

NB. – ON JUDICIAL PRACTICE OF CONSIDERATION OF CIVIL CASES WITH A FOREIGN ELEMENT. – 20 MAY 2013.

May 16, 2013 the High Specialized Court of Ukraine for consideration of civil and criminal cases (hereinafter - "**HSCU**") has published on its website information letter № 24-754/0/4-13 "*On judicial practice of consideration of civil cases with a foreign element*".

The purpose of this letter is to provide an information about generalized judicial practice in Ukraine in cases involving a foreign element.

In this letter VSSU points out that the jurisdiction of Ukrainian courts in cases with foreign element shall be determined at the time of the commencement of the proceedings despite the fact that in the course of the proceedings the reasons for such jurisdiction have disappeared or changed, except as provided in *Article 76 of the Law of Ukraine "On International private law"*. At the same time, the court shall refuse to commence the proceedings, if the court or other jurisdictional authority of a foreign country already considers a case between the same parties, with the same subject-matter and on the same grounds.

In addition, special attention is paid by HSCU to judicial immunity, which applies in cases with a foreign element in relation to private law relations, in which one of the parties are foreign states, accredited in Ukraine diplomatic representatives (representative offices) and the consular offices of foreign states, their officials, and in other cases.

At the same time it is mentioned that the diplomatic and consular immunities are governed by the national law and international conventions: *the Vienna Convention on Diplomatic Relations 1961* and *the Vienna Convention on Consular Relations and Optional Protocols in 1963*, - and in some cases they fall under the jurisdiction of the courts of Ukraine.

However, HSCU notes that the rule of judicial immunity does not extend to the possibility of suing the foreign state in a national court of this state, since the judicial immunity is a lack of jurisdiction over foreign states in the courts of other foreign states.

HSCU points out that civil cases with a foreign element is carried out by the "*law of the court*", i.e. legal basis for application of foreign law in the territory of Ukraine are the provisions of *the Civil Procedure Code of Ukraine*, *the Law of Ukraine "On International Private Law"*, etc.

The legal rules of other states shall be applied by the court if it is prescribed by the law or an international treaty, approved by the Verkhovna Rada of Ukraine.

In cases where the court is obliged to apply foreign law, it uses the following methods to obtain information about the foreign law:

- 1) personal clarification of the content of foreign law by the judge in charge of the case;
- 2) the use of expert opinions;
- 3) diplomatic procedure to obtain such information;
- 4) a formal request through the Ministry of Justice of Ukraine;
- 5) obtaining certificates through the legal aid system;
- 6) the exchange of legal information;
- 7) direct exchanges between courts of different states and with other competent authorities;
- 8) the establishment of foreign law by the parties, etc.

In addition, the court can rely not only on foreign laws, but also on customs and judicial practice to the extent to which the latter are determined as sources of law in the relevant states. In a number of civil law cases customs are interpreted by international organizations. For example, developed by the International Chamber of Commerce Uniform Customs and Practice for Documentary Credits, the Uniform Rules for Collections, the rules for the interpretation of trade terms "Incoterms".

This information shall not be considered as a legal advice and is accurate at the date of its publication. Should you require further information, please contact the law firm Rabomizo.