

ECONOMIC DISPUTES RESOLVING MODELS BY COURTS IN THE POST-SOVIET COUNTRIES

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ABSTRACT

The article is devoted to the study of models for resolving economic disputes by courts in the countries of the post-Soviet space (i.e. individual countries). Commercial courts should be viewed as a product of the historical development not only of the Soviet Union but also of European states since commercial courts first appeared in Western Europe and then spread throughout the continent. In this article, the authors examined the judicial systems of Ukraine, the Republic of Lithuania, the Republic of Armenia, the Republic of Kazakhstan, the Russian Federation, and the Republic of Belarus. The choice of these states was made taking into account the fact that they were all part of the Soviet Union, that is, they had the same initial elements of the judicial system, but at the moment, economic disputes are resolved differently in all these states. Based on the results of the study, the authors conclude that the following models of resolving economic disputes by courts can be distinguished as (1) economic disputes are resolved by economic courts based on the norms of the Economic Procedure Code (in this case, the status of economic courts can be determined in the Constitution or a special law); (2) economic disputes are resolved by economic courts based on the norms of the Civil Procedure Code; (3) economic disputes are resolved by general courts based on the norms of the Civil Procedure Code; (4) certain economic disputes are resolved by the bankruptcy courts based on insolvency legislation.

Keywords: Commercial Dispute, Commercial Court, Settlement of Commercial Disputes, Judicial System, Ukraine, Russian Federation, Republic of Belarus, Republic of Armenia, Republic of Lithuania, Republic of Kazakhstan.

INTRODUCTION

One of the critical tasks in the area of law of any state is the increase in the effectiveness of jurisdictional bodies provided via the development of scholarly legal *tools* (Kleandrov & Pluzhnik, 2018). *Economic instability, the volatility of the business environment, the increase in*

the number of economic crises has a huge impact on the financial stability and sustainability of organizations of various industries and forms of ownership (Kozlovskiy et al., 2019). In this regard, not only the quality of the legal framework that regulates economic legal relations is of great importance, but also the existence of an effective system of courts that would promptly resolve disputes arising in the course of economic activity. Commercial courts have gone through a fairly long evolutionary path of development, which was accompanied by structural changes, gradual expansion of competence, development of a procedural base, etc. (Butyrskiy, 2013). Commercial courts should be viewed as a product of the historical development not only of the Soviet Union but also of European states since commercial courts first appeared in Western Europe and then spread throughout the continent. The existing mechanism for protecting the rights and interests of participants in economic relations is a phenomenon that is based on rich European experience and has significant potential for the further development of economic legal proceedings in Europe.

The judicial system of different countries coincides in terms of the instance, rather than subject jurisdiction. It should be noted that the following system is the most common, i.e. The Constitutional Court, as the only body of constitutional jurisdiction; Supreme Court; appellate and local courts, which are established depending on the subject matter jurisdiction. In this regard, we propose to study the issue of consideration of economic (economic) disputes by the relevant courts, as well as the practice of establishing separate courts for their consideration in some states of the post-Soviet space, which is due to the following.

The Economic Courts Origins Formation in the Post-Soviet Countries

In all the republics of the Soviet Union, there was state arbitration, which was not a court in the traditional sense, but which resolved economic disputes. As noted by the British Researcher Fisher (2017):

“...Firstly, the soviet attitude to arbitration as a mechanism for dispute resolution was positive from the outset. Secondly, the nature of rights and obligations within the commercial sphere of soviet relations lent themselves to resolution by way of arbitration).”

With the collapse of the Soviet Union, its former republics (now independent states) inherited state arbitration, which at first continued to resolve economic disputes. However, over time, the states that were once part of the Soviet Union began to build the judicial system according to their model, where there was not always a place for economic courts.

The very existence of economic courts has both supporters and opponents. The key argument for the existence of a system of economic courts is the narrow specialization of the judges of these courts, who, in addition to being specialists in the field of commercial law, have a narrower specialization, i.e. corporate legal relations, bankruptcy, etc. The presence of a narrow specialization guarantees the highest quality solution to an economic dispute. Besides, the economic courts have always been distinguished by the promptness of resolving disputes.

“Jurisdiction specialization is a topic of interest in the administration of the justice system (Filho et al., 2019).”

The Italian Scientist E. Silvestri (2014) notes that:

“Judicial specialization may have positive effects, but it also has drawbacks: both are difficult to evaluate in vitro since they can be highly unpredictable and are likely to vary across different legal systems. Leaving aside the problems of institutional (and constitutional) ‘engineering’ that must be addressed when the possibility of establishing specialized courts is contemplated, no legal system should overlook the perspective of the court users: after all, if citizens trust their judges, it probably does not matter so much whether the judges are specialist or generalist” (Silvestri, 2014).”

