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MODELS OF INTERNATIONAL JURISPRUDENCE

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Abstract: This article discusses the models of the International judicial institute. The history of the international jurisprudence models development has been studied on the example of the United Kingdom and France. The conclusions were reached on the existing models compatibility with Uzbekistan legal system.

Key words: international jurisprudence, models, private international law, international civil process.

I. Introduction

As a result of the development of the International Judicial Institute, its specific substances are formed. In this article we will talk about the historical-political basis and legal composition of models of the International Judicial Institute.

II. Material and Methods

In the study of International judicial institute models it uses scientific works created by leading scholars on the law and jurisprudence history in countries such as France and the United Kingdom, as well as legal models. Legal analysis uses analysis, synthesis, historical and comparative legal methods.

III. Results

The legal analysis results show that in Uzbekistan it is necessary to apply an open model of international justice.

IV. Discussion

In most cases, in the literature on international jurisdiction of cases the "international judicial systems" classification is a three-component scheme. This scheme includes the following:

а) being exist in the area;

б) citizenship of the parties to the dispute;

в) jurisdiction determination on the permanent residence principles of the individual or permanent organization residence [1].

Arthur von Mehren cites three theories that directly define international jurisdiction:

a) fidelity theory. According to it, the political connection between the state and the individual is the basis for the international jurisdiction establishment in the state;

b) the physical dependence theory. According to this theory, if a state court can present a subpoena to the defendant while he is in that state territory, that state court may establish international jurisdiction;

c) convenience theory. According to the rules of this theory, if it is possible for the parties to see the dispute in a "convenient, impartial and fair" court, international justice is based on the following dependencies: integral connection between the court and the parties; the relationship of

the dispute with the court from a procedural point of view; the interdependence of the subject of the dispute and the state court [2].

P. According to Lagarde, the list of the above theories should be supplemented by the protection principles of the weaker side interests of the legal relationship, the independent will of the parties (the possibility of establishing international jurisdiction on the basis of an agreement on the powers establishment) [3]

It should be noted that this classification is correct, excluding absolute international jurisdiction. The second thing to note in this case: "theories" are the legal basis for determining international jurisdiction in the countries concerned. In turn, these "theories" based on the essence of the law, the scope of state power and certain assumptions about the basics. Because of the law history, each approach arises on the basis of certain historically emerging needs of human society.

For example, French national courts empowerment in the Napoleonic era to establish international jurisdiction on the citizenship principle is related to the need to ensure maximum judicial protection of French rights. Due to France's aggressive foreign policy, many foreign countries created obstacles in ensuring French rights protection in their own countries, so it was considered more effective to protect French people in French territory. As a result, norms have been established that all disputes involving the French belong to the international jurisdiction of the French courts. However, the jurisdiction establishment on the citizenship principle for other states depends on other historical grounds.

In England, the "physical dependency" approach provides for the establishment of international jurisdiction in a subpoena case. According to American proceduralists, the reason for this approach is that historically, claims for obligation in the British legal system have been of a quasi-criminal nature. Therefore, the court could not make a decision without first establishing physical authority over the defendant [4]. As can be seen, this theory also has clearly articulated historical roots.

It should be noted that, despite these historical features existence, the courts in establishing international jurisdiction in England or France are not based solely on these approaches. The international jurisdiction rule on the residence or location of the defendant, a particular division location of the legal entity is a universal basis for many countries. In different countries, historical norms of international jurisprudence are seen not as norms that shape the legal system, but as methodological approaches to regulation.

In our view, in order to demonstrate conceptual models of international jurisdiction, we need to assess its importance. Well-known lawyer F. Martens argued that the private international law problems could be solved only for the purposes of international relations. [5] The international jurisdiction regulation is aimed at ensuring the judicial protection of the rights and legitimate interests of the participants in cross-border relations. As the European Court of Human Rights has pointed out, justice is achieved through the adoption and enforcement of a judgment. The international jurisprudence Regulation is an important step in ensuring access to justice in cases complicated by foreign elements [6].

States determine their international jurisdiction broadly at the national legislation level. Cross-border work involves several states at the same time. Therefore, when the same case is considered by the several states courts at the same time on the basis of its own international jurisdiction norms, a job collision of jurisdictions may arise.

Sometimes, when no state court considers itself competent to hear the case, a negative collision of jurisdictions arises [7]. A positive collision of jurisdictions can lead to similar claims being considered in the different states courts and to several (sometimes contradictory) decisions being made on the same case. In the negative collision event, it will be impossible to reach a fair trial in all the countries to which the legal relationship relates.

We think that the issue of overcoming the negative collision of jurisdictions can be solved relatively easily. If it is impossible to recognize and/or execute the foreign state court decision in the territory of the Republic of Uzbekistan, but if it is required the protection of the rights and freedoms and legitimate interests of individuals in the Republic of Uzbekistan, a legal mechanism is needed to allow the case to be taken to court. This issue can be addressed by the following norm:

"On a general basis in the cases that do not fall under the international jurisdiction of the courts of the Republic of Uzbekistan if a person proves that his rights and freedoms, as well as his legitimate interests protection, must be ensured in the territory of the Republic of Uzbekistan and that there is no competent foreign state court to resolve this issue as well as in cases when it is impossible to recognize and enforce foreign court decisions in the territory of the Republic of Uzbekistan due to the fact that they were issued by an incompetent court in accordance with the laws of the Republic of Uzbekistan the cases complicated by a foreign element belong to the international jurisdiction of the courts of the Republic of Uzbekistan.".

Conclusion

A jurisdiction collision does not guarantee the recognition or enforcement of a foreign court decision in another country. This can lead to the non-protection of the rights and legitimate interests of the participants in cross-border relations. It is important to understand that in civil and economic affairs complicated by a foreign element collision of state jurisdiction are natural, this is due to the extraterritorial nature of the legal relationship, its connection with several states, and the fact that states broadly define their jurisdiction over international jurisdiction.

It is not difficult to see that the judicial protection of the rights and legitimate interests of the participants in cross-border relations depends on the states desire to cooperate in the international jurisdiction, mutual recognition of foreign court decisions and enforcement.

A necessary condition for the voluntary recognition and enforcement of court decisions is the jurisdiction recognition of a foreign sovereignty in resolving a case. Admittedly, this foreign court document cannot be recognized and enforced without a foreign court having the power to decide the case.

Therefore we can conclude that a key factor in interstate judicial cooperation in civil cases is whether national legislation determines whether or not to recognize the international jurisdiction of a foreign state in civil cases under certain conditions.

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