UDC 341.987.2

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Comparative analysis of the legal regulation of recognition and enforcement of foreign judgments in Republic of Kazakhstan and Russian Federation

The author explores the legal regulation of the recognition and enforcement of foreign judgments in the Republic of Kazakhstan and the Russian Federation. The article examines various types of jurisdiction in international civil procedure, the proceedings for submission and consideration of applications for enforcement of foreign judgments in courts of the states.

Key words: international civil procedure; systems of jurisdiction determination; immunity of a foreign state; exequatur.

Activization of Foreign Economic Relations during the last quarter of the twentieth century and in the modern world have caused a great need for qualitative legal regulation of all forms of these relations, starting from the level of legal maintenance of conclusion and implementation of international contracts, and finishing with situations where each participant of the transaction has to defend its interests in court. The reasoning about the development of international civil procedure should not be limited only by the scope of international trade relations. The development of productive and comprehensive cooperation requires valid, correct, civilized interstate relations based on the genuine respect for international law.

International relations develop not only at the corporate level but also at the level of ordinary human contacts, which often lead to the appearance of disputes which have to be resolved in the court. This Court is not always located on the territory of your state; similarly the language of proceeding and acting in another state's legal system is not always clear for comprehension. Here starts acting such important institution as the international legal assistance in civil cases.

There is a whole system of legal norms in Russian Federation which are contained in the international instruments and in the national legislation, aimed at resolving the contentious relationship of civil nature. These norms are contained in such legal acts as the Civil Code with amendments which came in force in September 2014, the Code of Civil Procedure and the Code of Arbitration Procedure and in a variety of bilateral and multilateral agreements on legal assistance and legal relations in civil, family and criminal cases. The practice of norms' implementation shows that there are problems related to the immunities of States and their property, recognition and execution of foreign judgments. All this requires further improvement of legal regulation.

The issues of improvement of legal regulation of relations emerging in the international civil process are a constant subject of research of experts in the field of international private law. A great contribution to the improvement of the theoretical foundations of international civil procedure and legal base were made by such famous Russian lawyers as Luntz L.A., Boguslavskiy M.M., Dmitrieva G.K. The problems of execution of foreign judgments and arbitral decisions are considered in the works of Muranov A.I. The estimation of a modern condition of theoretical bases and the legal regulation of international civil procedure is given in the monograph of Drobyazkina I.V. Among the foreign researchers the German scientists Koch H. and Magnus W. should be noted. In Kazakhstan the problems of international private law and international civil procedure are researched in the works of Suleimenov M.K., Maulenov K.S. etc. To the questions of recognition and execution of foreign judgments on the territory of Kazakhstan dedicated the articles of Kushimov N. [1] and Akimbekova S. [2].

The norms of modern international law, depending on their functional purpose can be divided into two groups - material and procedure. Such conclusion allows to research international law not only in static but also in dynamic, i.e. in revealing the mechanism of creation and implementation of international legal norms, which are carried out in specific procedure forms. It should be noted that the question of the presence of procedure norms in international law hasn't not raised until recently. Despite the fact that both material and procedure norms have been constantly present, the focus has been made on analysis and study of the material norms. This circumstance can be explained by several reasons and one of them is that in the science of international law has developed the theory of natural law, according to which international law in its development

lags behind the national law and therefore a separate system of procedure norms has not been segregated. However it does not mean their absence. Procedure rules can be identified in almost all branches of public international law.

In the system of modern international law alongside with the material norms are fuctioning procedure (from the Latin. Processes — origin, promotion) norms. When material norms proclaim the rights, duties and responsibilities of subjects of international law, the procedure norms regulate the methods, forms and procedures for their implementation by establishing certain procedures and binding rules, which are called international mechanisms to ensure the norms and principles of the treaty. According to its scope the procedure norms prevail over material. A number of branches and institutions of international law consists mainly of the procedure norms that regulate the way of creation and functioning of international instruments, implementation of diplomatic and consular functions, peaceful settlement of international disputes, international legal responsibility, legal assistance in criminal matters, extradition, asylum etc. The examples given above are referred to the sphere of regulation of public international law. However initially about the presence of procedure norms began to speak in relation to Private Law and not only in national relations, but also at the international level. These relations include private-law relations complicated with so-called "foreign element».

