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CHARACTERISTICS OF CONSIDERING CASES INVOLVING FOREIGN PERSONS IN COURT

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Sultanov Muhiddin Polotjonovich

Deputy chairman of the Tashkent Interdistrict Economic Court of Tashkent city, Independent researcher of the Higher School of Judges under the Supreme Council of Judges of the Republic of Uzbekistan, Uzbekistan

ABSTRACT

The peculiarity of disputes related to foreign persons is the existence of the need to perform some procedural actions abroad when considering cases of this category. Including gathering of evidence, notifying foreign persons staying abroad about the time and place of the trial, measures to secure the claim abroad, in addition, the regulation of material legal relations in dispute with foreign persons by foreign law or international law, etc.

KEYWORDS

Foreign Persons, foreign law, international law.

INTRODUCTION

Chapter 32 of the Economic Procedural Code (Articles 244-247) is called "Features of hearing cases involving foreign persons", it describes the procedure for hearing cases involving foreign persons, procedural rights and obligations of foreign persons, requirements for foreign documents, certain procedural actions there is talk about court orders for execution.

According to I.M. Shevchenko, the universally recognized principle and universally binding rule of international law is the principle of respect for state sovereignty and state sovereignty. Each state is considered to be the owner of full power in its territory. Therefore, considering that the administration of justice is an act of state sovereignty, the courts of the national state outside the state are



deprived of their legal authority and cannot perform any judicial action in another state.

Therefore, the economic courts of the Republic of Uzbekistan should take into account the laws of foreign countries and the regulation of these relations with the help of international law when considering cases related to foreign persons. Otherwise, the court decision may be annulled or the execution of this decision in the territory of a foreign country may be refused.

In order to determine the characteristics of cases involving foreign persons, it is necessary to study the legislation in the field of economic process and international private law, international agreements in which the Republic of Uzbekistan has participated or not. International agreements can be universal or regional, multilateral or bilateral.

The Economic Court of the Republic of Uzbekistan shall consider cases involving foreign persons, unless otherwise stipulated in the international agreement of the Republic of Uzbekistan, according to the provisions of this Code, taking into account the features provided for in this chapter. Judging from the content of the first part of Article 244 of the EPC, it is considered on the basis of the general rules of national legislation, taking into account the special features. This includes submission of claims and documents that must be attached to them, procedural rights and obligations of the parties, court proceedings, procedural terms, decisions, rulings, their execution, etc.

However, due to the fact that the foreign organization is registered in another country, the head office is located in another region, and it takes time to contact them, so there is a difference in the deadlines for processing cases. "Extended periods" are actually an opportunity given to foreign persons to protect their

rights and legal interests. This aspect of procedural law is followed by the laws of all countries. Due to the fact that there is a difference in terms of territory, court notices do not arrive within the time limit set by the general rules, the cases may be left unheard by the courts.

Cases with the participation of foreign persons, if these persons or their branches, representative offices or their authorized representatives are located or live in the territory of the Republic of Uzbekistan, are considered within the time limits specified in this Code.

In cases where the foreign persons participating in the case are notified in accordance with the procedure established by the international agreement of the Republic of Uzbekistan, the period of consideration of the case shall be extended to the period established by the international agreement of the Republic of Uzbekistan for sending court orders, and if such a period is not included in the agreement or if the specified agreement does not exist, it shall be extended for a period of no more than six months.

There are also peculiarities in the issue of jurisdiction in cases involving foreign persons. In some cases, according to the agreement specified in the contract or disputes related to the powers of a foreign country may not be considered by the economic courts of the Republic of Uzbekistan. International jurisdiction refers to the powers of the economic courts of the Republic of Uzbekistan, which allow to distinguish cases involving foreign persons from the powers of the courts of other countries. In the absence of an agreement on relevancy, the general rules of relevance and admissibility of proceedings established in the EPC of cases with the participation of foreign persons shall be applied.



According to M.A. Agalarova, the term of belonging to the international court allows to determine the competence of the court or other body to consider and resolve the dispute involving the foreign element. But nevertheless, it emphasizes that national jurisdiction is not a "separate" form, but rather a mechanism for determining the jurisdiction of the court.

Foreign citizenship, residence abroad, or the location of an organization owned by a particular person, the place where the contract is executed or the place of damage determines in advance that the conflicting legal relations will be regulated by the national legal regimes of different countries. In each country, the legislature independently determines the competent courts and the limits of international jurisdiction.

