼsiri tahlil qilingan.

Tadqiqot doirasida erk muxtoriyati prinsipini talqin etishda ikki xil doktrinal yondashuv mavjudligi koʻrib chiqiladi. Birinchi yondashuv – taraflarning manfaatlaridan kelib chiqadigan yondashuv (Party sovereigntist perspective) boʻlib, uning tarafdorlari mustaqil shaxslar oʻzaro munosabatlarda qonun chiqaruvchi irodasi bilan teng maqomda boʻlishi kerak, deb hisoblaydilar. Ularning

fikricha, shartnoma taraflari o'z nizolarini hal etishda asosiy va mustaqil vakolatlarga ega bo'lishi lozim.

Ikkinchi yondashuv esa – davlat manfaatlaridan kelib chiqadigan yondashuv (State sovereigntist perspective) bo'lib, bu nazariya vakillari erk muxtoriyati prinsipining mavjudligini inkor etmasdan, biroq uni davlat irodasi bilan teng qo'ymaydilar. Ushbu nuqtai nazarga ko'ra, taraflarning erkinligi faqat milliy qonunchilik tomonidan belgilangan doirada amal qiladi va agar shartnomaviy kelishuv mamlakatning ommaviy tartib to'g'risidagi izoh yoki huquqning qat'iy normalarga zid bo'lsa, bunday erkinlik cheklanishi shart.

O'zbekiston Respublikasining amaldagi qonunchiligida ham aynan ikkinchi yondashuv ustuvor hisoblanadi. Fuqarolik kodeksi mazkur prinsipni ikki turdagi normalar orqali izohlaydi: bir tomondan, taraflarning kelishuvi asosida qo'llaniladigan dispozitiv normalar, ikkinchi tomondan esa, taraflar kelishuvi bilan o'zgartirilishi yoki bekor qilinishi mumkin bo'lmagan imperativ normalar.

Tadqiqotchi tomonidan erk muxtoriyati prinsipi mohiyatini tashkil etuvchi taraflar tomonidan huquqni tanlay olish xususiyati muhokama qilinib xalqaro maydonda huquqni tanlashga oid ikki talabni tahlil qiladi:

Taraflarning huquqqa oid tanlovida taraflar va tanlangan huquq borasida mantiqiy bog'liqlik yoki aloqa bo'lishi talab etilmaydi. Taraflar irodalarini ishga solgan holda istalgan huquqni o'zlarining huquqiy munosabatlari uchun tanlash to'g'risida kelishishlari mumkin (mutlaq huquqlar beruvchi);

Taraflarning huquqqa oid tanlovi taraflar va tanlangan huquq borasida bog'liqlik yoki aloqa bo'lishi lozimligi to'g'risidagi talab (erk muxtoriyatini cheklovchi).

Tadqiqotchi tomonidan yuqorida keltirilgan talab muhokama qilinib fuqarolik huquq tizimi (civil law countries) ga amal qiluvchi mamlakatlarda, xususan Argentina Fuqarolik va tijorat kodeksining 2655-moddasida taraflar va ular tanlayotgan mamlakat huquqi o'rtasida asosli bog'liqlik bo'lishi talabi mavjud, Braziliya Fuqarolik va xalqaro xususiy huquq prinsiplari kodeksining 9-11-moddalarida taraflar va ular tanlayotgan mamlakat huquqi o'rtasida bog'liqlik bo'lishi talabi mavjud, Turkiya Xalqaro xususiy huquq kodeksining 24-moddasida ham taraflarning huquqqa oid tanlovida ular tanlayotgan mamlakat borasida bog'liqlik bo'lishi talabi qo'yiladi.

Shuningdek tadqiqotda Eron qonunchiligi alohida ajratib ko'rsatilib, ushbu mamlakat qonunchiligida taraflardan biri Eron fuqarosi bo'lganida yoki shartnoma majburiyatlari uchun hal qiluvchi ijro Eron hududida bajariladigan bo'lsa, taraflarning kelishuviga yo'l qo'yilmasligi yoki taraflarning huquq borasidagi kelishuvi mavjud bo'lsa, ushbu kelishuv sudlar tomonidan tan olinmasligi haqida qoida mavjudligi tahlil qilinadi. Xuddi shunga o'xshash qoidalar Braziliya qonunchiligida ham mavjudligi ko'rsatilib ushbu mamlakatlar erk muxtoriyatiga nisbatan "jiddiy" cheklovlar o'rnatganligi xulosasiga kelinadi.

Tadqiqotchi tomonidan taraflar va ularning tanlayotgan mamlakati huquqi borasidagi tanlovi o'rtasida bog'liqlik bo'lishi talabini ma'qullovchi bir qator olimlarning (S.C.Symeonides, J.Walker, P.Nygh, A.Mills, R.Michaels, A.Briggs, Y.Nishitani, H.M.Watt, J.Basedow) fikr va mulohazalari keltirilib, ularning fikr va

mulohazalari tahlil qilinib ular bilan munozaraga kirishgan. Xususan, huquqni tanlash borasida bog‘liqlik bo‘lishi talabi taraflar o‘rtasida erk muxtoriyati prinsipi huquqini va taraflarning huquqni tanlash erkinligini sui‘stemol qilishlarini oldini olishi va mamlakat ommaviy tartibi to‘g‘risidagi izohning taraflar tomonidan buzilishini oldini olish va “zaif” taraflarning huquqini himoya qilishda kuchli ta’sirga olib kelishi xulosasiga kelinadi.

Taraflar va ular tanlagan huquq borasidagi tanlov o‘rtasida hech qanday bog‘liqlik talabi qo‘yilmagan mamlakatlar, Buyuk Britaniya hamda Kanada qonunlarida taraflar irodasidan kelib chiqqan holda istalgan mamlakat huquqini tanlashiga ruxsat etilgan, taraflar mamlakat ommaviy tartibiga zid bo‘lmagan istalgan mamlakat huquqini hattoki taraflar o‘rtasida hech qanday bog‘liqlik bo‘lmasa ham tanlashi mumkinligiga ruxsat etilgan. Xuddi shunday qoidalar Fransiya va Germaniya qonunchiligida ham mavjud.

Tadqiqotchi tomonidan ushbu talabni qo‘llab quvvatlovchi bir qator olimlar (F.K.Juenger, G.Born, J.Klabbers, A.Bonomi, M.Wilderspin) mulohazalari o‘rganilib ular bilan munozaraga kirishgan. Shuningdek, taraflar va ularning huquq borasidagi kelishuvida hech qanday bog‘liqlik bo‘lishi talabi o‘rnatilmagan Rim I Qoidalari (3-modda) va Xalqaro Tijoriy Shartnomalarda Huquqni Tanlash Yuzasidan Gaaga konvensiyasi (2-modda)lari (ushbu qoidalar O‘zbekiston uchun amal qilmaydi) ham o‘rganilib tahlil qilingan.

Tadqiqotchi tomonidan huquqni tanlash borasidagi O‘zbekiston Respublikasi Qonunchiligi ham muhokama qilinib O‘zbekiston Fuqarolik kodeksining 1189-moddasida taraflar shartnomaviy munosabatlari uchun istalgan xorijiy mamlakat huquqini tanlashi mumkinligi va qonunchilikda huquqni tanlashda tanlanayotgan mamlakat qonunchiligi borasida bog‘liqlik bo‘lishi talabi mavjud emasligi qayd etiladi.

“Erk muxtoriyati” institutining asosiy mazmuni “huquqni tanlash” tushunchasi orqali yoritilishi muhokama qilinib, taraflar mamlakat qonunlari, xalqaro konvensiyalar va shartnomalar, e’tirof etilgan xalqaro taomillar (odat huquqi) ular tomonidan tanlanishi mumkinligi ko‘rsatiladi. Xususan, e’tirof etilgan xalqaro taomillarga to‘xtalib, O‘zbekiston Respublikasi Fuqarolik kodeksining 6-moddasi Tadbirkorlik faoliyatining biron-bir sohasida vujudga kelgan va keng qo‘llaniladigan, qonun hujjatlarida nazarda tutilmagan xulq-atvor qoidasi, biron-bir hujjatda yozilganligi yoki yozilmaganligidan qat’i nazar, ish muomalasi odati deb hisoblanadi. Fuqarolik qonun hujjatlarida tegishli normalar bo‘lmagan taqdirda, bu munosabatlarni tartibga solishda odat va an’analar qo‘llanilishi keltirib o‘tilganligi hamda 1158-moddasi chet el elementi bilan murakkablashgan fuqarolik-huquqiy munosabatlarga nisbatan qo‘llanilishi lozim bo‘lgan huquq e’tirof etilgan xalqaro taomillar asosida belgilangan. Shuningdek, O‘zbekiston Respublikasi Oliy Sudi Plenumining “Chet ellik shaxslar ishtirokidagi ishlarni iqtisodiy sudlar tomonidan ko‘rishda qonunchilik hujjatlarini qo‘llashning ayrim masalalari haqida”gi Qarorining 51-bandida iqtisodiy sud nizoni hal qilishda, O‘zbekiston Respublikasi qonunlariga zid bo‘lmagan va taraflar shartnomada to‘g‘ridan-to‘g‘ri ko‘rsatgan hollarda xalqaro ish odatlarini, shuningdek, Xalqaro savdo terminlarini sharhlash Qoidalari (Inkoterm) va Xalqaro tijorat shartnomalari Prinsiplari (UNIDRUA)

qo'llashi mumkinligini ko'rsatib o'tadi. Shuningdek, taraflarning munosabatlariga e'tirof etilgan xalqaro taomillarni qo'llanilishi mumkinligini Yaponiya, Bolgariya mamlakatlari qonunchiligidan ham misollar keltiradi.

