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# CURRENT TRENDS IN INTERNATIONAL JURISDICTION

**Allayorov Jahongir Toshpulatovich,**
Independent researcher of University of World Economy and Diplomacy
E-mail: Xattot@gmail.com

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**Abstract:**

This article analyzes current trends in foreign countries related to the International Institute of Jurisdiction. In particular, the author studied the norms of Germany, France and Switzerland related to international jurisdiction. Have been compared the pros and cons of legal norms in these countries. It was concluded that it is expedient to develop in the Republic of Uzbekistan a separate legal document regulating the institute of international jurisdiction.

**Keywords:** international jurisdiction, international private law, international civil procedure, forum solutionis, doppelfunktionalitat

**Introduction**.The rapid development of international private relations and new technologies (for example, the Internet) lead to the problems that must be solved in the sphere of International Institute of Jurisdiction. First of all, the issue of restoring the violated rights of the parties through a fair trial, protecting the interests of consumers, owners of property and other persons in the relations that arise on the Internet before the courts is condidered urgent. In recent years the new challenges nessesitate a comprehensive study of the experience of legally developed countries, their work on the development of the International Institute of Jurisdiction. At the later stages of the development of national legislation, it is clear that the legal system today faces with the problems that are solving now by developed countries. Therefore, in the context of this paragraph, we consider general works related to the general trend of changes in international jurisdiction in developed countries, as well as define international jurisdiction on the Internet.

In the case of Germany, international jurisdiction is determined in accordance with the rules of domestic jurisdiction set out in Articles 14-40 of the Civil Procedural Code (Zivilprozesordnung) (hereinafter - ZPO) [1]. This rule is similar to the principle of dual functionality (doppelfunktionalitat) applied in our Civil Procedural Code. Although international jurisdiction is determined by the domestic rules of jurisdiction, Crofoller argues that the rules governing the location of property

and argues arising from the contract are designed to establish international jurisdiction [2].

General international jurisdiction is determined on the basis of its domicile (Wohnsitz) for an individual and the location of the governing body (Sitz) for a legal entity. The domicile of the individual determined by the lex fori. According to Article 7 of the German Civil Code (Burgerliches Gesetzbuch) (hereinafter - BGB), the domicile of the person is the permanent place chosen by him for his main activity [3]. According to the BGB, a person can have more than one domicile. In order to establish international jurisdiction of persons who do not have a domicile, international jurisdiction is established on the basis of habitual residence. The determination of international jurisdiction in claims against a legal entity is based on the criteria of the location of the governing body of the legal entity, in cases where the governing body is located on German territory, the place of subsidiary registration and operation of the legal entity [4]. According to the Law on Companies, a governing body of a legal entity may be located in several places [5]. International jurisdiction may be established if the structure of the legal entity, ie branches, representative offices and other types of representative bodies are located on the territory of Germany and the claim arises from the activities of these representative bodies. An important condition – the claim must be based on the activities of the representative body. In this case, it does not matter whether the activity of the representative body is carried out on the territory of Germany or outside it [6]. It should be noted that in order to protect the rights of consumers in banking and credit relations, international jurisdiction can not be changed on the basis of an agreement [7]. Under German law, a representative body of a foreign legal entity is not required to register in Germany, and acting on behalf of a foreign company is itself a basis for determining international jurisdiction [8].

And the obligations arising from the agreement, as an alternative, the place of fulfillment of the obligation, will be the basis for determining international jurisdiction (*forum solutionis*). An important aspect – the agreement on the place of fulfillment of the obligation is authorized only when the parties are an entrepreneurial entity or a state body. The criterion of the place of performance of the contract is also the basis for establishing international jurisdiction in cases of origin of the obligation in the contract, the validity of the contract, errors arising during the preparation of the contract (*culpa in comprehendo*), recovery of damages caused by non-performance. In cases where the place of performance of contractual obligations is not specified, the applicable to the contract (*lex causae*) law determines this place.

For the determination of international jurisdiction on the basis of the location of the property of the defendant (*forum patrimonii*) applies in cases where the respondent does not have a domicile, governing body, as well as a representative body in Germany and the parties do not enter into a contractual relationship, that is, the *forum patrimonii* is applied subsidiary to the above grounds. *Forum patrimonii* is used to protect the weaker side (*forum actoris*) according to its function and is regarded as a manifestation of *forum actoris.* The fact that the value of the property does not depend on the value of the claim may make it difficult for the defendant to enforce the enforcement on the property located abroad. In addition, the determination of international jurisdiction based on the fact that the property is located in German territory has led to legitimate objections [9]. The German Supreme Court has now ruled that international jurisdiction should be established when the *forum patrimonii* dispute is inextricably linked to the location of the court [10]. Although this decision is based on the explanations of the Constitutional Court on the guarantees and compliance with the norms of international law established by the German Constitution [11]. however, the power of judges to decide independently on the issue of the interdependence of judges has led to the promotion of views that contradict the German Constitution [12]. Such disputes could lead to changes in the rules governing international jurisdiction in the future and to reforms within the international civil process.

