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**Jurisdiction over electronic contracts in cross-border tourism disputes
between China and Kazakhstan: Dilemma and path**

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Abstract: This article discusses the jurisdiction of electronic contracts in cross-border tourism between China and Kazakhstan, and analyzes its theoretical basis, practical difficulties, and breakthrough paths. The principles of freedom of contract, closest connection, and party autonomy in private international law provide theoretical support for cross-border contract jurisdiction, but the differences between China and Kazakhstan in legal systems and industry characteristics have led to intensified jurisdictional conflicts. In reality, the two countries have significant differences in terms of the elements of electronic contract formation, consumer protection, data sovereignty, fragmentation of the place of performance, and identification of electronic evidence. To break through the dilemma, this article proposes three paths: international commercial arbitration, adjustment of domestic judicial interpretations and optimization of bilateral judicial cooperation, including measures such as promoting the alignment of judicial interpretations, establishing a system for mutual recognition of electronic evidence, strengthening the binding force of model contracts, innovating dispute resolution mechanisms and introducing third-party guarantee mechanisms. Through collaborative governance, China and Kazakhstan can build stable and efficient jurisdiction rules to provide legal guarantees for the healthy development of cross-border tourism.

Keywords: Cross-border tourism electronic contracts, jurisdictional conflicts, bilateral judicial cooperation, digital economy, and legal coordination

Introduction

With the deepening of economic and trade cooperation between China and Kazakhstan, cross-border tourism has become an important link for economic and cultural exchanges between the two sides.

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The application of electronic contracts in cross-border tourism is becoming more and more widespread, but their virtuality and borderlessness have also raised complex jurisdiction issues.

Today, “the traditional legal application rules applied by the international community have been unable to effectively resolve cross-border tourism disputes in the network environment” [1]. The differences in the legal systems of China and Kazakhstan make it more difficult to determine the jurisdiction of electronic contracts in cross-border tourism disputes, which not only increases the cost of consumer rights protection but also affects the commercial efficiency of enterprises. Properly handling the conflict and choice of jurisdiction of cross-border electronic contracts will help enhance legal exchanges and cooperation between China and Kazakhstan in the field of cross-border tourism and also provide beneficial legal support for consumer rights protection and the improvement of commercial efficiency. The “Belt and Road” initiative provides enormous space and opportunities for the development of cross-border e-commerce. While bringing diversified choices of goods and services to consumers in countries along the route, it also promotes operators in countries along the route to explore international markets and expand overseas marketing channels” [2]. Solving legal issues such as the jurisdiction of electronic contracts will provide solid legal protection for the sustained and healthy development of cross-border tourism between China and Kazakhstan.

Methodology

This paper applies the literature analysis method and the comparative method to analyze the jurisdiction of electronic contracts in cross-border tourism between China and Kazakhstan.

Literature analysis method – Through reading relevant literature, this article fully analyzes the differences and conflicts in the legal mechanisms for protecting the rights of cross-border tourists between China and Kazakhstan, and points out the resolution mechanism.

Comparative analysis method – This article compares the protection mechanisms and backgrounds of tourists’ rights in China and Kazakhstan, then points out the cultural differences between the two countries, and finally draws a more reasonable conclusion by coordinating the common factors of the two countries.

Discussion

The theory of contractual jurisdiction in the context of private international law is based on three major legal principles: the principle of freedom of contract builds the basis of rights, the principle of closest connection provides a value balance, and the principle of party autonomy forms an effectiveness guarantee. The three together construct the institutional framework for cross-border contract dispute resolution.

1. The foundation of the principle of freedom of contract

Article 305 of the German Civil Code (1896) was the first to codify the principle of freedom of contract, granting parties the substantive right to choose the applicable law and the jurisdiction of the court. This principle has been widely recognized in the international arena. Article 5 of the Hague Convention on Choice of Court Agreements (2005) adopts the “jurisdiction priority of agreement” rule, which elevates the parties’ agreement to the level of transnational judicial cooperation. In the cross-border tourism electronic contract scenario, this principle is

reflected in the legal basis for platform operators and consumers to agree on dispute resolution institutions through clickwrap contracts.

