

ISSN 2518-1483 (Online),
ISSN 2224-5227 (Print)

2020 • 3

ҚАЗАҚСТАН РЕСПУБЛИКАСЫ
ҰЛТТЫҚ ҒЫЛЫМ АКАДЕМИЯСЫНЫҢ

БАЯНДАМАЛАРЫ

ДОКЛАДЫ

НАЦИОНАЛЬНОЙ АКАДЕМИИ НАУК
РЕСПУБЛИКИ КАЗАХСТАН

REPORTS

OF THE NATIONAL ACADEMY OF SCIENCES
OF THE REPUBLIC OF KAZAKHSTAN

PUBLISHED SINCE 1944



ALMATY, NAS RK

Бас редакторы
х.ғ.д., проф., ҚР ҰҒА академигі
М.Ж. Жұрынов

Редакция алқасы:

Адекенов С.М. проф., академик (Қазақстан) (бас ред. орынбасары)
Величкин В.И. проф., корр.-мүшесі (Ресей)
Вольдемар Вуйцик проф. (Польша)
Гончарук В.В. проф., академик (Украина)
Гордиенко А.И. проф., академик (Белорус)
Дука Г. проф., академик (Молдова)
Илолов М.И. проф., академик (Тәжікстан)
Кригер Виктор проф. (Германия)
Леска Богуслава проф. (Польша)
Локшин В.Н. проф., чл.-корр. (Қазақстан)
Нараев В.Н. проф. (Ресей)
Неклюдов И.М. проф., академик (Украина)
Нур Изура Удзир проф. (Малайзия)
Перни Стефано проф. (Ұлыбритания)
Потапов В.А. проф. (Украина)
Прокопович Полина проф. (Ұлыбритания)
Омбаев А.М. проф., корр.-мүшесі (Қазақстан)
Өтелбаев М.О. проф., академик (Қазақстан)
Садыбеков М.А. проф., корр.-мүшесі (Қазақстан)
Сатаев М.И. проф., корр.-мүшесі (Қазақстан)
Северский И.В. проф., академик (Қазақстан)
Сикорски Марек проф., (Польша)
Рамазанов Т.С. проф., академик (Қазақстан)
Такибаев Н.Ж. проф., академик (Қазақстан), бас ред. орынбасары
Харин С.Н. проф., академик (Қазақстан)
Чечин Л.М. проф., корр.-мүшесі (Қазақстан)
Харун Парлар проф. (Германия)
Энджун Гао проф. (Қытай)
Эркебаев А.Э. проф., академик (Қырғыстан)

«Қазақстан Республикасы Ұлттық ғылым академиясының баяндамалары»
ISSN 2518-1483 (Online),
ISSN 2224-5227 (Print)

Меншіктенуші: «Қазақстан Республикасының Ұлттық ғылым академиясы» Республикалық қоғамдық бірлестігі (Алматы қ.).
Қазақстан республикасының Мәдениет пен ақпарат министрлігінің Ақпарат және мұрағат комитетінде 01.06.2006 ж.
берілген №5540-Ж мерзімдік басылым тіркеуіне қойылу туралы куәлік.

Мерзімділігі: жылына 6 рет.
Тиражы: 500 дана.

Редакцияның мекенжайы: 050010, Алматы қ., Шевченко көш., 28; 219, 220 бөл.; тел.: 272-13-19, 272-13-18,
<http://reports-science.kz/index.php/en/archive>

© Қазақстан Республикасының Ұлттық ғылым академиясы, 2020

Типографияның мекенжайы: «NurNaz GRACE», Алматы қ., Рысқұлов көш., 103.

Главный редактор
д.х.н., проф., академик НАН РК
М. Ж. Журинов

Редакционная коллегия:

Адекенов С.М. проф., академик (Казахстан) (зам. гл. ред.)
Величкин В.И. проф., чл.-корр. (Россия)
Вольдемар Вуйцик проф. (Польша)
Гончарук В.В. проф., академик (Украина)
Гордиенко А.И. проф., академик (Беларусь)
Дука Г. проф., академик (Молдова)
Илолов М.И. проф., академик (Таджикистан)
Кригер Виктор проф. (Германия)
Леска Богуслава проф. (Польша)
Локшин В.Н. проф., чл.-корр. (Казахстан)
Нараев В.Н. проф. (Россия)
Неклюдов И.М. проф., академик (Украина)
Нур Изура Удзир проф. (Малайзия)
Перни Стефано проф. (Великобритания)
Потапов В.А. проф. (Украина)
Прокопович Полина проф. (Великобритания)
Омбаев А.М. проф., чл.-корр. (Казахстан)
Отелбаев М.О. проф., академик (Казахстан)
Садыбеков М.А. проф., чл.-корр. (Казахстан)
Сатаев М.И. проф., чл.-корр. (Казахстан)
Северский И.В. проф., академик (Казахстан)
Сикорски Марек проф., (Польша)
Рамазанов Т.С. проф., академик (Казахстан)
Такибаев Н.Ж. проф., академик (Казахстан), зам. гл. ред.
Харин С.Н. проф., академик (Казахстан)
Чечин Л.М. проф., чл.-корр. (Казахстан)
Харун Парлар проф. (Германия)
Энджун Гао проф. (Китай)
Эркебаев А.Э. проф., академик (Кыргызстан)

Доклады Национальной академии наук Республики Казахстан»

ISSN 2518-1483 (Online),

ISSN 2224-5227 (Print)

Собственник: Республиканское общественное объединение «Национальная академия наук Республики Казахстан» (г. Алматы).

Свидетельство о постановке на учет периодического печатного издания в Комитете информации и архивов Министерства культуры и информации Республики Казахстан №5540-Ж, выданное 01.06.2006 г.

Периодичность: 6 раз в год.

Тираж: 500 экземпляров

Адрес редакции: 050010, г. Алматы, ул. Шевченко, 28; ком. 219, 220; тел. 272-13-19, 272-13-18,

<http://reports-science.kz/index.php/en/archive>

© Национальная академия наук Республики Казахстан, 2020 г.