A change in the approach to private international law, in particular the institution of international jurisdiction, is also observed in Swiss law. The Law on Private International Law, which came into force on January 1, 1989, regulates international jurisdiction [13]. The determination of international jurisdiction is based on the principle of inextricable link between court and claim. Due to its structure, the rules for determining international jurisdiction differ from the Brussels Convention and other legal systems belonging to the family of continental law. According to this, the issue that needs to be regulated is brought separately in each section. For example, the third section deals with marriage and regulates the choice of law and international jurisdiction, while the ninth section deals with the choice of law and international jurisdiction in obligations [14]. Another aspect to note is that the local court rule (*actor sequitur forum rei*) applies subsidiary to special rules. That is, in the absence of a basis for the determination of international jurisdiction under special rules, the general rule applies to the place of responsibility. This logic suggests that in other continental legal systems, the rule of place in which the general rule is previously responsible applies, and in its absence, the special rule applies to subsidiary rule. However, the application of treaty international jurisdiction in family

matters is not allowed. In addition, when selecting Swiss courts for treaty international jurisdiction, it is stipulated that the case may be denied in cases where the dispute is not inextricably linked to Switzerland. In determining the affiliation, consideration is given to whether one of the parties has a Swiss domicile or conducts business there, or whether Swiss law applies to the relationship. Four binding factors are taken into account in disputes arising out of the contract. Accordingly, if the defendant has a domicile in Switzerland, if he does not have a domicile, he is a Swiss resident, if he is a non-resident, his place of business is Switzerland, if he does not have a place of business, his place of business is Switzerland. These binding factors are applied subsidiarily in sequence. The rules for determining international jurisdiction based on employment (*forum arresti*) have also been retained in the new legislation. According to the *Forum arresti* rule, property must be seized in accordance with the Law on Debt and Bankruptcy in determining international jurisdiction [15]. The fact that the property is on the territory of Switzerland does not give grounds for determining international jurisdiction [16]. There is no minimum requirement for the value of the occupied property, and the issue can be considered in the context of the part that exceeds its value. Of course, in determining international jurisdiction on the basis of reservation, the plaintiff must consider the risk of non-enforcement of the judgment in other States. A similar approach can be seen in the explanations of the Swiss Federal Tribunal [17].

Talking about trends in the determination of international jurisdiction, we consider it appropriate to analyze the French experience. France introduced the rules for determining international jurisdiction long ago in countries within other continental legal systems with the adoption of the French Civil Code. In France, international jurisdiction is determined based on citizenship, and in any case, where the dispute is not related to France, the courts are empowered to hear the case. Such an approach would mean that the French courts had broad powers to hear cases complicated by a foreign element. The newly adopted Civil Procedural Code went the way of limiting the powers of French courts in cases complicated by a foreign element [18]. It is noteworthy that according to the new Code of Civil Procedure, international jurisdiction is determined by the rules of domestic jurisdiction. The norms of international jurisdiction in the Civil Code are applied subsidiary to the rules of the procedural code. This approach first implies the establishment of international jurisdiction on the basis of civil prints, in the absence of the possibility of establishing international jurisdiction on the basis of the rules of internal law, the definition of international jurisdiction on the basis of the rules of internal law. This rule is related to the recognition and enforcement of court decisions abroad, and it is

highly probable that foreign courts will not enforce decisions on international jurisdiction established on the basis of the principle of citizenship. The general rule for determining international jurisdiction over individuals and legal entities – based on the location of the defendant. Due to the lack of separate rules of international jurisdiction for disputes arising from the activities of representative offices and branches of foreign legal entities, the rule of second place (*etablissement secondaire*) applies. According to the second established place rule, the representative office and branch of a foreign legal entity indicate the location of the French territory, and the international jurisdiction is determined by the location of the joint responsibility [19]. The fact that a representative office of a foreign legal entity operates in France is not sufficient to determine international jurisdiction, the agency must be able to make an independent decision at its head office and the representative office must operate only in France. That is, there is no international jurisdiction over the activities of a representative office in France in another country [20]. Claims arising from contractual obligations may also be subject to international jurisdiction in cases where the place of delivery or must be delivered place of the product is France. In this case acceptance of the product by the contractor is also an important condition. That is, international jurisdiction is not established in cases where the product is delivered to the territory of France without the consent of the counterparty, as well as in cases where payment for the delivered product must be made in the territory of France. For example, a claim for recovery of an unpaid payment when a product is delivered to the territory of Germany is not subject to the international jurisdiction of the French courts. As we can see, France adheres to the concept of indivisibility of obligations. In order to secure the claim, the issue of establishing international jurisdiction based on the property of the defendant arrested in France is resolved in a specific way. If the claim is pending in another state court or the claim may be instituted in another state, or if the defendant is not a French citizen, the establishment of international jurisdiction because of occupied property is left to the judge, and the establishment of international jurisdiction is optional [21]. There is also the economic side of the issue, as foreigners may try not to make deposits in banks there or have other property to avoid being sued in a French court.

The changes and trends in recent years in countries with developed legal systems of international justice lead to the conclusion that the Republic of Uzbekistan needs to reconsider approaches to international justice:

first, it is expedient that domicil be the main criterion in determining the location of the respondent;

secondly, the need to create a mechanism for the protection of consumer rights in the norms of treaty international jurisdiction;

thirdly, in determining international jurisdiction, it is necessary to abandon the rules of domestic jurisdiction (bilateral functionality) and to introduce directly applicable norms;

fourth, the norms of private international law should be brought into the form of a single code, which should include the rules of international jurisdiction;

fifth, the determination of international jurisdiction on the basis of citizenship should apply only to family relations;

sixth, accession to unified international treaties on international jurisprudence will contribute to the development of private international relations;

seventh, it would be expedient to establish international jurisdiction in traditional disputes on the Internet.

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