LEGAL NATURE OF JURISDICTIONAL IMMUNITY OF STATES IN INTERNATIONAL PRIVATE LAW

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Abstract: The article examines the theoretical and legal foundations of jurisdictional immunity of states in private international law and its methodological foundations. The author analyzes the principles of formation of jurisdictional immunity of states, defines the concept and its characteristics, names the main types of immunity of states. The main theories of jurisdictional immunity of states are considered: absolute immunity and functional (limited) immunity. The author pays special attention to the legal regulation of jurisdictional immunity of states at the international and national levels. The main provisions of the concept of jurisdictional immunity of states in private international law relations are revealed.

Keywords: private international law; state immunity; jurisdictional immunity; state sovereignty.

1 Introduction

The study of the legal nature of the jurisdictional immunity of states in private international law relations is relevant in view of the current state of the political development of international relations and private international law, as evidenced by numerous situations, including court cases concerning private-law relations at the international level. Issues related to the assessment of trends in the development of state immunity in private international law due to legal situations that constantly arise both for Ukraine and for other states of the international community are relevant.[1]

The problem of immunity of a foreign state and its property is relevant for many countries. In particular, in Austria, in 2002-2004, American courts considered the issue of seizing several paintings by the famous Austrian artist G. Klimt from the Austrian National Gallery and transferring them to a private person (US citizen) who claimed her rights to them. A similar situation arose for Germany, when in 2001 the Greek court ordered the seizure of German real estate in Athens, primarily the buildings of the Goethe Institute and the German Archaeological Museum. In 2002, a number of American citizens filed a civil lawsuit in the US court against a French railway that transported more than 70,000 Jews to death camps during the Second World War. Also in 2002, a lawsuit was filed against Japan by several South Korean citizens who were used as sex slaves during the Second World War [15].

The relevance of the study is also confirmed by the fact that nowadays in Ukraine there is no law on the immunity of foreign states in Ukraine, including in private legal relations [24]. The fact that the law has not yet been adopted emphasizes the urgent nature of the issue of foreign state immunity, which is representing difficult problem for the legislator. The issue of scientific study of the problem due to the mutual influence of court decisions of different states and the formation of the doctrine of private international law is also relevant.

2 Materials and Methods

The methodological basis of the study is made up of general scientific methods, including the dialectical, system-structural approach, methods of induction and deduction, as well as special ones – primarily, formal-legal, comparative-legal, and historical-legal methods. The main research method is the method of comparative legal analysis, which is used to identify the main definitions of the concept of "state immunity", conceptual approaches to this institution in private international law.

[1] For example, the suit of the Addox company to the court of the Southern District of New York against Ukraine with the demand to prohibit the auction for the sale of shares of the Kryvorizhstal combine in October 2005.

3 Results and Discussion

Formation of jurisdictional immunity of the state

The establishment of state immunity, i.e., non-subordination to the legal order of a foreign state, took place in ancient times, and since then has been based on the principle "equal has no power over equal" (lat. *par in parem non habet imperium*).

At the early stage of the formation of this institution, the courts substantiated the right of a foreign state to immunity by international courtesy - *comitas gentium* [19]. It is mentioned already in the first judicial decision of the Dutch court in 1688, which recognized the immunity of a foreign country: three Spanish warships were detained in a foreign port, in connection with the claims of private individuals to the Spanish king. The arrest was lifted and declared illegal, as it violated the rules of courtesy towards a foreign sovereign [1]. Later, these norms grew into customary law, and began to be called "ambassador's law". The Dutch professor Peter Malanchuk emphasizes the customary nature of the norms regarding state immunity [14]. State immunity was "established and acted, first of all, as a customary legal norm" [25]. Filing a claim against a foreign state, securing a claim and levying a foreclosure on the property of a foreign state could not be allowed. Originating in the Middle Ages, this principle dominated in the international legal practice and theory for a long time. In particular, at the beginning of the 19th century, American courts considered the right of states to immunity as an international legal custom, which is based on the principles of state independence and sovereignty. The decision of the US Supreme Court in 1812 is indicative – it was directly based on the presence of international legal custom. This complete equality and absolute independence of sovereigns and these common interests, prompting them to mutual relations, as well as the exchange of good services with each other, gave rise to a variety of legal cases, which proceed from the fact that each sovereign refuses to fulfill a part of that complete, exclusively territorial jurisdiction, which is considered as a property of each state [27].

