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Shepovalova Olesia Aleksandrovna

Legal Regulation of Indirect Jurisdiction in Cross-border Private Law Disputes

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Academic supervisor:
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Bakhin Sergey Vladimirovich

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Contents

List of abbreviations and symbols

Arbitration Procedural Code	Arbitration Procedure Code of the Russian Federation
Supreme Arbitration Court	Supreme Arbitration Court of the Russian Federation
Vedomosti of the Supreme Soviet of the USSR	Vedomosti of the Supreme Soviet of the Union of Soviet Socialist Republics
Bulletin of the Supreme Arbitration Court	Bulletin of the Supreme Arbitration Court of the Russian Federation
Supreme Court of the Russian Federation	Supreme Court of the Russian Federation
Supreme Soviet of the USSR	Supreme Soviet of the Union of Soviet Socialist Republics
Civil Code	Civil Code of the Russian Federation
HCCH	The Hague Conference on Private International Law
Code of Civil Procedure	Code of Civil Procedure of the Russian Federation
EEU	Eurasian Economic Union
EU	European Union
EEC	European Economic Community
Private international law	Private international law

OAS	Organisation of American States
UN	United Nations
Russian Federation	Russian Federation
Collection of Legislation of the Russian Federation	Collection of Legislation of the Russian Federation
USSR	Union of Soviet Socialist Republics
CIS	Commonwealth of Independent States
Federal Law	Federal Law
Federal Constitutional Law	Federal Constitutional Law

Introduction

Relevance of the research topic. The most important task of law as such has been and remains the provision of legal framework for the activities of subjects of law. This corresponds to the possibility of asserting or restoring their rights by appealing to the court for the resolution of a disagreement. An indispensable condition of legal protection is the real execution of the court decision, i.e. its implementation.

President of the Russian Federation V.V. Putin notes that today, in the context of the formation of a multipolar world order and new global challenges in the political, economic, cultural and legal spheres, constructive professional dialogue between representatives of the judicial community of different states is particularly relevant.[1] One of the most complex and at the same time demanded areas of its construction is the sphere of legal regulation of the recognition of foreign judgments[2].

Within a State, the enforcement of the decisions of its own judiciary is a matter for the sovereign power of the State concerned to decide alone. But in cases where a judgement rendered in another State is to be enforced in the territory of one State, considerable difficulties arise.

The question of the enforceability of a foreign judgment dates back to the early days of jurisprudence. For more than a century, States have sought to find a balance by ensuring, on the one hand, that the decisions of their national judiciaries are enforceable outside the territory of the State, and, on the other hand, by setting limits on the admissibility of foreign judicial acts that are enforceable on their own territory. As one of the first Russian researchers of international law, N.P. Ivanov, noted back in 1865, "the foundation of legal international relations lies on two principles: the beginning of state

[1] Putin V.V. To the participants of the XII International Legal Forum of the Asia-Pacific region [Electronic resource] // Administration of the President of Russia: [website]. 2023. 5 October. URL: http://www.kremlin.ru/events/president/letters/72437 (date of access 30.11.2023).

[2] In this paper we use the notion of recognition of foreign judgments in a broad sense, characterising the legality of the validity of a foreign judgment in the domestic legal order. In this sense, it is not opposed to the concept of enforcement of a foreign judgement. On the 'broad' and 'narrow' meanings of recognition see: Kostin A.A. Legal grounds for the recognition and enforcement of foreign judicial decisions in the Russian Federation: dissertation.... Cand. jurisprudence:12.00.03 / A.A. Kostin. M., 2018. P. 15-16.

independence and the beginning of mutual communication between nations... in the fair reconciliation of these principles lies the entire content of international law"[3].

For a long time, the prevailing opinion was that states would not be able to solve this problem at all. The famous Russian expert Prof. T.M. Yablochkov called this question 'hopeless in resolving it'[4].

Meanwhile, throughout the nineteenth, twentieth and twenty-first centuries, many efforts have been made by States to develop an effective mechanism for the recognition of a judgment. The search for a solution was conducted at the level of national legislation, bilateral international treaties, agreements within unions of states and even attempts to develop universal agreements. At present, States have been able to partially resolve the issue of cross-border movement of judgements. However, to date, we cannot say that these judgements correspond to the level of global economic relations.

However, it is at the present time, with the successful cross-border implementation of civil and commercial ties, that this issue can be considered a priority. A participant in economic turnover, having received a court decision in its favor and not being able to enforce it, is actually deprived of its rights. The more international cooperation and free movement of persons, goods, services, capital, other factors of production, etc. develop, the more obvious is the urgent need for quick and effective resolution of arising disputes and immediate enforcement of relevant court decisions.

A key issue with respect to the recognition of foreign judgments in cross-border private law disputes is the question of the acceptable limits of the foreign court's jurisdiction, i.e. indirect jurisdiction in cross-border private law disputes (hereinafter also referred to as indirect jurisdiction). The main obstacle to the creation of an effective mechanism for cross-border enforcement of judicial acts is precisely the difficulty in resolving this issue. Delimitation of jurisdiction is hindered by the conflicting political and economic interests of States, the varying degrees of confidence in the law of foreign

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[3] Ivanov N.P. Foundations of private international jurisdiction / N.P. Ivanov // Academic Notes of the Imperial Kazan University. Vol. I. Kazan, 1865. P. 152, 154. Later, also the Soviet scholar R.L. Bobrov emphasised that the basis for the existence of international law 'is the combination of the state division of society and the progressive need of separately existing units (states) in mutual relations'. Bobrov R.L. Basic problems of the theory of international law / R.L. Bobrov. M.: International Relations Publishing House, 1968. P. 8.

[4] Yablochkov T.M. Course of international civil procedural law / T.M. Yablochkov. Yaroslavl: printing house of the Provincial Board, 1909. VIII. p. 19.

States and, finally, the fear of letting fundamental legal issues slip away from their control.

The question of the acceptable limits of competence of a foreign court can be resolved at three levels: national, integration and international.

The national legislation of states uses various ways of regulating indirect jurisdiction. In the legislation of the Russian Federation the legal regulation of indirect jurisdiction is not sufficiently detailed.

The existing bilateral international treaties on the recognition of foreign judgments were concluded by the Russian Federation (USSR) between 1957 and 2001 (with 31 states). After 2001, the Russian Federation has not concluded any bilateral international treaties on this issue. As for multilateral treaties to which the Russian Federation is a party, they provide for the recognition of foreign judgments between the Russian Federation and only 10 states (in the CIS).

The task of developing a universal regulator in this area was set by the Hague Conference on Private International Law (hereinafter - HCCH). The result of the long work[5] was the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 2 July 2019 (hereinafter - HCCH 2019 Judgments Convention)[6]. This agreement does not delimit jurisdiction between states, but sets acceptable limits for the purposes of recognizing foreign judgments. The approach of the HCCH 2019 Judgments Convention to regulating indirect jurisdiction has different legal consequences for acceding states, depending on the national legal regulation of judicial jurisdiction over cross-border private law disputes.

The relevance of the present dissertation research is conditioned by a complex of interrelated circumstances.

Firstly, in practical terms, the most important task at present is to ensure the free movement of court decisions across state borders and, accordingly, to protect the right of

[5] Work on its creation has been underway since 1992: The originating proposal [Electronic resource] // The World Organisation for Cross-border Co-operation in Civil and Commercial Matters: [website]. URL: https://www.hcch.net/en/publications-and-studies/details4/?pid=6837&dtid=61 (date of access 17.05.2024).

[6] Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters of 2 July 2019 [Electronic resource] // HCCH: [website]. URL: https://assets.hcch.net/docs/806e290e-bbd8-413d-b15e-8e3e1bf1496d.pdf (date of access 25.09.2023).

business entities to recognise court decisions that establish (confirm) their rights or legal status. In this regard, it is fundamentally important to correlate, on the one hand, such protection, and, on the other hand, to defend the interests of the domestic legal order in today's competitive political and economic struggle in the world arena. The simultaneous achievement of these two objectives is possible only on the basis of a thorough normative elaboration of the issues of regulation of indirect jurisdiction in national, integration and international law.

Secondly, in today's world, cross-border communications have significantly intensified and diversified, the channels of their implementation are accelerating and becoming more complex, especially with the introduction of electronic circulation. The number of cross-border disputes and, accordingly, the number of cases on the recognition of foreign judgments is also growing. For example, in Russia, according to judicial statistics, the number of cases on recognition of foreign judgments in courts of general jurisdiction in 2022 was 4104 cases[7], and 6,270 cases in 2023[8]. The nature of the disputes that arise is also becoming more complex. In these circumstances, the effective enforcement and recognition of judgements rendered in other jurisdictions and not contradicting the public order of the Russian Federation has become a matter of paramount importance.

Thirdly, the scientific development of indirect jurisdiction over cross-border private law disputes should ensure the development of recommendations for the creation and improvement of legal regulation at the national, integration and international levels. This is especially significant for the Russian Federation, given the small number of states with which the Russian Federation has international treaties, in which the issues of recognition of foreign judgments are resolved. Recognition of foreign judgments was identified as a priority area for international cooperation by the former President of the

[7] Report on the work of courts of general jurisdiction on consideration of civil, administrative cases at first instance [Electronic resource]: Summary statistics on the activities of federal courts of general jurisdiction and justices of the peace for 2022 // Judicial Department at the Supreme Court of the Russian Federation: [website]. URL: http://cdep.ru/index.php?id=79&item=7645 (date of access 25.04.2024).

[8] Report on the work of courts of general jurisdiction on consideration of civil, administrative cases at first instance [Electronic resource]: Summary statistics on the activities of federal courts of general jurisdiction and justices of the peace for 2023 // Judicial Department at the Supreme Court of the Russian Federation: [website]. URL: http://cdep.ru/index.php?id=79&item=8688 (date of access 25.04.2024).

Supreme Court of the Russian Federation at the 2021 China Forum in a report on updating and improving international trade and investment rules for the "One Belt, One Road" initiative[9].

Fourthly, the particular relevance of a detailed analysis of the issues of indirect jurisdiction is predetermined by the fact that within the framework of the HCCH a unique international instrument - HCCH 2019 Judgments Convention. It is necessary to analyze whether it is necessary for the Russian Federation to participate in this international treaty and carefully check the legal consequences of such a step from the point of view of the current Russian legislation.

Fifthly, the relevance of this study is conditioned by Russia's participation in a number of integration associations (the Union of Russia and Belarus, CIS, EAEU, etc.). In the framework of such associations, the free movement of court decisions is of fundamental importance, as it ensures the formation of a common legal and economic space. This issue was among the main topics of the Forum of Judges of Regional Courts of the Shanghai Cooperation Organization (SCO)[10] member states and the International Legal Forum of the Asia-Pacific Region organized by the Supreme Court of the Russian Federation[11]. Recognition of foreign judgments is the first issue on the agenda of the Inter-American Legal Committee of the Organization of American States (hereinafter - OAS)[12].

Sixthly, in critical moments, the importance of comparativism as a special field of legal research increases significantly, as it allows choosing and applying the most effective legal solutions[13]. In this regard, it is particularly relevant to use the results of comparative legal research of the models of indirect jurisdiction existing in the national

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[9] Vyacheslav Lebedev spoke at the China Forum [Electronic resource] // Supreme Court of the Russian Federation: [website]. 2021. November 12. URL: https://vsrf.ru/press_center/news/30507/ (date of access 30.09.2023).

[10] At the Forum of SCO judges discussed topical issues and problems of judicial activity [Electronic resource] // Supreme Court of the Russian Federation: [website]. 2021. December 1. URL: https://vsrf.ru/press_center/news/30558/ (date of access 30.09.2023).

[11] Chairman of the Supreme Court of Russia spoke at the International Legal Forum of APR countries [Electronic resource] // Supreme Court of the Russian Federation: [website]. 2021. September 30. URL: https://vsrf.ru/press_center/news/30394/ (date of access 30.09.2023).

[12] Derecho internacional privado en Las Américas: lograr la justicia transnacional para las personas [Electronic resource]: Documento elaborado por el Departamento de Derecho Internacional. OEA/Sec. Gral. DDI/doc. 2/22. 15.06.2022. URL: https://www.oas.org/es/sla/ddi/docs/DDI-doc_2-22_ESP.pdf (date of access 24.09.2023).

[13] Semilyutina N.G. School of Comparative Civilization: Origins and Prospects for Development / N.G. Semilyutina // Bulletin of the Moscow City Pedagogical University. Series: Legal Sciences. 2018. № 1(29). P. 71

legislation of different states in order to improve Russian legislation and increase the competitiveness of the Russian legal system.

Seventh, despite the fact that the issues of indirect jurisdiction have been the subject of consideration in a number of scientific works both in Russia and abroad, no coherent theory regarding the legal nature, correlation with other legal institutions, the best options for regulation, etc. has been developed at present.

Degree of development of the research topic. In foreign doctrine, indirect jurisdiction has been studied by such scholars as E. Barten, R. Brand, W. Goldschmidt, F.J. Garcimartín Alférez, A.V. Dicey, M. Issad, P.B. Kutner, D. Opertti Badán, R.F. Oppong, E. Tellechea Bergman, H. Schack.

In contrast to foreign doctrine, there are no works in domestic doctrine devoted to a comprehensive study of indirect jurisdiction in cross-border private law disputes. With few exceptions, domestic specialists have not studied individual issues related to indirect jurisdiction.

A dissertation study by S.E. Gafarov was published in 2012[14], on the main models of international civil jurisdiction in national law[15], which considers the legal phenomenon of interest to us as a mechanism of harmonisation of international judicial jurisdiction. S.E. Gafarov suggested limiting the scope of jurisdiction recognised by foreign courts in the process of exequatur to the extent that the state is willing to recognise it for other countries. The author of the present dissertation study proposes a different solution to the issue.

A comparative legal analysis of the provisions of Russian legislation on the assessment of the jurisdiction of a foreign court in the procedure of recognition of foreign judgments and the legal regulation of indirect jurisdiction in France was undertaken by D.V. Litvinskiy (2005) [16].

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[14] Gafarov S.E. Main models of international jurisdiction of civil cases in the national law: dis.... Cand. jurisprudence:12.00.03 / S.E. Gafarov. Voronezh, 2012. 230 p.

[15] Along with the term 'judicial jurisdiction over cross-border private law disputes', the terms 'international jurisdiction', 'international jurisdiction', 'international procedural jurisdiction', 'international competence' are also used in scientific works. In this paper we will use the terms as they are used by the authors of the works and judgements cited. The issue of terminology will be discussed in more detail in Chapter I, § 2 of the present work.

[16] Litvinskiy D.V. Recognition of foreign court decisions on civil cases: (comparative legal analysis of French legislation, judicial practice and legal doctrine) / D.V. Litvinskiy. St. Petersburg: Publishing House of St. Petersburg State University, 2005. 950 p.

Separate issues of indirect jurisdiction are addressed in the works of N.G. Doronina, E.V. Mokhova and A.I. Schyukin, mainly devoted to the evaluation of the HCCH 2019 Judgments Convention.

Analyses of the HCCH 2019 Judgments Convention are contained in the publications of a number of domestic specialists: V.N. Borisov, N.G. Doronina, O.F. Zasemkova, E.M. Kurochkina, E.V. Mokhova, A.I. Schyukin, as well as foreign experts such as J. Amurodov, R. Brand, A. Bonomi, F.J. Garcimartín Alférez, A. Conley, S. Sanchez Fernandez, G. Somier, L.E. Teitz, Z. Zhang, E. Juptner, H. Schack and others.

A comprehensive study of indirect jurisdiction implies its analysis in the relationship with such legal phenomena as jurisdiction and judicial jurisdiction. The legal category 'jurisdiction' has been considered, in particular, in the works of Y.G. Barseghov, L.N. Galenskaya, A.R. Kayumova, B.M. Klimenko, I.I. Lukashuk, E.T. Usenko, O.S. Chernichenko, S.V. Chernichenko. The works of L.A. Lunz, A.A. Mamaev, N.I. Marysheva, M.A. Mitina, T.N. Neshataeva, O.Y. Skvortsov, L.V. Terentyeva and others are devoted to the analysis of judicial jurisdiction over cross-border private law disputes.

The issues of recognition and enforcement of foreign judgments have been studied in the works of domestic scientists: S.V. Bakhin, K.L. Branovitsky, E.I. Gerasimchuk, I. V. Drobyazkina, P.A. Kalinichenko, A.A. Kostin, E.A. Kudelich, D.V. Litvinsky, M.O. Lits, A.A. Matveev, N.I. Marysheva, A.I. Muranov, A.V. Trubacheva, T.M. Yablochkov, V.V. Yarkov; and foreign ones, such as R. Brand, M. Wolf, D. Kenny, E.J. Kohn, F.J. Garcimartín Alférez, J. Harris, J. Cheshire.

The object of the research are the relations arising in connection with the assessment of the admissibility of the jurisdiction of a foreign court during the recognition of foreign judgments.

The subject of the research is international, integration and national legal regulation concerning the determination of the criteria of admissibility of the jurisdiction of a foreign court for the purpose of resolving the issue of recognition of foreign judgments.

Purpose and tasks of the research. The purpose of this dissertation research is to substantiate a holistic concept of indirect jurisdiction in cross-border private law disputes. This goal is concretized in the following tasks, which the author sets for himself:

– explore the content of the concept of «jurisdiction» and identify the relationship between the concepts of ‘jurisdiction’, ‘overeignty’, ‘judicial jurisdiction’ and ‘indirect jurisdiction in cross-border private law disputes’;

– identify and define the legal nature of indirect jurisdiction in cross-border private law disputes;

– establish the specificity of legal norms on indirect jurisdiction;

– compare the legal regulation of indirect jurisdiction in the national legislation of different states and identify the main models of its regulation;

– analyse the provisions of Russian procedural legislation on the admissibility of foreign court jurisdiction in the recognition of foreign judgments and determine the expediency of amending it, formulate proposals for its improvement;

– to study the experience of international co-operation in the field of recognition of foreign judgements in relation to indirect jurisdiction and to identify the most effective solutions;

– assess the prospects for the Russian Federation's accession to the HCCH 2019 Judgments Convention, taking into account the future need to implement the provisions on indirect jurisdiction contained therein.

Legal and regulatory framework for the research. International treaties, acts of integration associations, legislation of the Russian Federation and foreign states regulating the issues of recognition of foreign court decisions formed the legal framework of this work.

Empirical basis of the research. Analyzed Russian and foreign judicial practice in the part concerning the assessment of the admissibility of foreign courts' jurisdiction when recognizing their rulings.

Theoretical basis of the research. In the process of research, the author used the works of domestic scientists: Y.G. Barsegov, S.V. Bakhin, M.M. Boguslavsky, K.L. Branovitsky, L.N. Galenskaya, N.Y. Yerpyleva, B.R. Karabelnikov, A. A. Kostin, E.A.

Kudelich, D.V. Litvinsky, L.A. Lunz, A.A. Mamaev, N.I. Marysheva, A.I. Muranov, T.N. Neshataeva, O.Y. Skvortsov, L.V. Terentyeva, S.V. Chernichenko, T.M. Yablochkov, V.V. Yarkov, etc. The author also referred to the works of foreign specialists, such as Barten, R. Brand, M. Wolf, F.J. Garcimartín Alférez, V. Goldschmidt, A.V. Dicey, M. Issad, P. Kutner, D. Kenny, D. Opertti Badán, R.F. Oppong, E. Tellechea Bergman, J. Cheshire, H. Schack, et al.

Scientific novelty of the research. For the first time in domestic legal science, the institute of indirect jurisdiction in cross-border private law disputes has been comprehensively investigated. In particular, the author for the first time: proposed a definition of indirect jurisdiction in cross-border private law disputes; identified specific features of legal norms on indirect jurisdiction and the purpose of legal regulation; analyzed the national legislation of various states and identified the main models of legal regulation of indirect jurisdiction; established the conditionality of the legal consequences of accession to the HCCH 2019 Judgments Convention approach to the regulation of direct jurisdiction in national legislation; the necessity to amend the Russian procedural legislation in order to improve it was substantiated, and proposals were formulated.

Research methodology. The research used a set of general scientific methods of cognition (analysis and synthesis, induction and deduction, generalisation) and particular scientific methods (formal-logical, formal-legal, comparative-legal and method of legal forecasting).

Theoretical and practical significance of the results obtained. The dissertation study proposes a holistic concept of indirect jurisdiction in cross-border private law disputes, including the formulation of the definition of indirect jurisdiction, proposes a solution to the problem of terminology, identifies specific features of this institution of international civil procedure, identifies existing models of regulation of indirect jurisdiction. The practical significance of the results obtained lies in the fact that the author has formulated proposals to amend the Russian legal regulation of indirect jurisdiction. The provisions of the thesis can also be used in improving the legal regulation of the recognition of foreign judgments at the international and integration levels. The results of the dissertation research may be useful to Russian and foreign courts in

assessing the competence of a foreign court in the procedure of recognition of a foreign judgement. The provisions of the dissertation research can be used in the educational process in the framework of educational courses: “International Law”, “Private International Law”, “International Civil Procedure” and others.

Validity and reliability of the results obtained. The validity of the conclusions of the dissertation research is confirmed by a comprehensive analysis of doctrinal sources, normative provisions and law enforcement practice of Russian and foreign courts. All the main scientific results of the dissertation research have been scientifically and educationally approved.

The results of the dissertation research were scientifically approved at the Department of International Law of the St. Petersburg State University. On the topic of dissertation research the dissertant made reports at the International Scientific and Practical Conference ‘Kutafinskie Readings’ (26 November 2021), All-Russian Conference on Natural Sciences and Humanities with International Participation ‘Science of SPbSU - 2023’ (21 November 2023).

The results of the dissertation research were approved in the course of teaching the academic discipline ‘Recognition and enforcement of foreign judicial and arbitral decisions’ at St. Petersburg State University.

The results of the study are presented in 3 scientific articles published in the editions recommended by the Higher Attestation Commission under the Ministry of Education and Science of the Russian Federation.

Structure of the research. The thesis consists of an introduction, four chapters, a conclusion and a list of references used.

Main scientific results.

1. The legal essence is revealed and the definition of indirect jurisdiction on cross-border private law disputes is formulated as a manifestation of state sovereignty, which has specificity and is expressed in determining the limits of admissibility of the

competence of foreign courts to resolve cross-border private law disputes when recognizing foreign judicial decisions[17].

2. The peculiarities of the norms on indirect jurisdiction are determined. It is established that they represent a specific group of legal norms of international civil procedure. Indirect jurisdiction is considered as a legal condition and as a legal fact (primary and derivative legal facts are defined). The purpose of legal regulation is revealed (balance between the realization of the right to judicial protection and protection of domestic legal order)[18].

3. The ways of legal regulation of indirect jurisdiction in the national legislation of States are grouped into four main models[19]. In order to improve the legal regulation of indirect jurisdiction in the Russian Federation, the necessity of using a mixed model has been substantiated, according to which the admissibility of the jurisdiction of a foreign court will be conditioned by compliance with the criterion of close connection between the dispute and the court that ruled the judicial act, or approval of its jurisdiction by the defendant, and non-contradiction with the criteria of exclusive judicial jurisdiction[20].

4. On the basis of comparison of models of indirect jurisdiction and levels of international co-operation, the most effective correlation between them is determined[21]. The risk of disparity in the mutual recognition of foreign judgments upon accession to the HCCH 2019 Judgments Convention, including in relation to the participation of the Russian Federation in it, and the way to avoid it is shown[22].

Provisions submitted for defence.

1. States, exercising their sovereign power, determine the competence of their national courts to resolve cross-border private law disputes, but they are not entitled to

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[17] Shepovalova O.A. Indirect jurisdiction in cross-border private law disputes // Vestnik of Volzhsky University named after V.N. Tatishchev. 2023. № 4. Vol. 2. P. 159. doi: 10.51965/2076-7919_2023_2_4_156.

[18] Ibid. P. 159, 162, 163, 164.

[19] Pavlova O.A. 'Judicial Convention': issues of jurisdiction // International Law. 2023. № 1. P. 74-75. doi: 10.25136/2644-5514.2023.1.39778 (after the change of surname - Shepovalova. - O.Sh.).

[20] Shepovalova O.A. Improving the legal regulation of indirect judicial jurisdiction in the Eurasian Economic Union // EURASIAN INTEGRATION: Economics, Law, Politics. 2024. № 18(1). P. 88. doi: 10.22394/2073-2929-2024-01-81-89.

[21] Ibid. P. 85

[22] Pavlova O.A. 'Judicial Convention': questions of jurisdiction // International Law. 2023. № 1. P. 76-77. doi: 10.25136/2644-5514.2023.1.39778.

determine the competence of foreign courts by virtue of the principle of sovereign equality of States. Therefore, when recognizing foreign court decisions, States determine the limits of acceptable competence of foreign courts to resolve cross-border private law disputes. When establishing the competence of national courts, we are talking about direct jurisdiction; when determining the limits of competence of foreign courts, we are talking about indirect jurisdiction. Indirect jurisdiction is a *sui generis* legal phenomenon. Indirect jurisdiction, as well as direct, is a manifestation of state sovereignty, however, such a manifestation has a certain specificity: the state, resolving the issue of judicial jurisdiction of another state, does not intrude into the sphere of its sovereignty. Indirect jurisdiction is one of the circumstances to be tested by the court when deciding whether to recognize a foreign judgment.

2. The author of the work proposes the following definition of indirect jurisdiction in cross-border private law disputes: indirect jurisdiction is a manifestation of the sovereignty of the state, which is expressed in determining the limits of admissibility of the competence of foreign courts to resolve cross-border private law disputes when recognizing foreign judicial decisions. Legal norms on indirect jurisdiction over cross-border private law disputes represent a specific group of legal norms of international civil procedure - norms of international, integration and national law, regulating the procedure for determining the admissibility of the competence of the court that has considered a cross-border private law dispute, within the framework of the procedure of recognition and enforcement of a foreign judgment.

3. The term “indirect jurisdiction in cross-border private law disputes” concretizes the multivalent notion of “jurisdiction” in relation to the legal phenomenon in question. Moreover, given the wide range of issues that states designate by the general term “jurisdiction”, the introduction of a special term - “indirect jurisdiction in cross-border private law disputes” - allows to localize the legal phenomenon under consideration, to identify its purpose and legal nature, to ensure the distinction between it and interrelated legal categories. The dissertant substantiates the preference of using the term “indirect jurisdiction over transboundary private law disputes” (or more concise

version “indirect jurisdiction”), including in relation to the terms “indirect international jurisdiction”, “indirect international jurisdiction”.

4. The regulation of indirect jurisdiction is aimed at achieving a balance in the realization of two legal principles: the right to judicial protection and the protection of the domestic legal order. Legal norms constituting the institution of indirect jurisdiction have the following features: those of them that contain indirect jurisdictional criteria are of evaluative nature, while those that contain direct jurisdictional criteria are of prescriptive nature. Indirect jurisdiction can be considered as a legal condition and as a procedural legal fact. Indirect jurisdiction is a legal condition that determines the emergence of a right to recognition of a foreign judgment. With respect to indirect jurisdiction, the primary legal facts are (depending on the model of indirect jurisdiction): indirect jurisdictional criteria, direct jurisdictional criteria (contained in the law of the forum State that rendered the judgment and in the law of the forum State recognizing the judgment), criteria of exclusive jurisdiction. A derivative legal fact is indirect jurisdiction, understood as the admissibility of the jurisdiction of a foreign court.

5. The models of legal regulation of indirect jurisdiction over cross-border private law disputes contained in the national legislation of different states have been identified and compared:

- determination of indirect jurisdiction on the basis of the rules on direct jurisdiction of the State in which the judgment is recognized;

- determination of indirect jurisdiction on the basis of the rules on direct jurisdiction of the State in which the judgment is rendered;

- application of the criteria for indirect jurisdiction contained in the law of the State in which the judgment is recognized;

- application of the criteria of exclusive jurisdiction contained in the law of the State in which the judgment is recognized.

6. In order to improve the legal regulation of indirect jurisdiction in the Russian Federation, the author proposes to introduce into the national legislation of the Russian Federation (in the Code of Civil Procedure of the Russian Federation and the Code of Arbitration Procedure of the Russian Federation) legal norms on indirect jurisdiction,

corresponding to a mixed model, providing for the application of both indirect jurisdictional criteria and criteria of exclusive judicial jurisdiction. The flexible criterion of close connection of the dispute and the court and the criterion of approval of the foreign court's jurisdiction by the defendant are proposed as indirect jurisdictional criteria. Under the proposed regulation, the admissibility of the jurisdiction of a foreign court is conditioned on compliance with the criterion of close connection between the dispute and the court that issued the judicial act, or approval of its jurisdiction by the defendant, and on the absence of contradiction with the criteria of exclusive judicial jurisdiction. The necessity of making changes in the legislation of the Russian Federation, their content and planned effect are detailed in the special section “Proposals of the dissertant on introducing amendments to the legislation of the Russian Federation” (pp. 100-109 of this dissertations).

7. International cooperation in the recognition of foreign judgements is hampered by the difficulty of reconciling indirect jurisdiction. Its results reflect the extent to which states have confidence in each other's legal orders. The free movement of foreign judgements can be ensured by using a model in which indirect jurisdiction is conditioned on unified criteria of direct jurisdiction, which is difficult due to the lack of agreement among States on the delimitation of jurisdiction. The implementation of this model is expedient in bilateral international treaties, as well as within the framework of integration associations. The use of indirect jurisdictional criteria in an international treaty provides an alternative legal option for States with less confidence in each other's legal orders, as it allows States to continue to resolve cross-border disputes on grounds established in national law. Other models for regulating indirect jurisdiction in international treaties - defining indirect jurisdiction on the basis of national law on direct jurisdiction and on the basis of the law of the State of judgement - are ineffective in the framework of international cooperation.

8. The conclusion of international treaties on the recognition of foreign judgments containing indirect jurisdictional criteria, including the HCCH 2019 Judgments Convention, may entail a situation of disparity in the issue of mutual recognition of foreign judgments. For states in which the competence of national courts

in cases with a foreign element is broader than the recognized competence of foreign courts, such international regulation will, on the one hand, allow for the widest possible exercise of the competence of national courts (limited only by the indirect jurisdictional criteria of the relevant agreement) and a guarantee of recognition of their judgments outside the country, and, on the other hand, will not create an equivalent obligation in respect of judgments of other states. Such a risk exists in the case of Russia's accession to the HCCH 2019 Judgments Convention, as the criteria for direct jurisdiction contained in Russian procedural law do not fully coincide with the criteria for indirect jurisdiction established by the HCCH 2019 Judgments Convention.

Chapter I. Indirect Jurisdiction in Cross-border Private Law Disputes: Concept and Essence

§ 1. Basis of Normative and Doctrinal Interpretation of the Concept of "Jurisdiction"

The recognition and enforcement of foreign judgements cannot be considered without reference to such legal categories as 'sovereignty' and 'jurisdiction'. A decision of a judicial body of a State (unlike decisions of international judicial bodies or courts of integration associations) generally has legal force only within the territory of that State and cannot be enforced in the territory of another State. The administration of justice and the enforcement of judgements is an inherent prerogative of the State, deriving from its sovereignty.

The sovereignty of the state is a complex philosophical and legal category reflected in the norms of national and international law. Moreover, it is believed that sovereignty is a prerequisite for the existence and operation of both national and international law. However, the enshrinement in the UN Charter of one of the basic principles of international law - the sovereign equality of states - does not mean that states are endowed with sovereignty on the basis of the norms of international law (para. 1, Art. 2 of the UN Charter)[23]. Sovereignty is an immanent property of the state as a legal personality and belongs to any independent state from the beginning, i.e. from the moment of its emergence[24].

Legal dictionaries, encyclopaedias and reference books indicate that the word 'sovereignty' is derived from the French term 'souverainete' (supreme power), and serves to denote the supremacy and independence of power[25]. This is how sovereignty is

[23] Charter of the United Nations of 26 June 1945, as amended and supplemented on 20 December 1971. [Electronic resource] // UN: [website]. URL: https://www.un.org/ru/about-us/un-charter/full-text (date of access 03.04.2024).

[24] Chernichenko S.V. The state as a person, subject of international law and bearer of sovereignty // Russian Yearbook of International Law. 1993-1994. St. Petersburg: Russia-Neva, 1995. P. 21.

[25] Barikhin A.B. Big Legal Encyclopaedic Dictionary. Moscow: Book World, 2005. P. 610; Big Legal Dictionary / ed. by A.Y. Sukharev. 3-e ed., revision and additions. Moscow: INFRA-M, 2007. P. 727; Russian Encyclopaedic Dictionary / ed. by A. M. Prokhorov. Moscow: Scientific Publishing House 'Big Russian Encyclopaedia', 2000. P. 1517; Tikhomirova L.B., Tikhomirov M.Y. Yuridicheskaya encyclopaedia / ed. by M.Y. Tikhomirov. 5th ed. revision and supplement. M.: 2007. P. 829.

interpreted when considering it from the angle of philosophy, political science, sociology and a number of related areas of scientific knowledge.

At the same time, for jurisprudence such a general formulation of the question in a number of cases is unacceptable without specifying what kind of power we are talking about. In this regard, in the field of jurisprudence the concept of "state sovereignty" (or "sovereignty of the state") is distinguished, which implies consideration of the content and boundaries of the power of the state. There are different approaches here.

From the point of view of domestic law, it is most often about the formation of state policy and the delimitation of power between the various branches of government within the state (legislative, executive, judicial). From the point of view of international law, the issue of independent and autonomous policy in the international arena, as well as the spatial scope of state sovereignty (including outside the territory of the state), is at the centre of the issue[26].

Thus, summarising, we can state that state sovereignty means the supremacy of state power inside the country and its independence in the external sphere, i.e. the completeness of legislative, executive and judicial power of the state on its territory, excluding any foreign power, as well as the insubordination of the state to the authorities of foreign states in the sphere of foreign political relations[27].

However, we are interested in a special aspect of the manifestation of state sovereignty - legal. It would seem that the wording about the completeness of 'legislative, executive and judicial power of the state on its territory' exhaustively covers the prerogatives of state power in the legal sphere. Meanwhile, in the field of international law, the boundaries and components of this power require clarification.

In the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations of 24 October 1970[28] (hereinafter - 1970 Declaration on Principles of

[26] Chernichenko S.V. Contours of international law. General issues: a monograph / S.V. Chernichenko. Moscow: Scientific Book, 2014. P. 265.

[27] Ibid.

[28] Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, adopted by UN General Assembly Resolution 2625 (XXV) of 24 October 1970. [Electronic resource] // UN: [website]. URL: https://www.un.org/ru/documents/decl_conv/declarations/intlaw_principles.shtml (date of access 18.01.2024).

International Law) in deciphering the principles of sovereign equality and non-interference in the internal affairs of the State, the same formula that every State has the right to freely choose and develop its political, social, economic and cultural systems was repeated twice. At that time the term 'legal system' was not yet widely used in the doctrine of law, and therefore the prerogatives of the state in the legal field were covered, it must be assumed, by the wording 'political system'.

Meanwhile, in stating the principle of 'Sovereign equality, respect for the rights inherent in sovereignty' in the Final Act of the Conference on Security and Co-operation in Europe of 1 August 1975[29], after the words 'to freely choose and develop their political, social, economic and cultural systems', it was added: 'as well as the right to establish their own laws and administrative regulations'.

Of course, the power of the state to build its own legal system is covered by the category of 'state sovereignty'. At the same time, the prerogatives of the state in the sphere of law are more often described with the help of a special term - 'jurisdiction' - and its derivatives[30].

The term "jurisdiction" is polysemous and complex in terms of its legal interpretation. Neither in the norms of international, integration, nor national law is there a legal definition that would cover all varieties and variants of its use. In the vast majority of cases, the term 'jurisdiction' is used with qualifying adjectives or auxiliary terms ('State jurisdiction', 'exclusive jurisdiction', 'tax jurisdiction', 'criminal jurisdiction', 'judicial jurisdiction', 'State jurisdiction over an aircraft', 'consular jurisdiction',

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[29] Final Act of the Conference on Security and Cooperation in Europe of 1 August 1975. [Electronic resource] // Organisation for Security and Co-operation in Europe: [website]. URL: https://www.osce.org/files/f/documents/0/c/39505_1.pdf (date of access 03.04.2024).

[30] The concept of jurisdiction as an aspect of State sovereignty is well-established in international law. See: Brownlie J. International Law: in 2 books / J. Brownlie; translation from English by Candidate of Jurisprudence S.N. Andrianov, ed. and with an introductory article [pp. 5-20] by Corresponding Member of the USSR Academy of Sciences G.I. Tunkin. G.I. Tunkin, Corresponding Member of the USSR Academy of Sciences. Book 1. Moscow: Progress, 1977. P. 425; Lukashuk I.I. International Law. General part: textbook for students of law faculties and universities / I.I. Lukashuk. 3rd ed., rev. and add. Moscow: Wolters Kluwer, 2008. P. 330; Chernichenko, S.V. Theory of the international law: In 2 vol. 2: Old and new theoretical problems / S.V. Chernichenko. Moscow: NIMP Publishing House, 1999. P. 111. Some researchers consider jurisdiction as a part of sovereignty, some of them identify it with state power. For example, according to Prof. L.A. Luntz, the term 'jurisdiction' in international law is equivalent to the term 'imperium', meaning state power (see Luntz L.A. Course of International Private Law: In 3 vols. Moscow: Spark, 2002. P. 810). B.M. Klimenko and A.A. Pork believed jurisdiction to be one of the elements of the territorial supremacy of the state, which, in its turn, is an integral part of sovereignty (see: B.M. Klimenko, A.A. Pork, B.M. Klimenko, A.A. Pork, Territory and Border of the USSR / B.M. Klimenko, A.A. Pork. Moscow: International Relations, 1985. P. 20). On the criticism of these campaigns see: Terentyeva L.V. The correlation of the concepts of 'Jurisdiction' and 'Sovereignty' / L.V. Terentyeva // Bulletin of O.E. Kutafin University. 2016. №12 (28). P. 131-132.

«appellate jurisdiction», «criminal jurisdiction», «exclusive jurisdiction», «general jurisdiction», «international jurisdiction», «legislative jurisdiction», «territorial jurisdiction», «voluntary jurisdiction»[31],«personal jurisdiction», «long-arm jurisdiction» «supplemental jurisdiction»[32], «jurisdicción contenciosa», «jurisdicción ordinaria», «jurisdicción voluntaria», «jurisdicción delegada»),[33] which are intended to indicate the sphere of jurisdiction realisation (territorial, object subject, subject) or its special properties.

The fact that the term "jurisdiction" is not strictly defined has been repeatedly emphasized by many specialists[34]. Prof. Y.G. Barsegov noted that in doctrine and in practice the original and basic meaning of the term 'jurisdiction' was associated with jurisdiction, with the right to create a court and to carry out judicial enforcement activities, as well as with the spatial area to which such a right extends. 'The term "jurisdiction" in international practice has been used very widely and in a very different and sometimes mutually exclusive sense, up to identifying it with sovereignty", while retaining its original meaning, - wrote Y.G. Barsegov[35]. Meanwhile, not only the semantic content of the terms 'sovereignty' and 'jurisdiction' do not coincide, but also the spatial sphere covered by them. Thus, Prof. M.I. Lazarev pointed out that foreign military bases may be subject to the jurisdiction of a foreign state, but not to its sovereignty, which belongs to the host state[36]. The mixing of the concepts of 'sovereignty' and 'jurisdiction', generated, as Y.G. Barsegov notes, by the desire to erase the existing distinction between them, creates confusion and uncertainty. The concept of 'jurisdiction' is covered by the broader concept of 'sovereignty', but their spatial spheres of action do not coincide.[37]

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[31] Black H.C. Black's Law Dictionary. Definition of the Terms and Phrases of American and English Jurisprudence, Ancient and Modern / by the publisher's editorial staff. Abridged fifth edition. St. Paul, Minn.: West Publishing Co, 1983. P. 433.

[32] Clapp J.E. Random House Webster's Dictionary of the law / J.E. Clapp. New York: Random House, 2000. P. 256.

[33] Diccionario de la lengua española [Electronic resource] // Real Academia Española: [website]. URL: https://dle.rae.es/jurisdicción (date of access 01.05.2024).

[34] See, for example: Galenskaya L.N. Legal problems of co-operation of states in the fight against crime / L.N. Galenskaya. Leningrad: Izd-vo LSU, 1978. P. 35; Shinkaretskaya, G.G. Trends in the development of judicial means of peaceful settlement of international disputes / G.G. Shinkaretskaya. Moscow: Nota Bene, 2009. P. 124.

[35] Dictionary of International Maritime Law / ed. by Y.G. Barsegov. M.: Mezhdunar. relations, 1985. P. 250 (author of the dictionary article 'Jurisdiction of the coastal state' - Y.G. Barsegov).

[36] Lazarev M.I. International law and scientific and technological revolution / M.I. Lazarev // Soviet Yearbook of International Law. 1978. M.: Izdvo 'Nauka', 1980. P. 58.

[37] Barsegov Y.G. Op. cit. p. 250.

Y.G. Barsegov's statement regarding the original meaning of the term ‘jurisdiction’ requires clarification. The fact is that initially the term ‘jurisdiction’ was identified not only with the administration of justice, but also in general with the power of the state to create law and the extension of the legal dictates of the state to any territory, persons or property.

Historically, the concept of ‘jurisdiction’ is derived from the Latin term ‘jurisdictio’[38]. In the most general terms, its meaning can be deduced from the meaning of the two words forming the term - from ‘*juris*’, i.e. law, and ‘*dictio*’, i.e. speech or declaration (speaking). In other words, the general meaning of jurisdiction is the power given to a person (broadly defined) to establish law or to do justice.

However, the problem is that even in Roman jurisprudence the term ‘jurisdiction’ was interpreted ambiguously. According to one source, designed to decipher the meaning of Latin legal terms, jurisdiction was understood as someone's legitimate authority[39]. Other sources interpret ‘jurisdiction’ as the power of the court to exercise its authority over a certain category of cases, or the same power over a certain case[40], as well as the right of the praetor to issue judgements in disputed cases[41]. In the Index of Latin Terms and Expressions annexed to Prof. Sanfilippo C.'s famous Course of Roman Private Law, the term “jurisdiction” is deciphered as “justice”; the same dictionary entry refers to the original term “ius dicere”, which means the administration of justice[42].

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[38] Dydynsky F.M. Latin-Russian dictionary to the sources of Roman law / F.M. Dydynsky. Warsaw: type. M. Zemkiewicz, 1890. P. 245.

