

JURISDICTIONAL IMMUNITY OF A FOREIGN STATE UNDER ENGLISH LAW

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Abstract. The article examines the current trends in the legal regulation of relations on granting jurisdictional immunity to a foreign state in the legal systems of foreign countries in the example of Great Britain. The author identifies the basic principles of development of this institution in the UK, their reflection on the rules of English law, and emphasizes the existence of problems associated with the application of state immunity in private law relations. The author substantiates the expediency of analyzing the most optimal legal positions reflected in UK legislation and tested in world practice. The author analyzes in detail the UK State Immunity Act 1978 and shows the role of case law in this process. The author analyzes the origins of limited immunity in the UK and provides a comparative description of English law and American law.

The paper looks at the methodological underpinnings of England's jurisdictional immunity in private international law and its theoretical and legal underpinnings. The author identifies the primary categories of state immunity, describes the idea and its features, and examines the underlying factors that led to developing a state's jurisdictional immunity. The two primary theories of state jurisdictional immunity under English law — absolute immunity and functional (limited) immunity — are examined by the author. The author gives particular consideration to the legal framework governing the State's jurisdictional immunity at the international and national levels. The author outlines the key elements of England's jurisdictional immunity doctrine about foreign private law contacts.

The scope of relationships in which the state may act as a subject of international law is defined by the author, who also looks at the immunity of the state as a subject of private international law. The State's sovereignty is seen as the foundation for immunity. The fundamental ideas of jurisdictional immunity in England are examined by the author, including absolute immunity and functional (limited) immunity, as well as how they are reflected in both national and international legal frameworks.

Keywords: immunity of a foreign state, concept of limited immunity, legal regulation of state immunity, commercial activity, property immunity

INTRODUCTION

The scope of the State's participation in both public law and private law relations complicated by a foreign element has been growing recently. The scope of these relations is quite extensive, and they are developing under the influence of one of the cornerstone institutions of private international law - the institution of State immunity. In this regard, it should be noted that recently there has been an increase in lawsuits against states not only for damages, in connection with commercial activities, and labor contracts, but also in connection with human rights violations by these states, for example, the use of torture, illegal imprisonment, nationalization.

MATERIALS AND METHODS

The study's methodological foundation consists of both special and general scientific methods, mainly formal-legal, comparative-legal, and historical-legal

approaches. The latter include the dialectical, system-structural approach, methods of induction, and deduction. The primary research methodology involves the analysis of formal-legal and historical methods. This approach is used to investigate current trends in the development of a foreign state's jurisdictional immunity under English law, as well as conceptual approaches to the fundamental principles of this institution's development and their manifestation in legal regulations.

RESULTS

With the adoption of the State Immunity Act of 1978, the United Kingdom enshrined at the legislative level the immunity of a foreign state, which provides for numerous cases related to the implementation of private legal relations, i.e., limited immunity of a foreign state. The adoption of this Law facilitated the adoption of similar laws by other states (not only the countries of the British Commonwealth), which was an important step in the development of the institution of jurisdictional immunity in private international law.

The Montreal Convention, which was drafted and ratified at the 1982 International Law Association Conference in Montreal took into consideration British law. With a few minor exceptions (the state had the burden of proof that it had judicial immunity, for example), the draft Convention mostly followed the form and content of the UK Immunities Act, limiting the application of the general rule of immunity to acts by which a state exercises its sovereign power. In 1994. This draft was approved with minor modifications by the International Law Association during a conference in Buenos Aires.

DISCUSSION

The issue of state immunity in civil law relations is one of the most pressing in private international law. The application of immunity is generally recognized in modern international legal practice. However, there is currently no consensus on the scope and application of this principle. Given the current political development of international relations and private international law, as demonstrated by a number of situations, including court cases about private law relations at the international level, the study of the legal nature of States' jurisdictional immunity in international private law relations is pertinent.

