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On the Competence of Russian Arbitration Courts in Cases Involving Foreign Persons

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Abstract. The paper attempts to identify the features of determining the competence of arbitration courts in the Russian Federation in cases involving foreign persons. firstly, the features of the definition of foreign persons, on whose exact depends the possibility of providing judicial protection in case of violation of their rights and legitimate interests in the field of business and other economic activities. Secondly, an important criterion for the legal personality of foreign and international organizations engaged in entrepreneurial activity has been formulated. Thirdly, the analysis of the main criterion for referring a dispute involving foreign persons to the jurisdiction of the arbitration court of Russia - the criterion of connection with the territory of Russia. Fourthly, the paper notes that in cases where foreign persons who participate in a case before an arbitral Tribunal are located or reside outside the borders of Russia, they acquire the right to be informed of the proceedings through the determination of the arbitral Tribunal. Moreover, the notification is carried out by sending an order to the institution of justice or other competent authority of a foreign state. Fifth, the paper analyzes the exclusive competence of arbitration courts, which can be limited only by international treaties of the Russian Federation. Sixthly, it is noted that the evolving inter-state relations, legislation and judicial practice of most States demonstrate a departure from the principle of absolute judicial immunity of a foreign state in favor of functional immunity, distinguishing the activities of a state as a subject acting as a carrier of power, and as a "trading entity".

1. Introduction

Regions, States and entire continents now have to cooperate in the context of different legal systems. Moreover, each legal system prefers to monitor and regulate matters that determine its nature and main features. One of the important issues is the question of the competence of the national courts in cases involving foreign parties.

Russia provides for the right to judicial protection of participants in international economic activity. This right is recognized and guaranteed by the Constitution of the Russian Federation by universally recognized principles, norms of international law and international treaties of the Russian Federation. Russian courts protect the rights of not only its citizens, but also foreign entities. According to the explanation, Alekseeva A. K., foreign persons granted the right to appeal to the arbitration courts of Russia on the rules of jurisdiction and the jurisdiction established by the APC RF.

Moreover, the Russian court resolves issues of competence in resolving disputes with their participation, using the same rules as in cases between Russian parties, but there are some features and problems of determining the competence of arbitration courts. All the above points determine the relevance of the topic. The task of the presented work is to identify the main features of the resolution



of economic disputes involving foreign persons through a systematic analysis of legal acts, modern literature and judicial practice.

2. Main part

One of the important features is the absence of an extended definition of foreign persons in the Russian agro-industrial complex. Of part 5 of article 27 of the APC, part 1 of article 247 of the APC RF it is clear that a foreign person, the APC will include international organizations, foreign organizations, foreign citizens and stateless persons engaged in entrepreneurial activities, unless otherwise stipulated by an international Treaty of the Russian Federation, which is quite a narrow definition.

In science, there is a broader approach: foreign persons are foreign citizens or stateless persons actually engaged in entrepreneurial or other economic activities. These include only foreign citizens and stateless persons who are considered to be officially registered merchants on their territory. Under the concept of "foreign organizations" some authors understand only foreign legal entities. Some believe that the concept of "foreign organizations" includes both foreign legal entities and organizations that are not such, referring to part 2 of the article. 27 APC RF. Under foreign organizations that do not have the status of a legal entity are understood associations that in the economic sphere of foreign countries, often operate legitimately and also under brand names, although officially the status of a legal entity is not endowed. To foreign persons should also be attributed, under certain conditions, foreign States (Art. 251 of the APC RF).

The next feature is the absence in the Russian agro industrial complex of a norm defining the criteria of legal personality of a foreign person. Article 43 of the APC norms of procedural legal capacity and procedural capacity of participating in the process. the subjects of the process can be in the process of the plaintiffs, claimants, defendants, third parties, etc. the legal capacity and the capacity of a legal entity of a citizen-entrepreneur in Russia occur simultaneously: on the day of state registration of a legal entity in the unified state register (article 49 and 51 of the civil code). Procedural legal capacity and legal capacity of a citizen engaged in entrepreneurial activity without formation of a legal entity arise from the moment of state registration as an individual entrepreneur (p.1 of Art. 23 of the civil code). Under clause 2, article 17 of GK of the Russian Federation, the legal capacity of a citizen arises at the moment of his birth and ends with death.

