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Foreign states as participants in a civil process

As the investment climate in our country improves, the influx of foreign investments into the national economy also increases. In this regard, it is necessary to constantly improve civil procedural legislation involving foreign states. Issues related to improving civil proceedings with the participation of foreign states must be thoroughly assessed and scientifically substantiated, taking into account all possible scenarios. The purpose of the research is to analyze the peculiarities of foreign states as participants in civil proceedings according to civil procedural legislation and to provide legislative proposals for its improvement. The research compares the current norms regulating civil processes involving foreign states with the legislations of Russia, Uzbekistan, and Kyrgyzstan, while also reviewing the works of foreign and domestic scholars on this topic. Civil procedural norms regarding cases involving foreign states were analyzed, and appropriate legislative recommendations were formulated. The relevance of the topic is determined by the recent increase in economic integration with foreign states and the growth of civil relations involving foreign entities in the Republic of Kazakhstan under the conditions of a market economy. As a result of the study, the foundations for foreign states to exercise jurisdictional immunity under the civil procedural legislation of the Republic of Kazakhstan were identified, and it was confirmed that all conditions for limiting judicial immunity are clearly defined. Nevertheless, the role of foreign states as full participants in civil proceedings still requires clarification.

Keywords: Foreign state, foreigner, stateless person, foreign organization, international organization, foreign entities, civil process, foreign legal entity, jurisdictional immunity, judicial immunity.

Introduction

According to the Decree of the President of the Republic of Kazakhstan No. 674, accepted on October 15, 2021, the further specialization of courts is identified as one of the key directions in modernizing the judicial system, as outlined in Section 5 of the Concept of Legal Policy of the Republic of Kazakhstan until 2030. In this regard, to create a favorable climate for the development of international relations and the investment climate, it is necessary to develop a procedural mechanism to regulate the participation of foreign entities in civil court proceedings in the Republic of Kazakhstan. When accepting cases involving foreign entities for consideration and decision-making, the courts of the Republic of Kazakhstan must be guided not only by the norms of the domestic procedural legislation but also by the international conventions and treaties signed by the country, as well as bilateral agreements on legal assistance with other countries. One such international document is the International Covenant on Civil and Political Rights, adopted on December 16, 1966. According to Article 14 of the Covenant, “All persons shall be equal before the courts and tribunals” [1]. Therefore, courts of the states that have ratified this Covenant must provide foreign persons with equal procedural rights and obligations as those granted to their own citizens and organizations.

Such international documents not only require “compliance” with their provisions but also impose international legal obligations on the participating states [2; 129]. In fulfilling these obligations, the participating states consider appropriate legislative changes and establish administrative and organizational resources to ensure the implementation of these provisions. The issues regarding the peculiarities of foreign states as participants in civil court proceedings, which are taken as the subject of this research, are also of great importance in addressing the obligations arising from international legal documents recognized by our country. One such document is the “Convention on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters” (Minsk Convention), ratified by the Supreme Council of the Republic of Kazakhstan in 1994.

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Moreover, Article 474 of the Civil Procedure code of the Republic of Kazakhstan stipulates that “the legal capacity of a foreign organization in procedural matters is determined by the law of the foreign state under which this organization was established”. This means that the personal law of foreign organizations (including foreign states) is considered the law of the state where the organization was created. This situation requires judges to be familiar with the laws of the respective foreign country when dealing with cases involving foreign elements.

In the context of an integrated market economy, the increasing number of civil relations involving foreign entities in the Republic of Kazakhstan necessitates a reassessment of both the theory and practice of handling civil cases with foreign elements. This is related to the rapid development of international relations and the high level of economic activity in the country. In 2023 alone, the country attracted \$28 billion in direct foreign investments, marking a record figure, with external trade reaching an unprecedented level of \$136 billion [3]. President Kassym-Jomart Tokayev, in his address, emphasized the need to implement at least 15 major projects at the state level, attracting both foreign investors and local business representatives. He instructed to exempt foreign investors in the processing industry from taxes and other obligatory payments for the first three years. Additionally, he highlighted the importance of establishing joint enterprises with large foreign IT companies. To attract further interest from domestic and foreign investors, he also tasked with resolving all legal and financial issues surrounding these projects [3].