What is this «foreign element»? This concept can be referred to the object of legal relationship such as property located abroad. Foreign can be the subject of legal relationship, for example, one of the sides in the dispute is a resident of another state. And finally, legal relationship itself can take place on the territory of another state, for example, the decision adjudicated by foreign court and its execution should take place on the territory of the Russian Federation.

The reasons for initiation of civil proceedings with a foreign element, as a rule, the same as for the national proceedings. These are the disputes on family, labor, inheritance legal relationship, disputes relating to the performance of international trade contracts, and others. A number of issues that require immediate resolution raises during the consideration of such disputes in a foreign court. These include questions about:

– the international jurisdiction of civil cases;
– the procedure status of foreign citizens, legal person;
– the procedure situation of another State;
– the admissibility of evidence in foreign courts;
– the use of foreign law and the procedure for establishing its content;
– the way of execution of foreign court orders;
– the recognition and enforcement of foreign judgments in civil cases;
– the recognition of foreign arbitration agreements and enforcement of the decision of another state [3; 10].

The scientific literature has several points of view concerning to the legal nature of the international civil process. Thus, Luntz L.A. notes that there are certain difficulties with distinguishing of issues of international civil process as an independent legal discipline (recognition of foreign laws, immunity, recognition of foreign judgments). At the same time he is inclined to consider international civil process as a branch of law that regulates activity of bodies of justice in civil matters [3; 11]. Boguslavskiy M.M. believes that the concept «international civil procedure» is very conditional, because «it is not about any international examination of a particular case».

He thinks that the «international civil procedure law should be understood as set of legal principles and norms of procedural nature as common for the states determined by international agreements» and established by each state in its legislation [4; 490]. It should be noted that at the present there are the following points of view:

– international civil process is an element of the international private law;
– it is part of the civil procedural law of the any state;
– it is an independent branch of law.

Drobyazkina I.V. defining the place of international civil procedure in the Russian law, has systematized all existing points of view. She concluded that it is not correct to consider international civil procedure as an integral part of the international private law, as they have different regulatory subjects. Comparing the principles, methods and sources of legal regulation, she concludes that international civil procedure is an integral part of civil procedure law [5; 16]. Based on the above, we also hold the view that the international civil process is an integral part of civil procedure law. Indeed, the majority of the cases of the disputes are solved in the national court, in accordance with the rules of national civil procedure laws. The only peculiari-

ty is that the procedure is complicated by a foreign element. This fact necessitated international legal component to resolve the inevitable conflicts of law.

In this regard it is necessary to clarify the question of the sources of international civil process. In accordance with Paragraph 4 of Article 15 of the Constitution, the generally recognized principles and norms of international law and international treaties of the Russian Federation are an integral part of its legal system. Zabelova L.B. divides the complex of international sources into three groups — the universal, regional and bilateral [6; 160]. The universal sources are three Hague Conventions on Civil Procedure: the Convention on civil procedure in 1954, the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters in 1965, the Convention on the Taking of Evidence Abroad in Civil and Commercial Matters in 1970. It is necessary to note the European Convention on International Commercial Arbitration of 1961.

The agreements of regional nature are Minsk Convention in 1993 and Kishinev Convention in 2002 on legal assistance and legal relations in civil, family and criminal cases.

For example, Article 7 of the European Convention of 1961 on the applicable law has established that the parties are free to determine by common agreement the law applicable by the arbitrators of the dispute. And if there is no decision of the parties on the applicable law, the arbitrators may apply the law defined by the conflict rule. Solving the question of jurisdiction, Article 6 of the European Convention has established that the presence of an arbitration agreement allows other party challenge the jurisdiction of the state court and its lack of jurisdiction in regard to the dispute.

