Settling cross-border disputes of a private law nature as part of the legal regulation mechanism

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Private legal relations with a foreign element require specific legal regulation, highlighting the immediate need for an effective resolution mechanism. The article explores the interconnection and interaction of the various components within the legal regulation mechanism, which is conceptualized as a complex and multifaceted system. This system encompasses the rule-making, the implementation of legal rules and the utilization of state coercion in instances of non-compliance. The authors made an effort to determine the distinct features of the settlement process for cross-border disputes of a private law nature, which constitutes an essential component of the legal regulation mechanism. The article consistently covers the challenges that arise when law enforcement officers address the international treaties and customs, select an appropriate legal order and apply foreign law if conflicts-of-laws rule refers to it. Particularly, such institutions of private international law as "the problem of qualification of legal concepts", "remission" and "transmission", "preliminary question" were analyzed. Special emphasis is given to the challenges encountered by law enforcement officers when determining the content of foreign law, which has been chosen as applicable following the resolution of a conflict of laws. Despite the various methods offered by the legislator to determine the content of foreign law, practical evidence reveals persistent challenges arising from the ambiguity surrounding their sequence and extent of application. In certain instances, the application of foreign law may be accompanied by substantial limitations, either due to their inapplicability based on the contradictions with the public order of the state, or the existence of directly applicable rules of a super-imperative nature in the law of the court's country.

Keywords: private law disputes, foreign element, mechanism of legal regulation, conflict-of-laws rule, qualification of legal concepts, remission, foreign law, public order clause.

1. Introduction

In contemporary sociolegal contexts, social relations have undergone a considerable intensification. The current trend is apparent through the constant quantitative rise in various social relationships, their gradual complexity, and the emergence of qualitatively new forms. For cross-border legal relations in the private legal sphere, a specific legal regulation is required to cover its elements and structures in their interconnection.

In an environment that is constantly changing, there is a significant need for a constant, comprehensive, and conceptually sound improvement of the legal regulatory mechanism. This is necessary for the re-evaluation of various forms of legal influence and their

strict compliance with progressive constitutional principles, international rules and principles, developing rights and freedoms, and multifactorial social expectations (Seniakin, Rep'ev, Torchilin 2022, 272).

As noted by V. O. Mironov and N. V. Zin, "acquiring an understanding of the mechanism of legal regulation is crucial to determine the legal means and methods utilized for the optimization of societal relationships. The analysis of the mechanism of legal regulation provides insight into how legal rules are translated into the legitimate behavior of its subjects, the various stages in this progression, and so forth" (Mironov, Zin 2020, 80).

The explanation of the legal regulation mechanism is offered as a systematic and organized assortment of legal techniques, methods, and tools that exert influence on public relations, with the ultimate goal of converting the legal norm into legitimate behavior among citizens. V. Iu. Ratnikov proposes the inclusion of a dynamic force feature in the definition of a legal regulation mechanism. The mechanism, being the primary representation of legal reality, initiates a process of motion for the complete legal system, without which its existence and development would not be possible (Ratnikov 2022, 192).

As V. M. Syrykh rightly notes, "to achieve a precise understanding of the legal regulatory mechanism's ability to function in its role, it is essential to thoroughly assess all of its components, as well as take into account their relationships and interactions. The mechanism of legal regulation, which comprises legal means, entities involved in legal regulation or legal activities, and legally significant outcomes of their actions, can be deemed as a complex system due to the methodological demands. Concurrently, the integrated mechanism of legal regulation, aligning with the stages of legal regulation, is partitioned into three constituents: the mechanism of rule-making, the mechanism of implementation of legal rules and the mechanism of state coercion" (Syrykh 1998, 146).

2. Basic research

The legal regulation mechanism of private legal relations with a foreign element entails identical components, yet each component has unique characteristics due to the international nature of these relations. The relations are interlinked with multiple legal systems, each regulating the relations differently.

The rule-making, as a crucial aspect of the legal regulatory mechanism, encompasses the development of a specific set of legal rules that establish the groundwork for resolving and implementing diverse legal relationships. Owing to the features of the object of private international law, comprising private legal relations with a foreign element, the scope of legal rules required to govern such relations is broadened through the incorporation of unified material and conflict-of-laws rules of international origin, coupled with domestic conflict-of-laws rules. It is through specific rules such as conflict-of-laws ones that the challenge of choosing applicable law in the context of applying relevant law to resolve a particular private issue on the merits is overcome.

