

Educational Institution  
«Belarus State Economic University»

APPROVED BY  
Rector of Educational Institution  
«Belarus State Economic University»

 A. Egorov

16.12 2021

Registration № 4980-21

**PROBLEMS OF THE INTERNATIONAL CIVIL PROCEDURE**

The Curriculum of the Educational Institution of Higher education in the academic  
discipline for the speciality  
1-24 80 01 «Jurisprudence»

2021

The Academic Program is based on the curriculum in the specialty 1-24 80 01 Jurisprudence (Profiling - Legal Support of Economic Activities)

**AUTHOR:**

**TARANOVA T.S.**, head of the department of civil law disciplines of the faculty of law of the Belarus State Economic University, doctor of juridical sciences, professor.

**REVIEWERS:**

**M. N. SHIMKOVICH**, Head of the Department of Legal Enforcement of Economic Activities of the Academy of Management under the President of the Republic of Belarus, Ph.D., Associate Professor;

**N.I. RUDOVICH**, deputy dean of faculty of law, candidate of legal sciences, associate professor

**RECOMMENDED FOR APPROVAL:**

Department of Civil Law Disciplines of the Belarus State Economic University  
(Protocol No. 12 25 May 2021);

Scientific and Methodological Council  
(Protocol No. 4 16.12 2021)

## EXPLANATORY NOTE

### OBJECTIVE AND TASKS OF TEACHING AND LEARNING

*The purpose* of the study of the academic discipline "Problems of the International Civil Procedure" is to acquire by masters the systemic knowledge about the theoretical and practical problems of the International Civil Procedure; the ability to identify directions in the development of legal regulation in the field of the International Civil Procedure; mastery by method of comparative law; acquisition of the skills of scientific, pedagogical and research work in this field.

In order to achieve this goal, the following *tasks* are envisioned:

- to gain theoretical knowledge of problems in the field of International Civil Procedure;
- to deepen knowledge of the international treaties of the Republic of Belarus on the provision of legal assistance, as well as on the norms of the national civil procedural and economic procedural legislation in the field of the International Civil Procedure;
- to develop skills to analyze, evaluate, and identify the inconsistencies in legislation governing International Civil Procedure;
- to develop the ability to compare legislation, doctrine and law enforcement practices of foreign countries in the field of international civil process;
- to develop skills to apply the acquired theoretical knowledge in the field of the to develop
- to develop the ability to conduct a comprehensive analysis and synthesis of law enforcement practices in cross-border cases and the ability to use relevant results in professional activities.

*Relations* with other educational disciplines, including educational disciplines of the higher education institution component, specialization disciplines, etc.

The academic program is drawn up taking into account inter-subject relations with educational disciplines "Implementation of international treaties in the national legal system," "Institutional law of the Union State, the EAEU and the CIS," "Private international law," "Civil process," "Economic process."

*Requirements* for mastering the training discipline:

The learning of the training discipline "Problems of the International Civil Procedure" should ensure the formation of:

*Specialized competence:*

SK-8. Be able to demonstrate knowledge and understanding of the specifics of civilistic procedural legal relations in cross-border civil and economic cases and use it in research, educational and other professional activities.

At the result of studying the discipline, masters *should know:*

- the concept of International Civil Procedure; basic doctrinal positions on the place of the International Civil Procedure in the system of law and the system of legal sciences;
- principles of the International Civil Procedure;
- the concept of international jurisdiction and its types, the main theoretical and practical problems of the institution of international jurisdiction in the civilistic court process of the Republic of Belarus;
- the legal status of the foreign persons in civil and economic procedure;
- judicial immunity of the State and its diplomatic agents, immunity of international organizations: basic theoretical and practical problems;
- the concept, types and procedure of relations with judicial orders, execution of instructions of the bodies of justice of foreign states;
- procedure for recognition and authorization the enforcement of foreign court decisions in the territory of the Republic of Belarus, as well as procedure for recognition and execution of decisions of the courts of the Republic of Belarus in foreign countries;

*Be able to:*

- disclose the nature of the categories of international civil process;
- independently study and analyze the sources of regulation of the International Civil Procedure, as well as the practice of their application;
- draw up procedural documents (claims, prorogation agreements, court orders, etc.);
- Provide qualified opinions and advice on enforcement issues within International Civil Procedure.

