SYSTEMATIZATION OF THE SOURCES OF INTERNATIONAL JURISDICTION IN CIVIL CASES OF RUSSIA


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Abstract. There is no universally binding system of international jurisdiction norms in the world. In Russia jurisdiction is regulated by the international treaties and norms of national law. A number of international treaties concluded by the Russian Federation with other states contain rules regulating the international jurisdiction in civil cases. The international treaties concluded by Russia stipulate the following types of international jurisdiction: general (contractual), exclusive and alternative. If the treaty does not contain rules on the competence delimitation, it should be used the domestic rules on international jurisdiction. The international legal documents not only of a bilateral but also of a multilateral nature, as a rule, establish several categories of cases, the disputes on which are subject to exclusive jurisdiction of the contracting countries according to the criteria formulated in the treaties. In the Russian practice, if a specific case is related to a particular jurisdiction of the courts of a specific country by a conventional rule, these courts should accept the statement of claim even in the cases where the national law does not stipulate the consideration of the case in local courts. The regulation of international jurisdiction in the interstate agreements causes the problem of correlation between the norms of domestic legislation and the provisions of international treaties. The general rule is as follows: if the international treaty contains provisions that differ from the provisions of the national law, the norms of the international treaty should be applied.

Key words: international jurisdiction, international treaty, general jurisdiction, exclusive jurisdiction, alternative jurisdiction.

1. INTRODUCTION

First of all, it is necessary to give the notion to a fundamental term of this work, namely, the "international jurisdiction". The legislation of the Russian Federation (hereinafter referred to as "the Russian Federation") has no precise definition of this term. In the theory of private international law characterized by a certain degree of conventionality the scientists equate a large number of various definitions to the notion of "international jurisdiction", the main essence of most of which is the understanding of international jurisdiction as the delineation of the competence of national courts of different countries to resolve civil cases "with the international characteristics".

My own attempt to give a clear and capacious definition of the above term reduces to the following reasoning.

This phrase consists of words, without an exact understanding of which it will be difficult to correctly understand the phrase definition as a whole. In this regard, it is firstly necessary to give definitions to each of them.

The jurisdiction is understood as the distribution of the court case between different branches of the judicial system of a particular state in the Russian Federation.

To get the definition of the adjective "international," one should refer directly to the Ozhegov dictionary, according to which "the international relates to relations between nations and states, the links between them" (Shak, 2001). Based on the understanding of these terms, it can be concluded that the presence of a definition in the object is mandatory in order to be considered "international," having connections with something or someone that transcends the state of the designated object or its people. In legal theory, as well as at the legislative level, the "people" are considered to be legal entities and individual persons of their country in this case, and, consequently, those who go beyond this framework - the foreign citizens or foreign legal entities. (Valeev, Shtidikov, Sidikova, Gabidullina, 2008) Thus, by going step-by-step along the logical chain of definitions, it can be concluded that the international jurisdiction is the property of a specific case involving the legal relations of persons from different states and/or affecting the foreign law order that places it in the jurisdiction of the judicial systems of different countries (Shak, 2001).

2. METHODS

At the moment, the world community lacks a generally binding system of norms of international jurisdiction, which is why the sources of legal regulation of this issue are the international treaties (both multilateral and bilateral) and the internal norms of the states. At the same time, preference is given to the international treaties that provide for a transboundary regime of agreements on jurisdiction. The possibility of considering the norms of the internal law of the state as special in relation to the rules of jurisdiction enshrined in the international treaty is rightly criticized by the scientists (Marysheva, 2007), since there are also general rules for the priority of international norms over the national norms in the event of a collision in this sphere. Nevertheless, A.I. Shchukin came to the conclusion that the Russian court had the right to refer to the norms of domestic legislation to justify its exclusive competence to consider a dispute when an international treaty permitted the possibility of their application. (2013)

A number of international treaties concluded by the Russian Federation with other states contain rules regulating the international jurisdiction in civil cases.

The main criteria (methods) are the principles of citizenship (treaties of the Russian Federation with Romania and Poland) and the domicile of the parties (treaties of the Russian Federation with the countries of Italy and the Baltic States). The resolution of issues about jurisdiction is connected with the issues of choice of law (the general tendency is the use of its own right by the court). The treaties define the rules on alternative, exclusive and contractual jurisdiction, the rules of delineation of jurisdiction in accordance with the criteria of cases, the rules on special jurisdiction of certain types of civil disputes (treaties of the Russian Federation with Spain, Italy, Bulgaria, Poland, Romania).