At the same time, L. Terekhova (2014) says that:

“...specialization of judges now has a clear priority over establishing of specialized courts. Paying attention to the peculiarities of Russian society and the national legislation, it is noteworthy that it is, perhaps, precisely present, no true necessity (or possibility) for the introduction of specialized courts. this gap, in our view, must be filled in by alternative dispute resolution) (Terekhova, 2014)”

Opponents of the existence of economic courts refer to the presence of additional expenses of the state budget for maintaining a separate vertical of courts, as well as to the uncertainty of judicial practice, which arises from the existence of different judicial jurisdictions.

In this study, we will consider the judicial systems of Ukraine, the Republic of Lithuania, the Republic of Armenia, the Republic of Kazakhstan, the Russian Federation, and the Republic of Belarus. The choice of these states was made taking into account the fact that they were all part of the Soviet Union, that is, they had the same initial elements of the judicial system, but at the moment, economic disputes are resolved differently in all these states.

Commercial Disputes in Ukraine

According to Article 125 of the Constitution of Ukraine, the judicial system in Ukraine is built on the principles of territoriality and specialization and is determined by law. The court is formed, reorganized, and liquidated by law, the draft of which is submitted to the Verkhovna Rada of Ukraine by the President of Ukraine after consultations with the High Council of Justice. The Supreme Court is the highest in the judicial system of Ukraine (Constitution of Ukraine, 1996). Thus, the Constitution of Ukraine does not determine either the types of legal proceedings or the types of courts, limiting itself only to the constitutional status of the Supreme Court.

In more detail, the content of the judicial system of Ukraine is reflected in the Law of Ukraine *“The Judiciary and the Status of Judges”*, which, in parts 2 and 3 of article 17, provides that the Supreme Court in the judicial system is the Supreme Court, while the judicial system is made up of:

1. Local courts;
2. Courts of appeal;
3. Supreme Court (Law of Ukraine, 2016).

The local economic courts are the district economic courts, which, however, have not yet been created, and instead of the economic courts of the regions continue to exist. The economic courts of appeal are the economic courts of appeal, which are formed in the respective appellate districts, and the Economic Court of Cassation operates within the Supreme Court, which revises the decisions of the economic courts in cassation.

Commercial disputes are resolved based on the Commercial Procedural Code of Ukraine, which in part 1 of Article 2 determines that the task of economic proceedings is a fair, impartial,

and timely decision by the court of disputes related to the implementation of economic activities, and consideration of other cases referred to the jurisdiction of the economic court, with the purpose of effective protection of violated, unrecognized or disputed rights and legitimate interests of individuals and legal entities, the state (Law, 1991).

Commercial Disputes in the Republic of Lithuania

In the Republic of Lithuania (hereinafter Lithuania), the courts operate based on the Constitution and a special law called the 'Courts' Law. The Constitution of the state determines that the following courts exist in Lithuania: The Supreme Court, the Court of Appeal of Lithuania, district and district courts, and specialized courts may be established to consider certain categories of cases, such as administrative, labor, family and other categories of cases (Law, 1992). In turn, the Law Courts establishes that courts are divided into courts of general and special jurisdiction (Law, 1994). Courts of general jurisdiction include the Supreme Court of Lithuania, appellate, regional and district courts. They consider civil and criminal cases, as well as cases of administrative offenses. The courts of appeal hear civil and criminal matters. Courts of general jurisdiction, when considering a civil case, can decide on the legality of a separate administrative act. The specialized courts, in turn, are the courts that consider disputes arising in administrative legal relations. These are the Supreme Administrative Court of Lithuania and the District Administrative Courts. Thus, although the creation of specialized courts is envisaged in Lithuania, there is no separate court for considering economic disputes. At the same time, the Law 'Courts' provides for the possibility of creating other specialized courts, including for considering bankruptcy cases, which indicates the importance of the above institution for Lithuania.

Commercial Disputes in the Republic of Armenia

Article 92 of the Constitution of the Republic of Armenia (hereinafter Armenia) provides that courts of first instance of general jurisdiction, an appellate court and a court of cassation, and, in cases stipulated by law, also specialized courts operate in the Republic of Armenia (Law, 1995). The highest court, in addition to issues of constitutional justice, is the Court of Cassation. By the Constitutional Law of Armenia dated February 10, 2018, the Judicial Code of Armenia (Law, 2018) was adopted, which establishes that courts of first instance include courts of general jurisdiction and specialized courts. The latter, in turn, are the administrative court and the bankruptcy court. Among the courts of appeal, there are separate criminal, civil and administrative courts.

