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Research Article

INTERNATIONAL JURISDICTION IN EUROPEAN UNION COUNTRIES

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ABSTRACT

In the framework of this article, we will consider the general trend of developments related to the determination of international jurisdiction in the countries of the European Union. In the article, views of foreign scientists, including Kropholler, Zoller, Geimer, Pocar and other scientists were studied. Also, German Civil procedure code, Italian Private international law, and The Netherlands Civil procedure code were analyzed. Important theoretical conclusions were made on the issues analyzed in the article and a number of proposals were presented.

KEYWORDS

Private international law, international civil procedure, international jurisdiction, civil procedure, private law.

INTRODUCTION

In Germany international jurisdiction is determined based on the rules of domestic jurisdiction contained in Articles 14-40 of the Code of Civil Procedure (Zivilprozesordnung) (hereinafter - ZPO) [1] . This rule is similar to the principle of double functionality (doppelfunktionalitat), which is also used in our civil procedure code. Although international jurisdiction is determined by the rules of domestic jurisdiction, according to Krofoller, the norms arising from the place of property and the contract were developed in order to determine international jurisdiction[2].

is determined based on the domicile (Wohnsitz) for an individual , and the place of the administrative body (Sitz) for a legal entity. The domicile of an individual is determined by the lex fori. According to Article 7 of the German Civil Code (Burgerliches Gesetzbuch) (hereinafter - BGB) , the permanent place chosen by a person for his main activity is his domicile [3] . According to it, a person can have several domiciles. In order to establish international jurisdiction over persons who do not have a domicile , international jurisdiction is determined based on the place where the person is registered (habitual residence) .

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Determination of international jurisdiction in claims against a legal entity is based on the criteria of the location of the legal entity's management body, and in cases where the management body is located on the territory of Germany, the legal entity is registered and operates on the basis of the criteria [4] . According to the German Companies Act, a legal entity may have its management body in several places [5] . If the structural structure of a legal entity, i.e. branch, representative office and other types of representative bodies are located on the territory of Germany, and the claim arises from the activities of these representative bodies, international jurisdiction may be established. An important condition is that the claim must arise from the activity of the representative body. It does not matter whether the activity of the representative body is carried out on the territory of Germany or outside it [6] . It should be noted that international jurisdiction cannot be changed on the basis of a contract in order to protect the rights of consumers in banking and credit relations [7] . According to German law, the representative body of a foreign legal entity is not required to be registered on the territory of Germany, the operation on behalf of a foreign company is the basis for establishing international jurisdiction [8] .

For the determination of international jurisdiction based on the location of the property of the defendant (forum patrimonii), it is used in cases where the defendant does not have a domicile, a management body, or a representative body in Germany, and the parties have not entered into contractual relations. Forum patrimonii, according to its function , is used to protect the weaker party (forum actoris) and the forum actoris considered as a form. The fact that the value of the property does not depend on the value of the claim can make it difficult to focus on the defendant's property located abroad . In addition, due to the fact that the property is located on the territory of Germany, the right to establish international jurisdiction has caused objections [9] . The German Supreme Court indicated that international jurisdiction should be determined when the forum patrimonii is inextricably linked with the location of the dispute court [10] . This decision, despite the explanations of the Constitutional Court about the guarantees established in the German Constitution and compliance with international law norms [11], among scientists, the opinion that the authority to independently solve the issue of coexistence of judges is contrary to the German Constitution [12] . Such controversies may in the future lead to changes in the rules of international jurisdiction and to reforms in the framework of international civil procedure.