In the New and Modern times, the theory (concept) of absolute immunity was the dominant concept in the formation of state immunity for a long time (remaining dominant in the Soviet period in the domestic Soviet doctrine of international law). Only at the end of the 19th century - the beginning of the 20th century, at the theoretical level, recognition of the position that state immunity interferes with ensuring the normal participation of the state in commercial relations occurred, and the first attempts to formulate the main positions of the theory (concept) of functional (limited) immunity appeared.

At the end of the 19th - beginning of the 20th century, among the countries of continental Europe, and later others, including the USA, the practice spread according to which a foreign state as a subject of private law and a carrier of private rights can, along with other private individuals, be subject to the jurisdiction of a local court. The US State Shipping Act of 1925 recognized the subjection of US state merchant vessels to foreign jurisdiction. The Brussels Convention on the Immunity of State Ships of 1926 adopted later, equated state merchant ships to private ships "with respect to claims concerning the dispatch of ships and the carriage of cargo". Even those states (the practice of Spain, France, etc.) that did not grant judicial immunity to foreign private individuals still provided them with immunity from execution based on the principle of independence of states [5].

During the 20th century, the theory of limited immunity of the state was in constant development, the number of cases when the state has the right to invoke immunity was reduced, and the mechanism of separating the commercial activity of the state from actions related to the implementation of its sovereign functions was improved. In the middle of the 20th century, the

theory of state immunity took on a debatable nature in the theory of private international law. Namely during this period, the main provisions of the theory of absolute (I. Brownlee, P. Malanchuk, L. Oppenheim, M. Ushakov) and functional (limited) immunity of states (B. Festivald, V. Bishop, A. Kuhn, S. Sucharitkul, M. Boguslavskyi, H. Fox) were developed.

The absolute principle was dominant in the international legal theory and practice for a long time. Currently, the circle of states that recognize the dominance of this principle has narrowed. There are reasons for this: firstly, it hinders the development of commercial relations, as the counterparties of the state essentially lose their rights to judicial protection of their property cases. Secondly, absolute immunity is very often not implemented in practice. A state on the territory of a foreign state can count on only the amount of immunity for which the host country is willing to waive its jurisdiction. Therefore, the states that are exempt from absolute immunity additionally protect their rights either by the condition of reciprocity or by the possibility of applying retort.

It should be noted that "the jurisdiction of the state does not mean the absoluteness of power, since modern international law in certain cases establishes restrictions on the state's exercise of its jurisdiction" (M.M. Hnatovskyi, Z.V. Tropin) [19]. Such restrictions include restrictions on the territory of the state, for example, on establishing the status of international channels, as well as various immunities of foreign states and their property.

At the end of the 20th century, the theory of limited sovereignty was consolidated at the normative level and was characterized by the adoption of national laws on state immunity, the first of which was the US law on state immunity of 1978 and the European Convention on State Immunity of 1972. At the universal level, the work program of the UN International Law Commission includes issues of state immunity, which ended at the beginning of the 21st century by the adoption at the 59th session of the UN General Assembly of the Convention on jurisdictional immunities of states and their property.

At the beginning of the 21st century, especially in the conditions of globalization [13, 22], the sphere of state participation in both public-law and private-law relations, complicated by a foreign element, is growing significantly. A state acting as a sovereign always has immunity, however, if the state acts as a private person (for example, carries out foreign trade operations and/or engages in other commercial activities), then its immunity is limited.

Jurisdictional immunity of states: concepts and types

Thus, state immunity is an integral property of the state as a subject of international law. In the modern legal world, the rule "equal does not have jurisdiction over equal" (lat. "*par in parem non habet jurisdictionem*") applies, i.e., the state cannot file a lawsuit against another state, demand from a foreign state recovery of property and carry out other procedural actions, except for cases agreed to by the state - potential defendant.

