Юрисдикция: понимание, основные признаки и правила выбора

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Аннотация: Исследование юрисдикции позволяет представить основные тенденции развития современного права. Понятие юрисдикции чрезвычайно сложное, оно имеет различные толкования. Каждая из ипостасей, в которых предстает юрисдикция, – предмет активных научных дискуссий с существенными последствиями для правоприменительной практики. Национальная юрисдикция в традиционном правовом контексте осмысливается как значимая составная часть правовой системы, складывающегося в границах конкретного государства или содружества государств правопорядка. Конец XX – начало XXI веков ознаменовались принятием целого ряда универсальных и региональных международных конвенций, регламентирующих вопросы юрисдикции в сфере гражданского права. В них урегулированы процедуры исполнения решений, вынесенных иностранными судами, определены предметы юрисдикции судов, основания для признания и приведения в исполнение решений иностранных судов, отказа в выдаче экзекватуры. При столкновении с иностранным элементом суду, обладающему юрисдикцией выносить решения по конкретному спору, необходимо осуществить многоступенчатый процесс выбора юрисдикции. В статье рассмотрены подходы российского права, законодательства ряда других стран к проблематике выбора юрисдикции, этапы этого выбора, основные доктрины, которыми должен руководствоваться суд.

Ключевые слова: юрисдикция, качество юрисдикции, выбор юрисдикции, признание иностранного судебного решения, исполнение иностранного судебного решения

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Jurisdiction: Insights, Essential Attributes, and Guidelines for Selection

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Abstract: The study of jurisdiction allows us to present the most significant trends in the evolution of modern law. The concept of jurisdiction is a complex issue with various interpretations. There are ongoing scientific discussions about each of the hypostases where jurisdiction appears, and these discussions have considerable implications for law enforcement practice. Conventional legal theory states that national jurisdiction is a crucial component of the legal framework that applies to a single state or commonwealth of states. In the late 20th and early 21st centuries, many regional and universal international conventions were adopted to regulate jurisdiction disputes in the field of civil law. They specify the subjects of the courts' jurisdiction, set forth the procedures for recognizing and executing judgments made by foreign courts, determine the process for enforcing those judgments, and decline to grant exequatur. If a court has the authority to decide a case involving a foreign element, it must go through a multi-step process to determine which jurisdiction to exercise. The article examines how Russian law and the legislation of several other nations handle the issue of jurisdictional choice, the steps involved in making that decision, and the key doctrines that the court should follow.

Keywords: jurisdiction, quality of jurisdiction, choice of jurisdiction, recognition of foreign judicial decision, enforcement of foreign judicial decision

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Introduction

William Schabas's foreword to Luc Reydams' monograph «Universal Jurisdiction: International and Municipal Legal Perspectives» begins by quoting a famous phrase about the weather attributed to Mark Twain: «Everybody talks about it, but nobody does anything about it» [Schabas, 2003]. The analogy between jurisdiction and weather is explained by the extraordinarily broad and varied application of the term «jurisdiction» in legal science. This includes both public and private international law, as well as numerous areas of domestic law. The complexity and multilateralism of the fundamental and derivative concepts also contribute to the analogy.

While «weather» and «jurisdiction» have many common characteristics, the following three stand out: a) they are not clearly defined and interpreted; b) they are shaped over long periods by a variety of circumstances and factors; and c) they are very difficult for individuals and society to manage. Specialists in these subjects refer to «higher force», «divine chancery», and other unpredictable and elusive sources. The human desire to control these phenomena – weather effects and jurisdictional effects – to make them predictable, to take advantage of their potential for socioeconomic growth and increased living standards, and, if these attempts are unsuccessful, at least to lessen potential harm, binds them together.

Jurisdictions and legal systems

In addition to the condition of the legal system and the overall economy, a state's jurisdiction is influenced by a wide range of other factors. As mentioned in the Russian Bar Association and RANEPA Report «National Jurisdiction: Course for Competitiveness of the Legal System» (2019), «One of the core tasks of the development and implementation of state legal policy is to identify these factors, determine their degree of influence, and establish ways to monitor and use them to improve the quality of jurisdiction» [National jurisdiction…, 2019]. The report explores the factors affecting the quality and competitiveness of the legal system and its institutions. All of them are contradictory political, legal, and socio-economic circumstances that are reproduced in the actual environment through the interaction of both anthropogenic and non-anthropogenic favorable and unfavorable agents. The report lists the following as «factors that very relatively affect the issues of law: the factor of the environment; the factor of the geo-climatic situation; the factor of human potential; the factor of social capital; the factor of state (public) institutions; the factor of socio-economic infrastructure; the factor of the efficiency of the market for legal services; the factor of innovation activity; and the factor of the image of the national legal system» [Ibid. P. 105].