*To master:*

- terminology;
- skills in civil case research and evidence analysis;
- to held to analyze of the norms of the International Civil Procedure.

The academic discipline “Problems of the International Civil Procedure” consists of 108 hours: 36 hours of class work, including 16 hours of lectures and 16 hours of seminars, and 72 hours of master’s independent study.

The final assessment method is examination. The labor intensity of the training discipline is 3 test units.

## **COURSE CONTENT**

### **TOPIC 1. CONCEPT, SUBJECT AND SYSTEM OF INTERNATIONAL CIVIL PROCEDURAL LAW**

Contemporary problems of the concept and subject matter of international civil procedure law. Concept of international civil process as part of the system of private international law. Procedural concept of international civil procedure law. Concept of international civil process as part of the system of public international law. Methods of regulating the international civil process.

Foreign element in procedural relations: concept, types, main problems. System of international civil procedure law.

### **TOPIC 2. SOURCES OF INTERNATIONAL CIVIL PROCEDURAL LAW**

System of sources of international civil procedure law. National legislation as a source of international civil process. Cross-sectoral codification of international civil procedural law. Problems of unification of norms of the international civil procedure in the Republic of Belarus.

International treaty as a source of international civil procedural law. The role of international agreements in regulating court procedure. Universal international treaties. Regional international treaties. Bilateral international treaties on the legal assistance. Relationship between international and domestic law.

Concept and types of ancillary sources of international civil procedural law and its main characteristics. The concept of soft law (international commercial law). Court practice as a source of international civil procedural law. Doctrine as the source of international of international civil procedural law.

### **TOPIC 3. PRINCIPLES OF THE INTERNATIONAL CIVIL PROCEDURE**

The principle of the "law of the court" as a fundamental principle of international civil procedure: concept and essence. Application of foreign procedural law in civil cases complicated by a foreign element. The problem of the distinction between rules of procedure and rules of substantive law, the methods and criteria used in solving it. Refusal to apply a foreign procedural form: grounds and consequences. Exceptions to the principle of the law of the court in national and international law.

General and special principles of the international civil process. Principle of priority of treaties. The principle of procedural equality of foreign citizens, stateless persons and foreign legal entities with citizens and legal entities of the Republic of Belarus. The principle of respect for the jurisdiction of foreign courts and other law enforcement agencies The principle of reciprocity. The principle of international courtesy (comitas gentium). Principles of the 2004 cross-border civil procedure(ALI/UNIDROIT).

#### **TOPIC 4. INTERNATIONAL JURISDICTION: EXISTING ISSUES**

The concept of international jurisdiction and its differences from the concepts of jurisdiction in civil and economic procedural law in the Republic of Belarus.

International jurisdiction in the domestic legislation of the Republic of Belarus. Criteria of international jurisdiction and their classification. The difference between the criteria of international jurisdiction and collisional links in private international law. The concept of the dual function of territorial jurisdiction.

Rules of international jurisdiction in international treaties involving the Republic of Belarus. "Direct" and "indirect" international jurisdiction.

Agreements on international jurisdiction: concept and qualification. Prorogation and derogation effect of the jurisdiction agreement. Law applicable to international jurisdiction agreements. Conditions of validity of the agreement on international jurisdiction. Conclusion of an agreement on international jurisdiction and its form. Execution of the agreement on international jurisdiction.

Exclusive international jurisdiction: the concept and main problems of legal regulation.

Conflicts of international jurisdiction. Problem forum shopping.

The cross-border consequence of the commencement of legal proceedings (*lis alibi pendens*) and the decision on the dispute that has entered into force (*res judicata*). The principle of invariability of jurisdiction after the initiation of proceedings (*perpetuatio jurisdictionis*).

International jurisdiction in foreign law. Regulation of international jurisdiction at the discretion of the court on the basis of the concept of a convenient or inconvenient place of trial (*forum convenience*, *forum non convenience*).