Shuningdek, erk muxtoriyati prinsipining cheklovchi xususiyatlari o'rganilib erk muxtoriyati prinsipi mamlakatning ommaviy tartib to'g'risidagi izohiga hamda huquqning qat'iy normalariga zid kelganida, cheklanishi qayd etiladi. Erk muxtoriyati prinsipining cheklovchi xususiyatlari prinsipga eng ohirgi nuqta ekanligi xuddi shu nuqtadan taraflarning erk muxtoriyati tugashi xulosasiga kelinadi.

Dissertatsiyaning ikkinchi bobi *“Erk muxtoriyati (party autonomy) prinsipining shartnomaviy munosabatlardagi ifodasi tahlili”* deb nomlanib, unda taraflarning kelishuv asosida huquqni tanlashi, taraflarning huquq borasidagi ochiq kelishuvi mavjud bo'lmaganida, huquqni aniqlash tamoyillari, “eng uzviy aloqa” tamoyili hamda “maqbul huquq” tamoyili, taraflarning arbitraj kelishuvlarida erk muxtoriyati, xalqaro tijorat arbitrajida arbitrajga taalluqlilik, xalqaro xususiy huquqda erk muxtoriyati prinsipini qo'llashda xorijiy mamlakatlari tajribasi kabi masalalar tahlil qilingan.

Tadqiqotchi erk muxtoriyati prinsipining asosini taraflarning huquqni mustaqil tarzda tanlay olishi va taraflarning huquqni tanlashdagi irodasi esa ularning kelishuvlarida aks etadi deya baholaydi. Tadqiqotchi tomonidan taraflarning erk muxtoriyati taraflar tomonidan huquqni tanlash borasidagi kelishuvga erishilishida yuzaga chiqadi deb hisoblaydi. Bunda dissertant bir qator olimlar (Symeon C. Symeonides, J. Kropholler, A. Briggs, J. Basedow) lar bilan munozaraga kirishib taraflarning huquq borasidagi irodasi ularning kelishuvlarida ifodalanishi va taraflarning kelishuvi ularning erk muxtoriyati prinsipini yuzaga chiqarish asosi bo'lib xizmat qilishi ko'rsatilgan.

Tadqiqotchi tomonidan taraflarning huquqni tanlash borasidagi kelishuvida taraflarning huquq tanlovi yuzasidan tahlil o'tkazilib huquqni tanlash taraflar tomonidan ochiq oshkora tarzda tanlanishi mumkinligi yoki taraflar huquqqa ishora qilishlari mumkinligi borasida muhokama yuritadi.

Tadqiqotchi tomonidan taraflarning huquq borasidagi kelishuvi aniq, oshkora ifodalanishi to'g'risidagi bir qator olimlarning, xususan Dicey, Morris–Collins o'zlarining xalqaro xususiy huquq kodeksi kitobida taraflarning huquq borasidagi kelishuvi ochiq va oshkora ifodalanishi g'oyasi muhokama qilingan. Shuningdek, S.C.Symeonides, J.Kropholler, F.K.Juenger, P.Nyghning taraflarning huquq borasidagi kelishuvi ochiq ifoda qilinishi borasidagi mulohazalari tahlil qilingan.

Taraflarning huquq borasidagi kelishuvi mavjud bo'lmaganida, ularning munosabatlari uchun qo'llaniladigan huquq shartnomaning mazmuni uchun hal qiluvchi ahamiyatga ega bo'lgan ijro bajariladigan mamlakat huquqi bilan, shuningdek bunday ijroni aniqlashning imkoniyati bo'lmaganida esa shartnoma eng uzviy bog'langan mamlakat huquqi bilan aniqlanishi qayd etilgan. “Eng uzviy aloqa” tamoyili hamda “maqbul huquq” ni aniqlash tamoyili qiyoslanib “eng uzviy aloqa” tamoyili obyektiv faktlarni hisobga olgan holda aniqlanishi, “maqbul huquq” esa taraflarning “yashirin xohishi”ni aniqlashga yo'naltirilishi ko'rsatilgan.

Tadqiqotchi tomonidan taraflarning kelishuvida ko'rsatilgan huquqidan boshqa huquqqa murojaat etishiga ruxsat etadigan kelishuvlar (non-exclusive agreements) va taraflarning kelishuvida ko'rsatilgan huquqidan boshqa huquqqa murojaat etishiga yo'l qo'ymaydigan kelishuvlar (exclusive agreements).

Eksklyuziv kelishuvlar taraflarning huquq borasidagi kelishuvini qat'iy belgilaydi va ular o'rtasida nizolar vujudga kelganida, taraflarning kelishuvdagi boshqa huquqqa murojaat qilishlariga yo'l qo'ymasligi bilan ajralib turishi va eksklyuziv bo'lmagan kelishuvlar esa taraflarga ularning huquq borasidagi kelishuvi mavjud bo'lsa ham, ularning kelishuvdan boshqa huquqqa murojaat qilishiga imkon berishi, taraflarga "boshqa" tanlov qoldirishi bilan ajralib turish xususiyatiga egaligi xulosasiga kelinadi.

Tadqiqotchi erk muxtoriyati prinsiplarining asosini taraflarning huquqni mustaqil tarzda tanlay olishi va taraflarning huquqni tanlashdagi irodasi esa ularning kelishuvlarida aks etadi deya baholaydi. Tadqiqotchi taraflarning erk muxtoriyati taraflar tomonidan huquqni tanlash borasidagi kelishuvga erishilishida yuzaga chiqadi deb hisoblaydi. Bunda dissertant bir qator olimlar (S.C.Symeonides, J.Kropholler, A.Briggs, J.Basedow) lar bilan munozaraga kirishib taraflarning huquq borasidagi irodasi ularning kelishuvlarida ifodalanishi va taraflarning kelishuvi ularning erk muxtoriyati prinsipini yuzaga chiqarish asosi bo'lib xizmat qilishi ko'rsatilgan.

Tadqiqotchi tomonidan taraflarning kelishuvida ularning huquq borasidagi tanlovi ochiq (express choice of law) ifoda etilishi yoki ularning huquq borasidagi tanlovi "yashirin" (tacit choice of law) bo'lishi mumkinligi borasida muhokama yuritiladi. Taraflarning "yashirin" (tacit choice of law) tanlovi shartnomaning butun xususiyatidan va shartlaridan ma'lum bo'lib turishi mumkinligi tahlil qilinadi.

Tadqiqotchi tomonidan taraflarning huquq borasidagi kelishuvi aniq, oshkora ifodalanishi to'g'risidagi bir qator olimlarning, xususan Dicey, Morris & Collins o'zlarining "Xalqaro xususiy huquq kodeksi" kitobida taraflarning huquq borasidagi kelishuvi ochiq va oshkora ifodalanishi g'oyasi muhokama qilingan. Shuningdek, S.C.Symeonides, J.Kropholler, F.K.Juenger, P.Nyghning taraflarning huquq borasidagi kelishuvi ochiq ifoda qilinishi borasidagi mulohazalari tahlil qilingan.

Taraflarning huquq borasidagi kelishuvi mavjud bo'lmaganida, ularning munosabatlari uchun qo'llaniladigan huquq shartnomaning mazmuni uchun hal qiluvchi ahamiyatga ega bo'lgan ijro bajariladigan mamlakat huquqi bilan, shuningdek bunday ijroni aniqlashning imkoniyati bo'lmaganida esa shartnoma eng uzviy bog'langan mamlakat huquqi bilan aniqlanishi qayd etilgan. "Eng uzviy aloqa" tamoyili hamda "maqbul huquq" ni aniqlash tamoyili qiyoslanib "eng uzviy aloqa" tamoyili obyektiv faktlarni hisobga olgan holda aniqlanishi, "maqbul huquq" esa taraflarning "yashirin xohishi"ni aniqlashga yo'naltirilishi "Assunzione" keysi bilan ko'rsatib berilgan.

Chet el huquqi normalariga huquqiy baho berish hamda chet el huquqi normalarining mazmunini aniqlashda mazkur normalarning tegishli xorijiy davlatda

rasmiy talqin qilinishi, qo'llanilish amaliyoti va doktrinasiga tayanishi, shuningdek chet el huquqi normalarining mazmunini aniqlash maqsadida yordam va tushuntirishlar so'rab ekspertlar jalb qilishi mumkinligi keltirib o'tilgan. Shuningdek chet el huquqi normasining mazmunini aniqlashda ekspertlar ko'rsatmasi sudlar uchun qaror qabul qilishda muhim ahamiyat kasb etishi Buyuk Britaniya yuqori sudi tomonidan Cassini v Emerald keysida Saudia Arabistoni keysida Saudia Arabistoni huquqini aniqlash uchun ushbu huquq bo'yicha ekspert jalb qilingani hamda ushbu ekspert xulosasi sud tomonidan qaror chiqarish uchun hal qiluvchi ahamiyatga ega bo'lganligi ochib berilgan.

Tadqiqotda xalqaro tijorat arbitrajida erk muxtoriyati prinsipi tahlili ham keltirib o'tiladi. Shuningdek xalqaro tijorat arbitrajida arbitrajga taalluqlilik masalasi muhokama qilinib arbitrajga taalluqlilik arbitraj uchun eng muhim xususiyat hisoblanishi aniqlanadi. Dissertant tomonidan arbitraj kelishuvi bitimi tahlil qilinib arbitraj kelishuvlari arbitraj jarayonlari boshlanishi uchun asos hisoblanishi hamda taraflar arbitraj kelishuvini alohida bitim tarzida yoki asosiy shartnoma tarkibida arbitraj sharti sifatida ham tuzishi mumkinligi muhokama qilinadi. Arbitraj kelishuvlarida taraflarning nizolarni arbitrajda hal etish bo'yicha irodasi aks etishi va aynan ushbu iroda nizolarni arbitrajda ko'rish uchun asos bo'lishi xulosasiga kelinadi.

“O‘zbekistonda chet el elementi bilan murakkablashgan fuqarolik-huquqiy munosabatlarda erk muxtoriyati prinsipini takomillashtirish istiqbollari” deb nomlangan bobida tadqiqotchi Buyuk Britaniya, AQSh, Yaponiya, Germaniya, Shvetsiya, Rossiya Federatsiyasi, Qozog‘iston kabi davlatlar qonunchiligi va huquq amaliyotini o‘rgangan hamda yoritib bergan.

