

INTERNATIONAL PRIVATE LAW RELATIONS OF THE STATE: SUBJECTIVE CHARACTERISTIC

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Abstract. The article examines the theoretical and legal foundations of the state as a subject of international private law relations and its special status. The author studies the immunity of the state as a subject of private international law and defines the range of relations in which the state may act as a subject of international law. The basis of immunity is considered to be the sovereignty of the state. The author analyzes the main concepts of jurisdictional immunity of states: absolute immunity and functional (limited) immunity, their features and enshrined in international legal acts and national legislation. The article reviews the relationship between the state as a subject of civil legal relations and a legal entity, their similarities and differences. This paper defines the range of relations in the international civil law sphere, to which the state may be a party.

Keywords: private international law, subject of international law, jurisdictional immunity of the state, concept of limited immunity, private legal relations

INTRODUCTION

Given the current state of political and economic development of international relations and international law, the study of the subjective characteristics of the state in international private law relations is relevant. Nowadays, there is a global trend of participation of states in international private legal relations, however, the competent authorities of the state do not always carry out such activities with confidence, since transactions with foreign private individuals are dangerous due to possible liability of the entire state in case of default, and foreign private individuals are cautious about entering into such transactions with states due to the difficulties (and sometimes even impossibility) of bringing them to justice in their national court due to judicial immunity.

By participating in commercial transactions on the same terms as private individuals, the state becomes an equal counterparty for them, which must be responsible for its actions, which in case of improper behavior may be sued and against which a court decision may be made obliging the state to compensate for damages or otherwise restore the violated right of its partner.

The difficulties of holding states accountable in private international law are related to numerous factors, among which state immunity is a prominent one. Persons who have suffered losses as a result of the actions of a foreign state cannot always rely on a trial in court, given the current doctrine of in-

ternational law: the immunity of a foreign state from judicial review. If there are circumstances for its application, the court may refuse to accept a case for consideration or enforcement against a foreign state. American and other scholars cite numerous situations arising in such circumstances, for instance: an Oregon company importing rhesus monkeys under a contract with the Bangladeshi government sued the government in a U.S. court when the contract was unexpectedly violated. Florida residents buy tickets for a group tourist trip to the Dominican Republic, but upon their arrival, the local government refuses them entry as undesirable aliens and returns them to Florida at their expense, and they sue the state-owned Dominican airline in a U.S. court. Americans buy certificates of deposit denominated in dollars from a private Mexican bank that the Mexican government nationalizes. The bank subsequently converts the certificates of deposit with dollar obligations into peseta obligations; the Americans sue the now state-owned bank in a U.S. court. In all of these cases, persons who have suffered losses as a result of the actions of foreign governments and have filed a claim for compensation face the prevention of litigation on the basis of state immunity. State immunity is a universally recognized and inherent quality of a state as a subject of private international law, which means that national judicial and arbitration bodies of one state cannot consider cases arising from civil legal relations, based on claims brought by individuals or legal entities (regardless of citizenship, place of residence, establishment, registration, or personal law) against a foreign state, unless the foreign state consents to it. State immunity is a kind of protection for a foreign country. The concept of "state immunity" was first developed in international law as a customary rule, and later became defined by court practice, legislation and international treaties.

There are two main concepts that are common to the legislation of different countries: the concept of absolute state immunity and the concept of limited state immunity. The doctrine of absolute state immunity is based on the premise that whatever legal actions a state takes, whether as a sovereign or as a private entity, it always remains immune from the jurisdiction of a court of another state without its consent. This doctrine has been dominant for a long time, but in the modern world, international private law relations are dominated by the doctrine of limited state immunity, which is enshrined in international instruments, national legislation and is observed in court practice. The doctrine of limited state immunity was developed in many foreign countries when, at the end of the 20th century, laws were adopted to limit the immunity of a foreign state (Australia, Argentina, Belgium, Canada, Denmark, Greece, Italy, Great Britain, Norway, Pakistan, the United states, etc.), due to the increasing number of cases of participation of countries in international private law relations.

This raises many problematic issues related to the legal regulation of relations in this area, in particular, the Convention on Jurisdictional Immunity of States and Their Property adopted in 2004 has not yet entered into force, as it has not been ratified by a sufficient number of parties. The problem of defining the status of the state as a subject of international private legal relations is also debatable.

