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THE SPECIFICS OF DETERMINING THE APPLICABLE LAW IN THE CONTEXT OF THE DIGITALIZATION OF FOREIGN ECONOMIC TRANSACTIONS

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Abstract
This article examines issues related to determining the applicable law in the context of the digitalisation of foreign economic transactions. Particular attention is paid to the analysis of conflict-of-law rules, such as the personal law of the operator, the personal law of the developer, and the law of the location of the servers. The conclusion formulates proposals for improving approaches to determining the applicable law in digital foreign economic transactions, including such forms as Internet auctions, Internet exchanges, Internet tenders, and Internet competitions.

Keywords: Applicable law; digitalization; foreign economic transactions; conflict-of-law; private international law; artificial intelligence; smart contracts; blockchain; lex loci solutionis; lex loci contractus; personal law of the operator, the personal law of the developer, law of the location of the servers; localization.

Introduction

The advancement of digital technologies has significantly reshaped the global economy, giving rise to new forms of cross-border trade and the legal

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framework governing foreign economic transactions. Electronic platforms, blockchain systems, smart contracts, and the use of artificial intelligence in contractual processes increasingly challenge traditional approaches of private international law. These technological innovations not only expand the scope and complexity of international commerce but also raise profound questions concerning the determination of the applicable law in a digital environment.

Unlike classical transactions, which are often anchored in specific territorial or jurisdictional frameworks, digital transactions are characterized by their extraterritorial and decentralized nature. The absence of physical localisation of contractual performance, the distribution of parties across multiple jurisdictions, and the reliance on automated technologies create significant legal uncertainty. In this context, traditional conflict-of-law mechanisms prove insufficient, as they were primarily designed to address conventional contractual relations rather than technologically driven interactions.

Materials and Methods

The present research is aimed at identifying the key challenges and peculiarities of determining the applicable law in the context of the digitalization of foreign economic transactions, as well as at developing potential solutions to ensure legal certainty and predictability in cross-border digital commerce.

The methodological basis of the research consists of general scientific and special legal methods. The dialectical method is applied to study the dynamic transformation of private international law under the influence of digitalization. The comparative legal method is used to examine approaches adopted in different jurisdictions and in international doctrine. The method of legal analysis and synthesis allows for the identification of doctrinal and legislative gaps, while the formal legal method is employed to clarify the content of conflict-of-law principles and their applicability to digital relations.

Research Results

Such a transformation objectively requires the formation of clear mechanisms for determining the applicable law, since the digital environment poses unique challenges: the extraterritorial nature of legal relations, the absence of physical

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localisation of the performance of obligations, the distribution of participants in foreign economic transactions across different jurisdictions, and competition between national legal systems. Traditional conflict-of-law rules developed for classic contractual relationships are insufficient for regulating new digital forms of transactions.

All this indicates that the digital environment has the following characteristics: the parties may be located in different jurisdictions, contracts may be concluded without the physical presence of the participants, the performance of obligations is automated (e.g., through digital platforms, the Internet or smart contracts), and the place of performance is often not tied to a specific territory.

For this reason, territorially oriented conflict-of-law rules (lex loci contractus, lex loci solutionis) are losing their practical applicability. Thus, determining the place of conclusion of a contract (lex loci contractus) becomes extremely difficult: a foreign economic transaction may be concluded via an electronic platform or cloud service whose servers are located in a third country not related to the jurisdictions of the parties. Similar problems arise when determining the place of performance of the contract (lex loci solutionis) when performance is carried out in digital form, for example, when transferring crypto assets or providing cloud access to a software product.

Smart contracts, which are executed automatically in blockchain networks without the traditional fixation of the parties' will, deserve special attention. Their specificity gives rise to new conflict of law challenges:

– the decentralised nature of the blockchain network excludes any link to a specific jurisdiction;

– the execution of the contract is distributed among multiple network nodes located in different countries;

– the absence of a centralised administrator makes it impossible to determine the ‘place of business’ of the parties.

The judicial practice of foreign countries has already encountered disputes over jurisdiction and applicable law in cases involving crypto assets, confirming the need to develop new conflict-of-law approaches. In this regard, the issue of creating flexible regulatory mechanisms that take into account the specifics of

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the virtual environment, as well as the development of unified international standards to ensure predictability and legal certainty in cross-border digital transactions, is particularly relevant.

It is clear that determining the applicable law is complicated by the emergence of virtual entities, the absence of a clear territorial link (e.g., the actual location of the server or its place of registration), the distribution of transaction participants across different jurisdictions, and the automation of legal relationships through smart contracts and artificial intelligence algorithms. The virtual nature of relationships blurs territorial criteria, and the cross-border nature of transactions makes it difficult to determine the closest connection. For this reason, conflict-of-law rules in the digital environment based on territorial criteria are difficult to apply and determine the applicable law.