Given that foreign persons are involved in various aspects of the country's economy, migration processes and joint entrepreneurship with Kazakhstani citizens and relations involving land, marriage, and other areas, it is clear that such relationships intersect with the civil judicial system. In the first six months of 2024, 90330 cases involving foreign elements were heard in Kazakhstani courts [4]. Consequently, as civil-legal relations (both property-related and non-property-related) become more complicated due to foreign elements, the judicial process also becomes more complex, with foreign elements adding layers of intricacy.

Methods and materials

In the analysis of civil proceedings involving foreign elements, including the participation of foreign states in civil court cases, both analytical and comparative legal methods were used. Specifically, the analytical method was applied to study the civil procedural legislation of the Republic of Kazakhstan, while the comparative legal method was employed to examine the experience of foreign states in involving them in civil court proceedings. The research materials included scientific works by domestic and foreign scholars on the participation of foreign states in civil proceedings, as well as civil procedural law norms, court practices, and case statistics involving foreign parties from Kazakhstan, the Russian Federation, the Kyrgyz Republic, and the Republic of Uzbekistan.

Results

As the investment climate in our country improves, the inflow of funds from foreign states into the national economy is also increasing. In this regard, the constant refinement of civil procedural legislation involving foreign states is a requirement of the times. Therefore, we believe that issues related to the improvement of civil court proceedings involving foreign states should be comprehensively assessed and scientifically substantiated, taking into account all possible circumstances. Chapter 57 of the Civil Procedure Code of the Republic of Kazakhstan is dedicated to procedural matters in cases involving foreign persons. Article 472 of the Civil Procedure code of Kazakhstan recognizes the following as foreign persons entitled to appeal to the courts of Kazakhstan to protect their violated or disputed rights, freedoms, and legal interests:

- a) Foreign citizens and stateless persons;
- b) Foreign and international organizations.

As can be observed, categories such as foreign states, refugees, and individuals with dual citizenship, who may be parties in civil proceedings, are not explicitly defined in Article 472. In our view, the term “foreign persons” itself is incorrect. Referring to “participants” or “parties involved” in the proceedings solely as “persons” is a flawed concept. A “person” is an individual who has formed through a socialization process, with a recognizable identity and characteristics in society. Therefore, the use of “foreign persons” in the chapter’s title excludes administrative-territorial entities and states, including foreign states, which are recognized as subjects of civil law but are left outside the concept of participants in civil proceedings.

The Civil Procedure Code of Kazakhstan does not define the term “foreign persons”. As a result, this creates barriers for certain categories of civil procedure participants classified as foreign persons from being involved in civil court proceedings as plaintiffs or defendants.

Despite the fact that Chapter 57 of the Civil Procedure Code does not specify the role of foreign states as participants in civil proceedings, it is important to note that Article 43 of the same code names parties as participants in the proceedings. Article 47 of the Civil Procedure Code recognizes the plaintiff and defendant as the parties to civil proceedings. Paragraph 4 of this article states that a state can be either a plaintiff or a defendant [5]. Therefore, the state, as a party in civil proceedings, is vested with equal procedural rights and bears the same procedural obligations as other participants. Based on this, we have grounds to recognize foreign states alongside the Republic of Kazakhstan as participants in civil proceedings.

When examining this issue, various approaches can be seen in the legislation of neighboring countries.

Chapter 45.1 of the Civil Procedure Code of the Russian Federation addresses the procedure for handling cases involving foreign states. According to Paragraph 2 of Article 417.1, civil cases involving foreign states are processed in accordance with the general rules of claim proceedings, taking into account the general provisions outlined in Chapter 43, which discusses the procedure for civil proceedings involving foreign persons, and Chapter 44, which covers the jurisdiction of cases involving foreign persons in the courts of the Russian Federation [6]. Additionally, Article 34 of the Civil Procedure Code of the Russian Federation classifies parties, third parties, prosecutors, persons defending the rights and freedoms of others, and individuals participating in proceedings to provide opinions on specific matters as participants and other persons involved in the proceedings. Article 38 of the same code recognizes the plaintiff and defendant as parties, stating that they hold equal procedural rights and responsibilities.