Issues related to the assessment of trends in the development of State immunity in private international law are relevant due to legal situations that constantly arise for both Ukraine and other States of the international community. A new trend in the development of the concept of limited state immunity is, for example, the denial of immunity to a foreign state in claims arising from the exercise of sovereign power by that state if human rights have been violated in the course of such exercise (e.g., the judgments in *Flatow v. Republic of Iran* 1998, *Republic of Austria v. Altmann* in 2004).

The relevance of the study is also emphasized by the fact that at present our country has no law on the immunity of foreign states in Ukraine (so far there is only a draft law), including in private law relations. The Ukrainian Cabinet of Ministers drafted the «On Jurisdictional Immunities and Liability of Foreign States» Draft Law (Reg. No. 2380 of March 16, 2015) and presented it to the Verkhovna Rada of Ukraine. For the national lawmaker, the urgency and complexity of the foreign state immunity issue are highlighted by the fact that the law has not yet been adopted. Due to the mutual effect of court rulings from other states and the development of the doctrine of private international law, the question of scientific investigation of the problem is also pertinent.

The development of state immunity in the legal positions of foreign countries, its legal nature, and its legal justification are of great methodological importance for its understanding. The study of the UK's experience in this regard is relevant given the impact of its legal position not only on the states of the Anglo-American legal system, but also on the legal systems of the world in general, and requires not only study but

also, perhaps, imitation.

Content. The concept of immunity in international law refers to a foreign state's lack of jurisdiction over the courts of another state. According to Professor V.N. Denisov, «a state's immunity has evolved into an absolute principle.» Foreign governments, their bodies, and their property should all be granted immunity. A foreign state must give its express consent before it can be brought as a defendant in a foreign state court. A foreign state's property cannot be the target of a claim or foreclosure in the process of enforcing a court order or arbitral award, nor can it be subject to coercive measures (seizure, etc.).

The notions of absolute state immunity and limited state immunity are the two basic ideas that are present in the laws of many nations. The foundation of the doctrine of absolute state immunity is the idea that a state is always immune from being subject to the jurisdiction of a court in another state without its consent, regardless of the legal actions it takes, whether as a sovereign or a private entity. The concept of absolute state immunity, which covers all areas of state activity with very few exceptions, has been applied by international law since its inception. «Since states are independent and legally equal, no state has the right to exercise jurisdiction over another state without the consent of the other; in particular, the courts of one state have no right to refer another state to their jurisdiction,» said Professor Peter Malanchuk of Erasmus University (Netherlands). Historically, the ruler of a state has been identified with the state, and even today the head of another state enjoys full immunity even in respect of his actions as a private person.» The granting of immunity to foreign states was largely due to the existence of relevant national legislation and the early practice of English and American courts. This doctrine has been dominant for a long time, but in the modern world, international private law relations are dominated by the doctrine of limited state immunity, which is enshrined in international instruments, national legislation, and judicial practice.

Due to the growing number of cases of countries participating in international private legal relations, laws were adopted in many foreign countries at the end of the 20th century to limit the immunity of a foreign state (Australia, Argentina, Belgium, Canada, Denmark, Greece, Italy, Japan, Norway, Pakistan, the United Kingdom, the United States, etc.). This led to the development of the doctrine of limited state immunity.

The emergence of the theory of limited immunity was a response to the activation of the state's participation in private legal relations on an equal footing with legal entities and individuals. However, the state, as a special kind of entity, was above the ordinary judicial procedure: it could not be sued, and its property could not be used as collateral for its participation in civil circulation. For private individuals, this state of affairs meant a de facto denial of judicial protection of their rights. Initially, the national legislation of many states allowed for claims arising from contracts and torts to be brought against states in their courts. In the United States, since 1863, the state could be sued for breach of contract. The US Tort Claims Act of 1946 abolished immunity from liability for torts; in the UK, the Tort Claims Act of 1947 established state tort liability. Moreover, many states began to waive immunity themselves if the state's contracting with private parties was in the public interest.