In contemporary law, one of the most significant developments is the intimate relationship between public law and private law regulation. Despite the wide range of interpretations and classifications of jurisdiction, it is essential to highlight the two primary components of this concept: a) law enforcement jurisdiction and b) «court jurisdiction».

Law enforcement jurisdiction refers to the authority of a government to oblige compliance with or punish non-compliance with its laws or regulations, whether through the courts or executive, administrative, police, or other non-judicial action.

The power of the state to punish individuals and settle disputes in civil or criminal proceedings, whether or not the state is a party to the proceedings, is known as «court» jurisdiction and is exercised by the judiciary.

Tort liability is a separate facet of jurisdictional competition; in this case, the competition is measured by the factual capacity of one state's law enforcement apparatuses to address the liability issuer rather than «attractiveness». In this context, tort liability goes beyond private law.

According to conventional legal theory, national jurisdiction is a crucial part of the legal system within the boundaries of a single state or commonwealth of states. It is important to remember that jurisdiction extends beyond the tasks performed by judicial and quasi-judicial entities. Jurisdictional activity is also carried out by public authorities of other (except judicial) branches, first of all, by the executive branch, which has legislatively authorized the relevant powers. To illustrate this point, consider the executive authorities responsible for enforcing the law: customs, taxation, antimonopoly structures, control and supervision bodies, etc. The activity of these bodies directly affects the national jurisdiction, its quality, and its status. That is, it is necessary to differentiate:

a) jurisdictional activity of a public-legal nature («activities of public authorities (judicial and executive), as well as a variety of local self-government activities»);

b) jurisdictional activity of institutions formed not by public authorities but via private-law instruments such as arbitration courts and various types of other quasi-judicial bodies operating in different countries (for example, in the sphere of labor law, antimonopoly legislation, securities market regulation);

c) activities of institutions accompanying the exercise of national jurisdiction (i.e., functioning of the notary system, dispute resolution system within the framework of self-regulatory organizations (SROs), etc.).

In the modern world, national jurisdictions no longer have the right to a monopoly. Developments in economic cooperation, transnational corporation formation, and globalization processes facilitate this. In addition to the apparent advantages, these procedures lead to a rise in the quantity and complexity of cases that need to be settled in the courts. Moreover, such courts may be located in different countries with different legislative systems. As a result, the regulations of various jurisdictions will govern how these companies organize their operations and handle any disputes that may arise. There are situations where courts from various countries compete to hear the same case, or courts from different states will consider differing aspects of the same case.

In terms of private law, the processes involved in determining jurisdiction include: a) defining and/or selecting the venue for courts to resolve disputes and issues that arise between citizens and economic entities; b) establishing legal guidelines regarding the authority and jurisdiction of national judicial bodies to decide on these types of disputes and issues; and c) deciding how to carry out decisions made by foreign courts regarding civil law disputes.

What or who determines the choice of jurisdiction to consider a particular case:

a) adhering to the dispositiveness principle, business partners, or possible litigation adversaries, are often given the right to choose the jurisdiction that best suits their needs for dispute resolution;

b) In the absence of an agreed decision between parties, the choice of jurisdiction becomes subject to conflict of laws rules of private international law;

c) alternatively, the decision is subject to the jurisdiction of a court with national jurisdiction, such as the law of the country in which the property is located, the testator's law, or the consumers' law.

Companies and citizens are always at risk from different rulings in different jurisdictions regarding the same dispute. Furthermore, there may be exceptional circumstances in which something that is supported and safeguarded by the government and legal system in one country is deemed unlawful in another.