There are different views on the legal characteristic of immunity in the doctrine of international law. Some scientists believe that the jurisdictional immunity of the state is a principle of international law (V.N. Denisov), while others focus on the fact that immunity is based on the sovereignty of states, their sovereign equality (H.S. Fedyniak). Some scientists prove that immunity does not have an imperative character (Y. Brownlee), while others, on the contrary, point to its imperative character (M.M. Boguslavskyi). It is especially important to clarify this characteristic in cases where a foreign state is the subject of private legal relations.

Despite the difference in doctrine regarding the imperativeness or dispositive nature of immunity norms, the legislation and practice of all states is clearly and unconditionally based on the principle of immunity. International conventions, legislation, practice, and doctrine of international law reveal such a concept as the essence of immunity in different ways, but the common understanding of state immunity is the withdrawal of a state and its organs from the jurisdiction of another state.

The term "immunity" etymologically comes from the Latin *immunitas* and means freedom from something, inviolability, independence. It is used in various fields, including biology and medicine. In legal science, there are several approaches to the interpretation of this term. Thus, in criminal proceedings, immunity provides for the release of certain persons from the performance of certain procedural duties. In constitutional law, along with the term "immunity", the term "indemnity" is also used, which is associated with the activities of deputies. Indemnity means freedom of speech and voting in the parliament, as a result of which it is not allowed to bring the deputy to responsibility for his parliamentary activity (speech and other actions during the exercise of the mandate: in the chamber, committee (commission), in other cases when the statement is of a public nature, as well as for the content of introduced draft laws and other decisions, for voting, questions and requests, amendments, etc.) [6].

In the international law, immunity is understood as the non-jurisdiction of a state to the courts of another state. Let us turn to the "Legal Encyclopedia", which states that "the immunity of the state has developed as a principle that has an absolute character. Immunity should be enjoyed by foreign states, their bodies, as well as property belonging to these states. A state cannot be brought to the court of a foreign state as a defendant, except in cases of its direct consent to this. The property of a foreign state cannot be subjected to measures of a coercive nature (seizure, etc.), it cannot be the subject of securing a claim and levy on property in order to enforce a court or arbitration decision" [5].

The immunity of a foreign state consists in the release of one state from the jurisdiction of another state, which allows it to be called jurisdictional immunity. Defining jurisdiction in the most general way, it can be said that it is the authority of the state based on state sovereignty, or as the American scientist B. Oxman notes, "its power to decide whether to act, and if to act, how" [17]. British professor M. Shaw considers jurisdiction as the power belonging to the state to influence people, property and circumstances through legislative, executive, and judicial acts. Jurisdiction is an important component of state sovereignty. Shaw notes that the jurisdiction of the state is related to such principles of international law as "state sovereignty, equality of states, and non-interference in internal affairs" [21]. Another well-known British scientist, I. Brownley, understands jurisdiction as a manifestation of "the general legal competence of states, which is often called sovereignty. Jurisdiction is one of the aspects of sovereignty and consists of judicial, legislative, and administrative competence" [2].

Jurisdiction and immunity from jurisdiction are correlated as "yes" and "no" answers. In fact, if the jurisdiction answers the question of what the state power of a certain country can do, then the immunity from jurisdiction determines the subjects (state, international organization, diplomatic and consular missions, military bases on the territory of a foreign state, etc.) on which the power of this state in full volume cannot be extended.

The issue of jurisdiction is an ascending one. If there is no reason for its production, then the problem of immunity does not arise. In the Commentary of the UN International Law Commission to Art. 6 of the draft articles "On jurisdictional immunity of states and their property", it is stated: "Since ... immunity is granted from the jurisdiction of another state, it is quite clear that there is a presumption of jurisdiction of this other state in relation to the issue under consideration; otherwise, there would be no need at all to invoke the rule of state immunity in the absence of jurisdiction. Thus, there is a mandatory and inextricable connection between state immunity and the presence of jurisdiction of another state in relation to the issue under consideration" [21].