MATERIALS AND METHODS

To the study of the problem of international private law relations of the state within their own subjects of scientific analysis were addressed A.S.Dovgert, O.T.Hirenko, Y.M.Dzera, Y.V.Korniychuk, M. M.M.Buromenskyi, M.M.Hnatovskyi, N.N.Chuchkova, H.Burkhard and others.

The methodological basis of this work is civil law methods and techniques. Civil method of regulation of civil relations is a complex category, which has the following features:

1) legal equality of participants, their autonomy and independence, which means that participants of relevant legal relations have legally equal opportunities to acquire and exercise civil rights and create and perform civil duties, and they are not in any legal dependence between each other (authoritative subordination);

2) optionality in choice of behavior of members of civil relations, this means that parties can act initiatively, freely, in their own discretion, based on their own interests and purposes;

3) judicial dispute settlement, which means that they are able to settle any disagreement between members of civil relationships in court;

4) property-compensational nature of measures of enforcement effect on the offender, which means that the participant of legal relations that is not performing his duties violates the rights of other participants of civil relations or creates barrier as to their proper implementation, use of means of protection, not beneficial in terms of property for the offender, which are mainly of property character, which is directed to restoring of the violated right, legally protected interest or welfare of the victim party.

RESULTS AND DISCUSSION

According to the doctrine of international law, a subject of international law is a party to international relations whose behavior is directly regulated by the rules of international law, that is a party to international relations which has international rights and bears international obligations. The main subject of international law is the state, which is a sovereign entity, notably the bearer of sovereignty. The international legal personality of states is based on state sovereignty, which gives them the right to conclude international treaties and enter into any other international legal relations, including being a party in international courts (Public International Law, 2017). The state is a complex, multilevel, multidimensional, systemic entity that was formed in the process of organizing society to ensure the management of society. The state is a special participant in civil (private) relations, which is particularly reflected in private international law, and is indicated by the existence of such an institution as state immunity, which by its legal nature is derived from the principle of state sovereignty.

The legal personality of the state as a subject of international private law relations has its own specific features; it is a full-fledged participant in international private law relations, with all its peculiarities, advantages and disadvantages. This position is expressed in the concept of Y.M. Dzera, who writes that "the state, being primarily a special public legal entity, is able to influence the emergence, change and termination within its territory of any legal relations, including civil ones. In this regard, the most pressing issues in relation

to such a public legal entity are the issues of determining the boundaries and peculiarities of its participation in civil legal relations. Since the recognition of the state as an equal participant in civil legal relations does not mean that such an entity or the property that is the object of state ownership can be fully subject to coercive measures, liability, etc. applied to ordinary participants in civil relations, such as individuals or legal entities. Instead, the existence of the aforementioned features of the state is not something unusual or new, since their formation and development took place taking into account the specifics of the relations that existed in society at each stage of its development" (Dzera, 2011). It should be noted that the participation of the state in private relations is not a ground for termination of its public powers, since such relations are different and complementary by nature.

The state may participate in international legal relations in two different capacities: as a sovereign, a holder of public power (*jure imperii*) and as an economic entity, a holder of private interest (*jure gestionis*). The first group of legal relations is formed in the process of interaction between subjects of international law (states, nations, peoples, international organizations) and is regulated exclusively by the rules of public international law (*jus publicum*). These are legal relations that arise between states, as well as between the state and international organizations, in particular in economic, scientific and technical cooperation, in the credit sector, etc. The second group of legal relations arises in the course of interaction between states, on the one hand, and a foreign private entity, on the other, and is governed by the rules of private international law (*jus privatum*). Such a foreign private entity may be a business entity, a foreign legal entity or an individual (citizen). These may be relations for the supply of goods, various services, etc. Both groups of legal relations are closely interrelated, since the state is both a sovereign, for instance, a holder of public power, and an economic entity, or a holder of private interest.

The judiciary faces certain difficulties in deciding whether the actions of the state are *jure imperii* or *jure gestionis*. Two theories have been put forward to determine the nature of state actions. According to the first one, the purpose of the actions is the basis (for example, an order by one state for the construction of a warship to a private foreign company is considered as a *jure imperii* action), while the second one is based on the legal nature of the actions: actions performed in the form of ordinary commercial contracts will be considered private (the same order will be considered as a *jure gestionis* action)