The making of conflict-of-laws rules is an extremely complex and multifaceted task. The distinctive legal nature and configuration of these rules necessitate that the legislator possess specialized legal drafting expertise, a comprehensive grasp of conflict-of-laws principles and meticulous attention to detail.

It is a well-known fact that any given phenomenon is characterized by both form and content, which are inherently intertwined. Generally speaking, the content tends to dic-

tate the form, although the opposite may also hold true. Thus, it follows that the definition of any given phenomenon must integrate both meaningful and formal features while also encompassing the properties that emerge from this relationship (Zav'ialova, Lebedeva 2021, 113).

The complexity of private legal relations with a foreign element is attributed to the conflict-of-laws rule, which is structured with elements like scope and connecting factor. Most scholars in the field of private international law agree that the regulation of such relations falls under the legal order of two or more states with appropriate legal systems (Kuznetsov 2019; Tikhinia 2014; Nikitashina 2017; Lunts 2002; Boguslavskii 2010; Anufrieva 2000). Meanwhile, several scholars hold the belief that the arrangement of the conflict-of-laws rule should be evaluated in terms of the three-link structure of the traditional legal rule (Zav'ialova, Lebedeva 2021; Shesteriakova 2012).

Our perception is that the reasoning behind developing a conflict-of-laws rule requires only scope and one or more guidelines for choosing the applicable law. Regrettably, Russian legislation features examples of conflict-of-laws rules with imperfect structure in their formulation. To provide an illustration, a specific phrasing in para. 1 of Art. 1209 of the Civil Code of the Russian Federation (part three) No. 146-FZ dated November 26, 2001[1], is as follows: "The form of the transaction is subject to the law of the country to be applied to the transaction itself. However, the transaction cannot be invalidated due to non-compliance with the form, if the requirements of the country of the place of transaction to the form of transaction are met". In this instance, the first sentence pertains to the scope — "the form of the transaction", while the second one addresses another scope — "the invalidity of the transaction". The consolidation of several scopes related to various civil law institutions into one conflict-of-laws rule could potentially result in challenges in the implementation and application of conflict-of-laws rules.

The creation of conflict-of-laws rules can be simplified when the legislator is guided in their diversity and differentiation, based on specific grounds. Despite the multitude of proposed options for classification, there remains a lack of consensus.

Upon analyzing the features and diversity of various conflict-of-laws rules (Aleshina, Kosovskaia 2008; 2011; 2022), the authors have determined that, excluding the classification criterion of the source of their consolidation (which separates them into international and domestic), the remaining criteria solely arise from the peculiarities of the connecting factors, because this issue stems directly from the essence of a conflict-of-laws rule, namely the choice of the applicable law, which can be determined through various means and established in the connecting factor(s) of the conflict-of-laws rules. The scope of the conflict-of-laws rule, which specifies the legal relationship that necessitates identifying the applicable law, does not have a significant impact on classification. The notion of a bilateral conflict-of-laws rule, whereby the utilization of domestic or foreign law is contingent upon the substance of the relationship and current circumstances, is inherent to the nature of private international law. The legislator categorizes a particular set of conflict-of-laws rules as unilateral, as a specific range of legal issues necessitate clear application of domestic law to protect the state's security, the interests of individuals, the preservation of human rights and freedoms, among others (para. 3 of Art. 1197, Art. 1200 of the Civil Code of the Russian Federation).

[1] Hereinafter all references to Russian normative legal acts are provided according to the SPS "Consul'tantPlius". Accessed November 6, 2024. http://www.consultant.ru.

The most common criterion for classifying conflict-of-laws rules, which is agreed on by most scientists (V. P. Zvekov, V. V. Gavrilov, L. P. Anufrieva, G. Iu. Fedoseeva, V. L. Tolstykh, I. V. Get'man-Pavlova, G. K. Dmitrieva and others), is the form of connecting factor, based on which unilateral conflict-of-laws rules, whose connecting factor explicitly refers to the law of the country to be applied, and bilateral ones, whose connecting factors, without indicating the law of a particular state to be applied, formulate the general principle of the choice of applicable law referred to in private international law as the attachment formula — *lex fori*, *lex voluntatis, lex rei sitae*, etc.

