

Conflicts of Judicial Competence

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ABSTRACT

Judicial competence as a predefined set of authority power determines the order of judicial protection and organization of the judiciary. The criteria for the subjective composition and nature of the controversial material legal relationship, developed in legal science and accepted by judicial practice, make it possible to get ahead of the court without any problems. However, after almost three decades, the perception of arbitration courts as courts of special competence, as well as the principle of universal competence of general jurisdiction courts, is irrelevant. Nevertheless, truly economic disputes go to a court of general jurisdiction, only because of the presence in the subject composition of a person who does not have the status of an individual entrepreneur, and this moment is often used in bad faith in a conflict of interest.

The purpose of this article is to show such problematic issues and try to find a way to resolve such a conflict and, as a result, protect the rights and legitimate interests of bona fide participants in civil circulation.

Keywords: *judicial power, competence, conflicts of jurisdiction*

1. MAINTAINING

One of the development priorities is the creation of conditions under which it would be beneficial for Russian companies to remain in Russian jurisdiction and use the Russian judicial system to resolve disputes, including property disputes. The setting of these goals is quite predictable in a situation of competition between various legal systems of the world community, which is widely discussed at conferences and pages of legal literature.

The activities of international companies, the conclusion of foreign economic transactions, the unlimited possibilities for the movement of people, goods and services lead to cross-border disputes and, as a result, to the following question: courts of which state have the authority to consider such disputes. Moreover, the parties include in the terms of the agreement propogative clauses, submit disputes to arbitration courts and choose foreign law as applicable, as they are interested in the prompt and effective resolution of subsequent disputes. Moreover, the effectiveness of justice is becoming one of the criteria for assessing the country's economic competitiveness.

Along with the optimization and rationalization of judicial procedures, an indirect investment in the judicial system is to change the rules of judicial competence, which is why judicial competence always remains the subject of active scientific discussions and legislative intentions. Of course, this is due to the endless search for ways to optimize legal proceedings and the logical mechanism for protecting the rights and legitimate interests of the parties, and in this matter the procedural legislation of Russia has been very successful over three decades of its development, eliminating many conflicts and, in fact, reducing the institution to an theoretical alternative intra-system competence.

However, in conditions of changing reality, do the developed criteria and peremptory rules of judicial competence always work as the optimal mechanism for protecting rights? Can the issue of judicial competence be the subject of manipulative influence and the aspect of abuse of law?

In the methodological aspect, the object of this study is public relations related to the determination of judicial competence and jurisdiction on economic disputes to arbitration courts, criteria developed in the civil process science.

2. JUDICIAL COMPETENCE CONFLICTS

Historically, arbitration courts have been a reaction to the new economic system, the emergence of private property, business and business entities and, as a consequence, the need to resolve disputes between new entities for the post-Soviet system of law. By virtue of this, the arbitration courts were initially perceived as specialized courts for the consideration of economic disputes, but the gradual development of arbitration procedural law, the expansion of arbitration competence, the increase in the number of arbitration cases led to an increase in the role of arbitration courts and the need to fix the boundaries of their competence within the judicial system.

The subjective composition and nature of the controversial material relationship are now the classic criteria for delimiting competence between courts of general jurisdiction and arbitration courts, the existence of which could previously be denied in the science of the civil process. Moreover, courts of general jurisdiction are still

courts of universal jurisdiction in the conditions when arbitration courts resolve economic disputes and consider other cases involving legal entities and individual entrepreneurs. And, despite the fact that the enforcement practice puts the criterion of the subject composition at the forefront, in our opinion, it is the nature of the dispute and the direct relationship with economic and entrepreneurial activity that should determine the jurisdiction of arbitration courts.

The Joint Plenum of the Supreme Court of the Russian Federation and the Supreme Arbitration Court of the Russian Federation of August 18, 1992 No. 12/12 "On Certain Issues of Jurisdiction of Courts and Arbitration Courts" imperatively stipulated that civil cases should be considered in courts of general jurisdiction if at least one of the parties is a citizen who does not have the status of an entrepreneur.

Consequently, a citizen can be a person participating in the arbitration process as a party only if, at the time of appeal to the arbitration court, he has state registration as an individual entrepreneur or if his participation in the arbitration process is provided for by the rules of special competence. But it is the distribution of cases according to the rules of special competence: insolvency (bankruptcy) cases of non-individual entrepreneurs and corporate disputes - in which only individuals can be involved, that led to the perception of arbitration courts as courts of general competence in economic disputes.

That is why investment disputes or about economic disputes, whether it is a guarantee of individuals for the obligations of legal entities, or contesting an imaginary transaction in the framework of a transit turnover of funds, should logically be considered by arbitration courts. Moreover, what about the aspect of abuse of law and the artificial drag of a dispute to the competence of courts of general jurisdiction?

Imagine, for example, that a director, acting in a conflict of interest, commits a number of unlawful acts and brings the property and main production assets of the legal entity under control to a relative. Of course, such actions lead to the growth of a corporate dispute, however, the general rules of intra-system jurisdiction automatically lead the dispute from the arbitration court, which is immersed in the details of the corporate dispute, case-law facts, procedural behavior and dishonesty of the parties, to some district court on the periphery of the region.

Moreover, if all the lost property: buildings, equipment, land, technical and communication networks are necessary for carrying out production activities, and the systematic extraction by such a nominal owner of a "rent" payment from an affiliated production company indicates actual business activities, the competence of the arbitration courts in such a dispute is obvious.