In Italy, the issues of international jurisdiction were regulated by the Code of Civil Procedure until the Law "On Private International Law" adopted in 1995 [13] . Before the adoption of the new law, Italian courts, like French courts, considered international litigation based on the criterion of nationality. At first glance, this rule, which was established to protect Italian citizens from the Italian courts, also showed its negative aspects. For example, according to the rule of that time, only the conclusion of the contract in the territory of Italy, the Italian national courts were considered competent to consider the issue, and the relations that did not have factors of connection with Italy other than the conclusion of the contract brought the international jurisdiction of the national courts. The reform of private international law in Italy introduced the actor sequitur forum rei general rule, abolishing nationality-based international jurisprudence . According to the first part of Article 3 of the Italian Law on "Private International Law", "Italian courts have international jurisdiction when the defendant is domiciled or resident in Italy, or when his

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representative is authorized to appear in court on behalf of the defendant" [14] . In order to establish international jurisdiction, the representative must be authorized to participate in the Italian court on behalf of the defendant in the dispute, the authority must be specified in writing, and the defendant cannot participate in the court because he does not have a domicile or residence in Italy. According to Italian law, a representative must be distinguished from a representative office or branch of a legal entity. The existence of a legal entity's representative office or branch in the territory of Italy is not the basis for establishing international jurisdiction [15] . In addition, according to the second part of Article 3 of the Italian Law "On Private International Law", other grounds for determining international jurisdiction are determined based on the Brussels Convention. The rules of domestic jurisdiction shall apply on grounds not specified in this Convention. Notably, the determination of rules of international jurisdiction based on the criteria of domestic jurisdiction did not exist until the reform of Italian private international law. In Spain, which is similar to the Italian legal system, the rules of private international law were reformed in 1985. As a result of this reform, the determination of international jurisdiction was completely copied directly from the rules of the Brussels Convention and abolished the rules of imperialismo jurisdiccional , which were in force until 1985. These rules were determined by the judge (like the precedents in the English system) and created uncertainty and conflict of rules in the determination of international jurisdiction. Nowadays, the reference of the rules of international justice to the Brussels Convention is the cause of justified criticism [16] . The main argument of the critics is that despite the fact that the Brussels Convention is perfectly structured, it is primarily an international agreement and cannot fully cover the national legal system. In our opinion , it may be difficult to establish international jurisdiction in relation to relations not covered by the international agreement when the rules defined in the international agreements are introduced directly into the national legislation .

When talking about the reform of the law on international justice, we believe that it is necessary to analyze the trends in the Netherlands. Following the 2001 reform of the Netherlands, the rules on international jurisdiction have undergone some changes. Before the reform, the rules of international justice in the Netherlands were determined by the rules of domestic justice (dual functionality). As a result of the expansion and complexity of cross-border relations, special rules for determining international jurisdiction have been developed [17] . This reform arose, on the one hand, from the fact that the principle of dual functionality does not correspond to the requirements of the time, and on the other hand, from the need to adapt national legislation to the provisions of the Brussels Convention. According to the old code of civil procedure, a plaintiff domiciled in the Netherlands could apply to the Dutch courts in cases complicated by a foreign element (forum actoris), such claims could only be dismissed on the basis of the inconvenient court rule (forum non conveniens) [18] New adoption It was determined that the rule of forum actoris is applied only to family relations [19] of the Civil Procedure Code . In the case of treaty international jurisdiction, it was determined that the parties would be allowed to hear the dispute in the Netherlands court if there were valid reasons [20] . This was done to prevent artificial overcrowding of cases in Dutch courts. In the case of obligations arising from contracts, if the obligation is performed or is to be performed in the territory of the Netherlands, the courts of the Netherlands are competent to deal with disputes arising from these contracts. This rule was

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considered new to Dutch law and was not considered relevant until the forum actoris rule was abolished.