Analysis of Research Results

In the digital environment, the following conflict-of-law rules may apply to foreign economic transactions involving the use of artificial intelligence (AI) [2,39]:

1. *The personal law of the operator* (the law of the country of residence or registration of the legal entity using artificial intelligence to conclude or execute a contract). This criterion fills the gaps in traditional conflict-of-law rules, which are ineffective in a virtual environment. For example, if a company in a particular jurisdiction uses artificial intelligence technologies to automatically conclude foreign economic transactions, the law of the country of its registration may be decisive in determining the applicable law. This approach has several justifications, namely those related to the attribution of legal liability, where, unlike decentralised algorithms, which do not have legal personality, the operator (legal or natural person) bears legal responsibility for the actions of artificial intelligence. Consequently, the legal order of the country of registration of the operator objectively reflects the closest connection with the relations arising in the process of concluding or executing a transaction. The next aspect is predictability and legal certainty, which lies in the fact that the application of the "personal law of the operator" ensures predictability for counterparties, as they can determine in advance which legal system will govern their contractual

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relations, regardless of the jurisdiction in which the servers, software, or other technical elements of the digital infrastructure are located. In foreign doctrine, the issue of the operator's liability, particularly in the sphere of autonomous systems and artificial intelligence, is being increasingly discussed. The personal law of the operator corresponds to the classical conflict-of-law principle of the "closest connection", since it is the operator who organizes the transaction, exercises control over the algorithm, and bears responsibility towards the counterparty.

Thus, enshrining in national and international legislation a conflict-of-law rule based on the "personal law of the operator" in cases involving the use of artificial intelligence in foreign economic activity will make it possible to adapt conflict-of-law rules to the digital reality. This is particularly important for transactions carried out in an automated mode without direct human involvement, where traditional conflict-of-law criteria – the place of conclusion of the contract (lex loci contractus) or the place of its performance (lex loci solutionis) – become difficult to apply and lose their practical value.

2. *The personal law of the developer* is understood to be the law of the country in which the legal entity developer is registered or the natural person developer resides. In the event of disputes related to the functioning of AI, errors in algorithms, or intellectual property rights violations, the applicable law may be determined by the place of registration of the developer as the person responsible for creating the software product. However, there may be a discrepancy between the jurisdictions of the developer and the operator, which gives rise to a conflict of legal systems. Moreover, developers may transfer rights to use or modify AI to third parties, which further complicates the choice of applicable law, namely whether to apply the personal law of the developer or the personal law of the user, since the user actually uses the AI on the basis of a contract concluded between the developer.

5. *The law of the location of servers* (lex situs). If AI operates on a cloud platform and the servers are located in a specific jurisdiction, the law of that country may apply. However, in the context of distributed computing and global data centres, linking to a specific server loses its significance and becomes technically and legally controversial. There is also the problem of actually

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determining the location of the servers, namely the main server, which may be located in one country, while its additional servers, which are part of it, may be located in another country, i.e. they are both located in different countries and fall under different jurisdictions. All this indicates that it is necessary to clearly determine which of them plays an important role in the conclusion of the transaction and to determine the location of the server and its jurisdiction.

The location of the server is the location of the communication system (hardware and software). The physical location of the server on which the information (website) is stored cannot be considered as a criterion for this link. The location of the equipment qualifies as the location of the server if the equipment or the software located on it is owned by a specific person and is used to perform actions that are decisive for the Internet relationship [5,16].

According to paragraph 19 of the Preamble to Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market (the E-Commerce Directive), the determining factor in establishing the applicable law is the "place of establishment ...". It is clear that this link plays a key role in determining jurisdiction, especially in the context of cross-border digital services, where a provider may be registered in one country, provide services in another, and the legal and economic consequences of its activities may arise in multiple jurisdictions. However, the place of establishment is not the same as the technical location of the servers or the location of the users. The Directive is based on the need to take into account not only the formal criterion (place of registration) but also the actual economic activity. This means that the criterion should be the jurisdiction in which the provider carries out its main professional activity, regardless of where the technical means it uses are located. In cases where activities are carried out in several jurisdictions, preference is given to the jurisdiction most closely associated with the provision of services, which brings this approach closer to the concept of the personal law of a legal entity (lex societatis) [3,99].

