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RESEARCH ARTICLE

CONCEPT, LEGAL NATURE AND CLASSIFICATION OF LABOR RELATIONS, COMPLICATED BY A FOREIGN ELEMENT.

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foreign element, collision norm, the principle of autonomous will, free choice of rights (lex volutatis); law at the place of work (lex loci laboris); flag act (lex flagi); law of the country of institution, business travelers' (lex loci delegationis) and others.

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Various scientific debates are taking place today not only at the national level but also within the framework of international organizations on the role of countries, international organizations on issues of legal regulation of foreign citizens' activities, foreign labor migration and its legal regulation. The main reason for this is sharp increase of labor migration process in the world in recent years, growing aspirations of foreign citizens in carrying out activities in other countries, as well as involvement of foreign professionals in working in other countries as the result of attracting foreign investment, signing bilateral agreements of employment on the basis of the principle of reciprocity between the two states. Bringing national legislation on human rights in accordance with international standards, development of foreign economic activity of enterprises and organizations entail the emergence and increase of labor relations with so-called foreign element. Based on this, in this article, different aspects of collision-legal regulation of labor relations with complicated foreign element are covered and analyzed. In this, the author pays attention to the types and importance of collision norms governing international labor relations, as well as the principle of autonomous will as a method of collision-legal regulation of labor relations.

Introduction:-

In recent years, in not only the Central Asian countries, but also in Western European countries labor migration issue and its legal regulation has become one of the significant topics. This is estimated in the Global Estimate on Migrant Workers of ILO (International Labor Organization) in 2015. According to it, the number of labor migrants made up to 150,3 mln. in 2015 (total number of migrants is 232 mln.). From them 83,7 mln. were males and 66,6 mln. were females. The quantity of labor migrants increased to 72,7 % while the percentage of local people was 63,9 %[1].

According to the results of the survey, the most part of labor migrants (106,8 mln.) work in social service. 26,7 mln. of them make a living in industry and construction, and 16,7 mln. migrants work in agriculture. 48,5% of total labor migrants works in North America and Europe[2].

Such international labor relations in nature are the subject of private international law - a private law relationship (i.e. civil relations in the broader sense), complicated by a foreign element. Private nature of labor relations reflects in itself the regulation of their use in the famous civil categories - contract, legal capacity, reparations, etc. The principles of private regulation of labor relations, makes it necessary to apply categories and concepts of private

[1] http://www.ilo.org/global/topics/labour-migration/news-statements/WCMS_436140/lang--en/index.htm
[2]http://www.ilo.org/global/topics/labour-migration/news-statements/WCMS_436140/lang--en/index.htm

international law with them. The inclusion of labor relations in the subject of private international law has significant civil nature and thus goes beyond one state[3].

Currently, among the experts on labor and international law, as the most common classification, international labor law (hereinafter - ICC) is considered as one of the branches of international law[4]. In post-Soviet legal tradition, this position was first formulated by S.A.Ivanov[5]. According to him, ICC was "a new branch of international law developed since the 2nd World War and designed to regulate relations between states in the improvement of working conditions"[6]. In some studies, this position is sometimes narrowed. For instance, A.O.Kharitonova would take ICC not only just as a branch of international law, but also as part of international human rights law[7], probably based on the previously expressed positions of specialists in the field of international law[8]. Close to that wording, the ICC relates to international humanitarian law[9]. In the earlier period ICC was a sub-branch of international law, under the name of "the law of the international cooperation on specific issues"[10].

According to D.K.Bekyashev international labor law means not only the branch of international (public) law, but also the legal regulation of labor relations, complicated by a foreign element that experts on private international law are assigned to one of the institutions of the field[11].

There are other point of views among European experts. N.Valtikos in his monograph "international labor law" gives a concept defined as "a part of the labor law, which has international sources"[12], pointing out that the employment relationship, complicated by a foreign element is the subject of private international law. J.M. Serve introduces international labor law as "a branch of law of international concern, and more particularly, the universal origin"[13]. We believe that this concept is not entirely clear; it whether means independent branch of law, or it comes to branches of international law. At the same time, the concept of international labor law is proposed to delete the regional legal regulation of labor and issues of conflict of application of national labor laws. In some studies the use of conflict of labor laws, on the contrary, is identified with the international labor law[14]. L. Swepston writes[15] that

[3] The Uzbek law,regulating the employment relations, is an independent branch of law - labor law, but labor relations belong to the same type of relationship as civil (for example, the conclusion and termination of employment contract, the latter is regarded as a kind of civil contract). However, labor relations tend to as a civil law and administrative law regulation.