[39] Babkin A.M., Shendetsov V.V. Dictionary of foreign expressions and words used in the Russian language without translation / A.M. Babkin, V.V. Shendetsov. Shendetsov. 2nd edition, corrected. SPb: ‘KVOTAM’, 1994. In 3 vol. Vol. 2. P. 706.

[40] Latin legal phraseology / compiled by Prof. B.S. Nikiforov. M.: Jurid. lit., 1979. P.136. Here we also give a deciphering of the original term - ‘juridicus’, which had a double meaning: 1) relating to law and 2) relating to the administration of justice.

[41] The Latin-Russian dictionary to the sources of Roman law gives two meanings of this term: 1) court and reprisal, proceedings, judicial power, defence of rights, resolution of a case; 2) the right of the praetor to issue rulings on disputed cases. See: Dydynsky F.M. Op. cit. P. 245.

[42] Sanfilippo C. Course of Roman private law. Textbook / ed. by D.V. Dozhdev. Moscow: Izd-vo BEC, 2000. P. 353. In the textbook itself Ch. Sanfilippo explains that the term ‘ius dicere’ originated from the praetor's law. The praetor, taking office, issued an edict in which he formulated and promulgated ‘the programme to be followed in the performance of his judicial function (ius dicere, to administer justice)’, see: Ibid. P. 14. However, it must be assumed that the term ‘in judicio’ (i.e., in the presence of a judge; before a judge; in court) does not belong only to the praetorian law, it was used in the legisaccio (one of the types of action proceedings in Roman law, which began when the plaintiff filed a lawsuit according to the written law) court, see: Roman Private Law: textbook / ed. by I.B. Novitsky, I.S. Peretersky. Moscow: Novy Yurist, 1997. P. 67.

Some dictionaries of Latin terms sometimes state that ‘power’ and ‘competence’ are figurative meanings of the term ‘jurisdiction’. The main meaning is the right of a court to exercise its authority over a certain category of cases or over a certain case; also, the conduct of legal proceedings, the trial of civil cases[43].

Such polysemy of the term has migrated to modern jurisprudence. Domestic legal dictionaries and encyclopaedias define jurisdiction as ‘a set of powers of the relevant state bodies, established by law or other legal act, to resolve legal disputes and decide cases on offences, i.e. to assess the actions of a person or another subject of law from the point of view of its legality’, as well as the sphere of relations covered by such powers[44]. Foreign dictionaries give such meanings of the term ‘jurisdiction’ as: power, authority; the power of judges and courts to adjudicate and enforce; the territory over which authority, including judicial authority, extends; power, dominion over objects[45], ‘the power and authority of a court or administrative tribunal to decide legal questions and disputes’, ‘the geographical area over which the authority of a court, legislature, law enforcement agency, or other governmental unit extends’[46].

In domestic doctrine, many specialists base their reasoning and conclusions about the meaning of the term ‘jurisdiction’ not on the provisions of the law (or international legal acts), but on deductions formulated in the theory of law. Sometimes it is even postulated as a starting methodological technique. Thus, when considering the concept and attributes of jurisdiction under Russian law, V.V. Golovko notes: ‘The concept and attributes of jurisdiction in Russian law. Golovko notes: ‘In order to more fully disclose the essence and content of jurisdiction, it is necessary to conduct a detailed analysis of the theoretical developments available in the legal literature devoted to this issue’[47]. I.V. Boriskova, considering the concept of jurisdiction, explicitly emphasises in the abstract to her article that the author analyses theoretical aspects of jurisdiction and jurisdictional

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[43] Latin-Russian dictionary of legal terms and expressions for specialists and translators of the English language / compiled by M. Gamzatov. SPb: Publishing house of St.-Petersburg University, 2002. P. 220.

[44] Barikhin A.B. Op. cit. P. 710.

[45] Diccionario de la lengua española [Electronic resource] // Real Academia Española: [website]. URL: https://dle.rae.es/jurisdicción (date of access 01.05.2024).

[46] Clapp J.E. Op. cit. P. 256, 257.

[47] Golovko V.V. The concept and signs of jurisdiction under Russian law / V.V. Golovko // Scientific Bulletin of the Omsk Academy of the Ministry of Internal Affairs of Russia. Golovko // Scientific Bulletin of the Omsk Academy of the Ministry of Internal Affairs of Russia. 2006. № 1 (23). P. 14.

activity[48]. It is difficult to agree with such an approach, since the study of the concept of jurisdiction should start with its legal definition by the legislator or, if there is no such definition, with the context in which this concept is used in legal norms.

The term “jurisdiction” is used quite broadly in international, integration and national law. Let us turn for an example to the text of the UN Convention on the Law of the Sea of 10 December 1982[49] (hereinafter - the 1982 Convention). In the 1982 Convention the term ‘jurisdiction’ is used more than 50 times and in different meanings. We have grouped them as follows:

- in the sense of ‘right of dominion’ (i.e. sovereignty) over certain objects and territory (art. 79, par. 4, 92, 94, 94, 95, 96, 100, 105, 109, 110, 111, 113, 142, 194, 196, 208);

- in the sense of the enforcement powers of the state in a certain area of law, in relation to a certain territory or objects, as well as in relation to certain issues (art. 27, 28, 97, par. 3, art. 109, 179-183);

- in the sense of the law-making powers of the state, i.e. to assign to the state the power to carry out legal regulation of certain issues in a certain territory (art. 56, par. 1 (b), 60).

It should be noted that the 1982 Convention uses the terms ‘jurisdiction’ and ‘sovereignty’ as complementary in describing the powers of the State (art. 34, 242).

In other international treaties, the term ‘jurisdiction’ is also used with these meanings.

Thus, for example, the Vienna Convention on Consular Relations of April 24, 1963[50], uses the term “jurisdiction” to describe the law enforcement powers of a state in order to regulate situations in which such powers cannot be exercised (“immunity from jurisdiction”, art. 43, 45, etc.). In the same sense, the term is used in the Convention on

[48] Boriskova I.V. The concept and types of jurisdiction under Russian law / I.V. Boriskova // Territory of Science. 2013. № 2. P. 238.

[49] United Nations Convention on the Law of the Sea of 10 December 1982. [Electronic resource] // UN: [website]. URL: https://www.un.org/ru/law/lawsea/convention.shtml (date of access 03.04.2024).

[50] Vienna Convention on Consular Relations of April 24, 1963. [Electronic resource] // UN: [website]. URL: https://www.un.org/ru/documents/decl_conv/conventions/pdf/consular.pdf (date of access 03.04.2024).

Offences and Certain Other Acts Committed on Board Aircraft of 14 September 1963[51] (art. 3, 4, 13, 17). The term ‘jurisdiction’ in the sense of ‘right of dominion’ over certain objects is used in the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 19 December 1966[52] (Jurisdiction over a Space Object, art. VIII).

The term “jurisdiction” is used to describe the law enforcement powers of the state exercised by the judiciary, for example, in the European Convention on Consular Functions of 11 December 1967[53] (art. 3 par. 35), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984[54] (art. 5), the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948[55] (art. VI), the International Convention against the Taking of Hostages of 17 December 1979[56] (art. 1) and many others.

In the framework of international treaties concluded on civil (including commercial), family law and international civil procedure, the term ‘jurisdiction’ is generally used in two meanings: in the sense of ‘the right of dominion’ over a certain territory (for example, in the Convention on Civil Procedure of 14 November 1896[57] (art. 5), in the Convention on the Law Applicable to Maintenance Obligations in respect of Children of 24 October 1956[58] (art. 2) and in the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility

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[51] Convention on Offences and Certain Other Acts Committed on Board Aircraft of 14 September 1963. [Electronic resource] // UN: [website]. URL: https://www.un.org/ru/documents/decl_conv/conventions/crimes_aboard.shtml (date of access 03.04.2024).

[52] Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies of 19 December 1966. [Electronic resource] // UN: [website]. URL: https://www.un.org/ru/documents/decl_conv/conventions/outer_space_governing.shtml (date of access 03.04.2024).

[53] European Convention on Consular Functions of 11 December 1967 [Electronic resource] // Council of Europe: [website]. URL: https://rm.coe.int/1680072311 (date of access 03.04.2024).

[54] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 10 December 1984. [Electronic resource] // UN: [website]. URL: https://www.un.org/ru/documents/decl_conv/conventions/torture.shtml (date of access 03.04.2024).

[55] Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948. [Electronic resource] // UN: [website]. URL: https://www.un.org/ru/documents/decl_conv/conventions/genocide.shtml (date of access 03.04.2024).

[56] International Convention against the Taking of Hostages of 17 December 1979. [Electronic resource] // UN: [website]. URL: https://www.un.org/ru/documents/decl_conv/conventions/hostages.shtml (date of access 03.04.2024).

[57] Convention relative a la procédure civile du 14 novembre 1896 [Electronic resource] // HCCH: [website]. URL: https://www.hcch.net/en/instruments/conventions/the-old-conventions/1896-civil-procedure (date of access 03.04.2024).

[58] Convention on the law applicable to maintenance obligations towards children of 24 October 1956 [Electronic resource] // HCCH: [website]. URL: https://www.hcch.net/en/instruments/conventions/full-text/?cid=37 (date of access 03.04.2024).

and Measures for the Protection of Children of 19 October 1996[59] (art. 5)) and in the meaning of the enforcement powers of the State exercised by judicial and administrative authorities (e.g. the Convention on the Powers of Authorities and the Law Applicable to the Protection of Infants of 5 October 1961[60] (art. 15)). In the latter case, the term 'competence' is often used instead of 'jurisdiction' (e.g. in the Convention on the Recognition and Enforcement of Decisions on Child Support Obligations of 15 April 1958)[61].

In international treaties providing for the mutual recognition and enforcement of judgements, the term 'jurisdiction' is also used in these two meanings, along with the term 'competence'.

Thus, the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 1 February 1971[62] establishes that a judgment rendered in one State may be enforced in another State if it is rendered by a court which is deemed to have jurisdiction within the meaning of the Convention (art. 4). Further, art. 10 and 11 regulate in detail the cases in which a court is deemed to have jurisdiction.

Similarly, the term of interest is used in the Convention on the Recognition and Enforcement of Decisions relating to Maintenance Obligations of 2 October 1973[63], the Convention on Choice of Court Agreements of 30 June 2005[64] and along with the term "competence" - in the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968[65] (hereinafter - the Brussels Convention

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[59] Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children of 19 October 1996 [Electronic resource] // HCCH: [website]. URL: https://www.hcch.net/en/instruments/conventions/full-text/?cid=70 (date of access 03.04.2024).

[60] Convention concerning the powers of authorities and the law applicable in respect of the protection of infants of 5 October 1961 [Electronic resource] // HCCH: [website]. URL: https://www.hcch.net/en/instruments/conventions/full-text/?cid=39 (date of access 03.04.2024).

[61] Convention concernant la reconnaissance et l'exécution des décisions en matière d'obligations alimentaires envers les enfants du 15 avril 1958 [Electronic resource] // HCCH: [website]. URL: https://www.hcch.net/fr/instruments/conventions/full-text/?cid=38 (date of access 03.04.2024).

[62] Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 1 February 1971 [Electronic resource] // HCCH: [website]. URL: https://www.hcch.net/en/instruments/conventions/full-text/?cid=78 (date of access 03.04.2024).

[63] Convention on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations of 2 October 1973 [Electronic resource] // HCCH: [website]. URL: https://www.hcch.net/en/instruments/conventions/full-text/?cid=85 (date of access 03.04.2024).

[64] Convention on Choice of Court Agreements 30 June 2005 [Electronic resource] // HCCH: [website]. URL: https://assets.hcch.net/docs/510bc238-7318-47ed-9ed5-e0972510d98b.pdf (date of access 03.04.2024).

[65] Brussels Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 27 September 1968 // Offic. J. of the Europ. Union. Ser. L. 31.12.1972. L299. P. 32–42.

of 1968) and the Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters of 16 September 1988[66] (hereinafter - the Lugano Convention of 1988) (hereinafter - Lugano Convention of 1988), as well as in acts of integration law (e.g., Regulation No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[67] (hereinafter - EU Regulation No. 1215/2012)). The HCCH 2019 Judgments Convention uses the term "jurisdiction" both in the sense of a state's enforcement powers exercised by the judiciary (art. 5(e), (f), (m)) and in the sense of a "right of dominion" over a certain territory (art. 2(g)).

The term "competence" is used to describe the law enforcement powers of the state exercised by judicial and administrative bodies in the Agreement on the Procedure for the Settlement of Disputes Related to the Exercise of Economic Activities of 20 March 1992[68] (arts. 3, 4, 6), the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 22 January 1993[69] (hereinafter - the Minsk Convention of 1993) (section II part 1, arts. 21, 48, etc.), the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 7 October 2002[70] (hereinafter - the Kishinev Convention of 2002) (section II part I, arts. 32, 33, etc.). At the same time, both conventions, in addition to the term "competence", use the term "jurisdiction" in the same sense (art. 21 of the Minsk Convention of 1993, art. 23 of the Chisinau Conventionof 2002). Bilateral treaties on legal assistance to which the Russian Federation is a party also mainly use the term "competence"[71].

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[66] Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 16 September 1988 // Offic. J. of the Europ. Union. Ser. L. 25.11.1988. L 319. P. 9–48.

[67] Regulation (EU) № 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) // Offic. J. of the Europ. Union. Ser. L. 20.12.2012. L 351. P. 1–32.

[68] Agreement on the procedure for resolving disputes related to the implementation of economic activities, dated March 20, 1992 // Bulletin of the Supreme Arbitration Court. 1992. №1.

[69] Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of January 22, 1993 // Collection of Legislation of the Russian Federation. 1995. № 17. Art. 1472.

[70] Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of October 7, 2002 // Collection of Legislation of the Russian Federation. 2023. № 30. Art. 5501.

[71] For example, in the Treaty between the Russian Federation and the Republic of Kyrgyzstan on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 14 September 1992 (arts. 21, 34, 35 and 45): Treaty between the Russian Federation and the Republic of Kyrgyzstan of 14 September 1992 "On Legal Assistance and Legal Relations in Civil, Family and Criminal Cases" // Bulletin of International Treaties. 1995. № 3. P. 16-36.

The term “jurisdiction” is also applied variably in national legislation. Thus, for example, in the meaning of ‘the right to rule’ over certain objects and territory the term is used in part 2 of art. 67 of the Constitution of the Russian Federation[72], in art. 13.47 of the Code of Administrative Offencesof the Russian Federation[73], in the meaning of law enforcement powers of judicial bodies - in part 3 of art. 4 of the Federal Constitutional Law ‘On the judicial system of the Russian Federation’[74], in article 1 of the Federal Law ‘On the territorial jurisdiction of garrison military courts’, Art. 1 of the Federal Law ‘On the territorial jurisdiction of garrison military courts’[75]. At the same time, the procedural legislation of the Russian Federation mainly uses the terms ‘competence’ and ‘jurisdiction’ to delimit the powers of judicial bodies[76]. In foreign legal systems, there is also a more orderly use of the term under discussion. Thus, for example, in Spanish law, the term ‘jurisdiction’ is used to refer to the ‘right of dominion’ exercised by the State (the authorities of the State) in a certain sphere, and represents in this sense a prerequisite for the ‘competence’ of a particular judicial or administrative body, which can be illustrated by the example of the Spanish Constitution:[77] (The term ‘jurisdiction’ is used therein, in particular in art. 117.5, 123, 136.2, 153, 161.1, and ‘competence’ in art. 82.6, 93, 117.3, 161.1).

Our analysis allows us to draw several general conclusions about the use of the term ‘jurisdiction’ in the norms of international, integration and national law.

First, the term “jurisdiction” is used in different meanings, including within the framework of a single international treaty.

Secondly, the legal content of the term ‘jurisdiction’ is usually not deciphered in any way. In some cases, necessary explanations are given by means of qualifying words

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[72] Constitution of the Russian Federation: adopted by popular vote on 12 December 1993, with amendments approved during the all-Russian vote on 1 July 2020. [Electronic resource] // PRAVO.GOV.RU: official Internet portal of legal information. - URL: http://pravo.gov.ru/constitution/ (date of access: 30.05.2023).

[73] ‘Code of the Russian Federation on Administrative Offences’ of 30 December 2001 No. 195-FZ // Collection of Legislation of the Russian Federation. 2002. No. 1 (part I). Art.1.

[74] Federal Constitutional Law of 31 December 1996, No. 1-FKZ ‘On the judicial system of the Russian Federation’ // Collection of Legislation of the Russian Federation. 1997. No. 1. Art. 1.

[75] Federal Law of 29 December 2020 No. 466-FZ ‘On the territorial jurisdiction of garrison military courts’ // Collection of Legislation of the Russian Federation. 2021. No. 1 (Part I). Art. 5.

[76] For more details, see. § 2 of this chapter.

[77] Constitución Española [Electronic resource] // Agencia Estatal Boletín Oficial del Estado: [website]. URL: https://www.boe.es/buscar/act.php?id=BOE-A-1978-31229 (date of access 03.04.2024).

(more often adjectives). Sometimes the meaning of the term ‘jurisdiction’ can only be deduced from the context in which it is used.

Thirdly, the clarification may concern the spatial scope of jurisdiction (it may refer to the territory of the State as a whole or part of it - ‘the waters, the airspace above them, their seabed and subsoil’), the object sphere (jurisdiction ‘over cables and pipelines laid or used in connection with the exploration of its continental shelf, the exploitation of its resources or the operation of artificial islands, installations or structures’). In this case, the term ‘jurisdiction’ is used in the sense of ‘right of dominion’ over certain territory and objects.

Fourthly, the clarification may relate to the subject-subject area (‘judicial jurisdiction’, ‘criminal jurisdiction’, ‘jurisdiction over the creation and use of artificial islands, installations and structures; marine scientific research; protection and preservation of the marine environment’, ‘consular jurisdiction’). In this case, the term ‘jurisdiction’ is used in some cases to refer to the law enforcement powers of the state (or certain authorities of the state), in other cases - the power to carry out legal regulation in a certain sphere.

Fifth, the term ‘competence’ is often used instead of the term ‘jurisdiction’ to describe the law enforcement powers of judicial authorities. We have not found any strict consistency in the use of the two terms in question. It is noteworthy that sometimes the terms ‘jurisdiction’ and ‘competence’ are interpreted as synonyms in different language versions of international treaties.

The variability in the use of the term ‘jurisdiction’ is characteristic not only of legal regulation. Specialists also interpret the content of this concept in different ways.

Thus, Prof. I.I. Lukashuk defined jurisdiction ‘as the power of the state to prescribe behaviour and ensure the implementation of its prescriptions by all legal means at its disposal’[78]. Prof. A.R. Kayumova defined jurisdiction as ‘a property of subjects of international law, expressed in the implementation of legal regulation of relations and the possibility of ensuring it through the adoption of measures of executive and coercive

[78] Lukashuk I.I. Op. cit. P. 331.

nature'[79]. A.R. Kayumova supported the views of Prof. L.N. Galenskaya that jurisdiction, being a manifestation of the sovereignty of the state, undoubtedly covers the law enforcement activity of the state, as well as the action of law norms in space and by a circle of persons, including all ways of implementing the law: application, observance and use of the law[80].

Prof. S.V. Chernichenko considered jurisdiction as "the possibility and admissibility determined by the state to expect and demand the implementation of its legal dictates (prescriptions and prohibitions) and to ensure their implementation", while the exercise of jurisdiction - as the realization by the state of the possibility and admissibility of ensuring its legal dictates through the use of coercive measures[81].

According to O.S. Chernichenko, jurisdiction can be tentatively defined as the ability of a state, taking into account its international legal obligations, to ensure the realisation of its right by threatening to apply or applying legal coerción[82]. This emphasis on the international legal obligations of the state, notes Prof. L.V. Terentyeva, fulfils the role of a deterrent mechanism in order to avoid situations of conflicting jurisdictions of different states[83].

It is worth noting the emergence of legal concepts that present jurisdiction from a new perspective and require careful critical consideration. This includes, for example, the concept of "integrated jurisdiction" developed by A.V. Malyshkin taking into account the need of the state to interact with non-state (autonomous) jurisdictions[84]. We must assume that the concept of "integrated jurisdiction" goes beyond the understanding of jurisdiction that we have described above.

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[79] Kayumova A.R. Criminal jurisdiction in international law (issues of theory and practice): autoref. dis.... Doctor of jurisprudence: 12.00.10 / A.R. Kayumova. Kazan, 2016. P. 9-10.

[80] Galenskaya L.N. Legal problems of co-operation of states in the fight against crime. P. 36; Kayumova A.R. Op. cit. P. 27-29.

[81] Chernichenko S.V. Op. cit. P. 114-115. Prof. S.V. Chernichenko noted that jurisdiction is often understood as competence, range of powers, authority, the right to resolve certain issues, etc. In this case, it may refer not only to the powers of the state itself, but also of its bodies (e.g., 'jurisdiction of a port') or the specifics of the exercise of the state's power in a certain territory (e.g., 'jurisdiction of a coastal state', 'zone of national jurisdiction'). See: Ibid. P. 111.

[82] Chernichenko O.S. International legal aspects of the jurisdiction of states: autoref. diss. Cand. of juridical sciences: 12.00.10 / O.S. Chernichenko. M., 2003. P. 8.

[83] Terentyeva L.V. Judicial jurisdiction over disputes in cyberspace: a monograph / L.V. Terentyeva. Moscow: RUSAINS, 2021. P. 43-44.

[84] Malyshkin A.V. Integrated jurisdiction (doctrine, practice, technique): autoref. diss. D. in jurisprudence: 12.00.01 / A.V. Malyshkin. Nizhny Novgorod, 2021. P. 3. 14-15.

At the doctrinal level, there have been repeated attempts to classify jurisdiction. They reflect the variation in the use of the term 'jurisdiction' in legal norms.

Thus, Prof. L.N. Galenskaya proposes three classification criteria: the effect of laws in space (territorial and extraterritorial jurisdiction), the effect of legal norms on the circle of persons (personal and universal jurisdiction), on the subject matter of regulation (criminal, civil and administrative jurisdiction)[85]. The English Prof. J. Brownlie distinguished such constituent parts of jurisdiction as judicial, legislative and administrative competences[86]. In English doctrine, this distinction into legislative (jurisdiction to prescribe), judicial (jurisdiction to adjudicate) and executive (administrative) (power to enforce) is traditional[87]. Prof. I.I. Lukashuk distinguished jurisdiction according to the scope of realisation of authority - full and limited, according to the sphere of action - territorial and extraterritorial, according to the nature of authority - legislative, executive, judicial[88]. Prof. S.V. Chernichenko distinguished between prescriptive jurisdiction (the possibility and admissibility, determined by the state, to expect and demand the implementation of its legal dictates) and executive jurisdiction (the possibility and admissibility, determined by the state, to ensure the implementation of its legal dictates through the use of coercive measures)[89].

Prof. A.R. Prof. A.R. Kayumova proposed classification of jurisdiction on eight grounds: on the subject (international and state), on the scope (full and limited), on the content (prescriptive (substantive) and law enforcement (procedural), on the method of implementation (judicial, executive and coercive), on the nature of regulated relations (administrative, civil and criminal), on the action in space (territorial and extra-territorial), on the nature of power - legislative, executive (administrative) and judicial, on the effect of norms of law on the circle of persons (personal and universal)[90].

In addition, A.R. Kayumova substantiated the incorrectness of differentiating jurisdiction by content only into prescriptive and law enforcement, covering, in turn, both

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[85] Galenskaya L.N. Legal problems of co-operation of states in the fight against crime. P. 36-37.
[86] Brownlie Y. Op. cit. P. 425.
[87] Bellia P.L., Shiff Berman P., Post D. G. Cyberlaw: Problems of Policy and Jurisprudence in the Information Age. St. Paul, MN, 2003. P. 83.
[88] Lukashuk I.I. Op. cit. P. 330.
[89] Chernichenko S.V. Op. cit. P. 114.
[90] Kayumova A.R. Op. cit. P. 10.

judicial and executive jurisdiction[91]. The position is motivated by the fact that judicial jurisdiction is not only related to the law enforcement process, as the activities of both state and international judicial bodies are also aimed at interpreting normative documents on request with the issuance of opinions that can be considered as a result of law-making activity, in this regard, in the opinion of the researcher, executive and judicial jurisdiction should be perceived as relatively independent forms of jurisdiction[92]. Another view, based on the same reasoning: the activity of the judiciary can be characterized as prescriptive (if the judge participates in law-making by interpreting a legal norm) or enforcement (if the judge issues, for example, an order to seize assets), contains the exact opposite conclusions - the separation of judicial jurisdiction is superfluous[93].

In the work devoted to judicial jurisdiction over cross-border private law disputes in cyberspace, Prof. L.V. Terentyeva came to the conclusion that 'the concept of "state jurisdiction", delineating the boundaries of the sphere of action of state power, is a system-forming, initial beginning of the formulation of the concept of judicial jurisdiction to consider cross-border private law disputes'[94]. Spanish Prof. F.J. Garcimartin Alferez speaks of state jurisdiction as a necessary prerequisite for judicial jurisdiction over a cross-border dispute[95].

Our analysis of the use of the term 'jurisdiction' in the rules of law, as well as doctrinal sources devoted to the study of the content of this concept allows us to come to the following conclusions.

Firstly, jurisdiction is a multidimensional concept, the relevant term is used both in international, integration and national law, as well as in doctrine, variably.

Secondly, the term 'jurisdiction' is concretised by the attribute 'judicial' in order to 'bind' to certain organs of the state, by which jurisdiction is exercised - judicial, as well as to the subject area, which covers law enforcement activity - resolution of court

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[91] Ibid.

[92] Ibid.

[93] Mills A. Rethinking Jurisdiction in International Law // British Yearbook of International Law. 2014. Vol. 84 (1). P. 195; O'Keefe R. Universal Jurisdiction: Clarifying the Basic Concept // Journal of International Criminal Justice. 2004. № 2. P. 737.

[94] Terentyeva L.V. Judicial jurisdiction on transboundary private law disputes in cyberspace: autoref. diss. Doctor of jurisprudence: 12.00.03 / L.V. Terentyeva. M., 2021. P. 3.

[95] Garcimartín Alférez F.J. Derecho internacional privado. Cizur Menor: Aranzadi, S.A., 2014. P. 63.

disputes, and law-making activity of courts (within certain limits). Thus, judicial jurisdiction is a manifestation of the sovereignty of the State in the relevant subject-matter area.

Thirdly, with regard to judicial jurisdiction in cross-border private law disputes, the manifestation of the sovereignty of the State is expressed in the exercise of its power to determine the competence of national courts in cross-border private law disputes. This issue can be resolved both in national legislation and in international treaties and acts of integration law.

At the same time, the manifestation of state sovereignty in the subject-matter area is not limited to determining the competence of national courts to resolve cross-border private law disputes. This will be discussed in the next paragraph.

§ 2. Indirect Jurisdiction as a Manifestation of State Sovereignty

The legal essence of indirect jurisdiction can be revealed, firstly, by considering it as a legal phenomenon arising as a result of the exercise of the power of the state, and, secondly, by studying the specifics of the norms constituting this legal institution, which is part of the international civil process.

In this paragraph, we will examine indirect jurisdiction from the first of these perspectives.

As we have previously established, judicial jurisdiction is a manifestation of the sovereignty of the state in the law enforcement sphere, namely, the result of the realization of the power of the state, which consists in assigning to certain law enforcement bodies - courts - the competence to resolve disputes.

However, the statement in the scientific literature that the state determines only the competence of its own judicial bodies and does not have the right to decide on the competence of courts of foreign states[96], in our opinion, does not fully take into account the scope of the power of the state, which may relate to the specified issue. In fact, the

[96] Gavrilov V.V. International Private Law: a short. training course / V.V. Gavrilov. Gavrilov. - 2nd ed., revision and supplement. M.: Norma: INFRA-M, 2002. P. 308.

manifestation of state sovereignty can be found both in the competence of national courts and in the competence of foreign courts. In the first case we are talking about direct jurisdiction, and in the second case about indirect jurisdiction.

It should be clarified that the adjective ‘direct’ is used in foreign literature when there is a need to distinguish between ‘direct’ and ‘indirect’ judicial jurisdiction, otherwise it is not used. This fact, however, does not prevent the understanding of which jurisdiction we are talking about, as the adjective ‘indirect’ is always used in relation to indirect jurisdiction. In the domestic literature, the attribute ‘direct’ is rarely used, as there are practically no works devoted to the comparison of these two types of jurisdiction.

Of course, a state has no right to determine the competence of the judicial bodies of a foreign state. International legal restrictions on judicial jurisdiction derive from the universally recognised principles of international law enshrined in art. 2 of the UN Charter and the 1970 Declaration on Principles of International Law - the principles of sovereign equality of states and non-interference in matters within the internal competence of states. Therefore, a state can only determine the competence of its own courts and enforce the relevant regulations. The power of the state does not extend to a foreign court, and the state cannot determine its competence. At the same time, the sovereignty of the State in matters relating to the competence of foreign courts may be manifested through the recognition of foreign judicial decisions.

In recognizing foreign judgments, the State whose court rendered the judgment cannot extend its effect beyond its jurisdiction. At the same time, the State in whose territory the judgment is to be enforced may authorize or refuse such enforcement.

This situation gives rise to many problems resulting from the fact that in different states, due to objective divergence in the content of their procedural law, the institutions of judicial jurisdiction in cross-border private law disputes differ significantly, which creates significant difficulties in the consideration of specific civil cases: conflicts of jurisdiction, non-recognition and impossibility to enforce a judgement in a case abroad[97].

[97] Mamaev A.A. Determination of the competent court on civil cases with participation of foreign persons: norms of foreign law: textbook. Khabarovsk: KHGAEP, 2003. P. 5.

A State's authorisation of the operation of a foreign judgment in its territory is subject to the limits of the foreign court's competence acceptable to it. If the result of verification of compliance with these boundaries is positive, recognition of a foreign judgment is allowed (in the absence of other grounds for refusal to recognize a foreign judgment), if the result of verification is negative, the court refuses to recognize the foreign judgment.

The limits of admissibility of the competence of a foreign court are established by States through special legal regulation. Such legal regulation may take place both in national legislation and in acts of integration law or international treaties.

Thus, for example, in accordance with par. 3, part 1 of art. 1 part 1 of art. 412 of the Code of Civil Procedure refusal to enforce a foreign court judgment is allowed if the consideration of the case falls within the exclusive jurisdiction of courts in the Russian Federation. Thus, the limits of admissibility of the competence of a foreign court are established: the competence will be recognized as admissible whenever it does not contradict the norms on the exclusive jurisdiction of Russian courts. If the competence of a foreign court is recognized as admissible, recognition of a foreign judgment may be refused by the court on other grounds (on the grounds provided for in par. 1, 2, 4, 5, 6 of part 1 of the same article).

Indirect jurisdiction can be characterised as a sui generis legal phenomenon, the specificity of which lies in the fact that, on the one hand, it is limited by the principle of sovereign equality of States and, on the other hand, it determines the competence of a foreign court for strictly defined purposes. Through the recognition of a foreign judgement, a State introduces it into its legal system[98] and is entitled to impose conditions, defining the limits of the acceptable jurisdiction of the foreign court. Thus, indirect jurisdiction over cross-border private law disputes can be defined as a manifestation of the sovereignty of the state, which is expressed in determining, when recognising foreign judicial decisions, the limits of admissibility of the competence of foreign courts to

[98] Bakhin S.V. Delocalisation of international commercial arbitration: myths and reality / S.V. Bakhin // Arbitration. 2020. № 1/2 (121/111). P. 129.

resolve cross-border private law disputes. The question of the rules forming the institution of indirect jurisdiction will be discussed in § 3 of this Chapter.

Since the task of our study is to develop a holistic concept of indirect jurisdiction in cross-border private law disputes, and given that a special term is rarely used in domestic science in relation to this phenomenon, we cannot leave the issue of word usage without attention.

As stated earlier, there are practically no works in domestic science devoted to the study of indirect jurisdiction over cross-border disputes. In the few studies that do mention it, the term 'indirect international jurisdiction' is most often used to describe it[99]. Foreign literature uses the terms 'indirect competence', 'assessment rules', 'indirect jurisdiction', 'competencia indirecta'[100].

The term 'indirect international jurisdiction' was first introduced by the eminent French scholar E. Barten in the first half of the twentieth century[101].

E. Barten modelled the following hypothetical situation. A legal dispute falls within the jurisdiction of French courts on the basis of French law, while on the basis of the legal rules of a foreign country the dispute falls within the jurisdiction of the courts of that foreign country. A judicial dispute is heard by a foreign State. Will a foreign judgement be considered in France as having been rendered by a competent court and what legal rules should guide the French court in determining the competence of a foreign court in this case[102]?

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[99] For example: Problems of unification of international private law: a monograph [Electronic resource] / N.V. Vlasova, N.G. Doronina, T.P. Lazareva, et al; ed. by N.G. Doronina. 2nd ed., rev. and supplement. Moscow: IZISP, Jurisprudence, 2023. 672 p. // JPS 'ConsultantPlus'. Access mode: http://www.consultant.ru/; Modern corporate law: current problems of theory and practice: a monograph [Electronic resource] / O.A. Belyaeva, S.A. Burlakov, M.M. Vildanova, et al; ed. by O.V. Gutnikov. Moscow: IZiSP, Statute, 2021. 528 p. // JPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/; Mokhova E.V. Recognition of foreign bankruptcies in Russia: the issue of finality of the court decision opening bankruptcy proceedings and the search for the means of its cross-border effect de lega lata / E.V. Mokhova // Zakon. 2023. № 1. P. 114-139; Shchukin A.I. Indirect international jurisdiction in the Hague Convention on the Recognition and Enforcement of Foreign Judgments 2019 / A.I. Shchukin // Journal of Russian Law. 2020. № 7. P. 170-186; № 11. P. 140-154.

[100] For example: H. Schack. International civil procedure law: textbook / H. Schack. Moscow: Izd-vo Beck, 2001. P. 404; Monge Talavera L. Reconocimiento de sentencias extranjeras de divorcio en Perú // Cuadernos de derecho transnacional. 2022. Vol. 14. №. 2. P. 1165. doi: 10.20318/cdt.2022.7238; Explanatory Report on the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2019 Judgments Convention) [Electronic resource]: by F. Garcimartín, G. Saumier // HCCH: [website]. URL: https://www.hcch.net/en/publications-and-studies/details4/?pid=6797 (date of access 21.03.2022).

[101] Barten E. Fundamentals of private international law according to the French legislation and judicial practice: [monograph] / E. Barten; translation from French by D.V. Tarikanov. T. 1. Moscow: Statute, 2019. P. 273.

[102] Ibid. P. 272.

In concluding that, in deciding whether a foreign court which has made a judgement has jurisdiction, French courts usually apply the rules of national law on the jurisdiction of French courts over cases with a foreign element, E. Barten observed that the rules of French law on international jurisdiction thereby go beyond what they were originally intended for, i.e. 'their direct application and natural function are duplicated by an indirect application and incidental function ... they become, if I may put it that way, the rules of French law on international jurisdiction...'[103].

Prof. Prof. D.V. Litvinskiy, in this connection, considers it more correct to speak of 'indirect verification', i.e. the court's control of the competence of a foreign court in an indirect manner[104].

Thus, the origin of the term is predetermined not by the essence of this legal phenomenon, but by the way in which the competence of a foreign court is controlled - by using national legal norms on direct jurisdiction, which are given an inappropriate 'indirect function'.

At the same time, the use of the adjective 'indirect' in the term we are interested in has become widespread in foreign doctrine, and the legal phenomenon under discussion is described by this term regardless of the way of determining the admissibility of the competence of a foreign court used in the states.

We believe that the use of the adjective 'indirect' in the term 'indirect jurisdiction in cross-border private law disputes' is justified, as it reflects the essence of the legal phenomenon under study. It should be taken into account its widespread use in foreign doctrine.

We have, however, only touched upon the question of the validity of the use of the adjective 'indirect' in the term. It also seems to us important to investigate the issue of terminology in relation to the notion of 'judicial jurisdiction in cross-border private law disputes' because of the close relationship between it and the legal phenomenon under study, as well as the need to justify the term denoting it.

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[103] Ibid. P. 273.

[104] Litvinskiy D.V. Recognition of foreign court decisions on civil cases: (comparative legal analysis of French legislation, judicial practice and legal doctrine). P. 411.

When speaking about judicial jurisdiction over cross-border private law disputes, Russian experts use a variety of terminology, noting that there is no universally accepted term defining this institution and that different researchers use the terms 'international jurisdiction', 'jurisdiction', 'competence' for its designation.[105] To date, the unity of terminology has not been reached, despite the fact that a recent dissertation study by Prof. L.V. Terentyeva argued the use of the term 'judicial jurisdiction over transboundary private law disputes'.[106]

Thus, A.I. Shchukin insists on preferring the term 'international jurisdiction'.[107] Some researchers argue that the term 'international jurisdiction' is widely used in Russian doctrine.[108] The term is used in the academic literature on private international law.[109]

Let us trace chronologically the use of the discussed terms in the doctrine and the attitude of specialists to them.

In pre-revolutionary legal science, Prof. T.M. Yablochkov, who is recognised by experts as the founder of international procedural law in Russia[110], designated the legal phenomenon of interest to us by the term 'international jurisdiction'[111], he used the terms 'jurisdiction' and 'jurisdiction in international law' as synonyms[112]. Prof. T.M. Yablochkov also spoke of 'competence' as a property of Russian courts that allows them to consider litigation of foreigners on Russian territory[113].

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[105] Mamaev A.A. International judicial jurisdiction on civil cases with participation of foreign persons: autoref. dis.... cand. jurid. sciences: 12.00.03, 12.00.15 / A.A. Mamaev. M., 2001. P. 4.

[106] Terentyeva L.V. Judicial jurisdiction on transboundary private law disputes in cyberspace: autoref. diss. Doctor of Jurisprudence. P. 14.

[107] Shchukin A.I. Issues of jurisdiction in international treaties with the participation of Russia: a monograph / A.I. Shchukin. Moscow: Prospect, 2021. P. 12-13.

[108] Drobyazkina I.V. International Civil Procedure: Problems and Prospects. SPb.: Izd. vo R. Aslanov 'Yurid. centre Press', 2005. P. 49-50. The term 'international jurisdiction' is also used in the works of foreign scholars, for example: Trunk A., Staudinger A. International civil procedure law of the European Community in comparison with international civil procedure law of Russia / Modern international private law in Russia and the European Union. Book 1: monograph / ed. by M.M. Boguslavsky, A.G. Lisitsyn-Svetlanov, A. Trunk. - Moscow: Norma, 2013. P. 290.

[109] See, for example: Private International Law: textbook / V.N. Borisov, N.V. Vlasova, N.G. Doronina, et al; ed. by N.I. Marysheva. 4th ed., rev. and add. Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation; LLC 'Law Firm KONTRACT', 2018. P. 704; International Private Law: textbook / M.M. Boguslavsky. - 7th ed., rev. and add. M.: Norma: INFRA-M, 2021. P. 551.

[110] Pavlova N.V. Tikhon Mikhailovich Yablochkov - an ancestor of international civil procedural law in Russia / Golden Fund of Russian science of international law. T. 2. Moscow: International Relations, 2009. P. 52.

[111] Yablochkov T.M. Course of international civil procedural law / T.M. Yablochkov. Yaroslavl: printing house of the Provincial Board, 1909. VIII. P. 59.

[112] Yablochkov T.M. Course of International Civil Procedural Law / Golden Fund of the Russian Science of International Law. T. 2. Moscow: International Relations, 2009. P. 367, 371.

[113] Ibid.

It should be noted that N.P. Ivanov, one of the scientists who laid the foundations of the Russian Science of Private International Law[114], used the concept of 'private international jurisdiction', which is sometimes mistakenly identified by modern specialists with the phenomenon we are discussing[115]. In his work 'Foundations of Private International Jurisdiction', N.P. Ivanov explains that he is referring only to 'international conflicts of local rights'; when speaking of jurisdiction, he means 'only substantive jurisdiction', i.e., the legal principles on the basis of which the judge renders his judgement, as opposed to formal jurisdiction, which includes the procedure itself'[116].

In the Soviet and post-Soviet periods, the issues of judicial jurisdiction over cross-border private law disputes were dealt with by Prof. L.P. Anufrieva, Prof. L.A. Lunts, Prof. N.I. Marysheva, and in the later period by A.A. Mamaev, I.V. Drobyazkina, Prof. L.V. Terentyeva, A.I. Shchukin and other researchers.

Prof. L.P. Anufrieva. Prof. L.P. Anufrieva uses the terms 'international jurisdiction' and 'international jurisdiction' as synonyms, while drawing attention to the fact that a stricter approach to terminology means that, depending on the circumstances, it is necessary 'to speak of the "international competence" of the relevant judicial institutions of a given country and the allocation of domestic territorial jurisdiction for the purposes of resolving the complex of problems of international jurisdiction as a whole'[117].

Prof. Prof. N.I. Marysheva distinguishes between domestic territorial jurisdiction and international jurisdiction - 'jurisdiction of the courts of a given state over cases with a foreign element'[118]. A similar definition of the concept of 'international jurisdiction' is

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[114] Abdullin I.A. Professor Nikolai Pavlovich Ivanov and his book 'Foundations of International Private Jurisdiction' / The Golden Fund of the Russian Science of International Law. T. 2. Moscow: International Relations, 2009. P. 31.

[115] L.V. Terentyeva refers the researcher to the figures who dealt with the problems of judicial jurisdiction to resolve disputes involving foreign persons. See: Terentyeva L.V. Judicial jurisdiction on cross-border private law disputes in cyberspace: autoref. diss. Doctor of Jurisprudence. P. 4.

[116] Ivanov N.P. Foundations of private international jurisdiction. P. 139.

[117] L.P. Anufrieva explains this approach by the fact that the law of some states distinguishes between 'international competence' and 'territorial jurisdiction': 'the rules relating to domestic jurisdiction may not always extend their effect to the area of international competence'. See: Anufrieva L.P. International Private Law: in 3 vol. 3. Trans-border Bankruptcies. International Commercial Arbitration. International Civil Procedure: textbook. Moscow: Izd-vo BEC, 2001. P. 301-302.

[118] Marysheva N.I. Consideration by courts of civil cases involving foreigners / N.I. Marysheva. - Moscow: Yurid. lit., 1970. P. 9.

given by V.V. Gavrilov[119]. At the same time, V.V. Gavrilov distinguishes the stages of the successive determination of jurisdiction, the first of which he calls the stage of determining the 'competent national jurisdiction', the second - the determination in the system of which courts of a given state (general civil, commercial, etc.) the dispute should be considered, and the third - the determination of a specific judicial body, which is directly to resolve the dispute[120]. Thus, 'international jurisdiction' and 'competent national jurisdiction' in the understanding of V.V. Gavrilov are synonyms.