Jurisdictional immunity of the state is an emerging concept in the study of state immunity in both public and private law

spheres. From the standpoint of the foundations of international law, the situation when one state limits the immunity of a foreign state without the consent of the latter is unacceptable. The domestic laws of states regulating the issue of jurisdictional immunity of a foreign state should not contain specific restrictions aimed at limiting the immunity of a foreign state to the extent of obligations greater than the foreign state itself has assumed at the international legal level or at the level of its own domestic legal system. Any type of immunity (for example, judicial immunity) can be considered as an independent element in the meaning of the general concept – "jurisdictional immunity". The concepts of "state immunity" and "jurisdictional immunity" are close in meaning, but they cannot be equated, since there are quite a lot of elements that fill the meaning of the concept of "state immunity", such as the concepts of "fiscal immunity", "tax immunity", etc.

Based on the fact that the state, as the bearer of public power, cannot be subject to the legislation, jurisdiction, and management of any foreign state, it is subject exclusively to international law. The jurisdictional immunity of the state is based namely on this postulate, which is also confirmed by the judicial practice of many states; scientists pay attention to such a position in the US Supreme Court in considering the case *Oetjen v. Central Leather Comp*. (1918): "Every sovereign State is bound to respect the independence of every other sovereign State, and the courts of one State shall not pass judgment on the acts of the Government of another State, done within its own territory. Compensation for damages caused by these actions must be achieved by the means used by sovereign states in their mutual relations".

Another postulate on which the jurisdictional immunity of the state is based is that immunity is grounded on the sovereignty of states, their sovereign equality. This means that none of the states can exercise its power over another state, its bodies, or property. This status is characterized as *par in parem non habet imperium* – "an equal has no power over equal".

The majority of scientists (L. Lunts, G. Fedyniak, A. Cassese) associate the state's ability to possess jurisdictional immunity namely with the presence of sovereignty, that is, non-jurisdiction of the courts of other countries and protection from enforcement measures of a coercive nature, as well as from the enforced execution of a decision rendered against the state. The Italian professor A. Cassese in his well-known work "International Law" calls sovereignty an all-encompassing category and characterizes it as the right to extend one's power to all persons who are on the territory of the state. This right, according to the scientist, is the "quintessence of sovereignty" [3]. Another, Thai, scientist, member of the UN International Law Commission S. Sucharitkul wrote: "... the basis of immunity in the international law can be found in the principles of sovereignty, independence, equality, and dignity of the state" [23].

The principle of sovereign equality of states, which is the fundamental basis of the principle of state immunity, is enshrined in the UN Charter and detailed in the Declaration on the Principles of International Law Relating to Friendly Relations and Cooperation between States in accordance with the UN Charter of October 24, 1970. According to the Declaration on the Principles of International Law 1970, "all states enjoy sovereign equality" [4]. They have the same rights and obligations and are equal members of the international community, regardless of differences of an economic, social, political, or other nature. The concept of "sovereign equality" contains a number of constituent elements, among which the following are decisive: a) states are legally equal; b) each state enjoys the rights inherent in full sovereignty; c) each state is obliged to respect the legal personality of other states; d) territorial integrity and political independence of the state are inviolable, and others.

In the doctrine of international law, it is generally recognized that two main concepts of state immunity are distinguished: absolute and functional (limited). Absolute immunity originates from the state, expresses its will, and is organically connected with power. The authorities create a special, exclusively legal regime for individual subjects to exercise their powers and ensure the development of international relations. Absolute immunity is inherent in public-law relations between states, while in private-law relations the state acts as an equal participant in private international law and it a priori has functional (limited) immunity. In cases where the state acts as a private person within the framework of private international law, foreign economic law, it is about its commercial activity, and in such a case it does not have absolute immunity. It has functional (limited) sovereignty in such cases.

The European Convention on State Immunity of May 16, 1972 (Basel Convention) is based on the concept of functional (limited) immunity [7]. According to the Basel Convention, the functional (limited) immunity of the state can be: a) positive and b) conditional. Positive functional (limited) immunity is the immunity of the Contracting States under this Convention, when they non-contractually recognize the jurisdiction of the courts of another Contracting State (Article 1, Clause 1). Conditional functional (limited) immunity is the immunity of contracting states, which is based on private treaties or court decisions outside the Basel Convention.

