

CIVIL PROCEEDINGS WITH FOREIGN PARTICIPANTS IN CHINA

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ABSTRACT

This article considers the civil procedural legislation of the China, legal status of foreigners, the jurisdiction of Chinese courts, and examines the recognition and enforcement of foreign judgments in civil and commercial matters on the territory of China.

In order to achieve the above research objectives, we have identified the following research tasks: to summarize the development history of China's legislation related to civil proceedings with foreign participants, especially the changes in the Civil Procedure Law in several amendments; to determine the legal status of foreigners in civil proceedings and the scope of jurisdiction of Chinese courts over civil proceedings with foreign participants; to analyse treaties about judicial assistance signed between China and other countries or international organizations, especially those relating to recognition and enforcement of foreign judgments in civil and commercial matters on the territory of China.

Keywords: *Civil Procedure Law, foreign participation, jurisdiction of courts, recognition and enforcement of foreign judgments, People's Republic of China*

INTRODUCTION

Since the 1990s, "globalization" has ushered in a new wave of rapid development, which has greatly promoted exchanges and cooperation among countries all over the world in the fields of politics, economy, education, society, culture and education. In order to cope with the new world development trend, all the legal systems of countries have also begun comprehensive reform.

With the increasingly international exchanges, a large number of civil and commercial disputes have been brought. In order to reasonably resolve disputes through litigation and safeguard the interests of the parties, various countries have made special provisions about "civil proceedings with foreign participants" in their civil procedure law and relevant regulations.

However, between different legal systems, between different countries of the same legal system, and even between different regions of the same country, the provisions about civil proceedings with foreign participants are different.

Therefore, civil proceedings with foreign participants have increasingly become the focus of attention of all countries, and it is necessary to study the relevant laws and regulations in different countries, which can promote the protection of civil rights, the guarantee of fairness and justice, the reform of judicial system, and the cooperation of judicial system among countries [3].

METHODS AND METHODOLOGY

The methodological basis of this research is general theoretical, abstraction, concretization, logical and functional analyses. The scientific novelty of this research consists of a comprehensive study of the legal instruments of the Institute of civil proceedings with foreign participants in the legal field of China, and a comparison with relevant legislation in other countries.

The main regulatory framework of the current research is The Civil Procedure Law of the People's Republic of China (hereinafter referred to as the CPL of the PRC or CPL) [1] of April 9, 1991, and then 3 amendments were made (as of July 30, 2020, the last amendment is dated June 27, 2017). Since that, Chinese procedural law has been developing for almost three decades.

In most cases, legal proceedings in cases involving foreign participants apply the basic rules of the CPL of the PRC, and in Section IV of the CPL of the PRC "Special Provisions Concerning Proceedings in Civil Cases with the Participation of Foreign participants", a number of special issues are regulated: general principles, jurisdiction, service of documents, terms and legal assistance.

RESULTS

Since the promulgation of the "reform and opening up" policy, China's economy has developed continuously. At present, China is the second largest country in the world in terms of GDP. In order to deal with the increasing civil and commercial disputes, which with foreign participants, China has amended the Civil Procedure Law for many times, by drawing lessons from the relevant legislation of western countries and summing up its own judicial practice experience, a unique model has been formed.

1. The legal status of foreigners in civil proceedings with foreign participants.

According to Art. 5 CPL of the PRC, foreign citizens, stateless persons, foreign enterprises and organizations, acting in the people's courts as plaintiffs and defendants, have procedural rights and bear procedural duties on an equal basis with citizens, legal entities and other organizations of the PRC. This means that these individuals are endowed with the same legal status as Chinese citizens and organizations.

But the extension of the national regime to foreign entities is conditional, paragraph 2 of Art. 5 of the CPL of the PRC says, that if the courts of foreign states impose restrictions on the civil procedural rights of citizens, legal entities, and other organizations of the PRC, the people's courts apply reciprocal restrictions on the civil procedural rights of citizens, enterprises and organizations of these states.