The concept of the origin of state immunity from the personal immunity of the sovereign from the jurisdiction of another state is generally recognized. This view is shared by both domestic and foreign scholars. Among domestic scholars, we will cite the point of view of E.V. Korniychuk, who writes: «In the common law states, in addition to the rules of international courtesy (comity gentium), the development of the principle of immunity of foreign states was largely influenced by the traditional immunity of their sovereign». A similar point of view is expressed by V.M. Timashova: «the special rule of state immunity, which arose from the personal immunity of the sovereign, was first formulated as such, in its «pure form», in connection with the consideration of cases on state courts». Australian scholar Ian Sinclair argues that if one wishes to look into the

roots of modern state immunity law, one will find that its origins lie in early theories of personal immunity of sovereigns or heads of state. The views of Sompong Sucharitkul (Thailand) are based on the formula: «The king cannot be a defendant in his courts», referring to the United Kingdom. Since the king personified the state, the courts, which were part of the central government, could not exercise jurisdiction over the sovereign, on whose behalf they could only act. The UK gave friendly foreign states' sovereigns the same level of immunity based on the king's immunity, which subsequently became the immunity of foreign governments and states. The scientist contends that the sovereign's immunity from the jurisdiction of his own state's courts is the source of the theory of state immunity in international law.

In English law, the concept of absolute immunity was established in the Middle Ages, which allowed foreign states to enjoy immunity concerning all their actions, including in the commercial sphere. As P. Malanchuk notes, «It is a remarkable fact that the world of Anglo-Saxon law held on to the old theory of absolute sovereignty much longer than many continental countries».

In England, as early as the Middle Ages, a customary rule was established in constitutional and legal relations, according to which the king could not be sued or prosecuted in his courts. English common law justified this rule by the fact that the king was the sovereign and personified the state, and the courts were part of the central state power and could not exercise their jurisdiction over the person on whose behalf they acted and in whose name they made their decisions. Along with power, the property of the state was inextricably linked to the person of the sovereign. Accordingly, in property relations related to the property of a foreign monarch, another sovereign could not exercise its jurisdiction.

The prominent English lawyer A. Dicey wrote that English courts do not have jurisdiction to consider or take procedural actions against a foreign state, coercive measures cannot be applied to the property of a foreign state, even if it is a matter of trade, and the property of the state is held by a third party who does not enjoy immunity. The principle of absolute immunity was broadly interpreted in the judgment in the case of *A.M. Luther v. James Sagor* (1921), which stated that no English court can verify whether a particular product belongs to a foreign state if an official representative of that state has made a statement about its ownership.

An important provision of the theory of absolute immunity is that the property of a foreign state cannot be subject to coercive measures (interim relief and enforcement of a court decision). Enforcement of a court judgment rendered in a proceeding to which the state has consented is possible only based on the goodwill of the state. Thus, back in 1938, in the famous case of the steamer «The Cristina», the House of Lords of the English Parliament noted that the steamer, which was transferred to the Spanish government by decree, enjoyed judicial immunity and could not be detained or arrested.

In the early twentieth century, decisions were made in cases related to the immunity of states in favor of its support. S. Sucharitkul, First Rapporteur of the UN International Law Commission on Jurisdictional Immunity of States and Their Property, cites Lord Atkin's decision in *The Cristina* case based on international law governing the immunity of states. «The basis for the application to set aside the court order and arrest the vessel are two international legal provisions that are reflected in our domestic law and seem to me to be well-established and indisputable. The first is that the courts of a country should not bring a foreign sovereign to court, i.e. they should not, by their procedural means, make it a party to the proceedings, regardless of whether they concern its person or claims to obtain certain property or compensation for damage from it. The second is that they should not, in the course of the proceedings, whether or not the foreign sovereign is a party to them, seize or detain property belonging to him or which he owns or disposes of».

The situation began to change after 1947 in connection with the adoption of the

Crown Proceedings Act in England, and the courts began to use the relevant logic not to grant immunity, but to deny it. Thus, in 1958, in the decision in the case of *Rahimtoola v. Nizam of Hyderabad*, a well-known judge, former Lord Keeper of the Court Records, Lord Denning, noted the following: «In all civilized countries, including England with the enactment of the Limitation of Suits Against the Crown Act 1947, there is a progressive trend towards recognizing the possibility of suing a sovereign in its courts. Foreign sovereigns should be no different. There is no reason why we should grant departments or agencies of foreign governments immunity that we do not grant to our own.»