Article 40 of the Civil Procedure code of the Kyrgyz Republic defines the concept of parties in civil proceedings, stating that citizens, officials, state bodies, local self-government bodies, as well as legal entities are recognized as the plaintiff and defendant in civil proceedings. Paragraph 4 of Article 40 provides that the Kyrgyz Republic and local communities can participate in civil proceedings through their authorized representatives from state or local self-government bodies. Civil cases involving foreign persons are regulated by Chapter 43 of the Civil Procedure Code of the Kyrgyz Republic, which addresses the issue of jurisdictional immunity of foreign states [7].

Article 43 of the Civil Procedure Code of the Republic of Uzbekistan, similar to Russian legislation, recognizes parties, third parties, and their representatives, as well as applicants and other interested persons in special proceedings, prosecutors, state administrative bodies, and individuals defending the rights and legitimate interests of others as participants in the proceedings. However, the Civil Procedure Code of Uzbekistan does not fully define the concept of parties, only mentioning that the plaintiff and defendant are the parties [8].

A comparative legal analysis of the legislation of these countries reveals that the role of foreign states as participants in civil proceedings is not clearly defined. Nevertheless, certain examples from judicial practice demonstrate that civil cases involving foreign states have been adjudicated by courts in these countries. For instance, the Kabanskyi district court of the Republic of Buryatia heard a civil case (No. 2-552/2016) brought by Russian citizen K.Yu. Samokin against the Ministry of Health and Social Development of the Republic of Kazakhstan for compensation for health-related damages, while the Kuzminskyi district court of Moscow heard a case brought by Russian citizen Yu.V. Rysayev against the Embassy of the Republic of Kazakhstan [9; 68–70].

A state, including a foreign state, participates in civil legal relations on an equal footing with other participants. Article 114 of the Civil code of the Republic of Kazakhstan states that unless otherwise stipulated by legislative acts, the provisions governing the participation of legal entities in civil relations shall apply to the state [10]. Thus, we can recognize a foreign state as a full participant in civil legal relations. This implies that the state, including a foreign state, holds the rights and obligations of a legal entity in civil legal relations. In this context, we agree with the opinion of legal scholar M.K. Suleimenov, who states: “In international and domestic relations, the state is recognized as a subject of law. However, like legal entities, the state also possesses legal fiction. In legal relations, the state acts through its governmental bodies. Except for cases where state bodies are considered as legal entities in civil transactions, they are not recognized as subjects of law” [11; 82]. As a full subject of civil legal relations, disputes over various property and non-property rights and interests inevitably arise between the state and other subjects. However, as previously discussed, the procedural status of the state, including foreign states, as a participant in civil proceedings is not clearly defined.

According to the provisions of the civil code of the Republic of Kazakhstan, a state in civil legal relations holds the rights and obligations of a legal entity. Similarly, we can assume that a foreign state possesses the rights and obligations of a foreign organization established under the laws of that state. Consequently, the

procedural capacity of a foreign state in civil proceedings is determined by its domestic law, just as the procedural capacity of a foreign organization is governed by the laws of the country in which it was established, as outlined in Article 474 of the Civil Procedure Code of Kazakhstan. Article 494 of the same code also provides that foreign states are subject to the same rules as legal entities, including foreign legal entities, when participating in civil proceedings.

However, Article 466 of the Civil Procedure code of Kazakhstan stipulates that cases involving foreign persons that fall under the jurisdiction of Kazakh courts require either the “location of the defendant-organization” or the “place of residence of the defendant-citizen” within the territory of Kazakhstan. This implies that only a foreign organization or a foreign citizen can be considered as foreign persons. Moreover, such an “organization” must have a place of residence. This raises the question of whether a “state” can be considered an organization. Many scholars who study state theory regard the state as a “sovereign political-territorial organization” [12; 17]. Or does the term “organization” only refer to associations of individuals with the characteristics of a legal entity? What about foreign organizations that are not recognized as legal entities? How will their status be determined in civil proceedings?

An analysis of the norms of civil procedural law shows that the list of foreign persons as participants in civil proceedings is incomplete. In particular, the role of foreign states as participants in civil proceedings is not clearly defined.