The number of disputes between economic entities in which there is a foreign element increases significantly due to factors such as the growing interdependence of states in the economy, the complexity of logistics and international economic cooperation, globalization processes, the increasing use of information and communication technologies, and the digitalization of all spheres of life. Which, in turn, complicates dispute resolution practices, the processes of choosing jurisdiction, and applicable law. It is evident that companies of all types and statuses are interested in:

a) legal certainty and harmonization of legal procedures between different countries;

b) minimizing litigation. This means avoiding the same case being heard in the courts of different countries. This is not only a question of procedures but also of financial savings.

As for states, their goals include fostering cooperative relationships, facilitating international trade, and establishing a business-friendly dispute resolution process. However, states also give foreign court rulings the same legal weight as those made by domestic courts, indicating that they are paying close attention (if not zealous attention).

State organizations' and businesses' interests influence the acceptance and application of decisions made by foreign and international courts.

Countries are required to use civil, administrative, and criminal law to provide different kinds of legal protection to businesses and citizens. The methods and procedures used in various states to settle private-law disputes differ, and when a foreign element arises, the international-private law (or conflict of laws) rules may be applied. Administrative claims and criminal cases are excluded from applying private international law, which limits its jurisdictions to private law relations only.

Before judicial consideration, disputing parties have the right to use various instruments of pre-trial resolution, administrative mechanisms, and mediation techniques. In case the parties cannot come to a consensus during the pre-trial phase, conflicts may emerge regarding jurisdiction, the court's authority, the law that applies to the settlement of the dispute, and, following judicial review, the acceptance and implementation of judgments issued by foreign courts. Selecting the jurisdiction and the law to be applied in resolving the dispute will be difficult for a process meant to be unified in such disputes because it is very likely that a situation of competing jurisdictions will arise where different aspects of the dispute may be subject to resolution in competing jurisdictions.

The choice of jurisdiction is governed by a set of regulations: a) general (universal, «global», «worldwide»); b) of regional significance. The approach that all or at least most disputes arising can be resolved through the means of recognition and enforcement of foreign arbitral awards under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention, 1958) or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of 18 March 1965 (Washington Convention), UNCITRAL rules, as well as the rules of such arbitration institutions as the International Chamber of Commerce (Paris), the Arbitration Institute of the Stockholm Chamber of Commerce, the Singapore International Arbitration Centre, the means of recognition and enforcement of international commercial arbitration awards, is unrealistic [Jahnke, 2015].

International conventions on jurisdictions and judicial decisions

International commercial arbitrations provide efficient, proven, and tested dispute resolution procedures. However, they have significant drawbacks, such as the high cost of resorting to them when protecting the interests of business entities. Large businesses and multinational corporations can afford such expenditures, but most other economic entities – individuals as well as most companies – find these mechanisms to be either very burdensome or completely unavailable. The vast majority of individuals and legal entities prefer to apply to state courts and national arbitration bodies. Furthermore, using them is more economical in situations where a foreign business entity is involved in a dispute and the claim needs to be filed in a foreign country's court or arbitration.

There have been numerous attempts to make justice available to most business entities. It was a question of developing «general», «universal», «worldwide», and «global» acts to provide procedures for the selection of a court, recognition, and enforcement of foreign judgments. All of the acts that claim to have a global effect are far from «worldwide» nature and are not used by most countries, so the aforementioned characteristics do not accurately reflect the current state of affairs.

Negotiations to develop a global (general) convention on judicial decisions are progressing, which indicates the challenges in defining the guidelines for recognizing decisions made by foreign courts. There have been numerous attempts to create a universal convention that would give all countries some kind of common standard instrument to select jurisdiction and recognize judicial decisions. A significant opportunity arose in 1971 with the drafting of the Convention on the Recognition and Enforcement of Foreign Judicial Acts in Civil and Commercial Matters. However, only five countries ratified it. Thirty years later, a new draft of a similar Convention was developed, but it was also premature. The Hague Convention on Choice of Court Agreements, adopted on June 30, 2005, by the Hague Conference on Private International Law (HCCH), settled the court selection disputes. Russia is not a participant in it.