The exclusive powers of the economic courts of the Republic of Uzbekistan in cases involving foreign persons provided for in Article 240 of the Criminal Code cannot be changed by agreement of the parties. This is a strict rule. However, if the international agreement of the Republic of Uzbekistan stipulates different provisions than those stipulated by the legislation of the Republic of Uzbekistan, the provisions of the international agreement shall be applied. (IPC Article 1 Part Three)

Current and customary rules for most legal systems apply to jurisdiction over jurisdiction: claims are usually filed in the jurisdiction of the defendant entity or the defendant citizen's residence.

According to the first part of Article 21 of the FC, the place of residence of a citizen is the place where the citizen lives permanently or mainly. According to Article 46 of this Code, the location of a legal entity is determined by the place of state registration, unless otherwise specified in the founding documents of the legal entity.

The powers of the economic courts of the Republic of Uzbekistan on cases involving foreign persons listed in Article 239 of the EPC can be interpreted very broadly. In fact, this is an advantage of the legislation. In the legislation of many foreign countries, the criteria on this issue are somewhat limited. In most cases, jurisdiction in foreign law is determined by the defendant's nationality (France, Italy) or the defendant's place of residence (Germany). At the same time, in common law countries, the question of jurisdiction is decided on the basis of the formal principle, that is, the fact that the defendant has the possibility of being served with the court decision (England).

It is worth noting that, in recent years, such different national legal systems on this issue have been unified (integrated) on the basis of international legal documents. As an example, the most famous international legal document is the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters, adopted in 1968. The Convention specifies one criterion for the above issue - the defendant's place of residence.

The list of competences of economic courts in handling cases involving foreign persons provided in EPC prevents the aforementioned uncertainty and confusion, and provides clear instructions on the issue of entities. When submitting an application to the court, the claimant is given the opportunity to apply to the court of his choice using the list specified in Article 239 of the Criminal Code. For example, if the claimant in the business reputation protection case resides in the Republic of Uzbekistan, this dispute will be heard in the economic courts of the Republic of Uzbekistan.

In general, a clause-by-clause specification of powers helps to avoid inconsistencies in jurisdictional matters. Approaching them as special rules, we can only look at

them as a complement to the rules about the place of residence. When the claimant applies to the economic court to resolve disputes related to foreign persons, the first part of Article 239 of the EPC

The circumstances provided for in clauses 1-10, that is, the existence of a civil-legal relationship related to the territory of the Republic of Uzbekistan, are considered sufficient. Examples of these are the location of the defendant, the place of fulfillment of the terms of the contract, the place of damage to property or unjustified wealth gain, the place of issuance of securities, the state registration of names, the place of service on the Internet global information network, etc. It should be noted that the forms of civil-legal relations may be more and different than those listed in this article, and therefore we cannot say that this list is complete.

The Economic Procedural Code of the Republic of Uzbekistan contains special articles specifying the powers of economic courts in cases involving foreign persons, procedural rights and obligations of foreign persons, requirements for foreign documents.

However, at the same time, the above-mentioned rules and their practical application have not been comprehensively and systematically analyzed in the scientific literature, the conflicts between international and national law have not been resolved theoretically and practically, the participation of translators and lawyers in determining the content of foreign law, informing foreign persons, there are significant problems in terms of time and other issues in processing cases related to foreign persons.

In Uzbekistan, the mechanism of interaction between the state authorities and the state authorities of foreign countries is not well established. The mechanism for providing legal aid and submitting a

questionnaire is almost non-existent. Uzbekistan's agreements on legal assistance with many countries serve only as a legal basis, the procedure for their practical application is not established in any regulatory document.

The economic courts of the Republic of Uzbekistan may refer to the courts of foreign countries or competent bodies of foreign countries with court orders to perform certain procedural actions in accordance with the procedure established by the international agreement of the Republic of Uzbekistan.

Jurisdiction is an important issue when submitting lawsuits to economic courts by foreign persons. The classic method of suing the defendant is to apply to the court of his location. However, in this category of cases, foreign persons may not have a branch in the territory of the Republic of Uzbekistan. Also, in the terms of the contract or with a separate agreement, the courts that will resolve disputes that may arise in the future may be specified. Documents in a foreign language are attached to a claim by foreign persons. Translations are made by experts, with the help of notaries and other organizations. In order to use translated documents in court, the documents must be translated by a licensed specialist and certified by a notary. Some documents may require a more complicated process, i.e. legalization and apostille.

