

Civil Cases Involving Foreign Individuals: Specificities and Issues

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ABSTRACT

This research is relevant due to the lack of an effectively functioning institute of foreign individuals' representation on the territory of the Republic of Kazakhstan. The work aims to analyze legislative regulations on the legal status of foreign persons in civil proceedings, providing an opportunity to study their rights and obligations within Kazakhstan. The study employs a doctrinal/legal analysis methodology to scrutinize legal texts and principles, a comparative legal research approach to compare Kazakhstan's legal framework with international standards, and empirical analysis to assess practical implementations and outcomes. The work analysed the status of non-resident individuals, namely foreigners, stateless persons, and foreign and international organisations in accordance with the valid Civil Procedure Code of the Republic of Kazakhstan. The Chisinau Convention was reviewed as a detailed study of the foreign organisation's legal status, and, for international organisations, the United Nations Charter was reviewed. The jurisdiction of civil cases involving foreign individuals was analysed, and it was noted that they are considered by courts of general jurisdiction. The basic rules, characteristics, and principles for civil case trials involving foreign citizens were examined. It was found that there are problematic aspects in the current legislation regarding the functioning of an institute of foreign persons' representation. According to the above, the main directions for improving the provisions of the Civil Procedure Code of the Republic of Kazakhstan for resolving this conflict have been provided in the work. The practical value of the obtained results is to increase the efficiency of the national legal system and to provide greater guarantees for foreign citizens.

Keywords: Conflicts, Institution of Representation, International Law, Lawyer, Legal Status.

ABSTRAK

Penelitian ini relevan karena kurangnya lembaga yang berfungsi secara efektif untuk mewakili kepentingan individu asing di wilayah Republik Kazakhstan. Karya ini bertujuan untuk menganalisis peraturan perundang-undangan tentang status hukum orang asing dalam proses perdata, yang memberikan kesempatan untuk mempelajari hak dan kewajiban mereka di Kazakhstan. Studi ini menggunakan metodologi analisis doktrinal/hukum untuk meneliti teks dan prinsip hukum, pendekatan penelitian hukum komparatif untuk membandingkan kerangka hukum Kazakhstan dengan standar internasional, dan analisis empiris untuk menilai implementasi dan hasil praktis. Penelitian ini menganalisis status individu non-penduduk, yaitu warga negara asing, orang tanpa kewarganegaraan, organisasi asing, dan organisasi internasional sesuai dengan Kode Prosedur Sipil Republik Kazakhstan yang berlaku. Konvensi Chisinau ditinjau sebagai studi mendalam mengenai status hukum organisasi asing, dan untuk organisasi internasional, Piagam PBB ditinjau. Yurisdiksi perkara perdata yang melibatkan warga negara asing dianalisis, dan dicatat bahwa perkara tersebut ditangani oleh pengadilan umum. Aturan dasar, karakteristik, dan prinsip-prinsip untuk persidangan perkara perdata yang melibatkan warga negara asing dieksplorasi. Ditemukan bahwa terdapat aspek-aspek problematis dalam peraturan perundang-undangan saat ini mengenai fungsi institusi perwakilan orang asing. Berdasarkan hal di atas, arah utama untuk memperbaiki ketentuan Kode

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Prosedur Sipil Republik Kazakhstan dalam menyelesaikan konflik ini telah diuraikan dalam karya ini. Nilai praktis dari hasil yang diperoleh adalah untuk meningkatkan efisiensi sistem hukum nasional dan memberikan jaminan yang lebih besar bagi warga negara asing.

Kata kunci: Hukum Internasional, Konflik, Lembaga Perwakilan, Pengacara, Status Hukum.

INTRODUCTION

The constant and rapid flow of changes that affect economic, political, and social spheres as well as the increase of cooperation in various sectors, both at the state and between legal relations subjects, makes the subject of legal regulation significantly more complicated. According to Stewart (2019), 'legal symbiosis' provides an opportunity to effectively and mutually implement the function of controlling legal transnational relations.

According to the position of Wuerth (2019), this practice is due to a number of factors, namely the formation of a single economic space as a conglomerate, globalization processes, and an increase in migration flows. In other words, transnational legal relations have an impact on global processes, such as economic, scientific, technical, technological, and others. It is worth noting that state economic relations are also affected accordingly. According to Filippaios et al. (2019), due to the growing role of private international law, there is a need for a better understanding of this area of law. The changes taking place in the global market are due to the growing volumes of foreign investments, the right to build a legal state, and an open and transparent economic system. In other words, transnational economic relations will have a significant impact on strengthening relations between states. It is worth noting that this, in addition, increases the need for a detailed analysis of the law. Globalization processes create new challenges for legal regulation, as new forms of cross-border interaction of subjects of legal relations arise. Therefore, there is a need to harmonize norms and principles of the regulation of such relations at the international level.