The treaty on legal assistance between the Russian Federation and Italy stipulates that the criteria for determining the competence of courts are as follows: place of performing obligation, defendant's permanent place of residence, place of injury, place of temporary residence of the claimant or his permanent place of residence (in the cases of alimony recovery). Exclusive competence is defined in disputes on real property rights (real estate court), in cases of personal status of individual persons (the
court of the country of person's nationality at the
time of filing a claim).

The trade agreement between the Russian Federation
and Denmark establishes the competence of the
court at the place of guarantee or transaction
conclusion, if there is no reservation on arbitration
proceedings. The court competence, which is
stipulated in accordance with accepted contractual
conditions in a special form, has priority.

Separate bilateral treaties are designed to resolve
issues of international jurisdiction indirectly: the
decisions of the courts of one country are to be
recognized in another country, if the cases in
accordance with which the decisions are made may
fall under the jurisdiction of the local court
(alternative jurisdiction) in accordance with the
legislation of the country on whose territory these
decisions are recognized. The decisions of foreign
courts are not recognized if cases are subject to the
exclusive competence of local courts. The indirect
criteria for delineation of jurisdiction are used when
the treaty does not directly delimit competence. (Valeev, Sitdikov & Novikov, 2016)

The Convention on Legal Assistance to the CIS
dated 1993 (as well as the Convention dated 2002)
contains a comprehensive set of rules on
international jurisdiction (delimitation of
competence): special jurisdiction and general
provisions on the jurisdiction of certain types of
family and civil cases. The main criteria are the
location of the management body of the legal entity
and the place of residence of the respondent
(individual person). The citizenship of the parties
does not matter in this case. The additional criteria
are the place of performing economic activities,
place of residence of the plaintiff, place of
performing obligation.

The international treaties concluded by the Russian
Federation stipulate the following types of
international jurisdiction: general (contractual),
exclusive and alternative.

3. RESULTS

In the Russian Federation, the international
jurisdiction is governed by the international treaties
concluded by the Russian Federation with other
states, as well as by the norms of national legislation.
The disputes arising from the civil, business and
economic legal relations with the participation of
foreign persons fall under the jurisdiction of the
Courts of General Jurisdiction and the Arbitration
Courts of the Russian Federation. The national
norms regulating the international jurisdiction,
respectively, are established in the Code of Civil
Procedure and the Arbitration Procedure Code of the
Russian Federation. These norms are contained in
the fifth section in both codes.

In the Arbitration Procedure Code of the Russian
Federation, the general competence of the
Arbitration Courts of the Russian Federation is
stipulated in Art. 247, according to which the
Arbitration Courts of the Russian Federation
consider cases on economic disputes and other cases
related to the implementation of entrepreneurial and
other economic activities with the participation of
foreign organizations, international organizations,
foreign citizens, stateless persons carrying out
entrepreneurial and other economic activities.

In accordance with the Civil Procedural Code of the
Russian Federation, the jurisdiction of civil cases
involving foreign persons in the Russian Federation
is determined by the general rules of Chapter 3 of the
Civil Procedure Code of the Russian Federation with
the application of special rules contained in Chapter
44 of the Code of Civil Procedure of the Russian
Federation (1994).

The general jurisdiction is regulated by Part 2 of
Article 402 of the Civil Procedure Code of the
Russian Federation, according to which the courts of
the Russian Federation consider cases involving
foreign persons if the respondent organization is
located on the territory of the Russian Federation or
the defendant resides in the Russian Federation.
(Maleshin, Silvestri, Sitgikov & Valeev, 2016)

Exclusive jurisdiction is the case property, according
to which the courts of only one particular country are
competent to consider the dispute, with the exception
of its jurisdiction to the courts of any other country.

In the Russian Federation, the exclusive jurisdiction
is stipulated in the Code of Civil Procedure of the
Russian Federation (Article 30) for:

1. The claims of the testator creditors presented
before the inheritance acceptance by the heirs, if the
inheritance is opened on the territory of the Russian
Federation;

2. The cases on the right to immovable property,
which is located on the territory of the Russian
Federation;
3. The cases on disputes that arise from contracts of carriage when the carriers are located in the territory of the Russian Federation;

4. The cases on divorce of Russian citizens with foreign citizens or stateless persons in the event that if both spouses have a place of residence in the Russian Federation.