[4]Ivanov S.A. International Labor Law // Labor Law: Encyclopedic Dictionary. 4th ed. Under editorial of V.S. Andreev, K.P.Gorshenin, M.L.Zakharova and others. M.: Soviet Encyclopedia, 1979, p 217; Kiselev I.Y. Comparative and international labor law. Textbook for high schools. M., 1999, p.p. 447-449; Lushnikova M.V.,Lushnikov A.M. International and comparative labor law and social security law: an introduction to the course. p.60; B. Mrchkov international labor law.p. 43; Potkina M.A. On the structure of the institute of international sports labor law // The second congress of the Permian legal scholars. Proceedings of the international scientific-practical conference (Perm, Perm State National Research University, 28-29 October 2011).Perm, 2011.p. 269; Shuraleva S.V. Legal regulation of individual and collective labor relations in multinational corporations in Russia.Monograph. Ed. L.Y.Bugrov. Perm: Perm. Perm State National Research University Press, 2012.p.68; Thomas C., Oelz M., Beaudonnet X. The use of international labor law in domestic courts: Theory, recent jurisprudence, and practical implications // Les norms internationales du travail: un patrimoine pour l'avenir Mélanges en l'honneur de Nicolas Valticos. J.-C. Javillier, B. Gernigon (eds.). Geneva: ILO 2004. p. 253, and others works.

[5]Ivanov S.A. Problems of international regulation of labor. M.: Science, 1964. p.102.

[6]Ivanov S.A. International Labor Law // Labor Law: Encyclopedic Dictionary. p. 217.

[7]Kharitonov S.A. Workers with family responsibilities: the differentiation of legal regulation as a means of ensuring international labor and Russian labor law equal opportunities. Dissertation for the candidate of law.Sciences.Perm, 2003. 5-6, 9-13.

[8]A.H.Saidov International human rights law. M.: GPI RAS, 2002.

[9]International humanitarian law.Textbook.Ed. and I. Kapustin. M.: Higher Education Yurayt-2009 p. 72-87.

[10]D.B. Levin Actual problems of the theory of international law. M.: Science, 1974. p. 99.

[11]Bekyashev D.K. International labor law.Tutorial.p. 8.

[12]Valticos N. International Labour Law, Deventer, 1977. p. 17.

[13]Servais J.-M. International Labour Law.p. 19.

[14]Erpyleva N.Y. Individuals as subjects of international labor law and international education law // Law and Politics, №5, 2009. p.p. 1048-1068.

international labor law "applies to the material of the legal rules established at the international level, as well as the procedural rules relating to their adoption and implementation". A group of distinguished lawyers in the field of labor law from the United States by volume textbook on international labor law defines[16] this concept as follows: "International labor law - a new field of study separate from a comparative labor law. It includes a "law" that crosses national boundaries - the legislation in quotation marks because it is not entirely certain body required for the application of legal norms supranational level". In this case, the textbook covers not only public sources, primarily ILO instruments, but also the activities of international non-governmental organizations, unilateral acts of States, corporate codes of conduct and national judicial decisions. D.V.Chernyaeva considers public international labor law as "a complex sub-sector employment and public international law"[17], and I.V.Shesteryakova expressed the view[18] that the ICC should be made "not in the sub-sector of the international but a separate branch of law". There is also a characteristic of the ICC as a "multi-complex legal framework"[19].

We believe that the employment relations, complicated by a foreign element are the subject of private international law. This statement is confirmed in the statements of such prominent scholars as: H.R.Rahmankulov, M.M.Boguslavskiy, V.Y.Ergashev, S.Hamraev, I.S.Peretersky, L.A.Luntz, V.P.Zvekov, S.N.Lebedev, N.A.Haustova, G.K.Dmitrieva. These authors define the subject of private international law as a civil law relations (in the broad sense), complicated by a foreign element[20].

In particular, I.S.Peretersky said: "Private International Law studies civil law relations. But this does not mean that private international law is just one part of civil law. Specific differences in civil law relations, included in international private law, are the fact that the private international law studies only a special group of civil legal relations, which have an international character"[21].

L.A.Luntz attributed to the sphere of private international law, not only civil, but also the family and labor relations. He wrote: "Private international law is a branch of law and jurisprudence which has civil nature in this broader sense, arising in international field"[22].