Summing up, it can be stated that transnational legal relations are an integral part of the modern globalized world. Their effective regulation requires constant improvement of national legislation, implementation of international standards, and development of cooperation between states in various spheres. According to Freer (2021), the concept of "foreign element" should be understood as a property of the factual relationship, which can manifest itself in the object and subjective compositions, by a legal fact of foreign origin. The subjective element refers to a foreign citizen or foreign legal entity, and the object element refers to a property that is located in another country. A foreign element in legal relations does not indicate the emergence of a new element but demonstrates connections between the elements and the various legal systems of other countries. The most common foreign elements are those relating to the structure of legal relations, a manifestation of the connections that arise between legal relations and the national legal system itself.

There is one significant regulation in private international law concerning the foreign element. According to Parrish (2019), a foreign element may only be legally meaningful where certain factual circumstances may create a conflict of laws – domestic and foreign, which raises, in turn, the issue about the choice of law for the particular dispute in question as an independent issue. In the Republic of Kazakhstan (RK), the current legislation contains a range of rules that regulate legal relations involving foreign persons. But at the same time, some problematic aspects are preventing the proper and effective implementation of civil proceedings. This issue is related to the institute of representation of foreign persons, increasing foreign law's ability to be implemented.

Researching the legal status of foreigners is key to ensuring their rights and freedoms in civil proceedings. It is also important to analyze the specifics of the participation of foreign persons in various stages of the civil process. Therefore, this study aims to analyze in detail the legal provisions regarding the participation of foreign persons in the civil process. To achieve this, it is important to study various aspects, as well as to pay attention to the legal status of foreign persons, the peculiarities of their participation in the civil process, the institution of representation. This approach will allow to improve the legal system as a whole and will give an opportunity to increase the level of protection of foreign persons on the territory of the Republic of Kazakhstan.

Thus, transnational legal relations are an essential aspect of today's globalized world, requiring continuous refinement of national legislation, adherence to international standards, and enhanced cooperation between states (Yan and Liu, 2024). The term "foreign element" refers to the factual relationship between legal systems, encompassing both subjective (foreign citizens or legal entities) and objective (property located in another country) elements, and often leading to conflicts of law (Himmah and Wibisono, 2023). In Kazakhstan, while there are regulations addressing foreign persons' legal relations, challenges remain in effectively implementing civil proceedings, particularly in the representation of foreign persons and the application of foreign law (Lumbantobing, 2017). The legal status of foreign individuals and entities in civil proceedings needs further analysis to clarify their rights, roles, and the institution of representation, ensuring better protection for foreign persons and enhancing Kazakhstan's legal system. However, terms like "foreign element" and "foreign person" are sometimes used ambiguously, which may create confusion regarding their scope, particularly when conflating natural persons with legal entities and international organizations.

RESEARCH METHOD

The research was accomplished through the use of various methods of juridical analysis. The method of functional analysis was implemented in order to reveal the concept of "foreign element", highlighting its legal essence and peculiarities. The method of logical analysis made it possible to examine the legal status of foreign persons, stateless persons, and foreign and international organisations. The formal-legal method was used to investigate the rights and obligations of foreign persons in the Republic of Kazakhstan. In this case, the method of abstraction was also applied, which reduces to abstraction in the process of cognition from any properties of the object in order to an in-depth study of one particular aspect, in this case, the institution of representation of foreign persons. The method of legal hermeneutics has provided an opportunity to examine the legislative basis of Kazakhstan and some international acts. Among them are the Civil Procedure Code of the Republic of Kazakhstan (2015), the Chisinau Convention "On the ratification of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters" (2002), the United Nations Charter (1945), the Law of the Republic of Kazakhstan No. 176-VI "On advocacy and legal assistance" (2018) and the Constitution of the Republic of Kazakhstan (1995). In this context, it is worth mentioning that it has provided an opportunity to identify problematic aspects related to the institute of representation rights of foreign individuals and to explore possible ways to improve the current legislation.

