

FEATURES OF THE CONSIDERATION OF CIVIL CASES INVOLVING FOREIGN PERSONS IN THE COURTS OF RUSSIAN FEDERATION

Anna V. Kuzmina^{1*}, Irina V. Vorontsova², Yana V. Kiseleva³ & Elena A. Vershinina⁴

¹ As.Prof., Cand., Mari State University, Russia, tsyplenkova@mail.ru

² As.Prof., Doctor., Mari State University, Russia, odiv@mail.ru

³ Postgraduate, Mari State University, Russia, jane_newkirk@icloud.com

⁴ Postgraduate, Mari State University, Russia, lilekk@mail.ru

*Corresponding author

Abstract

The article deals with the procedure for considering civil cases involving foreign individuals in the courts of general jurisdiction of the Russian Federation. The work focuses on the issues of representation, as well as the direction and execution of court orders.

The normative base of the research consists of multilateral conventions, bilateral treaties entered into on behalf of the Russian Federation or are on force in Russia in accordance with legal succession. The analysis of operation of the norms of international treaties in the regulation of national civil court proceeding is based on the provision of contemporary Russian legislation.

Keywords: international civil procedure, foreign persons, representative, court orders.

1. INTRODUCTION

The problematic issues of the institution of judicial representation in the civil process are already affected by many Russian authors. However, despite the relevance of the topic and availability of scientific research, the degree of lighting and study of this theme at present is relatively low, and problematic issues, respectively, remain unresolved.

Article 398 of the Civil Procedure Code of the Russian Federation (the CCP of the RF) states that foreigners have the right to apply to Russian courts for the protection of their violated or challenged rights, freedoms and lawful interests. At the same time, these persons enjoy procedural rights and fulfill procedural duties on an equal basis with Russian citizens and organizations.

In accordance with article 48 of the CPC of the RF foreigners can participate in civil procedure in person or

through their representatives. Personal participation in a civil case does not deprive a foreign citizen of the right to have a representative in this case.

A foreign person can also entrust representation of his interests in a Russian court to a consul of a consular establishment of a represented state. However, the Code of Civil Procedure of the Russian Federation does not explicitly provide such representation.

2. OPINION AND DISCUSSION

A consul is an official who is entrusted by a represented state to fulfill consular functions within a respective consular district on the territory of a host country; i.e. to protect legal and economic interests of a represented state and its citizens.

The basic provisions on consular representation of foreign persons are contained in multilateral and bilateral consular agreements with the participation of the Russian Federation. Consular representation of foreign persons in judiciary authorities is one of a consul's functions for protection of rights of citizens, organizations of a represented state abroad.

Among the most important functions of a consul according to article 5 of the Vienna Convention on Consular Relations of 1963 are as follows:

- protection of interests of a represented state and its citizens (individuals and legal entities) in a host state within the limits permitted by the international law (clause "a");
- assistance to citizens (individuals and legal entities) of a represented state (clause "e");
- protection of interests of citizens (individuals and legal entities) of the represented state, in case of the succession of "mortiscausa" in the territory of a host state in accordance with the laws and rules of a host state (clause "g");
- representation or ensuring proper representation of citizens of represented states in the judicial and other institutions of a receiving state in compliance with the practice and order adopted in a host state, with the aim of obtaining orders for preliminary measures protecting the rights and interests of these citizens, in accordance with the laws and regulations of a host state, if, due to the absence or other reasons, such citizens cannot timely implement the protection of their rights and interests (clause "i").

In other words, a consul performs a function of judicial representation by virtue of his official position and the functions assigned to him by the Convention. The provisions of international treaties with the participation of the Russian Federation granted consuls the right to represent the interests of their citizens in Russian courts without a written power of attorney.

At the same time, articles 49 and 53 of the Code of Civil Procedure of the Russian Federation establish a requirement for proper registration of a representative's or a capable person's power (i.e. power of attorney) to conduct a case in court. The question arises about the extent of the authority of a consul as a representative. What powers does a representative have, general, special or only common performing in a process without power of attorney? There are several points of view in legal literature regarding this issue.

M.M. Boguslavsky, A.A. Rubanov, D.D. Averin, N.A. Vasilchikova, I.V. Fedorov6 M. Yu. Porokhov believe, that since the representation of citizens of a represented state by a consul without power of attorney is established in international treaties for better protection of the rights of aliens, there are no base for any narrowing of the procedural rights of a consul; therefore, possible consummation by a consul on behalf of all admissible procedural actions, including those that require the submission of a special authority should be recognized. "The consular protection must use all established possibilities, including procedural legislation of a host country.. Denial of the right realization of all powers in a number of cases results in the deprivation of the person of consular protection as such".

Zhilin G.A. asserts that consuls acting without a power of attorney commit all actions on behalf of foreign citizen, including those that require special powers, as because otherwise is not provided for by an international treaty.

However, we cannot agree with this point of view on the following grounds. In this case, we cannot ignore the norms of Russian national legislation guided solely by the provisions of international treaties, since a judicial process takes place on the territory of the Russian Federation, which, in turn, is subject exclusively to the requirements of the CCP of the RF.

