

## СЕКЦІЯ 2. ЮРИДИЧНИЙ ДИСКУРС

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### **JURISDICTION OF CIVIL DISPUTES WITH A FOREIGN ELEMENT**

A significant number of works of both foreign and domestic authors is devoted to the issue of jurisdiction of disputes with a foreign element. Actually, this issue is one of the most actual topics for the international civil process researchers. At the same time, an unfairly little attention is given to the issue of establishing such jurisdiction in bilateral legal aid treaties of Ukraine.

Regarding the terminology to be used in this research, it should be noted that the term "jurisdiction" will be applied when considering and resolving the issue of attributing a dispute arising between subjects of the law of different countries to the jurisdiction of judicial authorities of a particular country.

#### *General rules of establishing jurisdiction*

The general rules on establishing the jurisdiction in disputes with foreign elements are the following: firstly, the jurisdiction depends on the place where the defendant is located – meaning the place of residence of the defendant (natural person) or the place where the governing body of the defendant (legal entity) is located. This general rule of establishing jurisdiction is applicable in all cases unless otherwise provided in other articles of the relevant treaty.

The second rule concerns the establishment of jurisdiction on the basis of a written agreement between the parties to the dispute. Regarding this rule, some treaties establish a reservation according to which, the court is obliged to terminate the proceedings, in case the respondent challenges the jurisdiction chosen by the parties in their agreement before the commencement of proceedings. This reservation means that the rule of establishing jurisdiction by the agreement of the parties, stipulates (a) admissibility of contractual jurisdiction; (b) its exclusive character with respect to the other rules for establishing jurisdiction, and (c) the prevailing right of the respondent to refuse to execute this agreement over its binding force.

The third rule called *lis alibi pendens* provides the following: in case the court of one of the Contractual States is hearing a case in dispute between the same parties, on the same subject matter, and on the same grounds, the court of the other Contractual State should terminate proceedings in this case, as long as a lawsuit is filed therein. The principle *lis alibi pendens* is a generally accepted rule applied by the courts of different countries when deciding whether they have jurisdiction over a particular dispute.

#### *Special rules for establishing jurisdiction*

*The rule of citizenship.* This rule is applied to many types of cases, such as cases of recognizing persons as incapable, declaring them missing or dead. These are cases concerning the personal status of individuals.

*The rule of the location of things in dispute.* This rule is applied when determining the jurisdiction of disputes on the right to ownership of immovable property, in cases of immovable property inheritance and those arising from contractual relations, if the dispute concerns immovable property. Apparently, this rule is applied to the disputes of different types: property, contractual, hereditary, but the object of controversial legal relations is always immovable property.

*The rule of the place of the event.* This rule is applied mainly to cases on the compensation of damages, which arise from the non-contractual relations.

#### *Alternative Jurisdiction*

This rule is also applied in various types of controversial legal relationships, which are the subject of regulation by legal aid treaties. According to this rule, the plaintiff is entitled to choose: to which court he/she will apply for the protection of his/her violated rights and interests.

While establishing the alternatives, the plaintiff is given two options for determining jurisdiction. The main rule is the defendant's place of location and one of the special rules is, for example, the place where the thing in dispute is located or where the event occurred. The alternative jurisdiction in the legal aid treaties of Ukraine is very limited.

All in all, the basic understanding of the issue in question shall be the following: the original principle of international jurisdiction is the place of the defendant's location; the general rules of jurisdiction are supplemented by the rules on international special jurisdiction and, finally, the freedom to transfer disputes to the courts of other States is limited by the rules of international exclusive jurisdiction. It should also be mentioned that international treaties in the field and national legislation of Ukraine are not always coordinated, they

need to be revised and unified in order to ensure the avoidance of conflict of jurisdiction and the proper treatment of the injured rights of any party.

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## **LEGAL REGULATION OF GENERAL PARTNERSHIPS IN UKRAINE**

The implementation of market relations in Ukraine has caused the necessity of creating the proper environment for entrepreneurship activities. The general partnership occupies a special place in the system of legal entities. This form of partnership is an association of individuals. It means that personal involvement is of primary importance in its economic activity.

General partnerships are not widespread in Ukraine. It can be explained by the fact that running business in the form of general partnerships is not profitable. According to the State Statistics Service of Ukraine the number of general partnerships in our country has decreased from 2074 to 1378 economic enterprises since January 2011. At the same time, the number of joint stock companies in hundred times exceeded the number of general partnerships.

It should be noted that the dissemination of general partnerships in many developed countries is significant. In European law general partnerships have always been the most productive form of small businesses.