According to the dogmatic method, it was possible to identify certain problematic aspects affecting the functioning of civil justice in the Republic of Kazakhstan, in particular, the institution

of representation of foreign natural persons. The method of analogy, the value of which is based on similarities in certain legal relations, namely the licensing of advocacy, allowed us to conclude that this aspect is similar to countries such as Azerbaijan and Georgia. Deduction, on the other hand, made it possible to characterize the institution of representation and the legal status of foreign persons on the territory of the Republic of Kazakhstan based on its specific features, principles and attributes. On the contrary, the inductive method was used to research legislative norms and, based on the doctrine, provide general information about the institution of representation of foreign persons and their legal status on the territory of the Republic of Kazakhstan. Due to the method of synthesis, which involves the combination of theoretical and practical information obtained during the analysis, recommendations were proposed to improve the current legislation of the Republic of Kazakhstan.

The application of the dogmatic method made it possible to identify a number of problems related to the institution of representation of foreign natural persons in civil proceedings. In particular, this concerns the process of researching the imperfection of the procedure for admitting foreign lawyers to representation in courts, the lack of clear requirements for their qualifications, and ethical standards. By using the method of analogy, the specifics of solving similar questions in neighbouring countries, such as Azerbaijan and Georgia.

RESULTS AND DISCUSSION

The Civil Procedure Code of the Republic of Kazakhstan (2015) (CPC RK), which currently contains a whole section devoted to this subject of legal regulation, namely Section 4 “International Proceedings”. This section is limited to a single chapter, “Proceedings involving foreign individuals”. By “foreign persons”, the term is used to include foreigners themselves, foreign and international organisations, and stateless individuals. The legislator mentions it in Article 472 CPC RK (2015). In terms of legal technique, however, it would be more logical to include it at the beginning of the section.

Article 472 of the CPC RK (2015) is referred to as “Procedural Rights and Obligations of Foreign Individuals”. This article establishes that foreign individuals are entitled by law to have the same procedural rights and obligations as Kazakh citizens and legal entities, unless an international treaty ratified by the state provides otherwise. In other words, this regulation sets out the basic principle of equality of residents and foreign persons in the Republic of Kazakhstan. It is worth noting that in Part 4 of the above article, the legislator, in correspondence with the principle of reciprocity of an international legal nature, enshrines a provision according to which the Republic of Kazakhstan may impose retorsions against persons of those states which allow any restrictions in relation to Republic of Kazakhstan citizens and entities (Civil Procedure Code, 2015).

The analysis of Article 473 of the CPC RK (2015) contains a sufficiently important regulation. This regulation establishes that the civil procedural capacity of foreign persons is determined by their personal law. In other words, personal law is the state law in which a foreigner is a citizen. Additionally, Article 474 of the CPC RK (2015) contains a regulation defining the procedural capacity of foreign legal persons, namely foreign and international organisations. In this case, the procedural capacity of a foreign organisation is determined according to the law of the foreign state under which it was established. For an international organisation, its procedural legal capacity is

determined by the international convention in accordance with which it has been established or by other international documents of the Republic of Kazakhstan.

In general, agreements and international conventions form an integral part of the legislation of the Republic of Kazakhstan, as set out in Article 1 of the CPC RK (2015). The Chisinau Convention “On the ratification of the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters” (2002), which was ratified by Kazakhstan in 2004, should be noted. The Chisinau Convention is worth analysing because it covers the range of neighbouring countries of Kazakhstan. Article 1 of the Chisinau Convention (2002) declares the principle of universality, meaning that the citizens from each Party to the Treaty are entitled to the same rights and obligations within the territory of the country as a Party as the Chisinau Convention (2002) nationals themselves. The rights include legal protection of property, non-property, and personal interest, and the right to apply to public authorities and courts of law freely and without hindrance. This includes, just as significantly, the rights of legal persons.

Article 2 of the Chisinau Convention (2002) provides an important clarification on the civil procedural rights and obligations of foreign individuals. Citizens of each country of the Treaty and other persons residing in the territory are entitled to exemption from reimbursement and payment of court and notary fees, as well as the right to free legal assistance in the territory of the Treaty states equally with the citizens of the country. These benefits apply to all procedural actions, including civil, family, and criminal cases, as well as the execution of their judgment and sentence (Chisinau Convention, 2002). A reference to Article 120 of the Chisinau Convention (2002) is worth mentioning; it contains a regulation, according to which the rules regulated will be legally enforceable for the Contracting States to the Chisinau Convention and for those Contracting States not parties to the Convention. As mentioned above, foreign entities also include international organisations. The legal regulation of this authority in civil proceedings should be considered using the example of the United Nations (UN).