Conventions on particular important regulatory topics were held before the 2005 Convention. Thus, marriages between citizens of different countries increased due to integration processes in post-war Europe (World War II), which predetermined the need to regulate the issues of recognition of court decisions on family status, recognition of marriages and divorces, alimony relations, and many other aspects of family law. The following were adopted for this purpose:

1) Convention on Jurisdiction, Applicable Law and Recognition of Decrees Relating to Adoption, 1965 («Hague Adoption Convention»);
2) The 1970 Convention on the Recognition of Divorces («The Hague Divorce Convention», entered into force on August 24, 1975);
3) Convention on the Celebration and Recognition of the Validity of Marriages, 1978 («The Hague Marriage Convention», entered into force on May 1, 1991);
4) The 1973 Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations («Hague Maintenance Convention»), which replaced the narrower 1958 Convention and provides easier recognition of foreign maintenance judgments (Articles 19–28 of the Hague Maintenance Convention);
5) Convention on the Law Applicable to Matrimonial Property Regimes, 1978;
6) Convention on the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants, 1961 («Convention for the Protection of Minors»);
7) Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, 1996 («Child Protection Convention»);
8) Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (concluded on November 23, 2007 and entered into force in 2013).

The enforcement of foreign judgments on nuclear accidents, civil liability for damage caused by oil pollution, and causing damage during the transportation of dangerous goods by road, rail, and inland waterway vessels are all covered by separate lists of conventions.

Establishing procedures for collaboration between the legal and administrative systems of various states in gathering evidence in civil cases and economic disputes is carries out through the Convention on Taking of Evidence Abroad in Civil or Commercial Matters, adopted on March 18, 1970 (HCCH 1970 Evidence Convention).

At the 22nd session of the Hague Conference on Private International Law on July 2, 2019, the Convention on the Recognition and Enforcement of Judgments in Civil and Commercial Matters was adopted (the Hague Convention on Judgments entered into force on September 1, 2023). On November 17, 2021, in the Netherlands, Russia (fifth among all countries) signed the convention. The Convention defines the exclusive jurisdiction of the courts, lays out the criteria for accepting and upholding judgments from foreign courts, and prohibits the granting of exequatur, or the authority to enforce a verdict rendered by a judicial body of another state. Its core purpose is to govern the processes for enforcing judgments rendered by foreign courts. The very fact that Russia has signed a universal convention on the recognition and enforcement of foreign court judgments predicts a change in the law enforcement practice of recognition of foreign court judgments and raises interest in this issue, even though the convention has not been ratified by Russia and is unlikely to be expected soon. We should mention that only the European Union and a few other states have ratified it thus far. Along with Russia, the United States, Israel, Uruguay, and Costa Rica are among those who have signed but not ratified it.

The Convention on the Recognition and Enforcement of Judgments in Civil and Commercial Matters specifies the conditions and procedures for recognizing judgments. Its goal is to guarantee the enforceability of court rulings based on forum shopping agreements and the legality of agreements between parties to international commercial transactions. However, its provisions do not apply to court rulings on some critical matters, such as intellectual property, copyright, bankruptcy cases, family disputes, etc.

The World Intellectual Property Organization (WIPO) Judges' Guide (2019), "When Private International Law Intersects with Intellectual Property Law", offers legal resources and instances of how private international law can be applied to intellectual property disputes [Bennett, Granata, 2019].

Acts of regional significance include international legal agreements concluded by countries: a) geographically close; b) having common legal traditions. The issue of implementing the choice of jurisdiction in the European Union is under the Brussels Ibis Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of December 12, 2012, "On jurisdiction, recognition, and enforcement of judgments in civil and commercial matters (as amended)" and the Convention "On Jurisdiction, Recognition, and Enforcement of Judgments in Civil and Commercial Matters" (Lugano Convention) of October 30, 2007.

Outside the European Union, comparable functions are performed by:

a) 1993 Minsk Convention, "Convention of the Commonwealth of Independent States on Legal Aid and Legal Relations in Civil, Family and Criminal Cases", adopted in Minsk on January 22, 1993 (in force as amended by the Moscow Protocol in 1997);
b) The Inter-American Convention on the General Rules of Private International Law, adopted on May 8, 1972, is in force in the Organization of American States;
c) In the Common Market of South America (MERCOSUR):
   – Protocol on Jurisdictional Cooperation and Assistance in Civil, Commercial, Labor and Administrative Matters, adopted at Valle de Las Leñas on June 27, 1992;
   – Ouro Preto Protocol of the Common Market of South American Countries (MERCOSUR), signed on December 17, 1994, in Ouro Preto;
d) Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards, entered into force on June 14, 1980;
e) Arab League Convention on the Enforcement of Judgments and Arbitral Awards, adopted on September 14, 1952;
f) Arab Agreement for Judicial Cooperation (Riyadh Convention), adopted on April 6, 1983.