Адрес типографии: «NurNaz GRACE», г. Алматы, ул. Рыскулова, 103.

E d i t o r i n c h i e f

doctor of chemistry, professor, academician of NAS RK

M.Zh. Zhurinov**E d i t o r i a l b o a r d:****Adekenov S.M.** prof., academician (Kazakhstan) (deputy editor in chief)**Velichkin V.I.** prof., corr. member (Russia)**Voitsik Valdemar** prof. (Poland)**Goncharuk V.V.** prof., academician (Ukraine)**Gordiyenko A.I.** prof., academician (Belarus)**Duka G.** prof., academician (Moldova)**Iilov M.I.** prof., academician (Tadjikistan)**Krieger Viktor** prof. (Germany)**Leska Boguslava** prof. (Poland)**Lokshin V.N.** prof., corr. member (Kazakhstan)**Narayev V.N.** prof. (Russia)**Nekludov I.M.** prof., academician (Ukraine)**Nur Izura Udzir** prof. (Malaysia)**Perni Stephano** prof. (Great Britain)**Potapov V.A.** prof. (Ukraine)**Prokopovich Polina** prof. (Great Britain)**Ombayev A.M.** prof., corr. member (Kazakhstan)**Otelbayv M.O.** prof., academician (Kazakhstan)**Sadybekov M.A.** prof., corr. member (Kazakhstan)**Satayev M.I.** prof., corr. member (Kazakhstan)**Severskiy I.V.** prof., academician (Kazakhstan)**Sikorski Marek** prof., (Poland)**Ramazanov T.S.** prof., academician (Kazakhstan)**Takibayev N.Zh.** prof., academician (Kazakhstan), deputy editor in chief**Kharin S.N.** prof., academician (Kazakhstan)**Chechin L.M.** prof., corr. member (Kazakhstan)**Kharun Parlar** prof. (Germany)**Endzhun Gao** prof. (China)**Erkebayev A.Ye.** prof., academician (Kyrgyzstan)**Reports of the National Academy of Sciences of the Republic of Kazakhstan.****ISSN 2224-5227****ISSN 2518-1483 (Online),****ISSN 2224-5227 (Print)**

Owner: RPA "National Academy of Sciences of the Republic of Kazakhstan" (Almaty).

The certificate of registration of a periodic printed publication in the Committee of Information and Archives of the Ministry of Culture and Information of the Republic of Kazakhstan N 5540-Ж, issued 01.06.2006.

Periodicity: 6 times a year.

Circulation: 500 copies.

Editorial address: 28, Shevchenko str., of. 219, 220, Almaty, 050010, tel. 272-13-19, 272-13-18,

<http://reports-science.kz/index.php/en/archive>

UDC 341.215.4(574+470+571):378.245.2

A. K. Muidenova¹, B. A. Seriyev¹, M. K. Zhusupbekova²

¹I. Zhansugurov Zhetysu State University, Taldykorgan, Kazakhstan;

²Kyzylorda State University named after Korkyt ata, Kyzylorda, Kazakhstan.

E-mail: alia_akerke@mail.ru, seriev_bolat@mail.ru, zhmk6464@mail.ru

COMPARATIVE CHARACTERISTICS OF SOME ISSUES ON PROCEEDING OF CASES WITH PARTICIPATION OF FOREIGN PERSONS IN INTERNATIONAL CIVIL PROCEDURE LAW OF KAZAKHSTAN AND RUSSIA

Abstract. Nowadays the cooperation of states in the integration process takes place within the framework of such international associations as the Commonwealth of Independent States (CIS), the Eurasian Economic Community (EAEC) and Common Economic Space (CES).

The cooperation of the states within EAEC is being developed most dynamically, which in the future can be transformed into the Eurasian Union (EU) as the most advanced form of economic integration. Due to this circumstance, the study of the legal systems of the states - members of the EAEC appears to be very interesting and relevant.

However, this international organization cannot be considered separately from the CIS, which can be assessed as a “laboratory of comparative law”. On the other hand, in fact, the Eurasian legal space exists. All participating countries are located geographically close to each other, and in the legal sphere they have a common legal heritage. They use a common working legal language (Russian) and they are united by the experience of interaction in the current institutional model (CIS).

The article is devoted to one of the most actual issues of the international civil process - proceedings on cases with participation of foreign persons. The authors focused on a comparative analysis of Kazakhstani and Russian legislation relating to the regulation of international civil procedural relations. The authors believe that the comparative characteristics of the institute of proceedings on the cases with participation of foreign persons in Kazakhstani and Russian law will be the next step in the scientific understanding of one of the most important branches of international private law in both states. It should be emphasized that as the subject of the research, the authors chose the proceedings on the cases with participation of foreign persons in international commercial disputes, i.e. the disputes related to entrepreneurial and other economic activities by legal entities and individual entrepreneurs.

Key words: Foreign persons, civil proceedings, proceedings on cases with participation of foreign persons, comparative characteristics, international process.

Introduction. Nowadays the cooperation of states in the integration process takes place within the framework of such international associations as the Commonwealth of Independent States (CIS) [1], the Eurasian Economic Community (EAEC) [2] and Common Economic Space (CES) [3].

The cooperation of the states within EAEC is being developed most dynamically, which in the future can be transformed into the Eurasian Union (EU) as the most advanced form of economic integration [4]. Due to this circumstance, the study of the legal systems of the states - members of the EAEC appears to be very interesting and relevant. However, this international organization cannot be considered separately from the CIS, which can be assessed as a “laboratory of comparative law” [5]. On the other hand, in fact, the Eurasian legal space exists. All participating countries are located geographically close to each other,

and in the legal sphere they have a common legal heritage. They use a common working legal language (Russian) and they are united by the experience of interaction in the current institutional model (CIS).

Methodology. The institute of proceedings on cases involving foreign persons, which is the subject of the study, is caused by its increasing role in modern conditions.

The comparative characteristics of the institute of proceedings on cases involving foreign persons in Russian and Kazakhstani law can serve as the next step in the scientific understanding of one of the most important branches of international private law of both states.