As previously indicated, there could be one or more options for choosing the applicable law, whereby conflict-of-laws rules are categorized as either simple (comprising of one scope and one connecting factor) or complex (encompassing one scope and multiple connecting factors). An example of a simple conflict-of-laws rule is Art. 1208 of the Civil Code of the Russian Federation: "The limitation period is determined by the law of the country to be applied to the relevant relation". A complex conflict-of-laws rule can be exemplified by Art. 1201 of the Civil Code of the Russian Federation: "The right of an individual to engage in entrepreneurial activity without the formation of a legal entity as an individual entrepreneur is determined by the law of the country where such an individual is registered as an individual entrepreneur. If this rule cannot be applied in view of the absence of mandatory registration, the law of the country of the main place of business shall apply".

The opportunity provided by the legislator to settle a legal relationship through one legal order or by choosing from several options for applicable law is closely linked to the classification of conflict-of-laws rules by "the form of expression of the will of the legislator fixed in the connecting factor(s) of the conflict-of-laws rule". Concerning the classification of conflict-of-laws rules using this criterion, multiple viewpoints have been established in the science of private international law. Some authors make a distinction between conflict-of-laws rules that are imperative and dispositive (M. M. Boguslavskii, V. L. Tolstykh and others), whereas others identify alternative conflict-of-laws rules in addition to the above-mentioned ones (L. P. Anufrieva, G. K. Dmitrieva, V. L. Gavrilov, T. N. Neshataeva, G. Iu. Fedoseeva and others).

The imperativeness involves the consolidation of categorical prescriptions by the legislator regarding the choice of law, which is not subject to change at the discretion of the parties to a private legal relation (for instance, para. 1 of Art. 1197, Art. 1207 of the Civil Code of the Russian Federation, etc.). The dispositive nature of the connecting factor of conflict-of-laws rule is made evident through the parties' option to choose the applicable law at their own discretion. Should there be no such option available, the regulations for choosing the applicable law as set forth in this provision will be applied (para. 1 of Art. 1213, Art. 1223.1 of the Civil Code of the Russian Federation, etc.).

Regarding alternative conflict-of-laws rules, which are considered, according to the established opinion in the science of private international law, rules that contain several regulations for choosing the applicable law enshrined by the legislator within the rules themselves, it is imperative to mention the following.

The alternative nature of a conflict-of-laws rule denotes the mandatory presence of multiple regulations for choosing the applicable law, which may be either equivalent in essence or, as per certain scholars (G. K. Dmitrieva, I. V. Get'man-Pavlova and others), interrelated in some way. Nevertheless, the term "alternative conflict-of-laws rule" is only

valid if the regulations for choosing the applicable law established by the legislator in the connecting factor of the conflict-of-laws rule are comparable to each other. This is the essence of the alternative, i. e. the ability to choose the applicable law from the available options. In the case of subordination between these regulations, one may talk about the legal regulation, which is expressed through the application of one or another regulation governing the choice of an appropriate legal order based on the conditions that are explicitly specified by the legislator. The primary (general) regulation governing the choice of law is consistently applied, with the secondary (subsidiary) regulation being applied only when the primary one fails to apply for some reason.

By way of illustration of an alternative conflict-of-laws rule, we consider it appropriate to mention para. 1 of Art. 1221 of the Civil Code of the Russian Federation, which states that "the claim for compensation for harm caused due to defects in the goods, work or service at the choice of the victim is subject to:

— the law of the country where the seller or manufacturer of the goods or other doer of harm has a place of residence or the main place of activity;

— the law of the country where the injured party has a place of residence or the main place of activity;

— the law of the country where the work was performed, the service was provided or the law of the country where the goods were purchased".

Therefore, the categorization of a conflict-of-laws rule as an alternative is possible only if there exist multiple comparable regulations for choosing the applicable law that are legally recognized as binding, and any of which can be chosen as the decisive one for governing the corresponding relation. When the connecting factors subordinate to each other and are closely related according to conditions set by the legislator, they fall under the category of "conflict-of-laws rules with subordinate connecting factors" as stated in Art. 1199 (3) and Art. 1201 of the Civil Code of the Russian Federation.

Although the matter has a theoretical aspect, it is noteworthy for its practical relevance. Adequate reflection of various conflict-of-laws rules in regulatory sources enables the most comprehensive realization of the rights of subjects of private legal relations with a foreign element.

