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PROCEEDING ON CASES WITH PARTICIPATION OF FOREIGN PERSONS IN INTERNATIONAL PROCEDURE LAW OF RUSSIA, KAZAKHSTAN AND UZBEKISTAN

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Abstract. This article is dedicated to one of the most interesting aspects of International Procedure Law – litigation with the participation of foreign persons. Authors focused on a comparative analysis of Russian, Kazakh and Uzbek legislation concerning the regulation of international procedural relations. Article includes two paragraphs: the first one considers international jurisdiction of Russian arbitrazh courts, Kazakh economic courts and Uzbek economic courts on commercial matters; the second one examines the recognition and enforcement of foreign court decisions in commercial matters on the territory of Russia, Kazakhstan and Uzbekistan. Authors deeply scrutinized a wide range of legal documents including domestic legislation and multilateral international treaties of regional character in order to show the convergences and divergences in Russian, Kazakh and Uzbek procedural law concerning participation of foreign persons in international commercial litigation.

Key words: International Procedure Law, International Civil Procedure, International Jurisdiction, Foreign Persons, International Commercial Litigation.

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With the dissolution of the former Soviet Union in December 1991 and transformation of the union republics into Independent States no longer bound by the Treaty of the Union of 30 December 1922, the Russian Federation operates as the "legal continuer" of the former Soviet Union and the other eleven sovereign States as each a "legal successor" of the Soviet Union. This policy of legal-continuer/legal successor avoided a legal vacuum with respect to treaty obligations of the former Soviet Union, and measures were taken to balance the domestic legislation of each former union republic with all-union legislation that was consistent with the new legal order, not repealed, and not contrary to old and new legislation whose existence and operation were necessary under post-Soviet conditions.

Other immediate responses included the negotiation of new treaties which would address the need for close harmonization of legal regimes that previously had been unified and the creation of regional organizations that pursued cooperation and, in some cases, elements of integration. Two leading organizations are the Commonwealth of Independent States (hereinafter: CIS)[1] and the Eurasian Economic Union (EAEU)[2], which has replaced the

[1] See: *Gadzhiev G.B.* Legal Aspects of the Creation of the Commonwealth of Independent States // History of State and Law. 2016. No. 1. P. 62–64; *Lebedev S.N.* To the Commonwealth of Independent States: 25 Years: Results, Prospects] // Dialogue: Policy, Law, Economy. 2017. No. 1. P. 5–11; *Shumskii N.N.* Conception of the Further Development of the Commonwealth of Independent States, Version 2.0 // International Economy. 2016. No. 2. P. 38–49.

[2] See: *Volova L.I.* Improvement of the Law of the Eurasian Economic Union under New Challenges and Threats // Northern Caucasus Legal Herald. 2017. No. 1. P. 24–31; *Elistratova V.V.* Forming of the Legal System of the Eurasian Economic Union // Herald of Saratov State Legal Academy. 2017. No. 1. P. 46–51; *Kapustin A. Ya.* Law of the Eurasian Economic Union: Approaches to Conceptual Rethinking // Contemporary Jurist. 2015. No. 1.

Eurasian Economic Community (EurAsEC)[3]. Economic integration is being pursued within the EAEU by the Customs Union and the Single Economic Space[4]. The EAEU is developing its own community law more assertively and positively than did its predecessor incarnation[5].

None of the regional organizations contain all the post-Soviet republics (the Baltic republics being outside the region for these purposes in any event). Nonetheless, all the Independent States are in close geographical proximity to one another, share a common Russian and Soviet legal heritage in addition to their local histories and experiences, use a common legal language, if not exclusively at least in part (Russian), and in many respects a common legal mentality. In addition to local community formation, these States confront the challenge of adapting their structures and harmonizing their legal regulation and legal concepts with larger communities – the World Trade Organization, European Union, Council of Europe, Organization for Economic Cooperation and Development, among others.

Initially, the CIS was the principal organization to which all, or nearly all, the post-Soviet republics attached themselves. Two have separated, but even among the others, subsets of organizational relationships have been formed, among them: the Eurasian Economic Union (EAEU) – which has replaced the Eurasian Economic Community (EurAzEC) – and within the EAEU, the Customs Union and the Single Economic Space. There are, moreover, advanced integration projects: the Union State of Russia and Belarus was founded in 1999. It remains the case, in our view, that post-Soviet legal space remains a "laboratory of comparative law", but that laboratory has become more sophisticated, more complex, more refined, and, in its own way, more challenging for the parties involved[6].

In this article we examine certain aspects of international civil procedure of Russia, Kazakhstan, and Uzbekistan: proceedings with the participation of foreign natural and juridical persons or stateless persons with particular reference to international commercial disputes. All these countries concerned have experienced mutual repatriations and migrations from one another during the past nearly three decades, foreign investment from within and outside the post-Soviet countries, expanded tourism, and the development in general of private international law influenced by a variety of sources.

Jurisdiction of Russian Arbitrazh Courts, Kazakh Economic Courts and Uzbek Economic Courts with Participation of Foreign Persons

Section V, "Proceeding with Regard to Cases with Participation of Foreign Persons", of the Code of Arbitrazh Procedure[7] determines the jurisdiction of Russian arbitrazh courts with regard to international commercial disputes[8]. The jurisdiction of Kazakhstan economic

P. 5–19; *Morozov A.N.* Realization of International Obligations Assumed by States-Members within Framework of the Eurasian Economic Union // Journal of Foreign Legislation and Comparative Jurisprudence. 2017. No. 3. P. 111–120; *Ragimov T.S.* Theoretical and Conceptual Approaches to the Analysis of the Eurasian Economic Integration // Eurasian Legal Journal. 2019. No. 1. P. 17–20.

[3] See: *Boklan D.S.* Eurasian Economic Union and World Trade Organization: Correlation of Legal Regimes // Law: Journal of the Higher School of Economics. 2017. No. 2. P. 223–236; *Kakitelashvili M.M.* Three Years of the EAEU: Prospects of Further Integration // Laws of Russia: Experience, Analysis, Practice. 2018. No. 5; *Mikaelian I.A.* Some Questions of Membership of States in the Eurasian Economic Union and Law of the World Trade Organization // International Journal of the Humanities and Natural Sciences. 2017. II. No. 3. P. 202–206; *Moiseev E.G.* (ed.). International Legal Foundations of the Creation and Functioning of the Eurasian Economic Union. 2017; *Ragimov T.S. and Ragimov R.T.* The Evolutionary Process of Economic Integration in the Eurasian Space: The Path to the Formation of the EAEU // Eurasian Legal Journal. 2018. No. 11. P. 15–18; *Sokolova N.A.* Eurasian Economic Union: Legal Nature and Nature of Law // Lex Russica. 2017. No. 11. P. 47–57.