In Germany, foreign lawyers are allowed to represent clients in civil cases under specific conditions outlined in the Federal Lawyers' Act (BRAO) and Code of Civil Procedure (ZPO) (Mostowik and Figura-Góralczyk, 2022). Foreign lawyers can represent clients in international legal matters or cases involving the law of their home jurisdiction, but they must prove their qualifications and cannot practice in areas requiring a German legal license unless they are admitted to the German Bar. This framework ensures that foreign legal professionals bring valuable international expertise into German courts, especially in cross-border disputes, facilitating legal cooperation and providing foreign clients with trusted representation familiar with their legal systems (Poole, 2021). However, the inclusion of foreign lawyers in domestic courts presents both advantages and challenges. While it enhances international legal expertise, broadens access to justice for foreign clients, and promotes legal diversity, it can also create risks such as jurisdictional conflicts and potential complications in legal procedures. Foreign lawyers might lack detailed knowledge of German law or procedures, requiring collaboration with local lawyers to navigate the complexities of German legal practice. Moreover, the lack of a consistent regulatory framework for foreign lawyers in non-international cases might undermine the fairness and efficiency of domestic proceedings, especially in sensitive or complex legal disputes (Okoli, 2022).

In practice, the legal equality between foreign and Kazakh citizens is supported by constitutional interpretations and case law. For instance, the Constitution of the Republic of Kazakhstan (1995) guarantees the protection of the rights and interests of all individuals within its

jurisdiction. Kazakh courts have interpreted these provisions in various cases to uphold the rights of foreign individuals, ensuring that they are treated equally under the law. Furthermore, Kazakhstan has ratified several international treaties that reinforce these principles (Banah, 2023). For example, bilateral agreements with neighbouring countries and conventions on legal assistance provide frameworks for cooperation and mutual recognition of legal rights. These treaties often include provisions for the recognition and enforcement of foreign judgments, which are critical for the effective resolution of cross-border disputes (Ngoc Du, 2024). However, the practical implementation of these legal principles can face challenges. Language barriers, differences in legal systems, and procedural nuances can complicate the representation of foreign individuals in Kazakh courts. To address these issues, it is essential to consider amendments to the CPC RK that would allow foreign lawyers to represent foreign clients in Kazakh courts. This change could enhance the quality of legal representation and ensure that the rights of foreign individuals are effectively protected. While the legal framework in Kazakhstan provides a strong foundation for the equality of foreign and Kazakh citizens, the practical application of these principles requires ongoing evaluation and adaptation (Vlahna, 2020).

The activities of the UN are based on the United Nations Charter (1945), which sets out the rights and obligations of the UN Member countries. A state willing to join the UN sends to the Secretary General an application for admission and a letter confirming its commitment to the obligations established in the United Nations Charter (1945). The United Nations Security Council is responsible for further consideration of the application. In the case of the latter, it is worth mentioning that the Council is made up of 5 members of the permanent plan and 10 members of the interim plan who are elected for a term of 2 years. Further, the application for admission must be approved by at least 3/5 members of the United Nations Security Council, which must include at least 5 members of the permanent plan (United Nations Charter, 1945). If the decision of the United Nations Security Council is positive, a further decision is made at the UN General Assembly, where at least 2/3 of the participants of the General Assembly should vote for the admission of the applicant (United Nations Charter, 1945). A country is therefore deemed to be admitted to the UN after the UN General Assembly approves the relevant resolution.

In accordance with the regulations contained in Articles 104 and 105 of the United Nations Charter (1945), the organization has the right to use such legal capacity, privileges, and immunities in the territory of each member state as are necessary for the realization of its functions and the fulfillment of its objectives. These rights and privileges include the ability of the UN and its authorized representatives to sign international agreements within their competence and mandate, to acquire and dispose of movable and immovable property, and to appear in court proceedings for the determination and resolution of disputes. It should be noted that in addition to the legal capacity and capacity to act as a subject of international law with special powers and as a legal entity, the United Nations organization enjoys diplomatic immunities and privileges. Furthermore, government representatives serving in the United Nations' authority and public officials working for the UN are granted such types of privileges, exemptions, and benefits that enable them to perform their various functions independently and without undue interference; for example, immunity from detention and arrest, exemption from legal process in respect of words spoken or written and all acts performed by them in their official capacity (ex officio liability).

Under the provisions of the Convention on the Privileges and Immunities of the United Nations (1946), the UN is allowed to utilize and benefit from immunity from every form of legal

process, judicial constraint, interference, or any other form of hindrance, except in those specific types of cases where the UN itself has expressly waived or disclaimed such immunity. This comprehensive legal immunity regime enables the UN to operate freely and effectively in pursuing its global mission of maintaining international peace and security, developing friendly relations among nations, and promoting social progress, better living standards, and human rights. The immunities and privileges granted to the UN are not designed to provide personal benefits to individuals, but rather to ensure the independent exercise of the organization's functions in the collective interests of all member states. As such, these legal protections are crucial for safeguarding the UN's impartiality, independence, and ability to act in accordance with the principles and purposes enshrined in its founding Charter.