The legal system is an important part of the national judicial system, which can only be applied in each own country and not abroad. Most sovereign states do not allow the foreign judiciary to interfere in their country's legal affairs, this is a recognized principle at the international level. Thus, lawyers can generally only engage in legal representation as a lawyer in the courts of their own country, and not in foreign courts [2].

Therefore, when foreigners appear in court proceedings in China as plaintiffs and defendants, they are entitled to conduct the case through a procedural representative. According to Art. 528 and Art. 529 Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (hereinafter referred to as the Interpretation) [4], foreigners can authorize the representation of fellow citizens or a lawyer of their country, but he is not allowed to participate in the trial as a lawyer. If they need to authorize a lawyer, they can only authorize a lawyer of the PRC (Article 263 of the CPL of the PRC). In fact, it is difficult for foreign lawyers to participate in the trial even as fellow citizens, according to Art. 58 of the CPL of the PRC, the parties, legal representatives may authorize one or two representatives to conduct the case: lawyer, close relative, citizen recommended by the community of or the entity employing a party or recommended by a relevant social group, as well as other citizens admitted by the people's court may be representatives in court. And so, the sphere of foreigners who can be representatives in court was limited to a lot. It should be noted that foreigners can be represented by consuls of the respective states with powers, but in courts, consuls will be without diplomatic immunity and privileges.

With regard to diplomatic immunity and privileges, Art. 261 of the CPL of the PRC provides that civil actions instituted against foreign nationals, foreign organizations or international organizations which enjoy diplomatic privileges or immunities shall be governed by the relevant laws of the PRC and the international treaties concluded or acceded to by the PRC. In addition, the Supreme People's Court of the PRC further identified some entities enjoying diplomatic powers and settled that in a civil case filed with the People's Court [5], in which the defendant or a third party is any of the subjects enjoying privileges or immunity in the PRC, the People's Court, before deciding on its adoption, must submit it to the highest people's court; the Supreme People's Court, agreeing to be adopted, will submit its findings to the Supreme People's Court. Until the Supreme People's Court gives an answer, the case is considered rejected.

The main content of these provisions is that prior to the adoption of these cases, the "procedure of internal court reporting" must be activated. It should be noted that if the subject is the plaintiff in the case and the people's court has jurisdiction, then the court can accept the case without the "internal court reporting procedure". Of course, the relevant provisions show respect for the diplomatic representatives of foreign states accredited in the PRC, and caution when resolving disputes with the participation of special foreign participants.

2. The scope of jurisdiction of Chinese courts over civil proceedings with foreign participants.

The jurisdiction of cases with the participation of foreign participants in courts is understood as the delineation of competence between the courts of different states in relation to cases with the participation of a foreign element, and each sovereign state determines its competence in cases with foreign elements [6]. Determining the jurisdiction of a civil dispute has a high political and legal significance; in practice, in specific cases, the definition of jurisdiction has a huge impact on the results of the trial, which may differ depending on which legal system the court belongs to. It can even influence the results - court decisions will be recognized and enforced by the relevant foreign courts or not.

As countries of continental law, the current legislation of China adopted the most common principle of determining jurisdiction as the main one: based on the place of residence of the defendant. In addition, when determining jurisdiction, there are still other principles, for example: on the basis of the citizenship of the parties or a party to the case, on the basis of the personal presence of the defendant or his property in the territory of the state when filing a claim and on the basis of the location of the disputed immovable thing.

The jurisdiction of cases to the courts of general jurisdiction of the PRC is established by the norms combined in Ch. 2 CPL of the PRC. And in section IV there is a separate chapter 24 "Jurisdiction", which contains additional specific provisions based on general rules. In general, except for some special cases, the provisions for determining the jurisdiction of cases involving foreign participants and cases involving domestic persons are almost the same in the PRC.