Moreover, registration of illegal actions in the outline of investment activity, which involves investment in the fixed capital of the enterprise, construction or reconstruction of equipment, design and survey work in order to make a profit and/or achieve another useful effect, is also not linked to the competence of courts of general jurisdiction.

Investment disputes, by definition, gravitate towards the economic sphere and production interests, so their consideration in the courts of general jurisdiction is at least illogical. Such legal conflicts are periodically resolved at the legislative level, for example, the 2011 amendments to the Federal Law of July 26, 2006, N 135-FZ "On Protection of Competition" removed from the jurisdiction of the courts of general jurisdiction cases challenging the decisions of the antimonopoly authorities, and the creation in 2013 of a specialized Court on intellectual property rights in the system of arbitration courts predetermined its exclusive competence in disputes about authorship of inventions, utility models, industrial designs, production secrets (know-how), disputes about the means of environment individualization.

Such legislative development fully corresponds to the trend of judicial specialization, which, along with the globalization and introduction of mediation technologies, is one of the elements of the optimization of legal proceedings. Herewith we have to agree that court specialization leads to greater procedural efficiency, speedy processing, higher-quality decisions, especially in complex areas of the law, and legal certainty on similar cases practice.

The courts of general jurisdiction do not consider economic disputes, and the lack of individual entrepreneur status does not offset the economic nature of the dispute, and in this regard, we cannot agree with the position of higher courts that arbitration courts cannot consider disputes related to actual business activities in if the person has not passed the registration procedure prescribed by law.

It seems that the attribution of these cases to the competence of the arbitration courts is more than logical, given that Article 4 of the Civil Code of the Russian Federation prohibits a citizen carrying out entrepreneurial activity without forming a legal entity in violation of the requirements of the law from referring to this circumstance with respect to the transactions concluded by him in this case, the court has the right to apply norms on obligations related to entrepreneurial activity to such transactions.

Of course, this norm applies to the substance of a substantive legal dispute, but civil law also does not allow unfair exercise of civil rights and abuse of law, and the negative consequences of such behavior are the possibility of a court refusing to protect such rights (Article 10 of the Civil Code of the Russian Federation).

Moreover, the refusal to protect the right of the person who has abused the right means the protection of the violated rights of the person who has been abused, and the immediate purpose of this sanction is not to punish the person who abused the right but to protect the rights of the person who has suffered from this abuse.

In judicial practice, such a refusal often concerns the substantive legal relationship or aspects of its qualification and fulfillment of obligations. Is it possible to applicate such a sanction in terms of procedural rights and limit the right guaranteed by Article 6 of the Constitution of the Russian Federation to consider a dispute by the court to whose competence it is assigned by law?

The relationship of judicial protection, like any other general legal relationship, serves as the basis for the emergence and functioning of specific civil procedural legal relations. Moreover, judicial protection is provided not only when resolving a specific civil case, but also in creating the conditions and willingness to provide such protection. Legal certainty in the matter of judicial competence as a set of powers pre-determined by the state and the rules for its delimitation within the judicial system is one of the conditions for the realization of the right to judicial protection. The Constitutional Court of the Russian Federation has repeatedly emphasized the fundamental importance of justice for the proper choice of court and judge, and the inadmissibility of arbitrary changes in a legal jurisdiction.

It is interesting to draw attention to the fact that, despite the peremptory issue of judicial jurisdiction, the legislator laid the ground for maneuver if necessary. So, the rules of Article 33 of the Civil Procedure Code of the Russian Federation provides for the possibility of transferring a case to another court if, after the dismissal of one or more judges or for other reasons, replacement of judges or consideration of the case in this court becomes impossible. Applying this rule, the courts proceed from the fact that the transfer of a case under jurisdiction to a court of territorial jurisdiction is allowed not in connection with the subjective mood of specific judges, but with objective circumstances related to the identity of the parties to the dispute, their authority, official position, authority, as well as other instruments of influence that they can maintain in the territory falling under the jurisdiction of the court, and for this, there is no need for a consistent application and consideration of the recusal of the entire judicial corps because the relevant grounds is a sufficient reason to change the territorial jurisdiction.

Of course, this rule serves the purpose of ensuring the independence and impartiality of judges and the formation of a respectful attitude to the judiciary as a whole, but in terms of legal certainty and equality of all before the law and the court, the provisions on the subjective condition of judicial competence seem paradoxical.

Yu.K. Osipov emphasized that the different nature of public relations predetermines a differentiated approach to legal regulation, therefore, the difference in the forms of resolution of legal cases is ultimately due to the different nature of public relations regulated by substantive law.

It was noted in the scientific literature that the main criterion of jurisdiction over legal affairs is precisely the nature of relationships from which they arise, therefore, the principle of universal jurisdiction of cases to courts of general jurisdiction is, in our opinion, losing its relevance.

3. CONCLUSION

In fact, the legislative consolidation of the right of arbitration courts to consider economic disputes involving individuals and disputes in connection with the actual business activities is a logical stage in the development of procedural law. Of course, the problem is not the

knowledge and experience of the courts of general jurisdiction, but rather the disputed concentration and moral preparedness of the court for the dispute in question. A court considering a corporate dispute and insolvency (bankruptcy) case is much more immersed in the essence of disputed material legal relations, extra-procedural behavior of the parties and their representatives, is aware of all the circumstances of abuse of law and unfair behavior. In the case if one of such disputes falls outside the jurisdiction of such a court, it all starts from scratch, and time and sometimes a substantial evidence base are needed to re-explain all the facts and circumstances of the case.

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