It is worth emphasizing that the legal capacity, privileges, and immunities of the UN are recognized and upheld by member states in their respective national legislations and legal systems, as well as through the adoption and implementation of the UN Conventions on Privileges and Immunities. This reciprocal recognition and respect for the UN's special legal status is a fundamental aspect of the organization's effective functioning and is essential for maintaining the rule of international law and promoting cooperative relations among nations. It is worth mentioning that the UN Secretary-General has the right and obligation to refuse immunity in cases where, in his opinion, the immunity would impede the course of justice, and it can be refused without prejudice and harm to the UN (Convention on the Privileges, 1946).

In other words, foreign individuals, stateless persons, foreign organisations analysed by the Chisinau Convention (2002), international organisations analysed by the UN, have the full range of civil procedural rights under the current Republic of Kazakhstan legislation, but apart from cases of retorsion and conscientious waiver of immunity. In this way, they have civil procedural obligations, which are enshrined in Article 46 of the CPC RK (2015). Specifically, this is the obligation to inform the court about the true and actual circumstances of the case, to provide written evidence or give facts that refute any such evidence of the other party. This also concerns:

1. the right to review the files, obtain copies of them, and make excerpts from them;
2. the right to make objections;
3. to take part in judicial deliberations;
4. to submit the necessary range of evidence and to take part in its examination;
5. to make a statement of motion;
6. examine the trial transcript and submit observations;
7. to appeal against decisions.

Foreign natural persons generally have the right to fully use the procedural rights granted to them in good faith, without abusing the rights and legitimate interests of other persons and without allowing deliberate delay in the resolution and consideration of cases (Civil Procedural Code, 2015). It is important to pay attention to the regulation of Article 48 CPC RK (2015); according to it, the participation of a foreign person as a party in the case gives him the right to change the subject of the claim or the basis of the claim, to reduce or increase the amount of the claim, to recognize the claim in full or in part, to terminate the proceedings in the case by concluding a settlement agreement, an agreement to transfer the dispute to a mediator or participative agreement, as well as other procedural rights provided for by the specified regulation. This makes it possible to establish that foreign natural persons, which include citizens of other states, stateless persons, foreign legal entities and international organizations, have the same procedural rights and

obligations in civil proceedings as citizens of the Republic of Kazakhstan. In other words, they have equal opportunities to protect their rights and legitimate interests in court. At the same time, foreigners are obliged to conscientiously use the procedural rights granted to them, to respect the rights and legitimate interests of other participants in the process, and to contribute to the timely and effective consideration of the case.

Registration of foreign persons in civil proceedings is one of the issues that need to be amended. Currently, the relevant legislation contains restrictions on foreign advocates. First of all, it is worth noting that advocacy in the Republic of Kazakhstan is subject to licensing and that Article 32 of the Law of the Republic of Kazakhstan No. 176-VI "On advocacy and legal assistance" (2018) requires citizenship of the Republic of Kazakhstan as a precondition for obtaining the status of an advocate. However, it is worth mentioning that lawyers of a foreign state are not allowed to practise law in the Republic of Kazakhstan on a permanent basis. They have the right to be admitted to participate in civil proceedings as a representative only in individual cases, if the international agreement of the Republic of Kazakhstan with the respective state provides for such representation on a bilateral basis. In accordance with the rule secured by Article 46 (6) CPC RK (2015), the authority of a foreign advocate, in this case, must be confirmed by documents that certify the identity, status, and authority to provide legal assistance.

However, Law of the Republic of Kazakhstan No. 176-VI "On advocacy and legal assistance" (2018) has no provisions that indicate restrictions on representation by foreign advocates to foreign persons who carry out this activity as employees of a legal entity and those who are members as legal advisers. According to Article 475 CPC RK (2015) these persons provide the court with a list of documents that are authorised and issued by the competent authorities of foreign states, committed outside the Republic of Kazakhstan under the laws of a foreign state in relation to foreign individuals or a Republic of Kazakhstan organisation. Therefore, these documents are accepted by the courts of the Republic of Kazakhstan if there is consular legalisation or an apostille, unless otherwise provided for by the law of the Republic of Kazakhstan. There are also no restrictions for foreign persons to join the Chamber of Legal Advisers, as the main requirement is the right to work in the territory of the Republic of Kazakhstan according to Law of the Republic of Kazakhstan No. 176-VI "On advocacy and legal assistance" (2018).