[4] See: *Pimenova O.V.* Organization of Interaction between Customs Authorities and Participants of Foreign Economic Activity in the System of Customs Administration in the Conditions of Transition to "electronic customs" in the Common Space of the EAEU // Eurasian Legal Journal. 2019. No. 10. P. 15–18; *Salmin'sh R. Yu.* Customs Law Regulation in the Customs Union of the Eurasian Economic Union // Fatherland Jurisprudence. 2017. No. 3. P. 11–13; *Sidorov V.N.* Principal Innovations of the Custom Code of the Eurasian Economic Union // State Audit. Law. Economy. 2017. No. 2; *Tochin A.V.* Management of Customs Risks in the Eurasian Economic Union // Customs Affairs. 2017. No. 1. P. 3–6; *Troshkina T.N.* Customs Control: Organization and Legal Regulation in the Eurasian Economic Union // Laws of Russia: Experience, Analysis, Practice. 2017. No. 6. P. 67–73.

[5] See: *Boklan D.S. and Lifshits I.M.* Operation of the Principle of Supremacy of Law in the Eurasian Economic Union // International Law. 2016. No. 2. P. 1–13; *Branovitskii K.L.* Developmental Trends of the European Process at the Contemporary Stage and Prospects for Approximation in European Space // Herald of Civil Procedure. 2017. No. 3. P. 204–220; *Ragimov T.S.* Eurasian Economic Union (EAEU): Prospects for Integration of the EAEU Member States // Eurasian Legal Journal. 2019. No. 9. P. 16–18; F*edortsov A.A.* Integration and National Justice in the Eurasian Economic Union // Journal of Foreign Legislation and Comparative Jurisprudence. 2017. No. 1. P. 36–39.

[6] See: *Butler W.E.* "Law Reform in the CIS" // Sudebnik, I (1996), p. 9–32. These observations were expanded in: *Butler W.E.* Eurasian Legal Space – Laboratory of Comparative Law // Eurasian Legal Journal. 2011. No. 7. P. 6–9.

[7] See: Compare No. 30 (2002), item 3012. As of 23.11.2019.

[8] There is no generally-accepted terminology in private international legal doctrine for determining procedural jurisdiction in civil cases with the participation of foreign persons. In the view of A.A. Mamaev, the most appropriate term is "international procedural jurisdiction". In turn, the unified complex institution of international procedural jurisdiction would be subdivided into: (a) international judicial jurisdiction; (b) international administrative jurisdiction; (c) international arbitral jurisdiction", and so on. Mamaev understands international judicial jurisdiction to be the determination of the competence of the judicial agencies of a particular State for the settlement of a concrete civil case; in other words, that institution which is at present called "international subject-matter jurisdiction" (see: *Mamaev A.A.* International Judicial Jurisdiction in Cross-border Civil Cases. M., 2008. P. 36–44). The terms "international jurisdiction" and "international subject-matter jurisdiction" are used as synonyms in the present work.

courts in cases with the participation of foreign juridical persons and entrepreneurs is determined by the Code of Civil Procedure of the Republic Kazakhstan of 31 October 2015, as amended[9]. The economic courts of Kazakhstan are an integral part of the judicial system and relegated to the category of specialized courts with the status of regional or district courts[10]. However, by virtue of Edict of the President of the Republic Kazakhstan, No. 803, they continue to be called specialized inter-district economic courts[11]. The jurisdiction of economic courts of the Republic Uzbekistan in cases with the participation of foreign juridical persons and entrepreneurs is determined by the Code of Economic Procedure of the Republic Uzbekistan of 24 January 2018, as amended[12]. The economic courts of Uzbekistan are an integral part of the judicial system and include the economic courts of the Republic Karakalpakstan, regions, the City of Tashkent, inter-district, and district (or city) economic courts. Karakalpakstan is a republic within Uzbekistan[13].

Under Article 254(1)-(3) of the RF Code of Arbitrazh Procedure, foreign persons enjoy procedural rights and bear procedural duties equally with Russian organizations and citizens[14]. Foreign persons have the right to apply to arbitrazh courts of the Russian Federation in order to defend their violated or contested rights and legal interests in the sphere of entrepreneurial or other economic activity. Foreign persons participating in a case must submit evidence to an arbitrazh court confirming their legal status and their right to undertake entrepreneurial and other economic activity. In the event of the failure to submit such evidence, the arbitrazh court has the right to demand and obtain such evidence at its own initiative.

The jurisdiction of specialized inter-district economic courts in international commercial disputes is addressed specifically in Section IV of the Code of Civil Procedure of the Republic Kazakhstan, "International Proceeding". Foreign persons in Kazakhstan have the right to have recourse to the courts of Kazakhstan in order to defend their violated or contested rights, freedoms, and interests protected by law (Article 472, Code of Civil Procedure). Foreign persons are defined as foreigners, stateless persons, and foreign and international organizations. They enjoy procedural rights and perform procedural duties equally with citizens and juridical persons of the Republic Kazakhstan unless provided otherwise by an international treaty ratified by Kazakhstan. Proceedings in courts with regard to cases in which foreign persons participate are effectuated in accordance with the Code of Civil Procedure, other laws, and international treaties.

Section III, "Proceedings with Regard to Cases with the Participation of Foreign Persons", of the Code of Economic Procedure of Uzbekistan is directly concerned with establishing the jurisdiction of Uzbekistan economic courts in cases with the participation of foreign persons. Foreign persons in Uzbekistan are defined as: "foreign organizations, international organizations, and foreign citizens and stateless persons effectuating entrepreneurial activity" (Article 239, Code of Economic Procedure). These foreign persons have the right to have recourse to Uzbekistan economic courts in order to defend their violated or contested rights and interests protected by law. Foreign persons enjoy the procedural rights and bear the procedural duties equally with organizations and citizens of the Republic Uzbekistan.

The Government of the Russian Federation may establish retaliatory limitations (retorsions) with respect to foreign persons of those foreign States in which special limitations are introduced with respect to Russian organizations and citizens (Article 254, Code of Arbitrazh Procedure)[15]. The Republic Kazakhstan may introduce retaliatory limitations (retorsions) with respect to foreign persons of those States in which special limitations are permitted on the procedural rights of citizens and organizations of Kazakhstan (Article 472(4), Code of Civil Procedure). The Code of Civil Procedure of Kazakhstan provides indirectly that foreign persons might be granted procedural privileges if so provided by an international treaty of Kazakhstan. Moreover, the Kazakhstan Code of Civil Procedure does not specifically vest the Government with the power to apply retorsions, which would mean that they must be introduced by the Parliament or by the President of the

[9] See: URL: https://online.zakon.kz/ As of 22.07.2019.