In fact that the dispute is usually solved in the state court of general jurisdiction in civil cases, the Civil Code of the Russian Federation should be called as a legal source, which has a special section 6. International Private Law. This section regulates the relationship of law enforcement. Chapter 5 of the Civil Procedure Code should be called as a national source, which defines the procedural rights and obligations of foreign persons [7]. Another source is the Code of Arbitration Procedure of the Russian Federation [8].

With regard to the rules for determining jurisdiction, there are several classifications. Boguslavskiy M.M. defines the three main systems of jurisdiction determination. In accordance with the Franco-German system, the jurisdiction is determined on the basis of the nationality of the parties of the dispute. In the Anglo-American system of jurisdiction, the jurisdiction is determined on the basis of the defendant's location in the country where the trial is, even if it's temporary location. The third type of jurisdiction is contract jurisdiction in which the parties of the dispute agree that the court of the state will decide the dispute [4; 407]. Drobyazkina I.V. also points to the three systems of jurisdiction determination: 1) on the basis of one of the parties' nationality of the dispute; 2) on the basis of the presence of the defendant on the territory in which there is the jurisdiction of the court; 3) determination of the territorial jurisdiction in accordance with the national rules of the state [5; 51]. Zabelova L.B. distinguishes three types of international jurisdiction: exceptional international jurisdiction (jurisdiction of a dispute to the court of a certain state, and excluded from the jurisdiction of other countries); alternative jurisdiction (the parties choose between the courts of the states); contract jurisdiction (jurisdiction is determined by agreement between the parties) [6; 164].

The questions of jurisdiction in the Russian legislation are regulated by Chapter 44 of the Civil Procedure Code. It should be noted that Article 402 provides a general jurisdiction according to the rules of Chapter 3 in the case, unless otherwise is provided in this article. Article 28 of Chapter 3 has established the general rule of jurisdiction: to file an action in court at the place of residence or location of the defendant. The principal provision has the paragraph 10 of Article 28, under which, if the case is under the jurisdiction of several courts, the right to choose the jurisdiction belongs to the plaintiff. Chapter 44 of the Code of Civil Procedure of Russian Federation also provides exceptional (Article 403) and the contract (Article 404) jurisdiction.

The provision of access to justice abroad to Russian and foreign citizens is provided by Part 1 of Article 46 of the Constitution, which guarantees everyone the right to judicial protection of his rights and freedoms. In accordance with Part 1 of Article 47 no one may be deprived of the right to the consideration of his or her case in that court and by that judge in whose cognizance the given case is according to law. Procedural status of foreigners and citizens of the Russian Federation is defined by the Constitution (Articles 46 and 62), the Civil Procedure Code (Article 398 and 399), the Code of Arbitration Procedure (Article 254). The legislation provides the national treatment to access to justice: foreign persons have procedural rights and procedural obligations as citizens and organizations of the Russian Federation.

The same principle is enshrined in the treaties on legal assistance. So Part 1 of Article 22 of the Kishinev Convention established the principle of general jurisdiction: lawsuits against persons with residence in

the territory of a Contracting Party, are presented in the court of this party. With respect to legal entities, lawsuits are presented in accordance with the location of the management body of the legal entity. Lawsuits are also presented in the court of the state in which the defendant exercises business or other economic activity; fulfilled or partially fulfilled the obligation of contract; the lawsuit to protect the honor and dignity if the plaintiff has a place of residence in the territory of that state. Article 23 provides for contract jurisdiction if the parties have a written agreement.

