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Annotatsiya. Mazkur maqolada “davlat huquqiy siyosati transformatsiyasi” tushunchasining nazariy jihatlarini, uning davlat boshqaruvidagi o‘rni va funksional ahamiyati, shuningdek, davlat huquqiy siyosati bilan bog‘liqligi har tomonlama tahlil qilingan. Tadqiqot predmeti sifatida transformatsiya jarayonining davlat huquqiy siyosatidagi o‘rni yoritiladi. Muallif huquqiy siyosat transformatsiyasi yo‘nalishlarini ikki tarmoqqa – progressiv va responsiv yondashuvlar hamda demokratik va inson huquqlari tamoyillari asosidagi yo‘nalishlarga ajratib ko‘rib chiqadi. Metodologik asos sifatida tizimli, mantiqiy va tahliliy yondashuv usullari qo‘llangan. Maqolada, xususan, davlat huquqiy siyosati transformatsiyasining asosiy yo‘nalishlari batafsil tahlil etilib, bu borada bir qator olimlarning ilmiy izlanishlari tahlil manbasi sifatida olingan hamda ularning fikr va qarashlari keltirilgan. Tadqiqot xulosalarida huquqiy siyosat transformatsiyasining o‘ziga xos jihati huquqiy hujjatlar, davlat boshqaruvi funksiyalari hamda zamonaviy axborot texnologiyalarining uyg‘unligida namoyon bo‘lishi ta’kidlangan. Ushbu yondashuvlar huquqiy siyosat transformatsiyasini mustaqil va yetakchi huquqiy yo‘nalishga aylantirishga xizmat qiladi. Shuningdek, davlat huquqiy siyosati transformatsiyasi jarayonida yuzaga kelayotgan muammo va kamchiliklar chuqur o‘rganilib, ularni amaliy bartaraf etish bo‘yicha bir qator taklif va tavsiyalar ishlab chiqilgan.

Kalit so‘zlar: huquqiy siyosat, transformatsiya, davlat huquqiy siyosati transformatsiyasi, raqamlashtirish, jamoatchilik nazorati, inklyuzivlik, institutsional-huquqiy tartib

АНАЛИЗ ПОНЯТИЯ ТРАНСФОРМАЦИИ ГОСУДАРСТВЕННОЙ ПРАВОВОЙ ПОЛИТИКИ

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Аннотация. В данной статье всесторонне анализируются теоретические аспекты понятия «трансформация государственной правовой политики», его место и функциональное значение в системе государственного управления, а также взаимосвязь с общей правовой политикой государства. В качестве предмета исследования рассматривается роль процесса трансформации

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CHOICE OF LAW IN INTERNATIONAL COMMERCIAL CONTRACTS: TACIT AND EXPRESS CHOICE IN DIGITAL TRADE

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Abstract. This article addresses the complex issues of choosing legal principles in international commercial contracts in the context of globalization and the rapid development of digital commerce. It analyzes the fundamental principle of party autonomy, in particular its explicit (expressly stated in the contract) and implied (determined based on the circumstances) forms. The paper considers the adaptation of traditional legal approaches to modern challenges such as smart contracts, decentralized autonomous organizations (DAOs) and jurisdictional uncertainty. The immutability of smart contracts, while providing commercial certainty, simultaneously gives rise to legal paradoxes and regulatory gaps, as demonstrated in the case of *Van Loon v. US Treasury*. The need to obtain legal entity status for DAOs creates a market of “legal shells” offered by various jurisdictions (e.g., Wyoming, Switzerland). The emergence of innovative mechanisms such as multi-signature arbitration in dispute resolution leads to the privatization of enforcement proceedings. The aim of the study is to examine the adaptation of traditional legal approaches to modern challenges such as smart contracts, decentralized autonomous organizations, and jurisdictional uncertainty. The paper uses legal analysis and case study methods. The results show that the immutability of smart contracts creates legal paradoxes, while mandatory public law rules limit the voluntary autonomy of the parties.