[10] See: URL: https://online.zakon.kz/ Article 3, Constitutional Law of the Republic Kazakhstan "On the Judicial System and Status of Judges of the Republic Kazakhstan", 25 December 2000, as of 21.02.2019.

[11] See: URL: https://online.zakon.kz/ Edict "On the Formation of Specialized Inter-District Economic and Administrative Courts", 9 February 2002.

[12] See: URL: https://lex.uz/ As of 12.11.2019.

[13] See: URL: https://lex.uz/ See: Article 1, Law of the Republic Uzbekistan "On Courts", 2 September 1993, as of 10.09.2019.

[14] Russian legislation understands "foreign persons" to be foreign organizations, international organizations, foreign citizens, and stateless persons effectuating entrepreneurial and other economic activity (see: Article 247, Code of Arbitrazh Procedure).

[15] On retorsions, see: *Agalarova M.A.* Restrictive Measures (Retorsions) // Herald of the Siberian Institute of Business and Information Technologies. 2017. No. 1. P. 52–56; *Luchkinskaia T.A. and Berdegulova L.A.* Private Law Retorsion in Private International Law // Science and Society in an Era of Changes. 2015. No. 1. P. 104–106; *Sarkisian A.S.* On the Question of a Change of Civil (Contractual) Legal Relation in Connection with New Legal Facts and the Use of the Institution of Retorsion in Contemporary Trade Relations // Jurist. 2015. No. 5. P. 23–29; *Stoianova A.V. and Chernienko Yu. M.* Retorsion: Private Law and Public Law Aspects // Education and Law. 2014. No. 5–6. P. 44–51; *Shliundt N. Yu.* Private Law Retorsions as Corrective Measures of a Special Character // Power of Law. 2013. No. 1. P. 107–116.

country. Retaliatory limitations with respect to foreign persons of those States in whose courts special limitations are permitted on the procedural rights of organizations and citizens of the Republic Uzbekistan (Article 245, Code of Economic Procedure) may be established by the Government of Uzbekistan. The formulation of the Uzbekistan position on retorsions does not presuppose a more preferential procedural regime for foreign persons in comparison with Uzbekistan organizations and citizens. Insofar as in Uzbekistan retorsions must be introduced by legislation which presumably means legislative acts adopted by the Parliament.

General Jurisdiction. Arbitrazh courts in the Russian Federation consider cases relating to economic disputes and other cases connected with undertaking entrepreneurial and other economic activity with the participation of foreign persons if:

(1) the defendant is situated or resides on the territory of the Russian Federation or property of the defendant is located on the territory of the Russian Federation;

(2) the management organ, branch, or representation of a foreign person is situated on the territory of the Russian Federation;

(3) the dispute arose from a contract under which performance should have occurred or did occur on the territory of the Russian Federation;

(4) the demand arose from the causing of harm to property by the action or other circumstances which occurred on the territory of the Russian Federation or the harm ensued on the territory of Russia;

(5) the dispute arose from unjust enrichment which occurred on the territory of the Russian Federation;

(6) the plaintiff in the case concerning the defense of business reputation is situated in the Russian Federation;

(7) the dispute arose from relations connected with the circulation of securities, the issuance of which occurred on the territory of the Russian Federation;

(8) the application with regard to a case concerning the establishment of a fact having legal significance indicates the existence of this fact on the territory of the Russian Federation;

(9) the dispute arose from relations connected with the State registration of names and other objects or rendering of services on Internet networks on the territory of the Russian Federation;

(10) in other instances when there is a close link of a contested legal relation with the territory of the Russian Federation (Article 247, Code of Arbitrazh Procedure)[16].

A case accepted by an arbitrazh court for consideration in compliance with the rules of international jurisdiction must be considered by it in substance even if in the course of the proceedings in the case it becomes relegated to the jurisdiction of a foreign court in connection with a change of location or place of residence of persons participating in the case or other circumstances (Article 247(4), Code of Arbitrazh Procedure)[17].

By Decree of the Plenum of the Supreme Court of the Russian Federation, No. 23, "On the Consideration by Arbitrazh Courts of Cases Relating to Economic Disputes Which Arise from Relations Complicated by a Foreign Element", of 27 June 2017 (hereinafter: Plenum Decree No. 23)[18], cases with the participation of foreign persons are relegated to such a generalized category as cases relating to economic disputes arising from relations complicated by a foreign element. This generalized category includes also cases relating to: disputes whose subject-matter is rights to property or another object situated on the territory of a foreign State (for example, rights to property in a foreign State possessed by a Russian organization, rights to intellectual activity or means of individualization situated in or registered in a foreign State); disputes connected with a legal fact which occurred on the territory of a foreign State, in particular a dispute arising from obligations arising from the causing of harm which occurred in a foreign State (point 1). All the aforesaid disputes are considered by an arbitrazh court according to the rules and within the powers established by the Code of Arbitrazh Procedure, subject to the peculiarities provided by Section V of the said Code, unless provided otherwise by an international treaty of the Russian Federation (Articles 3, 253 and 2561, Code of Arbitrazh Procedure).

The basic principles for establishing the general jurisdiction of Kazakhstan economic courts with regard to international commercial disputes have been set out in

[16] Cases relating to economic disputes and other cases connected with the effectuation of entrepreneurial and other economic activity are within the jurisdiction of arbitrazh courts. Arbitrazh courts settle economic disputes and consider other cases with the participation of organizations which are juridical persons, citizens effectuating entrepreneurial activity without the formation of a juridical person and having the status of an individual entrepreneur acquired in the procedure established by a law, and in instances provided by the Code of Arbitrazh Procedure and other federal laws, with the participation of the Russian Federation, subjects of the Russian Federation, municipalities, State agencies, agencies of local self-government, other agencies, officials, formations not having the status of a juridical person, and citizens not having the status of an individual entrepreneur. Other cases also may be relegated to the jurisdiction of arbitrazh courts by federal laws (Article 27(1)-(3), Code of Arbitrazh Procedure).

[17] See: *Vardikian A.E. and Degtiareva L.A.* Proceedings in Cases with the Participation of Foreign Persons // Youth Scientific Forum: Social and Economic Sciences. 2016. No. 11. P. 730–735; *Islamova L.R.* Peculiarities of Conducting and Problems of Proceedings in Cases with Participation of Foreign Persons in the Arbitration Process // Alley of Science 2018. No. 4:11. P. 732–736; *Kudriavtseva E.V.* Proceedings in Cases with the Participation of Foreign Persons // Herald of Moscow University. Ser. 11 "Law". 2013. No. 4. P. 26–35.