In the APC RF there is no norm that determines the procedural legal personality of foreign persons, it is possible to offer an analogy to the law. According to part 3, article 254 of the APC foreign persons participating in business, should submit to arbitration court proofs confirming their legal status and the right to engage in entrepreneurial and other economic activities. Foreign persons must provide evidence of legal personality under their national law.

Another peculiarity is that Russian arbitration courts consider cases with their participation if the dispute in any way associated with Russia: either the defendant is located or resident in Russia or in Russia, is the property of the defendant; either in Russia is a management body of the foreign company; or the dispute arose from the contract which was performed in Russia; or the plaintiff in the case on protection of business reputation is in Russia; or the dispute arose in connection with the securities, which were issued in Russia; or the dispute arose from unjust enrichment, took place in Russia (art. 247 OF THE APC RF). Territorial sign necessarily intersects with the implementation of entrepreneurial and other economic activities.

If the foreign persons participating in business located or domiciled outside of Russia, they should be informed about the trial by sending an order to the Department of justice or other competent body of a foreign state. An important feature of the process in such cases is that the term of consideration of the case is extended by the arbitral Tribunal for a period of not more than 6 months. Depending on the chosen method of informing the Respondent of the time and place of the hearing, the speed of the proceedings depends, since one of the main objections of the Respondent when considering a request for enforcement may be improper notice of the trial in another state.

Each Contracting state shall designate a Central authority which shall be responsible, in accordance with article 3 and article 6 of. The Hague Convention of 1965, for receiving requests for service or notification from other States parties and shall give them a further step. For Russia, the Central authority is the Ministry of justice of the Russian Federation in accordance with the decree Of the President of the Russian Federation of 24.08.2004 N 1101 "on the Central body of the Russian Federation on the Convention on the delivery abroad of judicial and extrajudicial documents in civil or commercial matters." Moiseev S. V. explains that the authorities authorized to make a request for legal assistance, for example, the Federal courts, apply to the Central competent authority of the requested state with a request made in accordance with the samples attached to the Hague Convention of 1965.

The exclusive competence of arbitration courts may be limited only by international treaties of the Russian Federation. Therefore, the courts of other States are not entitled to take up the relevant categories of cases. In this case, comes into force the provision of section 3 of part 1 of article 244 of the APC RF, according to which the arbitration court shall refuse recognition and enforcement of a foreign judgment, if the case falls within the exclusive competence of the court in the Russian Federation.

Gradova T. G. refers to the exclusive competence of arbitration courts in the Russian Federation on cases involving foreign persons: on disputes over state property of Russia; on disputes, the subject of which are real estate located in the territory of Russia; on disputes related to the registration of rights to the results of intellectual activity, which require registration or grant of a patent or certificate in Russia and other cases.

In deciding on the competence of arbitration courts in the Russian Federation in cases involving foreign persons, the concept of immunity of a foreign state is an important issue. The essence of judicial immunity (article 213 of the APC RF) with respect to the arbitration process is that a foreign state may act in the arbitration process, the Russian Federation only with the consent of the competent authorities of that state. The state's actions as "commercial", which were not inherent in the powerholder, had led to an increase in the competence of national courts with regard to the immunity of a foreign state. To distinguish between the actions of the state of media quality of government and business entity in the application by arbitration courts of the Russian Federation should be when the courts of foreign States will not accept Russia's right to immunity through its relationship to the state of nature. When deciding on the appropriate course of action to waive judicial immunity, account shall be taken of the provisions of the national law of the foreign state concerned or of the law of the international organization. However, the further order of the case is based on the APC.

Rozhkova M. A. writes that questions about the consent of a foreign state to sue in arbitration court of the Russian Federation, for his involvement as a third party and others listed in the APC actions are studied by the arbitral Tribunal in making a claim. The conclusion that it is possible to perform such actions is formulated on the basis of the domestic law of the foreign state, which defines the competent authority whose consent is necessary. Consent must be given for each of these actions. The government of the Russian Federation may impose reciprocal restrictions on foreign persons of those foreign States that impose restrictions on Russian organizations and citizens.

3. Conclusion

Summing up the above, it is possible to note the following features of the consideration of the competence of the arbitration court of Russia in resolving economic disputes with the participation of a foreign person:

First, foreign citizens or stateless persons who are not necessarily officially registered as individual entrepreneurs, who are actually engaged in entrepreneurial or other economic activities, as well as foreign organizations and foreign States, should be considered as foreign persons.

Second, foreign persons must submit evidence of legal personality to the Russian arbitration court in accordance with their national law. Proposes the introduction of the APC, the special article governing the arbitration procedure, the capacity and capability of foreign citizens-entrepreneurs.

