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CLASSIFICATION OF TERMS IN TRANSNATIONAL CIVIL PROCEDURE

Allayorov JahongirToshpolatovich
Acting associate professor of
Tashkent state university of law.
Doctor of philosoph in law
ORCID: 0000-0003-4099-2051
e-mail: xattot@gmail.com

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Abstract:

This article analyzes the question of qualification in international civil proceedings, and examines their differences in national procedural law and international private law. In the article, a number of foreign scientists, including Clarkson and Hill, I.V. Getman-Pavlova, V.P. The views of Zvekov, Biryukova.N.S., Kuznetsov M.N. and other scientists were studied. Also, Chisinau Convention "On Legal Assistance and Legal Relations in Civil, Family and Criminal Matters", Hague Convention "On Civil Procedure Matters", Civil Procedure Code of the Republic of Uzbekistan and The Economic Procedural Code of the Republic of Uzbekistan was 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, classification of terms, civil procedure, private law

There are a number of obstacles to achieving the clarity of the content of norms in the regulation of international justice, one of them is the problem of qualification of legal concepts. This problem is determined only in the direct application of the norms of international justice. Traditionally, the question of qualification in jurisprudence is placed in relation to conflict of law norms. Scholars express the problem of qualification in international private law as follows: " In order to apply the legal concepts used by the conflict of laws rule, it is usually necessary to interpret them, and such an interpretation depends on the content of the applied law, which still needs to be determined[1]. "According to professors Clarkson and Hill, "when choosing conflicting norms, the court, first of all, should qualify (to categorize) in order to determine the factual side of the case or the specific category of the foreign norm. Such activity is called classification or characterization in international private law[2].

The English scientist Forsish said that what exactly is the question of qualification is the cause of various disputes: the facts, the basis of the claim, the national or foreign legal norm, the issue of binding and scope of the conflicting norm [3]. According to Biryukova, the problem of classification is not limited to choosing the law that should be applied to the legal relationship. Before determining the legal system that should be used in legal qualification, it is necessary to determine that this legal relationship is of an international nature. Determining that the legal relationship is of an international character makes it possible to apply the norms of private international law to the relationship[4].

Any conflict rule applies legal categories that can be understood differently in the legal systems of different countries[5] (different legal systems cannot have the same categories, especially if they are built in different language systems; there can only be similar ones). The question arises as to what basis these concepts should be interpreted. Their different interpretation leads to different results of application of legal norms. In this regard, international private law is divided into primary and secondary qualifications. In the initial qualification stage, the law enforcer performs the qualification of concepts within the framework of the conflicting norm (lex fori), in the secondary framework - he directly applies the legal system selected on the basis of the conflicting norm to the relevant situation (lex causae) [6]. Based on Article 1159 of the Civil Code of the Republic of Uzbekistan, preliminary qualification is carried out in accordance with the law of the Republic of Uzbekistan.

The problem of qualification for the application of international judicial norms has a slightly different nature[7]. It should be noted that the problem of qualification in international civil proceedings is primarily related to the regulation of international jurisdiction. For example, the criteria for evaluating the evidence of a foreign element are not related to legal concepts - it requires checking the language of the

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document, the place where it was made, and determining the factual circumstances. When applying the norms of international jurisdiction, the issue of qualification of the existing concepts in the norms arises. International civil procedure is characterized by the problem of conflict in qualification in the norms of international justice. Article 239 of the Code of Economic Procedure of the Republic of Uzbekistan defines the principles of establishing international jurisdiction in cases involving foreign persons, and the concepts of substantive law are used in this article. For example, when establishing its authority on the criterion of the place of performance of the contract in the territory of the Republic of Uzbekistan (Article 239, Part One, Clause 3 of the Civil Code), the court must first determine the "place of performance of the contract" in relation to a specific contract. Accordingly, the issue of defining other legal concepts may arise (for example, "place of unjust enrichment", "place of legal fact", etc.). Under the law of which country should the court determine the place of performance of the contract or the place of unjust enrichment? Depending on whether it is based on national law or foreign law, there may be completely different answers.