[18] See: Bulletin of the Supreme Court of the RF. 2017. No. 8.

the Code of Civil Procedure as follows insofar as such cases involve the participation of foreign persons. As a rule, Kazakhstan courts will consider cases with the participation of foreign persons if the defendant – organization or defendant – natural person has a location or place of residence, respectively, on the territory of Kazakhstan. The Kazakhstan courts also consider cases with the participation of foreign persons when:

(1) the management organ, branch, or representation of a foreign person is on the territory of the Republic Kazakhstan;

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

(3) with regard to the recovery of alimony and the establishment of paternity if the plaintiff has a place of residence in Kazakhstan;

(4) with regard to the compensation of harm caused by mutilation, other impairment of health, or death of a breadwinner which served as grounds for filing demands concerning compensation of harm which occurred on the territory of Kazakhstan;

(5) with regard to compensation of harm caused to property if the action or other circumstance which served as grounds for filing demands concerning compensation of harm occurred on the territory of Kazakhstan;

(6) the suit arises from a contract under which full or part performance should have occurred or did occur on the territory of Kazakhstan;

(7) the suit arises from unjust enrichment which occurred on the territory of Kazakhstan;

(8) with regard to the dissolution of a marriage, the plaintiff having a place of residence in the Republic Kazakhstan or one of the spouses is a citizen of Kazakhstan;

(9) with regard to the defense of honor, dignity, and business reputation, the plaintiff having a place of residence in Kazakhstan;

(10) with regard to the defense of subjects of personal data, including compensation of losses and/or contributory compensation of moral harm, the plaintiff having a place of residence in Kazakhstan.

The courts of the Republic Kazakhstan also consider other cases if by a law and/or international treaty ratified by Kazakhstan they have been relegated to the competence of such courts (Article 466, Code of Civil Procedure)[19]. A case accepted by a court of Kazakhstan for proceedings in compliance with the rules of jurisdiction provided by Kazakhstan legislation is settled by such court in substance even though thereafter in connection with a change of citizenship or place of residence of the parties or other circumstances influencing competence, it became subject to the jurisdiction of a foreign court (Article 469, Code of Civil Procedure).

The economic courts of Uzbekistan consider cases with the participation of foreign persons if:

(1) the defendant is situated or resides on the territory of the Republic Uzbekistan or has property on the territory of Uzbekistan;

(2) the branch or representation of a foreign person is situated on the territory of Uzbekistan;

(3) the dispute arose from a contract under which performance should occur or did occur on the territory of Uzbekistan;

(4) the demand arose from the causing of harm to property by a foreign person or other circumstance which occurred on the territory of Uzbekistan or in the event harm ensued on the territory of Uzbekistan;

(5) the dispute arose from unjust enrichment which occurred on the territory of Uzbekistan;

(6) the plaintiff in a case concerning defense of business reputation is situated in the Republic Uzbekistan;

(7) the dispute arose from relations connected with the circulation of securities whose issuance occurred on the territory of Uzbekistan;

(8) the applicant with regard to a case concerning the establishment of a fact having legal significance indicates the existence of this fact on the territory of Uzbekistan;

(9) the dispute arose from relations connected with the State registration of names and other objects or the rendering of services on the Internet on the territory of Uzbekistan;

(10) there is an agreement concerning this between a juridical person or citizen of the Republic Uzbekistan and a foreign person, concluded according to the rules established by Article 241 of the Code of Economic Procedure[20].

[19] Specialized inter-district economic courts consider and settle civil cases with regard to property and non-property disputes to which the parties are natural persons undertaking individual entrepreneurial activity without the formation of a juridical person, juridical persons, and also corporate disputes, except for cases, the jurisdiction over which belongs to another court and has been determined by a law. Specialized inter-district economic courts also consider cases concerning the restructuring of financial organizations and organizations within a banking conglomerate as a parent organization and are not financial organizations in the instances provided by laws of the Republic Kazakhstan, and cases concerning the bankruptcy of individual entrepreneurs and juridical persons and the rehabilitation of juridical persons (Article 27(1), Code of Civil Procedure).

[20] According to Article 241 of the Code of Economic Procedure, if parties, or one of them, are foreign persons and they have concluded an agreement in which they agreed that an economic court of the Republic Uzbekistan has jurisdiction with regard to the consideration of a dispute which arose or might arise between them connected with the effectuation by them of activity in the economic sphere, the economic court of Uzbekistan will possess exclusive jurisdiction with regard to consideration of the said dispute, provided that such agreement does not change the exclusive jurisdiction of a foreign court.

Economic courts of Uzbekistan consider cases with regard to dispute arising in the economic sphere with the participation of foreign persons and in other instances when there are links of the disputed legal relation with the territory of Uzbekistan. A case accepted by an economic court for consideration in compliance with the aforesaid rules is settled by it in substance, even though in the course of the proceeding in connection with changes in the location of the persons participating in the case or other circumstances the case become relegated to the exclusive jurisdiction of a foreign court (Article 239, Code of Economic Procedure).

Special Proceedings Containing Foreign Element. Kazakhstan differs from most other post-Soviet republics by having introduced jurisdiction with respect to a special proceeding including a foreign element. Pursuant to Article 467(2) of the Code of Civil Procedure, the courts of Kazakhstan consider special proceedings with a foreign element when:

(1) the applicant in a case concerning the establishment of a fact has a place of residence on the territory of Kazakhstan or the fact which it is necessary to establish occurred or is occurring on the territory of Kazakhstan;

(2) a citizen with respect to whom an application is filed concerning adoption, limitation of dispositive legal capacity, or deeming a person to lack dispositive legal capacity, or declaring a minor to have full dispositive legal capacity (emancipation), compulsory hospitalization in a psychiatric in-patient institution, extending the period of compulsory hospitalization of a citizen suffering mental distress, compulsory treatment for tuberculosis, alcoholism, narcotics addiction, and toximania, is a citizen of Kazakhstan, or has a place of residence on the territory of Kazakhstan;

(3) a citizen with respect to whom the question has been raised of deeming him to be missing or declaring him to be deceased, is a citizen of Kazakhstan, or had his last known place of residence on the territory of Kazakhstan and the establishment of rights and duties of citizens and organizations having a place of residence or location on the territory, depends on resolution of this question;

(4) a thing with respect to which an application has been filed concerning the deeming thereof to be masterless and is situated on the territory of Kazakhstan;

(5) a security with respect to which an application has been filed concerning the deeming thereof to be lost and the restoration of respective rights to it (summary proceeding) and has been issued by a citizen or organization residing or located on the territory of Kazakhstan;

(6) entries of acts of civil status, concerning the establishment of the incorrectness of which an application has been filed and were made by agencies for the registry of acts of civil status of the Republic Kazakhstan;

(7) notarial actions, or refusal to perform which, are being appealed and were performed by a notary or other agency of the Republic Kazakhstan.

