



UNIFICATION OF LEGAL NORMS OF THE REPUBLIC OF UZBEKISTAN REGULATING COURT PROCEEDINGS IN CASES INVOLVING FOREIGN NATIONALS IN CIVIL AND ECONOMIC COURTS

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ABSTRACT

The article provides a comprehensive comparative legal analysis of the provisions of the Economic Procedural Code (EPC) and the Civil Procedural Code (CPC) of the Republic of Uzbekistan governing proceedings involving foreign persons. The article analyses the structure and content of the relevant sections of both codes, reveals the peculiarities of the competence and jurisdiction of courts, the procedural status of foreign persons, as well as the procedure for recognising and enforcing decisions of foreign courts and arbitrations. Based on the analysis, the article substantiates the need to unify and harmonise the procedural rules of the Economic Procedural Code and the Civil Procedural Code of the Republic of Uzbekistan.

A comparative analysis of the provisions of the Economic Procedural Code (EPC) and the Civil Procedural Code (CPC) of the Republic of Uzbekistan regarding proceedings involving foreign persons shows that both codes address such proceedings in Section III. In the CPC, this section is entitled "Proceedings involving foreign persons", while in the EPC it is entitled "Participation of foreign citizens and organisations, stateless persons in civil proceedings".

Thus, despite differences in wording, both codes provide for a special procedural order for the consideration of cases involving foreign entities, which indicates the legislator's desire to take into account the specifics of such categories of cases within different jurisdictions.

The content of Section III of the Economic Procedural Code of the Republic of Uzbekistan covers three chapters, which sequentially regulate: general provisions establishing the legal basis for the consideration of cases involving foreign persons; features of the procedural order for the consideration of this category of cases; proceedings in cases concerning the recognition and enforcement of foreign court and arbitration decisions.

In turn, Section III of the Civil Procedure Code of the Republic of Uzbekistan includes only two chapters containing general provisions governing the participation of foreign citizens, stateless persons and foreign organisations in civil proceedings, as well as a chapter

devoted to the recognition and enforcement of decisions of foreign courts and foreign arbitration tribunals.

Thus, the EPC provides a more detailed and comprehensive coverage of this area of procedure than the CPC, reflecting the specific nature of economic disputes with a foreign element.

A comparative analysis of the provisions of the EPC and CPC of the Republic of Uzbekistan regarding proceedings involving foreign persons shows that both codes address such proceedings in Section III. In the CPC, this section is entitled “Proceedings involving foreign persons”, while in the CCP it is entitled “Participation of foreign citizens and organisations, stateless persons in civil proceedings”.

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Thus, the EPC provides a more comprehensive and detailed description of this procedural area compared to the CPC, reflecting the specific nature of economic disputes involving foreign elements.

In turn, Chapter 31 of the EPC of the Republic of Uzbekistan regulates key issues related to the jurisdiction of economic courts in cases involving foreign persons. In particular, it regulates:

- the general and exclusive jurisdiction of the economic courts of the Republic of Uzbekistan in this category of cases;
- the conditions and legal consequences of the conclusion of agreements between the parties on the choice of jurisdiction of the economic courts of the Republic of Uzbekistan;
- the legal nature of the judicial immunity of foreign states and organisations;
- the procedural consequences of the consideration of a similar dispute between the same parties, on the same subject matter and on the same grounds in a foreign court.

Chapter 32 of the EPC is devoted to the procedural features of the consideration of cases involving foreign persons. It covers provisions on the procedural rights and obligations of foreign participants; requirements for documents of foreign origin; and the procedure for executing judicial orders aimed at carrying out certain procedural actions outside the Republic of Uzbekistan.

Chapter 33 of the EPC regulates the procedure for recognising and enforcing foreign court and arbitration decisions, setting out requirements for the form and content of

applications for recognition and enforcement; a list of documents that must be attached to the application; grounds for returning the application without consideration; the procedural order for the consideration of relevant applications by the court; an exhaustive list of grounds for refusing to recognise and enforce foreign decisions; and the procedure for its enforcement.