According to Art. 24 of the CPL of the People's Republic of China, claims brought in disputes arising from contracts are subject to the jurisdiction of the people's court at the place of residence (location) of the defendant or at the place of execution of the contract. But in disputes arising from contracts, or in other property disputes in which the defendants do not have a place of residence (location) on the territory of the PRC, according to Art. 265 CPL, and if the contract was concluded or is subject to execution on the territory of the PRC, or the property that is the subject of the claim is located on the territory of the PRC, or the defendant has a representative office in the PRC, these disputes may be subject to the jurisdiction of the People's Court in the PRC at the place the signing

of the contract, the place of execution of the contract, the location of the property that is the subject of the claim, the place of possible seizure of property, the place of committing actions that violate the rights, or the location of the representative office.

The purpose of this provision is to expand the jurisdiction of the Chinese courts in the resolution of disputes related to international commercial contracts and property rights in the case when the place of residence (location) of the defendants is not in the PRC. Thus, only on the territory of the PRC can one find the indicated legal ties, people's courts where legal relations will be settled by their jurisdiction.

Just like the civil procedure law in most civil law countries, the CPL of the PRC also has corresponding provisions on contractual jurisdiction, the parties can choose, by agreement between themselves, the territorial jurisdiction for a given case before it is accepted by the court for its proceedings, provided that the conditions regarding generic and exclusive jurisdiction are not violated. According to Art. 34 of the CPL of the PRC, the parties to disputes arising from contracts or other property disputes may, in a contract concluded in writing, by agreement, choose the jurisdiction of the People's Court at the place of residence (location) of the defendant, place of execution of the contract, place of signing the contract, the place of residence (location) of the plaintiff, the location of the thing. This means, for the application of contractual jurisdiction, there are restrictions on the nature of cases that arise from contracts, or on other property disputes, and the people's courts, which are chosen by the parties, must have legal ties with the disputes.

However, the Special Maritime Procedure Law of the PRC overcame these restrictions, according to Art. 8 of this Law, on maritime disputes, in the case where both parties are foreign citizens, stateless persons, foreign enterprises or organizations, they can, in a written agreement, by agreement, choose the Chinese courts to resolve disputes, regardless of the place of residence (location) of the defendant, place of performance of the contract, place of signing of the contract, place of residence (location) of the plaintiff, location of the thing in the territory of the PRC or not [8].

Of fundamental importance is the exact designation of the boundaries of exclusive jurisdiction for certain categories of cases, which are exhaustively listed in Art. 33 CPL of the PRC: claims brought in disputes related to real estate are subject to the jurisdiction of the people's court at the location of the real estate; claims for disputes arising in connection with the operation of ports are subject to the jurisdiction of the people's court at the location of the port; claims in disputes related to inheritance are subject to the jurisdiction of the People's Court at the last place of residence of the testator or at the location of the main inheritance. And Art. 266 of the CPL of the PRC states that claims brought in disputes arising from agreements on joint ventures with Chinese and foreign capital, agreements

on cooperative enterprises with Chinese and foreign participation, agreements on joint exploration and development of natural resources subject to execution in the PRC, also are under the jurisdiction of the People's Courts of the PRC.

It should be noted that in order to apply the relevant legal provisions on exclusive jurisdiction, the three types of claims indicated in Art. 266 are required because the place of execution of contracts is in the PRC and at least one party to the dispute is Chinese [9].

3. Recognition and enforcement of decisions of foreign courts in China.

Issues related to legal assistance are also very important, including ordering the service of documents, obtaining evidence, recognition and enforcement of decisions of foreign courts, etc., which are governed by international conventions, bilateral international treaties and national sources of law.

The main national source is Ch. 27 CPL of the PRC. According to Art. 261 of the CPL of the PRC, recognition and enforcement of a decision or ruling of a foreign court that has entered into legal force, if necessary, its recognition and execution by a PRC court can be requested by filing an application directly by the party itself to the middle level people's court according to the rules of jurisdiction, or by applying a foreign court states to the people's court in accordance with international treaties concluded by this state with the PRC or in which they participate, or on the basis of the principle of reciprocity.

