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LEGAL REGULATION SOURCES FOR THE UK CONTRACTUAL RELATIONS

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Abstract

The presented article discusses the sources of contractual relation legal regulation of private law nature in the United Kingdom of Great Britain and Northern Ireland, based on the peculiarities of their legal system related to the historic Association Agreement. The symbiosis of legislative regulation and judicial precedent is of particular importance to the Great Britain law, which stipulates that it is necessary to rely not only on the norms of law but also on the judicial decisions substantiating their claims.

Keywords

The United Kingdom – Common law – European law – Ttreaties – Civil law

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Introduction

The United Kingdom does not have a single legal system, since, in accordance with paragraph 19 of the Association Agreement in 1706, Scotland retained its own legal system[1]. Nowadays, the UK has three different legal systems: English law, Northern Ireland law, and Scotland law.

English law applied in England and Wales and North Irish law are based on common law[2]. Scotland law is a hybrid of common law and civil law. On this basis, conflicts arise in practice concerning the proper application of some proper act of an authority to settle contractual relations.

Besides, considering the regulation of UK contractual relations, certain circumstances should be taken into account. First, it is necessary to take into account the specifics described above, which relate the states of the United Kingdom to general law (case law). Secondly, the geographical heterogeneity of the United Kingdom of Great Britain and Northern Ireland suggests the features arising from a certain autonomy of its parts. In legal literature on the regulation of private law relations, including the issues of contractual obligation regulation, it is customary to bypass this problem by limiting geography to English law exclusively[3], and in the practice of concluded contracts - by the law of England and Wales. Finally, thirdly, as a member of international trade and economic integration, the United Kingdom could not avoid the influence of European law, as well as the influence of universal unified sources. These circumstances have affected the system of British contract law sources. It should be noted that a number of authors also focus on the analysis of English law provisions, without focusing on the fact that this concerns the law of the state regions[4].

Methods

The methodological basis of the article is represented by general scientific and special methods. The following general scientific methods were used: dialectical, logical, analysis and synthesis, induction and deduction, etc. Among the particular scientific methods of cognition, the following ones were used: formal legal, comparative legal and system-structural.

Results and discussiob

The belonging of a part of Great Britain - England - to the common law system[5] provided it with a special place in a series of legal systems relating to the Western legal tradition, based primarily on Roman law sources[6].

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[1] The International Survey of Family Law: 1996. The Hague: Martinus Nijhoff. 1998.
[2] The Treaty (act) of the Union of Parliament 1706. http://www.scotshistoryonline.co.uk/union.html.
[3] V. Anson, Contract Law (Moscow: H. E. Sadikova, 1984); A. A. Dubinchin, English contract law. Contract conclusion: a textbook for Russian lawyer (Moscú: 2012) y V. S. Belykh, Contract Law of England: comparative legal study (Moscú: 2017).
[4] E. A. Vasilyev, A. S. Komarov The civil and commercial law of foreign countries: In 2 Vol. (Moscú: 2004).
[5] M. Kh. Garcia Garrido, Roman private law: cases, lawsuits, institutions (Moscú: L. L. Kofanov, 2005).
[6] J. Berman Harold. LAW and REVOLUTION. The Formation of the Western Legal Tradition (Cambridge and London: Harvard University Press, 1983)