#### **TOPIC 5. PROCEDURAL STATUS OF FOREIGN PERSONS IN THE CIVILISTIC PROCESS OF THE REPUBLIC OF BELARUS**

The concept and types of foreign persons in international civil procedure. Principle of the national regime. The right to equal access to justice. Procedural connecting factor norms on the legal capacity of participants in international civil procedure. Personal law as a procedural conflict of laws rule. Recognition of foreign limitations in legal capacity.

Procedural rights and obligations of foreign citizens and legal persons, stateless persons. Representation in the court of these entities. Legal status of foreign representatives. Participation of a foreign lawyer in the civilistic process of the Republic of Belarus. Consular representation of foreign persons in the courts of the Republic of Belarus.

Institute of Judicial Bail in the Law of Foreign States (*cautio judicatum solvi*). General rules on the exemption of foreign persons from court costs in the 1954 Hague Convention on Civil Procedure.

## **TOPIC 6. LEGAL POSITION OF FOREIGN STATE, INTERNATIONAL ORGANIZATIONS AND THEIR REPRESENTATIVES IN THE CIVILISTIC PROCESS OF THE REPUBLIC OF BELARUS.**

The procedural status of the State as a participant in civil and economic court procedure. Sovereignty of the State. The general principle of law: an equal over an equal has no power - an equal over an equal has no jurisdiction.

Theories of state immunity. Doctrine of absolute immunity of the State. Doctrine of functional immunity of the State. The position of foreign State in the procedural legislation of the Republic of Belarus.

The UN Convention on Jurisdictional Immunities of States and Their Property of 2004 and the European (Brussels) Convention of the Council of Europe on State Immunity of 1972 as the main normative sources for the practical implementation of the theory of functional immunity.

The concept of "contractual, diplomatic" waiver of immunity.

Diplomatic immunity and waiver of immunity of members of diplomatic missions and international organizations.

## **TOPIC 7. OBTAINING EVIDENCE ABROAD**

The concept of "obtaining evidence." Procedure for obtaining evidence abroad in accordance with international treaties of the Republic of Belarus.

Rules for the use in court procedure of the document drawn up in a foreign language. Legalization of foreign documents. Exemption from legalization.

The problem of the qualification of rules of evidentiary law in resolving the disputes on the merits on the basis of foreign law. Conflict-of-laws issues in evidentiary law.

## **TOPIC 8. DELIVERY OF COURT DOCUMENTS IN CROSS-BORDER CASES**

The concept and purpose of the delivery of court documents. Possible ways to deliver foreign judicial documents.

Sources of legal regulation of the procedure for the delivery of documents in the interests of foreign judicial proceedings. Delivery of a foreign judicial document in the absence of an international agreement. Delivery of judicial documents in accordance with the provisions of international agreements.

## **TOPIC 9. RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGEMENTS**

The concept and essence of recognition and execution of foreign court decisions. Legal consequences of recognition of a foreign judgment. Theoretical problems of recognition and enforcement of acts of foreign courts. Basic concepts underlying the recognition and enforcement of foreign judgments.

Systems of implementation of foreign court decisions.

Domestic regulation of the recognition and enforcement of foreign judicial acts in the Republic of Belarus.

Types of international treaties on the recognition and enforcement of foreign judgments. Problems of the relationship between domestic and international legal sources.

Conditions for recognition and execution of decisions of foreign courts in the Republic of Belarus. Categories of judicial acts subject to recognition and execution in the Republic of Belarus. Limits of verification of a foreign judgment. Grounds for refusing to recognize and enforce foreign judgments.

Procedure for recognition and execution of decisions of foreign courts in the Republic of Belarus.

Enforcement of decisions of courts of general jurisdiction outside the Republic of Belarus. Foreign experience of recognition and enforcement of foreign decisions.

## **TOPIC 10. ALTERNATIVE WAYS OF SETTLING INTERNATIONAL COMMERCIAL DISPUTES**

Alternative ways of settling international commercial disputes: concept, types, meaning. Negotiations between the parties. Claim proceedings. Settlement agreement.

Mediation as an alternative way to resolve international commercial disputes.

Conciliation procedure in the economic process of the Republic of Belarus.