The Prof. L.A. Lunts and, later, A.A. Mamaev correlate the concepts of 'jurisdiction' ('international procedural jurisdiction') and 'international jurisdiction' ('international judicial jurisdiction'), the former being broader than the latter.

When using the term 'international jurisdiction', Prof. L.A. Lunz refers to the competence of the judicial apparatus of a state to resolve certain types of cases, while the term 'jurisdiction' in the sense of private international law, in his opinion, also covers the competence of administrative bodies (e.g. civil registry bodies)[121].

A.A. Mamaev understands international judicial jurisdiction as one of the elements of a single complex institute of international procedural jurisdiction in civil cases[122]. He classifies international procedural jurisdiction in civil matters, depending on the type of competent authorities, into judicial, administrative, public and arbitral, thus relating international judicial jurisdiction and international procedural jurisdiction in civil matters as part and whole[123].

I.V. Drobyazkina, insisting on the inadmissibility of identifying the concepts of 'international jurisdiction' and 'jurisdiction' in Russian legislation, proceeds from the idea that, unlike ordinary jurisdiction, which regulates the competence of judicial bodies, international jurisdiction determines the jurisdiction of the state as a whole, including

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[119] V.V. Gavrilov defines international jurisdiction as the competence of courts of a particular state to resolve civil cases with foreign participation. See: V.V. Gavrilov. Op. cit. P. 307-308.

[120] V.V. Gavrilov. Op. cit. P. 308-309.

[121] Luntz L.A. Op. cit. P. 810.

[122] Mamaev A.A. International judicial jurisdiction on civil cases with participation of foreign persons: autoref. dis.... kand. jurid. nauk. P. 9.

[123] Ibid.

issues attributed to the competence not only of the judiciary, but also of other bodies of justice[124].

L.V. Gorshkova, studying private legal relations of international nature, realised in the Internet, uses the term 'international jurisdiction' to designate the discussed legal phenomenon. Criticising the definition of this concept, given by A.A. Mamaev, for limiting the competence of courts in the consideration of international cases by cases of presence of foreign persons in the legal relationship[125], she proposes to define the content of international jurisdiction as 'the competence of judicial and other law enforcement bodies to consider private legal cases of international nature'[126].

A recent study by Prof. L.V. Terentyeva substantiates the use in doctrine, legislation and law enforcement practice of the concept of 'judicial jurisdiction to consider cross-border private law disputes'[127]. In her view, 'the use of a single notion of "jurisdiction" both to denote the sovereign powers of states and to delimit the powers of state law enforcement bodies to consider cross-border private law disputes allows to reflect the interrelation and interdependence of the notions of "state jurisdiction" and "judicial jurisdiction to consider cross-border private law disputes"[128].

The Russian Federation legislation uses the terms 'competence' and 'jurisdiction' to denote direct jurisdiction over cross-border disputes. Thus, in the Code of Civil Procedure[129] the legislator operates with the term 'jurisdiction', the corresponding title is also given to Chapter 44 - 'Jurisdiction of cases involving foreign persons to courts in the Russian Federation'and in the Arbitration Procedural Code[130] the term 'competence' is

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[124] Drobyazkina I.V. Op. cit. P. 50.

[125] A.A. Mamaev gives the following definition of international judicial jurisdiction: 'it is a procedural institute that determines which categories of civil cases involving foreign persons may be considered by the courts of a particular state'. See: Mamaev A.A. Determination of the competent court on civil cases involving foreign persons: norms of foreign law.P. 6.

[126] Gorshkova L.V. Legal problems of regulation of private legal relations of international character in the Internet: autoref. dis.... Cand. of juridical sciences: 12.00.03 / L.V. Gorshkova. M., 2005. P. 26.

[127] Terentyeva L.V. Judicial jurisdiction on transboundary private law disputes in cyberspace: autoref. diss. Doctor of Jurisprudence. P. 14.

[128] Ibid. P. 33.

[129] Civil Procedural Code of the Russian Federation: Federal Law of 14 November 2002 No. 138-Federal Law // Collection of Legislation of the Russian Federation. 2002. № 30. Art. 3012.

[130] Arbitration Procedural Code of the Russian Federation: Federal Law of 24 July 2002 No 95-Federal Law // Collection of Legislation of the Russian Federation. 2002. № 46. Art. 4532.

used: Chapter 32 is called ‘Competence of arbitration courts in the Russian Federation to consider cases involving foreign persons’.

As for the terminology used in foreign legislation and foreign doctrine, there is no universally accepted terminology; the equivalents of the term “jurisdiction” (‘jurisdiction’, ‘jurisdicción’, ‘giurisdizione’), ‘competence’ (‘competencia’, ‘competenza’, ‘competence’) and ‘jurisdiction’ (‘gerichtsstand’) are both used.[131]

The conducted analysis has shown that in science there is no universally recognised term denoting direct jurisdiction over cross-border private law disputes, therefore we are not bound by the necessity to use a certain variant when elaborating a term in relation to the phenomenon we are investigating. At the same time, the terms ‘competence’ and ‘jurisdiction’ have a somewhat different meaning than the concepts of ‘jurisdiction’ and ‘jurisdiction’: they are directly related to the concept of state sovereignty, sovereign power[132]. Considering the above and agreeing with the conclusions of L.V. Terentyeva about the justification of describing direct jurisdiction by the term “judicial jurisdiction over cross-border private law disputes”, in relation to the legal phenomenon under consideration, we believe it is reasonable to use the term “indirect jurisdiction over cross-border private law disputes”.

§ 3. Specifics of Legal Norms on Indirect Jurisdiction

This paragraph explores the peculiarities of the rules on indirect jurisdiction. In doing so, we proceed from the fact that these norms constitute an institution of international civil procedure, which will be further substantiated below.

In pre-revolutionary science, international procedural law was understood as ‘a set of norms and rules governing the competence of the judiciary, the form and evaluation of

[131] On the terminology used in Spanish law, see: Banacloche Palao J., Cubillo López I. J. Aspectos fundamentales de Derecho procesal civil. - 5.a Edición. - Madrid: LA LEY Saluciones Legales, S.A., 2023. P. 215. On the terminology used in German, French, Italian and English law, see: Schack H. Op. cit. P. 62-63; Mamaev A.A. Determination of the competent court in civil cases involving foreign persons: norms of foreign law. P. 6-9. On the terminology used in Algerian law: Issad M. International Private Law: per. from Fr. / ed. and afterword. M.M. Boguslavsky. M.: Progress, 1989. P. 215-218. On the terminology used in Latin American countries: Opertti Badán D. Algunas reflexiones sobre jurisdicción internacional y jurisdicción exclusiva / Derecho Procesal Transnacional. Homenaje al Prof. Dr Gualberto Lucas Sosa / coord. por M.J.A. Oyarzábal. Buenos Aires: Ábaco, 2012. P. 178.

[132] Neshataeva T.N. On issues of competence of arbitration courts in the Russian Federation to consider cases involving foreign persons / T.N. Neshataeva // Bulletin of the Supreme Arbitration Court, 2004, No. 12. P. 88.

evidence and the execution of judgements in international legal life in the event that there is a conflict of procedural laws and customs of different states'[133]. This approach, referring the rules on judicial jurisdiction and on the recognition of foreign judgements to matters of international civil procedure, has not changed.

Prof. L.V. Terentyeva, in particular, notes that according to the established opinion of scholars, judicial jurisdiction to consider transboundary private law cases belongs to the institute of international civil procedure, the rules of which regulate the division of competence between courts[134]. We note a certain imprecision in this definition, which is that norms on judicial jurisdiction can be found both in international treaties (in which case, yes, we are talking about the delimitation of jurisdiction) and in national legislation (in this case, it is not a question of delimitation, but rather of establishing the jurisdiction of national courts to resolve cross-border disputes).

In modern courses[135] and textbooks[136] on frequent flyer law there is a section on 'international civil procedure', which deals with the topics of 'judicial jurisdiction over cross-border disputes' (often called 'international jurisdiction' by the authors) and 'recognition and enforcement of a foreign judgement'. However, neither the former nor the latter usually mentions indirect jurisdiction. The term 'indirect jurisdiction' is also not found in textbooks devoted entirely to international civil procedure[137].

However, despite the lack of mention of indirect jurisdiction, any course and textbook on frequent flyer law, as well as on international civil procedure, provides information on the rules for its definition without mentioning the term itself. This is because deciding whether to recognize a foreign judgment depends on answering the

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[133] Yablochkov T.M. Course of international civil procedural law. P. 1.

[134] Terentyeva L.V. Court jurisdiction for the resolution of cross-border private law cases in the context of the principle of international cooperation of states / L.V. Terentyeva // Lex russica. 2021. T. 74. № 3. P. 37.

[135] See for example: Anufrieva L.P. International Private Law: in 3 vol. 3. Cross-border bankruptcies. International commercial arbitration. International Civil Procedure: textbook. Moscow: Izd-vo BEC, 2001. 768 p.; Luntz L.A. Course of International Private Law: In 3 vols. Moscow: Spark, 2002. 1007 p.; Trunk A., Staudinger A. International civil procedural law of the European Community in comparison with international civil procedural law of Russia / Modern international private law in Russia and the European Union. Book 1: monograph / ed. by M.M. Boguslavsky, A.G. Lisitsyn-Svetlanov, A. Trunk. - Moscow: Norma, 2013. P. 284-324.

[136] See for example: Private International Law: textbook / edited by G.K. Dmitrieva. G.K. Dmitrieva. 5th ed., rev. and supplement. Moscow: Prospect, 2023. 1216 p.

[137] See for example: Getman-Pavlova I.V. International Civil Procedure: textbook for universities / I.V. Getman-Pavlova, A.S. Kasatkina, M.A. Filatova; under the general editorship of I.V. Getman-Pavlova. 2nd ed. M.: Izd-vo Yurait, 2023. 341 p.; International civil procedure and international commercial arbitration: textbook / S.V. Nikoliukin. MOSCOW: JUSTICE, 2017. 256 p.

question of whether the competence of the foreign court that heard the cross-border private law dispute is acceptable. Domestic courses and textbooks, as a rule, mention only the need to verify compliance with the criteria of exclusive jurisdiction (jurisdiction), as failure to comply with them is a ground for refusal to recognise and enforce a foreign court judgment, which corresponds to the current Russian legal regulation of indirect jurisdiction over cross-border private law disputes[138].

It should be noted that the study of international civil procedure within the framework of the academic discipline 'Private International Law' has its own grounds. International civil procedure and frequent flyer law are recognised by specialists as inseparable legal matters[139]. However, the problem of the place of the norms of international civil procedure in the system of law has not been solved in the doctrine so far.

N.M. Yurova notes that the relations that are the subject of international civil procedural law are studied in several sciences - international law, private international law, civil procedural law, arbitration procedural law[140]. Some specialists consider international civil procedure to be an independent branch of domestic (E.A. Osavelyuk, M.A. Mitina)[141], or international (L.N. Galenskaya, N.M. Yurova)[142] law. According to other specialists, international civil procedure refers to civil procedural law as a branch of law, and to frequent flyer miles as a branch of jurisprudence (M.M. Boguslavsky, L.A. Lunts, V.P. Zvekov, G.K. Dmitrieva). Prof. L.P. Anufrieva and Prof. N.Yu. Yerpyleva include international civil procedure in the structure of CIS as a branch of law and science[143]. I.V. Getman-Pavlova, A.S. Kasatkina, M.A. Filatova believe that international

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[138] This issue is discussed in more detail in Chapter III.

[139] See: Osavelyuk E.A. International civil procedure in the system of Russian law: a monograph / E.A. Osavelyuk. SPb.: Publishers 'Lan', 2022. C 17.

[140] Yurova N.M. International civil procedural law: theoretical foundations of norms implementation in the legal system of the Russian Federation / N.M. Yurova. Moscow: Wolters Kluwer, 2008. P. 5.

[141] Osavelyuk E.A. Op. cit. P. 165; Mitina, M.A. On understanding the essence of regulation of international jurisdiction: modern trends / M.A. Mitina // Izvestiya vysokikh uchebnykh obrazovaniya. Jurisprudence. 2010. № 4(291). P. 229.

[142] Galenskaya L.N. International civil procedure: concept and development trends / L.N. Galenskaya // Actual problems of international civil procedure. SPb.: Russia-Neva, 2003. P. 12; Yurova N.M. Op. cit. P. 27.

[143] Yerpyleva N.Y. International civil procedural law: concept, subject and system // International Law. 2013. № 4. P. 16-160. doi: 10.7256/2306-9899.2013.4.10362; Yerpyleva N.Y., Klevchenkova M.N. Unification of norms on international judicial jurisdiction in international procedural law // International law and international organisations. 2013. № 3. P. 343. doi: 10.7256/2226-6305.2013.3.8984.

civil procedure is an independent branch, which is part of the system of international private law[144]. According to the definition of Prof. V.V. Yarkov international civil procedure is a system of norms of national and international law related to judicial and other jurisdictional protection of the rights of participants of civil turnover and public legal relations and containing a foreign element[145].

A detailed analysis of this problem is not included in the tasks of the present dissertation research, and, moreover, cannot be solved outside the definition of the place of private international law in the system of law - an archically complex issue of interaction between the systems of international and domestic law, in terms of its importance and relevance, as noted by N.M. Yurova, belonging to the eternal problems that will be studied as long as the legal science itself exists[146], as well as in the absence of the resolution of other issues of the general theory of law[147]. In this connection, let us only note that in our further reasoning we shall proceed from the uncontested postulate that the rules of international civil procedure exist both in the system of international law and in the system of integration law and the system of national law, as well as from the further proved judgment that indirect jurisdiction, along with direct jurisdiction and recognition of foreign judgments, are matters of international civil procedure.

The attribution of indirect jurisdiction, as well as direct jurisdiction, to the institutions of international civil procedure is explained as follows.

Firstly, there is no doubt as to the procedural nature of the rules on indirect jurisdiction, as they aim to regulate the activities of the judiciary and determine the conduct of the judicial process. Unlike the rules of direct jurisdiction, which establish (delimit) the competence of national courts, the rules of indirect jurisdiction regulate the procedure for a court to determine the acceptable competence of a foreign court within the framework of the procedure for recognition and enforcement of a foreign judgement. If the competence of the foreign court is deemed acceptable, the foreign judgement may

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[144] Getman-Pavlova I.V. Op. cit. P. 17.

[145] Yarkov V.V. Arbitration process: textbook / V.V. Yarkov. 8th ed., rev. and supplement. M.: STATUT, 2021. P. 710.

[146] Yurova N.M. Op. cit. P. 90.

[147] In particular, the question of whether procedural rules can be found in the substantive branch. For more details see: Melnikov Y.I. On the concept and place of procedural norms in the structure of Soviet law / Y.I. Melnikov // Problems of socialist legality: resp. scientific collection. Kharkov, 1988. Vyp. 22. P. 83.

be recognised and enforced. A contrary result of the verification shall result in the rejection of the respective application. For example, par. ‘e’ of art. 1097 of the Romanian Code of Civil Procedure[148] contains the following procedural rule: the exclusive competence of the Romanian courts in a pending case is a ground for refusing to recognise a foreign judgment in such a case. As we can see, on the one hand, the procedure for determining the admissibility of the jurisdiction of a foreign court (by comparing it with the rules establishing the exclusive jurisdiction of Romanian courts) is established, on the other hand, the procedural actions of the court are regulated, namely, it is prescribed to reject the application for recognition of a foreign judgement in case of a negative result of the competence test.

Secondly, the procedural rules in question, as well as the rules on direct jurisdiction, form a set regulating a separate group of procedural relations - relations arising in connection with determining the admissibility of the competence of a foreign court[149]. These include: the rules governing the procedure for determining the admissibility of a foreign court's jurisdiction, the jurisdictional bindings themselves, and the rules governing the procedural actions of the court based on the results of verifying such admissibility.

The norms on indirect jurisdiction are not always united in a separate section or other block of the relevant normative legal act. Where the admissibility of a foreign court's jurisdiction is subject to compliance with the rules on the exclusive jurisdiction of the courts of the State in which recognition is sought, the relevant jurisdictional bindings are contained in the block dealing with direct jurisdiction over cross-border disputes. At the same time, the rules governing the procedure for determining the admissibility of a foreign court's jurisdiction and the rules governing the procedural actions of the court based on the results of the admissibility test are usually placed together. For example, in the Code of Civil Procedure and in the Code of Arbitration Procedure of the Russian Federation the relevant provisions are in the block concerning the grounds for refusal to

[148] Codul de procedură civilă din 1 iulie 2010 [Electronic resource] // Ministerul Justiției: [website]. URL: https://legislatie.just.ro/Public/DetaliiDocument/140271 (date of access 10.09.2023).

[149] Under the institute of law we understand a stable group of legal norms regulating a certain type of qualitatively homogeneous social relations, in this case procedural. See: Polyakov A.V. General Theory of Law: textbook / A.V. Polyakov, E.V. Timoshina. 3rd edition, revised and supplemented. SPb: SPbSU, 2017. P. 360.

recognize a foreign judgment[150]. The rules on indirect jurisdiction are similarly situated in Spanish law: according to art. 46.1 (c) of Law 29/2015, of 30 July 2015, on international legal cooperation in civil matters, foreign judgments are not recognised if they have been rendered on a matter in respect of which the Spanish jurisdictional authorities have exclusive competence or on another matter if the competence of the foreign court is not due to a reasonable connection; the existence of a reasonable connection with the dispute will be presumed if the foreign judicial body has a reasonable connection with the dispute[151]. In this example, the rules governing the determination of the admissibility of foreign jurisdiction (the test is not limited to a comparison with the rules on the exclusive jurisdiction of Spanish courts, but also includes a test of whether the case has a reasonable connection with the forum, including through a comparison with the rules on direct jurisdiction of Spanish courts) and the rules governing the procedural actions of the court based on the results of the relevant test are combined into one block.

It should be noted that this arrangement of procedural norms constituting the institution of indirect jurisdiction in a normative legal act contributes to the fact that even in the doctrine indirect jurisdiction is sometimes considered narrowly, defining it only as one of the requirements for the recognition and enforcement of foreign judgments. In particular, the Uruguayan specialist S. Fresnedo de Aguirre classifies the requirements for the enforcement of a foreign judgement into the following categories: formal, documentary and substantive, the latter including the proper competence of the foreign court, compliance with the procedural guarantees of the parties, finality of the judicial act, and non-contradiction with public policy[152]. Such a narrow approach to understanding the legal category we are interested in essentially leads to the confusion of norms on indirect jurisdiction with other norms establishing the grounds for refusal to recognise foreign judgments, which does not seem correct to us, as it does not reveal the specific features of the phenomenon under study.

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[150] We provide their detailed analyses in Chapter III.

[151] Ley 29/2015, de 30 de julio, de Cooperación Jurídica Internacional en materia civil [Electronic resource] // vLex. Mode of access: https: vlex.es.

[152] См.: Cal Laggiard M. Jurisprudencia De La Suprema Corte De Justicia en Materia De Ejecución De Sentencias Extranjeras De Condena // Revista de Derecho. 2011. Vol. 10. № 19. P. 101, 102-103.

In other cases, the rules on indirect jurisdiction are combined into a single section, which is usually the case when the legislator has chosen the model of indirect jurisdiction regulation, according to which the admissibility of foreign jurisdiction is conditioned by indirect jurisdictional criteria[153]. For example, in Australia's Foreign Judgments Act 1991[154] the procedure for determining the admissibility of a foreign court's jurisdiction, indirect jurisdictional attachments and procedural consequences are contained in one section - 7 'Cancellation of a registered judgment'.

This or that arrangement of norms on indirect jurisdiction in a normative legal act does not prevent their institutionalization, because, as A.V. Kurochkin noted, in contrast to the concept of formalization, it is now justified to give determining importance in the institutional process to the content component, in other words, "the creation of legal institutions does not depend on their formal recognition by the legislator", "the form of law is not considered as an indicator of the existence of this or that institution", the basis of institutionalization are[155].

Indirect jurisdiction can be considered in two aspects: as a legal condition and as a procedural legal fact.

Both legal conditions and legal facts are the grounds for the emergence of legal relations. Making a distinction between these legal categories, Prof. V.V. Yarkov says that unlike legal facts, which exhaust themselves in their realization, legal conditions can exist for a long time in a potential state, without generating legal consequences, and represent previously established legally significant circumstances, determining the environment of formation of factual compositions[156].

Prof. V.V. Yarkov considers the scientific category of 'jurisdiction'[157] as a legal condition determining the emergence of the right to appeal to the court, and as a legal fact

[153] More on models of legal regulation of indirect jurisdiction in Chapter II.

[154] Foreign Judgments Act 1991 № 112 [Electronic resource] // Federal Register of Legislation. Mode of access: https: legislation.gov.au.

[155] Kurochkin A.V. Concept 'Legal institutionalisation' and its content / A.V. Kurochkin // Actual problems of Russian law. 2016. № 3 (64). P. 41.

[156] Yarkov V.V. Legal facts in the civilistic process / V.V. Yarkov. Moscow: Infotropic Media, 2012. P. 31.

[157] Prof. V.V. Yarkov considers jurisdiction as an instrument of delimitation of subjects of jurisdiction between all jurisdictional bodies (See: Yarkov V.V. Juridical facts in civilistic process. P. 291).

in a specific factual composition determining the emergence of civil procedural legal relation[158].

With respect to indirect jurisdiction, we can reach the following conclusions.

As a legal condition, indirect jurisdiction determines the emergence of the right to recognise a foreign judgment and, in this sense, establishes the limits of the acceptable competence of the foreign court.

Indirect jurisdiction also acts as a procedural legal fact. Legal facts, as a rule, are considered as circumstances to which the norms of law connect the emergence, change or termination of legal relations[159]. Legal facts are classified by the degree of interrelation between them into initial (primary) and derivative ones[160]: 'the appearance of the initial legal fact "includes" in the legal realisation process derivative legal facts'[161]. Prof. V.V. Prof. V.V. Yarkov considers jurisdiction as a derivative legal fact, and the criteria of a specific type of jurisdiction (exclusive, multiple) as primary legal facts[162].

In the case of indirect jurisdiction, the primary legal facts are indirect jurisdictional criteria, direct jurisdictional criteria (contained in the law of the adjudicating State and in the law of the recognizing State), exclusive jurisdiction criteria (depending on the model of legal regulation of indirect jurisdiction).

A derivative legal fact, which is established by the court as a result of the application of the above-mentioned primary legal facts, is indirect jurisdiction, understood as the admissibility of the jurisdiction of a foreign court. As a result of the court's review, the jurisdiction of the foreign court may be declared admissible or inadmissible. Depending on this, there are different procedural consequences - refusal to recognise the foreign judgment or satisfaction of the relevant application (in the absence of other grounds for refusal of recognition).

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[158] Ibid. P. 290-291.

[159] See for example: Ioffe O.S. Selected Works on Civil Law: From the History of Civilistic Thought. Civil legal relation. Critique of the theory of 'economic law': a collection of scientific papers / O.S. Ioffe. 4th ed. M.: Statute, 2020. P. 627; Mironov V.O.; Zin, N.V. Legal facts: concept, types, signs, classification / V.O. Mironov, N.V. Zin // Agrarian and land law. 2020. № 3 (183). P.56.

[160] Osipov Y.K. Subordination and jurisdiction of civil cases / Y.K. Osipov. Moscow: Gosurizdat, 1962. P. 33; Mironov V.O., Zin N.V. Op.cit. P. 57.

[161] Yarkov V.V. Legal facts in the civilistic process P. 106.

[162] Ibid. P. 292.

Let us consider the purpose of legal regulation and the nature of legal norms of the legal institute under study.

Foreign literature notes that the rules of direct and indirect jurisdiction have different purposes: the former are aimed at avoiding a situation in which the parties will be deprived of the opportunity to resolve their dispute in court, in other words, "no dispute should be left without a competent judge", the latter - to ensure the enforcement of the judicial act that has taken place in the case[163]. Attention is drawn to the fact that in the second case it is not a question of avoiding deprivation of justice, but of preventing the excessive administration of justice that would occur if a judge of one State invaded the competence of a judge of another State[164]. Thus, rules of direct jurisdiction are called rules of generosity and rules of indirect jurisdiction are called rules of frugality[165].

This judgement, however, contains an internal contradiction: on the one hand, the author says that the rules of both indirect and direct jurisdiction are aimed at ensuring the right to a court (although he contrasts the judicial and executive stages), and, on the other hand, the purpose of the latter is to prevent intrusion into the competence of the national court.

It seems that in the present case it is impossible to speak of opposing the purposes of determining direct and indirect jurisdiction.

As the purposes of the legal institute of direct jurisdiction in the doctrine are indicated, in particular: delimitation of the competence of courts of different states in cases with a foreign element (M.A. Mitina)[166], Guaranteeing the right to judicial protection, preventing conflicts of jurisdiction and ensuring that judicial acts adopted in another State can be recognised in the future (A.N. Shchukin)[167]. It is noted that it is necessary to take into account the 'international dimension', i.e. the identification by the law enforcement body of the connection of the case with both the State where the dispute

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[163] Goldschmidt W. Jurisdicción Internacional Directa e Indirecta / W. Goldschmidt // Prudentia Iuris. Revista de la Facultad de Derecho y Ciencias Políticas de la Pontificia. Universidad Católica Argentina Santa María de los Buenos Aires. 1980. № 1. P. 12, 19.

[164] Ibid.

[165] Ibid.

[166] Mitina M.A. Methods of regulation of international jurisdiction in Russian law / M.A. Mitina // Vestnik of St. Petersburg State University. Series 14. Law. 2011. №4. P. 43.

[167] Shchukin A.I. Issues of jurisdiction in international treaties with the participation of Russia: monograph. P. 22.

is pending and the foreign State whose law enforcement body may claim to hear a cross-border private-law dispute[168], which is in line with the principle of equality of judicial processes and the principle of international judicial co-operation[169].

It seems that both the rules of direct jurisdiction and the rules of indirect jurisdiction are aimed at the realization of the principle of law - the right to judicial protection[170], which, firstly, covers all the tasks mentioned by the above-mentioned authors: to delimit the competence of the courts, to prevent conflicts of jurisdiction (both positive and negative), including by comparing the relationship of the case with the national and foreign state), and secondly, includes both the right to have the court resolve the dispute and to effectively implement this decision. 'Enforcement acts as the most important part of the legal practice, reflecting the effectiveness of justice'[171], since the judicial procedure is used by the subject of law for only one purpose - to obtain real restoration and defence of his violated right[172]. A right confirmed by a judicial act but not expressed in action 'is essentially inanimate, non-existent, and reflects the abnormality of such a factual situation'[173]. Ensuring that a state has the right to judicial protection (including in the area of enforcement of foreign judicial acts) enhances the competitiveness of its legal system. States that offer more convenient jurisdictional conditions for resolving disputes and enforcing judgements ultimately attract capital and people to them[174].

Without this objective, the very existence of the rules of indirect jurisdiction would be meaningless. Judicial decisions, as previously stated, have no extraterritorial effect; they are enforced only in the territory of the State whose court rendered the judgement, reflecting the operation of the principle of the sovereign equality of States[175]. A State, acting sovereignly, allows the enforcement on its territory of foreign judgements by

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[168] Terentyeva L.V. Judicial jurisdiction to resolve cross-border private law cases in the context of the principle of international co-operation of states. P. 45.

[169] Ibid. P. 47.

[170] Galenskaya L.N. Legal regulation of transnational relations: a monograph / L.N. Galenskaya. SPb: SPbSU, 2022. P. 68-74.

[171] Yarkov V.V. Juridical facts in the civilisation process. P. 434.

[172] Kuznetsov E.N. The right to enforcement of court decisions and the right to judicial protection: issues of correlation / E.N. Kuznetsov // Legal Studies. Kuznetsov // Legal Studies. 2018. №10. P. 32.

[173] Yarkov V.V. Juridical facts in the civilisation process. P. 434.

[174] Yarkov V.V. Enforcement proceedings in the member states of the International Union of Court Enforcement Officers (some trends) / V.V. Yarkov. Yarkov // Arbitration and Civil Procedure. 2011. № 8. P. 32.

[175] Galenskaya L.N. Issues of International Private Law at the London Conference (2000) of the International Law Association / L.N. Galenskaya // Journal of International Private Law. SPb, 2000. № 1 (27). P. 9.

recognising the jurisdiction of foreign courts through the establishment of appropriate rules. Thus, there is no universal international obligation to authorize the execution of foreign judicial acts on its territory, at least at present, there is only one created by the will of the states themselves (through the conclusion of international agreements). Consequently, there is no need to establish rules limiting the jurisdiction of foreign courts outside the purpose of ensuring the right to judicial protection. In other words, restriction is always preceded by creation, and therefore the purpose of creation cannot be restriction in any way.

It is another matter that by creating legal regulation of indirect jurisdiction to ensure the right to judicial defence, States establish mechanisms to protect the domestic legal order.

It is the desire to achieve a balance between ensuring the right to judicial protection and the protection of the national legal order, i.e. a harmonious combination of public and private interests - one of the main dichotomies[176] - that constitutes the essence of the legal regulation of indirect jurisdiction. This internal dichotomy of the purpose of legal regulation is manifested in two main directions of legal impact - giving legal force to a foreign judgement and restricting access to the domestic legal system of judicial decisions that have not passed the 'filter of admissibility'. Depending on which of the two elements is weighted more heavily, a particular model of indirect jurisdiction is constructed, which will be discussed in more detail in Chapter II. Political factors have a significant impact on the result of correlation of the above elements. A.I. Muranov calls the consideration of an application for recognition of a foreign judgment a political dispute, meaning that although it is a dispute between two private persons, it is essentially a dispute as to whether there are conditions for one of the sovereign states to show its benevolent attitude towards the other in the form of allowing the acts of the latter's courts to have force in the territory of the first one[177]. This is why compliance with the rules of indirect jurisdiction

[176] It is interesting that from the point of view of Prof. O.Y. Skvortsov and Prof. V.A. Belov this dichotomy, as well as the dichotomy 'international law - national legal order', is a kind of projection of the competition of ideas of freedom and justice. See: Belov V.A. Justice vs freedom = law: antagonistic contradiction and its solution (part one) / V.A. Belov, O.Y. Skvortsov // Law. 2023. № 2. P. 122.

[177] Muranov A.I. Enforcement of foreign court and arbitration decisions: competence of Russian courts / A.I. Muranov. Moscow: CJSC 'Yuridichesky Dom "Yustitsinform", 2002. P. 51.

is usually tested by the court *ex oficio*, as it is not only the defendant's interest that is at stake, but also the public interest[178].

Consider the nature of the legal rules governing indirect jurisdiction.

The German researcher Prof. H. Schack writes about the need to constantly take into account the distinction between the rules of direct and indirect jurisdiction, referring to the former as prescriptive rules that indicate to the judge whether he or she should decide the legal dispute submitted to him or her, and to the latter as evaluative rules to determine whether, from the point of view of the national court, the court of the foreign state was competent to render a judgement that should be recognised domestically[179]. The scholar calls the rules of indirect jurisdiction the rules of jurisdiction to recognise judicial decisions[180].

Indeed, the rules of direct and indirect jurisdiction are in certain cases of a different nature: the former contain an indication of appropriate behaviour, while the latter merely describe acceptable behaviour, which can in no way exempt a foreign judge from the obligation to follow the direct rules of jurisdiction contained in his national law. However, we can only reach this conclusion with respect to jurisdictional bindings. The rules of indirect jurisdiction, however, do not consist only of jurisdictional bindings; as we have written above, they also include rules for determining the admissibility of the competence of a foreign court. For example, Article 2104 of the Civil Code of the Republic of Peru[181] provides that, in order for foreign judgements to be recognised in the Republic of Peru, they must, among other things, firstly, not resolve a dispute within the exclusive competence of the courts of the Republic of Peru, and secondly, the foreign court must have jurisdiction in accordance with its domestic law and in accordance with the 'general principles of international procedural competence'. This procedural rule contains an indication of proper behaviour, as it tells the court how to determine whether the foreign

[178] For example, according to part 2 of Art. 244 of the Arbitration Procedural Code, the grounds for refusal to recognise a foreign court decision that are subject to application, provided that the party against whom the foreign court decision was rendered does not refer to these grounds, include consideration of a case referred to the exclusive competence of a Russian court.

[179] Schack H. Op. cit. P. 88-89.

[180] Ibid.

[181] Código Civil – Decreto Legislativo № 295 (promulgado: 24.07.1984) [Electronic resource] // vLex. Mode of access: https: vlex.es.

court is competent. Thus, the rules of indirect jurisdiction are in some cases evaluative, in some cases prescriptive in nature.

Accordingly, indirect jurisdiction over cross-border private law disputes is an institution of international civil procedure, the rules of which have certain specifics. As an institution of international civil procedure, indirect jurisdiction is a set of procedural rules of international, integration and national law regulating the procedure for determining the admissibility of the competence of a court that has considered a cross-border private-law dispute in the framework of the procedure for the recognition and enforcement of a foreign judgement.

With regard to the use of the word 'admissibility' in the above definition, the following should be noted. Prof. N.V. Marysheva in one of her works mentions 'indirect international competence (jurisdiction)', defining it as 'taking into account the rules of international jurisdiction when deciding on the recognition and enforcement of a foreign judgement'[182]. We believe that in relation to indirect jurisdiction it is more correct to speak not of 'taking into account' but of 'determining the admissibility' of a court's competence, since taking into account does not in itself determine the legal effect of the process described, which is admissibility.

A comparative legal analysis of the national legislation of various states shows the variety of ways of legal regulation of indirect jurisdiction used, which we have grouped into four models and which we will analyse in the next chapter.

[182] Marysheva N.I. Family relations with the participation of foreigners: legal regulation in Russia: a monograph / N.I. Marysheva. 2nd ed., rev. and ext. M.: Institute of Legislation and Comparative Law under the Government of the Russian Federation: Norma: INFRA-M, 2023. P. 225.

Chapter II. Models of Legal Regulation of Indirect Jurisdiction in National Legislation

§ 1. Application of the Rules on the Direct Jurisdiction of the State, Where the Judgment is Recognized

The essence of the first model under consideration is that indirect jurisdiction is exercised through the application of legal rules that regulate the direct jurisdiction of the courts of the State in which recognition of the foreign judicial act is sought. Thus, the norms of direct jurisdiction are given an additional, initially inappropriate purpose - the regulation of indirect jurisdiction.

The author of the model is called French scientist E. Barten, who gave it the name 'the concept of "bilateralisation". This method is also referred to in doctrine as: the 'two-sidedness method', the 'mirror principle' or the 'mirror test'[183]. The ideas about the essence of the model under discussion have not been clear since its inception, and today they differ significantly from the original ideas of E. Barten.

The model is explored in detail in German doctrine, where the way it describes the determination of indirect jurisdiction is compared to the mirror effect. 'The recognising state,' explains H. Schuck, 'mirrors its rules governing the competence to adjudicate onto the adjudicating state: we recognise its decision if the foreign court, under the hypothetical operation of German law of jurisdiction, has international competence to adjudicate'[184]. The author assesses this method as 'fair' because it 'establishes, in a progressive form, the equality of States in terms of judicial competence', 'the limits of competence to recognise judgments go as far as the competence to render judgments claimed by the recognising State'[185].

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[183] Litvinskiy D.V. Recognition of foreign court decisions on civil cases: (comparative legal analysis of French legislation, judicial practice and legal doctrine). P. 417, 420; Mokhova E.V. Transnational turnover in light of the draft convention on the recognition and enforcement of foreign judgments in civil and commercial matters / E.V. Mokhova // Law. 2019. № 5. P. 190.

[184] Shak H. Op. cit. P. 405.

[185] Ibid.

In a classic British textbook, the English scholars J. Cheshire and P. North set out the following rules for assessing the competence of a foreign court: the foreign court must be a court of competent jurisdiction under the principles of private international law as they are understood in England, i.e. in relation, for example, to judgements in personam, since personal jurisdiction in England depends on the court having the right to summon the defendant; the foreign court will also, from the point of view of English law, be competent if it had the right to summon the defendant[186]. 'The criteria which determine the existence of a duty of obedience to an English court,' according to the authors, 'should also, for reasons of reciprocity, be applied when the competence of a foreign court is at stake'[187].

The above descriptions differ significantly from the concept of E. Barten. In Barten's view, it is not really a question of whether a foreign rule is analogous to a rule of national law on international jurisdiction[188] but whether it is compatible with it, i.e. whether it is compatible with the 'French expression of French sovereignty in the matter of conflict of jurisdiction'[189]. In defending his concept, E. Barten spoke of the rules of direct jurisdiction as an expression of sovereignty, which therefore does not allow the recognition of a foreign judgement that contravenes these rules[190].

Thus, according to E. Barten's reasoning, the existence of a rule of direct jurisdiction in national law, which has a content identical to the rule of foreign law on which the foreign court's conclusion that it has jurisdiction to hear the dispute is based, does not mean that the jurisdiction of the foreign court will be recognised and its decision will be enforced. The foreign rule must be compatible with other rules of national law on

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[186] Cheshire D., North P. International Private Law / translated from English by S.N. Andrianov; ed. by M.M. Boguslavsky. Moscow: Progress, 1982. P. 369.

[187] Ibid. We believe it is necessary to note that in English law not all the criteria of direct jurisdiction are applied to determine indirect jurisdiction, which gives rise to the problem of jurisdictional gap, which we analyse in § 3 of this chapter.

[188] Here and hereafter, when describing the researchers' judgements, we will use the terms meaning indirect jurisdiction as the authors use them.

[189] To illustrate this fallacy, Barten cites a case heard by the Court of First Instance of Paris on 4 February 1880 and on appeal by the Court of Appeal of Paris on 28 January 1985. The Court of First Instance, Barten explains, 'fell for this trick' by concluding that an Italian citizen could sue his debtor, a French citizen, in Italy because the rule allowing it (Art. 105 of the Italian Code of Civil Procedure) is an exact reproduction of Art. 14 of the French Civil Code. See subpara: Barten E. Op. cit. P. 484-485.

[190] Barten E. Op. cit. P. 480.

direct jurisdiction, i.e. it cannot invade the jurisdiction of the national court established by them.

The above reasoning of German, English and French experts clearly demonstrates two options for the use of national law rules on direct jurisdiction:

– the competence of a foreign court is recognised as admissible on the same grounds as the competence of a national court;

– the competence of a foreign court is recognised as admissible where the national court does not have jurisdiction to hear the dispute, as determined on the basis of express jurisdictional criteria contained in national law.

In the first case, the direct jurisdictional criteria are applied to determine indirect jurisdiction as if they were the direct jurisdictional criteria of the foreign State whose court has decided the judicial act. In this case, compliance with one of the direct jurisdictional criteria is sufficient to recognise the competence of a foreign court as acceptable. It is in this sense that modern scholars use the term ‘mirror test’ and others to refer to the model considered in this paragraph.

In the second case, the admissibility of the competence of a foreign court is determined by the method of exclusion: those disputes that are not placed by direct jurisdictional criteria within the competence of a national court may be heard by a foreign court. The decision of the foreign court is compared with all direct jurisdictional criteria to determine whether they are met. Such direct jurisdictional criteria have been termed “exclusive judicial jurisdiction criteria”.

The use of the exclusive judicial jurisdiction criteria to determine indirect jurisdiction is quite different from the method discussed in this paragraph, so we describe these approaches with two different models. Exclusive judicial jurisdiction will be discussed in § 4 of this chapter.

At the same time, due to the incorrect distinction of these models, we believe it is necessary to demonstrate our algorithm of distinction on the example of Albanian legislation.

Thus, in our view, the Standing Bureau of the HCCH, in drafting the HCCH 2019 Judgments Convention, incorrectly concluded that the Republic of Albania is among the

countries in which the jurisdiction of the court that issued the judicial act is assessed using direct jurisdictional criteria contained in the legislation of the state in which recognition is sought[191]. In a report on South-Eastern Europe[192], compiled within the framework of the project 'Cross-Border Enforcement of Judgments' implemented by the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH and the Union International of the Judicial Officers (UIHJ)[193], the Albanian model of regulating indirect jurisdiction is also qualified as a 'mirror' model. The Albanian model of regulation of indirect jurisdiction is also qualified as a 'mirror' model[194].

Let us consider the legislation of the Republic of Albania. According to art. 394 of the Code of Civil Procedure of the Republic of Albania[195], the decision of a foreign court will not be recognised in Albania if, according to the provisions in force in the Republic of Albania, the dispute cannot be within the competence of the court of the state that issued the decision. Thus, the Code of Civil Procedure of the Republic of Albania refers to legal norms that exclude the competence of foreign courts to hear disputes.

The jurisdiction of Albanian courts in private law cross-border disputes is regulated by Chapter IX of the Law on Private International Law of the Republic of Albania[196] (hereinafter - Law on Private International Law of the Republic of Albania), which contains, among others: the general rule of jurisdiction of Albanian courts (art. 71), provisions on exclusive jurisdiction of Albanian courts (art. 72), provisions on the jurisdiction of Albanian courts in certain categories of disputes (art. 74-79).

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[191] Comparative Study of Jurisdictional Gaps and Their Effect on the Judgments Project: to Permanent Bureau of The Hague Conference on Private International Law. July 1, 2015 [Electronic resource] // HCCH: [website]. URL: https://assets.hcch.net/docs/7ebd2982-351a-4ca7-b6b3-356c8cdc1778.pdf (date of access 22.03.2023).

[192] Cross-border Recognition and Enforcement of Foreign Judicial Decisions in South East Europe and Perspectives of HCCH 2019 Judgments Convention [Electronic resource] / Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH. 2021. 203 p. URL: https://www.uihj.com/wp-content/uploads/2022/05/Cross-border-recognition-book-complete-ENG1.pdf (date of access 10.01.2024).

[193] Cross-border enforcement of judgements – South East Europe [Electronic resource] // UIHJ - International Union of Judicial Officers: [website]. 2022. 10 May. URL: https://www.uihj.com/2022/05/10/cross-border-enforcement-of-judgements-south-east-europe/ (date of access 10.01.2024).

[194] Cross-border Recognition and Enforcement of Foreign Judicial Decisions in South East Europe and Perspectives of HCCH 2019 Judgments Convention [Electronic resource] / Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH. 2021. P. 34. URL: https://www.uihj.com/wp-content/uploads/2022/05/Cross-border-recognition-book-complete-ENG1.pdf (date of access 10.01.2024).