In the theory and practice of states, several types of immunity are distinguished: 1) judicial; 2) from preliminary security of the claim; 3) from enforced execution of a court decision; 4) property [8]). Judicial immunity is characterized as the most important immunity of the state, which establishes the non-jurisdiction of the court of another state, although the state can be a participant in the legal process, that is, it can be sued, it can be involved as a third party, it is possible to seize property belonging to a foreign state, as well as a seizure of its property is possible in order to enforce the court decision. Depending on the subjects of law, diplomatic immunity, witness immunity, parliamentary (deputy) immunity, judicial immunity, presidential immunity, and others are distinguished.

Therefore, jurisdictional immunity means the immunity of the state and its property from means of securing a claim and enforcement of a court decision in the courts of another state. With the passage of time and the development of international trade, the involvement of the state in private law relations, the concept of absolute immunity loses its dominant position as it does not meet the needs of subjects of international law. Subjects of private law relations, including the state, must guarantee the fulfillment of obligations. The concept of functional (restrictive) immunity assumes that the state and its property have immunity in cases where the property is used to ensure sovereign functions, while in commercial legal relations, the state and its property do not have immunity.

Legal regulation of jurisdictional immunity of states in private international law

The issue of jurisdictional immunity of states in private international law is regulated by international treaties and national legislation of states.

For the first time, the concept of state immunity was enshrined in the Brussels Convention for the Unification of Certain Rules Concerning the Immunity of State Vessels dated April 10, 1926, with subsequent additions in 1934. In this attempt to codify the rules on immunity, absolute state immunity was enshrined as the right of a state to exercise its sovereignty in full volume, including all state property and institutions. More than 20 European and South American countries took part in the Convention, including Germany, Italy, Poland, and Sweden.

The Geneva Convention on the Territorial Sea and the Contiguous Zone No. 1135 of April 29, 1958 [10] established that a coastal State may exercise the same jurisdiction over foreign state vessels operating for commercial purposes as over merchant vessels making peaceful passage through its territorial sea. Therefore, a state that owns a merchant vessel or a state that charters a vessel for commercial purposes is placed in a position equivalent to that of a private merchant vessel.

The efforts of the international community to codify the norms regarding the immunity of states are embodied to some extent in separate general (universal) conventions. In particular, in the Vienna Convention on Diplomatic Communications of April 18, 1961, the Convention on Special Missions of 1969, the Vienna Convention on the Representation of States and their Relations with International Organizations of a Universal Character of March 14, 1975, the Vienna Convention on Consular Communications of April 24 1963 issues related to the representation of states in the international communication have been settled. These international legal acts regulate the issue of the diplomatic agent's use of immunity from civil jurisdiction, except for bringing claims *in rem* against private immovable property located on the territory of the receiving state, unless the agent has immunity on behalf of the accrediting state for the purpose of representation. In the Vienna Convention on Diplomatic Relations 1961 the procedure for bringing claims in the field of inheritance is defined, if the agent must be the executor of the will, take care of the inherited property, the heir or the "responsible recipient" as a private person, and not on behalf of the accrediting state.

An important place in the legal regulation of these relations is occupied by the European Convention on State Immunity (ETS N 74) of May 16, 1972 (Basel, Switzerland), which entered into force on June 11, 1976 [7]. As of January 1, 2006, its participants were Austria, Belgium, Great Britain, Germany, Cyprus, Luxembourg, the Netherlands, and Switzerland. The Convention delimits the spheres of state immunity - public law and private law, and defines the cases when state immunity is preserved and when it is not applied.

The European (Basel) Convention of 1972 encouraged states to adopt from the mid-70s of the 20th century special laws of the states, containing rules on the immunity of the state and its property. These are the Foreign Immunity Act (USA, 1976), the State Immunity Act (UK, 1978), the Act To Provide For State Immunity in Canadian Courts (Canada, 1982), the State Immunity Ordinance (Pakistan, 1981), State Immunity Act (Singapore, 1979), Foreign State Immunities Act (South Africa, 1981), Foreign State Immunity Act (Australia, 1984).

The next stage of codification and progressive development of the norms of jurisdictional immunity of states was the draft articles on jurisdictional immunities of states and their property, adopted in the first reading by the International Law Commission in 1986.