Общее понятие о международном коммерческом арбитраже. Формы международного коммерческого арбитража. Арбитражное соглашение. Условия действительности арбитражного соглашения и последствия его заключения. Принципы международного коммерческого арбитража. Арбитры и другие субъекты арбитражного процесса. Доказательства в международном коммерческом арбитраже. Арбитражное разбирательство. Арбитражное решение. Упрощенный (ускоренный, электронный) арбитраж. Обжалование арбитражного решения. Исполнение арбитражного решения. Примирительные и согласительные процедуры в международном коммерческом арбитраже.

Развитие способов альтернативного разрешения споров в Республике Беларусь и за рубежом



## Teaching and methodical card of the course

### Day Training Form

№	Theme number	Quantity of Academic hours						Other	Testing
		Lectures	Practical studie	Seminar	Laboratory work	Controlled independent			
						IC	PS		
1	2	3	4	5	6	7	8	9	10
1	Concept, subject and system of international civil procedural law	2		2				[1,2,3, 4, 5, 6, 7]	interview
2	Sources of international civil procedural law	2		2				[1,7]	Interview Preparation of essay
3	Principles of the international civil procedure	2		2				[1, 11, 12]	interview
4	International jurisdiction: existing issues	2		2				[5, 6, 7]	interview
5	Procedural status of foreign persons in the civilistic process of the Republic Of Belarus	1		2				[5, 7]	written work

6	Legal position of foreign state, international organizations and their representatives in the civilistic process of the Republic of Belarus	1		2				[1,2,3, 4, 5]	interview
7	Obtaining evidence abroad	1		2		2		[5, 6, 7]	interview test
8	Delivery of court documents in cross-border cases	1		2					
9	Recognition and enforcement of foreign judgements	2	1						
10	Alternative ways of settling international commercial disputes	2	1						
	<b>Total</b>	<b>16</b>		<b>20</b>		<b>8</b>			<b>Examination</b>

**EDUCATIONAL-METHODICAL MAP OF THE ACADEMIC DISCIPLINE**  
**“Problems of the International Civil Procedure”**

**Methodical recommendations on the organization of independent work of  
master students in the academic discipline**

In mastering the knowledge of the educational discipline, an important stage is the independent work of masters. The recommended time for self-service is an average of 2-2.5 hours per 2-hour classroom.

**The main directions of independent work are:**

- initially is detailed introduction to the curriculum;
- acquaintance with the list of recommended literature on the discipline, its availability;
- the study of the necessary literature on the topic, the selection of additional literature;
- studying and expanding the lecture material of the teacher with the special literature, consultations;
- preparation for seminars with the study of basic and additional literature;
- preparation for diagnostic monitoring forms (abstract, essay and so on);
- preparation for the academic credit.

**Content of independent work of masters  
within the academic discipline “Problems of the International Civil Procedure”.**

1. Work with materials of lectures and for practical classes: preparation for classes, self-search for additional information (in accordance with the topics of the classes).
2. Work on the preparation of abstracts and essays.
3. Analysis of legislation and its implementation/

**Control over independent work of masters:**

1. The quality of the work of masters with practical materials is controlled in classes in the form of interview, fulfilment of individual tasks.
  2. The abstract is presented in the form of a presentation.
  3. Preparation of essays.
- Abstracts and essays are reviewed and evaluated by the teacher.

The assessment of the activity of masters is carried out according to the results of:

- checking of abstracts and essays;
- interviewing in the classroom.

The study the discipline "Problems of the International Civil Procedure" is based on the knowledge of other legal disciplines, including the disciplines "International private law", "Civil Law".

To study the discipline «Problems of the International Civil Procedure », the following knowledge and skills are necessary:

*Knowledge:* in the sphere international legal relations, civil procedure;

*Skills:* apply acquired knowledge, interpret the norms of international instruments on trade negotiations and settlement of international trade disputes; to operate with terminology; to learn theoretical material independently, to participate in discussions and to formulate own conclusions.

### **Sample list of tasks for Managed independent work of students**

Managed independent work (consulting and methodological support and control) is carried out in the form of classroom sessions.