2. Equitable supplement to the closest connection principle

As a theoretical supplement to the principle of freedom of contract, the Center of Gravity Theory, created in Article 188 of the Second Restatement of the Laws of Conflict of Laws of the United States (1971), realizes the dynamic configuration of jurisdiction by analyzing the substantial connection between contract elements and legal jurisdictions. Article 41 of China's Law on the Application of Law to Foreign-Related Civil Relations further refines the "characteristic performance" standard, which is embodied in cross-border tourism service contracts as follows: when Chinese tourists book a special homestay through a Kazakhstan tourism platform, if the core elements such as payment behavior, service delivery, and data storage are distributed in different legal jurisdictions, the quality and density of each connection point must be comprehensively evaluated.

3. Strengthening the effectiveness of party autonomy

Article 25 of the EU's "Brussels Regulation I" (revised version) raises the legal effect of the parties' agreement to the supranational level through the "absolute priority of jurisdiction by agreement" rule. In international commercial arbitration, "an arbitration agreement that exists in accordance with the law and is truly valid is almost the only source of the arbitral tribunal's jurisdiction" [3]. Article 8 of the "Interpretation of the Supreme People's Court of China on Several Issues Concerning the Application of the Law on the Application of Laws to Foreign-Related Civil Relations (I)" also clarifies that the jurisdiction of the court chosen by the parties is not automatically invalid due to the nature of the standard clauses, but must meet the dual important conditions of "obvious reminder + reasonable explanation". This institutional design was confirmed in the "China-Kazakhstan Cross-Border Tourism Platform User Agreement Dispute Case", where the court determined that the jurisdiction clause marked in multiple languages and with an independent confirmation link was binding.

The evolution of the theory of contractual jurisdiction shows that: from the classical contract theory that emphasized formal freedom in the 19th century, to the modern conflict norms that focused on substantive fairness in the 20th century, to the electronic jurisdiction rules that pursued certainty and efficiency in the digital economy era, the theory of contractual jurisdiction has always maintained a dynamic academic character. This theoretical flexibility provides legal legitimacy for the innovation of the China-Kazakhstan cross-border electronic contract jurisdiction rules in the background of the "Belt and Road Initiative".

Results and Discussion

Behind the booming cross-border tourism between China and Kazakhstan, electronic contracts, as its important support, are facing severe jurisdictional realities. In the 2022 "Central Asia Link" platform sued Chinese tourists for jurisdictional objection, the platform agreed to arbitration in Almaty, but the tourists sued in the Xi'an Court. The tourists claimed that they were not informed of the arbitration clause and that, as the weaker party, they should be protected by Chinese law. Based on Article 7 of the Judicial Interpretation of the "Law of the People's Republic of China on the Application of Laws to Foreign-Related Civil Relations", the Xi'an Intermediate People's Court broke through the jurisdiction of the agreement because

“major consumer interests were damaged” and ruled that the Chinese court should hear the case. This case is a microcosm of the real dilemma of jurisdiction over electronic contracts in cross-border tourism between China and Kazakhstan, highlighting the differences in judicial cognition between China and Kazakhstan on the jurisdiction over electronic contracts in cross-border tourism.

1. Systemic conflict in legal systems

The systematic conflict between China and Kazakhstan on the legal norms of electronic contracts is the root cause of the jurisdiction issue of cross-border tourism electronic contracts. This conflict is mainly reflected in the differences in the requirements for the establishment of electronic contracts, consumer protection rules and data sovereignty.

First, there are significant differences between the legal provisions of China and Kazakhstan on the elements of the establishment of electronic contracts. Article 13 of China’s “Electronic Signature Law” adopts the “functional equivalence principle” [4], that is, as long as the electronic signature can meet the basic functions of the traditional signature (such as identity identification and content authentication), it can be deemed valid. However, Article 8 of Kazakhstan’s “Digital Development Law” requires that electronic contracts must use state-certified electronic signatures; otherwise, the contract is invalid. For example, the 2020 “Silk Road Tour” platform contract was deemed invalid by the Astana Court because it did not use an electronic signature certified by the Kazakhstan state. This difference in legal norms directly leads to conflicts in the elements of the establishment of cross-border electronic contracts between China and Kazakhstan, increasing the uncertainty of the effectiveness of the contract.