Together with the aforementioned Minsk Convention of 1993, which contains Section III "Recognition and Enforcement of Decisions", we should mention two agreements on court decisions of the CIS countries:

a) 1992 Kiev CIS Convention on the Procedure for Settlement of Disputes Related to the Exercise of Economic Activities. The Minsk and Kiev agreements complement each other to a certain extent: The Minsk Convention is primarily used in settling civil law disputes of a non-economic nature; its effect does not extend to arbitration court decisions on disputes related to the implementation of economic activities. The Kiev Agreement applies to commercial activities and imposes on state parties the obligation of mutual recognition and enforcement of decisions of competent courts that have entered into legal force (Article 7);
b) Moscow CIS Agreement of March 6, 1998, on the procedure for mutual enforcement of arbitration and economic court decisions in the territories of the Commonwealth member states. In compliance with national legal requirements, the Moscow Agreement (Article 3) ensures that a judgment rendered by a court in another CIS country will be executed in an incontestable procedure and on an equal basis with decisions made by national courts in enforcement proceedings.

The Agreement between the Russian Federation and the Republic of Belarus on January 17, 2001, should also be emphasized. It outlines the procedure for mutual enforcement of judicial acts of economic courts in the Republic of Belarus and arbitration courts in the Russian Federation. Article 1 of the Agreement says that decisions made by these courts "are executed in the same manner as judicial acts of the courts of their state based on executive documents of the courts that adopted the decisions and do not need a special procedure of recognition". Since December 31, 2015, Russia and Belarus have agreed to the mutual enforcement of court rulings in cases involving alimony collection.

Experts recognize numerous difficulties in implementing these agreements when business entities and citizens face many obstacles when striving to enforce the decisions. There have been significant changes in the information exchange, technological support for judicial activity, and level of interaction between the two countries in recent years. For this purpose, it is reasonable to consider the issue of adopting a comprehensive agreement on the recognition and enforcement of judicial decisions made by the courts of Belarus and Russia in civil cases. The said agreement does not address the rulings on interim measures made by the two countries' economic courts; these rulings may also be the subject of a new treaty.

The stage of recognizing a foreign judgment in civil law is subject to the relevant multilateral and bilateral agreements. Countries take different approaches to making the mere existence of a bilateral agreement necessary for enforcing a foreign court decision. Some, like the Netherlands and several other Scandinavian states, fix the impossibility of foreign court decisions being executed without a bilateral agreement through legislation, while the USA takes a very liberal position. Given the significant differences in legal regulation between the various states within the United States, the issue of recognition and enforcement of judgments of other states is highly relevant in the country. Obviously, the question is solved positively. However, many states apply this liberal approach to the legal acts of foreign countries. The USA has not signed an agreement on recognizing foreign court decisions with any (!) country in the world, not even with neighboring Canada.

European judicial practices

Based on the analysis of the approaches of the leading EU countries (for example, the decisions of the French Court of Cassation and the Federal Court of Justice of the Federal Republic of Germany (Bundesgerichtshof), we can see that there are significant shifts in the approaches to recognizing and enforcing foreign court judgments. For over 150 years, French courts have exercised their authority to recognize foreign court decisions as long as they are sound with French law [Jahnke, 2015]. The French approach has traditionally been predicated on rejecting foreign court rulings as legally binding and the non-recognition of foreign court judgments against French citizens. French citizens were excluded from foreign court jurisdiction, but their right to sue foreigners in French courts was recognized.

French courts have consistently interpreted Articles 14 and 15 of the Civil Code (including the trial and appellate courts' decisions in the Fountaine Pajot case in 2004 and 2005) to prevent the recognition of foreign judgments against French defendants. The French Court of Cassation's decisions in 2006 and 2007 reflect changes in the basic principles governing the attitude to foreign judgments. The French Court of Cassation's decision in 2006 (Prieur v de Montenach) changed this approach, sharply limiting the scope of Article 15 of the French Civil Code [McEleavy, Cuniberti]. In several cases (Prieur v. de Montenach, Münzer, Simitch Banque de développement local BDL v. Fercometal SARL), the Court of Cassation has consistently softened the interpretation, deciding that it does not grant French courts exclusive jurisdiction over French claimants. Consequently, rather than establishing exclusive jurisdiction, Articles 14 and 15 of the Civil Code grant French citizens an extra possibility of access to French courts in light of the Prieur and Fercometal cases.