German lawyers H. Koch and W. Magnus, analyzing the European Convention on Jurisdiction and the Enforcement of (foreign) judgments in civil and commercial matters (Brussels) from September 27, 1968, determined the following types of jurisdiction: international jurisdiction; general (territorial) jurisdiction; competing special jurisdiction; contract jurisdiction (prorogation agreement) [9; 53]. The state is also involved in the international civil relationship. In considering the possibility of presence of the lawsuit to the state in a court of another state, there often exist unresolved conflicts. The problem is caused by the presence of such feature as the sovereignty of the state. In accordance with Part 1 of Article 4 of the Constitution of the Russian Federation, the sovereignty extends to its entire territory. Many states consider the presence of the lawsuit to them in a foreign court as an attack on their sovereignty. There are theories of immunity in the science of international public and international private law: the theory absolute immunity and the theory of limited immunity [10]. The decision to follow a theory is the essence of the sovereign right of each state.

International practice shows that states use three main ways to solve the issue of immunity. This could be the adoption of a special law (such as the US law on the immunity of foreign states in 1976, in Canada in 1981, in Singapore in 1979). Questions of immunity can be settled in an international agreement (the European Convention on State Immunity 1972). For example, Article 10 of the Convention in respect of commercial transactions found that if the state has entered into a bargain with a foreign person or entity, and differences in relation to this transaction are subject to the jurisdiction of a court of another state, i.e., the state entered into a bargain can not use the immunity from jurisdiction of dispute.

The third way to address the issue of state immunity is to include relevant norms of civil procedure law. This practice is followed, for example, by the Republic of Kazakhstan. In Russia, unfortunately, there is no special law on State Immunity. But there is a corresponding article in the Civil Procedure Code of the Russian Federation. We believe that in this regard, it makes sense to conduct a comparative analysis of the legislation of the two countries. Thus, the Civil Procedure Code of the Russian Federation currently provides for the theory of absolute immunity. Article 401 establishes that the presentation of the lawsuit to another state to the court in the Russian Federation, bringing it to participate as a defendant, the seizure of it's property in the territory of the Russian Federation, the application of measures for property to secure the lawsuit, foreclosure on the property of another state for the purpose of execution of court decisions is possible only with the consent of the competent authorities of that state. We believe that such edition of the article, namely the consolidation of absolute immunity is contrary to the interests of Russian legal entities and, ultimately, the interests of the state. In Kazakhstan, for example, until February 2010, the Civil Procedure Code of Kazakhstan also provided the theory of absolute immunity. The existing the Civil Procedure Code of Kazakhstan has a special Chapter 46. Jurisdictional immunity of a foreign state and its property, which includes 21 articles [11]. This, in accordance with Article 427 of the Civil Procedure Code of Kazakhstan, foreign country uses jurisdictional immunity in Kazakhstan except in cases stipulated by the Code. There are 7 cases of non-application of immunity, including the disputes about participation in legal entities, disputes over compensation for damages, disputes concerning property rights, disputes relating to business activity. In accordance with Article 428, the foreign country does not use immunity in Kazakhstan if it carries out activity different than the exercise of sovereign power. In other words, if the state enters into commercial transactions with foreign entities, it is, however, falls to the status of the person and should perform all duties and responsibilities on a par with that person.

Thus, we believe that the international civil process is a complex institution of international private law and civil procedural law. From national civil procedural law it is distinguished by the fact that such a relationship, as they say, «complicated by a foreign element». With international private law it has in common the fact that the relationship of disputes arising from contracts with foreign entities or in the territory of another state. Therefore there is a need for international agreements to resolve this type of relationship. In the international civil process the most important issues are the issues of jurisdiction, legal capacity of persons and applicable law. With regard to the immunity of a foreign state, we believe that the legal regulation of this issue needs further improvement.

The need for recognition and enforcement of a foreign judgment arises when, for example, the foreign trade transaction between the parties, a dispute arose about the improper performance or breach of contract; decision on alimony issued by a court of a state, and the respondent resides in the territory of another state. If the parties had agreed that the national court of the state is competent to consider their disputes, then it turns out that the decisions of national courts can be recognized and enforceable only in a few countries with which the state issued the decision has agreements on legal assistance in civil cases. The court checks the decision for compliance with the requirements of national law to foreign judgments, that in some countries often leads to re-hearing of the case (France, Germany, Belgium), and in many countries, while taking into account the principle of reciprocity. The countries of Anglo-American law strictly follow this principle. As noted by M.M. Boguslavskiy, «legislation of the different systems know enforcement of foreign judgments. A precondition for the enforcement of a foreign judgment is usually the requirement of reciprocity with respect to decisions of national courts» [4; 331].