According to Article 10 of the EPC, participants of court proceedings who do not know the language in which court proceedings are conducted have the right to familiarize themselves with case materials through an interpreter, participate in court actions, and speak in court in their native language or freely chosen language of communication. When it is necessary to use the services of an interpreter during the trial, a problem arises in the courts in this regard. First of all, the fact that the judge himself does not know the



foreign language spoken by the foreigner participating in the case is considered a problematic situation, and it should be mentioned that a special base of translators, tested and classified according to their experience or specialization, has not been formed in Uzbekistan. Secondly, solving the issue of ensuring the participation of an interpreter in court proceedings by the court also takes time procedurally. This, of course, causes the case to be delayed due to adjournments and adjournments. There is a gap in procedural law on this issue.

The register of the tax office can be used to determine the existence of a branch or representative office of a foreign organization. Courts must determine whether a foreign organization has a representative office when conducting business, especially when informing about the time and place of work. This causes the cases involving foreign persons to be considered and resolved within the general terms.

We will dwell on the problems encountered in the practice of courts in the process of accepting and preparing lawsuits involving foreign persons.

On January 6, 2020, the Law of the Republic of Uzbekistan "On State Duty" came into force. In accordance with Article 5 of this Law, a state duty in the amount of twice the amount of the base calculation is charged for the applications for recognition and enforcement of the decisions of foreign courts and arbitrations. Foreigners request to pay court costs in foreign currency they have, since they do not have the national currency of the Republic of Uzbekistan in their account, they face the first obstacle when submitting an application.

Of course, in the eighth part of Article 17 of this Law, if the value of the claim and the amount of the contract are determined in foreign currency, the amount of the

state duty shall be determined and collected in the national currency at the rate determined by the Central Bank of the Republic of Uzbekistan on the date of the action. But we cannot say that this rule is a basis for the recognition and enforcement of foreign court and arbitration decisions. Special consideration should be given to foreign persons applying to legal documents related to the collection of court costs in matters other than filing a lawsuit (recognition, enforcement).

When economic courts send a ruling on the assignment of a case to foreign persons, the ruling may be returned from the foreign address of the defendant because he is not at this address. According to the second part of Article 128 of the EPC, if the extract of the ruling sent by the court on the last address (postal address) of the legal entity known to the court, the citizen's place of residence was not delivered due to the fact that the recipient is not at the specified address, and the communication institution informed the court about this, the economic court the participant in the proceedings shall be deemed duly informed by the court. In this case, the judge is obliged to consider the case without the participation of the defendant, because the length of consideration of this category of cases is extended for a period of no more than six months.

Also, in the practice of the courts, it is possible to meet cases where court assignments sent to a foreign country with a request to perform a certain procedural action are not returned at all. In such cases, there is no regulatory legal document stating that the judge's actions or inactions are not against the law.

In cases where the parties involved in the case are residents of Uzbekistan, the court staff will determine the additional information of the parties through the website www.stat.uz and try to resend the decision on postponing the hearing of the case to the specified



address or contact them through other means of communication. This works in most cases. But this is not possible in cases involving foreign persons. With the help of international agreements, it would be appropriate to create a database of all world economic entities and to use it for information on foreign persons participating in the work.

At this point, we think that we should adopt the practice of "reserve date" used by the Russian Federation in assigning cases in cases related to foreign persons to our procedural legislation. According to this practice, the initial and main dates of the trial are determined in one ruling. If the foreign person participating in the case receives this ruling late due to objective reasons and cannot make it to the initial date of the trial, he/she participates in the court session held on the main date himself or through a representative. This will prevent procedural violations.

As a logical continuation of this idea, we can also say about postponing the hearing of the case. According to the second part of Article 171 of the EPC, the trial can be postponed for the period necessary to eliminate the circumstances that served as the basis for its postponement within the period provided for the trial in this Code, but not more than ten days. But the ten-day period will not be enough to deliver the ruling on postponing the case to foreign persons. Therefore, we believe that it is correct to include the situation related to a foreign person in this norm of the EPC as an exception.