Similar changes can be observed in the doctrine of English law. The 1951 edition of the *British Yearbook of International Law* published an article on state immunity by a well-known English scholar and international lawyer, Hersch Lauterpacht. Lauterpacht was a member of an interdepartmental committee that prepared a report for the English Parliament when discussing the issue of state immunity. In his article, the scientist advocated the abolition of foreign states' immunity before national courts, except when it is enjoyed by the state of the court. His strongest argument was that the protection of individual rights and justice requires the defeat of immunity. Only certain carefully limited areas of state activity should remain untouchable.

The state that enacted the Foreign Sovereign Immunities Act on October 21, 1976 — which is still in effect today — was among the first to reject the idea of the US having absolute immunity. The European Convention on State Immunity, also known as the Basel Convention, was created by a group of governmental experts within the Council of Europe, led by the European Committee on Legal Cooperation, and it was made available for member states to sign in May 1972. The following states were parties to the Convention as of January 1, 2006: Austria, Belgium, Cyprus, Germany, Great Britain, Luxembourg, the Netherlands, Switzerland, and the United Kingdom. The Convention came into effect on June 11, 1976. The purpose of the Convention was not only to regulate the issue of jurisdictional immunity but also to regulate the recognition and enforcement of judgments rendered against a foreign state. The Convention is based on the principle of limited immunity of states and defines cases when a foreign state does not enjoy immunity by the activities it conducts or the agreement it has concluded. The Basel Convention gave grounds for the adoption of national special laws containing provisions on the immunity of states and their property since the mid-1970s.

The international reality largely led to the adoption by the British Parliament of the State Immunity Act on July 20, 1978 (entered into force by order of the Lord Chancellor on November 22, 1981), as there was an urgent need to bring the domestic legislation of the United Kingdom in line with the new norms of international law. Furthermore, at that time, the Foreign Sovereign Immunities Act of 1976 explicitly codified the concept of limited immunity in U.S. law. A thorough, comprehensive legal reform was required, and this could only be accomplished by legislation. It was necessary to define and establish precisely the boundaries of foreign states' immunity from judicial jurisdiction, not only regarding commercial disputes but also about labor relations, torts, and intellectual property.

With the adoption of the State Immunity Act, the process of implementing the European Convention into British law began. The UK is beginning to introduce the doctrine of limited immunity, according to which a foreign state may be held liable in British courts for certain actions, usually of a commercial nature. However, difficulties arise due to the case law on which English law is based, as there are conflicts between old and new precedents.

In characterizing the UK Foreign Sovereign Immunities Act 1978, it is worth noting some peculiarities of UK law. The English legal system, based on the principles of common law, operates in England, Wales, and Northern Ireland, while the legal system used in Scotland is based on continental principles with elements of English common law (mixed legal system), which makes it somewhat difficult to apply legal

norms uniformly throughout the UK. The English common law system has long been shaped by judges, «English lawyers formulate the rules and principles necessary when referring to precedents - the doctrine of precedent. It is based on the so-called «stare decisis» principle of binding precedents of higher courts on lower courts. At the same time, the doctrine contains a number of provisions that allow judges to create new rules of law and change old ones, avoiding strict adherence to the stare decisis principle. Precedent, as a source of law, dominated until the doctrine of parliamentary supremacy was established. However, there is no hierarchy of sources in UK law, all of them (acts of parliament or statutory law, precedents, acts of delegated legislation, and legal customs) have equal legal force.