Dissertatsiyada O‘zbekiston Respublikasida xalqaro xususiy huquq qoidalari hamda erk muxtoriyati prinsipining rivojlanishi uch bosqichga bo‘lib muhokama etilgan. Dastlabki bosqich O‘zbekiston Respublikasining mustaqilligidan oldingi bosqich hisoblanib bunda xalqaro xususiy huquq qoidalari xalqaro munosabatlar cheklanganligi munosabati bilan rivojlanmaganligi ta’kidlanadi. Ikkinchi bosqich esa O‘zbekiston Respublikasining mustaqilligidan keyingi 2000-yillarga qadar bosqichdir. Bunda O‘zbekiston Respublikasida qonunchilik tizimi shakllantirilib xalqaro xususiy huquq qoidalari va erk muxtoriyati prinsipi O‘zbekiston Respublikasining Fuqarolik kodeksida qayd etiladi.

Bundan keyingi bosqich esa O‘zbekiston Respublikasi qonunlarining shakllanishi hamda dunyo hamjamiyatlari tomonidan o‘rnatilgan talablar asosida qayta shakllantirilishi davridir. Ushbu davrda O‘zbekiston Respublikasida xalqaro xususiy huquqqa oid qonunlar qabul qilinishi hamda xalqaro xususiy huquqqa oid xalqaro hujjatlarning imzolanishi yoki tan olinishi bilan xalqaro xususiy huquqqa doir qonunchiligining rivojlanish bosqichidir.

Dissertatsiyada xalqaro xususiy huquq qoidalarining takomillashtirilishi zaruriyati mazkur sohada munosabatlarning kundan kunga rivojlanib borayotganligi, ushbu sohada ilgari mavjud bo‘lmagan yangi munosabatlarning vujudga kelayotganli va ularni qonunan tartibga solishning ahamiyati bilan belgilanishi, bu sohaning rivojlantirilishi qonunchilikdagi mavjud bo‘shliqlarning

to'ldirilishiga, yechilmayotgan muammolarning yechimlarini vujudga keltirishga va shuningdek mamlakatimizning iqtisodiy imkoniyatlarini hamda tadbirkorlik munosabatlarining ham yanada yuksalishiga ko'maklashadi.

Taraflarning erk muxtoriyatini tan olish va taraflarning xususiy huquqiy munosabatlarda erkinligining yanada kengaytirilishi taraflarning shartnomaviy munosabatlaridan manfaatdorligini yuksaltirib shartnomalarning bajarilishini oshirishi qayd etib o'tiladi.

Shuningdek, "aqlli" (smart) shartnomalarning tabiati o'rganilib mazkur toifadagi shartnomalarda ham taraflarning huquq borasidagi kelishuvi aks etishi masalasi o'rganib chiqilgan. "Aqlli" shartnomalarning tabiati va tuzilishi o'rganilishi natijasida ushbu shartnomalar ham an'anaviy shartnomalardan faqatgina o'zining raqamlashtirilgan texnologiyalar (smart technologies) yordamida tuzilishi bilan farqlanishi keltirib o'tilgan. "Aqlli" shartnomalarda ham taraflar shartnomada ko'rsatilgan shartlarni qabul qilish orqali o'zining erk muxtoriyatini namoyon qilishi xulosasiga kelingan.

Tadqiqotchi tomonidan xalqaro xususiy huquqqa oid qonunchilikda erk muxtoriyati prinsipining izohi, shuningdek mamlakatning ommaviy tartibi to'g'risidagi izoh hamda huquqning qat'iy normalari izohi mavjud bo'lishi lozimligini ta'kidlaydi.

Shuningdek, dissertant tomonidan iqtisodiy imkoniyatlari jihatidan shartnoma shartlarini belgilashda teng imkoniyatlar bilan qatnasholmaydigan "zaif" taraflar huquqlari va manfaatlarini aks ettiruvchi qonunchilik normalari kuchaytirilishi lozimligini ta'kidlaydi.

XULOSA

O'zbekiston Respublikasining xalqaro xususiy huquq to'g'risidagi qonunchiligini takomillashtirish masalalarini kompleks o'rganish va tahlil qilishga bag'ishlangan ilmiy tadqiqot natijasida quyidagi ilmiy-nazariy hamda qonunchilikka oid taklif va xulosalar ishlab chiqildi.

I. Ilmiy-nazariy xulosalar:

1. Xalqaro xususiy huquq milliy qonunchilikning fuqarolik huquqi, oila huquqi, mehnat huquqi, fuqarolik protsessual huquqi, iqtisodiy protsessual huquqi normalarining chet el elementi bilan murakkablashgan munosabatlarning yig'indisini o'ziga xos metod sifatida tartibga soluvchi kompleks xususiyatga ega bo'lgan alohida huquq sohasidir.

2. Erk muxtoriyati prinsipi xalqaro xususiy huquqning markaziy qismini o'zida ifoda etuvchi prinsipdir. Erk muxtoriyati prinsipi taraflar o'rtasida shartnomaviy munosabat mavjudligini, ularning shartnomaviy munosabatlari uchun huquq va majburiyatlarini belgilaydigan prinsipdir. Mazkur prinsip asosida taraflar ularning shartnomaviy munosabatlarini tartibga soladigan huquqni tanlashlari mumkin.

3. Erk muxtoriyati prinsipining talqinida ikki asosiy doktrinal yondashuv mavjud. Birinchi yondashuv – taraflar manfaatidan kelib chiqadigan yondashuv

bo'lib (Sarty-soverigtist perspective), unga ko'ra shartnoma taraflari o'zaro munosabatlarda qonun chiqaruvchi bilan teng maqomda bo'lishi hamda nizolarni hal etishda mustaqil vakolatlarga ega bo'lishi zarur, deb e'tirof etiladi. Ikkinchi yondashuv esa – davlat manfaatidan kelib chiqadigan yondashuv (State-soverigtist perspective) bo'lib, unda erk muxtoriyati prinsipining o'zi inkor etilmaydi, biroq uning doirasi milliy qonunchilik va davlatning ommaviy tartibga oid manfaatlari bilan chegaralanadi. Demak, taraflarning erkinligi mutlaq emas, balki davlat tomonidan belgilangan qat'iy huquqiy normalar va ommaviy tartib talablariga zid kelmagan taqdirda amalga oshishi mumkin.

4. Taraflarning kelishuv asosida huquqni tanlash borasida ikki xil yondashuv mavjud: birinchisi taraflar tanlovida ular bilan tanlangan huquq o'rtasida bog'liqlik bo'lishini shart qilmaydi (Germaniya, Fransiya qonunchiligi) va taraflarga istalgan davlat huquqini o'zaro kelishuv asosida qo'llash imkonini beradi; ikkinchisi esa tanlov bilan huquqiy munosabatlar o'rtasida mantiqiy bog'liqlik yoki aloqa mavjud bo'lishini talab etadi (AQSH). Demak, erk muxtoriyati prinsipi xalqaro huquqiy munosabatlarda keng erkinlikni ta'minlasa-da, amalda uning qo'llanishi mazkur ikki talabdan qay biri ustuvor qo'llanilishiga bog'liq bo'ladi.

5. Erk muxtoriyati prinsipining vujudga kelishi va rivojlanishi haqida turli xil qarashlar mavjud. Ayrim huquqshunoslar prinsipning vujudga kelishini Qadimgi Misr huquqiga borib taqaladi, deb hisoblasa, ariylari esa Qadimgi Rim huquqi bilan bog'lashadi. Prinsipning rivojlanishi bugungi kunda xalqaro xususiy huquqda biz tushunadigan ko'rinishga kelishi uzoq davom etgan. Erk muxtoriyati prinsipining rivojlanishida yevropalik, xususan fransuz va nemis huquqshunos olimlarining xissalari ko'proqdir. Ayniqsa, fransuz olimi Dyumulyen va nemis huquqshunosi Frederik Von Savigny fikrlari erk muxtoriyati haqidagi fikrlarning o'sishiga xizmat qilgan. XX asrga kelib erk muxtoriyati huquqshunoslar tomonidan erk muxtoriyati prinsipi xalqaro xususiy huquqning alohida mustaqil prinsipi sifatida e'tirof etilishni boshlagan. Xususan, huquqshunos Vilgelm Haudek erk muxtoriyati prinsipini xalqaro xususiy huquqning mustaqil prinsip ekanligi va shartnoma erkinligi prinsipining bir qismi emasligi fikrini ilgari suradi.

6. XXI asrga kelib erk muxtoriyati prinsipi dunyo mamlakatlari qonunchiligi hamda xalqaro hujjatlarda e'tirof etila boshlangan. Xususan, quyidagi hujjatlarda erk muxtoriyati prinsipi va uning mohiyati ko'rsatib berilgan. 1986-yildagi Xalqaro Tovarlar Savdosi Shartnomalari yuzasidan Tatbiq qilinadigan Huquq To'g'risida Konvensiyasi (7-8-moddalar), 1980-yildagi Shartnomaviy Majburiyatlar yuzasidan Huquqni Tanlash To'g'risidagi Rim Konvensiyasi (5 - modda), 2008-yildagi Shartnomaviy Majburiyatlar yuzasidan Huquqni Tanlash To'g'risida Rim I Qoidalari (3-4-5- moddalar), 1994-yildagi Xalqaro Shartnomalar uchun Huquqni Tanlash yuzasidan Xalqaro Amerika Konvensiyasining (2-7-moddalari) (Meksika Shahar Konvensiyasi)

7. Xalqaro tijorat arbitraji xalqaro xususiy huquqda nizolarni muqobil hal etishning eng keng tarqalgan usulidir. Nizolarni arbitrajda ko'rishning asosi taraflarning arbitraj haqida kelishuvi va ularning masalalari arbitrajda hal etilish xususiyatining mavjudligidir. Nizolarni xalqaro tijorat arbitrajida ko'rish uchun, avvalo, taraflarning munosabatlari arbitrajda ko'rish uchun yaroqli bo'lishi lozim.