The methodological basis of the study is the use of systematic methods, and the study uses generalized methods such as the method of scientific abstraction, the method of differentiation, and the method of comparison.

Results of a research. The subject of the research is the proceeding on cases involving foreign persons arising from the consideration of international commercial disputes, i.e. disputes related to entrepreneurial and other economic activities by legal entities and individual entrepreneurs. Such disputes are settled in arbitration proceedings in Russia and civil proceedings in Kazakhstan.

Firstly, we will consider the international jurisdiction of the courts and the Kazakhstani economic and the Russian arbitration courts on the cases involving foreign persons.

The jurisdiction of the Kazakhstani economic courts on the cases involving foreign legal entities and entrepreneurs is defined in the civil procedural law, namely, in the Civil Procedure Code of the Republic of Kazakhstan dated October 31, 2015. By their legal status, the Kazakhstani economic courts are an integral part of the judicial system of Kazakhstan and are the specialized courts (Article 3 of the Constitutional Law “On the judicial system and the status of judges of the Republic of Kazakhstan” dated December 25, 2000 [6]).

The jurisdiction of the Russian arbitration courts on cases involving foreign legal entities and individual entrepreneurs is defined in the Russian procedural legislation, namely in the Arbitration Procedure Code of the Russian Federation [7]. It should be noted that due to their legal status, Russian arbitration courts are the integral parts and links of the Russian judicial system and are included into the federal courts along with federal courts of the general jurisdiction.

Secondly, section IV of the Civil Procedure Code of the Republic of Kazakhstan [8] “The International Process” and section V of the Arbitration Procedure Code of the Russian Federation [7] “Proceedings on cases involving foreign persons” are devoted directly to the issues of establishing the jurisdiction of Russian arbitration courts and Kazakhstani economic courts regarding the international commercial disputes.

In accordance with Clauses 1-2 of Article 413 of the Civil Procedure Code of the Republic of Kazakhstan, foreigners and stateless persons, foreign and international organizations (hereinafter - foreigners) have the right to apply to the courts of the Republic of Kazakhstan to protect their violated or contested rights, freedom and interests protected by law. Foreigners use the procedural rights and perform procedural obligations on a par with citizens and legal entities of the Republic of Kazakhstan, unless otherwise provided by an international agreement which was ratified by the Republic of Kazakhstan. Legal proceedings in courts on the cases with the participation of foreigners are carried out in accordance with the Civil Procedure Code, other laws and international agreements ratified by the Republic of Kazakhstan and other laws.

In accordance with Clauses 1-3 of Article 254 of the Arbitration Procedure Code of the Russian Federation, foreigners use procedural rights and perform procedural obligations on a par with Russian organizations and citizens. Foreigners have the right to apply to the arbitration courts of the Russian Federation according to the rules of competence established by the Arbitration Procedure Code to protect their violated or disputed rights and legitimate interests in the field of entrepreneurial and other economic activities. Foreigners who participate in the case must submit the evidence to the arbitration court confirming their legal status and the right to carry out entrepreneurial and other economic activities. If such evidence is not provided, the arbitration court has the right to demand it on its own initiative.

Thirdly, the Republic of Kazakhstan may establish reciprocal restrictions (retorsions) regarding the foreigners of the states where special restrictions on the procedural rights of citizens and organizations of the Republic of Kazakhstan are allowed (Clause 4, Article 413 of the Civil Procedure Code of the Republic of Kazakhstan).

The Government of Russia may establish reciprocal restrictions (retorsions) regarding the foreigners of the states where the restrictions have been introduced regarding Russian organizations and citizens (Clause 4, Article 254 of the APC of the Russian Federation).

The positions of both Kazakhstani and Russian legislation on this issue are likely to coincide completely except for two positions.

Firstly, the Kazakhstani Civil Procedure Code does not contain such a clause, therefore, does not imply a more preferential procedural regime for foreigners compared with their own organizations and citizens.

The Russian legislation contains a clause which states that foreigners can be granted procedural benefits if it is provided by an international agreement of the Russian Federation (Clause 1, Article 254 of the APC of the Russian Federation).

Secondly, in the Civil Procedure Code of the Republic of Kazakhstan, the application of retorsions is reserved for the Republic of Kazakhstan represented by the Parliament or the President of the Republic of Kazakhstan. And the Arbitration Procedure Code of Russia mentions the Government of the Russian Federation as a body with the authority to introduce retorsions, which are carried out in the form of making decisions by the government.

Thirdly, the basic principles for establishing the general jurisdiction of Kazakhstani economic courts and Russian arbitration courts in international commercial disputes are stated in both codes as follows.

The Kazakhstani legislation considers cases involving foreigners if the respondent organization is located or the respondent citizen has a residence on the territory of the Republic of Kazakhstan:

1) the governing body, branch or representative office of a foreigner is located on the territory of the Republic of Kazakhstan;

2) the defendant has property on the territory of the Republic of Kazakhstan;

3) in the case of the recovery of alimony and the establishment of paternity, the plaintiff has a place of residence in the Republic of Kazakhstan;

4) in the case of compensation for damage caused by mutilation, other damage to health or the death of a breadwinner, the damage was caused on the territory of the Republic of Kazakhstan or the plaintiff has his place of residence in the Republic of Kazakhstan;

5) in the case of compensation for damage to property, an action or other circumstance that served as the basis for the presentation of a claim for compensation for damage took place on the territory of the Republic of Kazakhstan;

6) the claim arose from the contract under which full or partial execution should take place or took place on the territory of the Republic of Kazakhstan;

7) the claim arose from unjust enrichment that took place on the territory of the Republic of Kazakhstan;

8) in the case of divorce, the plaintiff has a place of residence in the Republic of Kazakhstan, or at least one of the spouses is a citizen of the Republic of Kazakhstan;

9) in the case of the protection of honor, dignity and business reputation, the plaintiff has a place of residence in the Republic of Kazakhstan (Article 416 of Civil Procedure Code of the Republic of Kazakhstan).