Looks of I.S.Peretersky and L.A.Luntz were supported and developed by a number of scientists in the former Soviet Union. Thus, A.S. Dovgert wrote: "Without going into a detailed analysis of the various approaches to the relationship of civil and labor law, it should be noted that labor and civil relations with the existing differences are united by common principles of private law regulation. It is their quality and enables an employment relationship with a foreign element to use tools of private international law, which is produced mainly under the influence of the

[15]Swepston L. International Labour Law //Comparative Labor Law and Industrial Relations in Industrialized Market Economies. R. Blanpain (ed.) Wolters Kluwer, X ed., 2010. p. 141.
[16]Atleson J., Compa L. et al. Op. Cit. p. 1.
[17]Chernyaeva D.V. Decree. Op. p. 21.
[18]Shesteryakova I.V. International legal regulation of labor.Under editorial of N.P. Antipov. Saratov, 2004, p. 15; she is: the question of the teaching methods of the international labor law // Problems of international and comparative labor law and social security law. Collection of materials of international scientific and practical conference. Omsk: Omsk State University, 2006, p 32.
[19]Semeshko A.I. International treaties in the sphere of labor and their inclusion in the labor law in Russia. Abstract of diss. ... Ph.D. Perm, 2009. p.p. 7-8.
[20] International private law // H.R. Rahmonqulov and others. T.: The world of economy and law, 2002. – p.448; The problems of private international law. // Ed. N.I.Marysheva. - M.: 2000. – p.218; Boguslavskiy M.M. Private International Law: Textbook. 6th ed., Rev. and add. -M.: Norm: INFRA-M, 2012. – p.704; The problems of international private law and development prospects. - Tashkent: "Adabiyotuchqunlari" publishing house, 2014. p.282. (H.A.Rahmankulov, V.Y.Ergashev and others); Peretersky I.S. Krylov Sat. Private International Law.M., 1959.p.19; Luntz L.A.The course of private international law.The 3 volumes. T.I. M., 1973. p. 33; Private International Law: Contemporary Issues. In 2 books.Book 1 / Ed. Editor M.M. Bohuslav. M., 1993.;Lebedev S.N. On the nature of private international law // the Soviet Yearbook of International Law, 1978. M., 1980.;N.A.Haustova. Protecting labor rights in private international law: [electronic resource]: Dis. ...Cand.jurid. Sciences: 12.00.03. - M.: RSL, 2006. - p. 42-45.
[21]Peretersky I.S. Krylov Sat. Private International Law.Textbook. 1946. - p. 5.
[22]Luntz L.A. Course of private international law.The special part.M., 1975.- p. 10.

development of international civil relations"[23]. Confirming this position, G.I.Tunkin wrote: "The rules of private international law are governed by civil law, family and labor relations with a foreign element or international element"[24]. Analyzing the characteristics of regulation of labor relations with a foreign element K.A.Bekyashev wrote: "Along with the civil law relating to the subject of private international law are also labor relations with a foreign element. The law governing labor relations is twofold: in addition to his private law element and an element inherent in public-legal"[25].

We should agree on the inclusion of the views of N.A.Haustova the subject of private international law and labor relations. She claims it is possible for the following reasons: **firstly**, this is private-law relationships, which are used in the regulation of the category of civil law (contract law and capacity, compensation, party autonomy, etc.); **secondly**, it is the relationship of an international character[26].

It should be noted that two main features characterize relationships that are the subject of private international law: **firstly**, it is international relations; **secondly**, it is civil relations, and the term "international" has a different meaning in comparison with the term as applied to international (public) law[27]. In the latter, it is synonymous with the term "inter-state", i.e., it has a narrower meaning. Applied to the private international law, it is used in its broadest sense: international - these are relationships that go beyond a single state that one way or another related to the legal systems of different states.

Analyzing the question of the place of employment in the private international law is necessary to highlight the existing two points of view.

Proponents of the first view are the domestic and foreign scientists that set international labor law as an independent (separate) branch of law. In the 20s of the last century of the existence of international labor law, a German lawyer pointed Kutting G. and G. fon Toll, the French scientist Reynaud, Bulgarian scientists Yanulov I., M.Genovsky, as well as the West German lawyer F. Gamilmek. French lawyer Jacques Kamerlink and J. Lyon-Caen, analyzing international cooperation on improving working conditions, also noted the existence of international labor law[28].

The theoretical attempt to bring the employment relationship with a foreign element from the sphere of private international law was made in 1969 by the Hungarian scholar I.Sasi in the fundamental work "international labor law". I.V.Sasi distinguished from private international law of the international labor law, seeing it as a relatively independent branch of law[29].

Domestic scientists I.S.Ivanov, in support of its position on the withdrawal of labor relations, complicated by a foreign element, from the industry of private international law gives the following argument: "the selection of international labor law in the sector of modern international law is justified. You can talk about international labor law in the same sense that the international administrative or criminal law. The term "international labor law" can be used to indicate that large and specific branches of international law, which is intended to ensure the cooperation of States in the improvement of working conditions"[30].
Proponents of this position argue their opinion, pointing to significant differences between civil and labor laws, and the inapplicability of some of the classic rules of international private law to labor relations with a foreign element.