Thirdly, the main criterion for classifying a dispute involving foreign persons as being within the jurisdiction of the arbitration court of Russia is its relationship with the territory of Russia.

Fourth, a new version of part 3 of article 253 of the APC RF is proposed: "in cases where foreign persons participating in a case considered by an arbitration court in the Russian Federation are located or reside outside the Russian Federation, such persons are notified of the proceedings by the definition of the arbitration court by sending an order to a judicial institution or another competent body of a foreign state, unless another notification procedure is provided for by an international Treaty of the Russian Federation."

Fifthly, the exclusive competence of arbitral tribunals can be limited only by international treaties of the Russian Federation. In addition, it is proposed to exclude part 6 of article 75 of the agro industrial complex, and part 7 of article 75 of the agro industrial complex of the Russian Federation to state in a new edition: "Foreign official documents are recognized in the arbitration court by written evidence provided that they are legalized, unless otherwise provided in an international Treaty of the Russian Federation".

Sixthly, the concept of limited immunity is accepted in the APC of the Russian Federation, for example, the foreclosure of property in the enforcement of a judicial act of an arbitration court is allowed only with the consent of the competent authority of the state, unless otherwise provided by an international Treaty or Federal law.

The practical significance of the presented research lies in the designation of six of the most salient features of the resolution of economic disputes with participation of foreign persons in the Russian arbitration courts, which depend on the speed of court proceedings, the performance of the fulfillment process, reducing the number of cases of infringement of the rights of foreign persons to apply to the arbitration court of the Russian Federation, no problem of determining the competence of arbitration courts. According to modern scientists, the condition of fair justice is to ensure access to justice of participants in international economic relations, legal certainty in the choice of a competent court, timely and effective consideration of disputes arising from relations complicated by a foreign element.

4. References

- [1] The Constitution of the Russian Federation adopted by popular vote 12.12.1993 ATP "Garant" *NPP "Garant-Service"*
- [2] Alekseev A K 2014 Arbitration procedure of the Russian Federation: history and modern state M.: *Yurist* 54
- [3] Arbitration procedural code of the Russian Federation: Federal law of 24.07.2002 N 95-FZ *NPP Garant-SERVIS*
- [4] Mamaev A A 2016 international judicial jurisdiction in cross - border civil cases M.: *TK velbi* 52
- [5] Eliseev N G 2012 Civil procedure law of foreign countries M.: *TK velbi; Avenue* P 90
- [6] Neshataeva T N 2012 International civil process M.: *Case* 111
- [7] Arbitration procedural code of the Russian Federation: Federal law of 24.07.2002 N 95-FZ *NPP Garant-SERVIS*
- [8] Yudin V A 2012 the Legal status of participants of civil legal relations **3** 83
- [9] Alekseev A K 2014 Arbitration procedure of the Russian Federation: history and modern state M.: *Yurist* 68
- [10] The civil code of the Russian Federation (part one): the Federal law of 30.11.1994 N 51-FZ *NPP Garant-SERVIS*
- [11] Arbitration procedural code of the Russian Federation: Federal law of 24.07.2002 N 95-FZ *NPP Garant-SERVIS*
- [12] Zhuikov V M 2015 the Judicial protection of the rights of citizens and legal persons M: *Prospect* 280
- [13] Tumanova L V 2017 Comments to the APC RF M: *Prospect* 559

- [14] Moiseev S V 2015 the settlement agreement in the arbitration proceedings The Russian justice **10**
- [15] Gradova Tg Arbitration process in the Russian Federation: textbook SPb.: *Spetslit* 589
- [16] Koltsov A A 2014 the Participation of foreign persons in the Russian arbitration process **2** 204
- [17] Fetyukhin 2015 Mi Civil capacity and legal capacity of foreign citizens in the Russian Federation and the mechanism of their protection (Volgograd) 211
- [18] Yudin A V 2014 Legal status of participants of civil and arbitration process in the dynamics of legal proceedings Legislation Personality.Saratov: *Publishing house GOU VPO "Saratov state law Academy"* **3** (13) 83-87
- [19] Rozhkova M A 2013 Basic concepts of arbitration law M: *Prospect* 122
- [20] Goremykin V A 2015 Arbitration process: the textbook M.: *Higher education in 2015* 609
- [21] Byrdiev W B 2014 Preparing the case for trial The Russian Justice **22** 30