Keywords: private international law, digital commerce, choice of law, party autonomy, express choice, implicit choice, smart contracts, decentralized autonomous organizations

XALQARO TIJORAT SHARTNOMALARIDA HUQUQNI TANLASH: RAQAMLI TIJORATDA ANIQ IFODALANGAN VA IFODALANMAGAN SHAKLLAR

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Annotatsiya. Maqolada globallashuv va raqamli savdoning jadal rivojlanishi sharoitida xalqaro tijorat shartnomalarida qo'llanadigan huquqni tanlashning murakkab masalalari ko'rib chiqiladi. Taraflar xohish-irodasi avtonomiyasining fundamental prinsipi, xususan, uning ochiq (shartnomada to'g'ridan to'g'ri belgilangan) va nazarda tutilgan (vaziyatdan kelib chiqqan holda belgilangan) shakllari tahlil qilinadi. Shuningdek, an'anaviy huquqiy yondashuvlarning smart-shartnomalar, markazlashmagan avtonom tashkilotlar va yurisdiksiyaning noaniqligi kabi zamonaviy muammolarga moslashuvi o'rganiladi. Smart-shartnomalarning o'zgarmasligi tijorat aniqligini ta'minlash bilan bir vaqtda

huquqiy paradokslar va tartibga solish bo'shliqlarini keltirib chiqaradi, buni "Van Loon AQSh g'aznasiga qarshi" ishi namoyish qiladi. Markazlashmagan avtonom tashkilotlarga yuridik shaxs maqomini berish zarurati turli yurisdiksiyalar (masalan, Vayoming, Shveysariya) tomonidan taklif etiladigan "huquqiy qobiqlar" bozorini shakllantiradi. Nizolarni hal qilishda ko'p imzoli arbitraj kabi innovatsion mexanizmlarning paydo bo'lishi ijro tartib-taomillarini xususiylashtirishga olib keladi. Tadqiqotning maqsadi an'anaviy huquqiy yondashuvlarning zamonaviy tahdidlarga, jumladan, smart-shartnomalar, markazlashmagan avtonom tashkilotlar va yurisdiksiyaviy noaniqlikka moslashuvini tahlil qilishdan iborat. Tadqiqotda huquqiy tahlil va keys-stadi usullaridan foydalanilgan. Natijalar shuni ko'rsatadiki, aqlli shartnomalarning o'zgarmasligi yuridik paradokslarni keltirib chiqaradi, ommaviy huquqning imperativ normalari esa tomonlarning ixtiyoriy mustaqilligini cheklaydi.

Kalit so'zlar: xalqaro xususiy huquq, raqamli savdo, huquq tanlovi, tomonlar irodasi avtonomiyasi, to'g'ridan to'g'ri tanlov, nazarda tutilgan tanlov, aqlli shartnomalar, markazlashtirilmagan avtonom tashkilotlar

ВЫБОР ПРИМЕНИМОГО ПРАВА В МЕЖДУНАРОДНЫХ КОММЕРЧЕСКИХ ДОГОВОРАХ: ПРЯМОЙ И ПОДРАЗУМЕВАЕМЫЙ ВЫБОР В ЦИФРОВОЙ ТОРГОВЛЕ

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Аннотация. В статье рассматриваются сложные вопросы выбора применимого права в международных коммерческих договорах в условиях глобализации и стремительного развития цифровой торговли. Анализируется фундаментальный принцип автономии воли сторон, в частности его явная (прямо закреплённая в договоре) и подразумеваемая (определяемая исходя из обстоятельств) формы. Исследуется адаптация традиционных правовых подходов к современным вызовам, таким как смарт-контракты, децентрализованные автономные организации и неопределённость юрисдикции. Неизменяемость смарт-контрактов, обеспечивая коммерческую определённость, одновременно порождает правовые парадоксы и регуляторные пробелы, что ярко демонстрирует дело Van Loon v. US Treasury. Необходимость придания децентрализованным автономным организациям статуса юридического лица формирует рынок «правовых оболочек», предлагаемых различными юрисдикциями (например, Вайоминг, Швейцария). Появление инновационных механизмов, таких как арбитраж с мультиподписью при разрешении споров, приводит к приватизации исполнительных процедур. Целью исследования является анализ адаптации традиционных правовых подходов к современным вызовам, включая смарт-контракты, децентрализованные автономные организации и юрисдикционную неопределённость. В работе использованы методы правового анализа и кейс-стади. Результаты показывают, что неизменяемость смарт-контрактов создаёт юридические парадоксы, тогда как императивные нормы публичного права ограничивают добровольную автономию сторон.