In 1979, at the behest of the General Assembly, the UN International Law Commission began work (lasted more than 30 years) on a universal convention on jurisdictional immunities of states and their property, which is based on the concept of functional (limited) state sovereignty. The draft articles of this convention were adopted in the first reading by the International Law Commission in 1986 and only at the beginning of the 21st century work was completed, resulting in the universal UN Convention on Jurisdictional Immunities of States and their Property, approved by UN General Assembly Resolution No. 59/38 of December 2, 2004 (New York) [27], but not entered into force. The Convention contains the Appendix "Explanation regarding individual provisions of the Convention". It was signed by 28 states and ratified by 8 - Austria, Iran, Norway, Portugal, Romania, Switzerland, Sweden, Japan - from which the application for accession has declared acceptance of the Convention. However, due to the insufficient number of ratifications (ratification by 30 states is required), the Convention has not yet entered into force.

The UN Convention on Jurisdictional Immunities of States and Their Property dated December 2, 2004 confirms the principle of jurisdictional immunity of states and their property; the contemporary practice of economic cooperation between states was taken into account; the meaning of such terms as "state" and "commercial agreement" is defined; the validity of the traditional privileges and immunities that the state has in accordance with international law, namely in relation to its diplomatic missions, consular institutions, special missions, representative offices at international organizations and delegations in the bodies of international organizations and at international conferences, as well as persons belonging to them is stated; privileges and immunities are granted to heads of state and others. In addition, the 2004 Convention defines the means of ensuring the immunity of states, which oblige courts on their own initiative to issue a decision on compliance with the immunity of a foreign state in accordance with the provisions of the draft convention; criteria characterizing the content of the formula "clearly expressed consent of the state to exercise jurisdiction in the court of a foreign state" were proposed; the consequences of the state's participation in court proceedings with its consent and under other circumstances are considered; exceptions to the general rule on the immunity of states in the sphere of its trade or commercial activity, labor contracts, etc. are established.

Legal regulation of jurisdictional immunity is not perfect. The issue of jurisdictional immunity of the state in private international law, including in the case of litigation of private law disputes involving foreign persons, has not yet been settled at the level of private international law. A small number of states have laws regarding the immunity of states and their property in their national legislation.

This problem is also relevant for Ukraine. Currently, the Verkhovna Rada of Ukraine is considering Draft Law No. 7520-2 of July 19, 2022 "On Limiting the Immunity of Foreign States and Their Officials from Filing Lawsuits and Recovering Damage Caused on the Territory of Ukraine by Death or Injury to Health, as well as damage caused to property as a result of armed aggression, temporary occupation of the territory of Ukraine, other actions or inaction". The draft of this law proposes to overcome the restrictions established by Art. 79 of the Law of Ukraine "On Private International Law" and, accordingly, deprive any aggressor state, its state-owned company, as well as its officials of the right to invoke judicial immunity when suing them. According to Art. 79 "Judicial immunity", it is established: "Bringing a lawsuit against a foreign state, involving a foreign state in participating in the case as a defendant or a third party, imposing a seizure on property belonging to a foreign state and located on the territory of Ukraine, using other means in relation to such property for the securing of a claim and enforcement of such property may be allowed only with the consent of the competent authorities of the relevant state, unless otherwise provided by an international treaty of Ukraine or the law of Ukraine" [12].

The concept of jurisdictional immunity of states in private international relations

Modern international practice is based on the assumption of the possibility of distinguishing between two types of state activity - public and private. However, due to the lack of general norms of international law, which would contain the concept of limited jurisdictional immunity of states, this practice is varied and sometimes contradictory. There is an opinion that the presence of disagreements in it leads to the destruction of norms related to the immunity of states. But it is difficult to agree with this assessment, since the law of state immunity automatically produces its own means of regulating the rights and obligations of states, adapting to certain circumstances. Thus, a number of continental European and South American countries are parties to the aforementioned Brussels Convention, according to which the state that owns a merchant vessel or the state that charters a vessel for commercial purposes is placed in a position equivalent to that of a private merchant vessel. Similarly, under the 1958 Geneva Convention on the Territorial Sea and the Contiguous Zone, a coastal State may exercise the same jurisdiction over foreign state vessels operating for commercial purposes as over merchant vessels in peaceful passage through its territorial sea.