The arbitration courts of Russia consider cases of economic disputes and other cases related to entrepreneurial and other economic activities involving foreigners if: 1) the defendant is located or resides on the territory of the Russian Federation or there is property of the defendant on the territory of the Russian Federation; 2) the governing body, branch or representative office of a foreigner is located on the territory of the Russian Federation; 3) the dispute arose from a contract under which the execution should take place or took place on the territory of the Russian Federation; 4) the claim arose from the damage to property by an action or other circumstance that took place on the territory of the Russian Federation or upon the occurrence of harm on the territory of the Russian Federation; 5) the dispute arose from unjust enrichment that took place on the territory of the Russian Federation; 6) the plaintiff on the case for protecting business reputation is located in the Russian Federation; 7) the dispute arose from the relationships related to the circulation of valuable banknotes, their issue took place on the territory of the Russian Federation; 8) the applicant in the case of establishing a fact of legal significance indicates the presence of this fact on the territory of the Russian Federation; 9) the dispute arose from relationships

concerning the state registration of names and other objects and the provision of services in the international association of information and telecommunication networks of the Internet on the territory of the Russian Federation; 10) in other cases, if there is a close relationship of the disputed legal relations with the territory of the Russian Federation (Clause 1, Article 247 of the Arbitration Procedure Code of the Russian Federation) [9].

A case accepted by the arbitration court for consideration in compliance with the rules of international jurisdiction must be considered substantially, even if during the proceedings on the case due to a change in location or place of residence of the persons participating in the case, or in other circumstances, it will relate to competence of a foreign court (Clause 4 of Article 247 of the Arbitration Procedure Code of the Russian Federation) [10].

According to Article 417 of the Civil Procedure Code of Kazakhstan, the exclusive jurisdiction of Kazakhstani courts includes: 1) cases related to the right to real estate located in the Republic of Kazakhstan; 2) cases in claims against carriers arising from contracts of transportation, if carriers are located on the territory of the Republic of Kazakhstan; 3) divorce cases of citizens of the Republic of Kazakhstan with foreigners or stateless persons, if both spouses have a place of residence in the Republic of Kazakhstan; 4) some cases of special action proceedings provided for by chapters 27-30 of the Civil Procedure Code of the Republic of Kazakhstan (Clause 1, Article 417 of the Civil Procedure Code of the Republic of Kazakhstan). At the same time, the Civil Procedure Code includes cases of special proceedings arising from public relationships complicated by a foreign element, which are subject to the exclusive jurisdiction of Kazakhstani courts.

Kazakhstani economic courts consider cases of special proceedings if: 1) the applicant in the fact-finding case has a residence on the territory of the Republic of Kazakhstan or a fact that must be established, has taken or is taking place on the territory of the Republic of Kazakhstan; 2) a citizen who is recognized as legally competent or incompetent, forcibly admitted to a psychiatric hospital, is a citizen of the Republic of Kazakhstan or has a place of residence on the territory of the Republic of Kazakhstan; 3) a citizen who is recognized as missing or declared dead, is a citizen of the Republic of Kazakhstan or had the last known place of residence on the territory of the Republic of Kazakhstan, and the establishment of the rights and obligations of citizens and organizations having a residence depends on the resolution of this issue or location on the territory of the Republic of Kazakhstan; 4) thing in respect of which an application for declaring it ownerless has been submitted is located on the territory of the Republic of Kazakhstan; 5) valuable banknotes in respect of which an application for recognition as lost and for the restoration of relevant rights to it (call-up proceedings), issued by a citizen or organization residing or located on the territory of the Republic of Kazakhstan; 6) records of civil status acts, on the establishment of irregularities of which an application was submitted, were made by the bodies of the records of civil status acts of the Republic of Kazakhstan; 7) notarized actions appealed (refusal to perform them) were committed by a notary or other body of the Republic of Kazakhstan.

Thus, Article 248 of the Arbitration Procedure Code of the Russian Federation and Article 417 of Civil Procedure Code of the Republic of Kazakhstan consolidate the exclusive jurisdiction of Kazakhstan economic courts and Russian arbitration courts for the consideration of international commercial disputes of a certain category, which should be distinguished from the exclusive jurisdiction of an arbitration court or economic court for the consideration of a specific dispute arising from the conclusion of a proprietary agreement between the disputing parties.

Fourthly, the Rules on contractual jurisdiction are enshrined in both Kazakhstan and Russian legislation. They provide the possibility of the parties entering into disputed legal relationships of a proprietary agreement. The latter means an agreement between the disputing parties (the potential plaintiff and defendant) on the transfer of the dispute for resolution to a court of a state. Such agreement acts as a legal form for the implementation of the rules on contractual jurisdiction contained in domestic law.

According to Article 419 of Civil Procedure Code of the Republic of Kazakhstan “Contractual jurisdiction”, the competence of a foreign court may be provided by a written agreement of the parties, except for the cases specified in Article 33 of Civil Procedure Code of the Republic of Kazakhstan. If there is such an agreement, the court leaves the application without consideration at the request of the defendant, provided that such a request is applied for before the case is considered substantially. Article 33 “Exceptional jurisdiction” states that:

1. The claims for rights to land plots, buildings, premises, facilities, other objects firmly connected with land (real estate), for the release of property from arrest are provided at the location of these objects or seized property, except for the cases provided by Clause V of the present Article.

2. The claims of the testator's creditors presented before the inheritance is accepted by the heirs, are under the jurisdiction of the court at the location of the estate or its main part.

3. The claims against carriers arising from contracts for the transportation of goods, passengers or baggage are filed at the location of the permanent body of the transport organization.

4. The claims for compensation of losses caused by a violation by a foreign state of the jurisdictional immunity of the Republic of Kazakhstan and its property are filed at the location of the plaintiff, unless otherwise provided by an international agreement of the Republic of Kazakhstan.

5. The claims in which one of the parties is a citizen who carries out entrepreneurial activity without forming a legal entity in respect of which the decision to declare bankrupt has entered into legal force, or a legal entity regarding of which the decision to apply the rehabilitation procedure has entered into legal force and (or) being declared bankrupt, are considered by the same court judge who made the decision to apply rehabilitation procedure regarding him or to declare such a person bankrupt.