In contrast to the countries of continental Europe, the reception of Roman law in English law was not so much due to the use of codified sources, which contained substantive law norms, but rather by lawsuit system and order formula borrowing. The task of the law enforcer was not so much the analysis of an abstract legal norm or a substantive law institution, but the search for an appropriate lawsuit and the justification of its imposition on a practical situation, i.e. "English lawyers were the experts to find the formulas corresponding to each claim". Attention should be paid to the fact that the school of practicing lawyers and claim formula experts were opposed by university lawyers engaged in the study of Roman law codified sources. The confrontation between two law schools, or "socio-professional groups" (English civil lawyers and common lawyers), was the reflection of this state of affairs. The modern legal system of Scotland owes its relative independence to the Act of Union (1707) (hereinafter - the Law of 1707), which formed a unified state legal basis. At that, the article XVIIIth of the Law of 1707 allowed the continued existence of Scottish law, with the exception of trade, customs and taxation regulation, which should be the same for England and Scotland after their unification. The article XIXth of the Law of 1707 provided for the preservation of the judicial system in Scotland, stipulating, however, the right of the British Parliament to determine the status of judicial bodies. At that, it was stipulated that the Scottish disputes were not resolved in the English courts at Westminster. The above-mentioned articles "remain the formal basis for the continuing independence of the Scottish judicial system and the legal system"[7]. Describing the development of an independent Scottish legal system, the researchers note that in this case, it will be fair to speak about the assimilation of the Scottish system with the English one. The result of it is the loss of "civilian" (civil) characteristics by the Scottish system[8]. Despite this, the legal system of Scotland is considered as an independent autonomous system of "mixed nature" ("mixed jurisdiction") in the framework of comparative legal research[9].

It should be noted that a certain autonomy of the Scottish system is most clearly seen in the field of contractual obligation regulation. Differences are manifested, in particular, by consideration concept application practice. As the basis of a contractual obligation, Scottish contract law is closer to the idea of a cause than to the idea of consideration. Thus, the position of the Scottish courts is closer to the tenets of continental law in terms of the offer and contract irrevocability issue regulation in favor of a third party. Another manifestation of the Scottish system autonomy is the adoption of special legislation governing contractual relations. Unlike Scotland, the Northern Ireland legal system is not so autonomous. Northern Ireland law makes the part of the common law system, although some legal acts (in particular, statutory instruments) relate and extend their effect only to Northern Ireland. The status of Northern Ireland as part of the United Kingdom is determined by the Constitutional Act of Northern Ireland[10], as well as by the Northern Ireland Act[11].

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[7] H. L. MacQueen, Studying Scots Law (Hampshire: 2004).

[8] R. Evans-Jones, Roman Law in Britain. Quaestiones Juris. Festschrift Joseph Georg Wolf zum 70 Ehrburststag. Manthe U., Krampe C. ed. Freiburger Rechtsgeschlichtlieche Abhandlungen (n.F.) Bd. 36 (Berlin: 2000).

[9] W. Tatley, “Mixed Jurisdictions: Common Law v. Civil Law (Codified and Uncodified)”, Louisiana Law Review. 2000. Vol: 60 num 3 (2000): 678-738; R. Evans-Jones, “Reception of Law, Mixed Legal Systems and the Myth of the Genius of Scots Private Law”, Law Quarterly Review Vol: 63 (1998) y T. M. Cooper, “The Common Law and the Civil Law - A Scots View”, Harvard Law Review. Vol: 63 (1950): 468-475.

[10] Northern Ireland Constitution Act. PGA. 1973. C. 36.

[11] Northern Ireland Act. PGA. 1998. C. 47.

The analysis of legislative practice (legislative acts and statutory instruments) of the United Kingdom indicates the relative autonomy of legal sources governing contractual relations (written law). Among the legislative acts adopted by the British Parliament and regulating contractual relations, the following ones should be named:

- The Law on Public Acts[12]. It determines the conditions for a contract recognition as unenforceable ones;
- The Law on contracts (the rights of third parties)[13]. The adoption of this Law was necessary to develop a stable and predictable contractual practice of third party right recognition in favor of a third party;
- Legal Reform Law (Contract Enforcement)[14]. It concerns the substantiation for contract enforcement refusal if such a contract has the signs of fraud;
- The Law "On contracts concluded by legal entities"[15]. This law regulates the issues of contract form concluded on behalf of a legal entity; it is not applied to joint-stock companies established in accordance with the Law on Companies (2006), to limited liability companies (limited liability partnership, LLP), as well as to foreign legal entities; The law defines the contract conclusion procedure in writing and oral forms;
- Contract Law (applicable law). The adoption of this Law ensures the implementation of international convention provisions within the framework of the English treaty law, the provisions defining the law applicable to certain types of contractual relations; in particular, the thing is about the provisions of the Rome Convention (1980) on the law applicable to treaty obligations, the Luxembourg Convention of 1984 on Switzerland accession to the Rome Convention and on the Law applicable to treaty obligations;
- The Law on deregulation and contracting[16]. The adoption of this Law was necessary to regulate the contract conclusion procedure by authorized executive bodies;
- The Law on the treaty in Scotland[17]. Belonging to mixed law systems, Scotland does not belong to the countries with codified law; this relatively small act fixes the possibility of unilateral obligation recognition in relation to the territory of Scotland.

Along with the laws of contractual relation regulation, so-called statutory instruments are important, i.e. the legal acts adopted by the executive authorities authorized to adopt a relevant act by law (i.e. by an act of parliament). Statutory instruments fall into the category of so-called delegated legislation. The norms of laws are specified in the framework of statutory instruments, and the procedure for legislative act norm implementation is determined. Such statutory instruments include, for example, the Regulation on concession agreements[18], the Regulation on agreements in the field of the national healthcare system (general agreements on medical services)[19], the Regulation on public agreements[20], etc. The above mentioned legislative acts regulate the general issues of contractual obligations. Along with the laws relating to general issues, the UK has adopted a number of laws and statutory instruments regulating certain types of contracts and special types of legal relations, within which the relations between the parties are

[12] Judicature Northern Ireland Act. PGA. 1978. C. 23.
[13] Contracts (Rights of Third Parties) Act 1949 (PGA. 1949. C. 34).
[14] Law Reform (Enforcement of Contracts) Act 1954 (PGA. 1954. C. 34).
[15] Contracts (Applicable Law) Act 1990 (PGA. 1990. C. 36).
[16] Deregulation and Contracting Act 1994 (PGA. 1994. C. 40).
[17] Contract (Scotland) Act 1997 (PGA. 1997. C. 34)
[18] The Concession Contracts Regulations. 2016. №. 273.
[19] National Health Service (General Medical Services Contracts) Regulations. 2015. №. 1862.
[20] Public Contracts Regulations. 2015. №. 102.

established through an appropriate contract type. At that, in respect of Great Britain, it should be noted that judicial practice plays a significant role in comparison with the written law (legislative acts and statutory instruments). This practice is of particular importance for the law of the UK states. In particular, English law, as well as Northern Ireland law, is based on the system of precedents that form the common law. The category of "precedent" includes two meanings in English law. In a broader sense, a precedent is understood as a judicial act containing a legal decision rationale, which should be taken into account when subsequent judicial decisions are made. In a narrower sense, one should speak of a precedent as a judicial decision binding the judges of a certain category (as a rule, equal or lower instance as binding). This means that justifying their claims, the lawyers should be guided by judicial decisions. A lawyer examines judicial practice in order to find new arguments to substantiate his legal position. "The precedent doctrine considers judicial practice not as a source of additional knowledge of the law, but as an authoritative statement containing the rule of law (an authoritative statement of law)"[21].

Conclusion

Thus, during the analysis and the interpretation of the legal rules governing the contractual relations in the United Kingdom, it should be borne in mind that it consists of four relatively independent state entities, each of which has a number of its own features relating to the sources of private law contractual relation regulation. Therefore, it is erroneous to base their point of view, dwelling on the analysis of the of English law provisions and referring to the legal regulation of treaties without focusing on the fact that this concerns the law of the state regions. Besides, when you consider the sources of UK contract law, it must be borne in mind that common law is the foundation of the UK legal system. Common law is the system of laws, and the system developed on the basis of court and judicial authority decisions.

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[21] English Private Law / Ed. by A. Burrows. P. 30 (§ 1.63).

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