State immunity has long been recognized as a consequence and manifestation of the sovereign equality of states as subjects of public international law [16], however, in private-law relations with foreign legal entities and individuals, the state acts as a subject of private international law. The state as a subject of

private international law falls under the jurisdiction of those bodies that exercise it in relation to private individuals. In private relations, the state is legally equal to other subjects (natural persons, legal entities), whose actions are subject to private law. "It would be impossible to achieve the actual equality of the state with other subjects of private law, if one agrees with the presence of the state's sovereignty in the sense of private international law" [9].

The trend of moving away from the absolute immunity of the state to a more pragmatic restrictive practice arose at the beginning of the 20th century, among the countries of continental Europe, and later others, including the USA. A practice appeared according to which a foreign state, as a subject of private law and a carrier of private rights, became subject to the jurisdiction of a local court, along with other private persons. Only those actions carried out by their state as a bearer of sovereign power (*jure imperium*) were removed from the local judiciary, and those related to its activities as a non-sovereign bearer of power (*jus gestionis*) remained. Jurisdiction regarding the last actions of the state was carried out according to the law of the place of the court deciding the case (*lex fori*). Only the former socialist countries consistently continued to adhere to the doctrine of absolute immunity, which was conditioned by the existence of state ownership as the basis of their economy and state monopoly on foreign trade.

The question of distinguishing the action of the state as *jure imperium* and the actions of *jus gestionis* is complex, especially in cases where foreign states choose forms of private commercial activity to achieve state goals. For example, the purchase of boots for the army could be considered both a commercial action and a governmental one, depending on which criterion to apply (objective, indicating the nature of the action, or subjective, related to the purpose of the action).

According to the doctrine of private international law, the state as a subject of private law does not enjoy such protection as a subject of public international law regarding the jurisdictional immunities of the state. Therefore, the principle of state immunity in private international law is not imperative. Judicial practice and legal acts of a number of states (USA, Canada, Australia, Great Britain, France) confirm the possibility of limiting state immunity. Professor M.O. Ushakov noted that "the possibility of limiting the immunity of a foreign state in private legal relations comes from the fact that the international community did not give it an imperative character. One or another deviation from it in the mutual relations of two or more states does not affect the vital interests of other states and the international community as a whole" [26].

It should be noted that the absolute immunity of the state does not contribute to the protection of private legal relations between their subjects, since the state's right to judicial protection of the property interests of the subjects of such relations is limited. Therefore, states must, when concluding treaties, introduce conditions of reciprocity or the possibility of applying retort, that is, introduce restrictive measures applied by one state to another state (or to its citizens) in response to its unjust actions in order to achieve the cessation of these actions. Therefore, the current policy vector of most states in matters of immunity is shifting to the use of functional (limited) state immunity. In particular, the distinction between the immunity of states in the public and private spheres is found in German legislation, where the decision of the Federal Constitutional Court of Germany in 1963 states that the granting of immunity depends on "whether a foreign state acts in the exercise of its sovereign power or as a private person, i.e., within the limits of private law". The legislation of Ukraine provides for liability for breach of obligations arising from agreements (contracts). According to the Law of Ukraine "On Foreign Economic Activity" dated April 16, 1991 (Article 32), if Ukraine participates in foreign economic activity as a subject of such activity, then it bears responsibility on a general and equal basis on an equal footing with other foreign subjects of foreign economic activity [11].

4 Conclusion

The study of the jurisdictional immunity of states in private international law is relevant in view of the practice of relations between states in the modern world and the consideration of court cases on controversial issues. The right of a state to immunity from the jurisdiction of another state is a generally recognized principle of international law, consisting in the non-subordination of a state to the power of another state and its bodies and is expressed by the formula *par in parem non habet imperium*.

Jurisdictional immunity of states should be considered as a principle in private international legal relations, which should be followed by all subjects of international legal relations. The principle of state immunity is a dispositive principle and should be limited in private legal relations, which is justified in the concept of limited immunity. According to this concept, a state has the right to invoke immunity only when it performs actions aimed at exercising sovereign powers, and does not enjoy absolute immunity when it performs private law agreements. These provisions should be enshrined in the international legal acts, national legislation and confirmed by judicial practice.

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