Due to the fact that the question of qualification is not considered in the procedural law, this issue is not separately resolved in the Civil Procedural Code of the Republic of Uzbekistan and the Economic Procedural Code of the Republic of Uzbekistan. Logically, when the court applies the norms of international jurisdiction, it is necessary to assess the conflicting legal relationship. The problem is whether the court should use conflict of laws rules to determine the legal system applicable to the legal relationship and interpret a legal concept based on that (for example, the place of performance of the contract) or directly apply the provisions of national law.

Recognition of international jurisdiction is based on the principle of an integral connection of the legal relationship with the state. The place of performance of the contract located in the territory of one country means the actual connection with this country. If we determine the place of performance of the contract on the basis of national law and not on the basis of the law applicable to the relationship, the actual place of performance of the contract may differ from the place originally determined by national law under the law to be applied under the norms of private international law. As a result, the norm on determining international jurisdiction based on the sign of interdependence of legal relations with the state at the place of performance of the contract does not meet its purpose. The qualification of the binder used to establish international jurisdiction must be based on the law that is applied intermittently in the legal relationship .

On the other hand, determining the content of foreign law is a long and arduous process. If the definitions required by the substantive legal qualification are applied to the jurisdiction of the national court, some difficulties will not arise - the court will apply its own law. When dealing with cases involving a foreign element, the court is required to: conduct a preliminary examination, choose the applicable conflict of laws rule, determine the law to be applied, apply the selected substantive law to be applied to the actual relationship of the parties (if necessary, establish the foreign law) and make a final decision. conduct qualification. In order to determine the content of the foreign law, the court will have to initiate a civil case and collect information about the content of the foreign law within its framework.

After spending a lot of time and money on it, the court may conclude that it does not have jurisdiction at all. Informing foreign persons, obtaining evidence from abroad, and determining the content of foreign law are very complex tasks. For example, in order to determine the content of foreign legal norms in accordance with Article 14 of the Civil Procedure Code, requesting the court to help and explain, to the competent bodies or organizations of the Republic of Uzbekistan and foreign countries. can apply according to the established procedure or involve experts". Given such costs associated with conducting proceedings involving a foreign element, verifying jurisdiction using foreign substantive law is time-consuming and costly.

The approach that requires the application of international justice in qualifying the legal relations of the parties on the basis of the law applied to legal relations based on international private law norms brings out additional theoretical contradictions . A unique framework will appear: in order for the court to consider the content of the case (applying the conflict of laws rules, gathering evidence, applying its international court jurisdiction in a different way), the authority is necessary. However, without starting to consider the case, he cannot check his authority, he cannot apply conflict of laws rules, and if necessary, he cannot determine the content of foreign legal norms[8].

As we can see, the problem of qualification for the norms of international jurisdiction is more complicated than this issue compared to the conflict norms of private international law. On the one hand, this is due to the existence of interdependence between the norms of international justice and the norms of substantive law designed to regulate relations with a

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foreign element. On the other hand, it is related to the need to save procedural means .

What directions can be proposed to simplify the process of verification that the court itself has international jurisdiction? In our opinion, the court should conduct its work based on the following algorithm:

1. Qualifying the relationship on the basis of lex fori and taking the case to its jurisdiction;
2. After the commencement of proceedings, he shall verify his authority in the presence of the parties at the court session, in which he shall perform the initial qualification on the basis of lex fori and determine the law of the state to which his right should be applied;
3. Qualifying legal concepts based on the applied legal basis, if in the sense of the qualified legal concept the relevance of the court of the Republic of Uzbekistan to the international jurisdiction is understood, otherwise, the court should close the case because it is not relevant.

subjective rights , we believe that this right should be used in determining legal concepts in the event that the parties have the opportunity to choose the law applicable to the contract. If the parties have indicated that the law applicable to the contract is applied, for example, based on the laws of the Republic of Kazakhstan, the court must qualify the material norms giving rise to international jurisdiction on the basis of the law of the Republic of Kazakhstan.