According to Article 249 of the Arbitration Procedure Code of the Russian Federation, provided that that the parties, at least one of which is a foreigner, have made an agreement where they have determined that the Russian arbitration court has the competence to consider a dispute that has arisen or could arise related to their entrepreneurial and other economic activities, the arbitration court of Russia will have exclusive competence to consider this dispute, provided that such an agreement does not alter the exclusive competence of a foreign court. An agreement regarding the determination of competence must be concluded in writing [11].

The wording of the heading of Article 249 of the Arbitration Procedure Code of the Russian Federation “Agreement on the determination of arbitration court competence in the Russian Federation” should be specified in order to improve it. We are talking about a proprietary agreement, while it should be about contractual jurisdiction, where a proprietary agreement serves only as a legal form expressing the latter. It would be more correct to indicate the heading of Article 249 of the Arbitration Procedure Code of the Russian Federation as “Contractual jurisdiction of cases involving foreigners”, because such a wording makes it possible to clearly distinguish, firstly, the types of jurisdiction - general (Article 247 of the APC of the Russian Federation and Article 416 of the Civil Procedure Code of the Republic of Kazakhstan), exclusive (Article 248 of the APC and Article 417 of the Civil Procedure Code of the Republic of Kazakhstan) and contractual (Article 249 of the Civil Procedure Code of the Russian Federation and Article 419 of the Civil Procedure Code of the Republic of Kazakhstan) and, secondly, the concept of a proprietary agreement as a way of determining jurisdiction in the form of implementing contractual jurisdiction from the concept of jurisdiction itself as a set of rules for establishing the competence of a state court. In addition to this issue, it is necessary to focus again on the fact that a proprietary agreement can only change the rules for determining general jurisdiction, but never exclusive under the threat of recognition as legally invalid, and in this context, contractual jurisdiction can be considered as amended by agreement of the parties to the dispute [12].

Therefore, in this regard, it is necessary to distinguish between general (416 of Civil Procedure Code of the Republic of Kazakhstan), exclusive (417 of Civil Procedure Code of the Republic of Kazakhstan), contractual (419 of Civil Procedure Code of the Republic of Kazakhstan) jurisdiction. However, the regulation of the general jurisdiction of Kazakhstan and Russia has some peculiarities. For example, in the Russian legislation there is no rule implying the consideration of cases on the recovery of alimony and on establishing paternity, the plaintiff has a place of residence in the Republic of Kazakhstan, which is provided in Kazakhstan legislation.

Fifthly, the inclusion of conflict of laws norms defining procedural law and the legal capacity of foreigners can be considered a significant distinguishing feature of Kazakhstani procedural legislation [13]. According to Clauses 1-5 of Article 414 of Civil Procedure Code of the Republic of Kazakhstan, the civil procedural capacity or standing of foreign citizens and stateless persons is determined by their personal law. The personal law of a citizen is the law of the state where he resides. If a citizen, along with the citizenship of a foreign state, also has the citizenship of the Republic of Kazakhstan, his personal law is the law of the Republic of Kazakhstan. The belonging of such person to the citizenship of a foreign state

is not recognized by the courts of the Republic of Kazakhstan. If a citizen has several foreign citizenships, his personal law is the law of the state with which he is closely connected. The personal law of a stateless person is the law of the state in which the person has a permanent place of residence, and in the absence of permanent residence - the law of the state of his usual residence. A person who is not legally competent under his personal law may be recognized as legally competent if he has the procedural capacity or standing in accordance with the law of the Republic of Kazakhstan.

According to Clauses 1-2 of Article 415 of Civil Procedure Code of the Republic of Kazakhstan, the procedural legal capacity of a foreign organization is determined by the law of a foreign state, in accordance with which it was created. A foreign organization that does not have the procedural legal capacity under this law may be recognized as capable on the territory of the Republic of Kazakhstan in accordance with the law of the Republic of Kazakhstan. The procedural legal capacity of an international organization is established on the basis of an international agreement in accordance with which it was created, its constituent documents or an agreement with a competent state body of the Republic of Kazakhstan.

Russian procedural legislation does not contain any conflict of laws rules to determine the law which is applied to procedural law - and the legal capacity of foreigners. One can state that in this case the general conflict of laws rules concerning the personal law of individuals and legal entities, contained in Section VI "Private International Law" of the third part of the Civil Code of the Russian Federation will be used.

Sixthly, foreign judgments will be recognized and enforced in Kazakhstan and Russia.

In the international civil process, the issue of recognition and enforcement of judgments is the most significant one, since it is at this procedural stage that the final settlement of disputed relationships takes place in the form of material satisfaction of the plaintiff's claims. However, the practical complexity of this issue consists in the fact that being an act of public authority of one state, adopted within its jurisdiction, judicial decision must be recognized and enforced on the territory of another state, to which the above mentioned public authority does not apply. Due to generally recognized principles of international law, namely: territorial integrity and sovereign equality of states, the recognition and enforcement of foreign judgments on the territory of a state are possible only on the basis of the relevant norms of national law or international agreement [14]. Both of these possible ways are applied in both Russian and Kazakhstani law.

If we consider the norms of the national legislation of Russia concerning the recognition and enforcement of foreign court decisions, then they are contained in Section 31 APC RF "Proceedings on cases regarding the recognition and enforcement of foreign court decisions and foreign arbitral awards". According to Clause 1 of Article 241 of the Arbitration Procedure Code of the Russian Federation, decisions of foreign courts concerning the disputes and other matters arising in entrepreneurial and other economic activities are recognized and enforced by arbitration courts in the Russian Federation if the recognition and enforcement of such decisions is provided for by the international agreement of Russia and the federal law.

The norms of the national legislation of Kazakhstan on this issue are contained in Clause 1 of Article 501 Civil Procedure Code of the Republic of Kazakhstan. According to it, the decisions of foreign courts are recognized and enforced in the Republic of Kazakhstan, if this is provided by the law or by the international agreement of the Republic of Kazakhstan on the basis of reciprocity.