Another interesting situation is related to representatives and powers of attorney. In most cases, foreign persons prefer to participate in economic courts through their representatives. Recently, there are many cases where the legal fees paid to the representative of the foreign plaintiff, whose powers have been formalized in the appropriate manner, are

also included in the payment of the legal fees paid when submitting a claim to the court. We believe that the procedural solution of this issue should be reflected in the EPC. According to the provision established in Article 63 of the EPC, the powers of proceedings in court give the representative the right to perform all procedural actions on behalf of the person who represented him. But the performance of the actions listed in the first part of this article must be specifically provided for in the power of attorney. In court practice, there are also cases where the power of attorney of a foreigner does not meet this requirement, and the claim submitted by the representative was returned because it was signed by a person who did not have the right to sign it. The arguments of the foreign claimant that the general terms "all procedural actions", "submitting a claim" in the power of attorney given to the representative, actually include signing the claim, were not taken into account.

Since there is no mechanism for collection of state duty at the expense of foreign persons, the courts are forced to reject requests for delay in payment of state duty and payment in installments. Of course, in EPC it is listed as the judge's right. Nevertheless, in our opinion, this violates the criterion of foreign persons enjoying equal procedural rights with residents of Uzbekistan.

In addition, according to our national legislation, it is established that the company whose account number is in the card file can apply to the court by presenting a bank statement proving that there are no funds in the account. This bank statement must be submitted to the court within 3 days. But in the practice of courts, foreign persons do not have time to present the bank reference to the court due to the distance. Therefore, such short periods are the reason for their rightful objections that they violate their rights.



In the third part of Article 244 of the EPC, it is established that in the case of cases involving foreign persons, if a court order to notify the party in a foreign country is sent by the courts, it will be extended for a period of not more than six months. However, even if there are branches, representative offices of foreign persons or their authorized representatives in the Republic of Uzbekistan, cases are considered within six months, and it can be seen that a practice of non-observance of the procedural rules has been formed. In order to ensure the correct and uniform application of EPC norms in this regard, we think it is appropriate to submit a proposal to the decision of the Plenum in the future.

In accordance with Article 164 of the Criminal Code, the trial must be completed within a period of no more than one month from the date of issuance of the decision to prepare the case for trial. In exceptional cases, the term of the trial may be extended by the chairman of the court for a period not exceeding one month. Trial proceedings involving foreign persons may not be completed in a period not exceeding six months. According to the general rule, the chairman of the court has the right to extend the term of the trial using his authority. In the practice of the courts, the chairman of the court extends the term of the trial by one month, but the peculiarity of the foreigner means that even this term is insufficient. Therefore, Article 164 of the Criminal Code of Criminal Procedure needs to specify and strengthen the chairman's authority to extend the term in cases involving foreign persons. It would be appropriate to set the extension period to a period not exceeding six months.

At this point, we would like to draw your attention to the amendment to Article 253 of the Arbitration Procedure Code of the Russian Federation introduced on October 1, 2019. According to it, consideration of cases involving foreign persons, if the foreign persons

do not have branches or representative offices in the Russian Federation, is determined to be extended for a period of no more than one year. We also consider this period of not more than one year to be a reasonable period and suggest that it be included in the procedural legislation. This will certainly prevent the violation of procedural law by the courts, and will allow for sufficient separation of the deadlines for notifying the parties.

It is known to everyone that the practice of conducting court hearings in the mode of video conferencing and submitting claims through the electronic system has already developed in the courts of Uzbekistan. The idea of establishing virtual courts in the digitization of the judicial system is being promoted by the Higher School of Judges. Recently, due to the pandemic that shook the whole world, quarantine restrictions were applied, and all communications began to be carried out via the Internet. Remote participation of the court and other participants through virtual court chats leads to time savings, a sharp reduction in the costs of the parties' arrival from foreign countries, and full provision of the participation of the parties in the courts. We fully support the application of this innovation to cases involving foreign persons. Because the arrival and departure of a foreign person to the country where the trial is held, residence and other formalities require a lot of time and money. For this reason, we are confident that a foreigner will choose to participate from their home country by paying the court fees charged for virtual court chats. We hope to protect the rights and legal interests of citizens and legal entities by introducing the practice of virtual court chats, which has not been tried in any country in the world, for the first time in our country.

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