In summary, despite the long history of French national law prevailing over international law (the Matter doctrine), "French law offers more favorable conditions for the recognition and enforcement of foreign arbitral awards than the provisions of the New York Convention. The French Court of Cassation, in the ASECNA c/N'Doye decision, explicitly stated that a more favorable regime applies to the enforcement of foreign judgments (Article 1502 of the French Code of Civil Procedure). In this regard, individuals in whose favor judgments are rendered generally rely on French law" [Vareilles-Sommieres, Getman-Pavlova, 2014. P. 141].

The French Court of Cassation's decision on December 20, 2007, Korenlissen case formulated the principle approaches of French law for the recognition and enforcement of foreign court decisions of non-EU member states. These approaches can be presented as the following list of three mandatory conditions:

1) the conformity of the foreign court's decision with international public policy on the substantive and procedural sides;
2) absence of evidence of law circumvention;
3) the correct definition of the jurisdiction of a particular civil case to the competence of a particular court of a foreign state (a so-called "indirect jurisdiction" condition).

Article 1520 of the French Code of Civil Procedure contains the fundamental reservation governing the recognition and enforcement of foreign judgments. It states that a judgment's inconsistency with international public policy is one of the grounds for refusing to grant exequatur or the enforcement of a decision rendered by a judicial authority of another state. The public policy clause, found in Article V, paragraph 2(b) of the New York Convention, states that a state may decline to enforce a judgment if doing so would be against its public policy. This clause has been incorporated into national laws practically everywhere.

Unlike Germany and France, the English legal system views the establishment of foreign judgment recognition and enforcement as a presumption of the defendant's debt to the plaintiff, who may apply for the judgment to be implemented in England, rather than as an extension of the principle of "reciprocity". Established in 1870 by the House of Lords, this approach is based on the idea that the obligation resulting from a foreign judgment – rather than the judgment itself – is what is enforced. The English literature criticizes the concept of "enforcement of foreign judgments" as applied to England, claiming that a literal interpretation implies that a foreign judgment is actually being enforced.

A foreign judgment pre-translated into English and seeking enforcement in an English jurisdiction must follow the rules and principles of English private international law. This decision, accompanied by an affidavit (an explanatory statement that may be sworn and notarized), is sent to the High Court of London for registration.

In fact, there is an execution of a "derivative judgment". "A foreign judgment merely allows the beneficiary (creditor) to obtain and enforce an English judgment. It may be a question of format rather than content, but it is an essential matter of form" [Jahnke, 2015. P. 842]. Contrary to the general rule mentioned, foreign judgments can still be enforced through the registration mechanism established by the Administration of Justice Act of 1920 and the Foreign Judgments (Reciprocal Enforcement) Act of 1933.

Russian judicial system compared to other countries

As for Russian legislation, it essentially replicates the relevant provisions found in the New York Convention. We cannot say that the Russian legislator has established a more favorable regime than the Convention; however, interested parties seeking recognition and enforcement of foreign arbitral awards predominantly rely on Russian domestic law norms.

In the absence of such a regulatory framework, state authorities have the right to determine the status of foreign court decisions on their territory. The lack of international agreements on legal assistance between Russia and many EU nations (with 15 of the 27 EU countries having such treaties: Bulgaria, Croatia, Cyprus, the Czech Republic, Estonia, Finland, Greece, Hungary, Italy, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia, and Croatia) has made resolving economic disputes extremely difficult, even with Russia's primary EU trading and business partners, such as France and Germany. Similar agreements are in force with Azerbaijan, Albania, Algeria, Argentina, Vietnam, Egypt, India, Iran, Yemen, China, the DPRK, Cuba, Moldova, Mongolia, Tunisia, and Serbia (based on an agreement with Yugoslavia).