Secondly, there are also obvious differences in the legal provisions of China and Kazakhstan in terms of consumer protection rules. Article 58 of China’s “E-Commerce Law” stipulates a “cooling-off period clause”, allowing consumers to terminate the contract unconditionally under certain conditions. Article 15 of Kazakhstan’s “Consumer Rights Protection Law” stipulates an “immediate performance of the contract exception rule”; that is, once the contract is performed immediately, the consumer has no right to terminate the contract. This difference in legal norms is particularly prominent in China-Kazakhstan cross-border tourism electronic contracts, resulting in conflicts in the applicability of consumer protection rules.

Finally, in terms of data sovereignty, there is also a direct conflict between the legal provisions of China and Kazakhstan. Article 36 of China’s Data Security Law requires local storage of domestic data, while Article 12 of Kazakhstan’s Digital Development Law encourages the free flow of cross-border data. This conflict of legal norms is particularly prominent in cross-border electronic contracts, making the determination of data sovereignty more complicated.

2. Industry characteristics exacerbate conflicts

The particularity of the cross-border tourism industry has further exacerbated the practical dilemma of jurisdiction over cross-border tourism electronic contracts between China and Kazakhstan. This particularity is mainly reflected in the fragmentation of the place of performance and the dilemma of electronic evidence.

First, the fragmentation of the place of performance is an important feature of cross-border tourism electronic contracts. Taking the “China-Kazakhstan Cross-border RV Tour” electronic contract as an example, the performance of the contract involves multiple jurisdictions: the payment system is located in Shanghai, the route planning is handled by the service provider in Almaty, and the emergency rescue service is provided by an agency in Moscow. This

fragmentation of the place of performance makes the determination of contractual jurisdiction more complicated, especially when multiple jurisdictions are involved. How to determine the place of closest connection has become a difficult problem in judicial practice.

Secondly, the dilemma of electronic evidence is another important feature of cross-border tourism electronic contracts. In the ever-evolving information environment, “the virtuality, uncertainty, and weak regionality of electronic data often make the acquisition and identification of electronic evidence face many difficulties” [5]. For example, in the “Tianshan Lake Balkhash Tourism Dispute” case in 2023, the Xinjiang High Court refused to provide the original data of WhatsApp chat records due to the refusal of the Kazakhstan local travel agency, which led to a break in the chain of evidence and ultimately affected the trial of the case. This dilemma of electronic evidence not only increases the difficulty of judicial practice but also makes the dispute resolution of cross-border electronic contracts more complicated.

Conclusion

To cope with the above difficulties, it is necessary to explore breakthrough paths for the jurisdiction of cross-border tourism electronic contracts between China and Kazakhstan from three aspects: international commercial arbitration mechanism, adjustment of domestic judicial interpretation, and optimization of bilateral judicial cooperation.

1. International Commercial Arbitration

In the context of economic globalization, international commercial arbitration has increasingly become a “transnational judicial system” that affects the judicial policies of relevant countries [6]. However, the issue of the enforcement of arbitration awards remains one of the main obstacles to the breakthrough of the jurisdiction of cross-border electronic contracts between China and Kazakhstan. “The New York Convention has become a solid international legal basis for the recognition and enforcement of international commercial arbitration awards among major trading countries in the world” [7], but since Kazakhstan has not yet joined the provisions of Article 5, paragraph 2 of the New York Convention on “public policy reservations”, there is uncertainty in the enforcement of arbitration awards in Kazakhstan. For example, in 2020, the Beijing No. 4 Intermediate People's Court refused to enforce an award of the Astana Arbitration Court, which caused widespread controversy. Therefore, although the arbitration mechanism has the convenience of cross-border enforcement in theory, in actual operation, it is still necessary to ensure the effective enforcement of the award through bilateral judicial cooperation or domestic legal adjustments. From the practice of international commercial arbitration, the determination of arbitration jurisdiction depends on a valid arbitration agreement, while the enforcement of arbitration awards is affected by both national laws and international conventions. The New York Convention clearly stipulates that if an arbitration award exceeds the scope of the arbitration agreement or violates public policy, the contracting state may refuse to recognize or enforce the award. Kazakhstan has not yet fully accepted this clause, which makes the enforcement of arbitration awards in its territory face legal risks. In addition, the exercise of international commercial arbitration jurisdiction is also affected by the judicial practices of various countries. For example, when handling cross-border arbitration cases, Chinese courts will strictly review the validity of arbitration agreements and the legality of awards. Therefore, when it comes to disputes over the jurisdiction of electronic contracts in

cross-border tourism disputes between China and Kazakhstan, the advantages of international commercial arbitration are not obvious.