Chapter 41 of the Civil Procedure Code of the Republic of Uzbekistan regulates the participation of foreign citizens, stateless persons and foreign organisations in civil proceedings. This chapter covers the civil procedural rights of these entities; rules for determining jurisdiction in cases involving them, including cases where at least one of the parties resides outside the Republic of Uzbekistan; the specifics of bringing claims against foreign states; the procedure for the enforcement of foreign court orders, as well as the referral of requests from the courts of the Republic of Uzbekistan to foreign courts.

Chapter 42 of the Civil Procedure Code contains provisions governing the recognition and enforcement of foreign court judgments and foreign arbitral awards. In particular, it sets out requirements for applications for recognition and enforcement, their form and content; a list of supporting documents; grounds for returning applications; the procedure for judicial review of applications; grounds for refusing to recognise and enforce decisions, as well as the procedure for issuing court rulings and their enforcement.

An analysis of the content of the chapters regulating proceedings involving foreign persons in the EPC and CPC of the Republic of Uzbekistan reveals differences in the approaches reflected in their regulatory structure.

Thus, the provisions of the Economic Procedure Code of the Republic of Uzbekistan provide for broader regulation in this area. In particular, the general provisions establish both the general and exclusive jurisdiction of economic courts in cases involving foreign persons. This allows for a clearer definition of the limits of jurisdiction of economic courts in such categories of cases.

Unlike the EPC, the CPC of the Republic of Uzbekistan does not contain a direct reference to the general or exclusive jurisdiction of courts in cases involving foreign persons. Instead, it establishes the right of foreign citizens, stateless persons and foreign organisations to apply to the court, and also determines the jurisdiction of cases involving them. In essence, these provisions together serve a similar purpose – to establish a framework for foreign entities' access to justice in Uzbekistan.

According to Article 239 of the Economic Procedure Code of the Republic of Uzbekistan, economic courts of the Republic of Uzbekistan shall hear cases involving disputes arising in the economic sphere with the participation of foreign organisations, international organisations, foreign citizens, stateless persons (hereinafter referred to as foreign persons) if:

- 1) the defendant is located or resides in the territory of the Republic of Uzbekistan, or the defendant's property is located in the territory of the Republic of Uzbekistan;
- 2) a branch or representative office of a foreign person is located in the territory of the Republic of Uzbekistan;
- 3) the dispute arose from a contract under which performance must take place or took place in the territory of the Republic of Uzbekistan;

4) the claim arose from damage to property caused by a foreign person or other circumstances that took place in the territory of the Republic of Uzbekistan or when the damage occurred in the territory of the Republic of Uzbekistan;

5) the dispute arose from unjust enrichment that took place in the territory of the Republic of Uzbekistan;

6) the plaintiff in a case concerning the protection of business reputation is located in the Republic of Uzbekistan;

7) the dispute arose from relations connected with the circulation of securities issued in the territory of the Republic of Uzbekistan;

8) the applicant in a case concerning the establishment of a fact having legal significance indicates the existence of this fact in the territory of the Republic of Uzbekistan;

9) the dispute arose from relations related to the state registration of names and other objects and the provision of services on the World Wide Web in the territory of the Republic of Uzbekistan;

10) 10) there is an agreement on this between a legal entity or citizen of the Republic of Uzbekistan and a foreign entity, concluded in accordance with the rules established by Article 241 of the EPC of the Republic of Uzbekistan.

The economic courts of the Republic of Uzbekistan consider cases involving disputes arising in the economic sphere with the participation of foreign persons and in other cases where the disputed legal relationship is connected with the territory of the Republic of Uzbekistan.

Thus, despite differences in terminology and the degree of regulatory detail, the concept of jurisdiction enshrined in the EPC, as well as the right to apply to the court and the rules on jurisdiction contained in the CPC, are to a certain extent correlated. All of them are aimed at regulating the procedural order for the consideration of cases involving foreign persons, ensuring such persons' access to judicial protection within the jurisdiction of the Republic of Uzbekistan.