Article 239, Part 1, Clause 5 of the Economic Procedural Code of the Republic of Uzbekistan stipulates that "if a dispute arises from unjust enrichment in the territory of the Republic of Uzbekistan", this dispute shall be referred to the international jurisdiction of the court of the Republic of Uzbekistan.

We believe that there are ambiguities in clause 5 of part 1 of Article 239 of the Economic Procedural Code of the Republic of Uzbekistan. The law does not specify what should be considered as a place of unjust enrichment. In accordance with Article 1196 of the Civil Code of the Republic of Uzbekistan, "the law of the state in which unjust enrichment occurred" is defined. With such a definition of unjust enrichment in the law, it is difficult to say where the unjust enrichment took place.

If we proceed from the assumption that the acquisition of unjustified wealth for the purpose of determining international jurisdiction is not the property itself, but the unjustified acquisition / accumulation of it, then the problem arises of our localization of this fact or the process of acquisition / accumulation. Did it occur at the location of the person who acquired/acquired the property without reason or at the location of the property?

If we are talking about legal relations, it should be noted that relations are not localized. It can be determined that Ali is in Boka, and his friend Vali is in Piskent. These people are located in certain parts of the world. However, it is impossible to answer where the relationship between them is, because it is not physically located anywhere. This classification cannot be applied to it. The legislator should distinguish from legal relations those elements which, by their nature, can be connected with the state through territorial or other types of relations.

Getman-Pavlova, thinking about the place of unjustified wealth acquisition in international private law, states the following on the example of electronic money: "in the case of unjustified wealth acquisition related to electronic money, firstly, the physical location of electronic money - the place where the bank or payment system operator is located, and secondly, the debtor seizes the unjustified wealth the place where there is an opportunity, thirdly, the place that caused unjust enrichment based on the principle of interdependence, for example, the location of the bank-correspondent can be qualified as a place of unjust enrichment"[9]. That is, doctrinal views have different bases.

At the same time, if there is a gap in the law, it is natural that the judicial practice takes different positions regarding "unjust enrichment". We believe that this gap should be filled. This can be done by introducing a definition of what should be said to be the place where the unjust enrichment took place in the Civil Code of the Republic of Uzbekistan. At the same time, we believe that it is appropriate to amend Clause 5 of Part 1 of Article 239 of the Civil Procedure Code of the Republic of Uzbekistan.

If cases related to unjust enrichment are referred to the international jurisdiction of the Republic of Uzbekistan, the option "if an action or situation that caused unjust enrichment took place in the territory or property acquired/accumulated without reason appeared" can be accepted. This approach is primarily related to procedural and legal interdependence. Jurisdiction can be established in the area where "property has been taken /accumulated without reason".

The problem we have raised is not limited to the place of performance of the contract, the place of unjust enrichment. Since we need to correlate and localize some elements of civil legal relations and even civil cases in determining the jurisdiction of the international court in civil cases, issues of qualification of concepts may arise in different ways.