Sample tasks for self-management:

#### **Topic 3. Principle of international civil procedure (2 hours)**

Essay on the topic "The current state and prospects for the development of the principles of the international civil process."

(Control Form - Essay).

#### **Topic 4. International jurisdiction (2 hours).**

Rules on international jurisdiction in international conventions.

(Control Form - Essay).

#### **Topic 9. Recognition and execution of foreign judgements (2 hours).**

*Task 1.* Prerequisites for recognition and resolution of enforcement of foreign court decisions: current state and prospects for development.

(Control form - presentation at classes).

*Task 2.* Doctrinal approaches to the definition of a public policy clause as grounds for denying recognition and enforcement of foreign judgments.

(Control form - presentation at classes).

#### **Topic 10. Alternative ways to resolve international commercial disputes (2 hours).**

Advantages and disadvantages of alternative ways of resolving international commercial disputes.

(Control form - discussion).

#### **Methodological recommendations for organizing the independent work of masters**

At studying the discipline it is recommended to use the following forms of independent work:

- search (selection) and review of literature and electronic sources on individually defined course problem;
- homework;
- preparation for practical workshops;
- research and development;
- preparation of abstracts, reports, essays and presentations on specific topics;
- preparation for participation in conferences and competitions.

## **Basic Literature**

### *Legislature*

1. CONVENTION of 1 March 1954 on civil procedure // <https://www.hcch.net/en/instruments/conventions/full-text/?cid=33>
2. CONVENTION on international access to justice (Hague, 25.X.1980) // <https://www.hcch.net/en/instruments/conventions/full-text/?cid=91>
3. Vienna Convention on Diplomatic Relations 1961 // [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_1\\_1961.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_1_1961.pdf)
4. Vienna Convention on Consular Relations 1963 // [https://legal.un.org/ilc/texts/instruments/english/conventions/9\\_2\\_1963.pdf](https://legal.un.org/ilc/texts/instruments/english/conventions/9_2_1963.pdf)
5. CONVENTION on the service abroad of judicial and extrajudicial documents in civil or commercial matters // <https://www.hcch.net/en/instruments/conventions/full-text/?cid=17>
6. Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters // <https://www.hcch.net/en/instruments/conventions/full-text/?cid=82>
7. Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents // <https://www.hcch.net/en/instruments/conventions/full-text/?cid=41>.
8. United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 10 June 1958) // <https://www.newyorkconvention.org/english>
9. ALI / UNIDROIT Principles of Transnational Civil Procedure ( The American Law Institute and UNIDROIT // <https://www.unidroit.org/instruments/civil-procedure/ali-unidroit-principles>
10. Конвенция о правовой помощи и правовых отношениях по гражданским, семейным и уголовным делам, 22 янв. 1993 г., г. Минск // [http://www.consultant.ru/document/cons\\_doc\\_LAW\\_5942](http://www.consultant.ru/document/cons_doc_LAW_5942)
11. Конвенция о правовой помощи и правовых отношениях по гражданским, семейным и уголовным делам, 7 окт. 2002 г., г. Кишинев // <https://cis.minsk.by/page/614>
12. Конституция Республики Беларусь 1994 года (с изменениями и дополнениями, принятыми на республиканских референдумах 24 ноября 1996 г. и 17 октября 2004 г.). – Минск: Амалфея, 2005. – 48 с.

### **Textbook**

1. Taranova, T. S. International Civil Procedure: text. manual / T. S. Taranova. - Minsk: RIVSH, 2015. – 230 p.

### **Additional**

1. Гетьман-Павлова, И. В. Международный гражданский процесс: учебник для бакалавриата и магистратуры / И. В. Гетьман-Павлова, А. С. Касаткина, М. А. Филатова; под общ. Ред. И. В. Гетьман-Павловой. — М.: Изд-во Юрайт, 2018. - 271 с.
2. Дробязкина, И. В. Международный гражданский процесс: проблемы и перспективы / И. В. Дробязкина. – СПб. : Юрид. центр Пресс, 2005. – 312 с.