Russian, Kazakh and Uzbek legislations contain an open list of grounds for establishing the general jurisdiction of Russian arbitrazh courts, Kazakh economic courts and Uzbek economic courts. Other grounds, however, must conform to the criterion of a link between the disputed legal relation and the territory of Uzbekistan (Article 239(2), Code of Economic Procedure), and Russia (Article 247 (1(10)), Code of Arbitrazh Procedure), or be present in legislation or an international treaty of Kazakhstan (Article 466(3), Code of Civil Procedure).

Exclusive Jurisdiction. Arbitrazh courts in Russia have exclusive jurisdiction in cases with the participation of foreign persons which relate to:

(1) disputes with respect to property in the State ownership of the Russian Federation, including disputes connected with the privatization of State property and compulsory alienation of property for State needs;

(2) disputes whose subject-matter is immoveable property if such property is situated on the territory of the Russian Federation or the rights thereto;

(3) disputes connected with the registration or issuance of patents, registration and issuance of certificates for trademarks, industrial designs, utility models, or the registration of other rights to the results of intellectual activity which require registration or the issuance of a patent or certificate in the Russian Federation;

(4) disputes relating to the deeming invalid entries in the State registers or cadasters made by a competent agency of the Russian Federation keeping such register or cadaster;

(5) disputes connected with the founding, liquidation, or registration on the territory of the Russian Federation of juridical persons or individual entrepreneurs, and also with contesting the decisions of organs of these juridical persons (Article 248(1), Code of Arbitrazh Procedure).

In addition to the above principles for establishing the exclusive jurisdiction of Russian arbitrazh courts in cases with the participation of foreign persons, the Code of Arbitrazh Procedure provides for extending exclusive jurisdiction to cases with the participation of foreign persons arising from administrative and other public law relations (Article 248(2)).

The legislation of Kazakhstan relegates to the exclusive jurisdiction of courts of Kazakhstan:

(1) cases connected with the right to immoveable property situated in the Republic Kazakhstan;

(2) cases with regard to suits against carriers arising from contracts of carriage if the carriers are located on the territory of Kazakhstan;

(3) cases concerning the dissolution of a marriage of citizens of Kazakhstan with foreigners or stateless persons if both spouses have a place of residence in Kazakhstan;

(4) special proceedings provided for by Chapters 27 to 30 of the Code of Civil Procedure of the Republic Kazakhstan.

The legislation of the Republic Kazakhstan in effect relegates two categories of disputes relating to international commercial transactions to the exclusive jurisdiction of Kazakhstan courts: disputes connected with immoveable property, and disputes connected with the contract of carriage.

Uzbek legislation provides for the exclusive jurisdiction of economic courts in cases connected with property in the ownership of the Republic Uzbekistan, including disputes connected with destatization and privatization of State property and the compulsory alienation of property for State needs, and also the subject-matter of which is immoveable property, if such property is located on the territory of the Republic Uzbekistan (Article 240, Code of Economic Procedure). Other cases with the participation of foreign persons may be relegated to the exclusive jurisdiction of economic courts. Thus, Article 240 of the Code of Economic Procedure consolidates exclusive jurisdiction of Uzbekistan economic courts with regard to the consideration of international commercial disputes of certain categories, but Uzbekistan legislation in essence singled out only property cases and left the list open.

Contractual Jurisdiction. The Code of Arbitrazh Procedure of the Russian Federation provides for the possibility of contractual jurisdiction in the form of a prorogation agreement being concluded by the parties to a legal relation in dispute[21]. Prorogation agreements are an arrangement between parties or potential parties in dispute concerning the referral of a dispute for settlement of the court of a particular State[22]. A prorogation agreement acts as a legal form of implementing the norms on contractual jurisdiction contained in domestic law. A prorogation agreement must be concluded in written form. According to Plenum Decree No. 23 (point 6), the obligatory written form of a prorogation agreement is considered to be satisfied if it was drawn up in the form of a separate agreement, clause in a contract, or such agreement is reached by an exchange of letters, telegrams, telexes, faxes, or other documents, including electronic documents transmitted by channels of communication enabling it to be reliably ascertained that the document emanates from the other party.

Taking into account the Code of Arbitrazh Procedure (Article 9), a prorogation agreement is also considered to be concluded in written form if it was concluded by an exchange of procedural documents (petition to sue and reply to a petition to sue) in which one party declares the presence of a prorogation agreement and the other party does not object. Reference in the contract to a document containing a prorogation agreement represents a prorogation agreement concluded in written form on condition that the said reference enables such an agreement to be considered as part of the contract[23].

Kazakh legislation makes provision for the establishment of contractual jurisdiction between parties. Contractual jurisdiction is agreed by way of prorogation agreements between parties in dispute or potentially so; such agreements provide for the referral of a dispute for settlement to the court of a particular State. As noted above with respect to Article 241 of the Code of Economic Procedure, the economic courts of Uzbekistan have the right to consider cases with the participation of foreign persons if there is an agreement on this between an organization or citizen of Uzbekistan with a foreign person, provided that the agreement does not change the exclusive jurisdiction of a foreign court. The agreement to determine the jurisdiction of economic courts of Uzbekistan must be in written form.

The formulation of the headnote of Article 249 in the Code of Arbitrazh Procedure is, in some respects, unfortunate: "Agreement on Determining Competence of Arbitrazh Courts of Russian Federation". Reference actually is being made to a prorogation agreement, whereas the reference should be made to contractual jurisdiction, because the prorogation agreement is merely serving as the legal form expressing contractual jurisdiction. A more appropriate formulation would be: "Contractual Jurisdiction of Cases with Participation of Foreign Persons". The formulation would enable a more precise distinction to be drawn among, first, the types of jurisdiction (general (Article 247, RF Code of Arbitrazh Procedure; Article 466, Kazakh Code of Civil Procedure; Article 239(2), Uzbek Code of Economic Procedure), exclusive (Article 248, RF Code of Arbitrazh Procedure; Article 467, Kazakh Code of Civil Procedure; Article 240, Uzbek Code of Economic Procedure), and

[21] See: *Bogdanova N.A.* Problematic Aspects of Interpreting Agreements on International Jurisdiction in Fatherland and Russian Legal Orders // Arbitrazh and Civil Procedure. 2017. No. 9. P. 34–38; *Bogdanova N.A.* Agreements on International Jurisdiction in the Fatherland Legal Order // Arbitrazh and Civil Procedure. 2017. No. 2. P. 28–32; *Petrova A.V.* Problems of the Certainty of Agreements of International Jurisdiction: Comparative Analysis of Russian and French Regulation // Herald of Civil Procedure. 2017. No. 2. P. 164–181; *Rozhkova M.* On Certain Aspects of an Agreement of International Jurisdiction // Economy and Law. 2018. No. 3. P. 3–13.