Most post-Soviet countries abandoned state regulation of advocacy and licensing for legal practice. For example, in Georgia and Armenia, advocacy is equated with commercial activity, and there is no licensing (Colton, 2019). Expanding the civil procedural rights of foreign persons, namely the exercise of advocacy and the corresponding function of representation, would be very useful. This would provide an opportunity to gain foreign experience within the state and use it to improve the effectiveness of the legal system. In addition, it is important to note that the use of the latest technologies in the judicial process can facilitate the access of foreign citizens and organizations to justice. This may include the ability to file procedural documents electronically, participate in court hearings via video conferencing, and use the electronic exchange of legal documents between courts in different jurisdictions. On the one hand, this can contribute to the exchange of legal experience and best practices, and on the other hand, the issue of proper regulation and control of the activities of foreign lawyers in accordance with national legislation arises. justice and promote further harmonization of legal systems of different countries in the era of globalization.

The Republic of Kazakhstan is one of the countries with a developed market in the modern world economy. The key condition for this is that all directions and forms of international economic relations are actively functioning and developing in the state. This includes international trade in goods and services, scientific and technical cooperation, investment cooperation, currency transactions, and other aspects of international economic relations. International civil law cooperation with foreign legal entities and private entrepreneurs is also an important component.

As Hou and Liu (2020) rightly point out, the intensification and further expansion of partnership relations between foreign and Kazakh counterparties in the field of business inevitably leads to an increase in the number of disputes and disputes that arise in the course of their joint activities. In this context, it is appropriate to cite the opinion of the well-known expert Mackaay (2021), who emphasizes that in some cases, conflicts of interest between the parties to economic relations cannot always be prevented or resolved through direct negotiations. Therefore, in order to ensure the appropriate level of legal security of such transactions, it is extremely important to design and create favourable circumstances that will guarantee an objective, timely and professional resolution of any potential disputes between counterparties. In this aspect, a decisive role is played by the jurisdiction of dispute resolution, that is, a clear demarcation of the jurisdiction of different categories of cases between the courts of the relevant instance, as well as the procedure for the execution of the adopted court decisions. It should be noted that the effective functioning of dispute resolution mechanisms between foreign and domestic business entities is one of the key factors in creating a favourable investment climate and increasing the attractiveness of the country for foreign investors. After all, the lack of reliable legal guarantees for the protection of their property interests significantly increases the risks of doing business and can restrain the inflow of foreign investments.

According to national law, the term “jurisdiction” should be understood as a system of procedural rules that make it possible to allocate civil cases to the courts (Civil Procedure Code..., 2015). In this case, the jurisdiction of cases involving foreign individuals should be mentioned as the limits of jurisdiction. In other words, their limitation is due to the competence of foreign courts. As mentioned above, in accordance with Article 23 of the CPC RK (2015), the courts of general jurisdiction also arbitrate disputes involving foreign individuals, except as otherwise provided by an international agreement, existing legislation, or the parties’ agreement. As provided for in Article 466(1) of CPC RK (2015), the courts have jurisdiction to arbitrate cases involving foreign individuals if the defendant is located or domiciled in Kazakhstan. The Constitution of the Republic of Kazakhstan (1995), the primary law, specifies the protection of the rights and interests of citizens and sets out the rights of foreign individuals to apply to the courts of Kazakhstan and to use civil procedural rights on an equal basis with Kazakh citizens. In this case, it is a set of rights that are protected by the civil procedure. It is worth mentioning that the national treatment of foreign individuals in civil proceedings is unconditional; this means that they are subject to legal provisions on rights, duties, legal capacity, participation in cases, court costs, and so on.

Tsurkan-Saifulina et al. (2019) describe in detail the principles of private international law relating to the legal status of foreign persons and legal entities in the state judicial system. The authors distinguish two main regimes, namely the national regime and the most-favoured-nation regime. As for the first, it guarantees foreigners equal and favourable treatment by judicial authorities, similar to the treatment of citizens of their own state. The second regime gives foreigners and legal entities the same treatment as citizens and legal entities of any other third