In the State Immunity Act 1978, the legislator adopted the structure of the European Convention on Immunity of States of 1972 (three parts, entitled: «Procedure of Prosecution by or against a State in the United Kingdom» (Part 1), «Proceedings against the United Kingdom in States Parties to the Convention» (Part 2), the third - «Miscellaneous and Additional Provisions» (Part 3)) and went on to list the cases of exceptions to which state immunity does not apply. The Preamble of the English law defines the content and objectives: «An Act to make further provision concerning proceedings in the United Kingdom by or against other States; to provide for the effectiveness of judgments rendered against the United Kingdom in the courts of States Parties to the European Convention on State Immunity; to make further provision about the immunities and privileges of Heads of State; and for connected purposes».

As in American law, the UK Act of 1978 provides a list of exceptions to the general rule of state immunities (part 1). Further, the Law defines the procedure for initiating proceedings against a state; a separate provision concerns the application of the relevant terminology in Scotland, whose legal system, as already noted, has its peculiarities. Additional provisions to Part 1 of the Law clarify certain issues of its application.

Part 2, «Judicial proceedings against the United Kingdom in the Convention States,» of the 1978 Act regulates relations relating to the enforcement of judgments obtained in the courts of the countries party to the European Convention on State Immunities of 1972 against the United Kingdom. The UK's ratification of the European Convention on State Immunities of 1972 largely determined the content of this part.

Part 3, Miscellaneous and Supplementary Provisions, regulates the procedure for giving effect to the 1978 Act, in particular its operation in Northern Ireland. The provisions of this part apply to heads of government, heads of state, and other entities that enjoy privileges and immunities under international law. It is noted that the provisions of the Law (§ 23) do not have retroactive effect, i.e. they do not apply to proceedings in cases that arose before it entered into force. British law does not contain a separate article on the definition of terms, which distinguishes it from American law, instead, the meaning of some of them is explained immediately in the text after their first mention or in additional provisions (for example, this applies to «commercial transactions», «dependent territories», etc.)

Similar to the US Foreign Sovereign Immunities Act of 1976, the UK Act begins by establishing a general rule on state immunity from jurisdiction, which is formulated in Art. 1: «A state shall be immune from the jurisdiction of the courts of Great Britain except as provided in this Part of this Act. The court shall apply this rule of immunity even if the state fails to appear in court».

The list of cases of exceptions to the principle of immunity in which a state cannot invoke its immunity from the jurisdiction of courts differs from the cases listed in the 1976 US Foreign Sovereign Immunities Act. The American law establishes general exceptions to state immunity that foreign states enjoy unconditionally. These exceptions are based on the commercial activities of a foreign state that has a connection with the United States. First, it is a waiver of immunity by a foreign state, directly or indirectly. In other words, a foreign state does not enjoy immunity from the jurisdiction of the

US and state courts if it has waived immunity or has taken actions that indicate this, such as participating in court proceedings or filing a counterclaim. Secondly, when a foreign state conducts commercial activities in the United States or activities outside the United States that have a direct impact on the United States. Third, when a foreign state «performs an act outside the territory of the United States in connection with commercial activity and that act has a direct effect in the United States,» the scenario is brought about. Therefore, under the Act, a foreign state may be held accountable if it conducts business anywhere and that activity has a «direct effect» on this nation. Regarding property used for commercial (trade) purposes, a foreign state is not immune from enforcement actions under the laws of the United States, the United Kingdom, Canada, Australia, etc.

The 1978 UK law provides a wider list of exceptions to the principle of state immunity, in particular, they are possible when «the state has consented in advance in writing, or later orally in the course of the proceedings, to the exercise of jurisdiction over it» (Article 2). Like the immunity laws of other states, English law provides that a foreign state does not enjoy immunity if it has voluntarily submitted to the jurisdiction of a foreign court. Such submission is made by way of a waiver of immunity in the form of an agreement. The Law (Art. 2(2)) provides for two types of agreements on waiver of immunity: a) an agreement on waiver of immunity in respect of an existing dispute; and b) a preliminary agreement. According to Article 2(6), the subordination of the state to the jurisdiction of a foreign court also applies to appeals that may be filed by the parties to the proceedings. However, this rule does not apply to a counterclaim that may be filed against a foreign state.