It should be noted that the bankruptcy court has been operating since January 1, 2019. Earlier, there was an economic court in Armenia, and later an economic court. But in connection with the implementation of the judicial reform, the economic court was liquidated. Thus, today, the courts of first instance consider all civil cases, except for cases provided for by the Bankruptcy Law (Law, 2007). Under the norms of the Civil Procedure Code of Armenia, all cases related to a dispute about law are considered civil, except for cases referred to the competence of the administrative court or the Constitutional Court (Law, 2018).

Thus, there are no economic courts in Armenia, but there is a bankruptcy court, which, along with the administrative court, is specialized.

Commercial Disputes in the Republic of Kazakhstan

Following the Constitution of the Republic of Kazakhstan (hereinafter Kazakhstan), the courts of the Republic are the Supreme Court of the Republic, local and other courts of the Republic established by law (part 2 of article 75). The Constitution provides for civil, criminal and other forms of legal proceedings established by law (Law, 1995). The Constitutional Law of Kazakhstan *“The Judicial System and the Status of Judges of the Republic of Kazakhstan”* (Law, 2000) stipulates that other courts can be created, including specialized courts (military, financial, economic, administrative, juvenile and others). Such courts are established by the President with the status of a regional or district court.

The first inter-district economic courts were formed in the city of Almaty and the Karaganda region based on Presidential Decree No. 535 dated January 16, 2001 (Decree of the President of the Republic of Kazakhstan, 2001). Later, in 2002, the Presidential Decree Formation of specialized inter-district economic and administrative courts (Decree of the President of the Republic of Kazakhstan, 2002) was adopted, which provided for the creation of economic courts in other areas. As noted in the scientific literature;

“... The appearance of the first specialized courts in the Republic of Kazakhstan can be associated with three strategic goals in the economic sphere, including opening the Kazakh market for foreign manufacturers, ensuring freedom of the economy, supporting entrepreneurship (Ablaeva, 2020)”

Economic courts in Kazakhstan are subordinate to civil cases of action for disputes arising from civil, family, labor, housing, financial, economic, land and other legal relations. It should be noted that specialized inter-district economic courts consider cases under the norms of the Civil Procedure Code of Kazakhstan (Law, 2015).

The specified normative legal act classifies disputes arising from economic legal relations to the category of civil cases. Their competence includes consideration of the following cases:

1. Property and non-property disputes, the parties to which are individuals engaged in individual entrepreneurial activities without forming a legal entity;
2. Corporate disputes, except for cases, the jurisdiction of which to another court is determined by law;
3. Cases of financial organizations restructuring and organizations that are part of a banking conglomerate as a parent organization and are not financial organizations;
4. Cases of debt restructuring, rehabilitation and bankruptcy of individual entrepreneurs and legal entities, as well as their liquidation without initiating bankruptcy proceedings.

Thus, an economic court operates in Kazakhstan, which considers economic cases following the norms of the Civil Procedure Code. It should be emphasized that the existence of economic courts in Kazakhstan is not provided for in the Constitution, but such courts operate as specialized.

Commercial Disputes in the Russian Federation

Arbitration courts in the Russian Federation (hereinafter referred to as Russia) are a component of the judicial system, which is directly provided for by the Constitution. Thus, the Constitution of the Russian Federation defines that judicial power is exercised through constitutional, civil, arbitration, administrative, and criminal proceedings (Law, 1993). The

judicial system of Russia is constituted by the Constitutional Court of Russia; The Supreme Court of Russia; federal courts of general jurisdiction; arbitration courts; justices of the peace of the subjects of Russia (part 3 of article 118 of the Constitution of Russia). Thus, in Russia, at the level of the Constitution, the existence of, among other things, arbitration and administrative proceedings is stipulated, while only the existence of arbitration courts (without administrative) is provided for by the Constitution.

The mention of arbitration courts in the Russian Constitution gives an additional guarantee of the very existence of such courts and their importance for the economy since their abolition is associated with the introduction of amendments to the Constitution, which, as a rule, is difficult.

At the same time, the activities of commercial courts are also regulated by a special law, namely the Federal Constitutional Law ‘Arbitration Courts in the Russian Federation’ (Law, 1995). This regulatory legal act provides for a system of arbitration courts, which consists of:

1. Arbitration Courts of Districts (Arbitration Courts of Cassation);
2. Arbitration courts of appeal;
3. Arbitration courts of the first instance in republics, territories, regions, cities of federal significance, autonomous regions, autonomous okrugs;
4. Specialized arbitration courts.