The exclusive jurisdiction of the economic courts of the Republic of Uzbekistan covers cases involving foreign persons in disputes under Article 240 of the Economic Procedure Code of the Republic of Uzbekistan, including the following cases:

1) concerning property owned by the Republic of Uzbekistan, including disputes related to the denationalisation and privatisation of state property and the seizure of property for public needs;

2) concerning immovable property, if such property is located on the territory of the Republic of Uzbekistan, or rights to it.

The legislation of the Republic of Uzbekistan may also assign other cases involving foreign persons to the exclusive jurisdiction of economic courts.

The jurisdiction of the courts of the Republic of Uzbekistan over civil cases involving disputes in which foreign citizens and organisations, stateless persons, as well as disputes in which at least one of the parties resides in another state, is determined by the Civil Procedure Code, unless otherwise provided by an international treaty of the Republic of Uzbekistan (Article 361 of the Civil Procedure Code of the Republic of Uzbekistan).

The requirement for the form of an agreement on the determination of the jurisdiction of the economic courts of the Republic of Uzbekistan is that it must be concluded in writing.

Articles 247 of the EPC and 363 of the CPC of the Republic of Uzbekistan regulate issues of the execution of judicial orders, as well as cases in which the execution of an order is not permitted. There are differences between the two codes in this regard. In particular, Article 247 of the EPC provides grounds for refusing to execute a court order if the authenticity of the document containing the relevant order to perform certain procedural actions has not been established. At the same time, there is no similar ground in Article 363 of the CPC. For the purposes of unifying procedural rules, it seems appropriate to supplement Article 363 of the Civil Procedure Code of the Republic of Uzbekistan with a corresponding provision reflecting the specified grounds for refusing to execute a judicial order.

An analysis of Article 366 of the Civil Procedure Code and Article 250 of the Arbitration Procedure Code of the Republic of Uzbekistan shows that the requirements for the form and content of an application for recognition and enforcement of a foreign court or arbitration decision, or a foreign arbitration tribunal (arbitration) decision, are generally identical. The exception is part four of Article 366 of the Civil Procedure Code, which states that the application shall be submitted to the court with copies for each debtor, except for applications sent in the form of an electronic document.

However, based on the content of part one of Article 366 of the Civil Procedure Code, which explicitly states that the application shall be submitted in writing, it seems appropriate to review the need to retain part four of this article. Since the current version of Article 366 of the Civil Procedure Code does not provide for the possibility of submitting an application in the form of an electronic document, the reference to this in part four appears to be inconsistent with the general provisions of the said norm.

In this regard, it seems reasonable either to exclude part four of Article 366 of the Civil Procedure Code of the Republic of Uzbekistan or to bring it into line with part one of this article by adding a provision on the possibility of submitting an application in electronic form.

Furthermore, if the relevant amendments are made to Article 366 of the Civil Procedure Code and the possibility of submitting an application in electronic form is enshrined therein, it would be advisable to make similar amendments to Article 250 of the Arbitration Procedure Code of the Republic of Uzbekistan. In particular, this article should be supplemented with a fourth part providing for the possibility of filing an application for recognition and enforcement of a foreign court or arbitration decision in the form of an electronic document, which will ensure the unification of procedural regulation in civil and economic proceedings.

An analysis of the content of Articles 252 of the EPC and 367 of the CPC of the Republic of Uzbekistan reveals both general provisions and significant differences in the requirements for documents to be attached to an application for recognition and enforcement of decisions of foreign arbitral tribunals, foreign courts or foreign courts of arbitration (arbitration).

Paragraph 1 of Article 367 of the Civil Procedure Code of the Republic of Uzbekistan stipulates that the application shall be accompanied by a copy of the decision of a foreign court or foreign arbitration tribunal (arbitration), the recognition and enforcement of which is requested by the claimant, certified by a competent authority of a foreign state or the

Republic of Uzbekistan. Meanwhile, paragraphs 1 of Articles 251 and 252 of the EPC of the Republic of Uzbekistan provide for the possibility of submitting both the original decision of a foreign court or arbitration tribunal and a copy thereof certified by a competent authority. In order to harmonise procedural rules and eliminate contradictions between the codes, it seems appropriate to unify the content of paragraph 1 of Article 367 of the Civil Procedure Code by adding a reference to the possibility of submitting either the original decision or a certified copy thereof.