[22] According to Plenum Decree No. 23 (point 6), the participants of international economic relations and other relations connected with the effectuation of economic activity have the right to conclude a prorogation agreement for the consideration of disputes in an arbitrazh court of the Russian Federation (contractual competence). A prorogation agreement is an agreement of the parties to refer to an arbitrazh court of the Russian Federation all or certain disputes which arose or might arise between them in connection with a concrete legal relation, irrespective of whether this legal relation is of a contractual nature or not. In this event the arbitrazh court of the Russian Federation will have exclusive competence to consider the particular dispute provided that such agreement does not change the exclusive jurisdiction of the foreign court (Article 249, Code of Arbitrazh Procedure).

[23] See: *Bogdanova N.A.* Law Applicable to the Form of Agreements on International Jurisdiction // International Public and Private Law. 2017. No. 5. P. 8–11.

contractual (Article 249, RF Code of Arbitrazh Procedure; Article 468, Kazakh Code of Civil Procedure; Article 241, Uzbek Code of Economic Procedure) and, second, the concept of a prorogation agreement as a means of determining jurisdiction in the form of the realization of contractual jurisdiction from the concept of jurisdiction itself as a set of rules for ascertaining the competence of a particular State court. We draw attention once more to the fact that a prorogation agreement may change only the rules for determining general jurisdiction, but never exclusive jurisdiction – which would risk the prorogation agreement being deemed to be invalid. In this sense contractual jurisdiction may be regarded as the parties in dispute changing general jurisdiction by agreement between themselves[24].

Location of Defendant. The location of a natural or juridical person who is the defendant is the principal norm regulating jurisdiction with a foreign element (Article 247(1), RF Code of Arbitrazh Procedure; Article 466(1), Kazakh Code of Civil Procedure; Article 239, Uzbek Code of Economic Procedure). The Code of Arbitrazh Procedure introduced an unusual innovation in the criteria for establishing the jurisdiction of a Russian arbitrazh court: the presence of a close link between the legal relation in dispute and the territory of the Russian Federation (Article 247). The Information Letter of the Presidium of the Supreme Arbitrazh Court of the Russian Federation of 9 July 2013 (hereinafter: Information Letter No 158)[25] explained that when applying Article 247 an arbitrazh court should establish the existence of a close link of the legal relation in dispute with the territory of the Russian Federation in each concrete instances, taking into account the entire aggregate of circumstances of the case, the forms of such link being different, and the presence thereof must be identified by the court (point 10, Information Letter No. 158)[26].

The Supreme Court of the Russian Federation on this question said that the principle of the existence of a close link between the legal relation in dispute and the territory of the Russian Federation underlies the general rules of determining the competence of Russian arbitrazh courts, because Article 247 must be interpreted by taking this principle into account. Pursuant to Article 247, an arbitrazh court establishes the existence of a close link of a legal relation in dispute with the territory of the Russian Federation in each concrete instance by taking into account the entire aggregate of the circumstances of the case. Confirmation of the existence of a close link between a legal relation in dispute and the territory of Russia may be evidence that the territory of the Russian Federation is the place where a significant part of the obligations should be performed arising from the relations of the parties; the subject-matter of the dispute is most closely linked with the territory of Russia; the basic evidence with regard to the case is situated on the territory of the Russian Federation; the law applicable to the contract is the law of the Russian Federation; the natural person performing the functions of a management organ of the foreign company was registered at a place of residence on the territory of Russia; the domain name site with respect to which a dispute arose (except for domain names in the Russian domain zone) is oriented primarily towards a Russian audience, or commercial activity is oriented towards persons within the jurisdiction of the Russian Federation (points 12 and 15, Plenum Decree No. 23).

In our view, the category of "close link" serving as a conflicts link with respect to the choice of the applicable material law cannot serve as such when choosing a jurisdictional agency. This is because underlying the norms enabling the last to be chosen are factual circumstances making it possible to link the Russian arbitrazh court and the dispute which it is proposed to transfer for consideration (for example, management organ, branch, or representation of a foreign person on the territory of the Russian Federation – Article 247). The category "close link" does not allow one to choose a specific court as a jurisdictional agency for the settlement of a dispute because the link of a legal relation in dispute with the territory of a court itself needs special determination. We turn to the next explanation of the Supreme Court of the Russian Federation: the choice by the parties to a contract of an arbitrazh court of the Russian Federation as the place for the consideration of disputes does not automatically subordinate the contractual relations of the parties to Russian material law. The absence of the expression of the will of the parties with respect to applicable law means that the court competent to consider the particular dispute determines this, being guided by applicable conflicts norms of international treaties and/or federal laws (point 43, Plenum Decree No. 23).

In our view, this position of the Supreme Court of the Russian Federation should be understood in reverse: because the choice of jurisdiction of a Russian arbitrazh court does not mean the automatic subordination of contractual

[24] For an analysis of the categories of general and exclusive jurisdiction, see: *Datsko R.A. and Kudriavtseva L.V.* Problems of the Consideration of Cases with the Participation of Foreign Juridical Persons in Russian Arbitrazh Procedure // Polymatis. 2017. No. 4 (2017). P. 14–20; *Kurochkin S.A.* Peculiarities of Consideration by Arbitrazh Courts of Cases with the Participation of Foreign Persons // Herald of Federal Arbitrazh Court of Moscow District. 2012. No. 4. P. 80–88; *Mokhova E.V.* Competence of Russian Arbitrazh Courts with Regard to Consideration of Cases with Participation of Foreign Persons // Herald of Federal Arbitrazh Court of Moscow District. 2014. No. 4. P. 17–38.

[25] The Letter is entitled: "Survey of Judicial Practice with Regard to Certain Questions Connected with the Consideration by Arbitrazh Courts of Cases with the Participation of Foreign Persons" (see: Herald of the Higher Arbitrazh Court of the RF. 2013. No. 9).

[26] As forms of a close link, Information Letter No. 158 pointed to the place of undertaking work under a contract; the location of an object with respect to which work is performed; the location of evidence relating to a case; and the law applicable to the contract. It should be noted that the first two criteria are of a "strict" character and mentioned in Article 247 of the Code of Arbitrazh Procedure, but applicable law as a criterion for establishing court jurisdiction seems rather unequivocal (first we should choose the jurisdiction, and then the applicable law, for the choice of applicable law by the parties may be deemed by a court to be invalid).

relations of the parties to Russian material law, the choice of Russian law as applicable should not automatically entail the establishment of the jurisdiction of a Russian arbitrazh court. It should be regarded in aggregate with other circumstances of a concrete case. Thus, the innovation introduced in the Code of Arbitrazh Procedure of the Russian Federation concerning a "flexible" link into a "strict" procedural right should be approached with care.

