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ARBITRATION BETWEEN STATES WITH LIMITED RECOGNITION

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SUMMARY

This article in no case promoting separatism, it is just a result of scientific interest to the regarding to it legal aspects. In this article, the first ever study of the problems and prospects for the development of the arbitration between states with limited recognition conducted. An analysis of possible dispute situations is being carried out. Ways of it resolution were proposed. Second focus is on the "jurisdiction trap", caused by complicated legal status of states with limited recognition.

Key words: states with limited recognition, arbitration, disputes, separate territories, court`s decision, Namibia except.

АРБИТРАЖ МЕЖДУ ГОСУДАРСТВАМИ С ОГРАНИЧЕННЫМ ПРИЗНАНИЕМ

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АННОТАЦИЯ

Даная статья ни в коем случае не пропагандирует сепаратизм, а лишь является результатом научного интереса к касающимся его аспектам. В этой статье впервые изучены проблемы и перспективы развития арбитража между государствами с ограниченным признанием. Проведен анализ возможных спорных ситуаций, предложены пути их разрешения. Во-вторых, внимание сфокусировано на «юридической ловушке», вызванной сложным юридическим статусом государств с ограниченным признанием.

Ключевые слова: государства с ограниченным признанием, арбитраж, споры, сепаратные территории, решение суда, Намибийское исключение.

Statement of the problem. What if one or both of the parties in the International Arbitration would be states with limited recognition? How people of quasi states can use separate law? Answers on this questions in this article.

The relevance of the research topic is confirmed by absence of radical study in this aspect, moreover there is real problem, which lies in the fact that people of quasi states cannot use official law, but all the local institutions are illegal.

Status of research: because of ignoring of unrecognized states law and negative attitude of world community to separate lands research in this sphere standing on the very low level.

The Object and Purpose of the Article is the Study of arbitration between desirable members of world society – non-recognized or partially recognized states. Main purpose is finding the way of solving the legal problem, caused by diarchy of official and separate law.

Presentation of the main material. In the worldwide geopolitics there is a phenomenon of the states with limited recognition. World community treating with suspicion to them, but the fact of their subsistence is obvious. These polities have several forms, which depends on the level of recognition. International law is strictly unite in the aspect of states with limited recognition – they are identified as a territories of fully-recognized states.

We know legal cases between Russian Federation and Ukraine, Liechtenstein and Czech Republic, The Republic of Nicaragua and The United States of America etc. Theoretically it could be possible between states with limited recognition. Their collisions can be similar – territorial, commercial, on the protection of human rights etc. Moreover, nowadays there are preconditions for that. For example: Republic of China (Taiwan) expressed protest against deportation of it citizens from Kenya, United Nations Human Rights Committee took to consideration complaint of ex-head of the Catalonian government Carles Puigdemont against Spain, Sahrawi Arabian Democratic Republic won the case against Moroccan OCP Group, Puntland and Somaliland disputing about few border provinces and fighting for them. It would be interesting precedent when one or both parties of legal case in the International Arbitration would be states with limited recognition or their representatives (companies, citizens, institutions etc), because United Nations identified these territories as a parts of another full-recognized states, but claims of these polities are not supported by world-recognized governments, which de jure owning these lands.

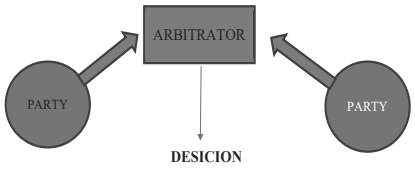
There are few ways of disputes resolution between states with limited recognition:

– Non-official arbitration. Both of parties taking arbitrators. There is two disadvantages of that way – recognition of the decision only in the quasi states and commercial disputes only. Last feature caused by the interest of arbitrators, who represent homeland - state with limited recognition in the other types of disputes, for example, about territory;

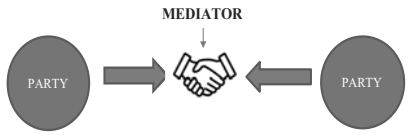
– Non-official arbitration by the third quasi state. In that case taking place resolution by the third state with limited recognition. It could solve the problem, but worldwide status of that decision would be zero. Perhaps, in the future, the decision of the third state with limited recognition have consultative character in the precedent;

– Semi-official arbitration. There are several partially recognized states (State of Palestine, Kosovo, The Republic of China etc), their disputes and collisions could be solved by the United Nations members, who recognized these polities. The disadvantage of this alternant is that fully-recognized states, with these special polities on their territories could blame the state-arbitrator in the interference in the internal affairs;

– Fully-official arbitration. Ad hoc recognition by world judicial body. It means just one-time acceptance of these disputing parties for the resolution of the collision or dispute. In this case governments of fully-recognized states, which de jure own separate territories could blame in the interference in the internal affairs too. Nevertheless, the arbitrator`s decision is compulsory in this situation.



– Mediation. It is not the arbitration, but nevertheless one of the ways of disputes resolution, which lies in the fact that neutral third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques. It could be non-official, semi-official and fully-official. For example, non-official mediation is holding by Nagorno-Karabakh Republic in the dispute between the Republic of Moldova and Pridnestrovian Moldavian Republic. For instance, semi-official mediation is holding by Kosovo in the crisis between the Republic of Cyprus and Turkish Republic of Northern Cyprus.



First two cases are the most possible, because procedurally they are the easiest. Quasi states supports each other, so mediation or arbitration by third state with limited recognition is not impossible. Semi-official arbitration and fully-official arbitration, in my point of view, is the most impossible. Government of the United Nations state-member, which was the arbitrator would get negative reaction from the world community, obviously, state government don`t want to waste it image. Partially-recognized states with all passion trying to get worldwide recognition and fact of their help to the separate territories could break plans of these semi-recognized countries. Obviously, fully-recognized states would not take part in the arbitration or mediation, where one or both of the sides are it`s separate land(s) as it could be with International Commercial Arbitration Court of Ukraine and dispute between Donetsk and Luhansk People`s Republics.