[195] Kodi i procedurës civile i Republikës së Shqipërisë. Miratuar me ligjin nr.8116, datë 29.3.1996 [Electronic resource] // Ministria e Drejtësisë: [website]. URL: https://www.drejtesia.gov.al/wp-content/uploads/2017/11/Kodi_i_Procedures_Civile-2014-perf-1.pdf (date of access: 12.01.2024).

[196] Për të drejtën ndërkombëtare privateю. LIGJ Nr.10 428, datë 2.6.2011 [Electronic resource] // Ministria e Drejtësisë: [website]. URL: https://www.drejtesia.gov.al/wp-content/uploads/2019/02/ligji_drejten_nderkombetare_private_1_571.pdf (date of access: 12.01.2024).

The wording of the legal provision of art. 394 of the Code of Civil Procedure of the Republic of Albania clearly shows the following. First, the impossibility of recognising the jurisdiction of a foreign court in cases where the norms of Albanian legislation provide for the possibility of adjudication of the dispute only by an Albanian court. Such rules include only the rules on the exclusive jurisdiction of Albanian courts (art. 72 of the Law on Private International Law of the Republic of Albania). Secondly, the admissibility of jurisdiction in all other cases.

Accordingly, the provisions of art. 394 of the Code of Civil Procedure of the Republic of Albania do not refer to direct jurisdictional criteria on the basis of which the jurisdiction of the Albanian courts is determined, but condition the possibility of recognition of foreign judgments on compliance with the rules of exclusive judicial jurisdiction. Direct jurisdictional criteria (art. 71, 74-79 of the Law on Private International Law of the Republic of Albania) are not used in the assessment of indirect jurisdiction, and therefore there is no reason to attribute the Albanian mode of regulation to the so-called 'mirror' model.

As an example of the 'mirror' model, let us take the Argentine legislation. According to art. 517 of the Argentine Code of Civil and Commercial Procedure[197] as a general rule, a foreign court judgement is recognised if it is rendered by a competent court, with competence to be determined in accordance with Argentine rules on international jurisdiction[198]. Unlike the Albanian legislation, the legal rule cited refers, for the purposes of the admissibility test, to the criteria of direct jurisdiction of the Argentine courts, rather than to the criteria of exceptional jurisdiction[199].

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[197] Código Procesal Civil y Comercial de la Nación Argentina: Ley 17.454/1967 [Electronic resource] // InfoLEG: Informarmación Llegislativa y Documental. Mode of access: https://www.infoleg.gob.ar.

[198] It should be noted that in the above example, the model we are considering does not exist in its 'pure' form. The criteria of direct jurisdiction are generally used to determine indirect jurisdiction. In addition, the cited article refers to one exception for disputes involving movable property rights: the jurisdiction of a foreign court remains admissible if it results from the resolution of a personal claim or a real claim, provided that the movable property has been moved to the Republic of Argentina during or after the proceedings. Thus, there is a combination with some of the criteria of indirect jurisdiction.

[199] In the case of CNCom, Sala E, *'Trigo Corporation c/ Cristalerías de Cuyo S.A.'*, (17/07/1998), the Argentine Court explained that the rules on direct jurisdiction in cross-border disputes are to be applied both to determine the competence of Argentine courts and foreign courts in recognising their decisions: All P. P. M. Las normas de jurisdicción internacional en el sistema argentino de fuente interna / P.M. All // Derecho del Comercio Internacional. Temas y actualidades. 2006. № 4. P. 426. See also: Cri Holding Inc. c. Compañía Argentina de Comodoro Rivadavia S.A.: CSJN, 03/11/09 [Electronic resource]. URL: http://fallos.diprargentina.com/2010/06/cri-holding-inc-c-compania-argentina-de_10.html (date of access 15.11.2023).

Admittedly, the formulation of a rule corresponding to the model under discussion is difficult and often leads to the creation of language that is not sufficiently clear, resulting in a lack of clarity for law enforcers as to which rules on judicial jurisdiction are being referred to and how to apply them. Thus, a provision of German procedural law[200], which is a classic version of the 'mirror' model, states that 'a foreign court shall, in accordance with German law, have jurisdiction' (art. 328). The provision is sometimes interpreted as requiring non-conflict with the exclusive jurisdiction criteria[201].

In Italian law, the condition of indirect jurisdiction is formulated by reference to the principles of judicial jurisdiction of the Italian legal system[202]. The use of the term 'principles' has not led to a deviation from the model in question, as can be seen in Italian doctrine[203] and jurisprudence. The acceptability of the jurisdiction of a foreign court is determined by applying the legal rules on the direct jurisdiction of Italian courts in cross-border disputes, satisfying any of the jurisdictional criteria provided for by them is sufficient[204].

Another example. Under art. 564 of the Mexican Federal Civil Code[205] the jurisdiction of a foreign court is recognised as admissible provided that it is based 'on grounds compatible or similar to national law, except in cases involving the exclusive jurisdiction of Mexican courts'[206]. The provision cited would seem to require a comparison between the grounds of direct jurisdiction contained in Mexican law and the

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[200] Zivilprozessordnung (12.09.1950) [Electronic resource] // Bundesministerium der Justiz: [website]. URL: https://www.gesetze-im-internet.de/zpo/index.html#BJNR005330950BJNE038606160 (date of access 15.11.2023).

[201] Cohn E.J. Manual of German Law / E.J. Cohn, M. Volf, G. Meyer, K. Neumann. LLMC, 2008. [Electronic resource] // vLex. Mode of access: https: vlex.es (see: Part III PRIVATE INTERNATIONAL LAW. SECTION VI – Recognition And Enforcement Of Foreign Judgments, para 31).

[202] According to Art. 64 para. 1a. Law of 31 May 1995, No. 218, a foreign judgement is recognised in Italy if the judge who rendered the judgement was able to deal with the case in accordance with the principles of judicial jurisdiction characteristic of the Italian legal system: LEGGE 31 maggio 1995, n. 218 – Riforma del sistema italiano di diritto internazionale privato [Electronic resource] // vLex. Mode of access: https: vlex.es.

[203] D'Alessandro E. Eccezione di difetto di giurisdizione nel procedimento di riconoscimento delle sentenze straniere: a proposito di Cass. n. 34969/2022 [Electronic resource] // Aldricus. Il Portale del Progetto EJNita / blog / Giurisprudenza della Corte di cassazione. 2023. 7 Giugno. URL: https://aldricus.giustizia.it/2023/06/07/eccezione-di-difetto-di-giurisdizione-nel-procedimento-di-riconoscimento-delle-sentenze-straniere-a-proposito-di-cass-n-34969-2022/ (date of access 15.11.2023); Ghapios G. Sul difetto di competenza giurisdizionale del giudice a quo ai fini dell'esecuzione in Italia di un provvedimento straniero [Electronic resource] // Aldricus. Il Portale del Progetto EJNita. 2023. 25 Gennaio. URL: https://aldricus.giustizia.it/2023/01/25/sul-difetto-di-competenza-giurisdizionale-del-giudice-a-quo-ai-fini-dellesecuzione-in-italia-di-un-provvedimento-straniero/ (date of access 15.11.2023).

[204] See: Sentenza № 21947 della Corte Suprema di Cassazione, 28-10-2015 [Electronic resource] // vLex. Mode of access: https: vlex.es.

[205] Código Federal de Procedimientos Civiles de 1943 [Electronic resource] // vLex. Mode of access: https: vlex.es.

[206] Ibid.

circumstances of the dispute. In Mexican doctrine, however, this provision is interpreted differently, with experts noting that it is extremely difficult to apply because the judge must be familiar with the foreign law and be able to analyse it for consistency with the Mexican law[207]. Thus, in the present case it is a question of joint application of the grounds of direct jurisdiction of both the State of recognition of the foreign judgement and the State where it was rendered[208].

In some cases the wording is extremely uninformative: according to art. 117 of the Bulgarian Code of Private International Law[209] a judgement of a foreign court is recognised when the foreign court was competent under the provisions of Bulgarian law. The given legal provision in its literal interpretation contains only a condition for the recognition of foreign judgments, which refers to the rules of Bulgarian law on indirect jurisdiction, i.e. to the rules which should contain rules on how the admissibility of the jurisdiction of a foreign court is to be determined. In reality, however, there are no such rules in Bulgarian law, and art. 117 of the Bulgarian Code of Private International Law has been interpreted in a number of cases as referring to the rules on the direct jurisdiction of Bulgarian courts to be applied in determining indirect jurisdiction under the "mirror" model[210], model, and in other cases to the rules on exclusive judicial jurisdiction to be tested for compatibility with a foreign judicial act on the model discussed in § 4 of this chapter and in other cases to the rules on exclusive judicial jurisdiction to be tested for compatibility with a foreign judicial act on the model discussed in § 4 of this chapter[211].

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[207] Perez nieto Castro L. La dogmática jurídica, con mención del derecho internacional privado [Electronic resource] / El Foro. 2020. № 2. P. 213 // vLex. – Mode of access: https:vlex.es.

[208] This legal regulation is a mixture of the model under discussion and the model discussed in § 2 of this chapter.

[209] Code of Private International Law. Ann. SG 42 of 17 May 2005. [Electronic resource] // Lex.bg. Mode of access: https: lex.bg.

[210] This is the recent jurisprudence of the Supreme Court of Cassation of the Republic of Bulgaria: Order No. 3305/01.11.2023 in Case No. 1443/2023. Supreme Cassation Court of the Republic of Bulgaria [Electronic resource] // Supreme Cassation Court of the Republic of Bulgaria: [website]. URL: https://www.vks.bg/pregled-akt.jsp?type=ot-spisak&id=BC0EAAB6E04D88D4C2258A5A0044666C (date of access 15.11.2023).

[211] Previously, such an interpretation was found in judicial acts of the same court, the Supreme Court of Cassation of the Republic of Bulgaria. In particular, it was stated: "the Bulgarian court or other authority is obliged to assess whether the foreign jurisdiction is compatible with Bulgarian law. In this case, the absence of exclusive jurisdiction of a Bulgarian court or a court of a third State should be determined": Decision No. 60044/16.09.2021 on Case No. 2775/2019 Vŭrhoven kasatsionen съд на Република България [Electronic resource] // Vŭrhoven kasatsionen съд на Република България: [website]. URL: https://www.vks.bg/pregled-akt.jsp?type=ot-spisak&id=761AC525B49E6302C22587520025A99E (date of access 05.02.2024). The interpretation given by the Bulgarian court in the two judicial acts cited (Decision No. 3305/01.11.2023 in Case No. 1443/2023, Decision No. 60044/16.09.2021 in Case No. 2775/2019) once again demonstrates the vagueness of the substance of the model in question, its confusion with the model discussed in § 4 of this Chapter, which is aggravated by the imperfect legal technique of the legal norm applied.

For some jurisdictions, the application of the model in practice, due to the lack of understanding of its essence by law enforcers, causes significant difficulties, as is well illustrated by Chilean judicial acts.

The criteria of direct jurisdiction are generally understood to be those established for cross-border disputes; however, Chilean jurisprudence makes the admissibility of a foreign court's jurisdiction conditional not only on compliance with these criteria, but also on compliance with the criteria of jurisdiction established in national law for domestic disputes. For example, the Supreme Court of the Republic of Chile, in accordance with art. 245 of the Code of Civil Procedure[212], of Chile, which provides that the condition for the recognition of foreign judgements is that they do not conflict with national jurisdiction, applied art. 87 of Act No. 19.947 on civil marriage[213], which establishes the division of jurisdiction between domestic courts in cases of divorce, and concluded that it was impossible to recognise the judgement of the Ecuadorian court on the dissolution of the marriage, since the defendant's place of residence was in the Republic of Chile[214].

In another case, the Supreme Court of the Republic of Chile tested the non-contradiction of national jurisdiction in an even more original way: the court applied art. 83 of the same Law No. 19.947 on civil marriage, according to which the law applicable to the relationship between the spouses at the time of the dissolution of the marriage applies to the dissolution of the marriage, and concluded that the applicable law was U.S. law, and therefore considered that the U.S. court had validly decided the case[215].

Many judicial acts of the Supreme Court of the Republic of Chile contain standardised language that does not distinguish between the assessment of compliance with the indirect jurisdiction provision and the provision on the non-contradiction of a foreign judgement with Chilean substantive law[216], which, according to Chilean experts,

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[212] Ley № 1.552 Código de Procedimiento Civil [Electronic resource] // vLex. Mode of access: https: vlex.es.

[213] Ley № 19.947 establece Nueva Ley de Matrimonio Civil [Electronic resource] // vLex. Mode of access: https: vlex.es.

[214] Resolución № 502-2008 de Corte Suprema, Sala Cuarta (Mixta) de 23 de octubre de 2008 [Electronic resource] // vLex. Mode of access: https: vlex.es.

[215] Causa № 13329-2023, (Familia) Exequatur, Corte Suprema - sala Cuarta Mixta, 16-01-2024 [Electronic resource] // vLex. Mode of access: https: vlex.es. It should be noted that Chilean law, in the example given, does not contain rules conditioning the jurisdiction of national courts on the application of Chilean law.

[216] For example, ‘the judgement whose recognition is claimed is not contrary to the laws of the Republic of Chile, nor to the national jurisdiction, since it provides for the dissolution of the marriage for the reason provided for in the national

shows that the highest court does not have a clear idea of what is meant by the legal requirement of non-contradiction of national jurisdiction[217].

In general, Chilean legislation on the recognition of foreign judgements is assessed by Chilean experts as underdeveloped and unclear, and judicial practice as not replenishing or clarifying the 'archaic' legal regulation[218].

The examples cited show, among other things, some deviations from the 'mirror' model, the realisation of which suggests that, firstly, it does not matter whether the foreign judge had jurisdiction to decide the dispute in accordance with his or her own judicial order and, secondly, it does not matter whether the foreign judge who rendered the judgement was competent under the rules on domestic jurisdiction over disputes. Under the mirror model, the jurisdiction of a foreign court is presumed to be acceptable if it satisfies the express jurisdictional criteria set out in the law of the State of recognition of the judgment. These criteria apply to both domestic courts and foreign courts. The acceptability of jurisdiction is assessed on the basis of the factual and legal situation existing at the time the foreign court resolved the dispute. In such a situation, it does not matter what the foreign court was guided by in recognising itself as competent, what matters is whether that competence satisfies the State's view of the 'correct' grounds of jurisdiction (as reflected in its law). However, such perceptions apply specifically to cross-border disputes, where the delimitation of jurisdiction within a State may be on different grounds.

Another important conclusion follows from the above reasoning: a judge considering the recognition of a foreign judgment is not bound by the facts established by the foreign court in assessing its jurisdiction and is free to assess them independently[219]. This judgement has practical significance. For example, in 2023, Italian

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legislation in force': Causa № 50848-2023, (Familia) Exequatur, Corte Suprema - sala Cuarta Mixta, 13-11-2023 [Electronic resource] // vLex. Mode of access: https: vlex.es.

[217] Esplugues Mota C. Sobre la aplicación en la práctica del modelo chileno de reconocimiento y ejecución de resoluciones extranjeras y la necesidad de su reforma [Electronic resource] // Revista de derecho (Valparaíso). 2014. № 43. P. 297-353. URL: https://dx.doi.org/10.4067/S0718-68512014000200008 (date of access 11.01.2024).

[218] Ibid.

[219] D'Alessandro E. Dialogos sulla giustizia civile. Eccezione di difetto di giurisdizione nel procedimento diriconoscimento delle sentenze straniere. A proposito di Cass. n. 34969/2022 [Electronic resource] // Roma, Corte di cassazione, 2023. 31 maggio. P. 6. URL: https://www.academia.edu/102876600/Dialogos_sulla_giustizia_civile_Eccezione_di_difetto_di_giurisdizione_nel_procedi

courts resolved in the same vein the question of the possibility of establishing the place of habitual residence of a child for the purpose of concluding the admissibility of the jurisdiction of a Russian court in a family dispute before it, and, accordingly, of deciding whether to recognize a Russian court decision[220].

To summarise, we conclude that the use of the grounds of direct jurisdiction to determine indirect jurisdiction since the inception of this approach has caused difficulties in understanding the peculiarities of its functioning, which leads to ambiguity in the wording of the relevant legal norms and ambiguity of their judicial interpretation, which persists to date.

Let's look at the advantages and disadvantages of this model.

The main advantage of this model is that there is no jurisdiction gap problem *(jurisdiction gap)*[221]. In studying the problem of jurisdictional gap[222] in different states, the Standing Bureau of the HCCH emphasised this positive side of the legal regulation of indirect jurisdiction under consideration.

The absence of the jurisdictional gap problem in the model under study is a consequence of the fact that the jurisdiction of the foreign court is recognised as acceptable on the same grounds on which the domestic court deals with cases with a foreign element. Through this model, the grounds of direct and indirect jurisdiction are equalised.

Since, under this model, the expansion of the grounds of direct jurisdiction leads to an expansion of the grounds of indirect jurisdiction, States are careful in setting the limits of jurisdiction of national courts (their expansion is tempered by a perceived obligation to recognise foreign judgments on the same grounds). Accordingly, the advantage of this model is the reasonableness of the criteria for direct jurisdiction.

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mento_di_riconoscimento_delle_sentenze_straniere_A_proposito_di_Cass_n_34969_2022_Roma_Corte_di_cassazione_31_maggio_2023?email_work_card=title (date of access 11.01.2024).

[220] Corte di cassazione. Sezioni unite civil. Sentenza 26 giugno 2023, n. 18199 [Electronic resource] // La Corte Suprema di Cassazione: [website]. URL: https://www.cortedicassazione.it/it/civile_dettaglio.page?contentId=SZC6852 (date of access 11.01.2024).

[221] The jurisdictional gap refers to the difference between the jurisdiction recognised by the domestic court and the jurisdiction recognised by the foreign court. The problem of jurisdictional gap is more characteristic of the model we describe in § 3 of this chapter, where it is discussed.

[222] For more details, see. § 3 of this Chapter.

As for the shortcomings of this model, in order to illustrate them, we will give some facts from the history of the evolution of the institution of indirect jurisdiction in France and the doctrinal notions related to them, taking into account that it is in this jurisdiction that the model in question, firstly, appeared, and secondly, went from the concept of 'bilateralisation' to the recognition of foreign judgments on the basis of broader criteria of jurisdiction than the criteria of jurisdiction of national courts.

The concept of 'bilateralisation', which initially gained considerable influence in France, was criticised. The French scholar D. Ulle came to the conclusion that it is impossible to solve the problem of indirect competence by referring to the rules of direct competence, since both types of competence have an independent character in relation to each other[223]. Whereas the rules of direct competence determine the lawfulness of recourse, i.e. a matter 'of interest to the legal order of the adjudicating foreign court', the rules of indirect competence 'are primarily a condition for the international effectiveness of the judgement and are primarily in the interests of the legal order in which the judgement is presented'[224]. Attention was drawn to the fact that this model did not guarantee the proper administration of justice, as foreign legislation might contain a basis of competence, albeit unknown to domestic law, that allowed for the quality of justice to be administered[225]. It was also criticised for giving too much weight to national jurisdictional criteria, giving them a character of exclusivity. It was also criticised for giving too much weight to national jurisdictional criteria, giving them a character of exclusivity[226].

In response to the criticism, a compromise approach emerged in French jurisprudence called the "double unilateral theory". According to this theory, the test of a foreign court's competence is carried out in two stages: the first stage is whether there is a conflict with the French rules of exclusive jurisdiction, and the second stage is whether the foreign court has competence under its own law[227]. The gradual liberalisation of the

[223] Litvinskiy D.V. Recognition of foreign court decisions on civil cases: (comparative legal analysis of French legislation, judicial practice and legal doctrine). P. 423.
[224] Ibid.
[225] Ibid. P. 421.
[226] Ibid. P. 422.
[227] Ibid.

test of admissibility of the competence of a foreign court eventually led to the rule laid down in the Simiti, judgment of 6 February 1985[228], according to which only the absence of a violation of the rules of exclusive jurisdiction, the connection of the case with the country of the court and the good faith of the choice of court are examined.

At present, the model we are considering is used in the legal systems of many states[229]. It is interesting that the modern criticism of this model partially repeats the reasoning of French specialists in the last century.

In addition, it is noted that this model is outdated. Globalisation, the Internet, the increased movement of goods, capital, people and services have had an impact on the world of law, creating the need to adjust the current approach to assessing jurisdiction, which hinders the development of international judicial cooperation[230]. Some experts see this approach as leading to the destruction of international judicial co-operation[231].

We believe it is also necessary to draw attention to the following point. When using this model, recognition of a foreign judicial act is possible if the criteria of direct jurisdiction established in the requested State are met. However, a foreign judgement may only be rendered by a court having jurisdiction in accordance with the criteria set out in the law of the forum State. Thus, the right of the recoverer can be protected only if the criteria of direct jurisdiction of both States - the State of issuance and the State of enforcement - are met. It should also be taken into account that if it is necessary to enforce a judgement in two or more jurisdictions using a similar model, the criteria of direct jurisdiction of three or more jurisdictions will be required, which leads to excessive, in our opinion, complication of the procedure of protection of the rights of the claimant.

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[228] Ibid.

[229] The legal systems of 75 States were studied by the HCCH Working Group during the preparation of the HCCH 2019 Judgments Convention, and the approach outlined was found in the national legislation of 27 of them: Comparative Study of Jurisdictional Gaps and Their Effect on the Judgments Project: to Permanent Bureau of the Hague Conference on Private International Law. July 1, 2015 [Electronic resource] // HCCH: [website]. URL: https://assets.hcch.net/docs/7ebd2982-351a-4ca7-b6b3-356c8cdc1778.pdf (accessed 22.03.2023)). We do not fully agree with the conclusions of the working group with regard to the classification of some States as using this approach (in particular, Albania, as we have justified in this paragraph, and some other States whose jurisprudence does not fit this model, despite the similarity of the legal rules on indirect jurisdiction with those of States using the approach under discussion).

[230] Baltar L. El control de competencia internacional desde el derecho internacional privado argentine / L. Baltar // Rev. secr. Trib. perm. revis. 2019. №7. P. 223-224. doi: 10.16890/rstpr.a7.n14.p222.

[231] Ellerman I. El control de la competencia en el auxilio judicial internacional / I. Ellerman // Anuario de Derecho Civil. 2003. №8. P. 129.

The analysis has shown that the model under consideration does not fully meet the purpose of legal regulation of the institution of indirect jurisdiction, which, as we have established, is to achieve a balance between the implementation of two principles of law - the right to judicial protection and protection of domestic legal order[232]. Firstly, the criteria of direct jurisdiction are not aimed at protecting the domestic legal order, except for the criteria of exclusive judicial jurisdiction, which are specifically identified by the legislator as a special group of criteria. The rules on direct jurisdiction essentially reflect the legislator's subjective view of the reasonableness of the connection between the court and the dispute, and therefore limiting the right to judicial protection by such rules has no rational basis.

In applying this model, it is possible that a party who obtains a judgement in a trial conducted in full compliance with the law of the forum state will later be deprived of the protection of its right in the state where enforcement of the judgement will be required only because of differences in the statutory regulation of adequate forum rules.

We agree with the experts' arguments that this model impedes the development of international cooperation by allowing situations in which foreign judicial acts are refused recognition when the jurisdiction of the foreign court is rational, arises from the nexus between the dispute and the forum, and does not pose a threat to the public policy of the requested State.

§ 2. Application of the Rules on the Direct Jurisdiction of the State, in Which the Judgment is Rendered

The method of assessing the admissibility of a foreign court's jurisdiction when considering the recognition of a foreign judgment, called the “theory of mere unilateralism”, is defined in a 1949 act of the Court of Montpellier. The Court has indicated that to determine whether a foreign court was competent, one must “look solely

[232] See. § 2 Chapter I.

to the foreign law unless the decision before it involves a violation of any of the fundamental rules of our law of exequatur"[233].

This mode of review involves assessing the jurisdiction of a foreign court by applying the law of the foreign State whose court rendered the judgement, that is, in terms of the legal order in which it was rendered.

This concept has been criticised, as well as the prevailing French doctrine of 'bilateralisation', but, unlike the latter, has been much less widespread.[234] A characteristic feature of this model is the reliance on the foreign legal order and the low degree of protection of the domestic legal order compared to the models described in § 1 and § 3 of this chapter (generally, the admissibility of a foreign court's jurisdiction is limited only by the criteria of exclusive judicial jurisdiction).

The variant of the model under consideration embodied in the legislation of the Republic of Uruguay is characterized by the greatest degree of openness and trust in the foreign jurisdiction. According to art. 539.1(4) of the General Code of Procedure of the Republic of Uruguay[235], the decision of a foreign court shall be recognized if the foreign court had jurisdiction under its national law, except in cases of conflict with the exclusive jurisdiction of the courts of Uruguay. Interestingly, the Code of General Procedure of the Republic of Uruguay expressly provides for the initial qualification of the substance of the legal relationship by the court of judgment in accordance with its national law (art. 537.2).

Such a liberal legal regulation is supported by Uruguayan doctrine. Uruguayan experts distinguish two ways of regulating indirect jurisdiction: *lex fori* (the jurisdiction of the foreign court is determined by the law of the State in which the recognition of the judgement is being considered) and *lex causae* (the jurisdiction of the foreign court is determined by the law of the State where the judgement was rendered). The *lex fori*

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[233] Litvinskiy D.V. Recognition of foreign court decisions on civil cases: (comparative legal analysis of French legislation, judicial practice and legal doctrine). P. 418-419.

[234] The Working Group of the HCCH found the approach outlined in the national legislation of 6 states out of 75 studied: Comparative Study of Jurisdictional Gaps and Their Effect on the Judgments Project: to Permanent Bureau of the Hague Conference on Private International Law. July 1, 2015 [Electronic resource] // HCCH: [website]. URL: https://assets.hcch.net/docs/7ebd2982-351a-4ca7-b6b3-356c8cdc1778.pdf (date of access 22.03.2023).

[235] Código General del Proceso (Ley № 15.982 de 18/10/1988) [Electronic resource] // Parlamento de la República Oriental del Uruguay: [website]. URL: https://parlamento.gub.uy/node/127778 10.09.2023 (date of access 23.12.2023).

method has been strongly criticised. Thus, according to Prof. Quintín Alfonsín, one of the most prominent Uruguayan jurists of the twentieth century[236], the *lex fori* method is inconvenient. The Uruguayan professor and well-known political figure D. Opertti Badán calls the lex fori formula for determining indirect jurisdiction 'particularly unfortunate', since the competence of the foreign judge is determined by the judge in whose hands the question of recognising the foreign decision is also in the hands of the judge[237]. In general, the prevailing view in Uruguayan doctrine is that this method is archaic, excessive, impeding the free flow of judicial decisions and limiting the right to judicial defence[238].

Furthermore, it is emphasised that exclusive jurisdiction should be interpreted restrictively and should not operate as an authorisation to reject a foreign decision, but as a mechanism to protect public policy when the case was clearly subject to review by a Uruguayan court[239].

Loyalty to the jurisdiction assumed by a foreign court, dictated by the desire to promote international cooperation, permeates both legislation, doctrine and Uruguayan jurisprudence. The judicial acts note that, in authorising the enforcement of a foreign judgment, it should not be overlooked that there is a principle in the field of international legal cooperation which requires that priority be given to the free circulation of foreign judgments[240]. Courts have indicated that when there is doubt about the recognition of a foreign judgement, recognition should be preferred[241].

One of the difficulties in applying the model in question is the need to look to foreign law to decide whether it has been correctly applied by the adjudicating court. Sometimes courts have avoided analysing these rules in detail, e.g. in Brazil. Interestingly, the Brazilian legal rule on indirect jurisdiction is extremely concise: a

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[236] Garcé García y Santos A. Conciencia moral, pensamiento lógico y continuidad en el esfuerzo. Tres lecciones del profesor Quintín Alfonsín en su «segunda vida» / A. Garcé García y Santos // Revista de Derecho: Publicación de la Facultad de Derecho de la Universidad Católica de Uruguay. 2021. № 23. P. 155.

[237] Tellechea Bergman E. Necesidad de profundización de la cooperación jurisdiccional internacional y el reconocimiento de los fallos extranjeros en el ámbito interamericano / E. Tellechea Bergman // Revista de la Secretaría del Tribunal Permanente de Revisión. 2017. Vol. 5. № 10. P. 48. doi: 10.16890/rstpr.a5.n10.p29.

[238] Ibid.

[239] Tellechea Bergman E. Op. cit. P. 50. For more details on this, see § 4 of this chapter. § 4 of this chapter.

[240] Sentencia Definitiva № 1204/2023 de Suprema Corte de Justicia, 23-11-2023 [Electronic resource] // vLex. Mode of access: https: vlex.es; Sentencia Definitiva № 22/2020 de Supreme Court of Justice (Uruguay), 17 de febrero de 20f0 [Electronic resource] // vLex. Mode of access: https: vlex.es.

[241] Sentencia Definitiva № 1.154/2019 de Supreme Court of Justice (Uruguay), 30 de mayo de 2019 [Electronic resource] // vLex. Mode of access: https: vlex.es.

foreign judgement is to be recognised if rendered by a competent judge[242]. However, the concept of "competent judge" [243] is not defined in Brazilian legislation, so doctrine and jurisprudence provide an answer to this question. The jurisprudence is characterised by the absence of any analysis of foreign law in relation to competence: in cases where there is no dispute as to competence, the courts limit themselves to saying that the competence of the foreign court is not in doubt[244], or that it is not disputed[245], otherwise, they refer to the inconsistency between the exclusive jurisdiction of the Brazilian courts[246] and the factual circumstances underlying the conclusion that the foreign court has competence[247]. This circumstance, in our opinion, is a consequence of the complexity of interpretation of foreign law norms by judges.

In the few jurisdictions where this model is used, in addition to the criteria of exclusive judicial jurisdiction, it is sometimes supplemented by other means of protecting the national legal order.

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[242] Decreto-Lei № 4.657, de 4 de Setembro de 1942 [Electronic resource] // Câmara dos Deputados: [website]. URL: https://www2.camara.leg.br/legin/fed/declei/1940-1949/decreto-lei-4657-4-setembro-1942-414605-publicacaooriginal-68798-pe.html (date of access 12.12.2023).

[243] However, there is a provision on the direct jurisdiction of Brazilian courts - a Brazilian court is competent when the defendant resides in Brazil or the place of performance is in Brazil (Art.12 Decreto-Lei No. 4.657, de 4 de Setembro de 1942), and on the exclusive judicial jurisdiction of Brazilian courts in real estate disputes (Art.12 § 1 Decreto-Lei No. 4.657, de 4 de Setembro de 1942) and certain other disputes, as well as the rule on the refusal to recognize a foreign judgment in violation of the provisions on exclusive jurisdiction (Art. 964 LEI No. 13.105, DE 16 DE MARÇO DE 2015 [Electronic resource] // Presidência da República: [website]. URL: https://www.planalto.gov.br/ccivil_03/_ato2015-2018/2015/lei/l13105.htm).

[244] For example: 'there is no doubt about the competence of the U.S. judiciary to decide the civil liability of the defendant to the complainant' (AgInt na HOMOLOGAÇÃO DE DECISÃO ESTRANGEIRA № 2565 - EX (2019/0027451-0) [Electronic resource] // Superior Tribunal de Justiça: [website]. URL: https://scon.stj.jus.br/SCON/jurisprudencia/toc.jsp).

[245] HDE 410 / EX HOMOLOGAÇÃO DE DECISÃO ESTRANGEIRA 2017/0061034-6 [Electronic resource] // Superior Tribunal de Justiça: [website]. URL: https://scon.stj.jus.br/SCON/jurisprudencia/toc.jsp (date of access 05.02.2024); SEC 15886 / EX SENTENÇA ESTRANGEIRA CONTESTADA 2016/0183595-3 [Electronic resource] // Superior Tribunal de Justiça: [website]. URL: https://scon.stj.jus.br/SCON/jurisprudencia/toc.jsp (date of access 05.02.2024).

[246] AgInt nos EDcl na HOMOLOGAÇÃO DE DECISÃO ESTRANGEIRA № 3383 - EX (2019/0260209-0) [Electronic resource] // Superior Tribunal de Justiça: [website]. URL: https://scon.stj.jus.br/SCON/jurisprudencia/toc.jsp (date of access 05.02.2024); AgInt na HOMOLOGAÇÃO DE DECISÃO ESTRANGEIRA № 2565 - EX (2019/0027451-0) [Electronic resource] // Superior Tribunal de Justiça: [website]. URL: https://scon.stj.jus.br/SCON/jurisprudencia/toc.jsp (date of access 05.02.2024).

[247] For example: 'since it is a suit by a Brazilian citizen residing in a foreign country and, in addition, the jurisdiction of the Brazilian courts is not violated' (AgInt na HOMOLOGAÇÃO DE DECISÃO ESTRANGEIRA № 1863 – EX (2018/0159589-1) [Electronic resource] // Superior Tribunal de Justiça: [website]. URL: https://scon.stj.jus.br/SCON/jurisprudencia/toc.jsp (date of access 05.02.2024)); or: 'one cannot speak of a judgement rendered by an incompetent authority when there are indications that the parties lived in the country in which the judgement was rendered, rather than the foreign authorities being declared incompetent', 'there is no doubt as to the competence of the Luxembourg judicial authority to decide on the custody of the children of a father living in Luxembourg and a mother living in Brazil' (HDE 818 / EX HOMOLOGAÇÃO DE DECISÃO ESTRANGEIRA 2017/0188341-5 [Electronic resource] // Superior Tribunal de Justiça: [website]. URL: https://scon.stj.jus.br/SCON/jurisprudencia/toc.jsp (date of access 05.02.2024)).

For example, in Romania, a foreign judgment may be recognised if the following conditions are met: the court that rendered the judgment had jurisdiction under the law of the country of location to hear the case, and such jurisdiction was not based solely on the presence of the defendant or his property outside the direct connection with the jurisdiction of the country of location[248]. At the same time, the Romanian Code of Civil Procedure establishes such a ground for refusal of recognition as the exclusive competence of the Romanian courts to hear a case[249].

In the above example, the reference to foreign law is supplemented by the criteria for indirect jurisdiction set out in the national law (jurisdiction must not be based solely on the presence of the defendant or his property; there must be a "direct" connection of the dispute with the legal order; non-contradiction with the exclusive competence of the national court). Although the lack of competence of the foreign court is not listed among the grounds for refusing to recognise the judgment, it is clear that failure to comply with this condition leads to the same result as we see in Romanian jurisprudence[250].

This method is sometimes combined with the one discussed in § 1 of this chapter. Thus, in the United Arab Emirates (hereinafter - UAE), a foreign judgment may be recognised if it satisfies both the requirement that the court of the state where it was rendered has jurisdiction under the law of that state and the requirement that the UAE court lacks jurisdiction over the dispute under the law of that state on direct jurisdiction[251]. Under such a provision, no court decision on a dispute that could potentially be adjudicated in the UAE would be recognised in the UAE.

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[248] See: Art. 1.096 (1) (b) and Art. 1.097 (1) (e) of the Romanian CPC: Codul de procedură civilă din 1 iulie 2010 [Electronic resource] // Ministerul Justiției: [website]. URL: https://legislatie.just.ro/Public/DetaliiDocument/140271 (date of access10.09.2023).

[249] Ibid.

[250] For example, in the context of resolving the recognition of a divorce decree issued by the Nicosia Family Court of the Republic of Cyprus, the Neamț Court (Tribunalul Neamț), verifying ex oficio the competence of the Cypriot court under Art. 1.096 para. 1 lit. b) of the Romanian Code of Civil Procedure, found a violation of the jurisdiction provisions of Art. 3 para. 1 lit. a of Art. 3 of EC Regulation No. 2201/2003, in view of the fact that the parties had never had a common residence in the territory of that State and the applicant had not resided there for at least 6 months prior to the application, and therefore rejected the party's application for recognition of the judgement, while the rules of exclusive jurisdiction set out in Art. 1.079 of the same Code had not been violated. See: Tribunalul Neamț. Decizie 208 din 02.02.2017. Minori și familie. Recunoașterea hotărârii de divorț. [Electronic resource]. URL: https://www.jurisprudenta.com/jurisprudenta/speta-10s79ami/ (date of access 10.09.2023).

[251] Federal Decree-Law № (42) of 2022 Promulgating the Civil Procedure Code (art. (222) (2) (a), (b)) [Electronic resource] // The General Secretariat of the Supreme Legislation Committee in the Emirate of Dubai: [website]. URL: https://uaelegislation.gov.ae/en/legislations/1602/download (date of access 06.02.2024).

Of interest is the description by Mexican Prof. M.E. Mancia Mejía of the interaction of the courts in the process of rendering and recognizing a judgment. Indirect jurisdiction appears to the specialist as a result of the division of jurisdiction in such a way that one part of it is exercised by a judge of the State where the judgment is rendered, and the other by a judge who has competence in the territory where the judicial act is to be enforced, thus, in exercising indirect jurisdiction, two judges act within the boundaries of two different territories, but in relation to the same judicial case[252]. Indirect jurisdiction is an act of comity whereby a State, acting sovereignly, allows a judgement of another sovereign State to be enforced in its territory whenever such a judgement respects the exclusive jurisdiction of the State in which recognition is sought, is not contrary to public policy and to a judgement rendered in that State[253].

Thus, in the scholar's view, the work of the courts of two states appears to be a ‘team’ working on a single task, each member of the team realising its own function and not controlling the other. Verification of the competence of a foreign court is effectively excluded, and any foreign judgement is allowed to be recognised, regardless of the criteria on which the foreign court based its jurisdiction, always when such criteria are acceptable to the state in which recognition of the foreign judgement is sought. The criteria of admissibility are the criteria of exclusive jurisdiction, public policy and an existing decision of a national court in an identical dispute.

This approach is based on the notion that the essence of the test of direct and indirect jurisdiction differs significantly, the test takes place within the national legal order, and therefore what matters is not whether the foreign court has correctly dealt with the dispute in terms of the rules of direct jurisdiction of the foreign State, but whether it is acceptable for the national legal order for the foreign court to confer jurisdiction.

The application of foreign law to determine the jurisdiction of a foreign court, in our view at least, lacks any rational basis. The use of this model essentially constitutes control over the application by a foreign court of its own legislation, i.e. ‘substitution’ of

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[252] Mansilla Mejía M.E. Derecho internacional privado [Electronic resource] / M.E. Mansilla Mejía. (2a. ed.). México: IURE Editores, 2019. P. 312. URL: https://bv.unir.net:2769/es/ereader/unir/130371?page=5 (date of access 06.02.2024).

[253] Mansilla Mejía. M.E. Op.cit. P. 313.

the relevant bodies of the judicial system of the foreign State. The result of such a test has no relation to the legal order of the State in which the foreign judgement is recognised, and therefore does not meet the objectives of the legal regulation of indirect jurisdiction.

It should also be taken into account that domestic control of the application of national legislation by courts is always more effective, while the exercise of such control by courts of other States involves their interpretation of foreign law, which, as court practice shows, is quite difficult.

In practice, the implementation of this model will almost always result in the acceptance of the acceptable competence of the foreign court[254], if it is taken as axiomatic that courts apply their national law in good faith, thus devaluing the jurisdictional control exercised by the court recognizing the judgment under this model.

It certainly expresses confidence in foreign legal orders, trust in the administration of justice and openness to interaction, which is second only to the model we discussed in § 4 of this chapter. However, states using this model run the risk of finding themselves in a situation where the criteria for direct jurisdiction of national courts are lower than the criteria for direct jurisdiction of foreign courts, leading to the recognition of judicial acts based on jurisdictional criteria on which the decisions of national courts cannot be based.

§ 3. Application of the Criteria for Indirect Jurisdiction Contained in the Law of the State in Which the Judgment is Recognized

The use of indirect jurisdictional criteria set out in national legislation is characteristic of common law countries. In this case, strict jurisdictional bindings are usually used. Usually the criteria for direct jurisdiction in such States are broader than the criteria for indirect jurisdiction, in other words, the State recognises its authorities as competent to hear disputes with a foreign element in a wider range of cases than the range of cases over which it recognises the competence of foreign authorities. Such a situation can be ensured by this model, as it allows the creation and consolidation in national

[254] Here we are not talking about the possibility of refusing to recognise a foreign judgment because of a violation of the rules on exclusive jurisdiction.

legislation of distinct lists of jurisdictional criteria depending on the purpose of their application.

Among the grounds of direct jurisdiction, the common law regime includes submission to the jurisdiction of the court, residence and presence in the country of the court[255]. In addition, for example, the Civil Procedure Rules for England 1998[256] set out the grounds of direct jurisdiction for cases where service of a summons is intended to take place outside the jurisdiction of the English court. These cases (25 in total) include, for example, the following: a claim is brought for breach of confidentiality or misuse of personal information where an obligation of confidentiality or right to privacy arose in the jurisdiction in question.

The grounds of indirect jurisdiction, however, are much narrower. In common law countries, for example, *the Dicey Rule*[257] applies, under which four grounds of indirect jurisdiction are relied upon by the court in recognising a foreign judgment: the presence of the party against whom the judgment is rendered in the foreign country at the time the foreign proceeding is commenced; the entry of judgment against a person who was a plaintiff or counterclaimant in the foreign proceeding; the consent of the party against whom the judgment is rendered to foreign jurisdiction through. The Dicey Rules derive from decisions of the English courts and Privy Council made in the late nineteenth and early twentieth centuries and have not fundamentally changed[258].

This approach of common law countries to indirect jurisdiction has been actively criticised.

Firstly, the narrow grounds of jurisdiction of a foreign court, which are limited to physical presence in or consent to the foreign jurisdiction, are questioned, irrespective of the merits of the dispute. In particular, the Supreme Court of Canada in *De Savoye v Morguard Investments Ltd* drew attention to the fact that English courts refuse to enforce

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[255] Oppong R.F. Private International Law in Commonwealth Africa / R.F. Oppong. Cambridge: Cambridge University Press, 2013. P. 320. doi:10.1017/CBO9781139031288.028.

[256] Practice Direction 6B which accompanies Part 6 of the Civil Procedure Rules 1998 of the Supreme Court of England and Wales (CPR) [Electronic resource] // Ministry of Justice: [website]. URL: https://www.justice.gov.uk/courts/procedure-rules/civil/rules/part06/pd_part06b (date of access 07.10.2023).

[257] Dicey, Morris and Collins on the Conflict of Laws / L.A. Collins (ed). 15th ed. London: Sweet & Maxwell/Thomson Reuters, 2012. P. 689-690.