Xususan, O'zbekiston tomonidan ratifikatsiya qilingan Chet el arbitrajlarini tan olish va ijroga qaratish to'g'risida Nyu York Konvensiyasining ikkinchi moddasida taraflar arbitraj kelishuvini tuzishda ularning munosabatlari arbitrajda hal etish xususiyatiga ega bo'lishi lozimligi qoidasini kiritadi. Tabiiyki, taraflar har qanday munosabat yuzasidan arbitraj kelishuvini tuzolmaydilar. Raqobatni tartibga solish masalalari ommaviy xususiyat kasb etganligi bois ushbu masalani xalqaro tijorat arbitrajida hal etish uchun kelishish xalqaro tijorat arbitrajining umum qabul qilingan xususiyatiga xos emas. Raqobat masalalari xalqaro xususiy huquq hamda xalqaro tijorat arbitrajining qamrov doirasidan tashqaridadir.

8. Chet el elementi bilan murakkablashgan xususiy huquqiy munosabatlarda taraflarning erkin bo'lishi ularning huquqlari batamom cheklanmagan, degan xulosa chiqarishga olib kelmaydi. Taraflar o'zlarining xohish-irodalari asosida xalqaro xususiy huquqiy munosabatlarda erkin ishtirok etsalar ham ularning irodalarini cheklovchi omillar mavjud. Bular mamlakatlarning ommaviy tartibi to'g'risidagi izoh va huquqning qat'iy normalaridir (O'zbekiston Respublikasi Konstitusiyaning 21-moddasi va Fuqarolik kodeksining 1164-moddasi). Taraflarning manfaatlari mamlakat ommaviy tartibi to'g'risidagi izoh va huquqning qat'iy normalariga zid kelganida, taraflarning huquqlari cheklanadi. Zero, Rim I Qoidalarining 4-moddasida hech qanday kelishuv yoki qoida mamlakatlar ommaviy tartibi to'g'risidagi izoh va huquqning qat'iy normalari qo'llanilishiga to'sqinlik qilolmasligi to'g'risida izoh mavjud. Taraflar mamlakatlarning ommaviy tartibi to'g'risidagi izoh va huquqning qat'iy normalarini chetlab o'tish yoki ushbu ikki omil ularning manfaatlariga zid kelganida, ushbu qoidalarga amal qilmaslik to'g'risida kelisha olmaydilar, shuningdek ularning xuddi shunday kelishuvi haqiqiy sanalmaydi (masalan, O'zbekiston Respublikasi Fuqarolik kodeksining 1162 va 718-moddalari hamda Havo kodeksining 119-moddasi "Javobgarlik miqdorini kamaytirish to'g'risidagi kelishuvlarning g'ayriqonuniyligi").

9. Chet el elementi bilan murakkablashgan fuqarolik-huquqiy munosabatlariga nisbatan qo'llanilishi lozim bo'lgan huquq taraflar kelishuv asosida tanlashlari mumkin. Taraflarning kelishuv asosida ularning shartnomaviy munosabatlari uchun qo'llaniladigan huquqni tanlashlari mumkin. Taraflar huquqni tanlash to'g'risida o'zlarining asosiy shartnomalarida kelishishlari yoki alohida huquqni tanlash to'g'risida kelishuv tuzishlari mumkin. Taraflar kelishuv asosida huquqni butun shartnoma uchun ham, uning alohida qismlari uchun ham tanlashlari mumkin. Taraflar huquqni ular o'rtasida nizo vujudga kelishidan oldin yoki nizo vujudga kelganidan keyin har qachon tanlashlari mumkin.

10. Chet el elementi bilan murakkablashgan fuqarolik-huquqiy munosabatlariga nisbatan qo'llanilishi lozim bo'lgan huquq taraflarning arbitraj to'g'risidagi kelishuvi xalqaro tijorat arbitraji jarayonlarini boshlash uchun asos bo'ladi. Taraflarning ikki tomonlama irodasiga asoslanib tuzilgan arbitraj kelishuvi haqiqiy deb sanaladi.

11. Taraflarning xalqaro tijorat shartnomalarining mazmunidan kelib chiqqan holda uning qismlari uchun alohida huquq tanlash imkoniyatining mavjud

bo'lishi dastavval fransuz huquqshunoslari tomonidan ilgari surilgan. Taraflar shartnoma imzolayotganlarida shartnoma alohida qismlari uchun alohida huquq tanlashlari taraflarning shartnoma ijrosidan manfaatdorligining ortishiga xissa qo'shadi. Taraflarning kelishuv asosida huquqni tanlash imkoniyati ham taraflarning shartnoma shartlarini mumkin qadar o'zlariga manfaatli bo'lishiga, shuningdek shartnoma majburiyatlarini bajarish ikki tomon uchun ham qulay bo'lishiga xizmat qiladi. Taraflarning shartnoma qismlari uchun alohida huquq tanlashlari imkoniyati esa shartnoma qismlarining mustaqil ahamiyat kasb etish hamda taraflarning shartnomaviy munosabatlardan va shartnomanning ijrosidan manfaatdorligining yuksalishiga xizmat qiladi.

12. "Aqlli" shartnomalar hozirgi kunda xalqaro xususiy huquqda reallikka aylanib ulgurdi. "Aqlli" shartnomalarning kompyuterlashtirilgan tabiati va avtomatik bajarilish xususiyati ushbu shartnomalardan foydalanishning o'sib borishiga olib kelmoqda. "Aqlli" shartnomalar ham xalqaro xususiy huquq qoidalaridan holi bo'lolmaydi. An'anaviy shartnomalarga qo'yiladigan talablar ularga ham qo'llanilishi lozim. Primavera De Filippi "aqlli" shartnomalar raqamli qurilmalar yordamida qonuniy kelishuvlarning avtomatik ijrosini taminlaydigan programmadir, deb baholaydi. "Aqlli" shartnomalar ham an'anaviy shartnomalar singari huquqni tanlash bir-biridan farqlanadi. "Aqlli" shartnomaning taraflar o'zlarining huquq borasidagi tanlovini keltirishi mumkin.

Bizningcha, elektron tijoratda hujjatlarni shakllantirish taraflarning kelishuviga ko'ra amalga oshirilishi kabi qoida "aqlli" shartnomalarga nisbatan ham qo'llanadi. "Aqlli" shartnoma qonunchilikda belgilangan, shartnomani tuzish va bajarish bilan bog'liq bo'lgan hujjatlarning mazmuniga va shakliga oid talablarga mos bo'lishi kerak.

II. Qonunchilik hujjatlarini takomillashtirish bo'yicha taklif va tavsiyalar:

1. Xalqaro xususiy huquq xalqaro xususiy huquq milliy qonunchilikning fuqarolik huquqi, oila huquqi, mehnat huquqi, fuqarolik protsessual huquqi, iqtisodiy protsessual huquq kabi huquqning alohida mustaqil sohasidir. Ushbu huquq qoidalarini o'zida to'laligicha aks ettirgan O'zbekiston Respublikasining "Xalqaro xususiy huquq qoidalari to'g'risida" gi Qonuni qabul qilinishi ushbu sohadagi barcha qoidalarning jamlanishiga va samarali ishlashiga olib keladi;

2. Taklif etilayotgan ushbu Qonun huquqiy munosabat ishtirokchilarining erk muxtoriyati prinsipi va uni tanlashda biron-bir shaxsning o'zboshimchalik bilan aralashishiga yo'l qo'yilmasligi, chet el elementi bilan murakkablashgan fuqarolik huquqiy munosabatlarda shartnoma ishtirokchilari halol, oqilona va adolat bilan harakat qilishlari lozimligi prinsiplariga asoslanib shakllantirilishi e'tiborga olinishi lozim;

3. Taklif etilayotgan ushbu Qonunda taraflar tomonidan tanlanadigan huquq doirasi sifatid O'zbekiston Respublikasining va chet mamlakat qonunchiligi hamda chet el shartnomalari, e'tirof etilgan xalqaro taomillar, xususan Xalqaro savdo terminlarini sharhlash Qoidalari (INCOTERMS) va Xalqaro tijorat shartnomalari prinsiplari (UNIDRUA), O'zbekiston Respublikasi qonunlariga zid bo'lmagan va

tarafklar shartnomada to'g'ridan-to'g'ri ko'rsatgan hollarda ish odatlari belgilanishi zarur;

4. Chet el elementi bilan murakkablashgan fuqarolik-huquqiy munosabatlarga nisbatan qo'llanilishi lozim bo'lgan huquqni erk muxtoriyati prinsipi asosida belgilash xalqaro xususiy huquqning markaziy qismi sanaladi va u shartnoma erkinligi prinsipi bilan juda uygun prinsipdir. Ushbu prinsip O'zbekiston Respublikasining Fuqarolik kodeksida xalqaro xususiy huquqning markaziy prinsipi sifatida xalqaro xususiy huquq normalarini fuqarolik-huquqiy munosabatlarga nisbatan tadbiiq qilish bo'limining Umumiy Qoidalar qismida alohida modda sifatida quyidagi tarzda kiritilishi lozim:

“Xalqaro xususiy huquq munosabatlari taraflari kelishuv asosida o'zlarining munosabatlariga tadbiiq etiladigan huquqni kelishuv asosida tanlab olishlari mumkin.

Taraflarning kelishuv asosidagi tanlovi ochiiq ifoda etilishi yoki taraflar shartnomalarining barcha xususiyatlaridan anglashilib olinishi mumkin.

Taraflar kelishuv asosida huquqni butun shartnoma uchun ham, uning qismlari uchun ham shuningdek, shartnomaning qismlari uchun boshqa huquq normasini ham tanlab olishi mumkin.