2. Domestic judicial interpretation

In recent years, domestic courts in China and Kazakhstan have explained and clarified relevant issues of cross-border electronic contracts through judicial interpretation and practice innovation. In China, Article 12 of the “Opinions on Providing Judicial Guarantees for Cross-border E-commerce” issued by the Supreme People’s Court in 2023 included “the location of server logs” in the category of actual contact for the first time. The introduction of this judicial interpretation provides a clearer standard for the determination of jurisdiction over cross-border electronic contracts. In cross-border tourism electronic contracts, the location of server logs is often different from traditional jurisdiction connection points, such as the place of contract signing and the place of performance, which can more accurately reflect the actual performance of the contract. For example, when Chinese consumers book services through Kazakhstan’s travel platform, if the server log shows that the main data exchange occurs in China, the Chinese court can claim jurisdiction based on this. In Kazakhstan, the case law of the AIFC Court also provides a reference for breakthroughs in jurisdiction. In 2022, the AIFC Court established the principle of “manifest unfairness” in Case No. CT002, that is, when consumer rights are seriously infringed, consumers are allowed to file lawsuits in their own courts. This case provides a new basis for the Kazakh courts to exercise jurisdiction in cross-border electronic contract disputes. Especially in the field of cross-border tourism, consumers are often in a weak position, and the application of this principle can effectively protect the legitimate rights and interests of consumers.

However, with the expansion of the jurisdiction of electronic contracts between China and Kazakhstan, the jurisdiction of contracts in cross-border tourism disputes has become increasingly complex. Therefore, only by promoting the convergence of judicial interpretations between China and Kazakhstan and unifying the rules can we effectively ease the conflict of jurisdiction and provide clearer and more stable legal guidance for cross-border tourism electronic contract disputes.

3. Bilateral judicial cooperation

Judicial cooperation between China and Kazakhstan in cross-border tourism disputes is an important path to break through the dilemma of electronic contract jurisdiction. In recent years, the two countries have gradually established a closer cooperative relationship through mutual recognition of electronic evidence and promotion of model contracts, but they still face many challenges.

In terms of mutual recognition of electronic evidence, the Memorandum of Understanding on Digital Judicial Assistance signed by China and Kazakhstan in 2022 laid the foundation for cooperation between the two countries in the field of electronic evidence. The two sides agreed to establish an electronic evidence exchange channel based on blockchain technology, using the immutability and data integrity of blockchain to provide technical support for the resolution of cross-border electronic contract disputes. However, there are still differences in technical standards and limitations in legal recognition in practice. For example, the blockchain platforms of China and Kazakhstan are not yet fully compatible in data format and encryption algorithm, resulting in the phenomenon of “inter-chain islands”. In addition, the standards for the acceptance of blockchain evidence in Kazakhstan’s “Electronic Transaction Law” are different from those in China’s “Electronic Signature Law”, and some evidence still needs to go through cumbersome notarization and certification procedures.

In terms of the promotion of model contracts, Article 17 of the Model Contract for Cross-border Tourism Services issued by the Shanghai Cooperation Organization in 2023 clarifies the standard for informing consumers of jurisdiction clauses, requiring consumers to be informed in the form of “consumer’s native language + highlighting”. This provision improves the transparency of contracts, but the implementation of model contracts still faces difficulties. On the one hand, the model lacks legal binding force, and some small and medium-sized tourism enterprises in Kazakhstan still tend to use single-language contract templates. On the other hand, consumers’ insufficient understanding of legal terms leads to frequent misunderstandings of the boundaries of rights. In addition, there is still a gap in the connection of dispute resolution mechanisms for cross-border tourism disputes between China and Kazakhstan. The two countries have not yet established a unified cross-border digital platform for the enforcement of arbitration awards. The recognition of AIFC arbitration awards in Chinese courts requires a cumbersome “paper document translation + diplomatic certification” process, which takes an average of 87 days. At the same time, the two countries’ judges have different standards for new legal issues (such as blockchain evidence review and smart contract validity determination), which can easily lead to the problem of “different judgments for the same case”.