[258] Kutner P. Recognition and Enforcement of Foreign Judgments – The Common Law's Jurisdiction Requirement / P. Kutner // Rabels Zeitschrift. 2019. Vol. 83. №1. P. 68.

judgements on contracts, wherever they are made and whatever obligations arise out of them, unless the defendant was within the jurisdiction of the foreign court at the time the action was brought or had submitted to its jurisdiction[259]. However, the world has changed since the said rules were developed in England in the nineteenth century, modern means of travel and communication have levelled the problems associated with defending oneself in court away from one's residence or place of presence, in these circumstances the approach to the recognition and enforcement of foreign judgments is, in the court's view, ripe for reassessment[260]. In judicial and academic circles, legal regulation in this area of English private international law has been described as "hopelessly anachronistic" (English Prof J. Harris),[261] 'fundamentally suspect' (English Prof J. Hill)[262], 'in need of revision and fundamental restructuring' (Singaporean Prof K. Tan)[263], 'chauvinistic and of dubious merit' and 'difficult to justify' (Irish Prof D. Kenny)[264]. This approach is seen as an excessive focus on protecting the rights of judgment debtors, which results in inadequate protection of creditors' rights, as noted by scholars[265].

Second, common law rules are criticised for not recognising the legitimacy of the exercise of jurisdiction by a foreign court on the same grounds on which the courts of such States deal with cases with a foreign element. The difference in the criteria of direct and indirect jurisdiction is called a *jurisdictional gap*, such norms are regarded as discriminatory, and the corresponding problem is seen as one of the essential and urgent problems of modern legal regulation of the recognition of foreign judgments[266]. Thus, when drafting the HCCH 2019 Judgments Convention, the HCCH Standing Bureau noted that such a situation contradicts the principle of equality of sovereign states and the

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[259] Morguard Investments Ltd. *v.* De Savoye [1990] 3 S.C.R. 1077, Supreme Court of Canada, 20 December 1990 [Electronic resource] // Supreme Court of Canada: [website]. URL: https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/700/index.do?alternatelocale=en (date of access 07.10.2023).

[260] Ibid.

[261] Harris J. Recognition of Foreign Judgments at Common Law – The Anti-Suit Injunction Link / J. Harris // Oxford Journal of Legal Studies. 1997. Vol. 17. № 3. P. 498.

[262] See: Arzandeh A. Reformulating the common law rules on the recognition and enforcement of foreign judgments / A. Arzandeh // Legal Studies. 2019. Vol 39. №. 1. P. 58.

[263] Ibid.

[264] Kenny D. Re Flightlease: The 'real and substantial connection' test for recognition and enforcement of foreign judgments fails to take flight in Ireland / D. Kenny // The International and Comparative Law Quarterly. 2014. Vol. 63. № 1. P. 197.

[265] Arzandeh A. Op. cit. P. 9.

[266] Brand R.A. The Circulation of Judgments Under the Draft Hague Judgments Convention / Brand R.A. // U. of Pittsburgh Legal Studies Research Paper. 2019. № 2. P. 22. doi: 10.2139/ssrn.3334647.

principle of equality of parties in litigation (audiatur et altera pars), eliminating jurisdictional gaps in national legislation was named as one of the objectives of the HCCH 2019 Judgments Convention[267].

In our view, such a state of affairs does not contradict the principle of the sovereign equality of States, since each State has the right to decide for itself whether to recognise foreign judicial decisions based on certain jurisdictional criteria, and in this sense the rules on indirect jurisdiction do not infringe on the sovereignty of another State[268]. It is another matter that specialists in the field of private international law have long noted that the policy of ignoring foreign law that took place in the past is impossible in the modern world; States have long come to the conclusion that they cannot, hiding behind the principle of territorial sovereignty, afford to disregard the rules of foreign law[269]. In this sense, the situation of jurisdictional gap shows a bias towards foreign justice and certainly has a negative impact on the effectiveness of the transnational movement of judgments[270].

Many researchers, either criticizing or agreeing with criticism of the model of regulation of indirect jurisdiction existing in common law countries, consider options for changing the existing situation[271].

The option of moving to a 'reciprocity'[272], model The option of moving to a 'reciprocity' model, that is, accepting that the foreign court had jurisdiction over the defendant when the courts in the place where recognition of the judgement is sought

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[267] Comparative Study of Jurisdictional Gaps and Their Effect on the Judgments Project: to Permanent Bureau of The Hague Conference on Private International Law. July 1, 2015 [Electronic resource] // HCCH: [website]. URL: https://assets.hcch.net/docs/7ebd2982-351a-4ca7-b6b3-356c8cdc1778.pdf (date of access 22.03.2023).

[268] We develop this position in Chapter I, § 1 of this paper.

[269] This was the conclusion reached by Cheshire, North and Fossett in their consideration of the relationship between private international law and sovereignty. The experts concluded that applying exclusively the law of the forum country may, firstly, lead to gross injustice (for example, in the case of non-recognition of widow status due to the application of English law to a union entered into in another state and not meeting the formal requirements of the English Marriage Act 1949) and, secondly, if a court were to adopt the rational policy of recognising foreign decisions, it must, by the nature of things, have regard to the relevant foreign law. See: Cheshire, North & Fawcett private international law / J.J. Fawcett, J.M. Carruthers. 14th ed. Oxford. New York: Oxford University Press, 2008. P.4.

[270] It should be noted, however, that bias may be manifested in the administration of justice towards certain legal orders and persons of certain states, such as the Russian Federation, Russian citizens and Russian legal entities (see: Order of the Government of the Russian Federation of 5 March 2022. 430-r "On the List of Foreign States and Territories Committing Unfriendly Acts against the Russian Federation, Russian Legal Entities and Individuals").

[271] Up to the model of 'local finality' of the judicial act, which implies that the jurisdiction of the foreign court is always admissible, while the debtor's defence, according to the model, is to be secured by means of public policy tests, fraud arguments and others to ensure that there is no fairness to the parties, justifiably criticised by specialists. See: Arzandeh A. Op. cit. P. 14-15.

[272] This is sometimes referred to as the model we discussed in Chapter II, § 1, 'Determining indirect jurisdiction on the basis of national law rules on direct jurisdiction'.

would have exercised jurisdiction in the same circumstances, is seen as leading to an unsatisfactory extension of accepted common law rules[273]. In justifying this judgement, Professor Peter B. Kutner, in relation to the prospects for expanding the grounds of indirect jurisdiction, notes that with the much greater development of international trade, travel and communications, courts are now likely to receive more judgments from countries where the quality of justice is often poor, and it may be more likely that the defendant will have only a tenuous connection with the country where the judgment was rendered[274]. In our view, the alleged unsatisfactory quality of administration of justice cannot be a reason for non-recognition of the jurisdiction of a foreign court, since the issue is on a completely different plane and is resolved by making the foreign judgement subject to the requirements relating to the procedure of proceedings in a foreign court[275]. On the quality of the administration of justice outside England, there is a different view: English Professor A. Briggs, calling for a change in the classical rules on indirect jurisdiction, notes that they were formed at a time when it was thought that there were far fewer reliable legal systems abroad, and that as of 1987 the number of countries in which the quality of judicial proceedings could be a cause for concern was small[276].

The alternative, suggested by Professor Peter B. Kutner, is a limited modification of the law to recognise judicial decisions in specific situations where there is a substantial connection with the State in which the action is brought and there is a real need for the dispute to be resolved in that State[277].

Expanding the indirect jurisdictional filters by listing possible situations in which the jurisdiction of a foreign State may be considered justified because of the close connection between the dispute and the forum would not improve the situation significantly because, first, such a method has the same disadvantages as the application

[273] Kutner P. Op. cit. P. 69.

[274] Kutner P. Op. cit. P. 68.

[275] An example is the ground in many legal systems for refusing to recognise a foreign judgment on the grounds of inadequate notice to the party against whom it was rendered. For example: para. 2 part 1 of Art. 1 part 1 of Art. 412 of the Code of Civil Procedure of the Russian Federation.

[276] Briggs A. Which Foreign Judgments Should we Recognise Today? / A. Briggs // International and Comparative Law Quarterly. 1987. Vol. 36. № 2. P. 258. doi:10.1093/iclqaj/36.2.240.

[277] Such situations include the need to recover damages for physical injury or breach of contract occurring in a foreign country. See: Kutner P. Op. cit. P. 68.

of national rules on direct rigid jurisdictional bases[278]; second, it does not eliminate the problem of the *jurisdictional gap* between direct jurisdictional criteria and indirect ones; and, third, rigid jurisdictional filters cannot mediate all possible life situations in which recognition of a foreign jurisdiction may be justified, and rigid jurisdictional filters tend to become 'outdated'[279].

The flexible jurisdictional test - the test of close connection between the dispute and the court - is devoid of all the above disadvantages. This test was first applied in common law countries by the Supreme Court of Canada in the already mentioned case of De Savoye v Morguard Investments Ltd, in which it was called the 'real and substantial connection' test[280]. The use of this criterion was based on the achievements of English doctrine, which justified the application of 'natural forum'[281] rules to the recognition of foreign judgments as well. In particular, English Prof A. Briggs wrote: 'If we assert jurisdiction on account of the defendant's submission to it, or on the fact that England is the natural forum, we must similarly adapt our view of what constitutes jurisdiction.... When we are approached to recognise a foreign judgment. We must recognise the decision of the court whose jurisdiction the defendant has recognised, or which is in any event the natural forum'[282]. In analysing the possible objections, Prof. A. Briggs considered the strongest argument to be that it seems strange to use the concept of *forum (non) convenience,* which serves the purpose of narrowing the jurisdiction of the English

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[278] We discussed the shortcomings of the above model in § 1 of this chapter.

[279] Thus, for example, with the emergence of the need to settle the issue of the competent court in cases on the termination of the issuance by the search engine operator of links allowing access to information on the information and telecommunications network 'Internet', the strict jurisdictional links contained in Part 3 of Art. 402 of the Code of Civil Procedure of the Russian Federation became obsolete, as none of them allowed to satisfactorily resolve this issue. In this regard, Federal Law No. 264-FZ of 13 July 2015 amended the Russian Federation Code of Civil Procedure by introducing a new jurisdictional link: such cases are subject to consideration by a Russian court if the plaintiff has a place of residence in the Russian Federation (paragraph 11 of Part 3 of Art. 402 of the Russian Federation Code of Civil Procedure).

[280] «the real and substantial connection test», см.: Morguard Investments Ltd. v. De Savoye [1990] 3 S.C.R. 1077, Supreme Court of Canada, 20 December 1990 [Electronic resource] // Supreme Court of Canada: [website]. URL: https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/700/index.do?alternatelocale=en (date of access 07.10.2023).

[281] The term 'natural forum' is also used in addition to 'natural forum': 'appropriate forum' ('appropriate forum', 'forum convenience'), see e.g. Garnett R. Determining the appropriate forum by the applicable law: Garnett R. Determining the appropriate forum by the applicable law / R. Garnett // International & Comparative Law. Garnett // International & Comparative Law Quarterly. 2022. Vol. 71. №3. P. 589. doi: 10.1017/S0020589322000203 (accessed 07.10.2023). 'Natural forum' refers to the most appropriate court to resolve a dispute in terms of the interests of the parties and the administration of justice. This concept was explained in detail by the House of Lords in Spiliada Maritime Corp v Cansulex Ltd. See: Spiliada Maritime Corp v Cansulex Ltd [1986] UKHL 10 (19 November 1986) [Electronic resource] // British and Irish Legal Information Institute (BAILII): [website]. URL: http://www.bailii.org/uk/cases/UKHL/1986/10.html (accessed 07.10.2023).

[282] Briggs A. Which Foreign Judgments Should we Recognise Today? P. 248–249.

courts, to expand the rules for the recognition of foreign judgments[283]. Responding to this argument, A. Briggs, observed that if a court is recognised as jurisdictional because of its close connection with the dispute, it does not matter whether the old law is extended or restricted, what matters is that it is placed on a rational basis[284]. As to the argument about the vagueness of the concept of 'natural forum' and the perceived difficulties in its use, Prof A. Briggs noted that in practice there is surprisingly little difficulty in applying the 'natural forum' rule in determining direct jurisdiction[285].

The 'real and substantial connection test' has subsequently been repeatedly applied by Canadian courts in recognising foreign judgments[286], while the English common law, always characterised as rather inert[287], has not been changed. Developments in Canadian case law have led to Canada being characterised by lawyers as one of the most hospitable jurisdictions in the world for the recognition and enforcement of judgments of foreign jurisdictions[288].

In *Club Resorts Ltd. v. Van Breda*[289] the Supreme Court of Canada attempted to unravel the content of the 'real and substantial connection test', taking into account the criticism associated with this approach regarding its vagueness[290]. The criteria for a 'real and substantial connection' have been described for a tort dispute[291], but the Supreme

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[283] Op. cit. P. 253.

[284] Op. cit. P. 253-254.

[285] Op. cit. P. 255.

[286] Beals v. Saldanha, [2003] 3 S.C.R. 416, 2003 SCC 72 Supreme Court of Canada. 18.12.2003. [Electronic resource] // Supreme Court of Canada: [website]. URL: https://decisions.scc-csc.ca/scc-csc/scc-csc/en/item/2107/index.do. (date of access 07.10.2023). Chevron Corp. v. Yaiguaje, 2015 SCC 42, [2015] 3 S.C.R. 69 04.09.2015. [Electronic resource] // Supreme Court of Canada: [website]. URL:https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/15497/index.do (date of access 07.10.2023).

[287] Briggs A. Crossing the River by Feeling the Stones: Rethinking the Law on Foreign Judgments / A. Briggs // Singapore Year Book of International Law. 2004. Vol. 8. P. 1.

[288] Dhooge L.J. Yaiguaje v. Chevron Corporation: Testing the Limits of Natural Justice and the Recognition of Foreign Judgments in Canada / L.J. Dhooge // Canada-United States Law Jornal. 2013. Vol. 38. №1. P. 95.

[289] Club Resorts Ltd. v. Van Breda, 2012 SCC 17, [2012] 1 S.C.R. 572. Supreme Court of Canada. 18.04.2012. [Electronic resource] // Supreme Court of Canada: [website]. URL: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/8004/index.do (date of access 24.01.2024).

[290] Monestier T.J. Jurisdiction and the Enforcement of Foreign Judgments / T.J. Monestier // 42 Advocates' Q. 107. 2013. Vol. 42. P. 197, 112; Blom J., Edinger E. The Chimera of the Real and Substantial Connection Test / J. Blom, E. Edinger // UBC Law Review. 2005. Vol. 38. №2. P. 380; Black V., Blom J., Walker J. Current Jurisdictional and Recognitional Issues in the Conflict of Laws / V. Black, J. Blom, J. Walker // Canadian Business Law Journal. 2011. Vol. 50. P. 505; Castel J.-G. The Uncertainty Factor in Canadian Private International Law / J.-G. Castel // MCGILL LAW JOURNAL / REVUE DE DROIT DE MCGILL. 2007. Vol. 52. P. 557.

[291] The Supreme Court of Canada has identified 4 factors: the defendant is domiciled in the province; the defendant carries on business in the province; the offence was committed in the province; and the contract involved in the dispute was entered into in the province. Club Resorts Ltd. v. Van Breda, 2012 SCC 17, [2012] 1 S.C.R. 572. Supreme Court of Canada. 18.04.2012. [Electronic resource] // Supreme Court of Canada: [website]. URL: https://scc-csc.lexum.com/scc-csc/scc-csc/en/item/8004/index.do (date of access 24.01.2024).

Court of Canada has noted their indicative nature and the need in other categories of disputes to determine whether there is a connection of a similar nature between the dispute and the fórum[292]. In doing so, the court emphasised that the determination of whether there is a 'real and substantial connection' must be based on objective criteria rather than abstract concepts of 'fairness', 'efficiency' or 'comity' to ensure predictability[293]. However, the list of presumed linking factors is not exhaustive; indeed, it may be revised at a later date[294].

In discussing the possibility of applying the approach developed in *Club Resorts Ltd. Van Breda* the approach of applying the "real and substantial connection test" to both cases of determining the competence of a national court and cases of assessing the admissibility of the competence of a foreign court, Canadian scholars assume that direct jurisdiction and indirect jurisdiction must be correlated: "it seems strange to have two lines of case law for the same correlative jurisdictional test", explains Prof. T. Monestier, "it seems strange to have two lines of case law for the same correlative jurisdictional test"[295] Subsequently, the connecting factors named in *Club Resorts Ltd. v. Van Breda*, have been used in determining indirect jurisdiction, for example, in *Sincies Chiementin S.p.A. v. King* (2012) and *Sleep Number Corporation v. Maher Sign Products Inc.* (2020)[296]. However, the validity of using identical approaches to recognise the relationship between the dispute and the forum as sufficiently close in determining direct and indirect jurisdiction remains debatable[297] and indirect jurisdiction remains debatable and its resolution requires a separate study.

Closely related to this problem, however, is the problem of whether a link can be recognised if a foreign court's adjudication of a dispute satisfies the direct strict jurisdictional bases contained in the law of the State of enforcement when applied

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[292] Ibid.
[293] Ibid.
[294] Ibid.
[295] Monestier T.J. Op. cit. P. 114, 197.
[296] Sincies Chiementin S.p.A. v. King, 2012 ONCA 653. COURT OF APPEAL FOR ONTARIO. 01.10.2012. [Electronic resource] // Ontario Courts: [website]. URL: https://www.ontariocourts.ca/decisions/2012/2012ONCA0653.htm (date of access 24.01.2024); Sleep Number Corporation v. Maher Sign Products Inc., 2020 ONCA 95 COURT OF APPEAL FOR ONTARIO. 07.02.2020 [Electronic resource] // Canadian Legal Information Institute: [website]. URL: https://www.canlii.org/en/on/onca/doc/2020/2020onca95/2020onca95.html (date of access 24.01.2024).
[297] Monestier T.J. Op. cit. P. 197.

hypothetically, which may raise the question of introducing similar direct indirect strict jurisdictional bases along with the flexible jurisdictional criterion of a close relationship between the dispute and the court. Indeed, direct strict jurisdictional bindings often express the relevant legislator's perception of a close relationship between the dispute and the court. However, firstly, the basis of these bindings is not always a close relationship[298], and secondly, this method represents the model discussed in § 1 of this chapter and has corresponding inherent disadvantages.

The Quebec solution to this dilemma is noteworthy in this regard. The Canadian legal landscape is unique in that it includes both common law and civil law systems, among the latter, the civil law system of the province of Quebec stands out for its specific features[299]. Among the latter, the civil law system of the province of Quebec stands out for its specific features. Quebec law is an example of a mixture of the two models discussed in this paper: the application of the indirect jurisdictional test, referred to in Canadian doctrine as the "real and substantial connection test", is combined with the method we discussed in § 1 of this chapter. Thus, the Civil Code of Quebec[300] establishes two stages in the test of admissibility of the jurisdiction of a foreign court (art. 3164). At the first stage, the court applies the same analytical framework used to determine direct jurisdiction. Where a Quebec court would have found itself competent in a similar situation, the court proceeds to the second stage, which tests whether there is a 'real and substantial connection' between the dispute and the forum. It should be noted that this approach also has the disadvantages we have summarised in § 1 of this chapter.

Despite these criticisms, the common law approach to the regulation of indirect jurisdiction has been proposed as a model for harmonising the recognition of foreign judgments in the Asian region in the Asian Principles on the Recognition and

[298] For example, the ground of direct jurisdiction discussed above: 'the presence of a court in the country'.

[299] Lockwood C., Hirsh A. Enforcing Foreign Judgments in Canada [Electronic resource] // Osler, Hoskin & Harcourt LLP: [website]. 2023. April. URL: https://www.osler.com/en/resources/regulations/2023/enforcing-foreign-judgments-in-canada-en#d (date of access 24.01.2024).

[300] CCQ-1991 - Civil Code of Québec [Electronic resource] // Gouvernement du Québec: [website]. URL: https://www.legisquebec.gouv.qc.ca/en/document/cs/CCQ-1991?langCont=en#ga:l_ten-gb:l_four-h1 (date of access 24.01.2024).

Enforcement of Foreign Judgments developed by Professor A. Chong of Singapore (Principle 2)[301].

In this paragraph, we have considered and evaluated the advantages and disadvantages of a model whereby indirect jurisdictional criteria are enshrined directly in the law of the State where the judgment is recognized. Such indirect jurisdictional criteria can be either rigid or flexible. This model is most characteristic of common law countries, whereby strict jurisdictional criteria are generally applied, allowing for different legal regulation of direct and indirect jurisdiction[302] A revolutionary approach in this case is that of Canada, whose courts, starting with *De Savoye v Morguard Investments Ltd*, have used a flexible test - the 'real and substantial connection test'. The use of rigid indirect jurisdictional criteria increases the predictability of transnational justice, but does not allow for all possible situations in which the jurisdiction of a foreign court should be considered reasonable, thus making it more difficult to recognise foreign judgments.

§ 4. Application of the Criteria for Exclusive Jurisdiction Contained in the Law of the State in Which the Judgment is Recognized

Under the model considered in this paragraph, domestic law does not condition the admissibility of judicial acts of foreign courts on the rules of direct jurisdiction of either

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[301] Chong A. Asian Principles for the Recognition and Enforcement of Foreign Judgments / A. Chong. Singapore: Asian Business Law Institute and Lead Authors, 2020. P. 18-39.

[302] The following jurisdictions, among others, have such legal regulation: Australia (Foreign Judgments Act 1991 № 112 [Electronic resource] // Federal Register of Legislation. Mode of access: https: legislation.gov.au); Ghana (Ghana's Courts Act of 1993 (Act 459) (Section 83) [Electronic resource] // Parliament of Ghana Library: [website]. URL: https://ir.parliament.gh/handle/123456789/1792 (date of access 10.01.2024); New Zealand (Reciprocal Enforcement of Judgments Act 1934 (Section 6 (3), (4)) [Electronic resource] // New Zealand Parliamentary Counsel Office/Te Tari Tohutohu Pāremata: [website]. URL: https: //www.legislation.govt.nz/act/public/1934/0011/latest/whole.html) (date of access 06.02.2024); Zambia (Foreign Judgments (Reciprocal Enforcement) Act of 1937 (Section 6 (2), (3)) [Electronic resource] // National Assembly of Zambia: [website]. URL: https://www.parliament.gov.zm/sites/default/files/documents/acts/Foreign%20Judgements%20%28Reciprocal%20Enforcement%29%20Act.pdf) (date of access 06.02.2024); Uganda (Foreign Judgments (Reciprocal Enforcement) Act (Section 5 (2), (3)) [Electronic resource] // Uganda Legal Information Institute: [website]. URL: https://ulii.org/akn/ug/act/ord/1961/4/eng@2000-12-31) (dateof access 06.02.2024); Seychelles (Foreign Judgments (Reciprocal Enforcement) Act (Section 6 (2), (3)) [Electronic resource] // Seychelles Legal Information Institute: [website]. URL: https: https://seylii.org/akn/sc/act/1961/29/eng@2014-12-01) (date of access 06.02.2024); Nigeria: (Foreign Judgments (Reciprocal Enforcement) Act (Section 6 (2), (3)) [Electronic resource] // Policy and Legal Advocacy Centre: [website]. URL: https://www.placng.org/lawsofnigeria/view2.php?sn=193) (date of access 06.02.2024); Kenya (Foreign Judgments (Reciprocal Enforcement) Act (Section 4 (1), (2)) [Electronic resource] // National Council for Law Reporting (Kenya Law): [website]. URL: http://kenyalaw.org:8181/exist/kenyalex/actview.xql?actid=CAP.%2043) (date of access 06.02.2024).

its own legal order, the legal order of the State of judgment, or indirect jurisdictional criteria. The jurisdiction of a foreign court is deemed admissible when the provisions on the exclusive judicial jurisdiction of the State in which recognition of the judicial act is sought are met.

The criteria of exclusive judicial jurisdiction, on the one hand, are direct jurisdictional criteria of the state of recognition of a foreign judgement, on the other hand, have specific features.

First, rules on exclusive judicial jurisdiction, unlike rules on direct jurisdiction, always serve the purpose of indirect jurisdiction. Whereas the criteria of direct jurisdiction may or may not be used to assess the admissibility of the competence of a foreign court in recognising a foreign judgment (depending on the model used), the rules on exclusive judicial jurisdiction are intended to delineate jurisdictional boundaries that cannot be invaded by a foreign court and are therefore always analysed.

Second, unlike the application of the rules on direct jurisdiction for indirect jurisdiction, where satisfaction of one of the jurisdictional criteria is sufficient to render the jurisdiction of a foreign court admissible, in the case of exclusive judicial jurisdiction, the decision of a foreign court is admissible only if it satisfies each jurisdictional criterion.

The noted differences in the rules on exclusive judicial jurisdiction are due to the fact that they are an integral part of public order[303], and serve the purpose of protecting the basic political and economic interests of the State[304]. The grounds for exclusive jurisdiction include those which the State considers essential to the legal order as a whole, such situations being the exception rather than the rule[305].

Prof. W. Goldschmidt insisted on the application of exclusive jurisdiction provisions only in cases of a clear violation of the public policy of the State in which the recognition of a foreign judgement was being considered[306]. In particular, at a seminar of the Organisation of American States on international civil procedure, when discussing the

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[303] Kudelich E.A. Cross-border enforcement of court decisions in Russia: in captivity of established stereotypes or progressive movement forward? / E.A. Kudelich // Law. 2015. № 5. P. 151.

[304] Nikolyukin S.V. International civil procedure (issues of theory and practice): monograph / S.V. Nikolyukin. Moscow: Yurlitinform, 2014. P. 75

[305] Neshataeva T.N. Actual problems of international public and private law: Study guide / T.N. Neshataeva. MOSCOW: RGUP, 2018. P. 60.

[306] Goldschmidt W. Op. cit. P. 17.

need to reform the inter-American legal regulation of jurisdiction, the wording of the ground for refusing recognition of a foreign judgement ‘invasion of exclusive jurisdiction’ was proposed to be supplemented with the words ‘violating public policy’, however, the proposal was not supported because most of the gathered experts considered that the invasion of exclusive jurisdiction is a violation of public order[307].

This raises the question of the boundaries of the grounds of exclusive jurisdiction. It seems that the provisions on exclusive jurisdiction, as being inherently a mechanism for the protection of national public policy, should be correlated with it.

Although this approach is in line with the global trend[308], there are situations of interpretations in the literature that maximize the scope of exclusive judicial jurisdiction, which jeopardizes the protection of litigants, and it is therefore suggested that a careful conceptualization of exclusive judicial jurisdiction should avoid broadening its criteria, as this prevents the recognition of foreign judgments[309].

The application of the model under consideration to regulate indirect jurisdiction has its positive aspects.

In particular, it is rightly pointed out that this approach does not raise questions about the establishment in a domestic court of the content of the foreign law governing the jurisdiction of the foreign court[310]. And in this sense, the model has a distinct advantage over the model discussed in § 2 of this chapter.

In addition, from the point of view of M.A. Mitina, conditioning the admissibility of judicial acts of a foreign court only by the rules of exclusive jurisdiction is justified, because by virtue of the principle of state sovereignty a court of one state has no right to control the legality of actions of a court of another state, including in terms of the legality of the emergence of the process[311]. We consider it necessary to note that there is no

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[307] Op. cit. P. 24.

[308] Article 3.1 of the American Private International Law Association's Principles of Cross-Border Access to Justice sets out the rule that cases in which exclusive jurisdiction is exercised should be considered and interpreted restrictively (Principios de ASADIP sobre el Acceso Transnacional a la Justicia, aprobado por la Asamblea de la ASADIP en Buenos Aires, el 12 de noviembre de 2016 [Electronic resource] // Associacion Americana de Derecho Internacional Privado: [website]. URL: https://www.asadip.org/v2/?page_id=231) (date of Access 06.02.2024); Tellechea Bergman E. Op. cit. P. 51.

[309] Tellechea Bergman E. Op. cit. P. 50.

[310] Mitina M.A. On understanding the essence of regulation of international jurisdiction: modern trends. P. 233.

[311] Ibid.

question of violating the principle of sovereign equality of States, whatever model of indirect jurisdiction is used by a State. As we have established in Chapter 1 § 1, by means of the rules on indirect jurisdiction, States, while remaining within the framework of this principle, determine the acceptable limits of the competence of foreign courts to resolve cross-border private law disputes for the purpose of deciding whether to recognise foreign judicial decisions.

However, checking the jurisdiction of a foreign court beyond the minimum that ensures the achievement of the purpose of the legal regulation of indirect jurisdiction - ensuring the right to judicial defence and the protection of the national legal order - does indeed seem unnecessary.

In this regard, the use of all the previously discussed models is not justified, as the application of any jurisdictional criteria other than the criteria of exclusive judicial jurisdiction (i.e., the criteria of direct or indirect jurisdiction of the State of recognition of the judgement or the criteria of direct jurisdiction of the State of delivery) goes beyond the objective of protecting the domestic legal order and, at the same time, does not guarantee adequate protection of the rights of the parties, creating potential situations of refusal to recognise a foreign judgement.

Another reason for the validity of such a model, according to M.A. Mitina, is that "the interests of the parties (and first of all, the defendant) within the framework of the institute of international jurisdiction can be realized by verifying the proper international jurisdiction in the court of instance in the state where the civil case was initiated"[312]. This is undoubtedly true. However, this does not exclude the need to protect the rights of the parties in the State of recognition of the foreign judgement, which is one of the components of the purpose of the legal regulation of indirect jurisdiction. The same rules on exclusive judicial jurisdiction fulfil the corresponding function.

The legal regulation considered in the present paragraph inherently gives a negative answer to the question: is it necessary to check the jurisdiction of a foreign court if the rules on exclusive jurisdiction are not violated? Some experts believe that beyond

[312] Ibid.

checking the invasion of exclusive judicial jurisdiction, any control is superfluous, leads to blocking international legal co-operation[313].

This position is due to the special nature of the rules on exclusive judicial jurisdiction, which are aimed at protecting the domestic legal order and thus contribute to the achievement of the goal of legal regulation of indirect jurisdiction.

However, the dichotomous nature of this objective requires that the rights of the parties to a dispute be adequately protected by the courts, which cannot always be guaranteed by this model. This shortcoming is also evidenced by the efforts of specialists to find legal instruments that could complement the model by providing guarantees to the parties to the dispute, as well as by the criteria of indirect jurisdiction already introduced in the legislation of a number of States.

In particular, some experts suggest the use of a 'reasonableness' test: this means that even if a foreign judgement does not violate the exclusive jurisdiction of the court of the State where recognition is sought (another court), the judge should refuse recognition if the jurisdiction of the judge who issued the judgement is not reasonably justified[314].

In some States, the model is supplemented by the criteria of indirect jurisdiction. Thus, in Spain, according to article 46.1 of Law 29/2015, of 30 July 2015, on international legal cooperation[315], foreign judicial decisions are not recognised if they violate the provisions on the exclusive competence of Spanish courts, and in other cases, if the competence of the foreign court is not based on a 'rational connection'. In Portugal, according to article 980 of the Code of Civil Procedure[316] foreign judgements are recognised if the jurisdiction of the foreign court is not based on fraud and the exclusive judicial jurisdiction of the Portuguese courts is not violated. In Croatia, by virtue of art. 69 of the Act on Private International Law of 4 October 2017[317] the court refuses to recognise a foreign judgment if the Croatian court has exclusive jurisdiction over the dispute in question, or if the jurisdiction of the foreign court is based solely on the

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[313] Baltar L. Op. cit. P. 239.

[314] Goldschmidt W. Op. cit. P. 18.

[315] Ley 29/2015, de 30 de julio, de Cooperación Jurídica Internacional en materia civil [Electronic resource] // vLex. Mode of access: https:vlex.es.

[316] Lei № 41/2013 - Código de Processo Civil [Electronic resource] // vLex. Mode of access: https:vlex.es.

[317] Zakon o međunarodnom privatnom pravu № 101/17 [Electronic resource] // URL: https://www.zakon.hr/z/947/Zakon-o-međunarodnom-privatnom-pravu (date of access 09.02.2024).

presence of the defendant or its property in the territory of the forum state, and this presence is not directly related to the subject matter of the dispute.

However, a number of States use this model 'in its purest form', limiting the recognition of foreign judgements on their territory only to the criteria of exclusive judicial jurisdiction. Among them are the Russian Federation[318], Costa Rica[319], the Republic of Colombia[320], the Republic of Panama[321], the Republic of Belarus[322], the Republic of Azerbaijan[323] and Ukraine[324].

The option of improving the legislation in relation to the Russian Federation, which, from our point of view, provides the best way to achieve the goal of legal regulation of indirect jurisdiction will be considered in the next chapter.

[318] Par. 3 of part 1 of Art. 1 part 1 of Art. 412 of the Code of Civil Procedure, par. 3 part 1 of Art. 244 of the Arbitration Procedure Code. 1 part 1 of Art. 244 of the Arbitration Procedure Code. The assertion is true subject to some additions, which we discuss in Chapter III.

[319] Article 705 of the Costa Rican Code of Civil Procedure: Código Procesal Civil. Ley No. 9342 del 03/02/2016 [Electronic resource] // vLex. Mode of access: https:vlex.es.

[320] Article 606 of the Code of General Procedure of the Republic of Colombia: Código General del Proceso (Ley № 1564 de 2012) [Electronic resource] // vLex. Mode of access: https:vlex.es.

[321] Article 156 of the Code of Private International Law of the Republic of Panama: Ley № 61. Que subroga la ley 7 de 2014, que adopta el código de derecho internacional privado de la república de panamá [Electronic resource] // vLex. Mode of access: https:vlex.es.

[322] Article 5 of Annex 4 of the Code of Civil Procedure of the Republic of Belarus: Civil Procedure Code of the Republic of Belarus: Law of the Republic of Belarus of 11 January 1999 № 238-З [Electronic resource] // National Centre of Legal Information of the Republic of Belarus: [website]. URL: https://pravo.by/document/?guid=3871&p0=hk9900238) (date of Access 10.02.2024); Art. 248 of the Economic Procedural Code of the Republic of Belarus: Economic Procedural Code of the Republic of Belarus: Law of the Republic of Belarus of 15 December 1998 No. 219-Z [Electronic resource] // National Centre of Legal Information of the Republic of Belarus: [website]. URL: https://pravo.by/document/?guid=3871&p0=HK9800219 (date of access10.02.2024).

[323] Article 465 of the Civil Procedure Code of the Republic of Azerbaijan: Civil Procedure Code of the Republic of Azerbaijan: Law of the Republic of Azerbaijan No. 780-IQ of 28 December 1999. [Electronic resource]. // online.zakon.kz. Mode of access: https:online.zakon.kz.

[324] Article 468 Code of Civil Procedure of Ukraine: Civil Procedure Code of Ukraine: Law of Ukraine from 18 March 2004 № 1618-IV [Electronic resource] // database 'Legislation of the CIS countries'. Mode of access: https:base.spinform.ru.

Chapter III. Improvement of Legal Regulation of Indirect Jurisdiction in the Russian Federation

It is noteworthy that the few works of domestic experts that deal with indirect jurisdiction sometimes state that there is no legal regulation of indirect jurisdiction in Russian procedural legislation[325]. In other cases, the authors identify the legal regulation of indirect jurisdiction with the establishment of criteria for indirect jurisdiction[326].

As we justified in Chapter 1 § 2, the rules on indirect jurisdiction are contained, inter alia, in national law and regulate the procedure for determining the admissibility of the competence of a court that has heard a cross-border private law dispute in the framework of the procedure for the recognition of a foreign judgement. Accordingly, States that potentially allow foreign judicial acts to operate in their territory include in their national legislation rules defining the conditions for such access, including rules on the admissibility of the jurisdiction of a foreign court. However, 'admissibility' is not always regulated by the introduction of the criteria of indirect jurisdiction, as we have shown in paragraphs 1, 2 and 4 of Chapter II, states use other models. In particular, the Russian Federation uses the model described in Chapter II, § 4 (with some refinements, which we discuss below), according to which the admissibility of a foreign court's jurisdiction is conditioned on compliance with the criteria of exclusive jurisdiction of Russian courts.

The origins of the Russian legal regulation of indirect jurisdiction can be found in the Statute of Civil Procedure of 1864[327], which laid the foundations for the formation of

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[325] See, for example: Mokhova E.V. Transnational turnover in light of the draft convention on the recognition and enforcement of foreign judgments in civil and commercial matters. P. 190; Mokhova E.V. Cross-Border Effect of Bankruptcy: Insolvency-Specific Recognition in Foreign Law and in International Standards / E.V. Mokhova // Law. 2022. № 9. p. 131.

[326] M.A. Mitina, for example, reduces the Russian regulation of indirect jurisdiction to arts. 160 and 165 of the Family Code of the Russian Federation and Art. 415 of the Code of Civil Procedure of the Russian Federation. All these articles contain criteria of indirect jurisdiction, in particular, Art. 415 of the Russian Federation Code of Civil Procedure contains a rule according to which the jurisdiction of a foreign court in a case on dissolution or invalidation of a marriage between a Russian citizen and a foreign citizen is admissible if at least one of the spouses resided outside the Russian Federation at the time of consideration of the case. See: Mitina M.A. On understanding the essence of regulation of international jurisdiction: modern tendencies. p. 236.

[327] Statute of Civil Procedure [Electronic resource]. // 1864. 208 p. URL: https://znanium.com/catalog/product/354467 (date of access: 29.10.2023).

the institute of recognition of foreign judgments in Russia[328]. The Civil Procedure Statute of 1864 did not address the admissibility of a foreign court's jurisdiction, except for one category of disputes.

Thus, the order of recognition of decisions of foreign courts is regulated by Articles 1273-281 of Chapter X 'On Enforcement of Decisions of Foreign Courts' of Book Two of the Statute of Civil Procedure of 1864. According to Article 1281 of this act, decisions of foreign courts are not enforced and have no effect in the Empire, if they resolve claims for ownership rights to immovable estates located in Russia. The Statute of Civil Procedure of 1864 does not contain any other provisions concerning the verification of the jurisdiction of a foreign court, from which it is possible to conclude the following: firstly, the jurisdiction of a foreign court is not subject to verification except in the case of a decision on the recognition of a foreign court judgement, which resolved a dispute about the right of ownership of immovable property located in Russia; secondly, the jurisdiction of a foreign court is recognised as acceptable a priori, except for the mentioned category of disputes.

"The Russian court,' wrote T.M. Yablochkov, 'does not even check whether the court that made the decision was competent, whether the formal side of the decision is legitimate and whether it has entered into legal force .... It only examines one thing: whether the judgement is not contrary to the public order of the Empire.... The court, when examining a petition for the granting of an exequatur, must only ascertain whether the conditions laid down in art. 1273 (treatises on reciprocity) and art. 1279 (whether the judgement is not contrary to public policy)"[329].

During the Soviet period, the law established a rule on the need to control the non-violation by a foreign court of the rules of exclusive judicial jurisdiction established in Soviet legislation and in international treaties concluded by the USSR.

Thus, the Decree of the Presidium of the Supreme Soviet of the USSR of 12 September 1958 'On the Procedure for Enforcement of Court Judgments of States with

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[328] According to the previous legislation, the execution of foreign court decisions in Russia was allowed only after a new consideration of the entire case on the merits: Engelman I.E. On the execution of foreign court decisions in Russia (excerpt from Book I of the Journal of Civil and Criminal Law) / I.E. Engelman. St. Petersburg: Tipography of the Governing Senate, 1884. p. 45-46.

[329] Yablochkov T.M. Course of international civil procedural law. P. 188.

which the USSR has concluded legal assistance treaties'[330] did not directly regulate this issue, referring to the grounds for recognition of a foreign court decision provided for by the relevant legal assistance treaties (par. 4). During the period of validity of this Decree, the provisions of the agreements concluded by the USSR on legal assistance in civil, family and criminal cases with the People's Republic of Bulgaria, the German Democratic Republic, the Democratic People's Republic of Korea, the People's Republic of Poland, the People's Republic of Romania, the Czechoslovak Republic, etc., containing provisions on the exclusive jurisdiction, were applied. Thus, for example, in accordance with art. 53 (b) of the Treaty between the USSR and the Polish People's Republic on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 1957[331], one of the conditions for recognizing the decision was compliance with the provisions of this treaty on the exclusive competence of the bodies of the contracting parties.

The Decree of the Presidium of the Supreme Soviet of the USSR dated September 12, 1958, which replaced the Decree of the Presidium of the Supreme Soviet of the USSR dated June 21, 1988, No. 9131-XI "On Recognition and Enforcement in the USSR of Foreign Court Judgments and Arbitration Awards" [332] states as a ground for refusal to recognize a foreign court judgment that the case falls within the exclusive competence of a Soviet court or other body (subpar. 3, par. 5). The list of grounds for the exclusive competence of a Soviet court set out in the Civil Procedure Code of the Russian Soviet Federative Socialist Republic, as well as the rules of delimitation of competence contained in legal assistance agreements, were to be applied in this case.

The Russian Federation Code of Civil Procedure and the Russian Federation Code of Arbitration Procedure, which replaced the USSR legislation, contain similar legal regulation.

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[330] Decree of the Presidium of the Supreme Soviet of the USSR of 12 September 1958 'On the procedure for the execution of court decisions of states with which the USSR has concluded treaties on legal assistance', approved by the Law of the USSR of 25 December 1958 // Vedomosti of the Supreme Soviet of the USSR. 1958. № 23. Art. 345.

[331] Treaty between the USSR and the Polish People's Republic on legal assistance and legal relations in civil, family and criminal cases of 28 December 1957 // Collection of existing treaties, agreements and conventions concluded by the USSR with foreign states. Vol. XX. M., 1961. P. 329-358.

[332] Decree of the Presidium of the Supreme Soviet of the USSR of 21 June 1988 № 9131-XI 'On the recognition and enforcement in the USSR of decisions of foreign courts and arbitration', as amended on 29 December 2015 // Vedomosti of the Supreme Soviet of the USSR. 1988. № 26. Art. 427.

Thus, according to par. 3 part 1 of art. 1 of art. 244.1 of the Code of Arbitration Procedure of the Russian Federation, an arbitration court refuses to recognise and enforce a foreign court judgment in whole or in part if the consideration of the case in accordance with an international treaty of the Russian Federation or federal law falls within the exclusive competence of a court in the Russian Federation, except for cases specified in part 5 of art. 248.1 of this Code.

The exclusive competence of arbitration courts in the Russian Federation in cases involving foreign persons is regulated by art. 248 of the Code of Arbitration Procedure of the Russian Federation. Art. 248.1 of the Code of Arbitration Procedure of the Russian Federation defines the exclusive competence of arbitration courts in the Russian Federation in disputes involving persons subject to restrictive measures. The difference in the application of art. 248 of the Code of Arbitration Procedure of the Russian Federation and art. 248.1 of the Code of Arbitration Procedure of the Russian Federation is that, as Prof. M.L. Galperin points out, "'exclusive' competence of the Russian arbitration court in relation to sub-sanctioned persons is not so exclusive (as in relation to other categories of cases in art. 248 of the Code of Arbitration Procedure of the Russian Federation)"[333], its application is limited to cases where a person consents to a foreign court to hear a dispute with his participation (part 5 of art. 248.1 of the Code of Arbitration Procedure of the Russian Federation).