Ключевые слова: международное частное право, цифровая торговля, выбор права, автономия воли сторон, прямой выбор, подразумеваемый выбор, смарт-контракты, децентрализованные автономные организации

Introduction

The globalization of commerce and the rise of digital trade have reshaped

international commercial contracts. A key aspect is the choice of law clause, determining the legal system governing

contractual obligations. Both express and tacit choices of law ensure predictability in cross-border transactions. This article explores their principles, examines digital trade practices, and assesses prospects for improvement.

Party autonomy is a cornerstone of private international law, enabling contracting parties to select the legal system that best fits their commercial needs. An express choice of law clause explicitly designates the governing jurisdiction, offering clarity to courts and arbitral tribunals while minimizing interpretational discrepancies. For instance, a standard clause might state: “This Agreement shall be governed by and construed in accordance with the laws of the State of New York” (HCCH, 2015). The HCCH is also actively engaged in adapting traditional private international law to novel digital instruments. For example, its recent discussions have centered on the private international law aspects of Voluntary Carbon Markets (VCMs), which involve digital or online certification of units and the tokenization of assets using distributed ledger technology. These initiatives highlight how traditional connecting factors, such as a physical place of transaction, are being challenged by new digital assets and market structures, underscoring the need for updated legal frameworks (HCCH, 2015). The organization’s e-Apostille Programme, which aims to develop and promote low-cost, secure software models for electronic apostilles, is another practical example of its efforts to harmonize cross-border internet exchanges (HCCH, 2015).

Express choice, where parties explicitly designate the governing law, provides clarity and predictability in enforcement. In contrast, tacit choice relies on contextual factors and requires nuanced judicial interpretation. This article analyzes both approaches, highlighting how digital trade

complexities impact traditional principles, supported by scholarly references and case law examples (Boyer Law Firm, n.d.).

In an influential study, Aurora Jillena Meliala argues that a clear legal framework, including explicit choice of law rules, is essential for legal certainty in metaverse-based commercial activities. As virtual environments host significant economic transactions, conventional legal concepts must adapt to the unique challenges of decentralized digital spaces (Meliala, 2024).

Moreover, G.J. Bouwers explores how regional and supranational organizations – particularly in emerging economies – could benefit from codifying private international law rules on tacit choice. This codification would enhance legal predictability and support economic growth by establishing standardized guidelines for determining tacit choice when express contractual clauses are absent (Bouwers, 2023).

In addition to these studies, insights from the research by Tamás Dezső Czigler further complement these findings by summarizing choice of law rules affecting electronic contracts in both the US and Europe (Czigler, 2012). Together, these research efforts form a comprehensive understanding of the evolving legal landscape that digital trade presents, emphasizing both the opportunities and challenges in harmonizing international legal norms.

Main part

Theoretical Framework and Legal Foundations

Party Autonomy and Express Choice

Party autonomy is a key principle of private international law, enabling contracting parties to choose the legal system that best suits their commercial needs. An express choice of law clause explicitly designates the governing jurisdiction, offering clarity to courts and arbitral tribunals while minimizing interpretational discrepancies. For example, a standard

clause may state: “This Agreement shall be governed by and construed in accordance with the laws of the State of New York” (WilmerHale, 2021).

Express choice provides crucial clarity in digital trade, where parties operate across multiple jurisdictions and contracts are formed rapidly, often through automation. Using precise legal language within a well-established legal framework helps prevent disputes over applicable law, ensuring smoother dispute resolution.

Tacit Choice: Inference and Complexity

Tacit choice, or implied choice, emerges when a contract lacks an explicit governing law clause. Instead, courts and arbitral tribunals infer the intended legal system based on the context of the transaction. This inference can be drawn from factors such as the language and structure of the contract, the forum selection clause, place of performance, or even the currency used for payment (HCCH, 2015).

Proving a tacit choice of law requires clear evidence of the parties’ intent, which can often be ambiguous. For example, if a business regularly operates from a particular jurisdiction without explicitly designating its governing law, that jurisdiction’s laws may be inferred as the governing framework. While this flexibility can be useful, it poses challenges in digital commerce, where the absence of physical indicators – such as a defined place of performance or explicit communications – complicates the determination of the applicable legal system (WilmerHale, 2021).