The conditions and procedure for the recognition and enforcement of foreign court decisions in Kazakhstan are determined by law, unless otherwise provided by the international agreement of the Republic of Kazakhstan. A decision of a foreign court may be presented for enforcement within three years from the date the decision comes into force. The term missed for good reason may be restored by the court of the Republic of Kazakhstan (Clauses 2-3 of Article 501 of the Civil Procedure Code of the Republic of Kazakhstan). In Kazakhstan, the following judgments of foreign courts are recognized, which do not require execution in their nature:

- 1) regarding the personal status of exclusively citizens of the state where the court made a decision;
- 2) on the dissolution or invalidation of marriages between Kazakhstani and foreign citizens, if at the time of divorce at least one of the spouses lived outside the Republic of Kazakhstan;
- 3) on the dissolution or invalidation of marriages between Kazakhstani and foreign citizens, if at the time of divorce both spouses lived outside the Republic of Kazakhstan (Article 502 of the Civil Procedure Code of the Republic of Kazakhstan).

Kazakhstani economic court at the location of the debtor or his property is the competent court to make decisions regarding the enforcement of a foreign court decision. According to Article 5 of the Law of the Republic of Kazakhstan “On enforcement proceedings and bailiffs status” dated April 2, 2010 [15], the order of enforcement of international and foreign courts decisions in Kazakhstan is determined by the relevant international agreements ratified by the Republic of Kazakhstan and the above law. A writ of execution issued on the basis of a foreign court decision by a court of the Republic of Kazakhstan may be presented for enforcement within three years from the date the decision comes into force.

The procedure for enforcing a foreign court decision is set out in detail in Regulatory Decree of Supreme Court of the Republic of Kazakhstan “On court decision” dated July 11, 2003 [16]. The enforcement of a foreign court decision is made at the request of the interested party by a court ruling in accordance with the rules of jurisdiction, which are defined in the Civil Procedure Code of the Republic of Kazakhstan, at the place of the decision execution.

A court that considers an application for recognition and enforcement of a decision is limited to establishing the circumstances in which enforcement of the decision is possible.

The application for permission to enforce the decision must be submitted to the competent court of the Contracting party, where the decision is subject to execution. It can also be brought to court which ruled the case in the first instance. This court sends the petition to the competent court to enforce decision on the petition. The application is accompanied by: a) the decision or its certified copy, as well as an official document stating that the decision has entered into legal force and is enforceable, or that it must be executed before it comes into force, if this does not follow from the decision itself ; b) a document which states that the party against which the decision was made that did not take part in the process, was in good order and called to court on time, and was properly presented in case of its procedural incapacity; c) a document confirming the partial execution of the decision at the moment of its transfer; d) a document confirming the agreement of the parties on cases of contract jurisdiction.

The decision of the competent court of one Contracting party that has entered into legal force is executed on the territory of the other Contracting party in an indisputable manner (Article 3).

Conclusion. In conclusion, it should be emphasized that in both Kazakhstan and Russia, there are three modes of conducting proceedings on the cases involving foreigners: firstly, under the bilateral international agreements (as a rule, on legal assistance in civil, family and criminal cases); secondly, under the multilateral international agreements (the Kiev Agreement and the Minsk Convention); thirdly, under the national legislation (APC RF and CPC RK).

Based on the analysis of the institute of proceedings on cases involving foreigners, we came to the following conclusions:

Firstly, the norms of procedure for cases involving foreigners in Russia are regulated by the Arbitration Procedure Code and in Kazakhstan by the Civil Procedure Code. In Russia the proceedings on cases involving foreigners are considered by the arbitration courts, and in Kazakhstan - by the economic courts.

Secondly, in the Arbitration Procedure Code of Russia, Section V “Proceedings on cases involving foreigners” is devoted to the proceedings on cases involving foreigners, and in the Civil Procedure Code of Kazakhstan Section IV called “International Process” is devoted to this issue.

Thirdly, there are some discrepancies in establishing retorsion. Thus, the Russian legislation provides for procedural benefits, if they are specified by an international agreement of Russia, the Kazakhstani legislation does not contain the norms of a preferential procedural regime for foreigners. In addition, the Government of Russia introduces retorsions in Russian legislation, and in Kazakhstan, the Republic of Kazakhstan in the person of the Parliament or the President of the Republic of Kazakhstan, deals with this issue.

Fourthly, based on the study of Articles 416, 417, 419 of the Civil Procedure Code of the Republic of Kazakhstan, we propose to rename Article 416 of the Civil Procedure Code of the Republic of Kazakhstan as “General jurisdiction of economic courts”, 417 Article 417 of CPC RK - “Exclusive jurisdiction of economic courts” and Article 419 of the CPC RK - “Contractual jurisdiction of economic courts”.

Fifthly, it should be emphasized that in both Kazakhstan and Russia, there are three modes of conducting proceedings on cases involving foreigners: firstly, under the bilateral international agreements (as a rule, on legal assistance in civil, family and criminal cases); secondly, under the multilateral international agreements (the Kiev Agreement and the Minsk Convention); thirdly, under the national legislation (APC RF and CPC RK).

А. К. Мүйденова¹, Б. А. Сериев¹, М. К. Жүсіпбекова²

¹І. Жансүгіров атындағы Жетісу мемлекеттік университеті, Талдықорған, Қазақстан;

²Қорқыт Ата атындағы Қызылорда мемлекеттік университеті, Қызылорда, Қазақстан

ҚАЗАҚСТАН МЕН РЕСЕЙДІҢ ХАЛЫҚАРАЛЫҚ АЗАМАТТЫҚ ІС ЖҮРГІЗУ ҚҰҚЫҒЫНДАҒЫ ШЕТЕЛ ТҮЛҒАЛАРЫНЫҢ ҚАТЫСУЫ АРҚЫЛЫ ІС ЖҮРГІЗУДІҢ КЕЙБІР МӘСЕЛЕЛЕРІНІҢ САЛЫСТЫРМАЛЫ СИПАТЫ

Аннотация. Қазіргі уақытта интеграциялық үдерістегі мемлекеттердің ынтымақтастығы мынандай халықаралық бірлестіктер шеңберінде өтуде: Тәуелсіз Мемлекеттер Достастығы (ТМД), Еуразиялық экономикалық қоғамдастық (ЕурАзЭҚ) және Бірыңғай экономикалық кеңістік (БЭК).