3. Международный коммерческий арбитраж: пособие / А.И. Анищенко [и др.]; под ред. У. Хелльманна, С.А. Балашенко, Т.А. Сысуева. – Минск: Изд. центр БГУ, 2017. – 395 с.
4. Николукин С.В. Международный гражданский процесс и международный коммерческий арбитраж: учебник / С. В. Николукин. – М.: ЮСТИЦИЯ, 2017. – 246 с.
5. Осавелюк, Е. А. Международный гражданский процесс в системе российского права: учебник / Е. А. Осавелюк. – М.: Лань, 2019. – 176 с.
6. Романова О.Н. Международный гражданский процесс: курс лекций для магистрантов специальности 1-24 81 03 «Правовое регулирование внешнеэкономической деятельности» /О.Н. Романова. – Минск: БГУ, 2015. – 78 с.
7. Белова Т.А., Романова О.Н., Международный гражданский процесс: практикум для магистрантов специальности 1-24 81 03 «Правовое регулирование внешнеэкономической деятельности» / Т. А. Белова, О. Н. Романова. – Минск: БГУ, 2015. – 71 с.
8. Molodyko, K. Russian Compulsory Financial Ombudsman and Civil Procedure / K. Molodyko // Russian Law Journal. – 2021. – Vol. 9. – No 3. – P. 111-136. – DOI 10.17589/2309-8678-2021-9-3-111-136.
9. Atalykova, G. Legal problems of pursuing the claim About revocation of adoption / G. Atalykova // Review of law Sciences. – 2019. – No 3. – P. 55-59.
10. Esenbekova, P. Participative procedure in civil proceedings / P. Esenbekova // Review of law Sciences. – 2019. – No 3. – P. 50-54.
11. A class action in various legal systems / V. S. Sinenko, Yu. V. Boltenkova, A. V. Tyurina, O. S. Lilikova // The Turkish Online Journal of Design Art and Communication. – 2018. – Vol. 8. – No S-MRCHSPCL. – P. 53-57. – DOI 10.7456/1080MSE/108.
12. Filipova, I. A. Mediation in enforcement proceedings: application in the European countries and prospects of application in the Russian Federation / I. A. Filipova, V. V. Filipov // Actual Problems of Economics and Law. – 2017. – Vol. 11. – No 1. – P. 180-188.
13. Zagidullin, M. Types of legal liability of the notary: actual problems / M. Zagidullin // Kazan University Law Review. – 2017. – Vol. 2. – No 4. – P. 42-55. – DOI 10.24031/2541-8823-2017-2-4-42-55.
14. Civil justice in China // BRICS Law Journal. – 2016. – Vol. 3. – No 4. – P. 94-124. – DOI 10.21684/2412-2343-2016-3-4-94-124.
15. Bocharova, N. Party autonomy in administrative (judicial) proceedings / N. Bocharova // BRICS Law Journal. – 2016. – Vol. 3. – No 2. – P. 153-163.
16. Dolganichev, V. V. Class Action in Civil Procedure of Continental Law Countries / V. V. Dolganichev // Журнал гражданского и уголовного права. – 2016. – No 2(6). – P. 71-79. – DOI 10.13187/zngup.2016.6.71.

## CURRICULUM APPROVAL PROTOCOL

Academic subject title to be matched	Name of the Department:	Proposals for changes in the curriculum content of the higher education institution on an academic subject	The decision taken by the department that worked out the curriculum (mentioning the date and the protocol number)
Философия и методология науки	Кафедра философии	<p><i>Не изменяется</i></p> <p><i>Dr. A. A. Gorbunov</i></p>	<p><i>N 12 of 25.05.11</i></p>



**ADDITIONS AND MODIFICATIONS TO THE CURRICULUM**  
\_\_\_\_\_ academic year

№	ADDITIONS AND MODIFICATIONS	Basis
1		

The curriculum is revised and approved at a meeting of the Department of Civil-Law Disciplines (Protocol No. \_\_\_\_\_ 2021)

Head of the Department  
of Civil-Law Disciplines  
Doctor of Juridical Sciences, Professor

T.S. Taranova

CONFIRM

Dean of the Faculty of Law

A.N. Shklyarevsky