Until Aug. 25, 2020, the People's Republic of China is a party to 38 bilateral interstate treaties on mutual legal assistance in civil and commercial matters. 34 of these states (France, Poland, Mongolia, Romania, Russia, Belarus, Spain, Ukraine, Cuba, Italy, Egypt, Bulgaria, Turkey, Kazakhstan, Cyprus, Greece, Hungary, Kyrgyzstan, Uzbekistan, Tajikistan, Morocco, Vietnam, Tunisia, Laos, Lithuania, North Korea, United Arab Emirates, Kuwait, Brazil, Argentina, Peru, Algeria, Bosnia and Herzegovina, Ethiopia) have concluded agreements with China on mutual recognition and enforcement of judgments.

For the recognition and enforcement of decisions of foreign state courts in the PRC, Art. 282 of the CPL of the PRC and Art. 543-544 Interpretation of the Supreme People's Court on the Application of the CPL Law of the PRC, these provisions provide for the form, content and language of applications, terms for filing and consideration by the court, grounds for a positive decision, etc. When considering a case, in the presence of bilateral interstate treaties with these states, the People's Court of the PRC checks whether the decisions of foreign courts have entered into force and whether they violate the fundamental principles of law or sovereignty, security and public order of the PRC state. In addition, the People's Court of the PRC is still considering whether foreign courts have jurisdiction to consider these disputes, of course, the Chinese courts are not entitled to determine this using the CPL of other states, but simply consider the relevant cases for the

presence or absence of exclusive jurisdiction of the PRC courts. If so, the People's Courts of the PRC will refuse to recognize and enforce foreign judgments.

Although, as a rule, the people's courts of the PRC do not recognize and enforce decisions of foreign courts in the event that China has not concluded agreements on mutual legal assistance with the relevant states, but according to Art. 544 Interpretation of the Supreme People's Court on the Application of the CPL Law of the PRC, decisions of foreign courts on divorce are not limited. Thus, decisions to divorce may not be limited to legal aid treaties and the principles of reciprocity. It is worth noting that the People's Courts of the PRC do not fully recognize the dissolution of marital relations in the decisions of foreign courts, and do not recognize in terms of the division of matrimonial property, raising children, etc.

DISCUSSION

Through the historical analysis, comparative analysis, and summarizes etc., it can be said that the current Chinese legislation regarding the regulation of proceedings in cases with foreign participants corresponds to the real needs in practice. Foreigners have relatively equal legal rights, and the determination of the jurisdiction of the court has basically adopted international standards. In the area of judicial assistance, China has achieved in-depth cooperation with many countries.

However, in recent years, the number of civil disputes related to digital rights has gradually increased. Because of the characteristics of the Internet, the proportion of foreign parties in these cases is significantly higher. The article "Digital rights as a new object of civil rights: Issues of substantive and procedural law" (Rusakova, E.P., Frolova, E.E., Gorbacheva, A.I.) demonstrates that as a new civil right, the cases involved in digital rights become more complex, so the use of digital methods to protect civil rights has become the development direction of the judicial system of various countries [7].

CONCLUSION

Today, in the field of civil procedural law, the legal systems all over the world are faced with such reforming trends as access to court, fair trial, openness of justice, use of electronic technologies, simplification of court procedures, improvement of the judicial system, development of conciliation procedures. In the reform of the civil judicial system, China retained its traditional philosophical ideas and borrowed the experience of Western countries.

The PRC judicial system has achieved relative success in civil proceedings, after the amendments, the legislative regulation of the legal status of foreign participants in the CPL of the PRC has become more perfect, undoubtedly, it will continue to develop by striving for goals that enshrined in Art. 2 of the CPL of the

PRC - The purposes of the procedural law are to protect the parties' exercise of procedural rights; ensure that a people's court finds facts, distinguishes right from wrong, applies law correctly and try civil cases in a timely manner; confirm civil rights and obligations; punish violations of civil law; protect the lawful rights and interests of the parties; educate citizens on consciously abiding by law; maintain the social and economic order; and guarantee smooth socialist development.

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