The Act sets out in detail the cases of exception to state immunity related to commercial activities or obligations that are to be performed in the UK under a contract. It follows from the Law that to determine the commercial nature of contracts concluded by the state, it is necessary to take into account their nature, including in some cases the purpose. The Law (Art. 3(3)) defines the term «commercial transaction» as: any contract for the supply of goods or services; any loan or other financing transaction, and any guarantee or indemnity in respect of any such transaction or any other financial obligation; or any other transaction or activity (commercial, industrial, financial, professional or other similar nature) in which the State enters into or participates in other than in the exercise of its sovereign powers.

As in the United States, a foreign state will not be able to obtain recognition of its immunity simply by asserting that the damage is of a public law nature. The 1978 Law contains both an express exception to the immunity of a foreign state that caused the damage (Article 5) and an implied or assumed exception, specified in the rule on commercial activities and immunity (Article 3(c)). According to this provision, it is possible to limit the immunity of a foreign state in case of a commercial tort (for example, defamation in connection with commercial activities. According to Article 5, a foreign state does not enjoy immunity in respect of legal proceedings relating to death or personal injury (clause a) or damage to or loss of property (clause b) resulting from an act or omission that occurred in the UK. As in the United States, a foreign state will not be able to obtain recognition of its immunity simply by arguing that the damage is of a public law nature. Purely economic damage, as well as damage to a person not related to physical harm and suffering, are not covered by this exception. However, this exception may be applied if the non-pecuniary damage resulted in physical harm to a person.

A state is not entitled to invoke immunity if it has initiated proceedings, actively participated in the proceedings, or taken any other action related to the trial (Article 2(3)). There is a reservation to this provision, according to which a state cannot be considered to have submitted to the jurisdiction of a foreign court if it has intervened or taken other actions only to claim its immunities. Another caveat provides that intervention

is not considered a waiver of immunity if the state learns of the existence of grounds for invoking immunity after intervention, or when the state asserts property claims, provided that it would have enjoyed immunity if the action had been brought against it on those grounds. Thus, the mere fact that a foreign state appears in a UK court to claim immunity does not automatically recognize the jurisdiction of the UK courts.

According to Article 4 of the 1978 Law, immunity is not granted to a state in respect of disputes related to labor relations. The general rule is that immunity is not granted to a foreign state if the employment contract was concluded in the territory of the forum state. This rule does not apply if, at the time of the initiation of the proceedings, the individual (employee) is a citizen of the employer's state (clause 2). In addition, the courts are not authorized to consider a labor dispute involving a foreign state if, at the time of the conclusion of the employment agreement, the individual was not a citizen of the country of the court or the parties agreed otherwise in the employment agreement. In addition, the Law stipulates that immunity is not granted to a foreign state if the individual performed work for an institution, agency, or other branch of that foreign state in the territory of the forum state and if such institution, agency, or branch was established to perform the functions of a trade mission and the employee had permanent residence in the territory of the forum state at the time of the contract. The Law (clause 3) also provides that immunity is not granted if the law requires that the case be heard in their court.

Pursuant to Article 6 of the 1978 Act, a foreign state does not enjoy immunity in disputes relating to the ownership of real estate located in the United Kingdom and transferred by gift or inheritance, as well as in respect of obligations arising from such ownership and use of real estate. In the UK, a foreign state is not granted immunity from enforcement actions in respect of property used for commercial purposes.

The special categories of property to which immunity always applies are the property of foreign diplomatic missions, the head of state, government, governmental unit, central bank of a foreign state, and the property of a legal entity associated with the exercise of sovereign power by a foreign state. The regulations establish immunity from interim measures for funds used to support the functions of the central bank. The immunity may be granted even if the funds were used for commercial purposes if it is proved that at the same time, such use ensured the functions of the central bank of a foreign state.

According to Article 7 of the 1978 Act, a foreign state does not enjoy immunity in disputes relating to the use of intellectual property (patents, trademarks, or industrial designs) owned by a foreign state and registered or protected in the UK.