country. Legal regulation of the representation of foreign persons in Kazakhstan is carried out in accordance with Article 472 (2) of the CPC RK (2015), which clearly regulates the issue of representation of foreign persons in legal disputes. This article recognizes the right of foreign persons to judicial protection in Kazakhstan, which can be exercised both by personal participation in civil proceedings and through an authorized representative. In this case, it is appropriate to single out the unique aspects of the representation of foreign persons in Kazakhstan. First of all, it should be noted that the representation of foreign persons in the courts of the Republic of Kazakhstan has its own peculiarities related to the specifics of cases involving foreign subjects. In particular, language barriers consist in the need to ensure the translation of legal documents and court hearings can complicate the process of representation. As for the legal differences, the representative needs to have a deep understanding of the legal systems of both the country of the foreign subject and Kazakhstan in order to effectively protect their interests. It is also necessary to emphasize the procedural nuances, since the representation of foreign persons may require additional formalities and procedures provided for by the legislation of Kazakhstan. Thus, comparing the results obtained in this study and the work of the researchers, it can be established that they equally emphasize the importance of ensuring equal and fair access to legal protection for foreign nationals in Kazakhstan.

According to Article 13 of the Constitution of the Republic of Kazakhstan (1995), everyone is entitled to a qualified plan of protection, and in some cases it is provided free of charge. The participation of foreign persons in international economic life, which affects various areas of activity, brings them into contact with the judicial system. In civil law, the issue of representation is regulated by legislation. In particular, Michener (2020) paid attention to the powers of the representative, and the researcher established that they should be clearly defined and confirmed by the relevant document. This document can be a power of attorney, which can be drawn up both in writing and orally, with recording in the minutes of the court session. This study also considered the specifics of the scope of the representative's powers. Thus, common to the results in both studies is the finding that the power of attorney must clearly outline the scope of authority that the representative has the right to exercise on behalf of their principal. These powers may include, but are not limited to, filing a lawsuit, taking steps to reduce or withdraw a lawsuit, admitting a lawsuit, and entering into a settlement agreement. As for the granting of powers by the prosecutor, it should be noted that in some cases, the powers of the representative may be granted by the prosecutor. Such powers can be general, i.e., extend to the entire court process, or special, i.e., relate to certain procedural actions (for example, receiving court costs). Thus, a common conclusion for both studies is that civil law with a foreign element can have certain difficulties related to differences in legal systems, language barriers, and cultural differences. At the same time, it was established that the legal regulation of representation is designed to ensure a clear definition of the representative's powers and protect the principal's interests.

Derrett (2021) emphasized in his study the broad powers of the legal representative of an incapacitated person. The researcher determined that this entity is authorized to file lawsuits on behalf of the disabled person, as well as initiate legal proceedings to protect the rights and interests of the disabled person. This study also highlighted the ability of a representative to respond to claims against an incapacitated person and, accordingly represent the interests of the incapacitated person in cases where a claim is filed against him. It should be emphasized that the exercise of these special powers requires prior approval by the court. This is done to protect the interests of the

incapacitated person and prevent abuse by his representative. Common to both studies is the conclusion that the scope of powers of the foreign representative is determined by the legislation of the country of origin of the incapacitated person. This means that the type and scope of powers may differ from those provided for by the legislation of Kazakhstan. Based on this, it should be established that the appointment of several representatives for an incapacitated person is allowed. Each of them has the right to exercise all the powers defined by law or power of attorney. Both studies indicated some caveats, as some specific actions, such as signing documents or attending a court hearing, can only be performed by one representative at a given time. The common conclusion of these studies is the establishment that the current legislation of Kazakhstan does not contain clear provisions regarding the specifics of the representation of incapacitated persons by foreign representatives. This can lead to legal uncertainty and complications during legal proceedings. Considering the above-mentioned aspects, there is a debate in legal doctrine about which representative will be more effective in protecting the interests of an incapacitated person – local or foreign. In this case, it is necessary to ensure a balance between the broad powers of the representative and the protection of the interests of the disabled person. Also, a priority task is to settle the issue of determining the powers of foreign representatives and their competence in Kazakhstani legislation.

According to Solehuddin (2022), it all depends on the nature of the dispute, meaning the type of legal relationship. We should agree with this and add that, for example, in the insurance field, the participation of a foreign representative would be more appropriate, as he has greater competence in the matter in question. However, according to Goldstein and Keohane (2019), considering the issue of state secrecy, restrictions on legal aid to foreign individuals, in this case, would be quite reasonable. This assertion is reasonable, quite valid and non-discriminatory as it takes into account the interests of the Republic of Kazakhstan.

