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The concept of public policy and its interpretation in various international cases

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«Public policy» (the term settled in the English language) or «Ordre public»/«Public order» (the term settled world-wide) is a concept, which expresses the observance of common public interests in private commercial contracts or, sometimes, legal acts (of courts). «If this does not contradict the public policy» (a.k.a. «Public Policy Exception») [1] is a legal formula presented both in the Anglo-American legal system/«Case law» (a.k.a. «Common Law» in the English terminology) [2, 3] and German-Roman legal system/«Civil Law» (a.k.a. «Continental Law» in the English terminology) [2, 3].

«Public policy» is an evaluative term used world-wide both in the national legal acts and in the international conventions. For example, The Convention on Recognition and Enforcement of foreign arbitral awards (Article V(2) (b)) also contains a reservation about contradiction to the public order of the country [1, 4].

Our country is a part of the Continental Law system [3, 4]. In the legislation of the Republic of Belarus, public policy is defined as the basis of the legal order of the Republic of Belarus (Article 1099 of the Civil Code, Article 1 of the Law On the International Arbitration Court) [3]. The same approach is applied in the Russian Federation. That's why we are able to analyze their cases should we lack those in our practice.

The translation of the mentioned term or legal formula, its usability and practical significance are still different in different languages and branches of law. In private international law, the public policy doctrine or ordre public concerns the body of principles that underpin the operation of legal systems in each state [1]. This addresses the social, moral and economic values that tie a society together. All of them vary in different cultures and change over time. Law regulates behavior either to reinforce existing social expectations or to encourage constructive change, and laws are most likely to be effective when they are consistent with the most generally accepted societal norms and reflect the collective morality of

the society. According to the international treatments and the national law, every time the authorized authority (the court) deals with a private case it makes a conclusion if the contract or arbitration award does not contradict the public policy. There are too many differences between laws, courts and their examination in every country [1].

That's why the practical views like a Public Policy Exception is a way to limit the power of foreign law on the territory of one's state, and this method is the only one covered by such a name and generally useful purposes. A good actual example is the Information letter of The Supreme Arbitration (Commercial) Court of the Russian Federation [5]. It contains the law terminology used in the relevant meaning and sense from the point of view of lawyers and translators.

Case in point, the Russian court did not recognize one of the international arbitration awards because it contradicted the public policy of Russian Federation. The court was guided by the fact that the arbitration agreement was concluded as a result of commercial bribery of officials of the organization that lost the lawsuit in arbitration (according to the earlier decision of another court) [5].

The court pointed out that the public order of the Russian Federation was based on fundamental legal principles that had the highest imperative, universal, exceptional legal and public significance. Fighting against corruption was the basis of not only domestic but also international law and order, since measures to prevent and combat corruption violations were fixed at the level of international treaties (United Nations Convention against Corruption 2003, Criminal Law Convention on Corruption 1999, Convention of the Organization for Economic Cooperation And development to combat bribery of foreign officials in the conduct of international commercial transactions in 1997).

From a linguistic point of view it means that every time when we observe foreign or international document we have to find the primary sources of the definitions used. And we must do it only by using foreign and national law. Legal definition is contained only in the legal act. Using them the translator is guaranteed not to distort the meaning of the document and terms. Not to do it means to have several definitions of all-known legal institute in our own national legislation. Practically, we can guide translators and governmental officials and give them recommendations how to prevent language mistakes in the process of incorporation the international legal issue into the Belarusian national law.

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К вопросу о формировании конкурсной комиссии для проведения процедур закупок товаров (работ, услуг) при строительстве объектов

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Одним из этапов проведения процедур закупок в строительстве является создание конкурсной комиссии. Формирование конкурсной комиссии представляет собой серьезное мероприятие, от ее состава и организации деятельности во многом зависит исход процедуры закупки в строительстве. Создает конкурсную комиссию и определяет полномочия ее членов организатор процедуры (его руководитель), поэтому ему необходимо тщательно подходить к подбору членов комиссии и организации ее работы.

Порядок создания и организации деятельности конкурсной комиссии отражен в Положении о порядке организации и проведения процедур закупок товаров (работ, услуг) при строительстве объектов, утвержденном постановлением Совета Министров Республики Беларусь от 31.01.2014 №88 [1] (далее – Положение №88).

Комиссия может создаваться временно (на срок проведения процедуры по конкретному объекту) либо на постоянной основе. В отличие от комиссии по государственным закупкам, обязательная смена 1/3 членов постоянно действующей комиссии и ее председателя в конкурсной комиссии не обязательна. Данный подход дает право организатору закупок не изменять состав комиссии несколько лет.

Конкурсная комиссия должна состоять не менее чем из 5 человек. В обязательном порядке в состав комиссии включаются юрист и специалисты по