[23] Dovgert A.S. Legal regulation of international labor relations.Kyiv, 1992.- p. 13.
[24] G.I. Tunkin International law.M., 1994.p. 10.
[25] Private International Law: Textbook / L.P. Anufrieva, K.A. Bekyashev G.K. Dmitrieva, etc.; Ans. Ed. G.K. Dmitrieva. - 2nd ed., Rev. and add. - M.: T.C. Welby, Publishing House of the Prospectus, 2004. - p. 547.
[26]N.A.Haustova. Protecting labor rights in private international law: [electronic resource]: Dis. ...Cand.jurid. Sciences: 12.00.03. - M.: RSL, 2006. - p. 42-45.
[27] N.A.Haustova. Protecting labor rights in private international law: [electronic resource]: Dis. ...Cand.jurid. Sciences: 12.00.03. - M.: RSL, 2006. - p. 42-45.
[28]N.A.Haustova. Protecting labor rights in private international law: [electronic resource]: Dis. ...Cand.jurid. Sciences: 12.00.03. - M.: RSL, 2006. - p. 42-45.
[29] Szaszy.International Labor Law. Budapest. 1968. p.14.
[30] Ivanov C.A. Problems of international regulation of labor. M., 1964.p. 102.

Representatives of the second viewpoint are scholars such as V.M. Chkhikvadze, TS.Ya. Yampolsky, E.M. Amethyst, V.P.Zvekov. They include private international labor law to the sub-sector of private international law. In support of its point of view, the scientists point out those labor relations should be solved with the help of approaches, principles and categories of private international law.

V.P.Zvekov believes that the system of regulations affecting labor relations with a foreign element forms a sub-sector of private international law - international private labor law, consisting of the substantive conflict of laws and regulations[31]. Among the sources of private international labor law play a significant role statutes and staff regulations of international organizations, due to the peculiarities of transnational labor relations[32].

In the legal science rather established approaches, according to which one of the main distinguishing features of labor law as an industry is to combine it private and publicly-legal elements. Despite the presence in the labor law is very important for him to start the treaty, a sign of a fundamental labor right from the moment of its occurrence is considered to be a significant level of state interference in contractual relations employee and the employer to protect the economically weaker party.

We agree with this position and believe that the allocation of private international labor law as a sub-sector of private international law may be:

1) on the subject of regulation - a labor relations with a foreign element of a private nature. These relationships are united by common principles of private law regulation: legal equality and independence of parties to the employment contract, discretionary regulatory contractual nature of the occurrence and termination of the relationship, reparations, etc.

2) the method of legal regulation. Private international law and private international labor law are united by common methods of legal regulation, namely, the conflict of laws and substantive law.

Defining common, what unites the international private law and private international labor law, it is necessary to dwell on the features of the latter. The rules specifically designed for the regulation of labor relations, complicated by a foreign element, included in the system of international private law and occupy a special place. This is due to the presence in the regulation of labor relations of a large number of public legal norms, and as a consequence, in the field of labor law with greater force than is typical of civil and family law, manifests itself publicly-legal principles, limiting the effect of the conflict rules of the court, and as a consequence, the application of foreign laws.

In other words, beyond the classification of labor relations in the field of private international law determines their content in private. But even in cases where a private law nature of the employment relationship, complicated by a foreign element is not in doubt, it is in a number of countries within the boundaries of “legal framework”, which appeal to the local law is mandatory and peremptory norms, or of the public policy are crucial.

Disputes over the ICC and the ratio of private international law, and continues now in the various doctrines. Nevertheless, almost all modern Russian textbooks on Private International Law contains a chapter on “labor relations in private international law.” This position is defended in the work of specialists in private international law. The inclusion of sections on labor relations, complicated by a foreign element in the structure of private international law seems justified. Conflict of national legislation concerning relationships at work, apply to the relations involved foreign entity as one independent party of labor relations.

It should be emphasized that private international labor law, namely the countries of Central Asia is characterized by a more “cautious” attitude legislator to the top of the autonomy will limit it in some countries, certain limits (application to the labor relations of mandatory (safety) standards), which focused on protecting the interests of the “weak” side.

[31]Zvekov V.P. Private International Law: The course lectures. M., 1999.- p. 410.

[32] Private International Law: Textbook / L.P. Anufrieva, K.A. Bekyashev G.K. Dmitrieva, etc.; Ans. Ed. G.K. Dmitrieva. - 2nd ed., Rev. and add. - M .: T.C. Welby, Publishing House of the Prospectus, 2004. - p. 547-548.

These mandatory rules exclude or supplement the provisions of law chosen by the parties, which are less protected workers. At the same time the concept of "mandatory rules" should be interpreted broadly. This refers not only to the law governing labor relations itself, but also all the rules, including public law or contained in collective agreements, which are aimed at protecting the rights of workers or directly regulate the mutual rights and obligations arising from the specific employment relationship[33].
Thus, the selection of international labor law in the private sub-sector of private international law is reasonable. As above mentioned private international labor law are inherent in the methods of legal regulation of private international law, namely the collision and substantive.