Despite the unclear status of foreign states as participants in civil proceedings, Article 477 of the Civil Procedure Code of the Republic of Kazakhstan addresses the jurisdictional immunity of foreign states. According to this article, foreign states in Kazakhstan are granted immunity from judicial jurisdiction, immunity from claims, and immunity from the enforcement of court decisions, and this is recognized as jurisdictional immunity. Article 484 of the same code specifies the conditions under which foreign states cannot invoke jurisdictional immunity. It states that foreign states cannot invoke jurisdictional immunity if they have violated the jurisdictional immunity of the Republic of Kazakhstan or its property.

Discussion

Before discussing the conduct of civil court proceedings involving foreign states, we must first address their participation in public legal and private legal relations. In his work, domestic scientist M.K. Suleimenov emphasizes that “it is essential to clearly define whether the state is a subject of public legal or private legal relations. In public legal relations, the state is recognized as a sovereign subject with authority powers. In international public legal relations, the state, possessing sovereignty, also enjoys judicial immunity. However, in private legal relations the state does not possess such immunity” [11; 82].

The legal status of foreign states as participants in private legal relations is distinguished by their judicial immunity from the jurisdiction of another country. The fact that a state can participate in civil court proceedings has been discussed in both domestic and international legal scholarship. Russian scholars A.V. Yudin and M.A. Agalarova point out in their work that foreign state can participate in civil proceedings under general rules, but they also enjoy the right to jurisdictional immunity [13; 46].

Other scholars, when considering foreign states as participants in civil proceedings, highlight that their ability to isolate themselves from the jurisdiction of other states is their primary distinguishing feature. They argue that this stems from the principles of sovereignty and equality of states, fundamental in international law [14; 30].

Kazakh scholars also recognize the state, including foreign states, as full participants in civil proceedings [15; 55].

Immunity grants a particular subject of legal relations certain privileges and advantages. As is widely known, immunity derives from the sovereign rights of states and aligns with the Roman law maxim *par in parem non habet imperium* (“equals have no dominion over each other”). Therefore, any judicial action involving a state requires that state's consent, as it would be unreasonable for one state to hold another accountable in its courts without consent or violation of jurisdictional immunity. Some scholars argue that such consent must be outlined in international treaties or provided through diplomatic channels [16; 28-29], while others refer to examples such as the 1992 agreement between Kazakhstan and the U.S. on mutual protection of investments, where both states agreed to waive jurisdictional immunity in case of disputes regarding property [17]. Legal scholar M.K. Suleimenov identifies another basis for a state voluntarily waiving judicial immunity: when such a waiver is stipulated by law or specific civil contracts [18].

Immunity encompasses of two aspects:

1. The immunity a state enjoys when engaging in private legal relations within the territory of another state.
2. The immunity a state grants when allowing private legal relations to be carried out within its own territory.

The first type of immunity concerns a state's right to be exempt from judicial jurisdiction in another state, meaning that, based on Kazakhstan's sovereign rights and international legal norms, Article 477 of the Civil Procedure Code of Kazakhstan allows foreign states to invoke immunity.

The second type of immunity refers to Kazakhstan's right to refrain from exercising its full territorial jurisdiction over a foreign state, except in certain cases.

Kazakh scholar, Professor M.K. Suleimenov explains three types of state immunity as follows:

1. Judicial immunity — the principle that one state is not subject to the jurisdiction of another state's courts. This is encapsulated in the legal formula: "equals have no jurisdiction over one another".
2. Immunity from measures of constraint — meaning that without the consent of the state, no coercive measures can be applied to its property.
3. Immunity from enforcement of judicial decisions — protecting the state from forced execution of a court decision [18].

Furthermore, in civil law, apart from the jurisdictional immunity of the state, there is also mention of general immunity regarding the inviolability of foreign state property [19; 445-446], as well as immunity from the application of foreign law [20; 257].

The following cases do not allow the use of judicial immunity:

- The foreign state's consent to waive immunity;
- The foreign state violating the jurisdictional immunity of Kazakhstan or its property;
- The foreign state's activities falling outside the scope of sovereign authority.

Professor M.K. Suleimenov explains that the rule on whether or not to recognize judicial immunity of foreign states in Kazakhstan or neighboring countries stems from the widespread theory of absolute sovereign power, which was prevalent in the former Soviet Union [18].