Special requirements (but not restrictions) established by articles 49 and 53 of the CCP of the RF for the

availability of a power of attorney and its proper registration does not affect the effectiveness of consular protection, as it does not create any direct or indirect obstacles to the implementation of such protection by a consul. It does not seem logical to regard this as depriving a person of consular protection does not seem logical. Also, these norms do not limit the consul's right to Participation in a civil process in order to implement judicial protection of rights and legitimate interests of foreign persons.

Luntz LA, Marisheva N.I., Galenskaya LN. adhere a different point of view. They believe that foreign consuls while implementing the representation in Russian (previously soviet) courts without power of attorney have the right to perform all procedural actions, except those, which should be specially stipulated in the power of attorney under the internal legislation. "The meaning of the treaty norms about consular representation of citizens of a represented state is in creating a possibility of taking urgent measures to protect the rights and interests of citizens. This goal is achieved by releasing a consul from the obligation to present a power of attorney. Marysheva N.I. writes, that there is no reason to draw a conclusion that the treaties are thereby abolish the norms of domestic legislation on the limits of powers of representatives, when they are consuls.

In our opinion, we can agree with this position, but with some exceptions. Indeed, it is advisable to admit a consul to a civil process without a power of attorney, but solely for the purpose of taking urgent measures to protect the rights and interests of citizens, since in this case a consul will act in the interests of foreign citizens. In the future, however, we consider it necessary to oblige a consul to give the court a power of attorney, from which a will of a principal to represent his interests by a corresponding consul would be clear.

It follows from the analysis of the Vienna Convention on Consular Relations that in the national legislation does not provide exceptions into the requirements for execution of a power of attorney for consuls or other officials for implementation of their representation in courts of the violated rights of citizens of a represented state. The wording "with observance of practice and order, adopted in a host state, representation or provision of appropriate representation of citizens of a represented state in judicial and other institutions of a state" contained in the Vienna Convention on Consular Relations, states that powers of attorney must be formalized according to the law of a host country, i.e. the scope of powers of attorneys must also be specified in them.

The issues of proper registration of a consul's authority in the civil process are not regulated by the Federal Law of July 05, 2010, N. 154-FL "Consular Charter of the Russian Federation".

3. CONCLUSION

Lack of an unambiguous approach to the problem of determining the scope of the consulship of a foreign country in a civil process generates discussions among scientists. This fact indicates the relevance of this issue.

Analysis of the above circumstances and law enforcement practice leads us to a conclusion that many controversial issues concerning the representation of foreigners are not resolved in legislation, therefore, additional legal mechanisms are necessary.

In this regard, we suggest supplementing Section V of the Code of Civil Procedure of the Russian Federation "Proceedings on cases involving foreigners" by an article that would imperatively establish proper registration of powers for consuls to conduct cases of citizens of a represented country in accordance with the requirements of articles 53 and 54 of the Code of Civil Procedure of the Russian Federation.

This suggestion is also due to the fact that procedural actions, committed beyond the powers granted to a representative, do not create legal consequences for a represented person.

REFERENCES LIST

1. Averin D.D. (1966). The situation of foreigners in soviet civil process. (P. 86). Moscow State University, Moscow;
2. Balashov A., Shalagina M. (2008). Problem aspects of the institution of judicial
3. Representation in the international civil process. Arbitration and civil procedure. Issue 8. (Pages 32 - 36);
4. Bogomolov M.V. (2013). Actual problems of the institute of procedural representation in civil and arbitration proceedings [Text]. Arbitration and Civil Procedure. Issue 1. (Pages 33 – 36);

5. Boguslavsky M.M., Rubanov A.A. (1960). Civil procedural rights of foreigners in the USSR. Soviet Yearbook of International Law, 1959. Academy of Sciences of the USSR. (1960). Moscow, (Pages 193-194);
6. Vasilchikova N.A. (2003). Proceedings on cases involving foreign persons in Russian courts: theory and practice: Author's abstract. Diss. ... doc. Saint-Petersburg. (P. 19);
7. The Vienna Convention on Consular Relations. [Electronic resource]. Retrieved from http://www.conventions.ru/view_base.php?id=161 (reference date: 10/14/2015)
8. Galenskaya L.N. (1970). Some consular functions for protection of citizens' rights. Vestnik of Leningrad State University. N. 23. Issue. 4. (P. 123);
9. Commentary on the Civil Procedure Code of the Russian Federation (Itemized) (2004). Edited by G.A. Zilina. 2-nd edition, revised and enlarged. Moscow;
10. Luntz L.A., Marysheva N.I. (2002). Course of the International Private Law: three volumes. Volume 3. International civil process. Moscow. (Pages 805 – 807);
11. Marysheva N.I. (1970). Consideration by courts of civil cases involving foreigners. Moscow. (P. 53);
12. Porokhov M.Y. (2001). Civil-law disputes with the participation of foreign persons. Diss. ... cand. Saint-Petersburg. (P. 5);
13. Rubanov A.A. 1962). Procedural position of citizens under contracts on legal assistance. Legal cooperation between socialist states. Moscow. (Pages 155 – 159);
14. Fedorov I.V. (2002). Civil and arbitration proceedings as a \subject of joint international legal and domestic regulation. Diss... cand. Kazan. (P. 25).