In contrast to the rule-making process within individual states, the establishment of regulations governing cross-border private legal relations at the international level arises from the harmonization of the will of states, which is enshrined in international treaties and customs.

As E. M. Deriabina notes, "the fundamental legal nature of a treaty is that of conciliation, which is why in the context of international treaties, the parties involved express their will and agreement with each other. International customs are distinguished by multiple features, namely their dual role as sources of public and private law. Through practice, a normative content of the custom has been formed along with its legal obligation, thus enabling its recognition as a legal force" (Deriabina 2012, 10).

The implementation of legal rules necessitates the engagement of a vast range of subjects who, guided by regulatory provisions, interpret them into specific legal relations, or avoid performing prohibited activities. The inclusion of a foreign element in private legal relations expands their scope beyond the "common" implementation of legal rules typical of relations formed within a single state. Given that cross-border relations necessitate the application of material rules of international origin or unified or domestic conflict-of-laws

rules for their regulation. Therefore, the marriage of citizens from different nationalities in the Russian registry office may be governed by various legal orders. As an illustration, in compliance with Art. 156 of the Family Code of the Russian Federation No. 223-FZ dated December 29, 1995, the law of the Russian Federation applies to the form and procedure for marriage, and the law of the country of citizenship of both persons entering into marriage applies to the conditions of marriage. Numerous foreign economic transactions, in turn, in most cases, can be governed by the provisions of international agreements (for example, the United Nations Convention on Contracts for the International Sale of Goods[2] (Vienna, 1980), International Convention for the Unification of Certain Rules of Law relating to Bills of Lading[3] (Brussels, 1924), etc.) or international customs (for example, International Rules for the Interpretation of Trade Terms, Uniform Customs and Practice for Documentary Credits, etc.).

As V. M. Syrykh rightly notes, "legal regulation, under normal circumstances, fully depletes itself as a tool for enforcing the law. Nonetheless, the occurrence of violations in society, actions that defy legal rules, mandates the presence of a justified mechanism for state coercion" (Syrykh 1998, 151).

In the event that at least one participant of a cross-border legal relation fails to comply with regulatory provisions or commits a tort, the primary concern is determining the appropriate body — whether it be jurisdictional or non-jurisdictional — for the parties to approach in order to resolve the dispute. Participants of foreign economic activity can choose to resolve disputes through international commercial arbitration, a non-legal alternative method of dispute resolution, as opposed to solely relying on state courts (a jurisdictional method). International commercial arbitration is an arbitration court that is created or elected by the parties themselves, based on their voluntary will as expressed through an arbitration agreement. Among extrajudicial methods of settling international commercial disputes, such as conciliatory procedures, mediation and mini-courts, international commercial arbitration most closely aligns with the judicial method in its aims, principles, and dispute resolution procedures (Davydenko 2013, 19).

The settlement of cross-border disputes within the state court system is unattainable without establishing international jurisdiction. In other words, it's imperative to determine which state courts are authorized to address the contested matter.

International jurisdiction serves to differentiate the judicial systems of various states. Initially, it does not establish the competency of a particular court such as generic or territorial jurisdiction, but rather establishes the jurisdiction of the state as a whole. The recipient of the rules of this institution is the state, given that it obtains the authority to administer justice through them (Smirnov 2019, 43).

Given that the judiciary is entirely responsible for settling disputes from beginning to end, the legislator must possess a diverse set of skills to apply international agreements of varying degrees, determine the appropriate legal system to handle the dispute, comprehend foreign law, and its impact on implementation. Apart from these problems, judges face numerous others, such as establishing the jurisdiction of a dispute, assessing the legal

[2] "The United Nations Convention on Contracts for the International Sale of Goods (1980)". *UNCITRAL*. Accessed November 6, 2024. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09951_e_ebook.pdf.

[3] "International Convention for the Unification of Certain Rules of Law relating to Bills of Lading (1924)". *UK Parliament*. Accessed November 6, 2024. https://api.parliament.uk/uk-treaties/treaties/9477.

capacity of foreign persons involved, and making decisions on recognizing and implementing foreign court decisions in the Russian Federation.