Legal literature identifies several forms of immunity:

1. Absolute immunity, where a state enjoys full immunity regardless of the nature of its activities, including both public and private legal matters [21; 81].
2. Functional immunity, which differentiates between a state's public authority functions and its involvement in private legal relations. Proponents of this view argue that a state can only claim judicial immunity when exercising its public functions, but not when engaging in private or commercial activities [22; 68].

In addition, a third type of immunity, limited immunity, is sometimes discussed. Unlike functional immunity, limited immunity doesn't rely on distinguishing between public and private functions but instead specifies particular circumstances where a state cannot claim immunity [20; 257]. Scholars note that the European Convention on State Immunity, adopted by the Council of Europe on May 16, 1972, is a clear example of limited immunity [18]. According to the Convention, several situations where immunity cannot be invoked are outlined, such as when a counterclaim is filed against the primary claim. The current Civil Procedure Code of Kazakhstan similarly limits the immunity of foreign states, allowing counterclaims and claims involving legal facts or relationships, which constitute a violation of the jurisdictional immunity of Kazakhstan and its property.

Another reason for limiting state immunity is when a foreign state engages in commercial activities on Kazakhstan's territory, leading to a dispute. When determining whether the transaction in question relates to the foreign state's sovereign authority, Kazakh courts consider the nature and purpose of the transaction at the heart of the dispute.

The first basis for limiting the judicial immunity of foreign states is the state's waiver of judicial immunity by consenting to the jurisdiction of the courts of the Republic of Kazakhstan. Such consent is only valid in one situation: when there is an agreement between the two states allowing the withdrawal of the waiver of judicial immunity. In all other cases, consent once given cannot be revoked. Additionally, another situation where a foreign state cannot invoke judicial immunity, immunity from provisional measures, or immunity from enforcement of court decisions is when the jurisdiction of the Republic of Kazakhstan and its property is violated.

Furthermore, the civil procedural legislation of the Republic of Kazakhstan outlines the following grounds for the limitation of judicial immunity in private legal relations:

1. Disputes arising from the foreign state's engagement in entrepreneurial activities within the territory of Kazakhstan. In determining whether the transaction conducted by the foreign state was related to the exercise of its sovereign authority, the courts of the Republic of Kazakhstan consider the nature and purpose of the transaction in dispute.
 2. Disputes arising from the participation of a foreign state in legal entities established or primarily operating within the territory of Kazakhstan.
 3. Disputes related to rights and obligations concerning immovable property.
 4. Disputes concerning compensation for damages.
 5. Disputes arising from the establishment and enforcement of a foreign state's rights to intellectual property objects.
 6. Labor disputes.
- Disputes related to the use of sea vessels and inland water vessels.

Conclusion

Analyzing the legislation governing civil proceedings involving foreign states, the following conclusions can be drawn:

1. The main feature of the legal regime of a foreign state as a participant in private legal relations is its immunity from the jurisdiction of the courts of the Republic of Kazakhstan. Jurisdiction stems from the sovereign rights of foreign states and reflects the independence of the legislative, executive, and judicial branches of power. The analysis of the norms of Kazakhstan's civil procedural legislation confirms this point.
2. Despite the fact that the legal grounds for the use and limitation of judicial immunity by foreign states are fully defined in civil procedural law, the role of foreign states as full-fledged participants in civil proceedings remains unclear. As equal participants in civil legal relations, the status of states, including foreign states, as necessary actors in civil proceedings when disputes arise, needs further clarification. Defining the legal position of a state (foreign state) as a participant in such proceedings is especially important when addressing the specifics of limited judicial immunity.
3. The analysis of the norms of the Civil Procedure code of the Republic of Kazakhstan reveals that foreign states are subject to limited judicial immunity. This is evidenced by specific cases where the judicial immunity of foreign states is restricted, particularly when their actions are not related to sovereign governance. Such cases include disputes arising from the foreign state's entrepreneurial activities in Kazakhstan, its participation in legal entities established or headquartered in Kazakhstan, disputes over property rights related to real estate located in Kazakhstan, intellectual property, labor, the use of sea vessels and inland watercraft, and other related matters.