Furthermore, in order to ensure procedural balance and legal certainty, it seems reasonable to supplement Article 367 of the Civil Procedure Code of the Republic of Uzbekistan with a provision similar to that contained in Article 251 of the Economic Procedure Code of the Republic of Uzbekistan, which provides for the need to submit a document confirming that a copy of the application for recognition and enforcement of a foreign court decision has been sent to the debtor. This clarification will contribute to compliance with the adversarial principle and ensure adequate protection of the procedural rights of the parties.

A comparative analysis of the provisions of Article 253 of the EPC and Article 368 of the Civil Procedure Code of the Republic of Uzbekistan concerning the return of an application for recognition and enforcement of a foreign court or arbitration decision reveals their substantial similarity in terms of legal regulation. However, there is one fundamental difference between them. Thus, part four of Article 253 of the EPC of the Republic of Uzbekistan provides for the possibility of appealing (challenging) the decision of the economic court to return the application. In this case, if the appeal or challenge is upheld, the date of filing of the application shall be deemed to be the date of its initial submission to the court.

Meanwhile, there is no similar provision in Article 368 of the Civil Procedure Code of the Republic of Uzbekistan, which creates a legal gap and leads to different procedural regimes when considering similar categories of cases in civil and economic proceedings. In order to eliminate this inconsistency and harmonise procedural legislation, it is advisable to supplement Article 368 of the Civil Procedure Code with a provision similar to part four of Article 253 of the Economic Procedure Code, which will ensure uniformity in law enforcement practice and strengthen the protection of applicants' rights.

One of the notable differences between the EPC and the CPC of the Republic of Uzbekistan is the establishment of different time limits for considering applications for the recognition and enforcement of decisions of foreign courts, foreign arbitration tribunals and arbitration courts. Thus, part one of Article 254 of the EPC of the Republic of Uzbekistan establishes a maximum time limit for considering such applications of no more than six months from the date of their receipt by the court. At the same time, Article 369 of the CPC of the Republic of Uzbekistan provides for a significantly shorter time limit of one month.

This discrepancy leads to a disproportionate procedural guarantees for the parties in cases of a similar legal nature considered in different jurisdictions. In order to unify procedural rules and ensure legal certainty, it seems appropriate to review the time limit established in the EPC and bring it into line with the provisions of the CPC, establishing a single time limit for consideration of applications of one month. This will achieve consistency

in the application of rules and eliminate unjustified differences in the regulation of similar procedures.

The requirements for the form and content of a court ruling on the recognition and enforcement of decisions of foreign courts, arbitration tribunals and foreign arbitration courts (arbitration tribunals) are identical in both the EPC and the CPC of the Republic of Uzbekistan. Both codes stipulate that such decisions shall be enforced on the basis of a writ of execution issued by the court, which confirms the uniformity of approaches in the procedural regulation of the relevant category of cases.

In conclusion, it should be emphasised that proceedings involving foreign persons are one of the most complex and specific categories of procedural cases under both the EPC and the CPC of the Republic of Uzbekistan. Given the specific nature of such cases, issues relating to the determination of the jurisdiction of courts, rules of jurisdiction, and the granting of procedural rights to foreign persons to apply to the courts of the Republic of Uzbekistan are of particular relevance. Both codes provide for general rules and special procedures aimed at recognising and enforcing decisions of foreign courts, arbitrations and foreign arbitration tribunals (arbitrations), which, in turn, contributes to strengthening confidence in the judicial system and legal protection of foreign participants.

Despite the similarity of legal regulation in general, there are still some differences between the EPC and the CPC in their approaches to the detailing of certain rules. In this regard, the unification and harmonisation of the provisions of the two codes in cases involving foreign persons is a necessary step towards ensuring uniformity in law enforcement practice and improving the effectiveness of judicial protection in the context of international legal cooperation.