An inherent property of the state and its peculiarity as a subject of international law is state immunity. State immunity is based on the fact that it has sovereignty and that all of the states are equal. The equality of states in ancient Rome was expressed by the well-known formulas: "*par in parem pop habet imperium*", "*par in parem non habet iurisdictionem*". It is worth noting that this refers to the equality of states, not participants in private legal relations. State sovereignty serves as the basis of the most important rights and obligations of states in international relations. Under international law, all states have equal rights and obligations. Sovereignty is the main quality of a state. As Y.M. Dzera writes, "sovereignty is characterized by the state's supremacy, autonomy and formal independence from the power of other participants (subjects) of public life or elements of the political system". In this regard, by entering into civil law relations, the state does not lose its quality of sovereignty in these

cases. The state, unlike other participants in international civil circulation, has sovereignty, notably the supremacy of state power within the country and its independence from any power in international relations. It is thanks to its sovereignty that the state enjoys judicial immunity, i.e., immunity from the jurisdiction of a court of another country.

In international practice, the narrower concept of “jurisdictional immunities” and the broader concept of “immunity of the state and its property” are used, since the issue of state immunity does not always arise in connection with the consideration of a lawsuit in court. All of these immunities are inter-related, as they are based on the same principle - the sovereignty of the state, which does not allow any coercive measures to be taken against the state. The principle of state immunity from the jurisdiction of any foreign state, which was formed in ancient times, is fundamental and recognized by all participants in interstate relations and is a well-established rule of international law. Scholars of different scientific schools from various countries agree that jurisdictional immunities determine the limits within which it is possible to file a lawsuit against states, their bodies and state-owned enterprises in a court of another state, as well as the limits of enforcement of a court decision at the expense of the property of a foreign state. As Yevgeniy Korniychuk rightly notes, “jurisdictional immunities of states are a vivid example of how the norms and principles of international law are shaped by the national practice of individual states. The main role in the development of law has always belonged to national courts and, in many respects, still belongs to them. The doctrine and international treaties in this area were usually secondary and only developed the provisions formulated in court decisions” (Korniychuk, 2019). The jurisdictional immunity of a foreign state in the broad sense of the word includes several types of immunity, including the following: a) immunity from preliminary injunctive relief, b) judicial immunity (immunity from the jurisdiction of a court of another state), c) immunity from enforcement of a court decision, d) immunity of state property.

The rule “*par in parem non habet jurisdictionem*” means “an equal has no jurisdiction over an equal”, that is a state cannot file a lawsuit against another state, foreclose on the property of a foreign state and take other procedural actions, except in cases agreed to by the state - a potential defendant. Initially emerging as absolute, in the course of the development of international economic relations and the intensification of states’ participation in civil law relations, the immunity of a foreign state was gradually subject to various restrictions. They mainly consisted in recognizing the possibility to file and consider claims against foreign states in the courts of another state. Absolute immunity is inherent in public law relations between states, while in private law relations the state acts as an equal participant in private international law and it a priori has functional (limited) immunity. Modern states have become states that carry out numerous private transactions (*jure gestionis*). The doctrine of absolute immunity has given way to the theory of limited immunity, according to which a foreign state may be brought as a defendant in a court of another state without its consent if the claim concerns the actions of the defendant state in the private sphere. According to foreign scholars, “many states have become private traders engaged in transportation, telegraph and telephone communications, radio and television broadcasts and production of goods (mining, production of tobacco products and matches, etc.). Com-

mercial transactions led to disputes, and the trading sovereigns of some states found themselves in the courts of others. The national courts were in no hurry to abandon the doctrine of absolute sovereignty. It is rather surprising that it was in the case law of the states with continental law traditions that the transition from the doctrine of absolute sovereignty to the doctrine of limited sovereignty took place, while in common law countries the courts had great difficulty in doing so, and the doctrine of limited sovereignty was clearly established only with the adoption of legislation”.

The immunity of a foreign state in international relations differs from the immunity of a state from being sued in its own courts. Establishing the latter and determining its limits is exclusively within the competence of the state and is determined only by its legislation and international treaties concluded by this state. Also, the immunity of a foreign state differs from the one of international organizations, although they are based on the same principles.