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Шет мемлекеттер азаматтық процестің қатысушысы ретінде

Еліміздің инвестициялық ахуалы жақсарған сайын шет мемлекеттер тарапынан ел экономикасына қаражат салу да артып келеді. Осыған байланысты шет мемлекеттердің қатысуымен жүргізілетін азаматтық процестің заңнаманы ұдайы жетілдіру талап етіледі. Шет мемлекеттердің қатысуымен азаматтық сот өндірісін жетілдіру мәселелері жан-жақты бағалануы және барлық болатын жағдайлар ескеріліп ғылыми негізделуі тиіс. Зерттеудің мақсаты азаматтық процестің заңнамаға сәйкес шет мемлекеттердің іске қатысушы ретіндегі ерекшеліктерін талдау және оны жетілдіруге қажетті заңнамалық ұсыныстар беру. Зерттеу барысында шет мемлекеттің қатысуымен азаматтық процесті жүзеге асырудың қазіргі қалыптасқан нормалары Ресей, Өзбекстан, Қырғызстан заңнамаларымен салыстырып қаралды, сондай-ақ шетелдік және отандық ғалымдардың осы тақырыптағы еңбектеріне шолу жасалды. Шет мемлекеттердің қатысуымен істерді қараудың азаматтық процестің нормалары талданды және тиісті заңнамалық ұсыныстар тұжырымдалды. Тақырыптың өзектілігі соңғы уақыттағы шет мемлекеттермен экономикалық интеграцияның ұлғаюымен, сондай-ақ нарықтық экономика жағдайындағы Қазақстан Республикасында шетелдік тұлғалардың қатысуымен азаматтық қатынастардың артуымен анықталады. Зерттеу нәтижесінде Қазақстан Республикасының азаматтық процестің заңнамасына сәйкес шет мемлекеттер юрисдикциялық иммунитетті пайдалану негіздері анықталды және де соттық иммунитет шектелуінің барлық жағдайлары нақты айқындалғандығына көз жеткізілді. Осыған қарамастан, шет мемлекеттердің азаматтық процестің толыққанды қатысушысы ретіндегі орны нақтылауды талап етеді.

Кілт сөздер: шет мемлекет, шетелдік, азаматтығы жоқ адам, шетелдік ұйым, халықаралық ұйым, шетелдік тұлғалар, азаматтық процесс, шетелдік заңды тұлға, юрисдикциялық иммунитет, соттық иммунитет.

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Иностранные государства как участники гражданского процесса

Улучшение инвестиционного климата в стране привело к увеличению объема инвестиции в экономику страны со стороны иностранных государств. В связи с этим имеется необходимость

постоянного совершенствования гражданско-процессуального законодательства, регулирующее гражданские судебные процессы с участием иностранных государств. Совершенствование гражданского судопроизводства с участием иностранных государств требует полноценной оценки и научной обоснованности всех обстоятельств. Цель настоящего исследования — проанализировать особенности рассмотрения гражданских дел с участием иностранных государств и дать рекомендации для его совершенствования. В ходе исследования проведен сравнительно-правовой анализ норм, регулирующих гражданский судебный процесс с участием иностранных государств, таких стран как Российская Федерация, Республика Узбекистан, Кыргызская Республика. Осуществлен обзор научных трудов зарубежных и отечественных ученых по данной теме, а также анализ гражданско-процессуальных норм рассмотрения дел с участием иностранных государств, и сделаны выводы для внесения необходимых законодательных предложений. Актуальность темы исследования определяется увеличением экономической интеграции с иностранными государствами, а также частно-правовых гражданских отношений с иностранными лицами в Республике Казахстан в условиях рыночной экономики. В результате исследования определены основания использования юрисдикционного иммунитета иностранными государствами в соответствии с гражданско-процессуальным законодательством Республики Казахстан, а также учтены все обстоятельства ограничения судебного иммунитета иностранных государств при рассмотрении дел с их участием. Однако, несмотря на это, требуется определение правового режима иностранного государства как участника гражданского судебного процесса.

Ключевые слова: иностранное государство, иностранец, лица без гражданства, иностранная организация, международная организация, иностранные лица, гражданский процесс, иностранное юридическое лицо, юрисдикционный иммунитет, судебный иммунитет.

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