By virtue of par. 3 part. 1 of art. 412(1) of the Code of Civil Procedure, refusal to enforce a foreign court judgement is allowed if the consideration of the case falls within the exclusive jurisdiction of courts in the Russian Federation.

The exclusive jurisdiction of courts in the Russian Federation is determined by the rules of art. 403 of the Russian Federation Code of Civil Procedure. In addition, Article 415 of the Code of Civil Procedure contains provisions on the admissible jurisdiction of

[333] Galperin M.L. Battle of jurisdictions: do Russian courts have procedural weapons? / M. L. Galperin // Bulletin of Economic Justice of the Russian Federation. 2021. № 1. P. 76.

foreign courts in cases concerning the status of a citizen[334], disputes on the dissolution or invalidation of marriage[335].

Russian civil and arbitration procedural legislation does not contain any other rules for determining the admissibility of a foreign court's jurisdiction.

As we have concluded above, indirect jurisdiction establishes the boundaries of the acceptable competence of a foreign court and, accordingly, is the legal condition governing the emergence of a right to recognition of a foreign judgment. Under Russian law, this legal condition is deemed to be met (the jurisdiction of a foreign court is recognized as acceptable) if the jurisdiction of the foreign court does not conflict with the exclusive jurisdiction of the Russian courts (the model discussed in Chapter II, § 4) and, in some cases, with the criteria of indirect jurisdiction (the model discussed in Chapter II, § 3). The primary legal facts, accordingly, are the criteria of exclusive jurisdiction of the Russian Federation courts, in some cases - the criteria of indirect jurisdiction (both in civil procedural legislation and in arbitration procedural legislation). For example, arbitration procedural legislation contains a criterion of indirect jurisdiction - the consent of a person to have a dispute heard by a foreign court, but only in cases involving persons subject to restrictive measures. Civil procedure legislation sets out criteria for indirect jurisdiction in two categories of cases - concerning the status of a citizen and disputes concerning the dissolution or invalidation of a marriage.

Norms on indirect jurisdiction are also contained in the Family Code of the Russian Federation[336]. It is noteworthy that the model chosen by the legislator for certain

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[334] The indirect jurisdictional criterion for this category of cases is the nationality of the State whose court has issued the judgement.

[335] For cases of dissolution or invalidation of a marriage between a Russian citizen and a foreign citizen, an indirect jurisdictional criterion is the residence of one of the spouses outside the Russian Federation at the time of the dissolution of the marriage, and for cases of dissolution or invalidation of a marriage between Russian citizens, the residence of both spouses outside the Russian Federation at the time of the dissolution of the marriage.

[336] In connection with this circumstance, E.P. Voytovich comes to the conclusion that foreign court decisions are recognised in the Russian Federation, if it is provided both by an international treaty and by federal law, and about the failure of the wording of Art. 409 of the Code of Civil Procedure, allowing the possibility of recognition of a foreign court decision only on the basis of an international treaty: Voytovich E.P. Recognition and enforcement of foreign decisions in family matters in the Russian Federation / E.P. Voytovich // Russian Law Journal. 2021. № 6. P. 95. doi: 10.34076/20713797_2021_6_91. We cannot agree with this point of view, as Art. 409 of the Code of Civil Procedure deals with the grounds for recognition of a foreign court decision, while other norms of the Code of Civil Procedure of the Russian Federation, as well as the norms of the Family Code of the Russian Federation establish the conditions for such recognition, including the norms on indirect jurisdiction.

categories of family disputes differs from the model used as a general rule in civil and arbitration proceedings.

Thus, according to pars. 3 and 4 of art. 160 of the Family Code of the Russian Federation, the dissolution of marriage between citizens of the Russian Federation, between citizens of the Russian Federation and foreign citizens or stateless persons, as well as between foreign citizens, committed outside the territory of the Russian Federation in compliance with the legislation of the relevant foreign state on the competence of the bodies that took decisions on the dissolution of marriage, is recognised as valid in the Russian Federation. It is thus a question of determining the admissibility of a foreign court's competence by reference to the rules of foreign law on competence[337] (the model discussed in Chapter 2 § 2). Clause 4 of art. 165 of the Family Code of the Russian Federation contains a criterion of indirect jurisdiction for disputes on the adoption of children who are citizens of the Russian Federation and reside outside the Russian Federation - the jurisdiction of the court of the state whose citizenship the child's adopter has is recognised as acceptable.

An analysis of the history of the development of the institution of recognition of foreign judgments in Russia shows a constant commitment to the position of minimum control of the jurisdiction assumed by the foreign court (in contrast to the models discussed in § 1, 2 and 3 of Chapter II). Jurisdiction is tested in terms of its acceptability to our legal order, which is ensured by controlling the intrusion of a foreign court into the exclusive jurisdiction of our state (except in the rare cases described above).

As we justified in Chapter II, § 4, this model of indirect jurisdiction seems to be the most consistent with the purpose of its legal regulation - to ensure the right to judicial defence and protection of the national legal order - as it eliminates unnecessary control

[337] The article does not specify whether the competence in question is domestic or 'international'. From the point of view of Prof. N.I. Marysheva, it means 'compliance primarily with the rules on jurisdiction and jurisdiction established in the respective state': Marysheva N.I. Family relations with the participation of foreigners: legal regulation in Russia: monograph. P. 292. The difficulty in applying foreign law in order to determine whether the competent authority that adopted the decision to be recognised, noted by us as one of the shortcomings of the model considered in § 2 of Chapter II, leads to the fact that this requirement is often ignored in practice and not analysed in judicial acts, for example: Appellate ruling of the Moscow Regional Court of 21 April 2014 in case No. 33-7575/2014 // JPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/.

over the jurisdiction of a foreign court, which does not meet this purpose (which is the case with the models discussed in Chapter II, § 1, 2 and 3).

In this regard, we cannot agree with S.E. Gafarov's proposal to improve the legal regulation of indirect jurisdiction, which consists of the following. S.E. Gafarov proposes to introduce into the Russian procedural legislation a new mechanism that does not correspond to any of the considered models of indirect jurisdiction: 'to recognise foreign courts as competent on the basis of the rules of indirect international jurisdiction of a foreign state whose jurisdiction is to be assessed for recognition'[338]. In other words, the author proposes to recognise jurisdiction over cross-border disputes for a foreign state to the extent that this state is willing to recognise it for other countries. In the researcher's opinion, such legal regulation will contribute to the development of mutually recognised uniform criteria for the exercise of jurisdiction between countries[339].

The proposal of S.E. Gafarov, in our opinion, has a number of significant drawbacks.

Firstly, as we explained earlier, the rules on direct and indirect jurisdiction have different purposes. The latter, unlike the former, serve not only the purpose of ensuring access to justice, but also to protect the domestic legal order from excessive jurisdiction of a foreign court. Therefore, the rules of foreign law on direct jurisdiction, while resolving the problem of access to justice in a foreign State, do not serve the purpose of protecting the legal order of another State. All the more alien to this goal are the rules of foreign law on indirect jurisdiction, resolving the issue of admissibility of recognition in a foreign court of decisions of courts of third States. Consequently, the proposed approach is unable to ensure the protection of the national legal order and, therefore, to achieve the goal of legal regulation of indirect jurisdiction.

Second, the use of the proposed mechanism essentially means giving priority to norms protecting the foreign legal order over norms protecting the domestic legal order. Suppose that in a foreign country indirect jurisdiction is regulated according to the model discussed in Chapter II § 4 (the jurisdiction of a foreign court is recognised as acceptable

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[338] Gafarov S.E. Main models of international jurisdiction of civil cases in the national law: dis.... Candidate of Jurisprudence:12.00.03. P. 9-10.

[339] Ibid.

whenever it does not violate the national law's provision on exclusive judicial jurisdiction). When applying the mechanism proposed by S.E. Gafarov, the decision of a foreign court will be recognised in the Russian Federation if it meets the criteria of exclusive jurisdiction contained in the legislation of the state where the judicial act was rendered, with their mirror application. Compliance with the norms protecting the domestic legal order is not assumed in this case.

Thirdly, the application of this model may result in the refusal to recognise a foreign judgment that was rendered in compliance with the law of the State where it was rendered (rules on direct jurisdiction) and that is not inconsistent with the public policy of the State in which recognition is sought, thus unduly reducing the level of protection of the rights of the parties to the dispute.

Fourthly, the proposed approach raises practical difficulties inherent in the model discussed in Chapter II, § 2, related to the need to refer to foreign law, as well as practical difficulties inherent in the model discussed in Chapter II, § 1, due to the peculiarities of the mechanism of 'mirror' application of foreign law norms.

Fifth, the method under discussion is an absolute novelty, there is no experience of its practical application in any jurisdiction, which reduces the possibility of its critical analysis.

Proposals to improve the Russian procedural legislation in the field of indirect jurisdiction are also formulated by M.A. Mitina. The expert considers it promising to 'introduce in the Code of Civil Procedure and in the Arbitration Procedure Code indirect regulation of exclusive international jurisdiction, i.e. regulation of exclusive international jurisdiction of foreign courts based on a unified approach to the definition of international jurisdiction for domestic and foreign courts'[340]. In other words, the author proposes to use the model described in § 1 of Chapter II, which seems inappropriate due to the significant drawbacks of this method that we have identified.

The model used in the current Russian procedural legislation, on the one hand, contributes to the achievement of the goal of ensuring the right to judicial protection, as it guarantees the recognition of the jurisdiction of a foreign court and, accordingly, the

[340] Mitina M.A. On understanding the essence of regulation of international jurisdiction: modern trends. P. 236.

recognition of a foreign judgement in all cases where this is acceptable for the national legal order, and, on the other hand, serves to achieve the second component of the goal of legal regulation of indirect jurisdiction, which is the protection of the domestic legal order.

However, ensuring adequate judicial protection of the rights of a person subject to a foreign judicial act may not always be guaranteed by the application of this model.

Thus, it is obvious that all possible legal situations cannot be covered by the strict jurisdictional criteria established in art. 403 of the Code of Civil Procedure and arts. 248, 248.1 of the Arbitration Procedure Code.

For example, the ruling of the Arbitration Court of St. Petersburg and the Leningrad region on 9 December 2011 in case No. A56-49603/2011[341] refused to recognise and enforce the decision of the District Court of Limassol (Republic of Cyprus) on 7 July 2011 in case No. 4019/2010 to satisfy the claim of the Cypriot company 'FRINGILLA CO. LTD' on invalidation of the permission of the company "Rybprominvest" to its subsidiary company - the company "Product Terminals" to alienate in favour of the company "Konmark" a share in the authorised capital of the company "Sea Fish Port" due to violation of the exclusive jurisdiction of the courts of the Russian Federation, established by art. 248 of the Arbitration Procedure Code. At the same time, the courts did not refer to the provisions of art. 248 of the Arbitration Procedure Code (coming to the conclusion that the foreign court violated the jurisdiction of Russian courts) in relation to the satisfaction of another claim - the invalidation of the transaction concluded between the companies "Rybprominvest" and "Konmark" on the alienation of a share in the authorized capital of the company "Sea Fish Port". Thus, verifying this judicial act by way of supervisory review, the Presidium of the Supreme Arbitration Court in its ruling dated 23 October 2012 № 7805/12[342] pointed out, among other things, that the company 'Konmark' as a buyer of a share in the charter capital of the company 'Sea Fish Port' under the above-mentioned purchase agreement. No. 7805/12 pointed out, among other

[341] Definition of Arbitration court of St. Petersburg and Leningrad region from 9 December 2011 on case № A56-49603/2011 // SPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/.

[342] Resolution of the Presidium of the Russian Federation of 23 October 2012 № 7805/12 // SPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/.

things, that the company ‘Konmark’, which was the buyer of a share in the authorised capital of the company ‘Sea Fish Port’ under the above-mentioned sale and purchase agreement concluded with the company ‘Rybprominvest’, was not incorporated in the territory of the Republic of Cyprus and did not operate there, did not conclude a prorogation agreement on the choice of the court of this state as competent to consider disputes between it and the company, did not voluntarily agree to participate in the proceedings in the court in question. In this regard, the Presidium of the Supreme Arbitration Court considered the decision of the Cypriot court in this part as violating the public policy of the Russian Federation. Thus, in fact, the absence of a rational connection between the court and the forum was recognised as a violation of public policy.

In this and similar situations[343] we believe it is imprecise to refer to such grounds for refusal to recognise a foreign court decision as contradiction to public policy (clause 7 part 1 of art. 244 of the Arbitration Procedure Code, clause 5 part 1 of art. 412 of the Code of Civil Procedure). As we indicated earlier, the rules on exclusive jurisdiction are part of public policy and thus express the content of a particular State's public policy on jurisdictional matters.[344] In this regard, the norms on exclusive jurisdiction are lex specialis in relation to the norm on public policy, and are therefore subject to priority application according to the rule of formal legal logic - *lex specialis derogate lex generalis*. The use of the rule of public policy in all cases where special legal regulation, due to its imperfection, does not ensure the achievement of an adequate legal effect[345], in our view, is unacceptable[346].

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[343] Prof. N.I. Marysheva draws attention to the use by courts of the reference to public policy as a ‘universal means’ to refuse recognition of a foreign court decision, if there are no other grounds: N.I. Marysheva N.I. Issues of recognition and enforcement of foreign court decisions in Russia / N.I. Marysheva // Journal of Russian Law. 2006. № 8 (116). p. 18.

[344] In judicial practice, in case of violation of the norms on the exclusive competence of Russian courts, it is stated that the relevant foreign decision contradicts the public policy of the Russian Federation: see: Definition of the Supreme Court of the Russian Federation of 28 October 2019 No. 305-ES19-18154 on the case No. A40-296672/2018 // SPS ‘ConsultantPlus’. Mode of access: http://www.consultant.ru/.

[345] For example, R.V. Zaitsev draws attention to the fact that the Russian legislator cares exclusively about the competence of Russian courts, ignoring the issue of violation of the competence of courts of other states, however, believes that in case of violation of the competence of courts of third states, it is possible to refuse recognition of the relevant foreign decision due to violation of public policy: see Zaitsev R.V. Recognition and enforcement in Russia of foreign judicial acts / R.V. Zaitsev; ed. by V.V. Yarkov. Yarkov. Moscow: Wolters Kluwer, 2007. P. 166-167.

[346] This in no way affects the court's obligation to refuse to recognise a foreign judgment if it is contrary to the public policy of the state where recognition is sought, since a violation of public policy is an independent and unconditional ground for refusing recognition under Russian procedural law.

Thus, there may be a situation in which it is obvious that the jurisdiction of a foreign court is excessive, but Russian procedural law lacks tools to counteract it.

The absence in Russian law of instruments to combat competition between legal systems and the need to develop legal instruments to prevent 'appropriation' of jurisdiction by foreign tribunals has been repeatedly emphasised[347]. In 2020, certain steps were taken in this direction: amendments were made to the Arbitration Procedure Code, which introduced a new procedural institute - *antisuit injuction* (*antisuit injuction*)[348].

Proposals of the dissertant on introducing amendments to the legislation of the Russian Federation

The analysis allowed us to formulate proposals to improve the Russian legislation on indirect jurisdiction. The following procedural instruments are proposed, which could complement the model of indirect jurisdiction used in Russian legislation, providing guarantees to the parties to the dispute and increasing the level of protection of the national legal order.

The first proposal. It seems advisable to introduce a flexible indirect jurisdictional criterion into Russian legislation (in the Code of Civil Procedure and the Code of Arbitration Procedure) - the criterion of close connection between the dispute and the court, which will make up for the lack of legal regulation in a situation where the jurisdiction of a foreign court does not contradict the criteria of exclusive jurisdiction, but it is quite obvious that there is no connection between the dispute and the forum. This criterion would protect the litigant against whom the judicial act is ruled from excessive foreign jurisdiction.

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[347] Forum in St. Petersburg: he was given an order to the West [Electronic resource] // Ministry of Justice of the Russian Federation: [website]. 2012. 23 May. URL: https://minjust.gov.ru/ru/events/47740/ (date of access 24.02.2024); Bakhin S.V. Bakhin Economic security of the Russian Federation and international private law / S.V. Bakhin // Journal of International Private Law. 2018. № 1 (99). P. 37; Galperin M.L. Op. cit. P. 73.

[348] Pursuant to Art. 248.2 of the Arbitration Procedure Code, a person against whom proceedings have been initiated in a foreign court (or if there is evidence that such proceedings will be initiated) may apply to a Russian arbitration court at its location or place of residence with a petition for a prohibition to initiate or continue such proceedings in order to protect the exclusive competence of Russian courts to hear such disputes (Art. 248.1 of the Arbitration Procedure Code).

The concept of ‘close connection’ is widely used in foreign procedural law. In Russian arbitration procedural legislation, this category is included in the formulation of one of the criteria for direct jurisdiction (clause 10 part 1 of art. 247 of the Arbitration Procedure Code). However, the concept of “close association” is often criticized for its vagueness and indefiniteness[349]. There is a threat of ‘legal uncertainty’[350]. An illustration is the situation in which a defendant must decide to intervene in proceedings in a foreign court (which means recognising the foreign jurisdiction and not being able to invoke it in the future)[351]. This decision depends on the possibility of justifying in the court of the State of enforcement of the judgement the lack of a close connection.

Meanwhile, it should be noted that the criterion of ‘close connection’ is now widely used in the national legislation of many states as the main or auxiliary conflict of laws reference in determining the applicable law (e.g., in art. 1186 of the Civil Code). It is noted that the criterion of ‘close connection’ is used in the Russian private international law as a ‘guiding star for the legislator when formulating individual conflict of laws rules’, as a general reserve conflict of laws clause, as a special conflict of laws clause and as a corrective clause[352].

We believe that the vagueness of the category ‘close relationship’ is not an obstacle to its use in a number of circumstances.

Firstly, despite the fact that uncertainty is inherent in valuation categories, some of them have a centuries-long history of application and have not been eliminated from the system of legal regulation, as no substitute for them has been found. As noted by Prof. L.A. Chegovadze and Prof. T.V. Deryugina, the uncertainty of a number of evaluative categories leads to defects in their interpretation, but in a number of cases it is impossible to provide in law for the possibility of certain behaviour corresponding to clear criteria, in which case the legislator resorts not to the description of behaviour, but to its

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[349] Hill J., Ni Shuilleabhain M. Clarkson & Hill's Conflict of Laws / J. Hill, M. Ni Shuilleabhain. 5th ed. Oxford: Oxford University Press, 2016. para 3.39; Schack H. Op. cit. P. 406.

[350] Schack H. Op. cit. P. 406.

[351] This refers to the concept of estoppel, which we discuss later in this chapter.

[352] Asoskov A.V. A New Ruling by the Plenary Supreme Court of the Russian Federation on Application of Rules of International Private Law: Key Clarifications / A.V. Asoskov // Judge. 2019. № 11. P. 14; Novikova, T.V. Review of the prospects of application of the doctrine of lex validatis within the framework of the principle of closest connection in the international private law of the Russian Federation / T.V. Novikova // Bulletin of Perm University. Juridical Sciences. 2022. № 1. P. 139, 140. doi:10.17072/1995-4190-2022-55-127-147.

assessment, creating the possibility of local regulation of legal relations[353]. Today, evaluative categories are not regarded as a negative phenomenon, but are presented as a special technique of legal technique, allowing, among other things, to overcome uncertainty, covering by normative regulation a range of diverse manifestations of reality, giving flexibility and stability to legal regulation[354].

Secondly, the law knows an effective way to overcome potential negative consequences of the use of evaluative categories, which is the development in doctrine and in practice of criteria for their application[355]. It should be noted that, at times, some guidance on the content of such concepts can be found directly in the legislation. In particular, Spanish law uses the criterion of indirect jurisdiction, 'rational connection', and there is also a provision that presumes the existence of a rational connection to the dispute when the foreign court has based its jurisdiction on criteria similar to the criteria of direct jurisdiction contained in Spanish law[356].

Thirdly, there is positive foreign experience of using the category of 'close connection' as an indirect jurisdictional criterion. In particular, in France, after testing various approaches to assessing the admissibility of a foreign jurisdiction, a flexible system for assessing the competence of a foreign court was chosen as early as 1985 and is still applied today, which involves an in concreto search for possible links between the dispute and the court, allowing to establish the existence of a 'clear connection'.[357] This legal instrument has been referred to as 'the basic principle for the whole of French frequent flyer law'[358]. It is noted that comparative jurisprudence has identified a trend to

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[353] Chegovadze L.A., Deryugina T.V. Actions on the implementation of civil law in the form of use / L.A. Chegovadze, T.V. Deryugina // Vestnik of Perm University. Legal Sciences. 2022. № 2. P. 276. doi: 10.17072/1995-4190-2022-56-268-280.

[354] Ryasina A.S. Development of scientific ideas about evaluation categories in Russian law / A.S. Ryasina // Russian Justice. 2020. № 6. P. 7.

[355] In particular, this has been the path followed by Canadian courts since the introduction of the category of 'real and substantial connection' as a criterion for indirect jurisdiction, see Chapter II, § 3. § 3 of Chapter II. Another example is the jurisprudence of the Spanish courts on the application of the 'rational connection' criterion of indirect jurisdiction. For example, in a case involving the recognition of a Moroccan divorce decree, the courts concluded that there was no rational connection between the dispute and the Moroccan court, taking into account the plaintiff's Spanish nationality, the fact that both spouses lived in Valencia (Spain) at the time of the action and their habitual residence, which was there: AAP Valencia 124/2023, 1 de marzo de 2023 [Electronic resource] // vLex. Mode of access: https:vlex.es.

[356] Art. 46.1 of the Law on International Judicial Co-operation in Civil Matters: Ley 29/2015, de 30 de julio, de Cooperación Jurídica Internacional en materia civil [Electronic resource] // vLex. Mode of access: https: vlex.es.

[357] Ansel B. Recognition of foreign judgments in France: historical perspective / B. Ansel // Bulletin of International Commercial Arbitration, 2012. № 2. P. 129.

[358] Litvinskiy D.V. Recognition of foreign court decisions on civil cases: (comparative legal analysis of French legislation, judicial practice and legal doctrine). P. 428.

increase the use of this criterion in frequent flyer law to determine the admissibility of a foreign court's jurisdiction[359]. In some jurisdictions, the name of this criterion may differ slightly: for example, Spain uses the concept of 'rational connection', while Canada uses 'real and substantial' connection. At the same time, in all cases, a link is presumed to be established which, from the perspective of the State recognising the foreign judgment, ensures the achievement of the objectives of the legal regulation of indirect jurisdiction.

Fourthly, there is also experience in applying the category of 'close connection' in our legal order within the framework of international civil proceedings: it has been used as a flexible criterion of direct jurisdiction in arbitration proceedings since 2002. Experts note the ability to solve with the help of this legal instrument the problem of using the Russian forum in the absence of the grounds provided for in paras. 1-9 ч. 1 of art. 247(1) of the Arbitration Procedure Code, but in the presence of a close connection between the dispute and the court[360]. At the same time, Russian doctrine[361] and judicial practice develops criteria for the application of the category of "close connection" and discloses its content. Par. 15 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 27 June 2017 No. 23 'On consideration by arbitration courts of cases on economic disputes arising from relations complicated by a foreign element'[362] names the circumstances that may indicate the existence of a close connection between the court and the dispute. Par. 12 of the same Resolution calls the criterion of close connection a principle and states that all criteria of direct jurisdiction must be interpreted with this principle in mind.

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[359] Ibid. P. 455, 456. In connection with this circumstance, D.V. Litvinskiy suggests the idea of introducing into Russian procedural legislation the legal regulation of indirect jurisdiction according to the model considered by us in § 3 of Chapter II, taking into account giving the criterion of 'close connection' priority among other indirect jurisdictional criteria to be introduced: Ibid. p. 455. We do not support the proposal (except for the introduction of the close connection criterion) because of the shortcomings of the model described in Chapter II, § 3.

[360] Shchukin A.I. Corporate relations with a foreign element in the consideration of cases in courts / A.I. Shchukin // Modern corporate law: current problems of theory and practice: a monograph / O.A. Belyaeva, S.A. Burlakov, M.M. Vildanova et al; ed. by O.V. Gutnikov. Moscow: IZiSP, Statute, 2021. P. 457.

[361] For example: Terentyeva, L.V. The content of the principle of close connection in establishing judicial jurisdiction over cross-border private law disputes / L.V. Terentyeva // Bulletin of arbitration practice. 2021. № 3. P. 65-75; Terentyeva, L.V. 'Close connection' category in international civil procedure and conflict of laws / L.V. Terentyeva // Lex Russica. 2021. №6 (175). p. 46-55; Yarkov V.V. The role of the court in the implementation of procedural norms: some theoretical problems / V.V. Yarkov. Yarkov // Law. 2016. № 1. P. 55, 56.

[362] Resolution of the Plenum of the Supreme Court of the Russian Federation of 27 June 2017 № 23 'On consideration by arbitration courts of cases on economic disputes arising from relations complicated by a foreign element' // JPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/.

Fifth, the use of the 'close connection' test to regulate indirect jurisdiction has undoubted advantages as well:

– The flexibility of the test allows it to take into account all the particularities of a particular case, which gives this tool an advantage over rigid indirect jurisdictional bindings and rigid criteria of exclusive jurisdiction;

– This criterion ensures maximum adaptability to changing legal realities, while rigid jurisdictional criteria tend to become outdated. Prof. N.A. Shebanova, in particular, draws attention to the changing trends in the definition of jurisdiction. She notes a shift from a lengthy concept of jurisdiction based on the criteria of business activity to a concept based on establishing a close connection between the dispute or the defendant and the court state, where the same criteria are given a new interpretation[363];

– This tool would provide a rational approach to the definition of indirect jurisdiction, as, in fact, the test of close nexus is at the heart of any jurisdictional linkage;

– By introducing this criterion into the legislation, a uniform approach to the definition of both direct and indirect jurisdiction in relation to the arbitration process will be ensured and, consequently, consistency in legal regulation will be ensured.

The second proposal. It seems necessary to introduce, along with the indirect jurisdictional criterion of close connection, an exception that serves as a kind of 'limitation' on the application of this criterion: to deprive the parties of the right to object to the absence of such a connection in cases of previously expressed consent to the jurisdiction of a foreign court.

This is a legal instrument called estoppel (estoppel). Estoppel is based on the legal maxim *allegans contraria non est audiendus*, which means that someone whose statements contradict each other should not be heard.[364] As Prof. T.N. Neshataeva notes, estoppel is a universally recognised principle and norm of international law and derives

[363] Shebanova N.A. Problems of recognition and enforcement of foreign court decisions on disputes in the field of intellectual property / N.A. Shebanova // Vestnik of Civil Procedure. 2020. T. 10. № 6. P. 244. doi: 10.24031/2226-0781-2020-10-6-232-251.

[364] Fellmeth A., Horwitz M. «Allegans contraria non audiendus est» [Electronic resource] / Guide to Latin in International Law: Oxford University Press, 2011. URL: https://www.oxfordreference.com/view/10.1093/acref/9780195369380.001.0001/acref-9780195369380-e-168 (date of access 10.02.2024).

from the principle of *bona fides* (good faith)[365]. Moreover, while the principle of good faith presupposes consistency in the behaviour of subjects of law, estoppel 'provides an inducement to comply with the principle of good faith'[366]. Estoppel is normatively enshrined in international treaties and national legislation of various states as a tool for regulating indirect jurisdiction, preventing challenges to the jurisdiction of a foreign court in cases of previously expressed consent to it.

Russian courts applied estoppel[367] for the first time in 2011[368] as an ordinary rule of law. This case was widely discussed in the scientific literature and then led to the consolidation of the judicial position in positive law[369]. In Russian judicial practice, estoppel is given autonomous content and is considered as a tool to combat abuse of process[370]. In jurisdictional matters, Russian courts apply estoppel, rejecting a party's objections to a court's competence where its actions showed that it recognised competence[371].

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[365] Separate opinion of Judge Neshataeva T.N. of 8 April 2015 in case No. CE-1-2/3-16-KS 1989 [Electronic resource] // Court of the Eurasian Economic Union: [website]. URL: https://courteurasian.org/upload/iblock/8be/3.%20Ремдизель%20-%20ОМ%20Нешатаевой%20Т.Н.%20на%20постановление%20КС%20о%20прекращении.pdf (date of access 10.02.2024). See also: Kalamkaryan R.A. Estoppel as an Institute of International Law / R.A. Kalamkaryan // Jurist-internationalist. 2004. № 1. P. 10.

[366] Kalamkaryan R.A., Migachev Y.I. International Law: Textbook / R.A. Kalamkaryan, Y.I. Migachev. Moscow: Eksmo, 2004. P. 74.

[367] We are referring to a situation in which the court expressly refers to the application of estoppel. See: Shvarts M.Z. Some reflections on the institute of estoppel // Information and Analytical Journal 'Arbitration Disputes'. 2016. № 1. P. 96.

[368] Resolution of the Presidium of the Supreme Arbitration Court from 22 March 2011 № 13903/10 on the case № A60-62482/2009-S7 // JPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/.

[369] Neshataeva T.N. Judicial interpretation / T.N. Neshataeva // Perm Legal Almanac. 2023. № 6. P. 143; Neshataeva T.N. The international judge: nothing personal / T.N. Neshataeva // International Justice. 2019. № 1(29). P. 24.

[370] Volodarskiy D.B. On the issue of the estoppel doctrine implementation: procedural aspect (part 1) / D.B. Volodarskiy, I.N. Kashkarova // Law. 2021. № 7. P. 107, 108.

[371] In arbitration proceedings see: Resolution of the Presidium of the Supreme Arbitration Court of 23 April 2012 No. 1649/13 on case No. A54-5995/2009 // JPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/; Resolution of the Arbitration Court of the North-West District of 11 September 2019 № F07-9118/2019 on the case № A26-816/2019 // SPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/ (the courts held that the defendant's actions showed that it recognised the competence of the arbitration court of a constituent entity of the Russian Federation by means of an exclusive action, which corresponded to the concept of a competent court in the international and national legal sense, and also entailed the loss of the right to object (estoppel) as to the jurisdiction of the dispute); p. 28 of the Resolution of the Plenum of the Supreme Court of the Russian Federation of 30 June 2020 № 12 'On the application of the Arbitration Procedural Code of the Russian Federation when considering cases in the arbitration court of appeal' // JPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/. In civil proceedings see: Definition of the Fourth Cassation Court of General Jurisdiction from 17 August 2023 № 88-21978/2023 on the case № 2-3109/2022 // SPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/; answer to question No. 5 of the Review of judicial practice of the Supreme Court of the Russian Federation No. 4 (2019), approved by the Presidium of the Supreme Court of the Russian Federation on 25 December 2019 // SPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/.

Since the introduction of the indirect jurisdictional test of close connection is intended to protect the party against whom a foreign judicial act has been taken, such protection would be illusory if the same party had previously accepted the jurisdiction of a foreign court and then, having changed its position, challenged it. A subsequent challenge to the foreign jurisdiction is hardly based on objective circumstances related to the forum location, but rather is one of the available options to overturn an unfavourable judgment. In such a position there is an imbalance between the rights of the parties, there is a potential defence of bad faith conduct, which can be addressed by the use of estoppel.

The necessity of introducing estoppel is also due to the following. It should be borne in mind that the criterion of close connection does not have the same properties as the criteria of exclusive jurisdiction and, unlike the latter, is not part of the public policy of the State. Therefore, the autonomy of the parties' will in selecting a forum is usually not limited to excluding those with which there is no close connection. The Spanish Supreme Court, in *STS 578/2021, 27 de Julio de 2021*[372], justifying the absence of grounds for limiting the parties' autonomy of will in the choice of court for lack of a rational connection with the dispute, noted that the reasons why the parties to a cross-border dispute may wish to submit to the jurisdiction of the courts of a particular State can be varied (specialisation of the courts in a particular field, their “neutrality” - the courts do not belong to any of the States of the parties to the dispute, etc.). In Russian procedural legislation, the autonomy of the parties' will in choosing a court in a cross-border dispute is limited only by the criteria of exclusive jurisdiction (art. 249 of the Arbitration Procedure Code, Article 404 of the Code of Civil Procedure)[373]. The introduction of estoppel is consistent with the legal regulation of prorogation agreements, as it is assumed that the parties' autonomy of will with respect to the choice of the court should not be restricted by the absence of a close connection (whether expressed in the prorogation agreement or in consent to the jurisdiction of the court hearing the case). At the same time, consent to the jurisdiction of a foreign court does not exclude the

[372] STS 578/2021, 27 de Julio de 2021 [Electronic resource] // vLex. Mode of access: https:vlex.es.

[373] Rozhkova M.A., Eliseev N.G., Skvortsov O.Y. Contract law: agreements on jurisdiction, international jurisdiction, conciliation procedure, arbitration (arbitration) and amicable agreement / edited by M.A. Rozhkova. Moscow: Statute, 2008. 3. 40.

possibility of refusal to enforce it on the territory of the Russian Federation in a situation where enforcement of a foreign court judgement would be contrary to the public policy of the Russian Federation (for example, in a case where such a judgement was knowingly issued with the purpose of causing economic damage to the Russian Federation, its citizens and Russian legal entities).

The proposed legal regulation is also consistent with the clarification contained in paragraph 18 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 23 of 27 June 2017 'On consideration by arbitration courts of cases on economic disputes arising from relations complicated by a foreign element' on the application of estoppel to cases of participation of a foreign person in court proceedings, if he has not raised objections to the competence of the arbitration court of the Russian Federation before the first statement on the merits of the dispute, except in cases of exclusive competence of a foreign court[374].

It should also be clarified that the need to detail the principle of estoppel in relation to the recognition of foreign jurisdiction and to enshrine it in law is due, in our view, to the fact that detailed normative regulation is always preferable, when its implementation is possible, as it promotes legal certainty. The view has also been expressed that the application of estoppel as a customary rule of international law 'leaves' it 'open', which is unacceptable, but not because of the threat of uncertainty and judicial discretion, but because such a rule 'denies the fairness of the law itself, as if the legal system is unable to offer a procedure that makes it possible to harmonise the general wording of the rule in the law with the specifics of an individual case'[375].

When formulating the rules on estoppel, it should be taken into account that the parties' agreement on jurisdiction may be expressed in various forms, including through the performance of actions indicating their tacit consent to the consideration of the case in court, which corresponds to the generally accepted world judicial practice[376]. Thus, in

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[374] See also: Babkin A.I. Economic disputes arising from relations complicated by a foreign element: competence of courts and peculiarities of consideration / A.I. Babkin // Russian judge. 2017. № 11. P. 9.

[375] Dozhdev D.V. Integrative function of the principle of good faith in civil law / Legal Week in the Urals: Proceedings of the VII International Forum (19-23 October 2015) / co-edited by N.A. Vatolina. N.A. Vatolina, E.I. Chervets. Ekaterinburg: Publishing House of the Ural State Law University, 2015. 3. 15.

[376] Neshataeva T.N. On some problems arising in the consideration of disputes involving foreign persons / T.N. Neshataeva // Bulletin of the Supreme Arbitration Court. 1996. №10. 3. 140.

a judgment of 20 July 1989 in the case of *Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy)*, the UN International Court of Justice noted that estoppel can be applied in a situation of silence, i.e. if a party is silent when something should have been said[377]. However, the assessment of the relevant conclusive acts should be treated with caution. In particular, the Court of Justice of the EU did not consider as acquiescence the notification of the defendant of the trial in a foreign court and the absence of objections to its jurisdiction without any actions aimed at active participation in the trial (appearance in court, submission of evidence, written position on the merits of the dispute, etc.)[378].

This position is reflected in Russian arbitration procedural legislation. Thus, estoppel is enshrined in the Arbitration Procedure Code as a regulator of indirect jurisdiction: it is used as a 'limiter' of application of the rule on the exclusive competence of the Russian arbitration court in respect of sub-sanctioned persons. Thus, according to part 5 of art. 248.1 of the Arbitration Procedure Code 'Exclusive competence of arbitration courts in the Russian Federation in disputes involving persons subject to restrictive measures', the provisions of this article do not prevent the recognition and enforcement of a foreign court judgement made at the suit of a sub-sanctioned person, or if this person has not objected to the consideration of the dispute with its participation by a foreign court, including not applying for a prohibition to initiate or continue proceedings in a foreign court.

It should also be noted that there are already judicial acts in which, as part of the examination of an application for recognition of a foreign judgement, the arguments of the person in respect of whom the judgement was made about the lack of competence of the foreign court are rejected with reference to estoppel[379].

Accordingly, in order to improve the legal regulation of indirect jurisdiction in the Russian Federation, it is proposed to introduce into the national legislation of the Russian

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[377] Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy). Judgment of 20 July 1989 [Electronic resource] // International Court of Justice: [website]. – URL: https://www.icj-cij.org/sites/default/files/case-related/76/076-19890720-JUD-01-00-EN.pdf (date of access 25.02.2024).

[378] Auto del Tribunal de Justicia (Sala Sexta) de 11 de abril de 2019. OD contra Ryanair DAC. Petición de decisión prejudicial planteada por el Juzgado de lo Mercantil n.º 1 de Gerona. [Electronic resource] // EUR-Lex. Mode of access: https: //eur-lex.europa.eu/.

[379] For example: Ruling of the Arbitration Court of the North-West District from 3 March 2022 № F07-637/2022 on the case № A21-9780/2021 // SPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/.

Federation (in the Code of Civil Procedure and the Code of Arbitration Procedure) legal norms on indirect jurisdiction, corresponding to a mixed model, providing for the application of both indirect jurisdictional criteria and criteria of exclusive jurisdiction. As indirect jurisdictional criteria, it is proposed to use the flexible criterion of close connection between the dispute and the court and the criterion of approval of the foreign jurisdiction by the defendant. Under the proposed regulation, the admissibility of the jurisdiction of a foreign court is conditioned on compliance with the criterion of close connection between the dispute and the court that issued the judicial act, or approval of its jurisdiction by the defendant and absence of contradiction with the criteria of exclusive jurisdiction.

In conclusion, we believe it is also necessary to note the following. The innovations we propose are essentially an addition to the model described in § 4 of Chapter II with elements of the model described in § 3 of the same chapter, which involves the creation of two different lists of direct and indirect jurisdictional criteria and is accompanied by a shortcoming noted by many experts - the jurisdictional gap[380]. However, the option we propose does not create such a gap, as it does not involve the use of strict jurisdictional criteria. On the contrary, the application of the flexible close connection criterion helps to smooth the jurisdictional gap, given that the direct jurisdictional criteria of domestic law can potentially be considered as evidence of such a connection. At the same time, it will be possible to take into account other circumstances that led to the dispute being heard in a foreign court. Such regulation, in our opinion, will contribute to the creation of conditions for the recognition of foreign decisions in the situation of reasonableness and justification of consideration of the dispute by a foreign court.

[380] On the jurisdictional gap in § 3 of Chapter II.

Chapter IV. Coordination Among States on Issues of Indirect Jurisdiction.

§ 1. Interaction of States on Regulation of Indirect Jurisdiction in Multilateral, Integration and Bilateral Formats

In the sphere of international cooperation, recognition of foreign judgments is one of the most complicated issues. Prof. T.M. Yablochkov, telling about the history of the creation of the oldest international organisation working on the unification of the rules of private international law – HCCH[381], noted that at the first series of conferences held in the period from 1893 to 1904, 'even the most famous issue of enforcement of foreign court judgments was pushed aside as a hopeless issue in its resolution by means of an international treaty'[382].

A key factor preventing mutual recognition of judgments between States is the difficulty in agreeing on the issue of indirect jurisdiction. The acceptability of the foreign court's jurisdiction is the first and foremost thing a court must ascertain in recognizing a foreign judgment[383].

It is particularly difficult to harmonise the issue of indirect jurisdiction in states whose legal systems differ significantly, as evidenced by the virtual absence of examples of successful unification of jurisdictional criteria by such states. As A. Conley explains, the difficulty of harmonising the continental and common law approaches to jurisdiction is due to the differences in the main components underlying the two traditions: common law rules present a wide margin of judicial discretion for the purposes of flexibility and fact-based justice, while continental law rules implement a rejection of such an approach in order to ensure predictability as a circumstance protecting the parties to the proceedings[384].

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[381] About the HCCH // The World Organisation for Cross-border Co-operation in Civil and Commercial Matters: [website]. URL: https://www.hcch.net/en/about (date of access 02.03.2024).

[382] Yablochkov T.M. Course of international civil procedural law. P 16.

[383] Bennett A., Granata S. When Private International Law Meets Intellectual Property – A Guide for Judges [Electronic resource] // World Intellectual Property Organization: [website]. 2019. P. 65. URL: https://www.wipo.int/edocs/pubdocs/en/wipo_pub_1053.pdf (date of access 02.03.2024).

[384] Conley A. Comparing Essential Components of Transnational Jurisdiction: A Proposed Comparative Methodology / A. Conley // Tulane Journal of International & Comparative Law. Vol. 31. №. 1. 2023. P. 3. doi: 10.2139/ssrn.4599530.

At the same time, there are successful examples in the world practice of regulating in a single international treaty both the issues of jurisdiction and recognition of foreign judgments. Such conventions are called ‘dual’ conventions. Let us turn to their consideration.

One of the successful examples of the ‘double convention’ is the Brussels Convention of 1968. This Convention served as a basis on which, as integration processes deepened, the regime of recognition of foreign judgments in the EU developed. The current normative legal act in this area - EU Regulation No. 1215/2012 - is an effective tool to ensure the movement of foreign judgements within the framework of this integration association. Therefore, it seems necessary to analyse the development of the legal regulation of recognition of foreign judgments in the legal acts of the ‘Brussels regime’[385].

At the time of the creation of the EEC, the recognition and enforcement of judicial decisions in the territory of this association of states was carried out on the basis of bilateral treaties concluded between the member states. Naturally, this state of affairs did not meet the objectives of integration, as the lack of uniformity in the legal regulation of these issues prevented the free movement of judicial acts throughout the territory of the community.