In private international law emerged two approaches to understanding the method of legal regulation of relations complicated by a foreign element. The first group of authors (V.G.Ermolaev, O.V.Sivakov)[34] believe that private international law is characterized by a control method and it is to overcome the problem of the collision. Its implementation is carried out in two ways - collision-legal and substantive. The second group of scientists (M.M.Boguslavskiy, L.A.Luntz, V.P.Zvekov)[35] says there are two methods of private international law: collision and substantive.

We support the view of the authors of the second group, believing that in private international law, there are two methods of control: collision and substantive. This position is explained as follows:

1. Conflict of legal method - historically the first method of regulation in the international private law. The first rule, and then the first of the doctrine relating to the field of private international law, began to appear as a result of the emergence of numerous conflicts of law with the development of relations between public entities, which have developed their own, separate, with a fairly clear distinction, the rules of civil law.

These rules were named as conflict rules are applied and to address the problems arising from conflicts of laws. For a long time, private international law has existed and developed only as a conflict of laws. This position is due to the fact that before the beginning of XIX century there was no substantive rules established by international agreements, and consequently, there was no reason to talk about substantive law as a method of private international law.

However, supporters of the "conflict" approach and modern science of international private law have a lot of followers. In the Anglo-American doctrine, in studies of the West and the French theorists view on private international law as a purely competition law is still predominant[36]. Cheshire J., Wrote: "The function of private international law is exhausted in selecting the proper legal system. Its provisions do not provide a direct solution to the dispute[37]. No less categorically expressed and Bulgarian author Zh.Stalev "Function of Private International Law is in the delineation of the international scope of various civil legal systems of different countries, so it is a system of conflict of laws and not substantive rules governing the civil relations with a foreign element"[38].

Supporters of the "conflict" approach to the understanding of private international law (structure and space) do not deny the growing role of international harmonization of substantive rules in the regulation of relations with a foreign element, but the unified substantive law involved in the regulation of these relations are not included them in the international private right. This is largely due to the fact that the private international law has traditionally been seen as part of national law and the uniform rules (substantive) contained in international treaties and are therefore outside the national legal systems[39].

[33]Koch X., W. Magnus, Winkler von Morenfels.Private international law and comparative law.M., 2003.- p. 236.
[34]Ermolaev V.G. Sivakov O.V. Private International Law. Lecture course. M., 1998.- p. 12.
[35]Boguslavskiy M.M. Private International Law.Elementary Course.M., 2002, p.p. 32-33., M.M. Boguslavskiy Private International Law.M., 1999. 75., Zvekov V.P. On the question of the relationship between material and legal means of regulating conflict in private international law // the Soviet Yearbook of International Law. 1973. M. 1975. 56 Private International Law / Ed. G.K. Dmitrieva. M., 1993.p. 14.
[36]Dmitriev T.K. Op. Op. - p. 14.
[37]Dzh.Cheshir, P.A. North.Private International Law. // Ed. and to enter. Art. M.M.Bohuslav; Trans. from English. S.N. Andrianova. - M.: Progress, 1982. –p. 496.
[38]Stalev J. The essence and function of private international law.Sofia, 1982.- p. 279.
[39]Müllerson R.A. The ratio of international and national law. M., 1982. p. 55-114.

According to the Bulgarian scientist Zh.Staleva "substantive rules that govern the international civil relations and created by international agreements (conventions, recommendations, etc.) are included in the international civil law and not in the private international law"[40]. Closely related to this position K.L. Razumov, who claimed that "unified in the international legal order standards together form the international civil law"[41].

Due to the rapid development of international economic relations from the end of the XIX century, it was necessary to develop the uniform legal regulation for certain types of relations: international sales, international labor, international shipping etc[42]. This process is greatly intensified after the Second World War - and more new kinds of relationships became the subject of international harmonization as universal, and at the regional level.

Substantive control method (using the unified substantive) in some cases turned out to be much more effective conflict: first, shot herself collision problem and, secondly, to the relations not applied in diverse national law and specifically designed for these relations, unified[43].

According N.A.Haustovoy, division and conflict of substantive law is almost a denial of private international law as a kind of regulatory system[44]. Substantive and collision methods are inextricably linked and in practice almost always intertwined: a specific set of obligations between subjects of legal relations can be regulated as a material unified standards and national substantive provisions, determined on the basis of the conflict rules. Help collision method is needed in cases when a uniform regulation of certain relations found gaps, makes up for by reference to national law.

"Association as part of private international law and conflict of substantive law based on the need to regulate the two different methods homogeneous nature relations"[45], - said M. Bohuslav.