The Law (Art. 8) also regulates corporate relations, according to this a foreign state does not enjoy immunity in disputes related to membership in companies established following the laws of the forum state or controlled from the territory of the forum state. The immunity is granted in cases where a dispute arises between the governing bodies of a legal entity and a state party to the legal entity. The provisions of Article 8(2) provide that the provision on the absence of immunity for a foreign state in corporate disputes does not apply if the parties have reached a written agreement to the contrary.

The 1978 Law enshrines the territorial principle of foreign state immunity. The act or omission that caused the damage must have occurred on the territory of that state. However, the English law only fixes torts (acts or omissions) and does not mention the need for harmful consequences to occur on the territory of the forum state.

The issue of resolving the situation with a tort that occurred outside the state arises. In this regard, the well-known case of *Al-Adsani v. Government of Kuwait and Others* is illustrative. A lawsuit for compensation for physical and mental suffering was filed by a British citizen against Kuwait and three individuals. The Court (High Court, Queen's Bench Division) recognized Kuwait's immunity in respect of actions (according to *Al-Adsani*) that took place in England, justifying its decision to deny immunity not by

reference to the public nature of the acts, but simply by recognizing the circumstances of the case as unproven. As for the actions that took place in Kuwait (torture, abuse), they were obvious to the court as an international crime. They are also recognized as such by English law, but the court emphasized that the issue of immunity in light of the 1978 Act, which contains a formulated tort rule, does not yet allow for the denial of immunity in the event of harm outside the UK. In the European Court of Human Rights, the Al-Adsani case was continued in 2001, but although not unanimously, but by a majority vote, the Court confirmed the existence of the principle of state immunity in international law and also ruled that limiting the right to a fair trial by granting jurisdictional immunity to foreign states pursues the aim of maintaining good interstate relations and is proportionate to that aim. Accordingly, the denial of access to justice in such cases, in the Court's opinion, does not lead to a violation of Article 6 ECHR.

A state's consent to the application of foreign law to a transaction involving its participation is not considered a waiver of immunity. A similar provision is enshrined in the UK law in Article 2(2).

The participation of the state in international commercial circulation by entering into contractual legal relations with foreign investors raises some other issues related to the scope of state immunity. For example, agreements concluded between the state, on the one hand, and a foreign investor, on the other, often contain arbitration clauses. This is due to the fact that the state does not want to submit disputes involving its participation to a foreign court, and the foreign investor does not want to consider possible disputes within the jurisdiction of the host state. It should also be borne in mind that international commercial arbitration is an alternative method of dispute resolution, i.e. its competence arises not under law, but by the will (agreement) of the parties, which ensures the impartiality and neutrality of the arbitral dispute resolution. Thus, the inclusion of an arbitration clause in a contract concluded between the state and a foreign investor reflects and secures the interests of both parties to the transaction. Following the generally recognized principle of international law, a state, being a party to an arbitration agreement, is bound by its provisions regarding the arbitration of a dispute. It should also be noted that most national laws do not restrict the state's right to enter into arbitration agreements. The possibility of the state entering into an arbitration agreement is recognized in the legislation of the United Kingdom, Switzerland, Sweden, Italy, and Germany.

The theory of the so-called permissible waiver of immunity as a result of the conclusion of an arbitration clause by a state is also supported by the national legislation of some states. Concerning the arbitration agreement, § 9 of the 1978 Law provides that the conclusion of a written arbitration agreement by a state means a waiver of immunity to the possible review of the arbitral award by the competent judicial authorities of a foreign state, as well as a waiver of immunity from enforcement of the award (para. 1). This provision of the Law does not apply in cases where the parties to the arbitration agreement have agreed otherwise and where the parties to the arbitration agreement are states (clause 2).

In English law, there is a general rule that a foreign state does not enjoy immunity in respect of maritime disputes, in particular, this applies to property claims against state-owned vessels and claims related to the enforcement of claims against such vessels. The caveat to this rule is that the state has the right to use ships for commercial (trade) purposes (Article 10 of the 1978 Law).