Huquqiy norma tanloviga yo'l qo'yilgan hollarda, agar taraflar boshqacha kelishmagan bo'lmasalar, tanlangan huquqning moddiy-huquqiy normalari qo'llaniladi.”

5. Xalqaro xususiy huquqda taraflarning erk muxtoriyati mamlakatning ommaviy tartibi to'g'risidagi izohga zid kelganida, taraflarning erk muxtoriyati cheklanadi. O'zbekiston Respublikasining Fuqarolik kodeksining 1164-moddasida ham xuddi shunday qoida keltirilgan. Lekin ushbu qoidada mamlakatlarning ommaviy tartibi to'g'risidagi izohning ta'rifi keltirib o'tilmagan. Shu bois ushbu moddada mamlakatlar ommaviy tartibi to'g'risidagi izoh tushunchasi kiritilishi moddaning to'ldirilishiga xizmat qiladi:

Mamlakatlarning ommaviy tartibi mamlakat hukumati tomonidan omma manfaatlarini ko'zlab olib boriladigan tartibdir. O'zbekiston Respublikasining ommaviy tartibi deyilganda, O'zbekiston Respublikasining jamiyat tuzilishi asoslari, O'zbekiston Respublikasining Konstitutsiyasida va boshqa qonunlarida omma manfaatlarini ko'zlab mustahkamlab qo'yilgan asosiy prinsiplar tushuniladi.

6. Fuqarolik Kodeksining 1190-moddasi quyidagi tartibda to'ldirilishi lozim: Yo'lovchi tashish shartnomalarida yo'lovchi doimiy turar joyga ega bo'lgan yoki yo'lovchi manzilini boshlagan yoki tugatgan mamlakat huquqi; Hayotni sug'urta qilish shartnomalarida esa sug'urtalovchi doimiy turar joyga ega bo'lgan yoki sug'urta xavfi yuz bergan mamlakat huquqi;

7. O'zbekiston Respublikasining “Xalqaro tijorat arbitraji to'g'risida”gi Qonuning 12-moddasida arbitraj kelishuvlarining ta'rifi va shakli keltirilgan. Ushbu moddaga Chet el arbitrajleri qarorlarini tan olish va ijroga qaratish to'g'risida Nyu York Konvensiyasining 2-moddasida ko'rsatilganidek taraflar arbitraj kelishuvini haqiqatan arbitrajda hal etish mumkin bo'lgan munosabatlardan kelib chiqib tuzishi mumkinligi haqida izoh keltirilishi maqsadga muvofiiq hisoblanadi.

8. Chet el elementi bilan murakkablashgan fuqarolik-huquqiy munosabatlarga nisbatan qo'llanilishi lozim bo'lgan huquqni erk muxtoriyati prinsipi va uni cheklanishi asosida belgilash xalqaro xususiy huquqning markaziy qismini tashkil etuvchi prinsip hisoblanadi. Shu sababli, xalqaro xususiy huquqda erk muxtoriyati prinsipi va uni cheklanishi haqidagi kurslar "Raqamli O'zbekiston – 2030" strategiyasi negizida "aqlli" shartnomalarni huquqiy tartibga solish nuqtai nazaridan xalqaro xususiy huquqiy fanlar o'qitiladigan yuridik oliy ta'lim muassasalarining o'quv standartlari, sudyalar, yuristlar hamda davlat boshqaruvi mutaxassislari malakasini oshirish dasturlariga kiritish taklif etiladi.

**SCIENTIFIC COUNCIL No DSc.07/30.12.2019.Yu.22.01 FOR AWARDING
SCIENTIFIC DEGREES AT TASHKENT STATE UNIVERSITY OF LAW**

TASHKENT STATE UNIVERSITY OF LAW

KHATAMJONOVA GULSANAM YASHARJON KIZI

**PARTY AUTONOMY PRINCIPLE AND ITS LIMITS IN PRIVATE
INTERNATIONAL LAW**

12.00.03. – Civil Law. Business Law.
Family Law. International Private Law

ABSTRACT
of doctoral (Doctor of Philosophy) dissertation on legal sciences

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INTRODUCTION (abstract of PhD thesis)

The actuality and relevance of the dissertation theme. In today's world, amid globalization and the expansion of international trade, the principle of party autonomy offers the parties an opportunity to establish a mutually acceptable regulatory framework that aligns with their interests. This concept — the principle of party autonomy — has remained relevant over centuries, having been developed and continually updated throughout legal history. Accordingly, the right to choose non-state regulation in specific areas of private international legal relations is now recognized in both national and international legal instruments. In this process, party autonomy is increasingly acknowledged as a fundamental principle of conflict of laws.

Notably, the legislation of the European Union (EU), China [Laws Applicable to Foreign-Related Civil Relations, Arts. 43–44], Russia [Russian Civil Code, Art. 1212], Germany [EGBGB, Arts. 29–30], Turkey [Turkish PIL Code, Arts. 26–27], Romania [Romanian PIL Act, Arts. 101–102], and Japan [Japanese PIL Act, Arts. 11–12] recognize the principle of party autonomy in governing private international legal relations. Similarly, in common law jurisdictions such as the United Kingdom [English Arbitration Act], Canada [Canadian Commercial Arbitration Act], India [Indian Arbitration Act], and South Africa [South African Arbitration Act], this principle has been accepted as a legal mechanism that grants parties autonomous rights in foreign economic agreements. This principle grants participants in private international legal relations the freedom to choose the legal system that governs their rights and obligations arising from mutual legal relationships.

Globally, there is a shift from understanding party autonomy from the state-sovereigntist perspective (focused on public interests of the state) to a party-sovereigntist perspective (focused on the interests of the parties themselves). National laws have started to reduce certain constraints on the parties' freedom of choice. For instance, the requirement of a reasonable connection between the chosen law and the parties or their dispute is increasingly being relaxed. Moreover, some jurisdictions now allow the parties to choose non-state rules of law, thus diminishing the “dependency” of party autonomy on national legislation. When parties are permitted to choose non-state legal norms to govern their contract, the will of the parties is no longer viewed merely as a connecting factor to a specific legal system. Rather, it becomes a basis for recognizing non-state norms as the applicable law. Furthermore, from an economic perspective, the development of principles protecting weaker parties in legal relations, and resolving disputes in accordance with those principles, reflects the modern evolution of the party autonomy principle. In this context, the view of Prof. William Dodge of Harvard University, author of “The Restatement (Third) of the Law of Conflict of Laws,” is noteworthy: “The choice of law in legal relations is a function of the law itself, and to give parties the authority to choose the applicable law is to delegate to them the function of legislation.” In private international law, the autonomy of the parties' will, as well as its reasons for application and limitations, has unique features when

applied to civil-law relations involving foreign nationals, legal entities, or foreign elements — particularly in foreign economic contracts.

In Uzbekistan, the principle of party autonomy was introduced in Article 1189 of the Civil Code, which entered into force in 1997. This created a legal foundation for regulating relations arising from foreign economic activity. Given the potential for property-related legal disputes to arise between Uzbek legal and natural persons and foreign states, organizations, and individuals, resolving such disputes through court proceedings alone can be complex. Therefore, providing the parties with the freedom to conclude international commercial contracts, to clearly define rights and obligations, and, most importantly, to determine the law applicable to disputes, is the most effective and appropriate approach.

In the 21st century, a new era has begun in the international legal sphere, characterized by the growing use of "smart" contracts in civil-law relations involving foreign elements. In particular, digital technologies are being introduced into international e-commerce relations, and electronic contracts are now recognized as equivalent to traditionally signed documents. These "smart contracts" represent a new phase in the development of international economic relations and require a more precise and consistent application of the principle of party autonomy within the scope of digital law.

Uzbekistan continues to create favorable conditions for integrating its economy into the global economic system. Therefore, the Concept for Improving the Civil Legislation of the Republic of Uzbekistan emphasizes the importance of systematizing and unifying civil legislation, ensuring its consistency with leading international practices, and implementing advanced international standards in this field.

In addition, national-level initiatives are being undertaken to develop and regulate relations involving digital technologies. For example, the Presidential Decree No. PF-6079 of October 5, 2020, "On the Approval of the Strategy 'Digital Uzbekistan – 2030' and Measures for Its Effective Implementation," and the Presidential Resolution No. PQ-358 of October 14, 2024, "On the Strategy for the Development of Artificial Intelligence Technologies until 2030," are clear indicators of these efforts.

In the future, as international trade relations continue to grow and as unforeseen and unpredictable circumstances arise, the orderly and effective application of the principle of party autonomy in other areas of international economic and trade relations will serve as an appropriate and practical solution.

The relevance of the research to the priority areas of development of science and technology of the Republic. This research on priority areas in the development of international private legal relations is based on the strategic areas of work in the field of improving the interaction of state bodies with the population, ensuring reliable protection of the rights and freedoms of citizens, and introducing modern mechanisms for solving their problems, established by the Resolution of the President of the Republic of Uzbekistan No. PQ-10 dated June 17, 2020.

The level of study of the research topic. The issues of the principle of

voluntary autonomy and the application of the principle of voluntary autonomy in contractual relations have been studied by X.A.Rakhmonkulov, K.Q.Rashidov, S.Gulyamov, I.Rustambekov, B.B.Samarkhodjayev, B.Y.Ergashev, O.Khazratkulov, N.Rakhmonkulova.

The emergence and historical development of the principle of voluntary autonomy, the factors limiting the principle, and the influence of the public order of countries on the voluntary autonomy of the parties are reflected in the research works of foreign researchers - F.Bauer, M.Petit J.R., H.Liang, Y.Zhao, M.Zhaohua, E.Friedler, B.Berger, J.Savage, J.Delvolve, G.Pointon, J.Rouche, M.Reimman, L.David, H.Gharavi, P.Sanders, S.Sterk, H.Noan, A.Cassis, Rowe V.Williams and a number of other scientists.