The problem of recognition and enforcement of judgments issued by the courts of other states, occurs when the losing side in a court refuses to comply with the decision voluntarily. In this case, the plaintiff has to appeal to foreign court for its recognition and enforcement. At the request contained in the appeal, the foreign court does not hear the case, and considers only the possibility of enforcement of foreign judgments in the territory of the state.

There are two possible situations after the court issued the decision:

1. The decision of the court is such that does not require execution. Then only the recognition on the territory of another state is necessary. Thus, in accordance with Article 415 of the Civil Procedure Code of Russian Federation, the Russian Federation recognizes the following decisions of foreign courts which do not require the enforcement by their nature:

a) if the decision affects only the personal status of citizens of the state, where the court is located and issued the decision (a change of name or surname, on the recognition of missing or dead; on the limitation of capacity);

b) the termination or invalidation of marriage between citizens of the state and a foreign citizen, if at the time of dissolution of the marriage one of the spouses lived in another state;

c) the termination or invalidation of marriage between Kazakhstan citizens who live abroad.

We believe that even if the solution requires no execution, but rather its recognition, it is still necessary to regulate the procedure for such recognition in the legislation of the Russian Federation. A similar situation in respect of such decisions exists in the legislation of the Republic of Kazakhstan.

The second situation. The decision of a foreign court requires the execution in the territory of another state, if the defendant lives in another. In this case, there is a need in the recognition and enforcement of foreign judgments.

The legal basis for the recognition and enforcement of foreign judgments is presented by:

1. Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 July 1958 [12]. The Convention consists of 16 articles. In accordance with Article 2, each State recognizes the agreement in writing under which the parties undertake to submit to arbitration disputes arising or which may arise between them. The term «agreement in writing» means «arbitration clause» in the contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams. Article 3 of the Convention established that each state recognize arbitral awards as binding and enforces them according to the rules of procedure of the territory where the recognition and enforcement of those decisions are necessary.

2. Minsk Convention on legal assistance and legal relations in civil, family and criminal matters of 1993 [13]. In accordance with Article 54, each participating State recognizes and executes the decisions made in the territory of another participating State. Article 55 also provides for the recognition of decisions that do not require enforcement, in case when the decision came into force.

3. Bilateral agreements on legal assistance. For example, such treaties of the Russian Federation and China, Estonia, Latvia, contain virtually identical provisions which provide that States mutually recognize and fulfill entered into force decisions of the institutions of justice in civil and family cases. To obtain permission to execute a foreign judgment it is necessary to bring the appeal, details of which are determined by the law of the country in which the decision will be implemented. For example, Article 411 of the Civil Procedure Code of the Russian Federation (the content of the application for enforcement of a foreign judgment); Article 242 of the Code of Arbitration Procedure of the Russian Federation (where it is called «application»).

4. The National Civil Procedure Code and the Administrative Procedure Code, regulatory decisions and instructions of the Supreme Court and the Supreme Arbitration Court.

Drobyazkina I.V. notes that the current international practice knows three possible ways of recognition and enforcement of foreign judgments, established by the legislation of the states [5; 109]. In the first case, it provided for the issuance of the exequatur. Thus is the process in which a foreign judgment is confirmed by the competent court of the country in which it must be enforced. The court makes a special resolution authorizing the execution of the decision. Thus, in some countries the solution is checked substantially, in others it is not checked. In the second case the court held validation of a foreign judgment. And in the third case, a foreign judgment is registered and passed for execution.

Luntz L.L. points at several systems of exequatur: the French system, the German system, the British system of registration of foreign decisions [3; 169]. Thus, in the Anglo-American common law, a foreign judgment is the basis for a new trial.