The signing of the Treaty establishing the European Economic Community of 25 March 1957 (hereinafter referred to as the Treaty of Rome of 1957) should be considered as a starting point in the development of regulation in this area[386]. The Treaty provided for Member States to enter into negotiations among themselves as necessary to ensure, in

[385] In the literature, the regime of recognition of foreign judgments established by EEC and EU regulations, which include the Brussels Convention of 1968, Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters // Offic. J. of the Europ. Union. Ser. L. 16.1.2001. L 12. P. 1-23) and EU Regulation No. 1215/2012 is commonly referred to as the ‘Brussels regime’ (see for example: Trubacheva A.V. Recognition and enforcement of foreign judicial decisions on economic disputes in the EAEU and the EU: thesis ... Cand. juris. sciences: 12.00.03 / A.V. Trubacheva. M., 2019. P.35; Hamed A., Khamichonak T.A. Step Forward in the Harmonization of European Jurisdiction: Regulation Brussels I Recast / A. Hamed, T.A. Khamichonak // Baltic Journal of Law & Politics. 2015. Vol. 8 № 2. P. 159; Kiolle A., van Veeren M. International and European Litigation post-Brexit: enforcement of judgments [Electronic resource] // Blenheim Advocaten B.V. «Blenheim»: [website]. 2022. 15 July. URL: https://www.blenheim.nl/en/blog/litigation-post-brexit-enforcement-judgments/ (date of access 28.04.2024).

[386] Treaty establishing the European Economic Community of 25 March 1957 [Electronic resource] // European Union: [website]. URL: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A11957E%2FTXT (date of access 03.02.2022).

the interests of their nationals, the simplification of the formalities to which mutual recognition and enforcement of judgements are subject (art. 220).

Inviting the Member States to start such cooperation, the EEC Commission stressed that a genuine internal market between the six States will only be created if there is adequate legal protection and legal certainty, which depend to a large extent on the Member States' resolution of the problem of recognition and enforcement of judgments[387].

The work in this area in pursuance of the above provision of the Rome Treaty of 1957 resulted in the conclusion on 27 September 1968 by the EEC Member States (France, Germany, Italy, Belgium, the Netherlands, Luxembourg) of the Brussels Convention of 1968.

As the Explanatory Report to the 1968 Brussels Convention makes clear, one of its objectives is to achieve, by establishing general rules of jurisdiction, a genuine legal systematisation that will provide the greatest possible degree of legal certainty[388]. It is the introduction of explicit jurisdictional criteria, the fulfilment of which makes the recognition of a foreign judicial act conditional, that is the key to the success of the 'double conventions'[389].

The mechanism of regulation of indirect jurisdiction in the 1968 Brussels Convention has the following peculiarities. By virtue of arts. 28, 34 of the Convention in question, a decision of a foreign court cannot be recognised if it contradicts the provisions of its Chapter II, Sections 3, 4 or 5. Section 3 delimits jurisdiction over insurance disputes, Section 4 - over consumer disputes, Section 5 establishes rules on exclusive jurisdiction. The list of grounds for refusing recognition of a foreign judgement is closed, it does not contain any references to the national legislation of the States parties to the treaty and, therefore, regulates the issues of indirect judicial jurisprudence to an exhaustive extent.

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[387] Jenard P. Report on the Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters / P. Jenard // Official Journal of the European Communities. 1979. C 59. Vol. 22. P. 3.

[388] Ibid.

[389] Garcimartín Alférez F.J. Op. cit. P. 75; Kalinichenko P.A. Evolution of EU norms and standards in the sphere of recognition and enforcement of the decisions on civil cases / P.A. Kalinichenko, S.A. Mikhailova // Actual problems of Russian law. 2014. № 1(38). P. 126; Matveev, A.A. Russia and international treaties on the recognition and enforcement of foreign judgments / A.A. Matveev // Moscow Journal of International Law. 2004. №2. P. 185. doi: 10.24833/0869-0049-2004-2-182-189.

Accordingly, such a way of protecting the domestic legal order as application of the rules of national legislation on exclusive jurisdiction is not allowed. At the same time, the control of the court where recognition of a foreign judgement is sought over compliance with the rules on the delimitation of jurisdiction is limited to verifying compliance with the requirements set out only in the above-mentioned sections 3, 4 and 5, while jurisdiction issues are also regulated in section 1 'General Provisions' and section 2 'Special Jurisdiction'. Thus, already in the first normative legal act of the 'Brussels regime', the Brussels Convention of 1968, a high degree of confidence in the foreign legal order is laid down, which is expressed in the fixing of the function of control over the observance of the provisions on the delimitation of jurisdiction to the court making the judgement (Chapter II, Section 7)[390] (with the exception of the most significant for the states provisions contained in Chapter II, Sections 3, 4 and 5).

Thus, by delimiting jurisdiction exhaustively and conditioning the recognition of foreign judgments on compliance with the most important provisions thereof, as well as by introducing other effective legal solutions (creation of a single list of grounds for refusal to recognise foreign judgments, unification of a number of procedural issues, including the introduction of a quick and convenient *ex parte* procedure)[391], the drafters of the 1968 Brussels Convention ensured its success. The drafters of the 1968 Brussels Convention ensured its success. By facilitating the movement of judgments between the six EEC member states, the 1968 Brussels Convention contributed to the achievement of the most important goal of the integration association - the creation of a single economic market.

A new stage on the path of European integration was the development of cooperation between two groups of European states - the EEC and the European Free Trade Association (hereinafter - EFTA)[392], which entailed the need to simplify formalities

[390] Jenard P. Op. cit. P. 47.

[391] See under: Trubacheva A.V. Op. cit. P. 42.

[392] The goal of creating a dynamic, homogeneous European economic space encompassing the EEC and EFTA member states was formulated in the Luxembourg Declaration adopted on 9 April 1984. By 1987, the market of the EFTA and EEC Member States was the largest in the world, surpassing that of the United States and Japan (See: Jenard P., Möller G. Report on the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters done at Lugano on 16 September 1988 / P. Jenard, G. Möller // Offic. J. of the Europ. Union. Ser. C. 28.7.1990. C 189. P. 63).

for mutual recognition and enforcement of judicial decisions. This need was met by the 1988 Lugano Convention between twelve EEC countries and six EFTA countries.

In the process of working on the 1988 Lugano Convention, the drafters called it 'parallel' due to the similarity of its provisions to those of the 1968 Brussels Convention[393]. The preamble to the new convention also refers to the continuity of the principles of the 1968 Brussels Convention, which, in the view of the States Parties, could strengthen economic and legal co-operation in Europe. The 1988 Lugano Convention, like its predecessor, was a 'double convention' containing similar rules on indirect jurisdiction to those described above, enforcement of the judgement still required exequatur, and the relevant procedure was largely unchanged[394].

The next stage in the development of the European legal regulation of recognition of foreign judgments is the adoption of Regulation (EC) No 44/2001 of the Council of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters[395] (hereinafter - Regulation (EC) No 44/2001). This document represented for the EU Member States an act of direct effect, containing norms of direct application, not requiring implementation into national legislation.

With regard to indirect jurisdiction, Regulation (EC) No 44/2001 provides for its verification only at the appeal stage, which makes the procedure for granting exequatur almost formal: by virtue of Article 41 of Regulation (EC) No 44/2001, the court of the State where recognition of a foreign judgement is requested only verifies compliance with formalities (submission of a duly executed copy of the judgement and certificate),[396] the court is not entitled to assess the judicial act for compliance with the provisions on the separation of jurisdiction. Except that the test of indirect jurisdiction was only exercised

[393] Jenard P., Möller G. Op. cit. P. 61.

[394] Since in Great Britain the enforcement of foreign judgments was carried out through the procedure of their registration for enforcement in each historical province: England, Wales, Scotland and Northern Ireland, which is different from the exequatur procedure characteristic of continental Europe, the provision on this method of enforcement was included in Art. 32 of the Lugano Convention of 1988.

[395] Council Regulation (EC) № 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters // Offic. J. of the Europ. Union. Ser. L. 16.1.2001. L 12. P. 1–23.

[396] States have developed a single certificate, the form of which is set out in Annex V to Regulation (EC) No 44/2001 and which is issued by the competent authority of the Member State in which the judgement has been rendered, at the request of any interested party (Art. 54 of Regulation (EC) No 44/2001).

at the appeal stage, Regulation (EC) No 44/2001 retained the approaches to its assessment implemented in the 1968 Brussels Convention and the 1988 Lugano Convention.

Subsequent simplification of the movement of foreign judgments has been made possible by The Stockholm Programme - an open and secure Europe that serves and protects its citizens'[397], which provides for the elimination of exequatur while maintaining certain safeguards for the adequate protection of the rights of the defendant. In pursuance of this programme, EU Regulation No. 1215/2012 was adopted, which ensures the virtually free movement of foreign judgments within the EU by abolishing exequatur while preserving the right of the person against whom the judgment was rendered to apply for refusal of recognition of the foreign judgment[398]. The assessment of indirect jurisdiction remains possible, however, only if the person against whom enforcement is sought files an application for refusal to recognise the judgment (par. 29 of EU Regulation No. 1215/2012). It should be noted that States also considered the option of the withdrawal of any control by the State of recognition of the foreign judgment, but this was not ultimately chosen for fear of leaving the defence of the defendant solely in the hands of the State of the judgment[399].

Thus, under EU Regulation No 1215/2012, indirect jurisdiction is only subject to *ex parte* assessment by the court, with the scope of the test limited to certain categories of disputes and a number of jurisdictional criteria of particular relevance.[400] The rules of national law do not apply.

The creation of such an effective mechanism, which demonstrates a high degree of confidence in the foreign legal order and significantly simplified the movement of foreign judgements, became possible precisely within the framework of the deepening integration

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[397] The Stockholm Programme — An open and secure Europe serving and protecting citizens // Offic. J. of the Europ. Union. Ser. C. 04.05.2010. C 115. p. 15.

[398] Thanks to this regime, the so-called 'fifth freedom of the EU' - the free movement of judgments between countries - has been established between EU countries: Iglesias Vázquez M. del Á. El nuevo sistema español de reconocimiento y ejecución de decisiones extranjeras / M. del Á. Iglesias Vázquez // Revista de derecho: Publicación de la Facultad de Derecho de la Universidad Católica de Uruguay. 2015. № 12. P. 105.

[399] Maestre Casas P. Reforma el sistema de competencia judicial y reconocimiento y ejecución de resoluciones en materia civil y mercantil / P. Maestre Casas // Ars Iuris Salmanticensis: AIS: revista europea e iberoamericana de pensamiento y análisis de derecho, ciencia política y criminología. 2013. Vol.1. №1. P. 195.

[400] In particular, judgements made in breach of the terms of a prorogation agreement are also recognised, which is based on mutual trust between the courts of different States, so that the court of the State of recognition has no control over the matter: Sánchez Fernandez S. El Convenio de La Haya de reconocimiento y ejecución de sentencias arquitectura y algunos problemas seleccionados / S. Sánchez Fernandez // Revista española de derecho internacional. 2021. Vol.73. № 1. P. 243.

process. EU Member States have declared that mutual confidence in the administration of justice in the EU justifies the principle that judgments rendered in a Member State should be recognised in all Member States without the need for any special procedure; a judgment rendered by the courts of a Member State should be treated as if it had been rendered in the Member State in question (par. 26 of the preamble to EU Regulation No 1215/2012). It should be taken into account that the EU integration process has created a whole system of uniform rules governing a wide range of legal relations in the field of cross-border cases[401]: a general procedure for determining jurisdiction and recognition of foreign judgements; a general procedure for resolving conflicts of laws[402]; a sectoral procedure for determining jurisdiction and recognition of foreign judgements and resolving conflicts of laws[403]; a simplified procedure for enforcement of judgements in certain categories of cases[404]. In associations that do not have such a high level of integration, such an effective way of regulating indirect jurisdiction is difficult to implement.

We will illustrate other ways of regulating indirect jurisdiction on the example of international agreements of American states, taking into account the fact that these states are recognised pioneers in the development of international cooperation in the field of private international law, as well as the result of work in this area of the Common Market

[401] Voynikov V.V. Legal regulation of the procedure for handling cross-border disputes in civil matters within the EU / V.V. Voynikov // Actual problems of Russian law. 2019. № 5 (102). P. 190. doi: 10.17803/1994-1471.2019.102.5.183-192.

[402] Regulation (EC) № 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations (Rome I) // Offic. J. of the Europ. Union. Ser. L. 4.7.2008. L 177. P. 6–16.

[403] For example, in the area of family relations: Council Regulation (EU) № 2019/1111 of 25 June 2019 on jurisdiction, the recognition and enforcement of decisions in matrimonial matters and the matters of parental responsibility, and on international child abduction (recast) // Offic. J. of the Europ. Union. Ser. L. 2.7.2019. L 178. P. 1–115; Council Regulation (EU) № 1259/2010 of 20 December 2010 implementing enhanced cooperation in the area of the law applicable to divorce and legal separation // Offic. J. of the Europ. Union. Ser. L. 29.12.2010. L 343. P. 10–16; Council Regulation (EU) № 2016/1103 of 24 June 2016 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes // Offic. J. of the Europ. Union. Ser. L. 8.7.2016. L. 183. P. 1–29. In the realm of inheritance relations: Regulation (EU) № 650/2012 of the European Parliament and of the Council of 4 July 2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession // Offic. J. of the Europ. Union. Ser. L. 27.7.2012. L 201. P. 107–134.

[404] For example: Regulation (EC) № 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims // Offic. J. of the Europ. Union. Ser. L. 30.4.2004. L 143. P. 15-39; Regulation (EC) № 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure // Offic. J. of the Europ. Union. Ser. L. 30.12.2006. L. 399. P. 1–32.

of the Southern Cone (Mercosur)[405] - an association, the level of integration in which is much lower than in the EU.[406]

In Latin America, international instruments in the field of recognition of foreign judgments are the outcome of the work of the Inter-American Conferences on Private International Law[407] of the Organisation of American States (hereinafter OAS)[408] and the Common Market of the Southern Cone (Mercosur).

In the field of codification of frequent flyer miles, American states are ahead of Europe.[409] This is attributed to the concern of the states liberated from colonial dependence (in the early 19th century) about possible new aggression, which contributed to the unity of the states and stimulated joint activities to unify and harmonize legislation, launched by S. Bolivar, who convened the Panama Congress in 1821[410], leading, among other achievements, to the adoption of the 1928 Code of Private International Law (hereinafter Code Bustamante 1928)[411].

The recognition and enforcement of foreign judgments in Latin America is governed by the Inter-American Convention on the Extraterritorial Effectiveness of Judicial and Arbitral Awards of 5 August 1979 The recognition and enforcement of

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[405] Regional Integration Organisation, formed in 1991, uniting four states (Argentina, Brazil, Paraguay, Uruguay, in the process of accession - Bolivia), the main objective of which is to create a common space for the development of trade and investment opportunities through the competitive integration of national economies into the international market: En pocas palabras [Electronic resource] // MERCOSUR: [website]. URL: https://www.mercosur.int/quienes-somos/en-pocas-palabras/ (date of access 24.09.2023).

[406] According to experts, Mercosur demonstrates real success in regional integration, however, its development is hindered by the different level of economic development of the participating countries, the cooperation of Mercosur with the EAEU is very promising: Shebanova N.A. Mercosur: legal aspects of the creation and functioning of the new Latin American integration / N.A. Shebanova // Proceedings of the Institute of State and Law of the Russian Academy of Sciences. 2015. №3. P. 56, 57.

[407] Historia del Proceso de las las Conferencias Interamericanas sobre Derecho Internacional Privado (CIDIPs) [Electronic resource] // OEA: [website]. URL: https://www.oas.org/es/sla/ddi/derecho_internacional_privado_historia_proceso_cidips.asp (date of access 24.09.2023).

[408] A regional organisation founded at the First International Conference of American States held in Washington DC in 1890, currently uniting 35 states of the Americas and representing the main political, legal and social governmental forum in the hemisphere. The OAS has also granted permanent observer status to 70 States, as well as to the European Union: Who We Are [Electronic resource] // OEA: [website]. URL: https://www.oas.org/en/about/who_we_are.asp (date of access 24.09.2023).

[409] Viñas Farré R. El reconocimiento y la ejecución de decisions extranjeras en Latinoamérica / R. Viñas Farré // La idea de América en el pensamiento ius internacionalista del siglo XXI / Gamarra Chopo Y. (Ed.). Zaragoza, España: Institución «Fernando el Católico». 2010. P. 166, 167.

[410] Garro A. Armonización y Unificación del Derecho Privado en América Latina: Esfuerzos, Tendencias y Realidades / A. Garro // THEMIS Revista de Derecho. Lima. 1992. №24. P. 14.

[411] The most important document that codifies the rules of the frequent flyer law, which is still in force in a number of Latin American states: Código de Derecho interacional privado (Código Bustamante) Convención de Derecho internacional privado del 20 de febrero de 1928) [Electronic resource] // OEA: [website]. URL: https://www.oas.org/juridico/spanish/mesicic3_ven_anexo3.pdf (date of access 24.09.2023).

foreign judgments in Latin America is governed by the Inter-American Convention on the Extraterritorial Effectiveness of Judicial and Arbitral Awards of 5 August 1979[412] (hereinafter the 1979 Inter-American Convention), adopted at the Second Inter-American Conference on Private International Law held in Montevideo in 1979 (CIDIP-II) and the Protocol on Legal Cooperation and Mutual Assistance.), adopted at the Second Inter-American Conference on Private International Law, held in Montevideo in 1979 (CIDIP-II), and the Protocol on Legal Cooperation and Mutual Assistance in Matters of Civil, Commercial, Labour and Administrative Law, adopted on 27 June 1992 at Las Leñas by the Mercosur countries (hereinafter the Las Leñas 1992 Protocol)[413].

In the case of indirect jurisdiction, these regulators refer to the national legislation of the states in which recognition of a foreign judgement is sought. In particular, art. 2(d) of the Inter-American Convention of 1979 contains the following wording: a foreign judgement will acquire extraterritorial effect in a State Party when the judge or court that rendered the judgement had international competence to institute and hear the case under the law of the State in which it is to be enforced. A similar regulation is contained in art. 20 of the 1992 Las Leñas Protocol.

The apparent unsatisfactoriness of the mode of regulation implemented in the 1979 Inter-American Convention (or, more precisely, the avoidance of addressing the problem of indirect jurisdiction) soon led to the adoption, within the framework of the Third Inter-American Specialised Conference on Private International Law, held in La Paz in 1984 (CIDIP-III), of the Inter-American Convention on Jurisdiction in the International Sphere in respect of the Extraterritorial Effect of Foreign Judgments of 24 May 1984[414] (hereinafter the Inter-American Convention of 1984). The Inter-American Convention of

[412] Convención Interamericana sobre Eficacia Extraterritorial de las Sentencias y Laudos Arbitrales Extranjeros del 5 de agosto de 1979 [Electronic resource] // OEA: [website]. URL: https://www.oas.org/juridico/spanish/tratados/b-41.html (date of access 24.09.2023).

[413] Protocolo de cooperación y asistencia jurisdiccional en materia civil, comercial, laboral y administrativa – Protocolo de las Leñas, hecho en valle de Las Leñas, Departamento de Malargüe, Provincia de Mendoza, Republica Argentina, a los 27 días del mes de junio de 1992. [Electronic resource] // Ministerio de Relaciones Exteriores de Paraguay: [website]. URL: https://www.mre.gov.py/tratados/public_web/DetallesTratado.aspx?id=N3IHqzUD1Ju3ySGqV9PRew%3d%3d (date of access 24.09.2023).

[414] Convención Interamericana sobre Competencia en la Esfera Internacional para la Eficacia Extraterritorial de las Sentencias Extranjeras del 24 de mayo de 1984 [Electronic resource] // OEA: [website]. URL: https://www.oas.org/juridico/spanish/tratados/b-50.html (date of access 19.09.2023).

24 May 1984 (hereinafter the 1984 Inter-American Convention), which contains indirect jurisdictional bindings[415], has been assessed by South American specialists as a 'brave attempt' to regulate indirect jurisdiction at the inter-State level by establishing specific criteria in an international treaty[416]. However, the 1984 Inter-American Convention has only been ratified by Mexico and Uruguay[417].

Within the framework of Mercosur, however, greater success has been achieved. An example of the regulation of jurisdiction is the Buenos Aires Protocol on International Jurisdiction in the Field of Contract Law of 5 August 1994 (hereinafter referred to as the Buenos Aires 1994 Protocol), which provides, on the one hand, for the competence of national courts to resolve disputes with a foreign element and, on the other hand, obliges the determination of indirect jurisdiction on the basis of these provisions on competence[418]. However, the 1994 Buenos Aires Protocol modified the legal regulation of indirect jurisdiction introduced by the 1992 Las Leñas Protocol only in relation to contract law.

Some features of the modes of legal regulation provided for in the 1984 Inter-American Convention and the 1994 Buenos Aires Protocol are noteworthy. Thus, it is necessary to distinguish between cases where an international treaty enshrines the criteria of indirect jurisdiction, cases where the criteria of direct jurisdiction are enshrined, and cases where indirect jurisdiction is conditioned by the criteria of direct jurisdiction.

The achievement of an agreement on the delimitation of jurisdiction is the ideal[419] to which States' efforts in the field of recognition and enforcement of foreign judgements are directed. The introduction of relevant provisions in an international treaty not only

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[415] In accordance with Art. 1 of the Convention, for the purposes of the extraterritorial effect of foreign judgements, the necessary conditions for jurisdiction in the international sphere shall be deemed to be established when a judicial or other jurisdictional authority of the State Party which rendered the judgement has jurisdiction in accordance with one of the provisions hereinafter enumerated.

[416] Tellechea Bergman E. Op. cit. P. 45.

[417] Información general del tratado: B-50: Convención Interamericana sobre Competencia en la Esfera Internacional para la Eficacia Extraterritorial de las Sentencias Extranjeras [Electronic resource] // OEA: [website]. URL: https://www.oas.org/juridico/spanish/firmas/b-50.html (date of access 19.09.2023).

[418] See: Art. 14 of the 1994 Buenos Aires Protocol on International Jurisdiction in the Field of Contract Law: Protocolo de Buenos Aires sobre juridicción internacional en materia contractual. Decisión del Mercosur 1/1994 del 5 de agosto de 1994 [Electronic resource] // MERCOSUR: [website]. URL: https://normas.mercosur.int/public/normativas/1956 (date of access 17.09.2023).

[419] It should be noted that today the achievement of such an ideal is hardly possible in relations with the states committing unfriendly actions against the Russian Federation.

leads to the recognition of foreign judgements based on these provisions, but also creates obligations for states to adjudicate cases with a foreign element using the treaty rules on jurisdiction.

The jurisdictional criteria on the basis of which States have agreed to adjudicate cases with a foreign element are provisions on direct jurisdiction for the State dealing with the cross-border dispute and provisions on indirect jurisdiction for the State before which the question of recognition of the foreign judgement is raised.

At the same time, the basis of jurisdiction on a criterion not listed in an international treaty among the direct jurisdictional criteria, as well as their violation, should not lead to an automatic refusal to recognise a foreign judgment.

As we reasoned earlier, the purpose of establishing rules of indirect jurisdiction is to balance the principles of the right to judicial protection and the protection of the domestic legal order. Consequently, a negative consequence in the form of a refusal to recognise a foreign judgment may occur only when the application by a foreign court of a rule of jurisdiction other than the one specified in the international treaty is unacceptable to the State, i.e. the rules of indirect jurisdiction enshrined in national law are violated (depending on the model of indirect international jurisdiction, these may include rules of exclusive jurisdiction, rules of direct jurisdiction of the foreign State, indirect jurisdiction of the foreign State, indirect jurisdiction of the foreign State, indirect jurisdiction of the foreign State, and indirect jurisdiction of the foreign State). Thus, in an international treaty, the criteria of direct jurisdiction, being at the same time criteria of indirect jurisdiction, are not equivalent to it; in some cases, recognition of a foreign judgment is possible on jurisdictional grounds that go beyond the direct jurisdictional criteria. In other words, not all criteria of direct jurisdiction are criteria of exclusive jurisdiction. There may be a judicial decision, albeit adopted in violation of the provisions on the criteria for direct jurisdiction, but consistent with the tools that constitute the arsenal of defences to domestic jurisdiction.

The situation is different when an international treaty makes indirect jurisdiction conditional on the criteria of direct jurisdiction,[420] or when an international treaty contains explicitly the criteria of indirect jurisdiction. In this case, the acceptability to a State of the jurisdiction of a foreign State is covered by those jurisdictional criteria named in the international treaty.

However, even agreement on the criteria for indirect jurisdiction does not fully guarantee the protection of the national legal order, which is why States include the necessary additional instruments in international treaties. Thus, Article 4 of the 1984 Inter-American Convention contains provisions aimed at protecting the domestic order - to refuse recognition of a foreign judgement if the exclusive jurisdiction of the state party in which recognition of the foreign judgement is sought is violated.

In summarizing the analysis of the development of international cooperation among American states, we note that it cannot be said that efforts to harmonize direct or indirect jurisdictional criteria have led to a satisfactory result. The most ratified[421] Inter-American Convention of 1979, as well as the Las Leñas Protocol of 1992, which remain relevant to the issue of indirect jurisdiction, as we have already noted, refer to the national law of the requested State.

This state of affairs has been criticised by experts from Uruguay and Mexico, among others[422]. Attention is drawn to the need for better legal regulation at the inter-American level, containing criteria for direct or indirect jurisdiction. If this fails, it is proposed to amend the national laws of States by replacing the 'reference to foreign law'

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[420] In addition to the above example of such regulation in the 1994 Buenos Aires Protocol, see also: Art. 11(a) of the Inter-American Convention on Maintenance Obligations, concluded in Montevideo on 15 July 1989, according to which court decisions on maintenance obligations are recognised in a State Party if the foreign court had jurisdiction in accordance with Arts. 8 and 9 of the said Convention, which list direct jurisdictional criteria: Convención Interamericana sobre Obligaciones Alimentarias, adoptada en Montevideo el 15 de julio de 1989 [Electronic resource] // OEA: [website]. URL: http://www.oas.org/dil/esp/Convencion_Interamericana_sobre_Obligaciones_Alimentarias_Argentina.pdf (date of access 17.09.2023).

[421] Ratified by 10 States (Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, Venezuela), cf: Información general del tratado: B-41: Convención Interamericana sobre Eficacia Extraterritorial de las Sentencias y Laudos Arbitrales Extranjeros [Electronic resource] // OEA: [website]. URL: https://www.oas.org/juridico/spanish/firmas/b-41.html (date of access 24.09.2023).

[422] The delegations of these states proposed the following legal regulation when the Inter-American Convention on the Extraterritorial Effectiveness of Judicial and Arbitral Awards was adopted in 1979 at the Second Inter-American Conference on Civil Procedure: Tellechea Bergman E. Op. cit. P. 48.

test of foreign competence with a ‘reference to foreign law’ test[423], while retaining the possibility of refusing recognition of a foreign judgement in the event of a violation of the rules of exclusive jurisdiction[424].

Notably, the 1928 Bustamante Code, an example of an outstanding regional codicisation of the frequent flyer law, contains just such a regulation - the test of the jurisdiction of a foreign court is done by reference to the criteria of direct jurisdiction established in the same Code, or on the basis of the law of the court that rendered the judgement, always when there is no violation of the public policy of the requested state[425].

Let us turn to the state of international co-operation of the Russian Federation on the issue of interest to us.

First of all, it should be noted that despite the judicial practice, which expresses the position on the possibility of recognising foreign court decisions in the absence of an international treaty[426], and the opinion of experts on the relevance of the issue of the transition of the Russian Federation to an open system of recognition of foreign court decisions[427], Russian procedural legislation does not currently provide for the possibility

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[423] As we have written previously, this approach is characteristic of Uruguayan national law and is justified in the Uruguayan doctrine of.

[424] Ibid P. 51.

[425] See: Art. 423(1) of the Bustamante Code of 1928.

[426] As a rule, the need to recognise a foreign judicial act on the basis of the ‘principle of reciprocity’ is indicated, however, very often the ‘reciprocity’ is not even checked. Such practice is currently common in both courts of general jurisdiction and arbitration courts. In the Determination of 3 June 2020 in case No. A40-45916/18-83-230, the Moscow City Arbitration Court stated that ‘as follows from numerous examples of judicial practice, including the highest courts of the Russian Federation, when considering disputes on enforcement of foreign judgments, if there is no bilateral treaty between the countries, the courts should base their decision on the existence of the countries’ compliance with the principle of reciprocity", see: “Determination of the Moscow City Arbitration Court of 3 June 2020 in case No. A40-45916/18-83-230”: Determination of the Moscow City Arbitration Court of 3 June 2020 in case No. A40-45916/18-83-230 // JPS ‘ConsultantPlus’. Access mode: http://www.consultant.ru/. From recent judicial acts see, for example: the definition of the Judicial board on civil cases of the Supreme Court of the Republic of Tatarstan from 29 April 2019 on the case № 33-7562/2019 // JPS ‘ConsultantPlus’. Mode of access: http://www.consultant.ru/; definition of the Third cassation court of general jurisdiction from 16 February 2022 № 88-3141/2022 // JPS ‘ConsultantPlus’. Mode of access: http://www.consultant.ru/; appeal determination of the Fourth Court of Appeal of General Jurisdiction of 19 April 2022 in case No. 66-807/2022 // SPS ‘ConsultantPlus’. Mode of access: http://www.consultant.ru/; the appeal definition of the First Appellate Court of General Jurisdiction from 11 January 2023 in case No. 66-81/2023 // JPS ‘ConsultantPlus’. Mode of access: http://www.consultant.ru/.

[427] See: Ivanov E.I. Recognition and enforcement of foreign judicial, arbitral decisions, notarial acts and mediation agreements with a foreign element: ¿is an international treaty and reciprocity necessary? / E.I. Ivanov // Arbitration and Civil Procedure. 2023. №10. P. 53; Marysheva N.I. Issues of recognition and enforcement in Russia of foreign court decisions. P. 10. The concept of the Unified Code of Civil Procedure of the Russian Federation provides for the introduction of the rule on the recognition of foreign court judgement on the basis of the principle of reciprocity (p. 58.1): Concept of the Unified Code of Civil Procedure of the Russian Federation: Decision of the State Duma Committee on Civil, Criminal, Arbitration and Procedural Legislation of 8 December 2014 № 124(1) // JPS ‘ConsultantPlus’. Access mode: http://www.consultant.ru/. E.A. Fokin calls the refusal to recognise a foreign court decision on the grounds of the absence of an international treaty an unacceptable formalism: Fokin E.A. Transboundary execution of court decisions in the system of guarantees of accessibility of justice / E.A. Fokin // Journal of Russian Law. 2022. T. 26. № 3. p. 123. doi: 10.12737/jrl.2022.033.

of recognising foreign court decisions in the absence of an international treaty[428], nor does the Russian Federation have such an obligation based on the norms of international treaties[429].

International treaties on cooperation are most often concluded by countries with close legal systems[430], and there are many bilateral treaties between countries due to historical and cultural ties[431]. These judgements are also applicable to the Russian Federation[432].

To date, the Russian Federation (USSR) has concluded and is in force bilateral international treaties on legal assistance providing for mutual recognition of judicial decisions in civil (family) cases (by our count 31 treaties). The Russian Federation also participates in multilateral agreements on this issue: the 2002 Kishinev Convention (in force between the Russian Federation and: Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan and Uzbekistan)[433], 1993 Minsk Convention (in force between the Russian Federation and the Republic of Moldova, Turkmenistan, Georgia), 1992 Kiev

[428] According to part 3 of Art. 6 of the Federal Code of the Russian Federation 'On the judicial system in the Russian Federation', the binding effect on the territory of the Russian Federation of judgements of courts of foreign states, international courts and arbitration tribunals is determined by international treaties of the Russian Federation. In development of the above provision, Art. 409 of the Code of Civil Procedure and Art. 241 of the Code of Arbitration Procedure provide for the recognition and enforcement of foreign court judgments if this is provided for by an international treaty of the Russian Federation (according to Art. 241 of the Code of Arbitration Procedure, also by federal law, however, there is no such federal law). See also: Definition of the Constitutional Court of the Russian Federation of 17 June 2013 № 890-O 'On refusal to accept for consideration the complaint of citizen Nazarov Sergey Mikhailovich on violation of his constitutional rights by part one of Art. 409 of the Civil Procedure Code of the Russian Federation' // JPS 'ConsultantPlus'. Access mode: http://www.consultant.ru/.

[429] The opposite position is covered in detail and criticised, in particular, by D.V. Litvinskiy, B.L. Zimnenko and others. (See: D.V. Litvinskiy D.V. 'Execute cannot be refused': once again to the issue of the possibility of enforcing foreign court judgements in the territory of the Russian Federation in the absence of an international treaty / D.V. Litvinskiy // Bulletin of the Supreme Arbitration Court. №4. 2006. P. 157-160; Zimnenko, B.L. To the question of execution and recognition of foreign court and arbitration decisions on condition of reciprocity / B.L. Zimnenko // Journal of Russian Law. 2006. № 8 (116). p. 58). We fully agree with the authors, as recognition of foreign judgments is not a general mandatory rule, so there is no basis to argue that international comity, as well as international reciprocity, are generally recognised legal principles governing the need to recognise and enforce foreign judgments.

[430] Khabrieva T.Y. International cooperation in the field of recognition and enforcement of foreign judgments / T.Y. Khabrieva // Journal of Russian Law. 2006. № 8 (116). P. 5; Nikulshina O.G. International legal assistance in civil and family cases: issues of theory, international agreements, Russian legislation / O.G. Nikulshina. Moscow: Izd-vo Institute of Risk Problems, 2006. P. 38.

[431] Ansel J.-P., Abassi M. Enforcement of foreign judgements / J.-P. Ansel, M. Abassi // Journal of Russian Law. 2006. № 8 (116). P. 31.

[432] Of the common law states, the Russian Federation has concluded international treaties on the recognition of judicial decisions only with India and Yemen.

[433] Unified Register of Legal Acts and Other Documents of the CIS: Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases: Depository Information [Electronic resource] // CIS: [website]. URL: https://cis.minsk.by/reestrv2/doc/1313#documentCard (date of access 12.03.2024).

Agreement (in force between the Russian Federation and Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Tajikistan, Turkmenistan and Uzbekistan)[434].

A comparison of international treaties providing for the recognition of foreign judgements among themselves has revealed the following features in relation to the regulation of indirect jurisdiction.

The majority of bilateral international treaties regulate both the delimitation of jurisdiction and the recognition of foreign judgements (21 treaties).

The first bilateral international treaties concluded by the USSR in 1957-1958 with the Democratic People's Republic of Korea[435], the People's Republic of Romania[436], the People's Republic of Albania[437] and the People's Republic of Hungary[438], on the one hand, delimit direct jurisdiction and, on the other hand, do not regulate the issues of indirect jurisdiction, but contain a closed list of grounds for refusal to recognise judicial decisions, thus creating a legal problem consisting in the impossibility of refusing to recognise a foreign judicial act on the grounds of its recognition (no jurisdictional grounds in the lists)[439]. A similar problem is observed in the Treaty between the Russian Federation and the Republic of India on Legal Assistance and Legal Relations in Civil and Commercial Matters of 3 October 2000[440]. However, this treaty lacks both provisions on indirect jurisdiction and provisions on refusal to recognise a foreign judgment, so it is possible to

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[434] Unified Register of Legal Acts and Other Documents of the CIS: Agreement on the Procedure for Settlement of Disputes Related to the Implementation of Economic Activities: Information of the Depositary [Electronic resource] // CIS: [website]. URL: http://cis.minsk.by/reestrv2/doc/57#documentCard (date of access 12.03.2024).

[435] Treaty between the USSR and the Democratic People's Republic of Korea on the provision of legal assistance in civil, family and criminal cases of 16 December 1957 // Vedomosti of the Supreme Soviet of the USSR. 1958. № 5. Art. 93.

[436] Treaty between the USSR and the Romanian People's Republic on rendering legal assistance in civil, family and criminal cases of 3 April 1958 // Vedomosti of the Supreme Soviet of the USSR. 1958. № 21. Art. 329.

[437] Treaty between the USSR and the People's Republic of Albania on rendering legal assistance in civil, family and criminal cases of 30 June 1958 // Vedomosti of the Supreme Soviet of the USSR. 1959. № 10. Art. 72.

[438] Treaty between the USSR and the Hungarian People's Republic on rendering legal assistance in civil, family and criminal cases of 15 July 1958 // Vedomosti of the Supreme Soviet of the USSR. 1958. № 35. Art. 423.

[439] There is also another position on this issue. In particular, D.A. Tumanov believes that the refusal to apply in this case the provisions of the Code of Civil Procedure may lead to the fact that in the territory of the Russian Federation would be enforceable decisions, 'which should not be viable in principle'. The application of the provisions of the Code of Civil Procedure in this case, in the author's opinion, can be justified by reference to the Constitution of the Russian Federation, since all the grounds for refusal to recognise foreign judgments enshrined in the Code of Civil Procedure 'can be deduced through the prism of the principles, principles and norms enshrined in the Russian Federation' (See: Tumanov D.A. Problem of correlation of grounds for refusal to recognise and enforce foreign judgments under the Code of Civil Procedure of the Russian Federation and international treaties with the participation of the Russian Federation / D.A. Tumanov // 'Lex russica'. 2013. № 11. P. 1236-1237).

[440] Treaty between the Russian Federation and the Republic of India on Legal Assistance and Legal Relations in Civil and Commercial Cases of 3 October 2000 // Collection of Legislation of the Russian Federation. 2006. № 20. Art. 2160.

resolve the dilemma by reference to national law on the grounds for refusing to recognise a foreign judgment.

In other 13 treaties, the admissibility of a foreign court's jurisdiction is conditioned on compliance with the criteria for exclusive jurisdiction provided for in both the treaty and the national law of the State in whose territory recognition is sought. Thus, for example, under art. 56(3) of the Treaty between the Russian Federation and the Republic of Estonia on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 26 January 1993[441], recognition of a judgment or permission to execute it may be refused if, in accordance with the provisions of the Treaty and, in cases not provided for by it, in accordance with the legislation of the Contracting Party in whose territory the judgment is to be recognised and executed, the case falls within the exclusive competence of its institutions. Such treaties have been concluded with: Czechoslovak Socialist Republic[442], Republic of Cuba[443], Republic of Lithuania[444], Republic of Kyrgyzstan[445], Republic of Azerbaijan[446], Republic of Estonia, Republic of Latvia[447], Republic of Moldova[448], Islamic Republic of Iran[449], Republic of Poland[450], Arab Republic of

[441] Treaty between the Russian Federation and the Republic of Estonia on legal assistance and legal relations in civil, family and criminal cases of 26 January 1993 // Collection of Legislation of the Russian Federation. 1998. № 2. Art. 229.

[442] Treaty between the USSR and the Czechoslovak Socialist Republic on legal assistance and legal relations in civil, family and criminal cases of 12 August 1982 // Vedomosti of the Supreme Soviet of the USSR. 1983. № 29.

[443] Treaty between the USSR and the Republic of Cuba on legal assistance in civil, family and criminal cases of 28 November 1984 // Vedomosti of the Supreme Soviet of the USSR. 1986. № 36. Art. 743.

[444] Treaty between the Russian Federation and the Republic of Lithuania on legal assistance and legal relations in civil, family and criminal cases of 21 July 1992 // Collection of Legislation of the Russian Federation. 1995. № 19. Art. 1712.

[445] Treaty between the Russian Federation and the Republic of Kyrgyzstan of 14 September 1992 'On Legal Assistance and Legal Relations in Civil, Family and Criminal Cases' // Bulletin of International Treaties. 1995. № 3. P. 16-36.

[446] Treaty between the Russian Federation and the Republic of Azerbaijan on legal assistance and legal relations in civil, family and criminal cases of 22 December 1992 // Collection of Legislation of the Russian Federation. 1995. № 18. Art. 1598.

[447] Treaty between the Russian Federation and the Republic of Latvia on legal assistance and legal relations in civil, family and criminal cases of 3 February 1993 // Collection of Legislation of the Russian Federation. 1995. № 21. Art. 1932.

[448] Treaty between the Russian Federation and the Republic of Moldova on legal assistance and legal relations in civil, family and criminal cases of 25 February 1993 // Collection of Legislation of the Russian Federation. 1995. № 20. Art. 1766.

[449] Treaty between the Russian Federation and the Islamic Republic of Iran on legal assistance and legal relations in civil and criminal cases of 5 March 1996 // Collection of Legislation of the Russian Federation. 2000. № 47. Art. 4579.

[450] Treaty between the Russian Federation and the Republic of Poland on legal assistance and legal relations in civil and criminal cases of 16 September 1996 // Collection of Legislation of the Russian Federation. 2002. № 7. Art. 634.

Egypt,[451] Socialist Republic of Vietnam[452] and Mongolia.[453] All 13 treaties contain virtually identical wording to the above. They were concluded between 1992 and 1999 (with the exception of the treaties with the Republic of Cuba and the Czechoslovak Socialist Republic, which were concluded in 1984 and 1982 respectively).

The wording of the provisions on indirect jurisdiction in these international treaties cannot be considered satisfactory because they lack the criteria of exclusive jurisdiction, whereas the admissibility of the competence of a foreign court is subject, inter alia, to such criteria.

It must therefore be recognised that the delimitation of jurisdiction contained in these treaties is not linked to the legal regulation of indirect jurisdiction, which will be determined on the basis of the provisions on exclusive jurisdiction contained in the national legislation of the States (the model discussed in Chapter II, § 4). Thus, for the Russian Federation, whose national legislation implements the same model, the conclusion of these agreements did not change the legal regulation of indirect jurisdiction. The resolution of the issue of indirect jurisdiction is still largely left to the national legislator, who independently determines the scope of acceptable jurisdiction of a foreign court by establishing criteria for exclusive jurisdiction.

It is noteworthy that among bilateral treaties the only exception to the above is the Treaty between the Russian Federation and the Republic of Latvia on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters of 3 February 1993, which contains the criterion of exclusive jurisdiction (the only one). Pursuant to Article 21(2) of this Treaty, the courts of the Contracting Party in whose territory the property is situated shall be competent solely for actions for ownership and other rights in rem in respect of immovable property.

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[451] Treaty between the Russian Federation and the Arab Republic of Egypt on Mutual Legal Assistance and Legal Relations in Civil, Commercial and Family Cases of 23 September 1997 // Collection of Legislation of the Russian Federation. 2003. № 28. Art. 2896.

[452] Treaty between the Russian Federation and the Socialist Republic of Vietnam on legal assistance and legal relations in civil and criminal cases of 25 August 1998 // Collection of Legislation of the Russian Federation. 2012. № 42. Art. 5682.

[453] Treaty between the Russian Federation and Mongolia on legal assistance and legal relations in civil and criminal cases of 20 April 1999 // Collection of Legislation of the Russian Federation. 2008. № 22. Art. 2490.