It is important to bear in mind that, in regulating such relations, prioritizing the use of unified material rules over conflict-of-laws ones is imperative. Therefore, the judges are faced with the task of checking the availability of relevant international sources. It is crucial to note that applicable material rules may be present in not only the international treaties of the Russian Federation, but also international customs acknowledged by our country and extensively utilized in specific domains of private international law. As an illustration, the Merchant Shipping Code of the Russian Federation No. 81-FZ dated April 30, 1999 (para. 2 of Art. 285), which characterizes the expenses and contributions arising from the conveyance of goods as general average losses, necessitates consulting the York-Antwerp Rules, as well as other global practices of merchant shipping, to calculate the amount of such losses and allocate them among co-participants of a common maritime adventure.

The absence of unified material rules necessitates the involvement of law enforcement agencies to address conflict-of-laws issues by choosing an appropriate legal order.

According to the Ruling No. 24 of the Plenary Session of the Supreme Court of the Russian Federation on the Application of the Norms of International Private Law by the Courts of the Russian Federation dated July 9, 2019, in cases where conflicts of laws arise from an international treaty of the Russian Federation, particularly in a multilateral or bilateral agreement on legal assistance, the court is obliged to be guided by the provisions of the international treaty when determining the applicable law. Otherwise, the judge refers to national conflict-of-laws rules.

The implementation of conflict-of-laws rules may present challenges due to diverse interpretations of legal concepts and categories, as well as variations in conflict-of-laws rules across different state legislations. According to the science of private international law, the problem of qualification, remission and transmission, a preliminary question relate to such challenges.

The law enforcement officers may face the necessity of clarifying legal concepts and categories early on in the process of selecting and applying the appropriate conflict-of-laws rules. This is because the terms and concepts within their scope and connecting factors, which are interpreted differently in various legal systems, require precise clarification for the most accurate dispute resolution.

Analyzing possible ways to solve the problem of qualification, V. A. Kanashevskii points out that "the primary principle is that the legal qualification of the legal concepts of the conflict-of-laws rules under the court law (*lex fori*) frequently hinders the court from legally resolving a dispute when encountering institutions that lack counterparts in the domestic legal system. In this case, it is imperative for the court to qualify legal concepts under the law governing the substance of the relations (*lex causae*) in order to ensure a fair resolution of the case. When it comes to autonomous qualification, courts inadvertently rely on it. Notwithstanding a notable deceleration in worldwide unification endeavors, it is the autonomous qualification that holds potential as a mechanism for addressing conflicts of qualifications" (Kanashevskii 2021, 45).

The emergence of private international law has led to challenges in the application of conflict-of-laws rules, particularly concerning renvoi ("sending back" in French) — remission and transmission. These challenges arise from disparities in the regulation of the same private legal relations across different legal systems.

If a domestic conflict-of-laws rule is specified within the legal system of a foreign state in its entirety, the conflict rule of the latter may, under certain factual circumstances, necessitate the application of both the law of the country where the court is located and the law of a third state. It is possible to create an endless sequence of conflict-of-laws rules, resulting in renvoi of varying degrees. Despite the ongoing discussions in the science of private international law about the reasonableness and effectiveness of recognition or non-recognition of renvoi, in our opinion, the most balanced is the position of the Russian legislator who enshrined the general rule on non-recognition of transmission in para. 1 of Art. 1190 of the Civil Code of the Russian Federation, providing in para. 2 of this article the possibility of its recognition when determining the legal status of an individual.

It is also necessary to address the issue known as the preliminary question in the context of private international law. The emergence of such questions is explained relatively simple. When applying a conflict-of-laws rule, or even beforehand, a judge may be confronted with the obligation to address issues going beyond the regulated relations. To provide an instance, in the process of determining the legitimate heirs, it becomes necessary for the law enforcement officer to scrutinize the legal validity of the testator's marriage that took place in a different jurisdiction, thereby ascertaining whether the surviving spouse will assert their claim to the inheritance.

As V. L. Tolstykh points out, "a preliminary question arises when two relations are examined within one process, namely the primary and additional relations governed by conflict-of-laws rules. From a methodological standpoint, this problem bears resemblance to the issue of transmission as it involves the consideration of conflict-of-laws rules from foreign jurisdictions" (Tolstykh 2004, 230).