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If we consider the issue related to the registration of domain names on the Internet. For example, in paragraph 9 of part 1 of Article 239 of the Civil Procedure Code of the Republic of Uzbekistan, "if the dispute arises from relations related to the state registration of names and other objects in the territory of the Republic of Uzbekistan and the provision of services on the Internet global information network", the courts of the Republic of Uzbekistan have jurisdiction over international jurisdiction. . In our opinion, this norm contains some nonsense. The purpose of this norm is to determine the international jurisdiction of the court in relations with the Republic of Uzbekistan arising from the registration of names on the Internet or the provision of services. From the word-by-word analysis of the norm, the meaning of establishing international jurisdiction in the consideration of disputes related to the provision of services on the Internet is revealed. Internet domains are not publicly registered. Domain names are registered by commercial organizations accredited by the Internet Corporation ICANN. Technically, any domain is registered on servers in the US. For national domains, registrars can be designated where they are authorized to register the domain, but the "list book" will still be US servers. On one side of this issue, on the other hand, if "state registration of names and other objects in the territory of the Republic of Uzbekistan" refers to the state registration of trademarks and patents, disputes related to the registration of such types of names should be based on the provisions of Article 240 of the IPK, i.e. the rules of absolute international jurisdiction. In the last part of the norm, questions arise regarding the sentence "relations related to the provision of services in the Internet global information network". First, why services? Can goods and objects of intellectual property also be objects of relations on the Internet? Secondly, it is possible to determine international jurisdiction on the basis of "place of performance of the contract" according to Article 239, Part One, Clause 3 of the Criminal Code. In addition, if the norm envisages "relations related to the provision of services on the Internet" outside the Republic of Uzbekistan (this is what the literal meaning of the norm means), the level of determination of international jurisdiction of the courts of the Republic of Uzbekistan will expand immeasurably. Disputes regarding any services provided on the Internet remain subject to the international jurisdiction of the courts of the Republic of Uzbekistan. In our opinion, this norm should be revised.

Another issue that needs to be qualified is property rights. Can property rights be said to have a location? Article 81 of the Civil Code of the Republic of Uzbekistan considers property rights to belong to property. The provisions of Article 239, Part 1, Clause 1 of the Economic Procedure Code of the Republic of Uzbekistan (property of the defendant) The courts of the Republic of Uzbekistan consider that the defendant's property has international jurisdiction in the case that it is located in the Republic of Uzbekistan. Is it generally possible to establish international jurisdiction "at the place where the defendant's property rights are located"? We think it is possible. Property is a collective concept and refers to the belonging of objects, property rights and obligations to the subject of civil law [10]. Therefore, if the property rights are located in the Republic of Uzbekistan, the court will have international jurisdiction. In this case, we should pay attention to the situation that may arise regarding the nature of the property right, while evaluating their location, first of all, it is necessary to pay attention to the possibility of implementing the court decision in the territory of this country at the expense of this property right or other property.

Here we logically approach the question of a significant extension of state jurisdiction over matters involving foreign elements and why jurisdiction over property may be extraordinary. For example, a national bank maintains account numbers of foreign legal entities in its foreign branches. Is it possible to exercise jurisdiction in the territory where the bank's head office is located, taking into account the possibility of enforcing a national decision by issuing a mandatory order to the head office of the national bank on the transfer of funds from the accounts of foreign legal entities from foreign branches?

The issue has a direct impact on the state's level of authority (and, accordingly, on many other issues, for example, the investment policy of foreigners, the policy of banks on providing financial services to foreigners). Perhaps, due to the rapidity of transnational economic relations, the very small scale of judicial practice, this problem has not yet manifested itself in its acuteness for Russian law. However, in order to create an open model of mutual legal relations, recognition and enforcement of court decisions between countries, this issue must be resolved.

In general, the problem of qualification is related to the problem of establishing jurisdiction according to the principle of close legal relations with states. It is this criterion that is considered universally accepted, which can be the basis for the establishment of jurisdiction by states and, most importantly, for the recognition of jurisdiction by other states. The problem of qualification of legal concepts shows that it is somewhat complicated to reflect the close connection

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of civil cases with the state in the norms of international jurisdiction that use substantive legal concepts . Establishing jurisdiction requires simplicity[11][1].

In conclusion, on the example of the conflict of competence, we want to show that even the simplest legal concepts (for example, the location of property) can be interpreted completely differently. Therefore, even the norms of international jurisdiction that are apparently the same for many countries do not create uniform rules for many countries and, moreover, do not eliminate conflicts of state jurisdiction. The issue of qualification of concepts for norms of relevance to international law requires further study.

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