Conclusion Remarks

The complexity of jurisdiction over cross-border electronic contracts between China and Kazakhstan stems not only from the differences in the legal systems of the two countries, but also involves the definition of new legal relations in the digital economy era. In order to build a stable and efficient dispute resolution mechanism, it is necessary to carry out collaborative governance in terms of rule connection and strengthening cooperation.

1. Adhering to “Conflict Justice”

Traditional private international law adopts Savigny’s theory and regards the process of legal selection as a “multiple-choice process”. The idea of resolving the problem of conflict of laws is to determine a unique “region to which it essentially belongs” [8] for each foreign-related civil relationship and exclude the application of laws of other countries. In the era of building a community with a shared future for mankind, this unilateral value system can no longer fairly and impartially resolve foreign-related civil disputes, because any foreign-related case involves the laws of different countries, and judges must pay attention to these different laws at the same time to reach a reasonable judgment. Therefore, only by shifting from the perspective of “conflict of laws” to the perspective of “sharing laws” [9] can we achieve justice in a substantive sense. To this end, in the disputes over jurisdiction over cross-border electronic contracts between China and Kazakhstan, when faced with conflicts in the laws of the two countries, we should adhere to the principles of consultation, commonality and proportionality, and build a three-in-one, effectively connected cross-border tourism dispute resolution mechanism with “consultation and mediation as the priority, arbitration as the center, and judicial guarantee” [10]. Taking the principle of consultation as an example, in terms of the design of arbitration clauses, we can refer to the “Digital Economy Arbitration Guidelines” issued by the International Chamber of Commerce (ICC) in 2021, and embed a “step-by-step dispute resolution clause” in the China-Kazakhstan electronic contract. The design idea of this clause is to first mediate through an online platform. If the mediation fails, it will be submitted to the Arbitration Court of the Astana

International Financial Center (AIFC) for arbitration. This phased approach to resolving disputes can not only reduce the cost of dispute resolution but also provide more flexible solutions for both parties. Especially in the field of cross-border tourism, disputes between consumers and tourism service providers often involve small amounts but high frequencies. The step-by-step dispute resolution mechanism can effectively balance efficiency and fairness.

2. Connecting with judicial interpretation

Traditional cross-border electronic contract jurisdiction rules mostly rely on static connection points such as “place of contract signing” and “place of performance”, which are difficult to adapt to the immediacy and virtualization characteristics of cross-border tourism services. To this end, China and Kazakhstan can jointly build a “dynamic characteristic place of performance standard” - an appropriate functionalist interpretation [11], that is, the actual place where the core service occurs is used as the jurisdiction connection point. For example, when Chinese tourists purchase tickets to Kazakhstan’s national park through an electronic contract, the park where the ticket verification equipment is located constitutes the place where the core service is provided, and the Kazakhstan court can exercise jurisdiction based on this. This standard is solidified through the “Guidelines for the Resolution of Cross-Border Tourism Disputes between China and Kazakhstan”, which can not only avoid jurisdiction conflicts, but also ensure the professional judgment ability of the arbitration institution on the focus of the dispute.

In response to the disagreement on the validity of electronic contracts, the two sides can jointly formulate the “China-Kazakhstan Electronic Contract Invalidity List” and adopt a negative list management model to clarify unenforceable contract terms. The list specifically excludes three types of situations: first, unilateral exemption clauses that do not provide bilingual versions in Russian/Kazakh; second, jurisdiction agreements that are not confirmed twice through pop-up windows; and third, format clauses that unilaterally change the content of the contract by taking advantage of algorithms. In 2023, the Almaty Court cited the list for the first time in the “Tianshan Travel Agency v. Chinese Tourists Case”, determining that the jurisdiction clause that did not provide Kazakh service instructions was invalid, providing an important case reference for the compliance design of cross-border electronic contracts.