In our perspective, the notion of a preliminary question should be construed in a somewhat broader sense, specifically, as a legal evaluation of the factual circumstances accompanying the examination of the principal legal relationship. A preliminary question can be considered as the commission of certain actions, for example: selective interpretation of individual terms (for example, the concept of "real estate"); comparison of concepts of one legal system with similar concepts of another legal system (for example, the concept of "last residence"); determining the legal force of judgments made in a foreign state, which may subsequently form the basis of this proceedings (for example, recognition in court of heirs unworthy); establishing legally significant facts (for example, when determining the circle of heirs by law, the question of challenging paternity may arise). The legislation does not contain a comprehensive and codified list of such actions. This list may vary with respect to a particular legal situation. All of these actions contribute to the resolution of the primary legal relations, although not all necessitate the application of conflict-of-laws rules. Therefore, the recognition of a foreign court decision within the territory of the Russian Federation, which directly affects the resolution of the primary legal relations, is not associated with the application of conflict-of-laws rules, but is governed by the provisions outlined in para. 1 of Art. 409 of the Civil Procedure Code of the Russian Federation.

The resolution of the conflict-of-laws issue may involve the application of both domestic and foreign law.

In any state, the law enforcement process is founded upon the principle of "the court knows the law" (*jura novit curia*), whereby law enforcement agencies, in the regulation of legal relations, rely on their knowledge of national law and its application. When the

conflict-of-laws rule of the country of the court indicates the legal order of a foreign state, the judge cannot and should not know its content (Get'man-Pavlova, Kasatkina 2018, 76).

The law of one state within the jurisdiction of another will perpetually be regarded as foreign elements, necessitating continuous clarification and establishment, primarily through the provision of evidence.

The primary objective of applying foreign law is to ensure the most efficient and equitable regulation of public relations with a foreign element.

The application of foreign law by Russian courts is based on international treaties of the Russian Federation that incorporate unified conflict-of-laws rules, domestic conflict-of-laws rules, customs acknowledged as a source in the Russian Federation, and the law chosen by the parties as stipulated in their agreement.

The responsibility for determining the content of foreign law in our country lies with the court ex officio. This is attributed to the fact that in the Russian Federation, similar to other nations within the Romano-Germanic legal tradition, foreign law is regarded as a legal category consisting of a set of state-established conduct rules that are obligatory. Consequently, it is considered a dogma that necessitates no further substantiation.

In countries belonging to the Anglo-American legal family, the responsibility to provide information regarding the content of the law of a foreign state rests with the disputing parties themselves. This is a result of the fact that in these countries, the law of a foreign state is seen as a factual circumstance that needs to be proven.

The task of our law enforcement officers was made significantly more challenging by the Russian legislator (Art. 1191 of the Civil Code of the Russian Federation). This is due to the requirement that when determining the content of foreign law, they must consider the doctrine, judicial practice and official interpretation of those rules in the respective state.

In accordance with Russian legislation, the court possesses multiple methods to determine the content of foreign law. Specifically, it has the opportunity to request information on foreign law from the Ministry of Justice of the Russian Federation and other competent state bodies, including embassies and consulates, on its own accord.

The activities of the Ministry of Justice to provide such information are governed by the provisions of international treaties of the Russian Federation, established through multilateral and bilateral cooperation. Notably, such treaties encompass the 1968 European Convention on Information on Foreign Law[4], which stipulates that States parties exchange information through competent national authorities.

Experts observe that based on an examination of law enforcement practice, the conclusion can be drawn that this approach to obtaining information on foreign law is ineffective. This is primarily because our Ministry of Justice often cannot fulfill judicial requests, as it lacks the necessary texts of foreign laws.

Additionally, the Civil Code of the Russian Federation also allows for the acquisition of information on foreign law through consultation with experts possessing the necessary expertise in foreign law or through the presentation of evidence by the involved parties themselves.

It is important to highlight that in determining the content of foreign law, the court cannot restrict itself to merely requiring the parties to provide information about foreign

[4] "European Convention on Information on Foreign Law (1968)". *UN iLibrary*. Accessed November 6, 2024. https://www.un-ilibrary.org/content/books/9789210594837s003-c015.

law or utilizing other means, if these methods have proven ineffective. In this case, the judge should use all the methods provided for by civil law, applying them in a certain sequence.

Frequently, the misinterpretation of foreign law can serve as the foundation for an appeal made by one of the parties against the court decision.