How to get a consensus between owner-state of separate territories and arbitrator of another state, which was blamed in the interference in the internal affairs? It must be written in the decision`s preamble, that it is just ad hoc recognition and it is not about separatism support, just help to human rights and commercial interests and that it is the only one way of solving this problem.

One of the ways of legalization of these arbitrator`s decisions is special worldwide legal document. It could be, for example, Convention on justice in the special conditions. It would help people, who lives in the "jurisdiction trap" – world is not recognizing local law of separate lands and there is no ability to use true law. Convention would include next rules of law: "Court's/arbitrator`s decisions of the separatists judicial systems are recognized if they not about political regimes of the breakaway regions and secessionist propaganda", "In the event of two court`s/arbitrator`s decisions (fully-recognized state and state with limited recognition), decisions of the first has a higher legal status", etc.

There are few preconditional documents for the proposed Convention. First of them is Advisory Opinion issued in 21 June 1971 by the International Court of Justice "Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)"[1]. Advisory Opinion introduced concept of "Namibia exception" – in some cases state bodies can recognize the legal power of the documents, which was issued by illegal government or occupation authorities. Second example is the Ukrainian Act on features of state policy on protection of state sovereighty in temporarily occupied territories of Donetsk and Luhansk oblasts. According to it activity of Donetsk and Luhansk People's Republics is unlawful, runs counter to the rules of international law and any act, which was issued in connection with occupation administration is null and void, except for documents, which confirm the fact of birth or death[2]. Second normative legal act is not concerning decisions of non-recognized courts, but nevertheless, it is a big step towards people, who standing in complicated legal and geopolitical situation.

Conclusions. Last two decades there is massive increase of separatist movements in the world. It causes problems with justice, because it depends on recognition. There is large population in the separate regions, all these people living in the intricate law situation – this problem must be solved. Worldwide community could see unprecedented case soon – law dispute, where one or both of the parties are representatives of states with limited recognition. This situation has several forms of progress, which depends on the type of arbitration. Some forms of the arbitration (semi/fully-official) could cause tense political situation, which could escalate into sanctions, easing of international relationships, political crisis etc. Complicated geopolitical situation causes similar legal status. Population of separate territories suffer from it. Convention on justice in the special conditions could solve the above-mentioned problems. Obviously, there is still a need for further research in this segment of law/

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[1] "Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)". URL: https://www.icj-cij.org/files/case-related/53/053-19700805-ORD-01-00-EN.pdf

[2] Ukrainian Act on features of state policy on protection of state sovereighty in temporarily occupied territories of Donetsk and Luhansk oblasts from 24.02.2018. URL: http://zakon.rada.gov.ua/laws/show/2268-19

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ОСНОВАНИЯ ПРЕКРАЩЕНИЯ ОБЯЗАТЕЛЬСТВА СУПРУГОВ ПО СОДЕРЖАНИЮ

Татьяна КРАСВИТНАЯ,
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АННОТАЦИЯ

В статье рассмотрены основания прекращения обязательства супругов по содержанию. С помощью системно-структурного метода исследования проведена классификация оснований прекращения обязательства супругов по содержанию на договорные и внедоговорные, а внедоговорных – на общие и специальные. Обосновывается, что общие основания прекращения обязательства супругов по содержанию – это основания прекращения обязательства супругов по содержанию автоматически на основании закона или по решению суда, которые распространяются на любого из супругов, имеющего право на содержание в соответствии с общими условиями алиментирования одного из супругов (нетрудоспособность, нуждаемость, способность второго из супругов предоставлять материальную помощь). Специальные основания прекращения обязательства супругов по содержанию – это такие правопрекращающие юридические факты, установленные законом, которые прекращают право на алименты у одного из супругов, если это право возникло не в силу таких общих условий алиментирования, как нетрудоспособность и нуждаемость, хотя при этом была установлена способность другого из супругов предоставлять материальную помощь. Разработаны предложения по совершенствованию семейного законодательства Украины относительно прекращения обязательства супругов по содержанию.

Ключевые слова: супруги, обязательства по содержанию, основания прекращения обязательств по содержанию, договорные основания, внедоговорные основания, общие основания, специальные основания, лишение права на содержание.

GROUNDS FOR THE TERMINATION OF MAINTENANCE OBLIGATIONS OF THE SPOUSES

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SUMMARY

The author of the article has studied the grounds for the termination of maintenance obligations of the spouses. The author with the help of the system and structural research method has carried out the classification of the grounds for the termination of maintenance obligations of the spouses into contractual and non-contractual, and non-contractual – into general and special. It has been substantiated that the general grounds for the termination of maintenance obligations of the spouses are the grounds for the termination of maintenance obligation of the spouses automatically based on the law or by the court decision, which are applied to either of the spouses eligible for maintenance in accordance with the general conditions to aliment of one of the spouses (incapability, need, ability of another spouse to provide financial aid). Special grounds for the termination of maintenance obligations of the spouses – are such dispositive facts established by the law, which terminate the right to alimony of one of the spouses, if this right arose not due to such general conditions to aliment as incapability and need, although the ability of another spouse to provide financial aid was established. The author has elaborated propositions to improve the family legislation of Ukraine regarding the termination of maintenance obligations of the spouses.

Key words: spouses, maintenance obligations, grounds for termination of maintenance obligations, contractual grounds, non-contractual grounds, general grounds, special grounds, deprivation of the right to maintenance.