Recognition of state immunity does not mean that a dispute over a transaction concluded with a state cannot be considered at all, or that a claim for damages cannot be brought against a foreign state at all. The point is that a claim against a state should theoretically be brought in the courts of that state. In practice, contractual disputes are usually resolved in international commercial arbitration courts. When entering into an agreement (contract), the parties may decide which dispute resolution mechanism is acceptable, convenient, fast and cheap for them, since the subject matter of the dispute may be quite expensive, and make a reservation in this regard in the contract, including out-of-court dispute resolution. In this case, it is easier to reach an agreement during negotiations when entering into a contract, rather than after a dispute arises. Another thing to emphasize is that the recognition of immunity should in no way imply that the state is released from fulfilling its obligations or that the state is released from liability for failure to fulfill its obligations. It should also be noted that a state's participation in agreements does not change its legal status. Back at the 11th session in 1959, the International Law Commission adopted the following decision: “An agreement in which only one of the parties is a state (or other subject of international law possessing the capacity to enter into international treaties) and the other is a private person, natural or legal, is never an international treaty or international agreement, however much it may resemble them from the outside” (Report of the International Law Commission, 1959).

The doctrine of international law establishes that it is a generally recognized rule that a waiver of immunity cannot be interpreted expansively. If a state has waived its immunity in a particular transaction or court case, it does not mean that it has agreed to submit itself to the jurisdiction of foreign courts in all other transactions involving it and all claims brought against it. This rule also means that the waiver of judicial immunity is not directly related to the granting of immunity from coercive measures (interim relief and enforcement of judgments), which is confirmed by international instruments. The UN Convention on Jurisdictional Immunity of a state and its Property (Article 7) states that “a state may not invoke immunity from jurisdiction in any proceedings before a court of another state in respect of any matter or matter if it has expressly consented to the exercise by that court of jurisdiction over such matter or matter by virtue of: a) an international agreement; a written contract; or c) a statement in court or a written communication in a particular proceeding.

The consent of a state to the application of the law of another state should not be understood as consent to the exercise of jurisdiction by the courts of that other state” (United Nations Convention, 2004).

In the second half of the 20th century, the concept of limited immunity became widespread in the legislative, judicial and contractual practice of various countries. This is due to the fact that the state as such has expanded the scope of its participation in economic activity. Integration processes and other factors have contributed to the fact that states have become more involved in commercial activities that are closely linked to international commodity and financial markets. Not only has the number of transactions entered into by states increased, but they have become more diverse. Countries are increasingly turning to foreign banks and international financial organizations to obtain loans. The issue of immunity for those states that pursue a policy of actively attracting foreign investment has become particularly important in modern economic relations. Investors are interested in the fact that the state that receives investments waives its immunity in the event of disputes arising between the investor and this state. The determination of the commercial nature of the contract is crucial for this most common concept of limited state immunity, but it is difficult to establish. The main criteria thereof may be the nature and purpose of the contract.

The participation of the state in international commercial circulation is specific. This is due to the peculiarity of the state itself as a special kind of entity. There are several doctrinal views on the state as a subject of civil legal relations. G.S. Fedynyak notes that “the state is a special subject of law. After all, there is no supranational body that would grant it the rights of a legal entity. This sovereign itself grants such rights to other entities, but does not assign itself the status of a legal entity. Thanks to such a property as sovereignty, the state can act in relations governed by the rules of both international law and private law (Fedynyak, 2021). Therefore, one may disagree with the theory of “splitting” of the state, which is supported by many foreign lawyers. According to this theory, the state as a subject of property relations “splits” into two persons. First, when it acts on the basis of sovereignty as a subject of power. Secondly, when entering into civil law transactions, it loses the properties of a power entity and is equated with other legal entities” (Fedynyak, 2021). In the second half of the twentieth century, most scholars defended the position that the state as a public legal entity is a special subject of civil relations. In private international law, there is a widespread view that when a state enters into civil law relations, its status is actually equated to the status of a legal entity with some exceptions. The specifics of the state are noted by Professor A.S. Dovgert and other scholars who hold the position that the participation of the state in civil legal relations is determined by the status of a subject of public law (Dovgert, 2000). The special status of a foreign state in private law relations is emphasized by N. Chuchkova, who writes that “as a subject of private law (non-governmental) relations, the state is a legal entity with a special legal status. This legal nature of a foreign state makes it a special subject of private law relations” (Chuchkova, 2011).

The novelty of the Civil Code of Ukraine “Participants of Civil Relations” (Article 2) defines that “participants of civil relations are: the state of Ukraine, the Autonomous Republic of Crimea, territorial communities, foreign states and other subjects of public law” (part 2). It is worth noting that in the same

Article 2(1), other participants in civil relations (individuals and legal entities) are referred to as persons. Thus, the term “persons” is defined in relation to individuals and legal entities, and the term “participants” in civil legal relations is used for such subjects of law as states, including foreign ones.