Procedural Legal Capacity of Foreign Persons. Kazakh legislation incorporates conflict rules determining the procedural legal capacity and dispositive procedural legal capacity of foreigners and stateless persons. According to the Code of Civil Procedure (Article 473), such legal capacity is determined by their personal law, being the law of the State of which they are citizens. If an individual has several citizenships, the personal law thereof is considered to be the law of the State with which the person is most closely linked, including in which the person has a place of residence. The personal law of a stateless person is the law of the State in which this person has a permanent place of residence, and in the absence of such – the law of the State of his habitual residence. A person who does not have procedural dispositive legal capacity under his or her personal law may have procedural dispositive legal capacity on the territory of Kazakhstan if this person in accordance with the law of Kazakhstan possessed procedural dispositive legal capacity.

The procedural legal capacity of a foreign organization (Article 474, Code of Civil Procedure) is determined by the law of the foreign State under which the organization was created. A foreign organization not possessing procedural legal capacity under its personal law may on the territory of Kazakhstan be deemed to have legal capacity in accordance with a law of Kazakhstan. The procedural legal capacity of an international organization is established on the basis of an international treaty in accordance with which it was founded or other international treaties of the Republic Kazakhstan.

Russian procedural legislation does not contain any conflicts norms with regard to determining the law applicable to the procedural legal or dispositive legal capacity of foreign persons. In this event, undoubtedly, the general conflicts norms concerning the personal law of natural and juridical persons contained in Part Three, Section VI, of the Russian Civil Code would be used, as amended[27]. According to the amendments to Part Three of the Russian Civil Code of 28 March 2017, which entered into force on 8 April 2017, under Article 1196 the civil legal capacity of a natural person is determined by his personal law. According to Article 1195, the personal law of a natural person is the law of the country of which this person is a citizen. If a person in addition to Russian citizenship also has a foreign citizenship, Russian law is his personal law. If a foreign citizen has a place of residence in the Russian Federation, Russian law is his personal law. When a person has several foreign citizenships, the personal law is considered to be the law of the country in which this person has a place of residence. The personal law of a stateless person is the law of the country in which this person has a place of residence. The law of the country which granted a person asylum is considered to be the personal law of a refugee. According to Article 1202(1) of the Civil Code, the personal law of a juridical person is considered to be the law of the country where the juridical person was founded, unless provided otherwise by provisions of the Civil Code.

Uzbek procedural legislation does not contain any conflicts norms with regard to determining the law applicable to the procedural legal or dispositive legal capacity of foreign persons. Under these circumstances, the conflicts norms on the personal law of natural and juridical persons contained in Section VI, "Application of Norms of Private International Law to Civil Law Relations" set out in Part Two of the Civil Code of the Republic Uzbekistan of 29 August 1996, as amended[28], are applicable[29].

Minsk Convention. The principles underlying the establishment of international jurisdiction in Russia, Kazakhstan and Uzbekistan are also embodied in the 1993 Minsk Convention on Legal Assistance and Legal Relations with Regard to Civil, Family, and Criminal Cases (hereinafter: Minsk Convention) and the 1997 Moscow Protocol (hereinafter: Moscow Protocol)[30]. The Minsk Convention is thus a multilateral regional international treaty which sets out the basic principles for the citizens and juridical persons of one Contracting State to have recourse to the courts on the territory of another Contracting State. The most important Minsk Convention principles for determining international jurisdiction are: (1) the principle of national regime (Article 1); and (2) the principle of the delimitation of territorial jurisdiction on the basis of the place of residence of the defendant (Article 20).

Principle of National Regime. Under the Minsk Convention (Article 1), the citizens of each Contracting State, as well as persons residing on the territory thereof, enjoy on the territories of all other Contracting States with respect to their personal and property rights the same legal defense as do citizens of the particular Contracting State. This means citizens and other persons have the right to freely and without obstruction to apply to the courts of other Contracting States which enjoy competence in civil and family matters, appear in such cases, file petitions or suits, and exercise other procedural actions on the same

[27] See: No. 49 (2001), item 4552, as of 18.03.2019.

[28] See: URL: https://lex.uz/ As of 04.03.2019.

[29] See: *Butler W.E.* (transl. and ed.). Civil Code of the Republic Uzbekistan (2018).

[30] The Minsk Convention entered into force on 19 March 1994; for the Russian Federation on 10 December 1994; for Kazakhstan on 19 May 1994; for Uzbekistan on 19 May 1994. The Moscow Protocol entered into force on 17 September 1999 and for Russia on 9 January 2001. The Moscow Protocol is not in force for Uzbekistan. The Moscow Protocol entered into force for Kazakhstan on 17 September 1999.

conditions as citizens of the particular Contracting State. The provisions also extend to juridical persons created in accordance with legislation of the Contracting States.

Principle of Place of Residence of Defendant. The Minsk Convention (Article 20) provides that suits against persons having a place of residence in one of the Contracting States are to be filed irrespective of their citizenship in the courts of this Contracting State, and suits against juridical persons are filed in courts of the Contracting State on whose territory the management organ, representation, or branch is situated. If there are several defendants having a place of residence or location on the territories of different Contracting States, the dispute is considered at the place of residence or location of any defendant at the choice of the plaintiff. The courts of the Contracting States are competent also in instances when on the territory thereof:

(a) trade, industrial, or other economic activity of an enterprise or branch of the defendant is undertaken;

(b) an obligation from a contract which is the subject-matter of a dispute is performed or should be performed wholly or in part;

(c) the plaintiff with regard to a suit concerning the defense of honor, dignity, and business reputation has a permanent place of residence or location.

With regard to suits concerning the right of ownership or other rights to a thing to immoveable property, the courts at the location of the property are solely competent. Suits against carriers arising from contracts for the carriage of goods, passengers, and baggage are filed at the local of the management of the transport organization against which a claim was filed in the established procedure. The two last grounds are examples of the exclusive jurisdiction of the court of a particular Contracting State and cannot be changed by the counter-parties and consequently may not be the subject-matter of a prorogation agreement.

Contractual Jurisdiction. The Minsk Convention also regulates contractual jurisdiction. Under Article 21 of the Minsk Convention, the courts of the Contracting States may consider cases also in those instances when there is a written agreement of the parties concerning the referral of a dispute to these courts. The exclusive jurisdiction arising from Article 20 of the Minsk Convention and other norms, and also from the domestic legislation of the respective Contracting State, cannot be changed by agreement of the parties to the contract. The court terminates the proceedings in the case upon the application of the defendant when there is an agreement concerning the transfer of the dispute.