international private law , in particular to the institution of international justice, is also observed in Swiss legislation. The Law "On Private International Law", which came into force on January 1, 1989, regulates issues of international jurisdiction [21] . The determination of international jurisdiction is based on the principle of interdependence between the court and the claim. According to its structural structure , the rules for determining international jurisdiction differ from the Brussels Convention and other legal systems belonging to the family of continental law . Accordingly, the matter to be regulated is set out in each section separately. For example, the third section is devoted to marriage issues and regulates the issue of choice of law and international jurisdiction, while the ninth section separately regulates the issue of choice of law and international jurisdiction in obligations [22] . Another point to note is that the rule of the court of the place where the defendant is located (actor sequitur forum rei) applies subsidiarily to the special rules. That is, when there is no basis for determining international jurisdiction according to special rules , the general rule - the rule of the location of the defendant is applied. This logic shows the difference that in other continental legal systems, the general rule is applied first, and when it does not exist , other special rules are applied subsidiarily. At the same time , it is not allowed to apply the contractual international jurisdiction in family matters. In addition , when the Swiss courts are selected for contractual international jurisdiction , it is established that the court will refuse to consider the case in cases where the dispute does not have an inherent connection with Switzerland. The determination of nexus will take into account whether one of the parties is domiciled in Switzerland or carries on business there, or whether the relationship is governed by Swiss law. There are four binding factors to consider in disputes arising out of a contract. According to this article , if the defendant has a domicile in Switzerland, if he does not have a domicile, he is a resident of Switzerland, if he is not a resident, if the place of business is Switzerland, if there is no place of business, the place of performance of the contract is Switzerland. These binding factors are used subsidiarily in the sequence. The rules of determining international jurisdiction on the basis of prohibition (forum arresti) have been preserved in the new legislation. In order to determine international jurisdiction based on the rule of forum arrest , the property should be subject to the law "On Debt and Bankruptcy" [23] . The fact that the property is in the territory of Switzerland alone is not a basis for establishing international jurisdiction [24] . There is no minimum requirement for the value of the leased property, and the issue can be considered meaningfully even on the part that exceeds its value. Of course, when determining international jurisdiction on the basis of seizure of property , the claimant must take into account the risk of non-enforcement of the judgment in other countries . Such an approach can be seen in the explanations of the Swiss Federal Tribunal [25] .

In recent years, the issue of determining international jurisdiction in solving disputes complicated by the foreign element arising from civil-legal relations on the Internet has become increasingly important . The Internet, by its very nature, exists in a space where different legal systems apply without recognizing state borders. There are different approaches to determining the competent state courts to resolve disputes between persons located in different countries when entering into mutual civil relations. For example, in the European Union, a traditional approach is used to determine international

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jurisdiction in resolving disputes arising on the Internet . As a general rule, the court of the responsible location is competent to consider a dispute arising on the Internet. Determining the location of the defendant may cause difficulties in determining the location of legal entities, while it does not cause difficulties for individuals. According to the general rule, the place where a legal entity is registered is its place of residence. According to Article 63 of the Brussels Convention , the center of administrative management and place of business of a legal entity is also considered as its location. In addition to the general rule of determining international jurisdiction, there are also special rules. According to a special provision (Brussels Recast, Article 7) , it is possible to establish international jurisdiction at the place of performance of the obligation. According to the product supply contract, the place where the product is delivered or should be delivered, the court of the place where the service is to be provided or should be provided in relation to the provision of services is competent to hear the case. This rule does not differ from the rules of international jurisdiction that apply to relations that arise offline. The problem may arise if there are more than one place where the product is to be delivered or where the service is to be provided according to the contract. This problem can be divided into two types: firstly , different obligations are performed in different places, and secondly , if the same obligation must be performed in different places , it is a question of which court has jurisdiction over which place . The first type of problem can be solved in two ways: the first way, according to each obligation in every place where it should be performed, the second way, when one of the two obligations is the main obligation, the place of performance of the main obligation is the basis for determining international jurisdiction. If the place of delivery is in a different part of the same country in the case of delivery of products to different places within the framework of one obligation, the court chosen based on the discretion of the plaintiff (domestic jurisdiction), if the place of delivery is several countries, the court of the state most integrally connected with the contract is competent to hear the case. As a general rule, the most integral relationship is determined on the basis of economic criteria. When the organic connection with two countries is the same, the court is chosen according to the plaintiff's choice.

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