3. Strengthening bilateral cooperation

First, build a standardized electronic judicial cooperation system. From a technical perspective, establish a China-Kazakhstan Blockchain Judicial Cooperation Working Group, jointly formulate the “Technical Standards for Cross-Border Electronic Evidence Mutual Recognition”, unify hash algorithms, timestamp synchronization rules and cross-chain verification protocols, to achieve the interconnection and interoperability of the judicial chains of the two countries; from a legal perspective, add a “Special Chapter on Electronic Evidence” in the revision of the “China-Kazakhstan Treaty on Civil Judicial Assistance”, clarify the presumption of validity rules of blockchain evidence, and simplify the notarization and certification process.

Second, strengthen the binding force of model contracts, promote the transformation of Article 17 of the SCO’s “Model Contract for Cross-Border Tourism Services” into mandatory regulations in the China-Kazakhstan bilateral agreement, require contract providers to explain the legal consequences of jurisdiction clauses to consumers through “dynamic pop-up windows + voice interpretation”, and establish a China-Kazakhstan cross-border tourism contract filing platform, and implement joint credit penalties on companies that fail to adopt bilingual jurisdiction clauses.

Third, a third-party guarantee mechanism can be introduced. The Chinese and Kazakh judicial ministries can jointly certify cross-border electronic contract compliance service providers, conduct technical inspections on the “significant reminder” level of jurisdiction clauses and issue cross-border compliance labels; use the GPT4 multilingual model to develop an automatic explanation system for jurisdiction clauses, and consumers can generate personalized risk warning reports containing arbitration fee estimates, legal procedure duration, etc. after clicking on the clauses. Through these measures, China and Kazakhstan can achieve a deep integration of technology and law, improve the efficiency of judicial cooperation, protect consumer rights, and promote the healthy development of the cross-border tourism market.

The contribution of the authors:

Three authors made equal contributions to this article. The first author and the second author wrote the first version of this article; the third author corrected the form of this article and sent this article to this journal.

References

1. Qianbo W. Research on the applicable law of cross-border online consumer contracts//Dispute Resolution. – 2023. – No.5. – C.2423-2427. [In Chinese]
2. Weiwei Z., Chunjie G. Research on online dispute resolution mechanism of cross-border e-commerce in the “Belt and Road” initiative: Focusing on the inspiration of the EU Consumer ODR Regulation//Legal System and Social Development. – 2018. – Vol.24, No.04. – C.190-204. [In Chinese]
3. Gary B. B. International Commercial Arbitration. – M.: Wolters Kluwer Law & Business, 2021. - c.251.
4. Zhonghua Y. Reflection on the Methodology of Civil Procedure Law: Taking the Dispute over the Subject Matter of Litigation as a Clue//Political and Legal Forum. – 2025. – No.01. – C.54-67. [In Chinese]
5. Yi L. Jurisdiction basis, conflict and response in cross-border direct access to electronic data//Social Science Front. – 2024. – No.11. – C.270-277. [In Chinese]
6. Xiaohong L., Shuo F. International Commercial Arbitration in the Context of Great Change: World Trends and China’s Response//Chinese Social Sciences. – 2024. – No.12. – C.63-82. [In Chinese]
7. Xiuwen Z. On the Court’s Determination of the Validity of Foreign-Related Arbitration Agreements and the Applicable Law//Journal of Hangzhou Normal University (Social Sciences Edition). – 2003. - No.5. – C.41-45+68. [In Chinese]
8. F. C. von Savigny. System des heutigen R9 mischen Rechts. – M.:Berlin, 1849. - C.108.
9. Tao D. From “conflict of laws” to “sharing of laws”: the value reconstruction of private international law in the era of a community with a shared future for mankind//Contemporary Jurisprudence. – 2019. – Vol 33, No.3. – C.145-160. [In Chinese]
10. Junya L., Shouping L.[eds.]. Research on Non-litigation Resolution Mechanism for Cross-border Tourism Disputes. – M.: Social Sciences Academic Press, 2022. – c.112. [In Chinese]
11. Heyong W., Hongwei W., Tatarinov D., Saktaganova A., Saktaganova I. Protecting victims of international crimes: A Reflection on the Functional Interpretation of the Statute of the International Criminal Court//Social and Legal Studios. – 2024. – No.3. – C.203-212.