ЕурАзЭҚ шеңберінде мемлекеттердің ынтымақтастығы неғұрлым серпінді дамып келеді, ол келешекте экономикалық интеграцияның неғұрлым жетілдірілген нысаны ретінде Еуразиялық одаққа (ЕАС) айналуы мүмкін.

Осы жағдайға байланысты ЕурАзЭҚ-қа кіретін мемлекеттердің құқықтық жүйелерін зерделеу өте қызықты және өзекті болып саналады.

Сонымен қатар, аталған халықаралық ұйымды ТМД-дан бөліп қарауға болмайды, оны «салыстырмалы құқықтану зертханасы» деп бағалауға болады. Екінші жағынан, еуразиялық құқықтық кеңістік, шын мәнінде, бар. Барлық қатысушы елдер бір-біріне географиялық тұрғыда жақын орналасқан, ал заң саласында оларды ортақ құқықтық мұра біріктіреді. Олар жұмыста қолданылатын ортақ тілді – заң тілін (орыс) пайдаланады, оларды қолданыстағы институционалдық модельдегі (ТМД) өзара іс-әрекет тәжірибесі біріктіреді.

Авторлар шетелдік тұлғалардың қатысуы арқылы қазақ және ресей құқығындағы істер бойынша өндіріс институтының салыстырмалы сипаттамасы екі мемлекеттің халықаралық жеке құқығының маңызды салаларының бірі ғылыми ұғынуда кезекті қадам болып саналады деп есептейді. Зерттеу нысаны ретінде авторлар халықаралық коммерциялық дауларды, яғни заңды тұлғалар мен жеке кәсіпкерлердің кәсіпкерлік және өзге де экономикалық қызметті жүзеге асыруына байланысты дауды қарау барысында шетелдік тұлғалардың қатысуы негізінде іс жүргізуде өндірісті таңдағанын атап өткен жөн.

Бұл мақала халықаралық азаматтық үдерістің өзекті мәселелерінің бірі – шетелдік тұлғаларға қатысты істер бойынша сот ісін жүргізуге арналған. Авторлар халықаралық азаматтық іс жүргізу қатынастарын реттеуге қатысты қазақстандық және ресейлік заңнаманы салыстырмалы талдауға назар аударды. Авторлар шетелдік тұлғалардың қатысуы негізінде іс жүргізуге қатысты ресейлік және қазақстандық құқық саласындағы ұқсас ерекшеліктер мен айырмашылықтарды анықтау мақсатында ұлттық заңнама мен өңірлік сипаттағы халықаралық шарттарды қоса алғанда, құқықтық сала ауқымын егжей-тегжейлі зерттеді.

Зерттеу пәні ретінде авторлар халықаралық коммерциялық дауларды, яғни заңды тұлғалар мен жеке кәсіпкерлердің кәсіпкерлік және өзге де экономикалық қызметті жүзеге асыруға байланысты дауларды қарастыруда шетелдік тұлғаларға қатысты іс жүргізуді таңдағанын атап өткен жөн.

Түйін сөздер: шетелдік тұлғалар, азаматтық сот ісін жүргізу, шетелдік тұлғалардың қатысуы арқылы іс жүргізу, салыстырмалы сипаттама, халықаралық үдеріс.

А. К. Мүйденова¹, Б. А. Сериев¹, М. К. Жусупбекова²

¹Жетысуский государственный университет имени И.Жансугурова, Талдықорган, Казахстан

²Кызылординский государственный университет имени Коркыт Ата, Кызылорда, Казахстан

СРАВНИТЕЛЬНАЯ ХАРАКТЕРИСТИКА НЕКОТОРЫХ ВОПРОСОВ ПРОИЗВОДСТВА ДЕЛ С УЧАСТИЕМ ИНОСТРАННЫХ ЛИЦ В МЕЖДУНАРОДНОМ ГРАЖДАНСКОМ ПРОЦЕССУАЛЬНОМ ПРАВЕ КАЗАХСТАНА И РОССИИ

Аннотация. В настоящее время сотрудничество государств в интеграционном процессе проходит в рамках таких международных объединений, как: Содружество Независимых Государств (СНГ), Евразийское экономическое сообщество (ЕврАзЭС) и Единое экономическое пространство (ЕЭП).

В силу этого обстоятельства изучение правовых систем государств, входящих в ЕврАзЭС, представляется весьма интересным и актуальным.

Вместе с тем, данную международную организацию нельзя рассматривать в отрыве от СНГ, которое можно оценить как «лабораторию сравнительного правоведения». С другой стороны, на самом деле евразийское правовое пространство существует. Все страны-участницы находятся в географической близости друг от друга, а в юридической сфере их объединяет общее правовое наследие. Они используют

общий рабочий юридический язык (русский), их объединяет опыт взаимодействия в действующей институциональной модели (СНГ).

Настоящая статья посвящена одному из наиболее актуальных проблем международного гражданского процесса – производству по делам с участием иностранных лиц. Авторы сконцентрировали свое внимание на сравнительном анализе казахстанского и российского законодательства, касающегося регулирования международных гражданско-процессуальных отношений. Авторы полагают, что сравнительная характеристика института производства по делам с участием иностранных лиц в казахстанском и российском праве будет очередным шагом в научном осмыслении одной из важнейших отраслей международного частного права обоих государств.

Следует подчеркнуть, что в качестве предмета исследования авторы выбрали производство по делам с участием иностранных лиц при рассмотрении международных коммерческих споров, т.е. споров, связанных с осуществлением предпринимательской и иной экономической деятельности юридическими лицами и индивидуальными предпринимателями.

Ключевые слова: иностранные лица, гражданское судопроизводство, производству по делам с участием иностранных лиц, сравнительная характеристика, международный процесс.