Thus, the restriction of private international law among conflict of laws rules seems to us, at first, theoretically unfounded, and secondly, do not meet the current level of legal regulation of civil relations (in the broad sense) with a foreign element, which is characterized by the increasing role of contractual and uniform rules.

Since the employment relationship - a relationship of a private nature, they are subject to the fundamental principles of private international law, namely, the autonomy of the will, the contractual nature of origin, freedom of contract. Supporting this view N.A.Haustovoy said therefore to the labor law applicable fundamental principles, namely the autonomy of the will of the Civil Code[46].

In 1991, the Institute of International Law was expressed that party autonomy was one of the fundamental principles of private international law[47], freedom means the part of an agreement to subordinate their chosen the rule of law. However, in doctrine and in practice the post-Soviet countries are debatable questions on the definition of the boundaries of action will of the parties, about whether their freedom of choice in regard to the rights applicable to the contract to be absolutely unlimited.

[40]Stalev J. The essence and function of private international law.Sofia, 1982.- p. 286.
[41]Razumov K.L. Private international law (some questions of theory and practice).Materials section of the right of the CCI.Vol. 34.M., 1983.- p. 15.
[42]V.M.Koretsky Essays on international economic law. Kharkov 1928.
[43]Lebedev S.N. The unification of the legal regulation of international economic relations // Legal aspects of the implementation of foreign economic relations. Proceedings of the Department of Private International and Civil Law MGIMO. M., 1979, p.p. 15-43.
[44]N.A.Haustova. Protecting labor rights in private international law: [electronic resource]: Dis. ...Cand. jurid. Sciences: 12.00.03. - M .: RSL, 2006. - p. 42-45.
[45]Boguslavskiy M.M. Private International Law.M., 1982.- p. 83.
[46]N.A.Haustova. Protecting labor rights in private international law: [electronic resource]: Dis. ...Cand. jurid. Sciences: 12.00.03. - M.: RSL, 2006. - p. 42-45.
[47]Zvekov V.P. Private International Law: The course lectures. M., 1999.- p. 286.

Objective and subjective approaches are formed to this problem[48]. An objective approach is the ability to select only the parties to the right, which has a connection with the contract. This principle is, in particular, in the Spanish legislation, USA. Subjective approach does not limit the will of the parties, giving them complete freedom in the choice of the applicable law. It is reflected in the legislation of many countries, including Austria, Germany and Switzerland.

The principle of autonomy of the will found its consolidation in a number of international conventions. Among these documents Agreement on the settlement of disputes relating to the implementation of business on March 20, 1992[49] Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 22 January 1993[50] Rome Convention on the law applicable to the Contractual Obligations of 19 July 1980[51], the Regulations "On the Law Applicable to Contractual Obligations" (Rome I Rome I)[52].

Now let us focus on the autonomy of labor contract in Rome convention, dated July 19, 1980. Article 3 is dedicated to party autonomy[53]. The parties are free to choose the legal regulation, which will apply to the contract concluded. In paragraph 1 of article 3 clearly appears the term "law". Thus, the parties cannot use such rules as *lexmercatoria*. Regarding the form of a choice of law, it has remained the same as in the Convention. Also, it does not change the principle of "depecage" - splitting connecting factors and the possibility of a change in applicable law in future.

Limiting the autonomy of the parties, according to the Rome Convention, may be in cases where:

1) all elements of the contract are localized in one country; peremptory norms of this country are applied to such a contract regardless of the law;

2) are the consumer and individual labor contracts; these agreements set specific connecting factors allowing, regardless of the law, determined by the choice of the parties, to apply the "protective" rules of law of the country where consumers have a habitual residence. And workers typically perform their jobs (or countries where the company has hired an employee or a country with which the employment contract is most closely connected).

The theoretical foundation for the modern understanding of the meaning of peremptory norms in private international law have made the concept of European and American collisions in mid XX century. Among them, first of all, it should be noted "the special theory of communication" of German scientists V.Venglerand, K.Tsvaygert, "the theory of the analysis of the government's interest"[54]of the US lawyer B.Karri[55], the concept of direct application of the rules of the French collision lover F.Frantseskakis[56].

These theories in one way or another influenced the content of a number of international conventions and national laws in the field of private international law. Modern civil and private international law is based on the existence of two kinds of peremptory norms - peremptory norms of domestic civil law and super-imperative standards.

Mandatory rules of internal civil law set limits on the implementation of the principle of party autonomy in domestic civil law and express the interests of having the most significance for the State than the above-mentioned principle.