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Юрисдикция в отношении электронных контрактов в спорах по трансграничному туризму между Китаем и Казахстаном: дилемма и путь

Аннотация: В данной статье рассматриваются вопросы юрисдикции электронных договоров в сфере трансграничного туризма между Китаем и Казахстаном, а также анализируются теоретические основы, практические затруднения и возможные пути их преодоления. Принципы свободы договора, наибольшей связи и автономии воли сторон, закреплённые в международном частном праве, служат теоретической базой для установления юрисдикции по трансграничным договорам. Однако различия в правовых системах и отраслевых особенностях Китая и Казахстана способствуют усилению конфликтов юрисдикции. На практике наблюдаются существенные расхождения в элементах заключения электронных договоров, механизмах защиты потребителей, подходах к цифровому суверенитету, фрагментарности места исполнения обязательств и способах идентификации электронных доказательств. В качестве выхода из сложившейся ситуации предлагаются три направления: международный коммерческий арбитраж, корректировка национальных судебных толкований и оптимизация двустороннего судебного сотрудничества. В числе конкретных мер предлагаются согласование судебных толкований, создание системы взаимного признания электронных доказательств, усиление обязательной силы типовых договоров, развитие инновационных механизмов разрешения споров и внедрение систем третьей стороны-гаранта. Через совместное правовое регулирование Китай и Казахстан могут сформировать стабильные и эффективные юрисдикционные правила, обеспечивающие правовую основу для устойчивого развития трансграничного туризма.

Ключевые слова: электронные контракты в сфере трансграничного туризма, юрисдикционные конфликты, двустороннее судебное сотрудничество, цифровая экономика и правовая координация.

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Қытай мен Қазақстан арасындағы трансшекаралық туристік даулардағы электронды келісімшарттардың юрисдикциясы: дилемма және жол

Андатпа: Бұл мақалада Қытай мен Қазақстан арасындағы трансшекаралық туризм саласындағы электрондық шарттарға қатысты юрисдикция мәселелері қарастырылады, сондай-ақ оның теориялық негіздері, практикалық қиындықтары мен оларды еңсеру жолдары талданады. Халықаралық жеке құқықтағы шарт бостандығы, ең тығыз байланыс және тараптардың автономиясы қағидаттары трансшекаралық шарттар юрисдикциясының теориялық негізін құрайды. Алайда Қытай мен Қазақстан арасындағы құқықтық жүйелер мен салалық

ерекшеліктердегі айырмашылықтар юрисдикциялық қайшылықтардың ушығуына әкелуде. Іс жүзінде электрондық шарт жасау элементтерінде, тұтынушыларды қорғау тетіктерінде, деректер егемендігіне деген көзқарастарда, міндеттемені орындау орнының бытыраңқылығында және электрондық дәлелдерді тану жолдарында елеулі айырмашылықтар бар. Бұл тығырықтан шығу үшін мақалада үш бағыт ұсынылады: халықаралық коммерциялық арбитраж, ұлттық сот түсіндірмелерін үйлестіру және екіжақты сот ынтымақтастығын жетілдіру. Атап айтқанда, сот түсіндірмелерін үйлестіру, электрондық дәлелдерді өзара тану жүйесін қалыптастыру, үлгілік шарттардың міндеттілігін күшейту, дау шешу тетіктерін жаңғырту және үшінші тарап кепілдік тетіктерін енгізу секілді шаралар ұсынылады. Бірлескен құқықтық басқару арқылы Қытай мен Қазақстан трансшекаралық туризмнің орнықты дамуына құқықтық кепілдік беретін тұрақты әрі тиімді юрисдикциялық ережелер қалыптастыра алады.

Түйін сөздер: трансшекаралық туризм электрондық келісімшарттары, юрисдикциялық қақтығыстар, екіжақты сот ынтымақтастығы, цифрлық экономика және құқықтық үйлестіру

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