To determine the law applicable to the form of a transaction, it is necessary to ascertain what is considered to be the place of performance of an online

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transaction. The UNCITRAL Model Law on Electronic Commerce stipulates that:

– the place of dispatch of an electronic message is the place of residence or location of the sender's commercial enterprise;

– the place of receipt of an electronic message is the place of residence or location of the recipient's commercial enterprise.

The place of conclusion of an online contract is the place of residence of the natural person offering the contract or the principal place of business of the legal entity offering the contract. The place of performance of a unilateral online transaction is the place of residence of the natural person or the principal place of business of the legal entity that performed the transaction [4].

Thus, the location of a provider's establishment, as understood by European regulations, is determined on the basis of the principle of actual economic activity, rather than on the basis of the availability of technological infrastructure or Internet resources.

As I.R. Rustambekov rightly points out, traditional conflict-of-law criteria – "the law of the place of location" and "the law of the place of conclusion of the contract" – take on a different meaning when applied to legal relationships arising on the Internet and are used in conjunction with the category of "server location". The location of the server is understood to be the physical location of the communication system (hardware and software). At the same time, the physical address of the server on which the information (e.g., a website) is located cannot be considered an independent conflict criterion. The location of the server is defined as the place where the equipment or software installed on it is located, if they belong to a specific person and it is through their functioning that actions are performed that are decisive for the establishment of legal relations on the Internet. At the international level, approaches to the application of the conflict-of-law rule "place of establishment of the provider" are also being developed. At the same time, a provider organisation may be registered in one country but provide services in another country or several countries, with the legal and economic consequences of providing services arising worldwide. Determining the place of establishment of a provider is necessary to establish jurisdiction over its activities and is largely similar to determining the personal

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status of a legal entity. When determining the place of establishment of a provider, in addition to its place of registration, it is necessary to take into account the actual economic activity it carries out. The place of establishment of a company providing services through a website is not the location of the technological infrastructure (servers) or the place from which the website can be accessed, but the place where the company carries out its economic activity. If the provider is registered in several places, and it is not possible to determine the place of registration, it is necessary to establish where the main professional activity of providing services is carried out. The place of establishment of the provider is considered to be the place where the main activity related to this is carried out [6, 21-22].

For the first time in national civil law, a system of conflict-of-law rules has been developed based on a new approach, serving the legal regulation of civil relations complicated by foreign elements arising in virtual space (the law of the server location, the law of the provider's place of registration, the law of the national domain) [6,30].

In the sphere of conflict-of-law regulation of electronic trade relations, it seems expedient to form a special system within the framework of lex informatica, focused on cross-border contracts concluded by means of electronic communications. This system could include a special conflict-of-law rule – the "law of the country where the server is located", i.e. the country from which the seller sent the electronic message. Thus, in the absence of a choice of applicable law by the parties and provided that the commercial activity is carried out within a single country, it is proposed to apply the law of the country where the seller is located (lex venditoris). In a situation where electronic commerce covers the territory of several states, the law of the country from whose territory the electronic message was sent by the seller and left its information system should be applied. This approach reflects the principle of the closest connection to the contract and may be applicable, for example, when concluding agreements by exchanging e-mails. In this case, it is proposed that the place of dispatch of the electronic message be considered to be the country in which the seller's commercial enterprises are registered or actually operate and from which the electronic message left its information system under its control.

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In the United States, courts often use a modified "most significant contacts" test, which takes into account the location of the parties, servers, and the place where the transaction was concluded and performed. In Alibaba Group v. Alibabacoin Foundation (2018), a US court recognised jurisdiction on the basis that the defendant's activities were directed at the US market, despite the absence of a physical presence. The European Union, under the Rome I Regulation, applies the principle of "characteristic performance" and the criterion of "habitual residence" to determine the applicable law to contractual obligations, which can be adapted to digital transactions. Singapore and Switzerland are developing specialised legal regimes for blockchain assets, offering clearer rules for determining the applicable law. In Japan, regulators consider the place of registration of a crypto exchange as the determining factor for establishing jurisdiction [7,125].

Conclusion

In conclusion, it should be noted that the digitalisation of foreign economic activity is radically transforming the classic system of conflict of laws. Whereas previously the key criteria for determining the applicable law were the place of conclusion of the contract (lex loci contractus) and the place of performance of the contract (lex loci solutionis), in the context of electronic platforms, blockchain technologies, smart contracts and artificial intelligence algorithms, these criteria are largely losing their practical applicability. The reason for this is the erosion of territorial factors: transactions are conducted in a virtual environment, obligations are performed in distributed networks without physical localisation, and participants may be located in different jurisdictions, which objectively complicates the determination of the law of closest connection.