It should be noted that until 2014 in Russia there was the Supreme Arbitration Court of the Russian Federation, which was the highest judicial body for the consideration of economic disputes. In 2014, amendments to the Constitution of the Russian Federation were adopted and its powers were transferred to the Supreme Court of the Russian Federation (hereinafter referred to as the RF Armed Forces). Today, the RF Armed Forces created a judicial collegium for economic disputes in accordance with the Federal Constitutional Law “*The Supreme Court of the Russian Federation*” (Law, 2014).

Arbitration courts consider disputes based on and in the manner prescribed by the Arbitration Procedure Code of the Russian Federation (Law, 2002). The competence of arbitration courts includes the consideration of economic disputes and other cases related to the implementation of entrepreneurial and other economic activities.

Commercial Disputes in the Republic of Belarus

The Constitution of the Republic of Belarus (hereinafter Belarus) does not provide for which courts make up the judicial system. According to article 109 of the Constitution of Belarus, the judicial system in the country is determined by law (Law, 1994). The provisions on the judiciary are disclosed in more detail in the Code of Belarus on the Judicial System and the Status of Judges (Law, 2006), the second article of which stipulates that the judiciary is exercised through constitutional, civil, criminal, administrative, and economic proceedings.

Economic courts are part of the system of courts of general jurisdiction and are created in the regions and the city of Minsk. In the economic court of the region (the city of Minsk), a judicial collegium is formed to consider cases as a court of the first instance, an appellate judicial collegium, and a judicial collegium on administrative cases (part 2, article 36 of the Code of the Republic of Belarus on the Judicial System and the Status of Judges). Thus, economic courts

consider economic cases as a court of the first instance, on appeal, and on newly discovered circumstances.

The system of courts of general jurisdiction is headed by the Supreme Court of Belarus, which includes a judicial collegium for economic cases.

In 2013, a judicial reform took place in Belarus, the result of which was the merger of the Supreme Court and the Supreme Economic Court of Belarus with the aim of creating a single higher court in civil, criminal, administrative, and economic cases in the voice of the Supreme Court, which began work in this capacity in 2014. These changes were stipulated by the Decree of the President of Belarus 'Improving the judicial system of the Republic of Belarus' dated November 29, 2013 No. 6. As a result, the economic courts entered the system of courts of general jurisdiction and were renamed economic courts. As Belarusian scholars note;

"The result of this association is the achievement of the unity of judicial practice in the application of legislation and the interpretation of substantive law, the creation of an effective system of specialized courts headed by a single supreme judicial body (Kochurko, 2017)."

Legal proceedings in economic cases are carried out in the manner prescribed by the Economic Procedure Code of Belarus (Law, 1998). It should be noted that in Article 1 the mentioned code defines the concepts of commercial (or economic) dispute and economic affairs. So, an economic dispute is a dispute arising in the implementation of entrepreneurial and other economic activities. In turn, economic cases are lawsuits disputes arising from civil, land, financial, and other legal relations), cases arising from administrative and other public legal relations, cases on the establishment of facts of legal significance, cases of order production, other cases in stipulated by legislative acts.

Thus, the court has jurisdiction over cases related to the implementation of entrepreneurial and other economic (economic) activities with the participation of legal entities, individual entrepreneurs, and in the cases provided for by the Code and other legislative acts, with the participation of Belarus, administrative-territorial units of Belarus, state bodies, local government and self-government bodies, organizations that are not legal entities, officials and citizens (parts 1, 2 of article 39 of the Economic Procedure Code of Belarus).

CONCLUSION

Summing up the above, the following models of economic disputes resolution by courts can be distinguished:

1. Economic disputes are resolved by economic courts based on the norms of the Economic Procedure Code (in this case, the status of economic courts can be determined in the Constitution or in a special law);
2. Economic disputes are resolved by economic courts based on the norms of the Civil Procedure Code;
3. Economic disputes are resolved by general courts based on the norms of the Civil Procedure Code;
4. Certain commercial disputes are resolved by the bankruptcy courts based on insolvency law.

From the analyzed judicial and procedural systems of the post-Soviet countries, the versatility and uniqueness of models for resolving economic disputes by courts in different countries is seen. It should be pointed out that there is no universal model, and the peculiarities of resolving economic disputes in different countries are determined by many factors, for

example, such as the size of the country, historical characteristics, belonging to a legal family, etc.

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