[48]Isayev G.B. The law applicable to international contracts for the sale of goods.Almaty. 1999. - p. 22; Raape L. Private International Law. M., 1960.- p. 427.
[49]Bulletin of the Supreme Arbitration Court of the Russian Federation, 1992.№ 1.
[50]Collection of Laws of the Russian Federation. 1995. № 17. Art. 1472.
[51]Vilkova N.G. Contract law in the international turnover.M., 2002.p. 454.
[52]Parliament and Council Regulation 593/2008, Law Applicable to Contractual Obligations (Rome I), OJ 2008 (177 L).
[53]Rinze J. The Scope of Party Autonomy under the 1980 Rome Convention on the Law Applicable to Contractual Obligations. // The Journal of Business Law, 1994.
[54] Wenger W. Die Anknupfung des zwingendeSchuldrechtsiminternationalenPrivatrecht // Zeitschrift fur vergleichendeRechtswissenschaft. 1941; Zweigert K. IPR und offentlichesRecht // FunfzigJahreInstitut fur InternationalesRechtan der Universitat Kiel. Hamburg, 1965.
[55]Currie B. Selected Essays on the Conflict of Laws.Durham, 1963.
[56]Francescakis Ph. Quelques precisions sur les "lois d" application immediate "et leurs rapports avec les regies de conflits de lois // RCDIP 1966. Vol. 55.

Because of the presence of a foreign element in the legal relationship, it falls within the scope of private international law. The application of the mandatory rules of the law of the forum can be eliminated as a result of the collision as a reference to the foreign law, and as a result of an expressed choice by the parties. Eliminating the actions, not only discretionary but also peremptory norms of legislation of the court of the country, as a result of legal subordination to foreign law can be regarded as one of the established principles of private international law. In accordance with the same principle applying to legal means, the application of foreign law are as non-mandatory and peremptory norms of this law[57].

Super-imperative standards referred to direct application of the rules. They shall apply regardless of whether a law is recognized by the competent for a particular relationship. There is no choice of law by the parties and the effect of the conflict rules of the court can eliminate their use. Such particular imperativeness of these standards is a consequence of interest, which aimed at protecting these standards, and they express goals of particular importance to the State which issued those rules.

In other words, government policy, expressed in terms of these rules, is so important that the state cannot, under any circumstances, allow submission of the relevant foreign law relationship.

Accordingly, the use of super-imperative rules intended to limit the autonomy of the parties and the law applicable by virtue of conflict rule in the absence of choice of law by the parties. When deciding which rules may be characterized as super-imperative should refer to the experience of foreign countries.

Modern European doctrine and jurisprudence classified as direct application of the norms of the rules on the protection of consumers' rights, the rules of the currency legislation, the rules of antitrust rules limiting the freedom of contract in order to protect its weaker side, and the like[58].

This list can be concluded that in this category of norms can include both private law and public law.

In deciding whether a particular norm is super-imperative, you must start from the following: the text of the rules can contain a direct reference to the special territorial and (or) the personal scope of the specific rule. However, in the absence of such a direct indication of a particular rule can be categorized, as a result, it can be interpreted as super-imperative by the court. Its goals and expressed its interest to be considered through the perspective of their relevance to the state which issued the norm. Therefore, the circle of super-imperative standards in every single legal system is exhaustively impossible to determine.

Although the right to a number of countries (UK, Canada) does not preclude the application of conflict binding "law chosen by the person who committed the deal" in the field of labor relations, yet there is a tendency to the definition of certain limits, which allowed parties to choose the law applicable to the labor relations. In the US, this choice implies the existence of a significant connection between the applicable law and labor contracts.

Limited range of legal systems, which may be subject to an employment contract in Poland. Swiss law allows the parties to subordinate the labor contract, which belongs to the country where employee is working or principal place of business, place of residence or usual residence of the employer.

Action usually determined by the participant's choice of an employment contract may be limited by the requirement that in this case the employee is not deprived of the protection afforded to him the beginning of *lex loci laboris* - law of the place of work.

[57] Look: Luntz L.A. Course of private international law. 4.1. M., 1973. On . 329; Monastic YE Range of application of foreign laws to justice in international disputes // Moscow Journal of International Law. 1996. ' 3. S. 203; De Ly F. International Business Law and LexMercatoria. Amsterdam, 1992.p. 130.

[58] Tenants A.N. problem application of the mandatory rules of third countries in European private international law // the Legislation and economy. 1997. № 23-24, p.p. 37-48; Luntz L.A. Private International Law. M., 1970. S. 300-301; Sadikov O.N. Mandatory rules in private international law // the Moscow magazine of international law. Op. cit, p.p. 71-83 .; N.A.Haustova. Protection of labor rights in private international law: [electronic resource]: Dis. ... cand. jurid. Sciences: 12.00.03. - M .: RSL 2006. - p. 42-45.