Digital Trade and the Expansion of Choice of Law Principles

The digital landscape has reshaped international commerce, eliminating traditional physical and geographical constraints. Digital trade – spanning e-commerce, online services, data transfers, and technologies like smart contracts – operates in a borderless realm, heightening

the need for a clear choice of law framework. As contracts are increasingly formed on online platforms and executed autonomously, conventional indicators for determining tacit choice, such as physical location or negotiation venue, have become less reliable (HCCH, 2015). This concept is particularly crucial for Decentralized Autonomous Organizations (DAOs), which require a legal identity to interact with traditional legal and financial systems. A well-designed legal wrapper is a legal entity that a DAO uses to gain separate legal personality, limited liability, and tax protection, shielding its members and core contributors from personal, unlimited liability (DAOBOX, n.d.). Without a legal wrapper, a DAO might be considered a general partnership, making all contributors personally liable in the event of a lawsuit or other legal issue. The legal wrapper also allows the organization to formally enter into contracts and hire employees (Aragon, n.d.).

Jurisdictions around the world are developing specific legal wrappers tailored to DAOs. For example, the state of Wyoming has created legislation that allows for the registration of DAO-specific Limited Liability Companies (LLCs), which uniquely permit a smart contract to be designated as a manager in the official legal filings. This provides a clear, legally recognized link between the on-chain code and the off-chain legal entity. Other jurisdictions offer different legal structures, such as a Swiss Association, an Unincorporated Nonprofit Association (UNA) in the U.S., or a company limited by guarantee, each with its own pros and cons regarding membership, legal identity, and governance flexibility (Aragon, n.d.).

In smart contracts deployed on a blockchain, code self-execution operates based on predefined conditions, often without explicit legal language. As a result, the governing law may need to be embedded within the contract code itself or inferred

from the surrounding transactional data. Furthermore, digital platforms frequently incorporate standardized terms that, through consistent practice, imply a tacit choice of law – thereby fostering a hybrid legal framework better suited to the complexities of digital trade.

The United States has provided a foundational framework for electronic agreements through the Electronic Signatures in Global and National Commerce Act (E-SIGN Act) and the Uniform Electronic Transactions Act (UETA). These federal and state laws, respectively, affirm the legal validity of electronic records and signatures, thereby lending crucial support to the idea that smart contracts are legally enforceable agreements. However, the self-executing and often immutable nature of smart contracts creates unique legal challenges that go beyond simple validation. Unlike traditional contracts, which allow for a degree of flexibility and modification, smart contracts operate on a rigid, “if-then” logic where vague or ambiguous terms cannot exist in the code. Moreover, once deployed on a blockchain, a smart contract is immutable and cannot be modified; any change requires the cancellation of the old contract and the creation of an entirely new one. This immutability, while preventing breaches through automatic execution, fundamentally changes the dynamic of contract negotiation and modification (Federal-Lawyer.com, n.d.).

The immutability also creates a profound legal paradox for regulatory bodies. The self-executing nature of smart contracts is often lauded for its ability to prevent breaches and provide certainty, as there is no need for third-party approval or intermediaries. However, a recent ruling by the US Court of Appeals for the Fifth Circuit in *Van Loon v. US Treasury* illustrates a significant contradiction (Federal-Lawyer.com, n.d.). The court found that truly immutable

smart contracts, which cannot be altered once deployed, do not fall under the legal definition of “property” for the purpose of sanctioning by the Office of Foreign Assets Control (OFAC). This ruling effectively puts certain smart contracts beyond the reach of a key regulatory authority, demonstrating that immutability, while offering certainty for contracting parties, can inadvertently create a legal “black hole” for regulators. This compels a strategic rethinking: instead of trying to regulate the immutable asset, regulators must pivot to targeting the human actors who create and interact with it, or focus on “mutable” proxy contracts that allow for upgrades and modifications (Katten, n.d.).

Challenges in Implementing Choice of Law in Digital Contexts

Jurisdictional Ambiguity

One of the primary challenges in applying choice of law principles to digital trade is the inherent absence of clearly defined geographical boundaries. In global transactions, the location where a contract is eventually performed may span multiple legal territories. This complexity often forces courts to rely on various conflict-of-laws principles, potentially leading to unpredictable legal outcomes (Boyer Law Firm, n.d.).

Beyond the general issues of immutability and subjectivity, the implementation of smart contracts introduces specific legal challenges that require innovative solutions. Due to the pseudonymous nature of many smart contracts, it can be difficult to identify a party to sue, and there may be evidentiary challenges in pinpointing who is responsible for a loss caused by faulty code or corrupted messages (Norton Rose Fulbright, n.d.). Furthermore, a key advantage of smart contracts, their irrevocability, also creates problems when a party is legally entitled to terminate or unwind a transaction. Since the contract cannot be changed, the permanent record on the blockchain may no longer

reflect the actual legal position (Norton Rose Fulbright, n.d.).