When a foreign element appears in the process, a court with jurisdiction to hear a specific dispute must go through a multi-step jurisdictional selection process. Stages in the choice of jurisdiction include:

1) choosing the appropriate court to hear the case and decide on the dispute;
2) identifying the legislation to be applied;
3) applying chosen law;
4) recognizing a foreign court's decision;
5) enforcing a foreign court judgment.

Competition and cooperation among different national jurisdictions extend beyond judicial evaluation. We can talk about the competition of national prosecutor's offices, investigative structures, economic security bodies, etc. After all, if we are dealing with significant economic issues, state interests are affected, state resources are involved, and fines can amount to billions (in any currency).

Consequently, the following attributes define national jurisdiction:

a) quality of public administration;
b) quality of legislation (legal regulation) and the condition of the legal infrastructure;
c) quality of legal support and legal education;
d) and the key factors – the quality of the administration of justice, the independence of the court, the unity, and the predictability of law enforcement practice. We should also mention the role that non-state instruments focused on conflict resolution play in dispute resolution.

The appeal of jurisdiction: 1) does not lie in the quality of positive law, and its enhancement is not merely about adjusting legislation; 2) does not lie in improving procedural rules, as these were developed by the ancient Romans, and subsequent generations of jurists have focused on relatively minor refinements. What is most important in a national jurisdiction is the practice of law enforcement and the mechanisms for delivering justice.

Attracting economic actors of international trade and international cooperation to settle disputes within their jurisdiction is an essential topic for every country. At the same time, each country strives to reduce cases of flight from its jurisdiction, in which economic entities become parties to disputes and lawsuits and attempt to resolve them in another jurisdiction. The issues of efficiency of national jurisdiction and its competitive attractiveness for participants of domestic and cross-border social, economic, financial, energy, corporate, and other relations are being actualized.

Researchers highlight the following as core civil law jurisdictional shortcomings in Russia and challenges to their abolition; these shortcomings and challenges are interrelated, with the preceding ones serving as the foundation for the ones that follow:

a) inadequate efficiency of several legal institutions and judicial processes in enforcing the law;
b) consequently, critical evaluation of the Russian legal and judicial systems' operation by national and international businesses and the legal community;
c) resulting in transferring disputes involving Russian business structures to foreign jurisdictions for resolution. The use of offshore instruments in this transfer frequently indicates the unusual circumstances surrounding the funding's origin and attempts to withdraw it (launder it) abroad.

For Russian businessmen, Cyprus is the most popular foreign jurisdiction (it accounts for over 20 % of all "foreign investments" in Russia, followed by the British Virgin Islands and the Netherlands. Evidently, these "investments" are predominantly of Russian origin).

The critical analysis considers several measures to improve the functioning of the Russian judicial system in civil law cases, including those involving foreign companies. A jurisdiction's quality can also impact purely economic factors, such as initial public offerings (IPOs) and securities valuation. When going AIM on the London Stock Exchange, for example, litigation, potential tax risks, and concerns about specific balance sheet items (such as potentially uncollectible receivables) are all taken into account[1].

Major Russian corporations frequently act in a very unpatriotic way when planning different financial campaigns. K.B. Ryzhov uses the major Russian corporations as examples. For instance, in 2006, PJSC "Gazprom" informed Western investors about the unreliability and corruption of Russian courts before placing Eurobonds; in 2010, JSC "Russian Railways" provided information in a memorandum on the placement of Eurobonds, stating that "state bodies have great opportunities for arbitrary decisions and can be corrupted". In turn, the courts are not independent enough from political, social, and commercial forces and can be corrupted as well. Furthermore, the courts lack staffing and funding, and judges remain incompetent in certain areas of business and corporate law. In 2011, when Yandex launched its IPO in the United States, the prospectus outlined the following legal risks for the company under the Russian Federation's constantly changing economic legislation: contradictions between laws and bylaws regulating economic activities; gaps in the legal framework caused by the absence of specific bylaws or their untimely adoption; selective law enforcement practices driven by political and financial considerations; limited judicial and administrative leadership in interpreting legislation; relative lack of experience among the judiciary in interpreting new commercial legislation; lack of absolute independence of judges and public prosecution from political, social, and economic pressure groups; lack of judicial resources; and high level of discretion among judicial and executive authorities; inefficient bankruptcy procedures allowing for abuse [Ryzhov, 2012].