The international legal documents not only of a bilateral but also of a multilateral nature, as a rule, establish several categories of cases, the disputes on which are subject to exclusive jurisdiction of the contracting countries according to the criteria formulated in the treaties.

In particular, in accordance with the Soviet-Spanish treaty on legal assistance dated 1990 (ratified by the Russian Federation on July 30, 1996), the exclusive jurisdiction is had by the following courts of: the state of property location - on claims for proprietary rights to immovable property; the state of legal entity location - on claims that have termination or validity of a legal entity or company or the decision of their bodies as their object; the states whose authorities have performed the recording - on applications for the validity of records in the civil status records (Art. 20). The treaty on mutual legal assistance and legal relations in civil, commercial and family cases between Egypt and Russia dated September 23, 1997 includes the list of criteria that determine the competence of the courts and other judicial bodies of the contracting parties, which is quite extensive and contains signs of the real estate location, place of residence of the defendant - an individual person, location place of a management body, a branch of a legal entity or representative office, which acts as a respondent, providing that the court exclusive jurisdiction is not changed by agreement of the parties (Valeev & Baranov, 2014).

The main rule enshrined in the Brussels and Lugano Conventions, which are respectively the main regulatory instruments on the issue under consideration in the EFTA and the EU, is the provision that the competence of the courts of the contracting countries is based on the principle of the place of residence of the respondent (Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Cases, 1988).

Article 16 of the Brussels Convention provides that the relevant courts have exclusive competence in certain categories of disputes. This provision is used regardless of the place of residence of a person and even in the removal of the rule that the Convention is valid only when the defendant should reside in the territory of the contracting country (The Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Disputes, 1968).

This applies to the disputes that relate to real estate, a number of cases concerning issues of corporate relations within the organization, the reality of entries in the state registers, individual disputes that have intellectual property (issuance, registration and validity of patents and other protection documents) as an object, decision enforcement. Other scientists share similar position (Valeev & Golubtzov, 2014).

In case of alternative jurisdiction, the parties have the right to consider their dispute between the judicial systems of different countries, if they are equally competent to consider the dispute. The alternative jurisdiction is a procedural guarantee for the plaintiff. In one case, the alternative jurisdiction provides more favorable conditions for seeking legal protection for the plaintiff who is in a different state than the defendant, for example, in the case of paternity claims, alimony, damage compensation caused by injury or other damage to health, as well as death of the breadwinner, etc. In other cases, the alternative jurisdiction provides an opportunity for a broader review of the case where more evidence can be concentrated, for example, when a suit is filed at the location place of a representative office or branch of a legal entity, at the place of contract execution and at the place where the damage has been caused. Other scientists share similar opinion (Chelyshev, Tufetulov & Valeev, 2016).

4. CONCLUSIONS

Thus, taking into account the above, we can make the following conclusion. The national legislation of the Russian Federation, as well as a number of international treaties concluded by the Russian Federation with other states, stipulate the possibility of applying alternative jurisdiction or, as it is also called jurisdiction at the choice of plaintiff, according to which the dispute can be examined in the judicial systems of different countries, if they equally are competent to consider this dispute. The institute of alternative jurisdiction is important, as it is some kind of a procedural guarantee for the plaintiff. In one case, the alternative jurisdiction provides more favorable conditions for seeking legal protection for a plaintiff who is in a different state than the defendant. In other cases, the alternative jurisdiction provides the opportunity for a broader
review of the case where more evidence can be concentrated.

5. SUMMARY

The regulation of international jurisdiction in the interstate agreements causes the problem of correlation between the norms of domestic legislation and the provisions of international treaties. The general rule is as follows: if the international treaty contains provisions that differ from the provisions of the national law, the norms of the international treaty should be applied. Similar approaches are applied in other branches of law.

If the treaty does not contain rules on the competence delimitation, it should be used the domestic rules on international jurisdiction.

If the norm of an international treaty relates a specific case to the exclusive jurisdiction of a certain country, then the national courts of all other countries should refuse to consider the case in this event, even if the national laws treat this case as exclusive to the jurisdiction of local courts. The grounds for refusal to accept the statement of claim in the case, which is attributed to the exclusive jurisdiction of the foreign country, will be represented by the relevant article of this international treaty.

If a specific case is related to a particular jurisdiction of the courts of a specific country by a conventional rule, these courts should accept the statement of claim even in the cases where the national law does not stipulate the consideration of the case in local courts.

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REFERENCES