The legal practice of the Russian Federation uses the name of a «statement» and «appeal». In accordance with Article 243 of the Code of Arbitration Procedure of the Russian Federation statement for recognition and enforcement of foreign court decisions and foreign arbitral award is considered at the hearing by a single judge in a period not exceeding three months from the date of its receipt by the court of arbitration. In Part 4 of this article contains a fairly clear position: in the proceedings the arbitration court is not allowed to re-hear the foreign judgment. Thus, Russian law does not provide for check of a foreign judgment. However, the Civil Procedure Code contains several other provisions. In accordance with paragraph 4 of Article 411 a judge can hear the explanations of the debtor, to consider the evidence, may also interrogate the debtor and to request clarification of the foreign court. Upon review, the court may issue an order for enforcement of the decision or refusal in it.

The procedure for filing an appeal for enforcement of the decision is usually following. The enforcement of the decision is only possible in the case, if the defendant does not execute the decision voluntarily. If the decision is not executed voluntarily within the specified period in it, the party in whose favor the award is invoked may apply to the court at the place of the dispute with the statement for enforcement of the arbitration award or court's decision. It is important to bear in mind that in accordance with the rules of international civil process, an application for enforcement of a judgment in another country is brought to the court that issued the decision. To submit a request for enforcement of the decision, the party provides for:

– the duly authenticated original award or a duly certified copy;
– the original agreement, on the basis of which the parties have agreed to solve their dispute in the arbitration.

The solution must be accompanied by an officially certified translation into the language of the decision of the country which asks for execution of the decision. Translation can be certified by a diplomatic or consular agent. The appeal may be brought also in the court of the state where the decision is enforceable, the decision passed by the court in the court that issued the decision to prepare the entire package of documents. The court shall attach to the request: a certified copy of the decision; a certificate stating that the decision came into force and enforceable; a certificate stating that the decision is not executed; certificate confirming that the party is obliged to execute the decision, the party was not involved in the process and has been properly notified of the date and place of the hearing. All documents shall be accompanied by a certified translation into the language of the requested state.

Russian legislation and international treaties on legal assistance contain standard grounds for refusal of enforcement of foreign judgments:

The party, which is obliged to execute the decision, brought to the competent authority of the country where the decision must be enforced the evidence that the parties did not have the legal capacity in accordance with the legislation of that country;

The party, against whom the decision was issued, was not given proper information about the date and place of the trial;

The decision was made regarding a dispute, which is not covered by the arbitration agreement;

The Tribunal did not comply with the parties' agreement;

The court considering the application, may also establish that: the object of the dispute can not be the object of a dispute in accordance with the law of the country;

Recognition and execution of decisions is contrary to the public right of the state and can not be subject to arbitration procedure.

Consider the example of the case at the request of a judge of the Arbitration Court of the Perm region and the resolution on the recognition and enforcement of the decision of the court. The judge of the Arbitration Court of Perm region appealed to the competent court of the Republic of Kazakhstan on the recognition and enforcement of the resolution decisions on 23.07.2004 on case number A50-9580/2004-Г-11, to recover from the LLP IC «Dorsnabservis» in favor of CJSC FTC «Permoyl», Perm, Russian Federation, 9,453,335 rubles 18 kopecks of debt and 82 066 rubles 68 kopecks of state duties and to take steps to transfer this amount to the account of the creditor.

The request can not be executed on the following grounds.