The problems highlighted are a consequence of the shortcomings in the rules governing the streamlining of the application of foreign law by courts. The Russian legislator has yet to resolve the issue pertaining to the requirements that can be brought against the sources used to establish the content of foreign law, when the parties themselves provide the court with the content of the relevant provisions of foreign legislation. Should the request to the Ministry of Justice of the Russian Federation prove unsuccessful, the legislator does not mandate the court to employ alternative methods in order to determine the content of foreign law. According to the current provisions of the Civil Code of the Russian Federation, if the court sends a request to the Ministry of Justice and does not receive a response, it is deemed to have fulfilled its obligation. This raises concerns, especially considering that the law grants the court extensive authority to determine the content of foreign law. The question regarding the application of foreign judicial precedents and religious customs, which, in some legal orders, are accepted as sources of law and utilized by courts to resolve disputes, has been disregarded.

As T. Iu. Barishpol'skaia notes, "the assignment of the responsibility to provide information regarding the content of foreign law could be deemed a sustainable and effective measure if the parties had the legal opportunities to access relevant information. We are talking specifically about legal, official opportunities. Nonetheless, it is worth mentioning that under certain conditions, the court is left with no alternative but to assign this responsibility to the parties engaged in entrepreneurial activities, as it no longer has other options to determine the content of foreign law" (Barishpol'skaia 2018, 100).

Written evidence typically provided by the parties includes: foreign laws translated into Russian or published in legal literature; affidavits — documents certified by foreign competent authorities and containing information on foreign law; conclusions of domestic and foreign experts in foreign law; textbooks on foreign law; decisions of foreign courts; materials on foreign law on the Internet, etc. State courts of foreign countries also exhibit, to some extent, the cancellation of decisions involving the application of foreign law due to "insufficient evidence" of its content. However, one should note that many negative points of such a formal application of the rules on foreign law in Russian judicial practice have been smoothed out and recently the courts have increasingly begun to show flexibility in performing this task, without reducing the issue to the formal use of the methods listed in Art. 1191 of the Civil Code of the Russian Federation, and determining the sufficiency of materials confirming foreign law taking into account specific circumstances, clarity of the texts of the laws, their clarity for understanding, etc., as well as to use the opinions of experts submitted by the parties, to raise the question about legal examination as necessary, to adhere to the principle of adversarial proceedings when deciding on the sufficiency of evidence, drawing attention to the other party's challenge to the evidence presented by the first party. In several instances, the courts deemed it sufficient to solely include the texts of regulatory acts in the case.

The fact is that no matter what reliable information the justice body provides, no matter how competently and conscientiously the request of the court is executed and no

matter how perfectly the mechanism for the exchange of legal information between countries works, the provision of legal information in such a form cannot fully fulfill the task set in Art. 1191 of the Civil Code of the Russian Federation — to reveal the content of the law just the way it applied in the foreign state concerned — in accordance with its official interpretation, practice of application and doctrine (Gribanov 2012, 17).

One of the criteria to consider when deciding whether or not to apply foreign law is the presence or absence of reciprocity. Should Russian courts acknowledge and enforce foreign law in the event that Russian law is not acknowledged and enforced in the corresponding foreign country? Is the presence of reciprocity necessary for the application of foreign law, or does foreign law apply based on the legally binding prescription of domestic conflict-of-laws rules?

From a legal standpoint, the obligatory implementation of foreign laws should not be contingent upon reciprocity (this stance is predominant in both the theory and practice of private international law).

As L. A. Lunts points out, "it is impossible, referring to the principle of reciprocity, to justify the demand of State A to State B aimed at allowing State B to apply connecting factors to State A law in the same cases, when State A allows connecting factors to be applied to the law of State B. Such a requirement would mean that State A purports to have State B adopt the same system of conflict-of-laws rules, which is in force in State A. Such a requirement could also mean that State A requires State B to have privileges for its own citizens over those of other states" (Lunts 2002, 297).

Part three of the Civil Code of the Russian Federation encompasses a specific article, namely Art. 1189, which governs the effect of reciprocity in the regulation of civil relations with a foreign element. This provision comprises three interconnected rules:

— application of foreign law does not depend on reciprocity;

— compliance with reciprocity can be ensured through separate legislation, with the application of foreign law contingent upon the presence of reciprocity;

— in the event that the application of a foreign law is contingent upon reciprocity, it is presumed that reciprocity exists until proven otherwise.