Hudson and Day (2019) justify the need to involve a lawyer as a representative in civil disputes involving a foreign person. This position coincides with the results obtained during the conduct of this study. First of all, it should be noted that the complexity of civil disputes with a foreign element. Accordingly, it was established that such disputes often have a complex nature due to differences in the legal systems of the countries involved in the dispute. In addition, the researchers also pointed to conflict of law rules that determine which law will apply to a dispute. Based on this, the question arises regarding the recognition and enforcement of foreign court decisions. Within the framework of this study, the need to provide qualified legal assistance was emphasized. This shows that only a lawyer with thorough knowledge of civil law, private international law, and conflict of law rules can effectively represent the interests of a party in such a complex dispute. Both studies have in common that they describe the specifics of the application of the norms of foreign law. In particular, if the court will apply the norms of foreign law during the consideration of the dispute, the legal representative must have knowledge of this legal system. Based on this, the advantages of representation by a lawyer were formed, which include the protection of the rights and interests of the party, which consists in the fact that the lawyer can develop an effective legal position, collect the necessary evidence, and ensure compliance with procedural norms. In addition, it should be noted that communication with the court is simplified, since the lawyer knows legal terminology and can effectively represent the interests of the client before the court. Based on this, both studies share the conclusion of risk minimization, which is that a lawyer can help avoid mistakes during the legal process, which can lead to negative consequences

for the party. As for the factors that affect the effectiveness of representation by a lawyer, the researchers attributed to them the qualification of a lawyer, experience in conducting cases with a foreign element, and knowledge of foreign law. This allows us to form a common conclusion between studies that the involvement of a lawyer as a representative in civil disputes with a foreign element is an important step to protect the rights and interests of the party. The complexity of such cases requires qualified legal assistance, which can only be provided by a lawyer with the necessary knowledge and experience.

The proposed amendment to the Civil Procedure Code (CPC) of the Republic of Kazakhstan (RK) to allow foreign lawyers to represent foreign clients in Kazakh courts has the potential to enhance the efficiency of the foreign representation institute. By incorporating the following addition to Article 58 of the CPC RK (2015): "In cases where the court applies foreign norms of the law of the parties to the dispute when considering and deciding cases involving foreign natural persons, foreign lawyers may act as representatives of foreign persons," it is envisioned that the quality of legal representation for foreign individuals will improve. Foreign lawyers, with their expertise in foreign legal systems, will be better equipped to safeguard the interests of their clients, which could, in turn, minimize the risk of legal errors when applying foreign norms of law that may lead to negative consequences. Moreover, allowing foreign lawyers to serve as representatives in Kazakh courts will facilitate the development of international cooperation in jurisprudence, enhancing Kazakhstan's global legal standing. However, it is crucial to ensure that the adoption of this change takes into account international jurisdiction rules, evidence submission processes, and the legalization of foreign materials. These factors are essential to ensuring a fair and impartial resolution of disputes involving foreign parties. Nevertheless, this proposal must be carefully considered from multiple angles. While the introduction of foreign lawyers is expected to bring benefits, including the effective protection of foreign persons' rights, it is vital to assess the potential jurisdictional conflicts, political implications, and the sensitivity regarding Kazakhstan's national legal sovereignty (Sastrowiyono, 2019). The effectiveness of foreign lawyers in local courts should not be generalized, as the complexities of cross-border legal representation must be balanced with these broader considerations.

CONCLUSION

This research has been made to provide a detailed analysis of foreign persons' participation in civil proceedings under the current laws of Kazakhstan. In order to cover all the basic aspects of the research, the concept of "foreign element" and "foreign individual" was described at the outset. In line with this, it was found that the concept of the foreign individual is to be understood as foreign persons, stateless persons, and foreign and international organisations.

The legal status of foreign and international organisations was examined. Thus, foreign organisations were examined using the example of states parties to the Chisinau Convention, while international organisations were analysed using the UN as an example. In general, it was noted that all types of foreign persons have civil procedural rights and obligations on an equal basis with Kazakh citizens in accordance with the norms regulated by the Civil Procedural Code.

A problematic aspect that decreases the efficiency in the handling and resolution of cases involving foreign individuals is the institution of foreign representation. This issue is caused by the fact that foreign individuals are restricted from engaging representatives of their own country. The

current legislation also contains a number of restrictions in this respect, namely that a lawyer must have Kazakh citizenship and be licensed to practise in Kazakhstan. In accordance with this, foreign representatives cannot perform this type of activity on the territory of Kazakhstan. It has been noted that the involvement of foreign specialists will contribute to a higher quality and more effective consideration and resolution of civil disputes involving foreign persons. For this reason, they have a certain level of competence in matters of their own legislation.

Considering the above, there were recommendations to change the rules of civil procedure law. This would provide an opportunity to improve civil proceedings and promote the rights of foreigners. Subsequent research will focus on the challenges of civil procedure in a digitalised environment.

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