The representatives of the LLP IC «Dorsnabservis» were invited to the hearing of the case in district courts of Astana. However, they did not come to the hearing due to the fact that they were not given the subpoena, as at the address specified in the application — Astana, Pobedy Avenue, 71, apartment 4 – is incorrect address of the legal entity, and it was certified by the acting of chairman of LIC Vanyukov V.V. Under Article 8 of the Minsk Convention, execution of the order for legal assistance the requested authority uses legislation of its part. If the exact address of the person specified in the order is not known, the requested authority shall, in accordance with the law of the contract part, on the territory of which it is necessary to take measures to establish the address. After execution of the order requested authority shall return the documents to the requesting institution; in the case that legal assistance could not be provided, it shall simultaneously notify about the circumstances which prevent the execution of the order and return the documents to the requesting institution. The Department of Justice has been asked to provide information on the location of the debtor. From the Department of Justice, it was reported that LLP IC «Dorsnabservis» is domiciled in Astana, Saryarka district, Pobedy Avenue, 71, apartment 4. It is also found that the founder and director of LLP is Teplyashov Mikhail Alexandrovich. According to the address reference, Teplyashov M.A., date of birth 03/11/1961, registered in Astana, K. Marx street, 167 «a» (now Kenesary 57/1), the hostel. The subpoenas were sent to this address, but he did not appear at court. 05.05.2006, by the decision of the court, Teplyashov M.A. was subjected to forced drive. However, the report from the bailiff Eschanov K.S. showed that Teplyashov M.A. did not live in the hostel. Commandant of the hostel, Kypshakbaeva Raushan, was invited to the hearing of the case, who explained the court that a citizen by the name of Teplyashov M.A. does not live in the hostel.

Thus, the taken measures had not allowed to establish the location of the debtor, in connection with which an application for recognition and enforcement of decision was returned to the requesting party. In view of the above, guided by Article 8 of the Minsk Convention, the court decided: to return to the Arbitration Court of Perm region the appeal on recognition and enforcement of the decision of this Court from 23.07.2004 on case number A50-9580/2004-Г-11 [14].

Recognition and enforcement of foreign judgments and arbitral awards is an important part of an international civil process in general, and international legal assistance in civil cases. This area has a variety of inter-state relations regulation at the multilateral and bilateral treaties and national legislation.

This study allowed us to make some conclusions and proposals. Inconsistency and improper execution of court documents on conventions, treaties, agreements on legal assistance may adversely affect the image of the state. More attentive and careful study of articles and paragraphs, regulating the procedure for the request and orders the courts of foreign countries and the Russian and Kazakhs judicial acts are accepted and recognized by official authorities of another foreign state, is necessary.

The Russian legislation on the immunity of foreign states and their property, in our opinion, needs to be more detailed regulation. For example, to give an exhaustive list of cases of non-use immunity in the law, including disputes about participation in legal entities, disputes over compensation for damages, disputes concerning property rights, disputes relating to business activity. We also consider it necessary to provide a norm, according to which a foreign state does not use immunity in the Russian Federation, if it carries out activity which is different than the exercise of sovereign power.

The recognition of foreign judgments and arbitration on the Russian Federation territory means that these solutions acquire the same legal consequences, which have entered into force decisions of Kazakhstan courts: cogency; exceptionality; obligation; the enforceability of the decision to award. We believe that even if the solution is that it requires no execution, but rather its recognition, it is still necessary to regulate the procedure for such recognition in the legislation of the Russian Federation. A similar situation in respect of such decisions exists in the legislation of the Republic of Kazakhstan.

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Қазақстан Республикасы мен Ресей Федерациясында шетелдік сот шешімдерін тану және орындалуын құқықтық реттелуіне салыстырмалы талдау

Автор Қазақстан Республикасы мен Ресей Федерациясында шетелдік сот шешімдерін орындау мен тануды құқықтық реттеу мәселелерін зерттеді. Мақалада халықаралық азаматтық үрдісте соттылықтың көптеген түрлерін, шетел сот шешімдерін мәжбүрлі түрде орындау туралы өтініш хаттарын соттарда қарастыру және беру үрдістері талданды.

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Сравнительный анализ правового регулирования признания и исполнения иностранных арбитражных решений в Республике Казахстан и Российской Федерации

Автор исследует правовое регулирование признания и исполнения иностранных судебных решений в Республике Казахстан и Российской Федерации. В статье анализируются различные виды подсудности в международном гражданском процессе, процедуры подачи и рассмотрения в судах ходатайств о принудительном исполнении иностранных судебных решений.

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