The Law of Ukraine “On Foreign Economic Activity” states that “Ukraine, represented by its bodies, local authorities and governments, on behalf of foreign economic organizations established by them, which participate in foreign economic activity, as well as other states involved in economic activity on the territory of Ukraine, act as legal entities” (Article 3), i.e., states are equated with legal entities (Law of Ukraine, 1991). Since the category of a legal entity is a category of internal national law of each state, it is the state that endows any entity with the rights of a legal entity, that is the state itself establishes that a particular entity is a legal one.

In civil law relations, the state participates as a special subject of law, which, although not a legal entity itself, acts in civil law relations on an equal basis with it. In Ukrainian legislation, this provision of private international law is emphasized in the Law of Ukraine “On Private International Law” of June 23, 2005, Article 30 of which states: “the rules of this Law shall be applied to private law relations with a foreign element involving the state and legal entities under public law on a general basis, unless otherwise provided by law” (Law of Ukraine, 2005). The national legislation of foreign countries also regulates the legal status of the state, in particular, the Czech Civil Code (1964) states that the state is considered a legal entity if it is a party to civil law relations (§21), and Article 33 of the Polish Civil Code defines the status of the state treasury as a legal entity.

It seems incorrect to consider the state as some kind of extraordinary and specific subject, some incomprehensible entity with uncertain competence, as well as to consider it a legal entity. Such points of view are extremes that do not correspond to reality, doctrine and law. As a special participant in international private law relations, the state has legal personality and can be a bearer of civil rights and obligations, and participate in civil law relations complicated by a foreign element. The Scientific and Practical Commentary of the Civil Code of Ukraine notes that “public law entities, which generally perform other functions, usually of a power-political nature, participate in civil law relations exclusively. For them, participation in civil law relations is of an auxiliary (non-main) nature (Dzera, 2005). At the same time, when entering into civil law relations, they are endowed with the same rights as any other participants in civil turnover. The state should be viewed in two dimensions as a subject of power and political nature and a participant in civil law relations in inseparable unity, which is confirmed by the provisions of the European Convention on the Immunity of states of May 16, 1972, in particular, Article 20, paragraph 2, subparagraph a states that the state is not obliged to enforce a court judgment in cases specified in the Convention, for example, if its enforcement would be in clear contradiction with the public order of the state (European Convention on the Immunity of states, 1972).

The state and a legal entity as subjects of international private legal relations are united by features inherent in collective entities, in particular, civil legal personality, organizational unity, property independence, and the presence of their own name. The legal status of the state in private international law differs from the legal status of legal entities “by the procedure of creation,

legal personality, management, availability (as a rule) of power, etc.” (Dovgert & Kysil, 2012). The state also has a number of peculiarities that distinguish it from other participants in international civil circulation.

Firstly, in such relations, when resolving a dispute between the state and a business entity (legal entity), a conflict of laws arises as to which system of law may be applied if it is not specified by the parties in the contract. There is no clear answer. Some scholars believe that when resolving a dispute, the court (arbitration) should apply the national law of the country - the state party to the agreement, that is, use the conflict of laws in such cases - the law of the state party to the agreement/contract. Other researchers criticize this point of view and consider it incorrect to apply exclusively its internal law to civil law transactions of a state, unless it has agreed otherwise. The author cites the situation when a state has acquired property on the territory of another state; in this case, the acquisition may be possible on the basis of the internal law of the permissive nature of this other state and on the conditions determined by its national legislation. In resolving a dispute between the state and a private foreign counterparty, the law of the country of the private entity may be applied if it performed a performance that is crucial to the content of the transaction. In legal relations involving the state and a foreign private entity, where the entity is a contractor, seller, donor, lessor, etc., the dispute may be resolved by applying the law of the country of the private entity. The court may apply the law of the state party to the agreement if it is impossible or difficult to determine which party performed or should have performed a performance that is crucial to the content of the agreement. In disputed cases, the court shall apply the national law of the state party to the agreement when resolving a dispute arising from an agreement concluded between it and a foreign business entity, except in cases related to the acquisition of real estate by the state in the territory of another state and when a private foreign entity performed a performance that is crucial to the content of the agreement.

If an individual or legal entity files a counterclaim against a foreign state, it should not be entitled to immunity from such a claim. In case of a counterclaim by a foreign state against an individual or legal entity, the state should not be deprived of the right to immunity from the initial claim of these persons.