The issues of the parties' choice of law based on the principle of voluntary autonomy, the possibility of the parties choosing a law other than the law of the country for their contractual relations, and the application of the principle of voluntary autonomy to the newly emerging “smart” contracts in private international law were studied by Symeon C.Symenoids, Zheng Sofia Tang, Dr. Giesele Ruhl, and Alexander Svalyev.

Research on “smart” contracts, which are considered a relatively “new contractual relationship” of the principle of free will, that is, a new type of contract, was also conducted by German scientist Dr. Giesele Ruhl, Simeona Kostova and Serbian expert Alexander Svaljev.

However, this indicates that insufficient research has been conducted in the legislation of the Republic of Uzbekistan within the framework of “new relationships” in the age of digital technologies.

Compatibility of the dissertation topic with the research plans of the higher educational institution where the dissertation is being conducted. This research, aimed at further strengthening the significance of the principle of party autonomy in private international legal relations and regulating its specific application in the field of “smart” contracts, is closely connected with the research plans of Tashkent State University of Law dedicated to the development of legal frameworks and the stabilization of private international legal relations in the era of the digital economy.

The aim of the research is to define the principle of party autonomy in private international legal relations and to scientifically describe the precise boundaries of the limiting factors of this principle in civil-law relations complicated by a foreign element, thereby developing scientifically grounded conclusions and recommendations.

Research Objectives:

To study the historical formation, development, and current application level of the principle of party autonomy in private international law through comparative analysis;

To analyze the freedom of the parties in choosing applicable law within the scope of the party autonomy principle in civil-law relations complicated by a foreign element;

To determine the role of the party autonomy principle within the system of

international commercial arbitration law;

To analyze the nature, purpose, and function of arbitration agreements involving foreign nationals or foreign legal entities, as well as the freedom of the parties in entering into such agreements based on private international legal norms;

To carry out a general analysis of situations that may be resolved through arbitration involving foreign participants (arbitrability);

To examine the limitations on the application of the party autonomy principle in private international legal relations;

To assess the impact of restrictions imposed on party autonomy in order to protect public morals, the rights and freedoms of others, public safety, and public order;

To explore the theoretical and practical aspects of whether or not the applicable law chosen by the parties, based on the principle of party autonomy, can serve as a guarantee of full autonomous rights for the parties in civil-law relations involving a foreign element;

To develop proposals for improving the legislation of the Republic of Uzbekistan regarding the future development of international commercial arbitration.

Object of the Research:

The object of the research consists of social relations connected with the autonomy of the will of the parties in private international law and the reasons for applying limitations on that autonomy.

Subject of the Research: The subject includes theoretical and legal approaches and concepts regulating the principle of party autonomy and its limitations in private international legal relations; national and foreign legislation related to private international law; scientific and theoretical literature on the research topic; as well as judicial and arbitral practice.

Research Methods: The study employs methods such as generalization, induction, deduction, systematic approach, comparative legal analysis, clarification, and the study of statistical and practical materials.

The scientific novelty of the study is as follows:

It has been substantiated that disputes arising from both contractual and non-contractual relations of a commercial nature may, by agreement of the parties, be referred to international commercial arbitration;

The basis has been established for the view that an arbitration agreement may be concluded either as an arbitration clause within a contract or as a separate agreement;

It has been substantiated that the parties may, at their discretion, agree on the procedural rules governing the conduct of the arbitration;

It has also been substantiated that the parties may agree, at their discretion, on the language(s) to be used in the arbitration; in the absence of such an agreement, the arbitral tribunal shall determine the language(s) of the proceedings.

The practical results of the research are as follows:

It was substantiated that the principle of party autonomy, as a central principle of private international law, should be introduced as a separate article in the

General Part of the Civil Code;

It was substantiated that Article 1164 of the Civil Code should be supplemented with a legal definition of public policy;

It was substantiated that Article 4 of the Law "On International Commercial Arbitration" should allow for the referral of all disputes arising from both contractual and non-contractual relations of a commercial nature to international commercial arbitration, based on the agreement of the parties;

It was substantiated that Article 12 of the Law "On International Commercial Arbitration" needs to be supplemented with the concept of arbitrability.

Reliability of research results. The reliability of the research outcomes is grounded in the application of scientifically recognized methods, the use of theoretical data obtained from official sources, and reference to national and international legal acts and programs. The research also draws upon the works of recognized national and international scholars and is supported by consistent and reproducible results, verified principles, and substantiated data. The analysis of the principle of party autonomy and its limitations reflects current trends in private international law.

Scientific and practical significance of the research results:

The scientific significance of the research lies in the conclusions and proposals, which can be used in conducting further academic research on the principle of party autonomy and its restrictive characteristics. The findings may also be utilized in the teaching and methodological development of legal disciplines such as "Private International Law", "International Commercial Arbitration", and "Civil Law".

Moreover, the research contributes to the improvement of legal frameworks, addressing existing shortcomings and filling gaps in normative legal documents in the relevant fields.

From a practical perspective, the study provides insights into the effective legal solutions and technological measures that can be applied in the context of international commercial contracts, including "smart" contracts, thereby supporting the practical application of the party autonomy principle in cross-border commercial relations.

Implementation of research results. Based on the scientific results obtained from the study on the principle of party autonomy in private international law and its restrictive features:

The proposal that disputes arising from all relations of a commercial nature, both contractual and non-contractual, may be submitted to international commercial arbitration by agreement of the parties is reflected in the second paragraph of Article 4 of the Law of the Republic of Uzbekistan "On International Commercial Arbitration" (Reference of the Senate of the Oliy Majlis of the Republic of Uzbekistan No. 2 dated February 20, 2025). This proposal helped to determine the scope of disputes subject to international commercial arbitration;

An arbitration agreement is an agreement of the parties to submit to arbitration all or certain disputes that have arisen or may arise between them, related to a specific legal relationship, regardless of whether they have a

contractual nature or not. The proposal to conclude an arbitration agreement as an arbitration clause of a contract or as a separate agreement was reflected in the first paragraph of Article 12 of the Law of the Republic of Uzbekistan “On International Commercial Arbitration” (Reference of the Senate of the Oliy Majlis of the Republic of Uzbekistan dated February 20, 2025 No. 2). This proposal expanded the freedom of the parties to conclude an arbitration agreement;

The proposal that the parties, subject to compliance with the provisions of this Law, may agree on the procedure for conducting the hearing by the arbitration court at their own discretion is reflected in the first paragraph of Article 34 of the Law of the Republic of Uzbekistan "On International Commercial Arbitration" (Reference of the Senate of the Oliy Majlis of the Republic of Uzbekistan No. 2 dated February 20, 2025). This proposal provided an opportunity for the parties to clarify the procedural rules relevant to international commercial arbitration;

The parties may agree on the language or languages to be used in the arbitration proceedings. In the absence of such an agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. The proposal that such an agreement or award, unless otherwise stipulated in them, shall also apply to any written application of a party, any hearing of the case and any arbitration award, decision or other communication of the arbitral tribunal is reflected in the first paragraph of Article 36 of the Law of the Republic of Uzbekistan “On International Commercial Arbitration” (Reference of the Senate of the Oliy Majlis of the Republic of Uzbekistan dated February 20, 2025 No. 2). This proposal opened the possibility of choosing the language to be used in the arbitration proceedings.

Approbation of research results. The research results were discussed at 1 international and 1 national scientific and practical conferences.

Publication of research results. A total of 10 scientific works have been published on the research topic, including 3 articles in HAC-recommended journals, 5 articles in foreign publications, and 2 papers in international and national scientific-practical conferences.

Structure and volume of the dissertation. The dissertation consists of an introduction, three chapters, a conclusion, and a list of references. The dissertation is 127 pages long (excluding the list of references).

MAIN CONTENT OF THE DISSERTATION

The introduction to the dissertation contains information on the relevance and necessity of the research topic, the correspondence of the research to the main priority areas of the development of science and technology of the republic, the level of study of the problem under study, the connection of the dissertation topic with the scientific research work of the higher educational institution where the dissertation is being conducted, the goals and objectives, object and subject of the research, methods, scientific novelty and practical result of the research, the reliability of the research results, the scientific and practical significance of the research results, their implementation, the approval of the research results, the publication of the results, the volume and structure of the dissertation.

The first chapter of the dissertation, entitled “Theoretical and methodological foundations of the significance of the principle of party autonomy in private international law,” analyzes the historical formation, development, and reflection of the principle of party autonomy in the legislation of various countries, the significance and expression of the principle of party autonomy in international commercial arbitration, and the limiting features of the principle of party autonomy. The principle of party autonomy is analyzed lexically and it is concluded that its basis is the will of the parties.

The researcher carefully studied the essence of the principle of voluntary autonomy, the specific aspects of its reflection in the legislation of different countries, and the development of the principle of voluntary autonomy, that is, the international documents that have contributed to its formation to this day, and analyzed their influence on the development of the principle.

The researcher discusses the nature of the choice of law by the parties, which constitutes the essence of the principle of voluntary autonomy, and analyzes two widespread requirements for the choice of law in the international arena:

The choice or agreement of the parties concerning the law does not require any connection or connection between the parties and the chosen law. The parties may, by exercising their will, agree to choose any law for their legal relations;

Requirement that the choice or agreement of the parties concerning the law must have a connection or connection between the parties and the chosen law.

The researcher discussed the above requirement and found that in countries that apply a civil law system, in particular in Argentina, Article 2655 of the Argentine Civil and Commercial Code requires that there be a reasonable connection between the parties and the law of the country they choose, Articles 9-11 of the Brazilian Code of Civil and Private International Law require that there be a connection between the parties and the law of the country they choose, and Article 24 of the Turkish Code of Private International Law also requires that there be a connection between the parties in their choice of law.