The specificity of conflict of laws regulation in the digital age is manifested in the fact that traditional references require adaptation and clarification, since their literal application in the electronic environment often leads to legal uncertainty. In these circumstances, there is a need to develop new conflict-of-law categories that take into account the specific features of digital infrastructure, such as: the personal law of the operator (the country of registration of the entity using AI), the personal law of the developer (the country where the algorithm was created),

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as well as criteria related to the location of the server and the direction of activity towards a specific market.

The principle of autonomy of will of the parties is becoming increasingly important, allowing for the elimination of uncertainty in the choice of law in cross-border digital transactions. However, in the digital environment, this principle must be rethought, taking into account the specifics of automated decisions and self-executing smart contracts. In the absence of an agreement between the parties, priority should, as before, be given to the principle of the closest connection, but its content requires further clarification based on factors such as the location of the platform operator, the territorial availability of the service and the target market.

Thus, the specificity of determining conflict of laws in the context of digitalisation lies not only in the complication of traditional mechanisms, but also in the need to develop a comprehensive approach that combines classical and innovative criteria. Only such an approach can ensure a balance between flexibility and predictability of legal regulation, guarantee the protection of the interests of the parties and minimise the risks of legal uncertainty in the resolution of cross-border disputes in the digital economy.

The development of uniform international approaches to determining the applicable law for foreign economic transactions using artificial intelligence technologies is also of particular importance. Issues related to the legal status of AI, as well as the complexity of predicting the consequences of its autonomous actions, require the introduction of flexible and adaptive conflict-of-law rules.

Key areas for improving the national legislation of the Republic of Uzbekistan in the field of conflict of laws regulation of digital foreign economic transactions.

The introduction of new conflict-of-law categories that take digital infrastructure into account appears to be a necessary step in adapting legal regulation to the realities of the digital economy. In this regard, it is advisable to provide for the following additional references in the Civil Code of the Republic of Uzbekistan:

– the personal law of the operator (the law of the country of registration of the entity using artificial intelligence in the conclusion or execution of a transaction);

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– the personal law of the developer (the law of the country where the algorithm or software was created), applicable in cases of disputes related to algorithm defects or intellectual property rights violations;

– the criterion of the location of the server or digital platform, if this circumstance determines the accessibility, functioning and stability of the transaction.

In addition, in order to clarify the content of the 'closest connection' principle in the digital environment, it is necessary to establish additional factors to be taken into account when applying it: the location of the platform operator, the focus of its activities on the market of a specific country, the place of registration of users, and the territorial availability of the digital service. In the context of distributed networks (e.g., blockchain or smart contracts), it should be recognised that "close connection" is determined not by territorial but by functional criteria reflecting the organisational centre of activity.

Particular attention should be paid to smart contracts, which are executed automatically and often do not contain a direct expression of the parties' intentions. They require the establishment of special rules on applicable law. In particular, in the absence of a choice of law by the parties, the dispute should be governed by the law of the country of registration of the platform operator or the persons who provided the software.

Auction, tender and exchange contracts deserve special attention in the conflict of laws regime enshrined in Part 2 of Article 1190 of the Civil Code of the Republic of Uzbekistan, as they are governed by the law of the country where the auction or tender is held or where the exchange is located [1,29]. However, in the context of digitalisation, the issue of legal jurisdiction is significantly complicated: the current legislation does not regulate the determination of the country where an internet auction, internet tender or internet exchange is held.

The absence of such rules creates uncertainty and legal gaps in the resolution of cross-border disputes. After all, unlike a traditional marketplace, a virtual marketplace does not have a fixed physical location, and electronic messages can be transmitted through distributed servers in different jurisdictions. This objectively complicates the determination of applicable law and undermines legal predictability for participants in electronic commerce.

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In view of these circumstances, it seems appropriate to include the following clarification in paragraph 3 of part 2 of Article 1190 of the Civil Code of the Republic of Uzbekistan:

"Contracts concluded through an internet auction, internet competition, internet bidding or internet exchange shall be governed by the law of the country in which the organiser receives electronic messages, where its enterprises are located or incorporated, and in whose territory the electronic message is received by the information system controlled by the organiser."

This approach eliminates legal uncertainty by relying on an objective and verifiable criterion – the connection to the organiser's information system. It reflects the principle of legal certainty and ensures a close link between the transaction and the applicable legal order.

In addition, the judicial practice of various states has a significant influence on the formation of approaches to conflict of laws regulation in the field of electronic commerce. An analysis of foreign decisions shows that courts, when faced with similar disputes, develop different models for interpreting the place of conclusion and performance of electronic contracts, which confirms the relevance of legislative clarification.

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