Now we have a closer look at the legal basis of the legal status of foreigners in the Republic of Uzbekistan, and their work. Article 23 of the Constitution states: "Foreign citizens and stateless persons in the territory of the Republic of Uzbekistan enjoy rights and freedoms in accordance with international law. They shall perform the duties established by the Constitution, laws and international treaties of the Republic of Uzbekistan"[59]. These rules apply to the labor relations of foreign citizens and stateless persons. This means that the laws of the Republic of Uzbekistan are based on the application of labor relations with principle of national treatment.

Labor code of the Republic of Uzbekistan does not have rules specifying the right to choose the right relating to the labor contract. Labor relations are of administrative and legal regulation, as well as the desire of the legislator to protect the interests of the employee (as the weaker party in the employment relationship) and to protect against possible abuse by the employer.

To fill the gap of conflict regulation of labor relations, we propose to enter the Labor Code of the Republic of Uzbekistan, chapter namely "Application of the rules of private international law to labor relations." Starting rules in this chapter must be based on the following: in the labor relations, the parties themselves decide what the national system of labor law should apply to the relationship. In other words, the parties themselves elect their national law for the contract. If the will of the parties to the employment contract is not found, then to the employment contract will be applied the law of the country in which the employee habitually carries out his work under the contract, even if he is temporarily performing the job in another country. If there is no country -rule of the country where the company hires an employee. If the circumstances show that the contract is more closely connected with another country, subject to the application of the law of that country.

Thus, analyzing the point of view of experts in the field of private international law, provisions of national legislation in different countries, we can draw the following conclusion:

Firstly, the employment relationship with a foreign element is the subject of private international law, as the relationships of a private nature (civil and labor relations are united by common principles of private law regulation: legal equality and autonomy of the parties, the dispositive regulation, contractual nature of origin, etc.). For the regulation of labor relations with a foreign element, there are two methods of private international law - collision and substantive.

Secondly, the literature suggested that the presence of certain categories of employment, need special regulation of conflict: the labor relations of employees of diplomatic missions and consular posts (these possible application of the law of the flag State); labor relations of employees of international organizations (used, for example, the right of the state where the headquarters of an international organization); labor relations of employees seconded abroad (possibly apply integrated management, in particular the law of the employer, or the right of the state of the traveling performance of the job)[60].We cannot fully agree with this idea. In our opinion, the term and aim of official journey should be main factor to define collisions in legislation.

In our opinion, labor relations regarding the employees from Uzbekistan should be regulated with national labor legislation.Because those labor relations do not evolve in the territory of foreign state, but Uzbekistan. In addition, the worker does not formalize documents with a foreign company located abroad, but continues labor relations with the company which sent him.
However, while abroad, workers are subject to the regime of work and rest periods, established in enterprises and institutions, which actually work. They are obliged to follow the rules and safety instructions in practice in these enterprises.

In the third, the autonomy of the will, which is one of the fundamental principles of private international law, labor law applies to a certain degree of caution (i.e., limited by the application of peremptory norms and super-imperative). In such situation, one side is the worker, and the legislator seeks to protect his interests.

[59]Bulletin of the Supreme Council of the Republic of Uzbekistan, 1993, № 1, Art. 4.
[60]Tolstix V.L. Conflict regulation in international private law.p.206.

Fourth, the allocation of private international labor law as a sub-sector of private international law, possibly as follows: 1) on the subject of regulation - a labor relations with a foreign element of a private nature. These relationships are united by common principles of private law regulation: legal equality and autonomy of the parties, the dispositive regulation, contractual nature of the origin and termination of the relationship, reparations, etc. 2) the method of legal regulation. Private international law and private international labor law are united by common methods of legal regulation, namely, the conflict of laws and substantive.

Fifth, analyzed the provisions of international treaties, national legislation and judicial practice, it can be concluded, according to which, the autonomy of the will, which is one of the fundamental principles of international private law and labor law applied with some degree of caution (i.e., limited by the application of the mandatory and super-imperative norms).

Sixth, the Labor Code does not provide for a choice of the right sides of the labor contract. At present the share of labor relations of administrative and legal regulation, as well as the desire of the legislator to protect the interests of the employee (as the weaker party in the employment relationship) and to protect against possible abuse by the employer. To bridge the gap of conflict regulation of labor relations proposed to the Labor Code of the Republic of Uzbekistan, we suggest entering a chapter under a name "Application of the rules of private international law to labor relations." Starting position in this chapter must be based on the following: the labor relations, the parties themselves decide what the national system of labor law should apply to the relations. In other words, the parties themselves elect their national law for the contract.

If the will of the parties to the employment contract is not found, then to the employment contract will be applied the law of the country in which the employee normally carries out his work under the contract, even if he is temporarily performing the job in another country, or if there is no country - law of the country, where the company hires an employee. If the circumstances show that the contract is more closely connected with another country, the application of the law of that country is acceptable.