To overcome these critical assessments, in 2012, Russia approved the federal target program "Development of the judicial system of Russia for 2013–2020 years" (approved by the order of the Government of the Russian Federation of September 9, 2012 No. 1735-r), which was later approved by the Decree of the Government of the Russian Federation No. 1406 of December 27, 2012. Since 2013, a policy has been pursued to return large business registrations from offshore to Russian jurisdiction, and some measures have been implemented to improve the quality of Russian jurisdiction. V. Momotov, the Chairman of the Council of Judges of Russia, stated that the primary goal of the reform is to design a judicial system "that will meet the modern demands of civil society, enjoy the trust of this society, and provide the highest level of legal protection"[2].

The stages in the transformation of the judicial system were:

a) Russian Federation Supreme Court and Russian Federation Supreme Arbitration Court merger in 2014;
b) creation of a new general jurisdiction system of appeal and cassation courts. On October 1, 2019, 14 new appeal and cassation courts of general jurisdiction were established and began functioning. The Chairman of the Supreme Court of Russia, V.M. Lebedev, summarized some of the reform's outcomes in 2019: "The institution of continuous cassation has increased the efficiency of cassation justice. This is evident from the work done by the general jurisdiction cassation courts over four months. In civil cases, 14 % of complaints were

1 The AIM Market: Guidelines for Issuers. The text is available on the information portal of the London Stock Exchange for clients from CIS countries.

2 *Momotov V.* Our ultimate goal is to create a model of judicial power that will provide the highest level of legal protection. https://www.garant.ru/news/1182856/. In Russian

resolved, which is three times more than the 5% of complaints that regional-level courts in selective cassation satisfied in the first half of 2019. In administrative proceedings, 17% of complaints were settled, which is four times more than the 4% of complaints that regional-level courts resolved in the first half of 2019. In criminal proceedings under the continuous cassation rules, 38% of complaints were satisfied”[3]. According to experts, the establishment of appellate and cassation courts of general jurisdiction, and the introduction of the principle of continuous cassation in general, had a positive impact on ensuring the right to appeal court decisions, as well as the possibility of correcting judicial errors [Paraschuk, 2021];

c) 2019–2020 saw a revision of procedural laws that had an impact on all three main codes: the Administrative Procedure Code, the Code of Civil Procedure, and the Code of Arbitration Procedure.

The transformations have given their results. For example, according to the most recent report of the European Commission on the Efficiency of Justice of the Council of Europe evaluating the Russian judicial system (the 2020 report), which for the first time assessed the effectiveness of the use of modern technology in the courts, the Russian Federation received high scores in all categories and the Russian judicial system was recognized as the most technologically advanced and least financially costly compared to 47 Western countries.

Although Russia ranked sixth in the Council of Europe in terms of the number of civil and economic cases per capita (4.1 cases per 100 people, compared to the European average of 2.4 cases per 100 people; Germany, in contrast, only 1.5 cases per 100 people), experts noted that civil and commercial cases in Russia take an average of 50 days to process, whereas in other European countries this period is significantly longer. In Germany, the average time for such proceedings is 220 days, in France 420 days, and in Italy 527 days. Despite this, Russia and other European countries are part of the same legal family, and the length of court proceedings is not determined by local legislation. Russia leads the Council of Europe in the number of administrative cases per 100 citizens – 5.3. In Europe, the average indicator is only 0.5 cases per person, with Germany and France having 0.9 and 0.3, respectively[4].

Conclusion

The image of a national jurisdiction is a highly complex component of a national jurisdiction. It is influenced by both logical methods and things that can be characterized through the concept of “perception”. Perception, in turn, refers to how citizens and foreigners, business structures and non-governmental organizations, civil society institutions, and international organizations evaluate a country’s judicial system and legal system in general. This perception combines objective analysis with various emotional attitudes, images, and established stereotypes about legal activities. In this case, mass media, expert agencies, and sociological services play critical roles. The trust factor is the result of all of this complexity. The most important factor influencing the appeal of a national jurisdiction is trust in the judicial system.

3 The Chairman of the Supreme Court of Russia summarized the results of the judicial system in 2019. https://www.vsrf.ru/press_center/news/28750/

4 European judicial systems CEPEJ Evaluation Report. https://rm.coe.int/rapport-evaluation-partie-1-francais/16809fc058

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