Secondly, the state as a subject of private international law has jurisdictional immunity (from preliminary injunctive relief, judicial immunity, and from enforcement of a court decision), which is also its characteristic feature. Thus, transactions involving the state carry an increased risk for a foreign counterparty. In fact, a foreign private business entity that is a party to the agreement is restricted in its right to apply to its national court without the consent of the state that violates the agreement. Such consent may be expressed either in the contract itself, in a separate agreement, or expressed by the state when the foreign counterparty directly applies to its court.

Thirdly, the peculiarity of the state's participation in international private law relations (as opposed to individuals and legal entities) is that certain bodies and persons authorized to do so by law participate in such relations on behalf of the state. Such persons may acquire property and personal non-property rights and perform certain duties on behalf of the state by their actions. As O. Girenko emphasizes, “it is these persons who create civil rights and obligations for the state by their actions” (Girenko, 2009). Article 2 of the UN Convention

on Jurisdictional Immunities of states and Their Property (2004) attempts to define possible cases when certain individuals and their groups may act on behalf of the state. The first group includes the state itself and its various organs of government, i.e., constitutional authorities. The second group includes the constituent parts of the federal state or political subdivisions of the state "which are authorized to act in the exercise of sovereign power and act in that capacity". The third group includes "institutions or agencies of the state or other entities to the extent that they are authorized to act and actually do act in the exercise of the sovereign power of the state". The fourth group includes "representatives of the state acting in this capacity" without setting any specific requirements for this category. Undoubtedly, this group includes heads of governments, ministers, ambassadors and other heads of state authorities in the performance of their official duties.

At the same time, it should be borne in mind that state bodies are independent legal entities and may enter into international legal relations on an equal footing with other persons. The question of the legal status of legal entities (business companies and unions) with a state share in their authorized capital is a complicated one.

The state is a subject of international private law relations, for example, when constructing a building for an embassy or consulate abroad, leasing a land plot, premises, etc. The state can participate in inheritance relations, notably accept property as a gift under a gift agreement, act as an heir to certain property in case of inheritance both by law and by will. As an heir, the state may be the holder of any civil rights, except for those related to the personality of the subject, and thus exclude the possibility of their transfer to other persons. The state may concession subsoil areas for the purpose of development and extraction of minerals on its territory; lease out buildings and structures owned by it, located in its country and in the territory of a foreign state; acquire and dispose of property owned by it; order works, services, goods, etc. Undoubtedly, the state will be a party to international private law relations when it issues loans if the bonds are placed among foreign citizens. The state will also be a party to international private law relations if it provides a guarantee for a foreign trade transaction made by a national business entity.

The range of relations in the international private law sphere, to which the state is a party, is wide. In addition to those already listed, the state may: grant and receive credit, i.e. enter into credit agreements with credit organizations, foreign states and international financial organizations; provide guarantees for loans and credits; enter into concession agreements with a foreign investor; enter into production sharing agreements, primarily agreements on significant long-term investments, primarily in the oil production and oil refining industry to acquire and lease land plots abroad; to enter into contracts for the performance of contract works for state needs; to enter into agreements for the purchase and sale of goods; to guarantee the fulfillment of contracts of any kind concluded by legal entities on its own behalf, etc.

CONCLUSIONS

The legal personality of the state as a party to international private-law relations has its own specific features; it is a full-fledged participant in international private-law relations, with all its peculiarities, advantages and disadvan-

tages. The state is a special subject of civil law, the specificity of which is due to the possibility to be in both public and private relations; the state can enter into almost any international private law relations. These include inheritance relations arising from the law of torts, international sale of goods contracts, contractor agreements, commission and service agreements, agreements in the field of scientific and technical cooperation, cooperation agreements arising from concession agreements, as well as those related to production sharing agreements, service agreements (service contracts) and compensation agreements. There is a specific area of international private law relations in which only the state can be one of the parties, for example, the concessionaire in a concession agreement, and theoretically, the state can enter into any civil law contract with a foreign private entity.

By entering into civil legal relations, the state, without losing its public law powers, acts on equal terms with other parties to such legal relations. As a commercial entity, the state participates in these relations on the same terms as private individuals and becomes an equal counterparty for them, which must be responsible for its actions. In the event of disputes arising between the parties and improper behavior, a lawsuit may be filed and a court decision rendered against it, obliging both the state and the other counterparty to compensate for damages or otherwise restore the violated right of its partner.

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