The issue of the absence of reciprocity as a justification for rejecting the application of foreign law can be raised by either the party involved in the dispute or by the court in case of any uncertainties regarding its presence. In these instances, it is imperative to prove the absence of reciprocity.

The matter of proving the absence of reciprocity in a foreign state remains unresolved by the Civil Code of the Russian Federation, which stipulates that reciprocity exists until proven otherwise.

There exists an opinion that in this particular instance, one can make reference to para. 2 of Art. 1191 of the Civil Code of the Russian Federation, using the analogy of the law. As a court has an opportunity to request the Ministry of Justice of the Russian Federation and other relevant authorities and organizations in Russia or abroad to determine the substance of a foreign law, these same entities can be approached to prove reciprocity.

There are situations where the application of foreign law can be hindered by notable restrictions, such as its inability to be applied due to contradictions with the public order of the state, or the existence of super-imperative rules, which are directly applicable, in the law of the court's country.

In exceptional cases, the public order clause renders the application of foreign law impossible if its application contradicts moral foundations, constitutional principles of the state, fundamental principles and rules of international law, and poses a threat to national security and defense capabilities.

The legal systems in both the Russian Federation and foreign countries encompass a distinct set of imperative rules. These rules, either explicitly stated within the laws or due to their exceptional significance, govern relations independently of the law to be applied and irrespective of the law chosen by the parties involved as the applicable one.

The very concept of super-imperative rules poses a complex question for understanding. The majority of contemporary Russian scholars define imperative rules as regulations of behavior that prohibit any deviations at the discretion of subjects of law. The primary objective of an imperative rule of a specific State is to limit the freedom of contract for the aforementioned purposes, and the core of conflict-of-laws regulation in international relations lies in the connecting factors towards foreign legislation, thereby rendering this particular legal relations unregulated by both dispositive and imperative rules of its own law (Kvitsiniia, Narushkevich 2015, 276).

As an example of super-imperative rules, one can cite para. 3 of Art. 1085 of the Civil Code of the Russian Federation on the inadmissibility of reducing compensation for harm caused by damage to health, Art. 14 of the Family Code of the Russian Federation on circumstances preventing marriage, para. 2 of Art. 414 of the Merchant Shipping Code of the Russian Federation on the inadmissibility of eliminating or reducing the liability of the carrier for harm caused to the life and health of the passenger, and many others.

Therefore, the previously discussed mechanism of state coercion, as part of the mechanism of legal regulation, is essentially procedural when dealing with complex private law disputes with a foreign element. D. A. Nikitin, B. P. Kozachenko, A. V. Agadzhanian, exploring the nature of the mechanism of procedural and legal regulation, note that "it becomes applicable during certain stages of general legal regulation in cases where obstacles hinder the regular implementation of legal rules" (Nikitin, Kozachenko, Agadzhanian 2019, 75).

3. Conclusions

One should agree with the opinion of V. M. Syrykh that "the mechanism of rule-making, the mechanism of the implementation of legal rules and the mechanism of state coercion form an interconnected and hierarchical relationship within the mechanism of legal regulation. This relationship is reflected in the way that the outcomes of one mechanism's functioning establish the starting point and foundation for the functioning of the other. The implementation of each subsequent mechanism is essential for achieving the goal of legal regulation, which cannot be realized during its earlier stages" (Syrykh 1998, 152).

Given the diversity of the mechanisms involved, it is not possible to initially identify a universally applicable "set" of sub-processes. The notion of a perfect model of legal regulation is flawed, as there will always be specific legal relations that deviate from this model (Ratnikov 2022, 192).

It is the "mechanism" that allows recording challenges and formulating problems of legal regulation in modern society, developing the theory of legal regulation, assessing the

dynamics of national legal practices and legal forms of international relations (Tarasov 2020, 92).

At present, it appears that the primary objective of legal science is to achieve a theoretical understanding and justification of the key directions and methods for enhancing the efficacy of the legal regulation mechanism. The timely and qualitative resolution of this issue is pivotal to addressing various other public challenges, including legal ones, notably ensuring compliance with the rule of law, eradicating legal nihilism in legal consciousness, nurturing legal culture, and improving its content (Chapchikov 2016, 55).

To conclude, it is important to acknowledge that the resolution of current issues in the settlement of cross-border disputes of a private law nature can be achieved through a unified approach and strong collaboration between law enforcement and legislative institutions, driven by their commitment to overcoming crises in this field.

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