Dispute resolution bodies are actively adapting to these challenges. Arbitration is emerging as a preferred method for resolving smart contract disputes, as it allows parties to appoint arbitrators with specialized technical knowledge and ensures confidentiality of proprietary source code. Arbitration institutions like JAMS have even developed specific “Smart Contract Rules” that allow for bespoke procedures. One such innovative solution is the use of a “multisig” mechanism, where parties collectively nominate an arbitrator, which then triggers the power of that arbitrator to transfer assets or money on the blockchain automatically in accordance with the arbitral award (JAMS, n.d.). This direct, code-based enforcement of a legal decision represents a new frontier in dispute resolution for the digital age.

Uzbekistan is also actively developing its legal framework to accommodate digital technologies, including smart contracts, as part of its broader “Digital Uzbekistan – 2030” strategy. Foundational steps were taken with a 2018 presidential resolution aimed at developing the digital economy and crypto-assets, which defined a smart contract as an electronic agreement whose execution is automated through digital transactions. The government is exploring the application of these technologies in areas like public procurement to increase efficiency and transparency.

However, legal challenges remain, particularly concerning the integration of smart contracts into the existing Civil Code. While there is a move to recognize smart contracts as equivalent to written agreements, proposed drafts of the Civil Code have contained conflicting provisions, creating uncertainty about their legal status and enforceability, especially for transactions that traditionally require notarization. This ongoing legislative development highlights

the country’s efforts to balance technological innovation with established legal principles.

Standardization and Technological Integration

The rapid evolution of digital commerce necessitates standardized contractual formulations that align with modern technology. Clearly drafted, enforceable digital-specific choice of law clauses can mitigate legal uncertainty. Additionally, blockchain technology and smart contracts offer a groundbreaking approach by embedding governing law within the contract itself. While these innovations enhance automation and legal clarity, their effective implementation demands close collaboration between legal professionals and technologists (Navas & Cusi Abogados, n.d.).

Practical Implications and Recommendations

Recommendations for Integrating Express and Tacit Choices

For businesses in international digital trade, combining express and tacit choice strategies is recommended. Express clauses should be prioritized to ensure clarity and uniform interpretation, while tacit choice may be inferred from transactional context and operational patterns when no explicit clause exists. Additionally, educating legal professionals and businesses on the implications of choice of law in digital trade is essential for fostering legal certainty and compliance (WilmerHale, 2021).

The increasingly digital economy demands robust international cooperation to develop uniform legal standards and reduce disparities among national conflict-of-law rules. International organizations, including the Hague Conference on Private International Law, have made significant progress in this arena. However, the rapid evolution of digital trade necessitates further refinement and updated conventions that specifically address the nuances of tacit choice in the digital age (HCCH, 2015).

In addition, the adoption of digital identity frameworks that capture the

preferences of contracting parties could markedly improve clarity and automation. Incorporating these preferences into smart contracts would ensure that the intended governing law is automatically enforced, reducing reliance on subjective judicial interpretation.

Conclusion

In conclusion, the principles of choice of law in international commercial contracts remain indispensable in promoting legal certainty and predictability—especially as digital trade continues to expand. Express choice offers a definitive mechanism through which parties can voluntarily select a governing legal framework, thereby minimizing ambiguity. Conversely, tacit choice, while more nuanced, provides the necessary flexibility in instances where explicit terms are absent. However, with the increasing complexity of digital transactions, coupled with their borderless nature, there is an urgent need to rethink traditional choice of law methodologies.

The integration of innovative research, such as the work by Meliala emphasizing legal clarity in the metaverse and Bouwers highlighting the benefits of codifying tacit choice principles by regional organizations, complements traditional analyses and underscores the evolving challenges and opportunities in this arena. Furthermore, the summary of choice of law rules affecting electronic contracts provided by Czigler reinforces the importance of harmonizing US and European approaches to foster a more predictable and enforceable legal environment globally.

Moving forward, it will be crucial for businesses, legal practitioners, and policy makers to foster concerted efforts towards international standardization, integrate technological solutions such as smart contracts, and promote educational initiatives that highlight best practices. Such efforts will not only support the continued growth of digital trade but also ensure that legal frameworks remain robust and adaptive to emerging challenges in the digital era.

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