The researcher presents the views and opinions of a number of scholars (S.C.Symeonides, J.Walker, P.Nygh, A.Mills, R.Michaels, A.Briggs, Y.Nishitani, H.M.Watt, J.Basedow) who support the requirement of a connection between the parties and their choice of the law of the country they choose, analyzes their views and opinions, and enters into a discussion with them. In particular, it is concluded that the requirement of a connection in the choice of law prevents abuse of the principle of autonomy of the parties and the freedom of the parties to choose the law, and has a strong effect on preventing the parties from violating the interpretation of the public order of the country and protecting the rights of "weaker" parties.

Countries where there is no requirement of any connection between the parties and the choice of law they choose, the UK Rome I Rules allow the parties to freely choose the law of any country, Article 187 of the US Second Restatement of Conflicts of Law allows the parties to choose the law of any country that is not contrary to the public policy of the country, even if there is no connection between the parties, and French and German law also do not impose any restrictions on the

choice of law on the parties based on Article 3 of the Rome I Rules.

The researcher studied and discussed the opinions of a number of scholars who support this requirement (F.K.Juenger, G.Born, J.Klabbers, A.Bonomi, M.Wilderspin). The Rome I Rules (Article 3), which do not require any connection between the parties and their agreement on the law, and the Hague Convention on the Choice of Law in International Commercial Contracts (Article 2), were also studied and analyzed.

The researcher also discusses the Legislation of the Republic of Uzbekistan on the choice of law and notes that Article 1189 of the Civil Code of the Republic of Uzbekistan states that the parties may choose the law of any foreign country for their contractual relations and that the legislation does not require that the choice of law be subject to the law of the country being chosen. However, in practice, it is discussed that the parties may come to restrictions on the choice of law based on the interpretation of the Republic of Uzbekistan on public order and the requirements of mandatory provisions of law.

The second chapter of the dissertation is entitled “**Analysis of the expression of the principle of party autonomy in contractual relations**”, which analyzes issues such as the choice of law by the parties based on agreement, the autonomy of the parties in arbitration agreements, and the experience of foreign countries in applying the principle of autonomy in private international law.

The researcher assesses the basis of the principle of party autonomy as the ability of the parties to independently choose the law and the will of the parties in choosing the law is reflected in their agreements. The researcher believes that the autonomy of the parties arises when the parties reach an agreement on the choice of law. In this, the dissertation, in discussion with a number of scholars (S.C.Symeonides, J.Kropholler, A.Briggs, J.Basedow), shows that the will of the parties regarding the law is expressed in their agreements and that the agreement of the parties serves as the basis for the emergence of the principle of their autonomy of will.

The researcher analyzes the parties' choice of law in the agreement on the choice of law and discusses whether the choice of law can be chosen by the parties in an open and transparent manner or whether the parties can refer to the law.

The researcher discusses the idea of a number of scholars, in particular Dicey, Morris & Collins, in their book on the code of private international law, that the parties' agreement on law should be expressed clearly and openly. Also, the opinions of S.C.Symeonides, J.Kropholler, F.K.Juenger, P.Nygh on the open expression of the parties' agreement on law are analyzed.

The parties can choose not only the law, but also the courts based on their autonomy. It is suggested that the agreement of the parties on the choice of courts may be expressed in their agreement on the law or the parties may conclude an agreement on the choice of courts.

The researcher discusses exclusive and non-exclusive agreements and considers exclusive agreements to be “closed” agreements, while non-exclusive agreements to be “open” agreements. An exclusive agreement of the parties is the most unanimous agreement of the parties on the choice of court, and such an

agreement does not allow the parties to resolve disputes in courts other than those specified in the agreement. A non-exclusive agreement, on the other hand, includes the agreement of the parties on the law and the court, but this agreement of the parties is not considered a unanimous final agreement. Agreements of this type leave the parties the opportunity to consider disputes in other courts if a dispute arises between them. The dissertation concludes that the adoption of non-exclusive agreements in this category creates broader opportunities for the parties and has a positive impact on the implementation of agreements between the parties.

The researcher studies the autonomy of the parties in international commercial arbitration and considers it to be the area where the autonomy of the parties is most widely expressed and where the parties have absolute autonomy. It is in international commercial arbitration that the parties can exercise it in the most unrestricted manner.

The third chapter of the dissertation is entitled **“Prospects for the application of the principle of autonomy of will in improving international commercial arbitration in Uzbekistan”**, in which the researcher studied and covered the legislation and legal practice of such countries as Germany, the USA, Sweden, Japan, Great Britain, the Russian Federation, Kazakhstan. The dissertation discusses the development of private international law rules and the principle of autonomy of will in the Republic of Uzbekistan in three stages. The first stage is considered to be the stage before the independence of the Republic of Uzbekistan, in which it is emphasized that private international law rules did not develop due to the limited international relations. The second stage is the stage after the independence of the Republic of Uzbekistan until the 2000s. In this, the legislative system was formed in the Republic of Uzbekistan, and the private international law rules and the principle of autonomy of will were recorded in the Civil Code of the Republic of Uzbekistan.

The next stage is the period of formation of the laws of the Republic of Uzbekistan and their reformulation based on the requirements established by the world community. During this period, the adoption of laws on private international law in the Republic of Uzbekistan and the signing of international instruments on private international law are the stages of development of private international law legislation.

The dissertation emphasizes the need to improve the legislation of the Republic of Uzbekistan on private international law.

It is also proposed that the rules of private international law of the Republic of Uzbekistan should include rules for intellectual contracts, which are a new phenomenon in private international law.

The researcher emphasizes that private international law legislation should contain an explanation of the principle of autonomy of will, as well as an explanation of the public order of the country and an explanation of strict norms of law.

The dissertation also concluded that a detailed explanation by the legislature of the issues of applying the law of countries with multiple legal systems would further improve the country's private international law legislation.

CONCLUSION

As a result of a scientific study devoted to a comprehensive study and analysis of the issues of improving the legislation of the Republic of Uzbekistan on private international law, the following scientific-theoretical and legislative proposals and conclusions were developed:

I. Scientific-theoretical conclusions:

1. Private international law is a separate area of law with a complex nature, regulating the set of relations complicated by the foreign element of the norms of national legislation, civil law, family law, labor law, civil procedural law, economic procedural law, as a specific method.

2. The principle of autonomy of will is a principle that expresses the central part of private international law. The principle of autonomy of will is a principle that determines the existence of a contractual relationship between the parties, their rights and obligations for their contractual relationship. Based on this principle, the parties can choose the law that will regulate their contractual relationship.

3. There are different views on the emergence and development of the principle of autonomy of will. Some jurists believe that the emergence of the principle dates back to Ancient Egyptian law, while others associate it with Ancient Roman law. The development of the principle to the form we understand today in private international law took a very long time. European, in particular French and German, legal scholars have made a greater contribution to the development of the principle of autonomy of will. In particular, the ideas of the French scholar Dumoulin and the German jurist Frederick Von Savigny served to grow ideas about autonomy of will. By the 20th century, the principle of autonomy of will began to be recognized by jurists as a separate independent principle of private international law. In particular, the jurist Wilhelm Haudek puts forward the idea that the principle of autonomy of will is an independent principle of private international law and is not part of the principle of freedom of contract. By the 21st century, the principle of self-determination has begun to be recognized in the legislation of countries around the world and in international documents. In particular, the following documents set out the principle of self-determination and its essence.

4. 1986 Convention on the Law Applicable to Contracts for the International Sale of Goods (Articles 7-8), 1980 Rome Convention on the Choice of Law in Contractual Obligations (Article 5), 2008 Rome I Rules on the Choice of Law in Contractual Obligations (Articles 3-4-5), 1994 Inter-American Convention on the Choice of Law in International Contracts (Mexico City Convention) (Articles 2-7).

5. International commercial arbitration is the most common method of alternative dispute resolution in private international law. The basis for the consideration of disputes in arbitration is the agreement of the parties to arbitration and the existence of the nature of their issues to be resolved in arbitration. In order for disputes to be considered in international commercial arbitration, first of all, the

relations of the parties must be suitable for arbitration. In particular, Article 2 of the New York Convention introduces the rule that when concluding an arbitration agreement, the parties must have the nature of their relations to be resolved in arbitration. Naturally, the parties cannot conclude an arbitration agreement on any relations. Since competition regulation issues have acquired a public nature, it is not inherent in the generally accepted nature of international commercial arbitration to agree to resolve this issue in international commercial arbitration. Competition issues are outside the scope of international private law and international commercial arbitration.

6. The freedom of the parties in private legal relations complicated by a foreign element does not lead to the conclusion that their rights are not completely limited. Even if the parties enter into free relations in private international legal relations based on their will, there are factors that limit their will. These are the interpretation of the public policy of the country and the strict norms of law. When the interests of the parties conflict with the interpretation of the public policy of the country and the strict norms of law, the rights of the parties are limited. After all, Article 4 of the Rome I Rules contains a statement that no agreement or rule can prevent the application of the interpretation of the public policy of the country and the strict norms of law. The parties cannot agree to bypass the interpretation of the public policy of the country and the strict norms of law or not to apply these rules when these two factors conflict with their interests, and their similar agreement is also not valid.

7. The parties may by agreement choose the law applicable to their contractual relations. The parties may agree on the choice of law in their main contract or conclude an agreement on the choice of law separately. The parties may by agreement choose the law for the entire contract or for its individual parts. The parties may choose the law at any time before a dispute arises between them or after the dispute has arisen.

8. The parties' agreement on arbitration shall be the basis for initiating international commercial arbitration proceedings in private international law. An arbitration agreement concluded on the basis of the mutual consent of the parties shall be considered valid.

9. The possibility of the parties to choose a separate law for parts of international commercial contracts, based on the content of the contract, was first put forward by French lawyers. When the parties are negotiating a contract, in order to create convenience for the parties, based on the specific nature of the parts of the contract, the choice of a separate law for parts of the contract contributes to increasing the parties' interest in the performance of the contract. The possibility of the parties to choose a law based on agreement also serves to make the terms of the contract as beneficial as possible for the parties, and to make the performance of the contractual obligations convenient for both parties. The possibility of the parties to choose a separate law for parts of the contract serves to give the parts of the contract independent significance and to increase the parties' interest in the contractual relationship and the performance of the contract.