The Law (Article 13) contains provisions according to which the property of a foreign state enjoys immunity from interim and enforcement measures, except in certain cases, such as where the state consents to it or the property is used for commercial purposes. The law provides that any property of a foreign state used for commercial purposes and located in the UK may be subject to enforcement measures, regardless of whether it is related to the underlying claim (Article 13(4)).

Article 14, paragraph 1, defines the concept of «state» and what bodies fall under the definition of «state and its various governing bodies», refers to the government of a foreign state as the state itself, and defines the legal status of foreign heads of state. The provisions of the same article provide for the possibility of extending immunity to a federal subject by proclamation of a Crown decree in parliament, in the absence of which federal subjects are not entitled to invoke immunity.

The Law contains provisions on the determination of the body competent to establish whether the state has the right to enjoy immunity in each particular case, which is particularly important in applying the concept of limited immunity. In most countries that have laws on state immunity, this function is performed by the court, which is also provided for by the UN Convention on Jurisdictional Immunities of States and Their Property of December 2, 2004. At the same time, in this area, UK law gives greater importance to the conclusions of executive authorities. According to Art. 21 of the 1978 Act, the competence of executive authorities includes the provision of conclusions (certificates) in the following cases: a) when a party to the proceedings is recognized as a state; b) when a person is the head of a foreign state, head of its diplomatic mission, head of a foreign state authority, i.e. whether such person is authorized to act on behalf of a foreign state. Such certificates of executive bodies are «crucial» for the court, although this, according to the English researcher M. Sornarayah, contradicts Article 6.1 of the European Convention on Human Rights.

The UK has a practice of issuing certificates to the court on the existence of immunity of a foreign state in a particular case by the Ministry of Foreign Affairs. In particular, in the case of *Trawnik v. Ministry of Defense* (1984), the Ministry of Foreign Affairs of the United Kingdom, under Article 21 of the 1978 Act, issued an opinion on whether West Berlin could be considered a sovereign state within the meaning of the UK Law. In this case, the court considered a complaint by residents of West Berlin against the actions of the Allied military command, in particular the British military commandant. Taking into account the opinion of the British Foreign Office, the court found that the actions of the military command that were the subject of the complaint were committed by it as the authority of West Berlin, and therefore, the military commandant in this case has the right to invoke immunity.

The UK law also contains rules governing the procedural issues of consideration of cases in the English courts, in particular, the procedure for filing a statement of claim, and establishes the obligation of the defendant state to appear before the court within two months from the date of receipt of the document through the UK Foreign Office.

The 1978 Act does not exclude the possibility of recourse to English common law both in respect of state actions that occurred before it entered into force (i.e., it does not have retroactive effect) and in respect of matters to which the Act does not apply (Article 16). Thus, for example, the exceptions to the immunity of a foreign state established by the Act cannot be applied to actions taken by the armed forces of a foreign state located in the UK.

Part 2 of the Judicial Proceedings Against the United Kingdom in the Convention States Act 1978 regulates relations relating to the enforcement of judgments obtained against the United Kingdom in the courts of the countries party to the European Convention on State Immunities 1972. It provides for cases where the court is not obliged to enforce the judgment, in particular, if it is contrary to public policy or the procedure for notification of proceedings described earlier has been violated. Other exceptions to the enforcement of judgments are cases where a judgment has already been rendered in another contracting state in the same case between the same parties where hearings are ongoing that began earlier, or where the court did not have jurisdiction to render the judgment or applied an incorrect law.

It should be noted that the UK State Immunity Act 1978 does not contain a special exception to the immunity of a state responsible for torture, blackmail, restriction of

human liberty, etc. However, the Act contains a general exception to the judicial immunity of a foreign delinquent state, which can be used by a person whose fundamental rights have been violated by a foreign state. The territorial principle of foreign state immunity, as defined in the Law, stipulates that the actions (inaction) that caused the damage must take place on the territory of that state, i.e. it only covers torts and does not say anything about the occurrence of harmful consequences on the territory of the court state.

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