Information about the authors:

Muidenova A.K., Doctoral student, I.Zhansugurov Zhetysu State University, Taldykorgan, Kazakhstan; alia_akerke@mail.ru; <https://orcid.org/0000-0003-0641-5111>

Seriyeв B.A., Candidate of law sciences, professor, I.Zhansugurov Zhetysu State University, Taldykorgan, Kazakhstan; seriev_bolat@mail.ru; <https://orcid.org/0000-0002-0161-7219>

Zhusupbekova M.K., Candidate of law sciences, docent, Kyzylorda State University named after Korkyt ata, Kyzylorda, Kazakhstan; zhmk6464@mail.ru; <https://orcid.org/0000-0002-3858-0472>

REFERENCES

[1] Moiseev E.G. Legal basis for creating the Commonwealth of Independent States and its international legal status // Eurasian law journal. 2010. N 8.

[2] Mishalchenko Yu.V. Eurasian economic community: current condition and development prospects // Eurasian law journal. 2009. N 7.

[3] Kamyshevsky V.I. Some aspects of legal support for the formation of the Customs Union and the Common Economic Space within the EAEC // Eurasian law journal. 2010. N 1.

[4] Kamyshevsky V.I. From Eurasian Economic Community to the Eurasian Union // Eurasian law journal. 2011. N 8.

[5] Butler W.E. Law Reform in the CIS // In: Sudebnik. 1996. Vol. 1, N 1. P. 9–32. 74 p.

[6] Constitutional law of the Republic of Kazakhstan “On Judicial system and status of judges of the Republic of Kazakhstan” dated December 25, 2000 No.132 (as amended and supplemented as of February 21, 2019).

[7] Arbitration Procedure Code of the Russian Federation, dated July 24, 2002 No. 95-FZ (as amended and supplemented as of July 18, 2019).

[8] Civil Procedure Code of the Republic of Kazakhstan dated October 31, 2015 No. 377-V LRK (as amended and supplemented as of July 22, 2019).

[9] Kharsontsev A.I. Competence of arbitration courts for consideration of cases involving foreign persons. Yekaterinburg, 2002.

[10] Muranov A.I. Competence of general jurisdiction courts for consideration of entrepreneurial disputes involving foreign persons in the light of the new Arbitration Procedure Code of the Russian Federation // M., Journal of international rights. 2002. N 3. P. 127-150.

[11] Dergachev S.A. Peculiarities of agreements regarding national jurisdiction with the participation of a foreign element // International public and private law. 2010. N 6. P. 23-24.

[12] Shebanova N.A. Procedural peculiarities of the consideration of cases involving foreign persons in the arbitration courts of the Russian Federation // Boguslavsky M.M., Svetlanov L.G. (editors) International private law: modern practice. Collection of articles. M., 2000. P. 290-299.

[13] Makhniboroda I.M. Characteristics of international legal standing // Modern law. 2010. N 11. P. 130-134.

[14] Muranov A.I. Enforcement of foreign judgments and arbitral awards: Competence of Russian courts. M.: Justiceinform, 2002. 168 p.

[15] Law of the Republic of Kazakhstan “On enforcement proceedings and the status of bailiffs” dated April 2, 2010 No. 261-IV (as amended and supplemented as of March 7, 2019).

[16] Regulatory decree of the Supreme Court of the Republic of Kazakhstan “On court decision” dated July 11, 2003. No. 5 (as amended and supplemented as of May 31, 2019).

**Publication Ethics and Publication Malpractice
in the journals of the National Academy of Sciences of the Republic of Kazakhstan**

For information on Ethics in publishing and Ethical guidelines for journal publication see <http://www.elsevier.com/publishingethics> and <http://www.elsevier.com/journal-authors/ethics>.

Submission of an article to the National Academy of Sciences of the Republic of Kazakhstan implies that the work described has not been published previously (except in the form of an abstract or as part of a published lecture or academic thesis or as an electronic preprint, see <http://www.elsevier.com/postingpolicy>), that it is not under consideration for publication elsewhere, that its publication is approved by all authors and tacitly or explicitly by the responsible authorities where the work was carried out, and that, if accepted, it will not be published elsewhere in the same form, in English or in any other language, including electronically without the written consent of the copyright-holder. In particular, translations into English of papers already published in another language are not accepted.

No other forms of scientific misconduct are allowed, such as plagiarism, falsification, fraudulent data, incorrect interpretation of other works, incorrect citations, etc. The National Academy of Sciences of the Republic of Kazakhstan follows the Code of Conduct of the Committee on Publication Ethics (COPE), and follows the COPE Flowcharts for Resolving Cases of Suspected Misconduct (http://publicationethics.org/files/u2/New_Code.pdf). To verify originality, your article may be checked by the originality detection service Cross Check <http://www.elsevier.com/editors/plagdetect>.

The authors are obliged to participate in peer review process and be ready to provide corrections, clarifications, retractions and apologies when needed. All authors of a paper should have significantly contributed to the research.

The reviewers should provide objective judgments and should point out relevant published works which are not yet cited. Reviewed articles should be treated confidentially. The reviewers will be chosen in such a way that there is no conflict of interests with respect to the research, the authors and/or the research funders.

The editors have complete responsibility and authority to reject or accept a paper, and they will only accept a paper when reasonably certain. They will preserve anonymity of reviewers and promote publication of corrections, clarifications, retractions and apologies when needed. The acceptance of a paper automatically implies the copyright transfer to the National Academy of sciences of the Republic of Kazakhstan.

The Editorial Board of the National Academy of sciences of the Republic of Kazakhstan will monitor and safeguard publishing ethics.

Правила оформления статьи для публикации в журнале смотреть на сайте:

www.nauka-nanrk.kz

ISSN 2518-1483 (Online), ISSN 2224-5227 (Print)

<http://reports-science.kz/index.php/en/archive>

Редакторы: *М. С. Ахметова, Г. Б. Халидуллаева, Д. С. Аленов*

Верстка на компьютере *А.Д. Абдрахимовой*

Подписано в печать 10.06.2020.

Формат 60x881/8. Бумага офсетная. Печать – ризограф.

16,5 п.л. Тираж 500. Заказ 3.