10. Computerized algorithms that automatically execute the terms of a

contract are “smart” contracts. “Smart” contracts have now become a reality in private international law. The computerized nature of “smart” contracts and the automatic execution feature lead to the growth of their use. “Smart” contracts cannot be free from the rules of private international law. The requirements for traditional contracts should also be applied to them. Primavera De Filippi considers “smart” contracts to be programs that provide automatic execution of legal agreements using digital devices. The choice of law differs in both fully automated and semi-automated (Ricardian) types of “smart” contracts. The semi-automated type of contract is not much different from traditional contracts in its characteristics. In them, the parties can make their own choice of law.

II. The following suggestions and recommendations for improving legislative documents:

1. Private international law is an independent and distinct branch of national legislation that encompasses rules from various areas such as civil law, family law, labor law, civil procedural law, and economic procedural law. The adoption of the Law of the Republic of Uzbekistan “On the Rules of Private International Law”, which fully reflects the norms of this legal field, would lead to the consolidation and effective functioning of all relevant rules within this domain.

2. This Law shall be based on the principles of party autonomy of participants in legal relations, the prohibition of arbitrary interference in the exercise of such autonomy, and the requirement that parties to civil-law relations involving a foreign element act in good faith, reasonably, and fairly;

3. The principle of autonomy of will is a central principle of private international law. This principle should be included in the Civil Code of the Republic of Uzbekistan as a central principle of private international law in the General Rules section of the section on the application of private international law norms to civil legal relations as a separate article as follows:

The parties to private international law relations may, by agreement, choose the law applicable to their relations.

The choice of the parties by agreement may be expressed expressly or may be understood from all the features of the parties' contracts.

The parties may, by agreement, choose the law applicable to the entire contract or to its parts, as well as to choose another rule of law for parts of the contract.

In cases where a choice of law norm is permitted, the substantive legal norms of the chosen law shall apply, unless the parties have agreed otherwise.

4. In private international law, party autonomy is limited when it conflicts with the public order of the country. A similar provision is included in the Civil Code of the Republic of Uzbekistan. However, this provision does not define the concept of public order of countries. Therefore, introducing a clear definition of the concept of public order of countries in this article would serve to supplement and clarify it.

Public order of a country refers to the system of rules maintained by the state

government in the interest of the public. When referring to the public order of the Republic of Uzbekistan, it means the fundamental principles that protect public interests as established by the constitutional foundations of the social structure of Uzbekistan, the Constitution of the Republic of Uzbekistan, and other laws.

5. When the parties' freedom of will contradicts the strict norms of law in private international law, the parties' freedom of will is limited. The Civil Code of the Republic of Uzbekistan also contains a provision on the limitation of the parties' freedom of will when it contradicts the strict norms of law in the article. However, this article does not provide any explanation or explanation of what the strict norms of law are. The following explanation of the strict norms of law in this article serves to supplement this article:

The strict norms of law are the legal norms that are applied to regulate the contractual relations of the parties, regardless of the existence of an agreement between the parties on the law. Nothing can prevent the application of the strict norms of law to the relations of the parties, and the agreement of the parties not to follow these norms is invalid. 6. Article 1190 of the Civil Code of the Republic of Uzbekistan contains a provision on the application of law in the absence of an agreement of the parties. However, this article does not contain a provision on how the law is applied in the absence of an agreement on the law of the parties to a complex business license (franchise) agreement. The inclusion in this article of a provision on the application of the law of the licensor's location in the absence of an agreement on the law of the complex business license agreement serves to supplement this article.

6. Article 12 of the Law of the Republic of Uzbekistan "On International Commercial Arbitration" contains a definition and form of arbitration agreements. It is considered appropriate to add to this article an explanation that the parties may conclude an arbitration agreement based on relations that are actually subject to arbitration, as specified in Article 2 of the New York Convention.

7. The principle of autonomy of will is a central principle of private international law. This principle reflects the most important features of private international law. Therefore, it is considered appropriate to teach the subject of the principle of autonomy of will within the framework of the subject of private international law at the Tashkent State Law University and to include a separate subject on autonomy of will in textbooks on private international law.

**НАУЧНЫЙ СОВЕТ DSc.07/30.12.2019.Yu.22.01 ПО
ПРИСУЖДЕНИЮ УЧЕНЫХ СТЕПЕНЕЙ ПРИ ТАШКЕНТСКОМ
ГОСУДАРСТВЕННОМ ЮРИДИЧЕСКОМ УНИВЕРСИТЕТЕ**

**ТАШКЕНТСКИЙ ГОСУДАРСТВЕННЫЙ ЮРИДИЧЕСКИЙ
УНИВЕРСИТЕТ**

ХАТАМЖОНОВА ГУЛЬСАНАМ ЯШАРЖОН КИЗИ

**ПРИНЦИП АВТОНОМИИ СТОРОН В МЕЖДУНАРОДНОМ
ЧАСТНОМ ПРАВЕ И ЕГО ОГРАНИЧИТЕЛЬНЫЕ ЧЕРТЫ**

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АВТОРЕФЕРАТ
диссертации доктора философии (PhD) по юридическим наукам

Тема диссертации доктора наук (Doctor of Philosophy) зарегистрирована Высшей аттестационной комиссией при Министерстве высшего образования, науки и инноваций Республики Узбекистан за № В2022.4.PhD/Yu872

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Ведущая организация:	Академия правосудия при Высшем судебном совете Республики Узбекистан

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С диссертацией можно ознакомиться в Информационно-ресурсном центре Ташкентского государственного юридического университета (зарегистрировано за № 1288). (Адрес: 100047, г. Ташкент, ул. Амира Темура, 13. Тел.: (99871) 233-66-36).

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ВВЕДЕНИЕ (аннотация диссертации доктора философии (PhD))

ВВЕДЕНИЕ (аннотация диссертации доктора философии (PhD))

Цель исследования. Заключается в разработке научно обоснованных выводов и рекомендаций посредством определения принципа автономии воли в международных частноправовых отношениях и научной характеристики точных границ факторов, ограничивающих принцип автономии воли применительно к гражданско-правовым отношениям, осложненным иностранным элементом.

Объектом исследования являются общественные отношения, связанные с автономией свободного волеизъявления сторон в международном частном праве, а также с основаниями применения его ограничений.

Научная новизна исследования заключается в следующем:

обосновано, что в международный коммерческий арбитраж по соглашению сторон могут передаваться споры, возникающие из всех отношений коммерческого характера, как договорных, так и не договорных;

обосновано, что арбитражное соглашение может быть заключено в виде арбитражной оговорки в договоре или в виде отдельного соглашения;

обосновано, что стороны могут по своему усмотрению договориться о процедуре ведения разбирательства арбитражным судом;

обосновано, что стороны могут по своему усмотрению договориться о языке или языках, которые будут использоваться в арбитражном разбирательстве, в отсутствие такой договоренности арбитражный суд определяет язык или языки, которые должны использоваться при разбирательстве.

Внедрение результатов исследования. На основе научных результатов, полученных в ходе исследования принципа автономии воли (party autonomy) в международном частном праве и его ограничительных особенностей:

предложение о том, что в международный коммерческий арбитраж по соглашению сторон могут передаваться споры, возникающие из всех отношений коммерческого характера, как договорных, так и не договорных, отражено во второй части статьи 4 Закона Республики Узбекистан «О международном коммерческом арбитраже» (Акт Сената Олий Мажлиса Республики Узбекистан № 2 от 20 февраля 2025 года). Данное предложение способствовало определению круга споров, относящихся к международному коммерческому арбитражу;

предложение о том, что арбитражное соглашение может быть заключено в виде арбитражной оговорки в договоре или в виде отдельного соглашения отражено в первой части статьи 12 Закона Республики Узбекистан «О международном коммерческом арбитраже» (Акт Сената Олий Мажлиса

Республики Узбекистан № 2 от 20 февраля 2025 года). Данное предложение послужило расширению свободы сторон при заключении арбитражного соглашения;

предложение о том, что стороны могут по своему усмотрению договориться о процедуре ведения разбирательства арбитражным судом отражено в первой части статьи 34 Закона Республики Узбекистан «О международном коммерческом арбитраже» (Акт Сената Олий Мажлиса Республики Узбекистан № 2 от 20 февраля 2025 года). Данное предложение предоставило возможность определения сторонами процессуальных правил, относящихся к международному коммерческому арбитражу;

предложение о том, что стороны могут по своему усмотрению договориться о языке или языках, которые будут использоваться в арбитражном разбирательстве, в отсутствие такой договоренности арбитражный суд определяет язык или языки, которые должны использоваться при разбирательстве, отражено в первой части статьи 36 Закона Республики Узбекистан «О международном коммерческом арбитраже» (Акт Сената Олий Мажлиса Республики Узбекистан № 2 от 20 февраля 2025 года). Данное предложение послужило обеспечению возможности выбора сторонами языка, применяемого в арбитражном разбирательстве, на основе соглашения.

Структура и объем диссертации. Структура диссертации состоит из введения, трех глав, заключения, списка использованной литературы. Объем диссертации составляет 127 страницы (без учета списка использованной литературы).

E'LON QILINGAN ISHLAR RO'YXATI
LIST OF PUBLISHED WORKS
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I bo'lim (I часть, I part)

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II bo'lim (I часть, I part)

9. Xatamjonova G.Y. Xalqaro xususiy huquqda erk muxtoriyati (party autonomy) prinsipining amalga oshirilishida xalqaro tijorat shartnomalarida tanlov huquqi yuzasidan Gaaga prinsiplari ahamiyati// Kasbiy rivojlanishda professional kompetensiyalarning roli va o'rni xalqaro ilmiy-amaliy konferensiya (Ch.2, volume 3, pp. 45-49).

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