Similar legal regulation is contained in the 2002 Kishenev Convention and the 1993 Minsk Convention. Thus, Article 59(e) of the 2002 Kishinev Convention provides for the refusal to recognise a foreign judgment if, according to its provisions and, in cases not provided for by it, according to the legislation of the state in whose territory the judgment is to be enforced, the case falls within the exclusive competence of the justice institution of that state. This international treaty expressly refers to the exclusive nature of jurisdiction only in relation to claims for ownership and other rights in rem over immovable property (Article 22(3)(I) of Section II). At the same time, based on the provision of subparagraph 2, paragraph 1, art. 23, part I, section II. I of Section II, Part I of the Chisinau Convention of 2002[454] and the absence of norms on the delimitation of competence between courts outside Parts I-V of Section II, it can be concluded that the term "exclusive competence" applies to the competence of courts to hear cross-border private law disputes established by Parts I-V of Section II, in other words, to all provisions of this treaty on the delimitation of competence[455].

The regulation of indirect jurisdiction in the Treaty between the USSR and the People's Republic of Bulgaria on Legal Assistance in Civil, Family and Criminal Cases of 19 February 1975 is paradoxical[456]: on the one hand, the Treaty delimits judicial competence, on the other hand, the admissibility of the jurisdiction of a foreign court is subject to the non-violation of the provisions on exclusive jurisdiction established by the Treaty (only by the Treaty, there is no reference to national legislation)[457], while the Treaty does not contain provisions on exclusive jurisdiction.

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[454] According to Art. 23(1)(2)(1) of Part I of Section II of the Kishenev Convention of 2002. I, Section II, Part I of the 2002 Kishenev Convention. 'exclusive jurisdiction arising from the rules of this Convention, established in Parts I to V of this Section, as well as from the domestic law of the Contracting Party concerned, may not be altered by agreement between the parties'.

[455] A similar point of view is expressed by the Belarusian expert O.N. Romanova, who, however, believes that the jurisdictional criteria established in Parts I-V of Section II of the Kishinev Convention of 2002, which are of an alternative nature, cannot be attributed to the exclusive jurisdiction. In our opinion, there are no sufficient grounds for such a judgement, since we are talking about a jurisdiction, the 'exclusivity' of which prevents the recognition of a judicial decision in case of its violation. Thus, if non-compliance with any of the alternative jurisdictional criteria leads to a refusal to recognise a foreign judgment, it can be said that the relevant jurisdictional alternative bindings have the property of exclusivity. See: Romanova O.N. Some issues of international civil procedure of the Republic of Belarus / O.N. Romanova // Vestnik of civil procedure. 2012. № 2. P. 79.

[456] Treaty between the USSR and the People's Republic of Bulgaria on legal assistance in civil, family and criminal cases of 19 February 1975 // Vedomosti of the Supreme Soviet of the USSR. 1976. № 8. Art. 133.

[457] See Art. 22 (c) of the Treaty between the USSR and the People's Republic of Bulgaria on Legal Assistance in Civil, Family and Criminal Cases of 1975.

The issue of indirect jurisdiction is ambiguously regulated in the Treaty between the USSR and the Federal People's Republic of Yugoslavia on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of 24 February 1962[458]. According to Article 49(b) of this Treaty, judgments will be recognised if the case in which the judgment is rendered could, under the law of the Contracting Party in whose territory the judgment is to be recognised or enforced, have been tried by the court of the Contracting Party which rendered the judgment. The phrase ‘could have been considered’, without reference to either the provisions of this Treaty or national law, is highly ambiguous. Given that the said Treaty delimits the competence of the courts of the States which concluded it, we believe that the relevant provisions on the delimitation of competence should be followed.

A similar problem can be observed in relation to the 1992 Kiev Agreement. Thus, the delimitation of competence between the courts of the Contracting States is laid down in art. 4, which contains explicit jurisdictional criteria. At the same time, para. “c” of art. 9 of this Treaty provides for refusal to recognize a foreign judgment if the dispute is settled by an “incompetent court”. The answer to the question of the content of the notion of ‘competent court’ and, accordingly, whether the provisions of national law on exclusive competence are applicable in determining the admissibility of the jurisdiction

[458] Treaty between the USSR and the Federal People's Republic of Yugoslavia on legal assistance and legal relations in civil, family and criminal cases of 24 February 1962 // Vedomosti of the Supreme Soviet of the USSR. 1963. № 21. Art. 236.

of a foreign court is ambiguous[459]. The ambiguity was subsequently resolved by jurisprudence providing a favourable answer to this question[460].

Ten international treaties do not delimit competence between the judicial organs of States.

In three of them (the treaties concluded with the People's Democratic Republic of Algeria[461], the People's Democratic Republic of Yemen[462] and the Argentine Republic)[463] there is no legal regulation of indirect jurisdiction; the treaties refer to the national legislation of the State in which recognition of a foreign judgement is sought (art. 15, para. 1, art. 15, par. 1 and art. 24 of the Treaties, respectively).

In two of them (the treaties concluded with the Republic of Cyprus[464] and the People's Republic of China)[465], indirect jurisdiction is determined by reference to the provisions on exclusive jurisdiction contained in the national legislation of States (the model discussed in Chapter II, § 4).

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[459] See, for example: Eliseev N.G. International jurisdiction of claims on the rights to real estate // Problematic issues of civil and arbitration processes / Edited by L.F. Lesnitskaya, M.A. Rozhkova. Moscow: Statute, 2008. P. 119. In our opinion, Art. 9 of the Kiev Agreement of 1992 assumes refusal to recognise a foreign court decision in cases when the dispute is resolved in violation of the provisions on competence contained exclusively in this agreement, which follows from the literal reading of paragraph 'c' of Art. 9, which refers to the provisions of the agreement: 'enforcement of the decision may be refused... only if...'. A party submits ... evidence that the dispute under this Agreement has been resolved by an incompetent court". It follows from the definition of 'competent court' given in Art. 3 of the Kiev Agreement of 1992 that competent courts are courts, arbitration (economic) courts, arbitration courts and other bodies whose competence includes the resolution of cases referred to in Art. 1 of the said Agreement; the attribution of these cases to the competence of the courts is contained in Art. 4 of the Agreement, which does not contain any reference to national law. This position is also indirectly confirmed by the advisory opinion of the CIS Economic Court, which indicated that there are no grounds for refusing recognition of a foreign court decision on the grounds that its enforcement contradicts the public policy of the requested state (see: Advisory Opinion of the CIS Economic Court No. 01-1/3-10 of 20 June 2011. 'On Interpretation of Art. 9 of the Agreement on the Procedure for Settlement of Disputes Related to the Exercise of Economic Activities of 20 March 1992' // ConsultantPlus. Mode of access: http://www.consultant.ru/). Such a ground for refusal to recognise a foreign judgment as a violation of the norms of national legislation on exclusive competence is also not provided for by the 1992 Kiev Agreement.

[460] For example: Resolution of the Federal Arbitration Court of the Far Eastern District from 14 February 2006 on the case № F03-A59/05-1/4118 // JPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/; Resolution of the Federal Arbitration Court of the North-West District from 29 October 2008 on the case № A56-8186/2008 // SPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/; Definition of the Supreme Court of the Russian Federation from 18 April 2023 № 65-PEK23 on the case № A19-14701/2021 // SPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/.

[461] Treaty between the USSR and the People's Democratic Republic of Algeria on mutual legal assistance 23 February 1982 // Vedomosti of the Supreme Soviet of the USSR. 1984. № 15. Art. 213.

[462] Treaty between the USSR and the People's Democratic Republic of Yemen on legal assistance in civil and criminal cases of 6 December 1985 // Vedomosti of the Supreme Soviet of the USSR. 1986. № 48. Art. 1010.

[463] Treaty between the Russian Federation and the Argentine Republic on Cooperation and Legal Assistance in Civil, Commercial, Labour and Administrative Cases of 20 November 2000 // Collection of Legislation of the Russian Federation. 2003. № 30. Art. 3040.

[464] Treaty between the USSR and the Republic of Cyprus on legal assistance in civil and criminal cases of 19 January 1984 // Vedomosti of the Supreme Soviet of the USSR. 1987. № 15. Art. 199.

[465] Treaty between the Russian Federation and the People's Republic of China on legal assistance in civil and criminal cases of 19 June 1992 // Collection of Legislation of the Russian Federation. 2013. № 7. Art. 612.

In one treaty (concluded with the Republic of Iraq[466]) indirect jurisdiction is determined by reference to the rules of the adjudicating State on the competence of its courts (art. 15(1) of the treaty) - i.e. on the model discussed in Chapter II § 2.

An interesting and ambiguous formulation of the condition of indirect jurisdiction is contained in the Treaty between the USSR and the Republic of Tunisia on Legal Assistance in Civil and Criminal Matters of 26 June 1984[467]. According to paragraph 1, the competence of the court of the requesting contracting party shall not be taken into account if the law of the requested contracting party places the case within the exclusive competence of its courts. The content of the concept of 'competence of the court' is not disclosed. Probably refers to the competence determined in accordance with the law of the State of the court that issued the judicial act. In such a case, the legal regulation follows the model discussed in Chapter II, § 2.

In the three treaties concluded with EU Member States - the Republic of Finland[468], the Republic of Italy[469] and the Kingdom of Spain[470] - indirect jurisdiction is regulated on the model discussed in Chapter II, § 3, by including indirect jurisdictional criteria in the treaties.

Special legal regulation is provided for in the Agreement between the Russian Federation and the Republic of Belarus of 17 January 2001. 'On the Procedure of Mutual Enforcement of Judicial Acts of Arbitration Courts of the Russian Federation and Economic Courts of the Republic of Belarus'[471]. According to Article 1 of the said agreement, judicial acts do not need a special recognition procedure and are executed in the same manner as judicial acts of the courts of their own state on the basis of executive documents of the courts that adopted the decisions. Thus, the Agreement ensures the free

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[466] Treaty on Mutual Legal Assistance between the USSR and the Iraqi Republic of 22 June 1973 // Vedomosti of the Supreme Soviet of the USSR. 1974. № 19. Art. 293.

[467] Treaty between the USSR and the Tunisian Republic on legal assistance in civil and criminal cases of 26 June 1984 // Vedomosti of the Supreme Soviet of the USSR. 1986. № 28. Art. 525.

[468] Treaty between the USSR and the Republic of Finland on legal protection and legal assistance in civil, family and criminal cases of 11 August 1978 // Vedomosti of the Supreme Soviet of the USSR. 1980. № 34. Art. 690.

[469] Convention between the USSR and the Italian Republic on legal assistance in civil cases of 25 January 1979 // Vedomosti of the Supreme Soviet of the USSR. 1986. № 35. Art. 729.

[470] Treaty between the USSR and the Kingdom of Spain on legal assistance in civil cases of 26 October 1990 // Collection of Legislation of the Russian Federation. 1998. № 9. Art. 1049.

[471] Agreement between the Russian Federation and the Republic of Belarus of 17 January 2001. 'On the order of mutual execution of judicial acts of arbitration courts of the Russian Federation and economic courts of the Republic of Belarus' // Russian Federation. 2003. № 7. Art. 550.

movement of judicial decisions on economic disputes between the Russian Federation and the Republic of Belarus.

Thus, the legal regulation of indirect jurisdiction in both bilateral and multilateral treaties to which the Russian Federation is a party is basically similar, characterised by vagueness, incompleteness, internal contradictions, as well as a significant number of legal and technical deficiencies. It should be noted that it is precisely the shortcomings of legal regulation on issues of indirect jurisdiction that we are talking about. At the same time, A.I. Muranov noted back in 2002 that the legal regulation of recognition of foreign judgments in international treaties in general is 'far from perfect' and needs to be developed[472].

One of the directions of development of the modern world is the formation of large integration structures aimed at creating relatively independent centres of the world economy[473]. It is promising for the Russian Federation to develop cooperation in the field of recognition of foreign judgments within the EEU, an integration association that, according to experts,[474] has significant potential for development. Currently, the legal regulation of indirect jurisdiction in the EEU is implemented through the above discussed 1993 Minsk Convention, Kishenev Convention of 2002 and the Kiev Agreement of 1992. Within the framework of integration associations, it is especially important to ensure the free movement of judicial decisions[475]. It seems advisable to improve legal regulation between the EEU states by unifying the criteria of direct jurisdiction and conditioning the

[472] Muranov A.I. Enforcement of foreign judicial and arbitral decisions: competence of Russian courts. P. 114.

[473] Arifulin A.A. The role of arbitration courts of the Russian Federation in the execution of foreign judgments / A.A. Arifulin // Journal of Russian Law. 2006. № 8 (116). P. 5.

[474] See, for example: Dzhantaleeva M.S. Prospects for EAEU expansion and development / M.S. Dzhantaleeva // Caspian region: politics, economics, culture. 2022. №1 (70). P. 91; Tlepina Sh.V. Participation of Kazakhstan in the EEU: legal regulations of humanitarian cooperation / Sh.V. Tlepina // Participation of Kazakhstan and Russia in the WTO and the EEU: problems and challenges: Proceedings of the International Scientific Online Conference, Nur-Sultan, 5 October 2021 - Nur-Sultan: L.N. Gumilev Eurasian National University. L.N. Gumilev Eurasian National University, Lomonosov Moscow State University. Lomonosov Moscow State University, 2022. P. 7, 19. The EEU has defined the main benchmarks of macroeconomic policy for 2024-2025 [Electronic resource] // Eurasian Economic Commission: [website]. 2023. 25 December. URL: https://eec.eaeunion.org/news/v-eaes-opredelili-osnovnye-orientiry-makroekonomicheskoy-politiki-na-2024-2025-gody/ (date of access 10.03.2024).

[475] Argerich G. Eficacia extraterritorial de las sentencias extranjeras en los procesos de integración [Electronic resource] // La Dirección Nacional del Sistema Argentino de Información Jurídica (SAIJ): [website]. 1997. 27 de Agosto. URL: http://www.saij.gob.ar/guillermo-argerich-eficacia-extraterritorial-sentencias-extranjeras-procesos-integracion-daca970186-1997-08-27/123456789-0abc-defg6810-79acanirtcod (date of access: 19.02.2024).

recognition of foreign judgments on their observance without reference to the norms of national law on exclusive jurisdiction.

It should be noted, however, that the issue of applying the criteria of national legislation on exclusive jurisdiction has always been a sensitive one for the Russian Federation. For example, it was the impossibility to apply the provisions on exclusive jurisdiction that gave rise to discussions among specialists regarding the possibility and expediency of the Russian Federation's accession to the Lugano Convention of 1988. In particular, A.A. Matveev pointed out the unwillingness of the Russian legislator to be deprived of the freedom to determine the limits of the exclusive jurisdiction of Russian courts as one of the essential obstacles to the Russian Federation's participation in this convention[476]. In this regard, E.I. Gerasimchuk, defending the idea of accession to the Lugansk Convention of 1988, proposes to 'compromise some instruments of legal policy and abandon some grounds of exclusive jurisdiction provided for by national legislation... to show flexibility'[477]. Criticising E.I. Gerasimchuk's position, Prof. S.V. Bakhin expresses doubts about the need to follow the path that is expedient from the EU's point of view. He also points to the large-scale modification of Russian legislation, which will have to be transformed in such a case, and this should be carefully considered in terms of immediate and long-term consequences[478].

At the same time, with regard to the EEU, given the similarity of the national legal systems of the member states of this integration association[479], it seems possible to

[476] Matveev A.A. Op. cit. P. 186.

[477] Gerasimchuk E.I. To the question of accession of the Russian Federation to the Lugansk Convention / E.I. Gerasimchuk // Moscow Journal of International Law. 2006. № 2. P. 177. doi: 10.24833/0869-0049-2006-2-168-177.

[478] Bakhin S.V. Law of integration formations: issues of competition of legal systems // International Relations and Law: A Look into XXI Century. Proceedings of the conference in honour of Professor L.N. Galenskaya / ed. by S.V. Bakhin. St. Petersburg: Publishing House of St. Petersburg State University 'University Publishing Consortium "Yurydychnaia kniga", 2009. P. 131.

[479] Thus, for example, the provisions of part 1 of Art. 403 of the Code of Civil Procedure of the Russian Federation, part 1 of Art. 430 of the Code of Civil Procedure of the Republic of Armenia, part 1 of Art. 467 of the Code of Civil Procedure of the Republic of Kazakhstan, Art. 384 of the Code of Civil Procedure of the Kyrgyz Republic contain the same jurisdictional references with regard to the exclusive competence of national courts. 1 Art. 467(1) of the Civil Procedure Code of the Republic of Kazakhstan, Art. 384 of the Civil Procedure Code of the Kyrgyz Republic contain the same jurisdictional references in relation to the exclusive competence of national courts. See: Civil Procedure Code of the Republic of Armenia: Law of the Republic of Armenia No. ZR-110 of 27 February 2018 [Electronic resource] // DB 'Legislation of the CIS countries'. Mode of access; https://base.spinform.ru/; Code of the Republic of Kazakhstan from 31 October 2015 № 377-V 'Civil Procedure Code of the Republic of Kazakhstan' [Electronic resource] // IS Paragraph 'Yurist'. Mode of access: https://online.zakon.kz/; Civil Procedure Code of the Kyrgyz Republic: Law of the Kyrgyz Republic of 20 January 2017 № 6 [Electronic resource] // Ministry of Justice of the Kyrgyz Republic: [website]. URL: https://cbd.minjust.gov.kg/111521/edition/1261675/ru (date of access 10.03.2024).

develop a unified approach to the delimitation of jurisdiction that meets the ideas of the states about the exclusive jurisdiction of their judicial bodies.

In bilateral agreements, it also seems appropriate to use this model, or a model under which legal regulation is carried out through unified criteria of indirect jurisdiction[480] (depending on the degree of confidence of States in each other's judicial systems).

The application of the model according to which indirect jurisdiction is determined by reference to the law of the State whose court rendered the judgement (the model discussed in chapter II, section 2) to be recognised, as well as to the rules on the exclusive jurisdiction of the State of recognition of the judicial act (the model discussed in chapter II, section 4) in the framework of international cooperation is ineffective because it means that there is no agreement on the issue of indirect jurisdiction, so that no uniform jurisdictional criteria are developed[481].

§ 2. Prospects for States' accession to the HCCH 2019 Judgments Convention

International co-operation in the area of interest to us, despite the previously mentioned difficulties, is also developing at the universal level. It is noteworthy that Russian experts have started talking about indirect jurisdiction only in recent years, assessing the HCCH 2019 Judgments Convention as a universal regulator in the designated area, in the text of which the drafters included indirect jurisdictional criteria.

The 2019 Adjudication Convention is the result of years of work by the HCCH, during which many experts noted the unlikelihood of its success[482]. Currently, 26 EU

[480] Such regulation exists, as already noted, in three international treaties in force between the Russian Federation and the EU Member States - the Republic of Finland, the Italian Republic and the Kingdom of Spain. Another example of a bilateral international treaty that uses the proposed model and to which the Russian Federation is not a party is the 1984 Convention between Canada and Great Britain on the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters: Canada-United Kingdom Civil and Commercial Judgments Convention Act (R.S.C., 1985, c. p-30) [Electronic resource] // Government of Canada: [website]. URL: https://laws.justice.gc.ca/eng/acts/C-30/FullText.html (date of access 10.03.2024).

[481] The barrier in this case does not refer to the possibility of a State invoking a public policy clause as a ground for refusing to enforce a foreign judgement, the enforcement of which might prejudice its sovereignty, security or otherwise be contrary to its public policy.

[482] For example: Babkina E. Europeanisation of international private law / E. Babkina // Journal of International Law and International Relations. 2018. №1-2 (84-85). P. 10.

member states, as well as Ukraine and Uruguay, have acceded to the HCCH 2019 Judgments Convention[483]. In addition, the Convention has been signed by Costa Rica, Israel, Montenegro, North Macedonia, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland and the United States of America[484]. The Convention entered into force on 1 September 2023[485]. The drafters of the Convention would like to repeat the success of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958[486], which provides for the recognition of foreign arbitral awards in most countries of the world. They envisage that the HCCH 2019 Judgments Convention will become a similar universal regulator for the recognition of foreign judgments.

The legal solutions in relation to indirect jurisdiction, implemented in the HCCH 2019 Judgments Convention, are of undoubted interest because, firstly, they reflect a modern approach to the legal regulation of this issue, and secondly, they can influence the development of national legislation of states. As noted by Prof. S.V. Bakhin, international treaty unification in many cases contributes to the consolidation of the most advanced and modern legal constructs in legal systems and thus appears to be directly linked to the progressive development of both international and national law[487].

The HCCH 2019 Judgments Convention has been widely welcomed by foreign specialists[488] and is largely assessed as having the potential to have a transformative impact on global judicial co-operation in civil matters[489], becoming 'the central building block in such truly transnational judicial integration'[490].

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[483] Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters: Status Table [Electronic resource] // HCCH: [website]. – URL: https://www.hcch.net/en/instruments/conventions/status-table/?cid=137 (date of access 03.03.2024).

[484] Ibid.

[485] Ibid.

[486] United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958. [Electronic resource] // UN Commission on International Trade Law: [website]. URL: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/ru/new-york-convention-r.pdf (date of access 25.09.2023).

[487] Bakhin, S.V. Legal problems of contractual unification / S.V. Bakhin // Moscow Journal of International Law. 2002. № 1. P. 139.

[488] See: Khanderia S. The prevalence of 'jurisdiction' in the recognition and enforcement of foreign civil and commercial judgments in India and South Africa: a comparative analysis / S. Khanderia // Oxford University Commonwealth Law Journal. 2021. Vol. 21(2). P. 181–211. doi: 10.1080/14729342.2021.1934298.

[489] Weller M., Ribeiro-Bidaoui J., Brinkmann M., Dethloff N. The HCCH 2019 Judgments Convention / M. Weller, J. Ribeiro-Bidaoui, M. Brinkmann, N. Dethloff (eds). New York: Bloomsbury Publishing, 2023. P. 3.

[490] Weller M. HCCH 2019 Judgments Convention - New Trends in Trust Management / Christoph Benicke, Stefan Huber (eds.), Festschrift für Herbert Kronke zum 70. Geburtstag, Bielefeld, 2020. P. 622.

Most Russian experts are also favourable to the idea of joining the HCCH 2019 Judgments Convention. It is noted its 'global' nature and potential to increase the attractiveness of cross-border dispute resolution by state courts, becoming a simple and effective basis for the recognition of foreign judgments, acceptable to states with different social, economic and legal conditions, as well as reducing the risks of subjects of cross-border economic activity through the creation of a unified judicial practice[491]. A.I. Shchukin, in particular, notes that the HCCH 2019 Judgments Convention will increase the predictability of the law, 'the practical way to restore justice, as well as access to justice will be faster and less costly'[492]. E.A. Naumova notes the significance of this Convention for achieving the goal of protecting the rights of persons against whom restrictive measures have been imposed by foreign states[493]. According to the Minister of Justice of the Russian Federation, who stressed the special importance of this document by the Russian side during the signing ceremony of the HCCH 2019 Judgments Convention, 'the Convention finds an optimal balance between the free circulation of judicial decisions, which is designed to ensure the effective realisation of the right to trial in a broad, cross-border aspect, and the possibilities of effectively ensuring national sovereignty and protecting the public interests of the state'[494]. In judicial acts of Russian courts we can already see references to the HCCH 2019 Judgments Convention as an international legal act, which implements the modern international procedural standard - control of the judicial power of the executing state over a foreign judicial act in any

[491] Agalarova M.A., Kizhaeva A.A. Recognition and enforcement of foreign court decisions in Russia / M.A. Agalarova, A.A. Kizhaeva // Vestnik Arbitrazhnaia Praktika. 2022. № 1. P. 91; Zasemkova O.F. 'Judicial Convention' as a New Stage in the Recognition and Enforcement of Foreign Judgments / O.F. Zasemkova // Lex russica (Russian law), 2019. № 10(155). p. 84, 99; Shchukin A.I. Indirect international jurisdiction in the Hague Convention on the Recognition and Enforcement of Foreign Judgments 2019 (Part I) / A.I. Shchukin // Journal of Russian Law, 2020. № 7. p. 170; Borisov V.N. 2019 Hague Judgments Convention: of civil and commercial judgments (review of the International Conference held in Hong Kong on 9 September 2019) / V.N. Borisov // Journal of Foreign Legislation and Comparative Law, 2020. № 3(82). P. 166, 167, 172.

[492] Shchukin A.I. International unification of norms on recognition and enforcement of foreign judgments in civil and commercial cases / Problems of unification of international private law: a monograph / ed. by N.G. Doronina. Moscow: Institute of Legislation and Comparative Law under the Government of the Russian Federation - 2nd ed., revision and supplement; Publishing House 'Jurisprudence', 2023. P. 655.

[493] Naumova E.A. Updated arbitration proceedings as a result of the implementation of the Concept of development of the judicial system of Russia in 2013-2020: monograph / E.A. Naumova. Moscow: Justitsinform, 2021. P. 75.

[494] The Russian Federation has signed the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters [Electronic resource] // Ministry of Justice of the Russian Federation: [website]. 2021. 17 November. URL: https://minjust.gov.ru/ru/events/48631/ (date of access: 21.03.2022).

procedural form[495].

The drafters of the HCCH 2019 Judgments Convention have paid particular attention to jurisdictional issues. Emphasising the fundamental role of the relevant provisions, Prof. R. Brand suggested that they would be of central importance to any State in deciding whether to ratify the Convention[496].

The HCCH 2019 Judgments Convention failed to incorporate the mechanism used in 'double conventions' by making the recognition of foreign judgments conditional on compliance with the provisions of the same treaty on the delimitation of jurisdiction, since it is one thing to reach agreement on jurisdiction within an integration grouping comprising a small number of states[497], often with similar legal systems, and quite another to develop universal rules designed to apply globally.

During the development of the HCCH 2019 Judgments Convention, various options for regulating indirect jurisdiction were discussed.

It was proposed to use the model we discussed in Chapter II § 1 (determining indirect jurisdiction based on state law rules recognizing a judicial decision on direct jurisdiction). The proposal, however, did not find favour[498]. Obviously, such a legal regulation of indirect jurisdiction would reduce the predictability of the outcome of a court's resolution of an application for recognition of a foreign judgement. The parties would have had to analyse the provisions of foreign law on the jurisdiction of the State in which enforcement of the judgment would presumably be required before resorting to the court. The situation is even more complicated when bringing an action against several defendants whose assets may be located in several States. Such a solution in an international treaty represents an escape from the problem of indirect jurisdiction, since it remains essentially unresolved and left to the legislature of the State of recognition of the foreign judicial act.

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[495] Paragraph 40 of the Review of judicial practice of the Supreme Court of the Russian Federation № 3 (2020), approved by the Presidium of the Supreme Court of the Russian Federation 25.11.2020 (See: Review of judicial practice of the Supreme Court of the Russian Federation № 3 (2020), approved by the Presidium of the Supreme Court of the Russian Federation 25 November 2020 // SPS 'ConsultantPlus'. Mode of access: http://www.consultant.ru/).

[496] Brand R.A. Op. cit. P. 12.

[497] In particular, as we indicated above, the 1968 Brussels Convention was concluded by six EEC Member States: France, Germany, Italy, Belgium, the Netherlands and Luxembourg.

[498] Brand R.A. Op. cit. P. 12.

The approach we discussed in Chapter II, § 1, of determining indirect jurisdiction on the basis of the law of the State of adjudication of direct jurisdiction, has also been suggested. This approach has been rejected because it would lead to obliging States in some cases to recognise foreign judgments based on excessive grounds of jurisdiction, the only limitation of which is the foreign State itself[499]. The Working Group reasonably noted that this approach was contrary to 'international legal principles of fairness' and had a negative impact on the predictability and effectiveness of transnational justice[500].

Having carried out extensive work on the national legislation of potential parties to the HCCH 2019 Judgments Convention, its drafters chose to enshrine indirect jurisdictional filters directly in the Convention (art. 5). The Convention on the International Procedure for the Recovery of Child Support and Other Forms of Family Maintenance of 23 November 2007, for example, has a similar structure, combining provisions on the recognition of foreign judgements and indirect international jurisdiction[501].

We believe that the advantages of such regulation include, firstly, predictability of the prospects for recognition of a foreign court judgement - the interested party will know, already at the stage of applying to the court, what are the prospects for enforcement of the judgement in the foreign country where, for example, the debtor has assets. Second, indirect jurisdictional criteria can provide guidance to States and facilitate the enshrinement of a similar approach in national legislation, i.e., favour the harmonisation of law[502]. The drafters of the HCCH 2019 Judgments Convention also draw attention to this, noting in an explanatory report that while they were not intended to affect existing national laws on jurisdiction over cross-border disputes, however, judgments from states

[499] Comparative Study of Jurisdictional Gaps and Their Effect on the Judgments Project: to Permanent Bureau of The Hague Conference on Private International Law. July 1, 2015 [Electronic resource] // HCCH: [website]. URL: https://assets.hcch.net/docs/7ebd2982-351a-4ca7-b6b3-356c8cdc1778.pdf (date of access 22.03.2023).

[500] Ibid.

[501] The Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (HCCH 2007 Child Support Convention) [Electronic resource] HCCH: [website]. URL: https://www.hcch.net/en/instruments/conventions/specialised-sections/child-support (date of access 20.03.2022).

[502] Rumenov I. Implications of the new 2019 Hague Convention on recognition and enforcement of foreign judgments on the national legal systems of countries in South Eastern Europe / I. Rumenov // EU and Comparative Law Issues and Challenges Series (ECLIC), 2019. Vol. 3. P. 402. doi: 10.25234/eclic/9008.

with explicit jurisdictional criteria similar to the filters contained in this Convention will have 'greater potential for recourse under it'[503].

Undoubtedly, such legal regulation loses to the option of delimiting jurisdiction by establishing criteria for direct jurisdiction. In this regard, some experts have pointed out that the HCCH 2019 Judgments Convention is not a viable alternative to the 1988 Lugano Convention, accession to which remains a priority for the UK[504].

The main disadvantage of using this model of indirect jurisdiction in an international treaty appears to be the problem of jurisdictional divergence[505]. The unification of indirect jurisdiction on the model of the HCCH 2019 Judgments Convention, as E.V. Mokhova puts it, 'preserves, legitimises and, in fact, freezes' the jurisdictional gap'[506]. The essence of the problem is that national courts can still hear cases under their national law on international jurisdiction, and its criteria may be broader than the criteria for jurisdiction set out in the HCCH 2019 Judgments Convention[507].

The legal consequences of accession to the HCCH 2019 Judgments Convention are thus not uniform for States and depend on the approach to the regulation of jurisdiction implemented in their national legislation.

Where the criteria for direct jurisdiction are broader in the state in which the judgment is rendered (State A) than in the state of the court in which enforcement of the judgment is sought (State B), assuming passage of the jurisdictional filter of the HCCH 2019 Judgments Convention is presumed, the following situation occurs.

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[503] Explanatory Report on the Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (HCCH 2019 Judgments Convention) [Electronic resource]: by F. Garcimartín, G. Saumier // HCCH: [website]. URL: https://www.hcch.net/en/publications-and-studies/details4/?pid=6797 date of access 21.03.2022).

[504] Entry into Force and UK's Accession to The Hague Convention (2019): a Storm in a Teacup? [Electronic resource] // Gide Loyrette Nouel Law Firm, a limited liability partnership: [website]. 2024. 1 March. URL: https://www.gide.com/en/actualites/entry-into-force-and-uks-accession-to-the-hague-convention-2019-a-storm-in-a-teacup (date of access 15.03.2024).

[505] We have discussed this problem in detail in § 3 of Chapter II.

[506] Mokhova E.V. Transnational turnover in light of the draft convention on the recognition and enforcement of foreign judgments in civil and commercial matters. P. 190.

[507] Sometimes the grounds of international jurisdiction established by national law may be excessive. For example, E. Jueptner draws attention to the most notoriously excessive ground of direct jurisdiction contained in Art. 14 of the French Civil Code, which allows French courts to exercise international direct jurisdiction over a defendant located outside the State on the sole ground that the defendant has entered into a business relationship with a French national. See: Jueptner E. The Hague Jurisdiction Project - what options for The Hague Conference? / E. Jueptner // Journal of Private International Law, 2020. Vol. 16. № 2. P. 250.

A court in State B will not be able to refuse to recognise a judgment rendered in State A (because the jurisdictional filter under the convention has been passed). At the same time, in a similar situation, the court of State B would not have jurisdiction to hear the case, as it would determine it on the basis of the narrower criteria of jurisdiction set out in its national law.

This situation creates a situation of disparity in the mutual recognition of foreign judgements. For States in which the competence of national courts in cases with a foreign element is broader than the recognised competence of foreign courts, such international regulation would, on the one hand, allow the widest possible exercise of the competence of national courts (limited only by the criteria of the indirect jurisdiction of the relevant agreement) and guarantee recognition of their decisions outside the country, and, on the other hand, would not create an equivalent obligation with respect to judicial decisions of other States.

This negative effect may occur in case of Russia's accession to the HCCH 2019 Judgments Convention, as the criteria of direct jurisdiction enshrined in Russian procedural legislation do not fully coincide with the criteria of indirect jurisdiction established by this Convention.

The distinction can be seen, for example, with regard to the following jurisdictional criterion. Art. 5, par. 1 (b), of the Judgments Convention contains a provision according to which a foreign judgment may be recognised if the natural person against whom recognition or enforcement is sought had a principal place of business in the State of origin at the time such person became a party to the proceedings before the court of origin and the action on which the judgment is rendered was brought in connection with the conduct of such business. Such a criterion of jurisdiction is absent in Russian procedural legislation.

Thus, a foreign court decision based on this jurisdictional criterion will pass the conventional filter and will be subject to recognition in the Russian Federation, while a court in the Russian Federation in a similar situation is not entitled to consider such a case, since the relevant basis of jurisdiction is not provided for by the procedural legislation of the Russian Federation. The way to overcome this negative effect is to

ensure a correlation between the provisions of national law on direct jurisdiction and the indirect jurisdictional criteria of an international treaty.

The use of indirect jurisdictional criteria in international treaties also has disadvantages, which we discussed in Chapter II, § 3. Thus, there is a risk of fixing jurisdictional bindings which, in view of the development of international trade, means of communication and technology, may become 'obsolete', while other grounds of jurisdiction, which may become widespread, will remain outside the scope of the international treaty[508]. Prof. R. Brand, moreover, draws attention to the fact that the use of indirect jurisdictional filters raises the problem of their uniform interpretation[509]. The scientific literature notes the tendency of the subject of interpretation to bring the concepts of the national legal tradition into the result of interpretation, which has been called the *'homecoming tendency'* (*homeward trend*)[510].

Thus, on the one hand, the use of indirect jurisdictional filters ensures the recognition of foreign judgements on uniform grounds of jurisdiction for all States parties, and in this sense, unlike the application of direct jurisdictional criteria contained in the national law of each State party to an international treaty, and thus differing, contributes to legal certainty. On the other hand, the problem of uniform interpretation of indirect jurisdictional criteria reduces legal certainty, while the method of determining indirect jurisdiction by means of direct jurisdictional criteria of the state of recognition of a foreign judgement, the initial qualification of which is carried out in accordance with the *lex fori*, is devoid of this disadvantage.

At the same time, the use in international treaties of such methods of determining indirect jurisdiction as reference to the direct jurisdictional criteria of the State of recognition of a foreign judgment (the model discussed in Chapter II, § 1) or of the State of delivery (the model discussed in Chapter II, § 2) is, in our view, ineffective, since it

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[508] This shortcoming in relation to the HCCH 2019 Judgments Convention has been highlighted by R. Brand. See: Brand R.A. Op. cit. P. 19-20.

[509] Ibid. P.20.

[510] Flechtner H. Article 79 of the United Nations Convention on Contracts for the International Sale of Goods (CISG) as Rorschach Test: The Homeward Trend and Exemption for Delivering Non-Conforming Goods / H. Flechtner // Pace Int'l L. Rev. 2007. Vol.19 (29). P. 30. doi: 10.58948/2331-3536.1058.

does not actually bring to a common denominator the jurisdictional criteria on the basis of which indirect jurisdiction is determined.

In addition to the disadvantages of these models, which we have discussed in the relevant paragraphs, it should be noted that the implementation of these approaches seems unrealistic if the parties to an international treaty are States that define the grounds of direct and indirect jurisdiction differently, the grounds of direct jurisdiction being much broader than those of indirect jurisdiction. Such States are unlikely to be willing to recognise judicial decisions of other States when they exercise jurisdiction on a similar basis, which could create a significant barrier to widespread ratification[511].

Thus, the use of indirect jurisdictional criteria in international treaties seems justified and preferable to other models in the event that no agreement can be reached on the delimitation of jurisdiction.

The analysis of international cooperation on the recognition of foreign judgements in matters of indirect jurisdiction has led us to the following conclusions.

First, international cooperation on the recognition of foreign judgements is mainly hampered by the difficulty of agreeing on the grounds of indirect jurisdiction. The results of international co-operation on this issue reflect a state's confidence in foreign legal orders.

Second, the freest possible movement of foreign judgements can be ensured by using a model in which indirect jurisdiction is conditioned on uniform criteria for direct jurisdiction. The greatest degree of reliance on the foreign legal order is demonstrated in the EU instruments and consists in removing from the competence of the court in which recognition of the foreign judgment is sought the function of controlling indirect jurisdiction (with some exceptions, which we have noted above) and assigning this function to the judicial authority of the state in which the judgment is rendered.

Third, implementation of this model is a difficult task due to the lack of unanimity among States on jurisdictional delimitation and the increasing competition. The establishment of such regulation is possible within a narrow group of States whose

[511] Goddard D. The Judgments Convention – The Current state of Play / D. Goddard // Duke Journal of Comparative & International Law. 2019. Vol. 29 (473). P. 484.

national law is similar in jurisdictional matters. Its implementation in integration associations, including the EEU, is promising.

Fourthly, the use of indirect jurisdictional criteria in an international treaty is an alternative way of regulation for States between which the level of confidence in each other's legal order is lower[512], as, at the same time as indirect jurisdiction is settled, it allows States to continue to resolve cross-border disputes on the grounds established in national law.

Fifth, other models of regulating indirect jurisdiction in international treaties - defining indirect jurisdiction on the basis of national law on direct jurisdiction and on the basis of the law of the State of judgement - are rarely used because they are ineffective in the framework of international cooperation.

[512] It should be noted that the issue of the level of trust is of particular importance nowadays, given the unfriendly actions of a number of states. It is hardly possible to be guided by the "level of trust" when creating legal regulation, if we are talking about such states. In this regard, one of the components of the purpose of legal regulation of indirect judicial jurisdiction becomes significant - the protection of the national legal order, which can be achieved through the introduction of an additional jurisdictional criterion for which a foreign judgement is subject to review - the criterion of close connection between the dispute and the court.

Conclusion

On the basis of the conducted research it is possible to summarize certain results.

The internationalisation of legal relations, which have expanded considerably in recent years due to various factors, leaves no doubt that the action of justice should not be confined to jurisdictional boundaries. This makes it all the more valuable to establish balanced mechanisms that can not only remove barriers but also draw a 'red line' to protect the national legal order.

'Good neighbourly life with other states implies not only cordiality and hospitality, but also respect for personal boundaries.... Hospitality and hospitality appear in the form of the admissibility of the recognition ... the judgements of foreign courts. Personal boundaries, on the other hand, are demarcated by a series of restrictions.... '.[513] Indirect jurisdiction is an essence among such limitations and a marker of confidence in the foreign legal order.

Indirect jurisdiction is a special legal entity, a *sui generis* phenomenon. This or that variant of its embodiment in law is, in the broadest sense, the result of interaction between sovereign States, which predetermines the model of indirect jurisdiction chosen by them and introduced into national legislation, incorporated by the bodies of integration associations into acts of integration law and by States into international treaties.

By accepting the jurisdiction of a foreign court and thereby allowing the enforcement of its judgement in their territory, States pursue a dichotomous aim to ensure the realization of the principles of law - the right to judicial protection and the protection of the domestic legal order. The analysis of the existing models of indirect jurisdiction has led us to conclude that the model that correlates most closely with this objective is the one that focuses on recognising the acceptable jurisdiction of a foreign court in all cases except those that do not meet the objective of protecting the domestic legal order.

The Russian legal regulation of indirect jurisdiction is based on this model, however, it needs to be improved by introducing, on the one hand, a flexible mechanism

[513] Akuzhinov A.S. Overcompensation and contravention of public policy as grounds for refusal of enforcement of arbitral awards and foreign judgments in Russian and European law / A.S. Akuzhinov // Vestnik of Economic Justice of the Russian Federation. 2022. № 8. P. 121.

that will make up for the lack of legal regulation in a situation where the jurisdiction of a foreign court does not contradict the criteria of exclusive jurisdiction, but it is quite obvious that there is no connection between the dispute and the forum, namely, the indirect jurisdictional criterion of close connection between the dispute and the court, This criterion will allow to protect the party to the litigation. However, the criterion of close connection does not have the same properties as the criteria of exclusive jurisdiction and, unlike the latter, is not part of the public policy of the State. Therefore, the parties' autonomy of will in selecting a forum should not be limited to the exclusion of those with which there is no close connection. Accordingly, it is necessary to level this criterion by introducing an estoppel.

As for international cooperation on the problem in question, its results largely depend on the level of cooperation (bilateral treaties, multilateral treaties, integration, universal levels) and are a marker of the confidence of the participating States in each other's legal systems. In the framework of bilateral agreements (between states with similar legal systems), as well as in highly integrated entities, a model that demonstrates a high degree of trust is possible and best implemented - the introduction of unified criteria for direct jurisdiction and conditioning indirect jurisdiction on them. The introduction of such legal regulation in international treaties that do not meet these characteristics, as well as at the universal level, is currently unrealistic.

Despite the steps taken and the adoption of the HCCH 2019 Judgments Convention, the creation of a common space involving the free movement of judgments between states seems to be a matter of the distant future.

The author's concept of indirect jurisdiction in cross-border private law disputes - a new legal phenomenon for the domestic science - is thought to be the basis for future research aimed at further development of all its aspects, in particular, devoted to the conceptualisation of the legal category of ‘exclusive jurisdiction’ and the development of its criteria, taking into account its role in the model of indirect jurisdiction proposed for introduction into the legislation of the Russian Federation. The introduction of the model of indirect judicial jurisdiction into the legislation of the Russian Federation will ultimately strengthen the protection of domestic public order, which is relevant not only

today, in the conditions of unfriendly actions committed against Russia by certain countries and the European Union, but will also be relevant in the future, because the regulation of indirect judicial jurisdiction in domestic law allows to protect the national legal order from abuses by foreign justice.

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