Kiev Agreement. The 1992 Kiev Agreement on the Procedure for the Settlement of Disputes Connected with the Effectuation of Economic Activity[31] (hereinafter: Kiev Agreement) is, together with the Minsk Convention, a major instrument establishing jurisdiction in cases with the participation of foreign persons. The Kiev Agreement regulates, inter alia, the settlement of cases arising from contractual and other civil law relations between economic subjects (Article 1). To this end, the Agreement contains norms concerning general, exclusive, and contractual jurisdiction.

General Jurisdiction. A court from a State – Party to the Kiev Agreement is competent to consider a dispute with the participation of foreign persons where:

(a) the defendant had a permanent place of residence or location on the day of filing a suit;

(b) trade, industrial, or other economic activity of an enterprise or branch of the defendant is effectuated;

(c) an obligation from a contract which is the subject-matter of dispute was performed or should have been performed in whole or in part;

(d) an action or other circumstances which served as grounds for a demand concerning the compensation of harm occurred;

(e) the plaintiff in a suit concerning the defense of business reputation has a permanent place of residence or location;

(f) the supplier, independent-work contractor, or provider of services or performer of work who is a counterparty is located there, and the dispute concerns the conclusion, change, or dissolution of contracts (Article 4(1)).

Exclusive Jurisdiction. Suits filed by subjects of economic activity concerning the right of ownership to immoveable property are considered solely by a court of a Contracting State on whose territory the property is situated (Article 4(3)). Cases concerning the deeming invalid wholly or in part acts of State and other agencies not having a normative character, and also compensation of losses caused to economic subjects by such acts or which arose as a consequence of the improper performance by such agencies of their duties with regard to economic subjects, are considered solely by a court at the location of the said agency (Article 4(4)). A counter-suit and demand for a set-off arising from the same legal relation as the basic suit is subject to being considered in the court which considers the basic suit (Article 4(5)) – also being the grounds for exclusive jurisdiction together with the two mentioned previously.

Contractual Jurisdiction. The contractual jurisdiction defined by the Kiev Agreement assumes that the court of the Contracting State considers cases also if there is a written agreement of the parties to transfer a dispute to this court. When there is such an agreement, the court of the other Contracting State terminates the proceedings in the case upon the application of the defendant if such an application was made before the rendering a decision in the case (Article 4(2)). The prorogation agreement cannot change the exclusive jurisdiction of a court competent to

[31] The Kiev Agreement entered into force on 19 December 1992; for the Russian Federation also on that date; for Kazakhstan on 20 April 1994; for Uzbekistan on 6 May 1993.

consider the case in accordance with Article 4(3)-(4) of the Kiev Agreement.

Thus, for courts of Contracting States to the Kiev Agreement, that Agreement is the principal specialized international treaty regulating jurisdiction with regard to economic disputes. Because, however, Georgia and Moldova are not parties, the rules of the Minsk Convention apply to determine jurisdiction in economic disputes in which citizens or juridical persons from those States are involved because the Minsk Convention has more Contracting States than does the Kiev Agreement.

In addition to the Minsk Convention and Kiev Agreement, there are a significant number of bilateral agreements concerning legal assistance in civil, family, and criminal cases which are in force among the twelve post-Soviet States and which address jurisdiction in economic disputes[32]. As a rule, the place of residence on the territory of a State by a natural person or the location of a management organ of a juridical person, representation, or branch of a juridical person is the basis on which the court of a Contracting State to a bilateral treaty is competent to consider the dispute. The question then arises of the priority or correlation of the multilateral and bilateral treaties and the relevant norms of national legislation.

Pursuant to general principles of public international law and private international law, one may conclude that in order to determine jurisdiction with respect to disputes relating to foreign persons of those States where bilateral treaties operate, the provisions of the bilateral treaty will apply. National legislation will be applied when neither a bilateral, nor a multilateral treaty is relevant to the parties in dispute. Russia, Kazakhstan, and Uzbekistan have a considerable number of bilateral treaties. One such Treaty is the 1997 Almaty Treaty between the Republic Kazakhstan and the Republic Uzbekistan on Legal Assistance and Legal Relations Relating to Civil, Family, and Criminal Cases (hereinafter: Almaty Treaty). In general, the Almaty Treaty, just as most others of its kind concluded among post-Soviet republics, provides that the court of a State where the place of residence on the territory of such State is maintained by a natural person or management organ, representation, or branch of a juridical person will consider such a case. The Almaty Treaty contains provisions concerning general, exclusive, and contractual jurisdiction.

According to the Almaty Treaty (Article 20) provisions on general *jurisdiction*, unless provided otherwise by the Treaty, suits against persons having a place of residence on one of the Contracting Parties are filed irrespective of their citizenship in a court of this Contracting Party, and suits against juridical persons are filed in a court of the Contracting Party on whose territory the management organ of the juridical person, or representation, or branch is located. Courts of each Contracting Party also have jurisdiction when on its territory:

(1) trade, industrial, and other economic activity of an enterprise or branch of the defendant is undertaken;

(2) an obligation from a contract which is the subject-matter of dispute is performed or should have been fully or partly performed;

(3) the plaintiff has a permanent place of residence or location with regard to a suit concerning the defense of honor, dignity, and business reputation.

According to Article 20(3) of the Almaty Treaty with respect to *exclusive jurisdiction*, courts at the location of property have exclusive jurisdiction with regard to suits concerning the right of ownership and other rights to a thing to immoveable property. Suits against carriers arising from contracts of carriage of goods, passengers, and baggage are filed at the location of the management of the transport organization to which a claim was filed in the established procedure. Pursuant to Article 21 of the Almaty Treaty concerned with *contractual jurisdiction*, the courts of the Contracting Parties may consider cases also in other instances if there is a written agreement between the parties to transfer the dispute to such courts. The exclusive jurisdiction arising from Article 20(3) of the Almaty Treaty and other rules set out in Parts II to V of the Section[33], and also legislation of the respective Contracting Party, may not be changed by agreement of the parties. When there is an agreement to transfer a dispute, the court upon the application of the defendant transfers the case for proceedings in another court. Bilateral legal assistance treaties of Kazakhstan or Uzbekistan are *lex specialis* with regard to multilateral treaties. National legislation of Kazakhstan or Uzbekistan will apply to determining jurisdiction when the party to a foreign economic transaction is not party to any relevant international treaties of Kazakhstan or Uzbekistan.

(To be continued)

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[32] See: *Matveev A.A.* Russia and International Treaties Relating to Questions of the Recognition and Enforcement of Foreign Judicial Decisions // Moscow Journal of International Law. 2004. No. 2.

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