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Dear readers,

I would like to present for your attention the second regular issue of the journal "Kazan University Law Review" in 2019.

This issue presents articles on issues of theory and practice of Russian and foreign law.

The opening article is written by Professor of Azerbaijan State Economics University *Oktay Efendiev*. His article "Trade and economic issues of landlocked states and their international legal regulation" highlights pressing issues for today's situation in the world. It is important to note that the article discusses not only the main problems of the countries without access to the open sea but also other topical issues in the sphere of international cooperation. At the same time, the author addresses some difficulties in improving transit-transport legal relations and the customs system of this group of countries.

The next article of the issue is the article of our colleague from Poland, *Mateusz Rojewski*, Polish Academy of Sciences. "Golden share as a special privilege of the State Treasury in the Polish legal system". The main purpose of this article is the synthetic analysis of the golden share institution in the Polish legal system. The author explains the basics and the core of the institution of golden share and enables the specialists to extend and consolidate their knowledge of the subject. Furthermore, by dint of the rulings of Polish Supreme Court and Court of Justice of the European Union included in the article, this type of contract is presented in practical terms.

I am pleased to present research of our colleague from Sevastopol State University, Director of Law Institute *Vladimir Koval*. His article "Basic aspects of legal regulation of merchant shipping" addresses important issues of regulation and the emergence of merchant shipping. Vladimir Koval analyses the historical activities in this sphere and the current issues, for example, he discusses the work of the legal section of the All-Russian Congress of Sea Pilots on August 1, 1923 in Petrograd and the development of shipping internationally.

The "Commentary" part contains a very interesting article on topical issues of tax law "Dependent agent in double tax treaties of Russia: a legal analysis of criteria". It is written by young scholars from Moscow *Lyaysan Mingazova* and *Denis Akhmetyanov who are* former graduates of Kazan Federal University.

The issue finishes with the "Conference reviews" containing the article by our colleague from Kutafin University (MSAL), Moscow, on one of the events of the IV Moscow

Legal Forum dedicated to the 200th anniversary of the birth of Professor Dmitry Meyer, as well as the article by the scholars of Kazan Federal University, who presented the fifteen-year history of creation and realization of the annual student model trial "All-Russian Judicial Debates".

With best regards,
Editor-in-Chief
Damir Valeev

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Oktay Firuddin Efendiyev
Doctor of Legal Sciences,
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TRADE AND ECONOMIC ISSUES OF LANDLOCKED STATES AND THEIR INTERNATIONAL LEGAL REGULATION

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Abstract: As shipping still plays a central role in world trade, and geographic location is also of great political and economic importance, the article discusses not only the main problems of states that do not have access to high seas, but also their current issues, their significance and role in the difficult conditions of globalization of international economic relations. At the same time the author describes some problems related to the difficulties in improving transit-transport legal relations and the customs system of this group of countries. Although the lack of access to the sea creates certain problems, they are not insoluble ones as geographic factors are only one aspect of the issue. There could be practical solutions, including integrated approaches to the creation of transit corridors or general regional integration, legislation reforms, fundamental institutional and administrative changes. The article substantiates the active advancing of foreign economic cooperation and partnership of all states on a mutually beneficial, equal and civilized basis.

Keywords: international trade, landlocked countries, transport security, transit, customs system, international legal acts, new economic world order.

As an eminent scholar of his time, Adam Smith, wisely noted in his unique monument to economic thought: "in addition to having a free market economy, the geographical

location, access to the sea and, consequently, to trade routes, are essential for the indicators of the country's economic activity".[1]

Over time, due to the intellectual development of mankind and other factors, the rail, land, sea, air and pipeline means of transportation, as well as telecommunication and modern information technologies have reduced the advantages of coastal countries compared to landlocked countries. However, maritime transport still plays a central role in world trade, and the geographical location is of great political and economic importance.

According to the Human Development Index[2], nine out of twelve modern states are landlocked[3]. Although the share of developing countries included into this group accounts for more than 12% of the land and more than 4% of the Earth's population, their total gross domestic product is insignificant (only 0.3% of world GDP). Moreover, without having the direct access to the oceans, this group of states is forced to spend an average of 15% of export revenues on transportation costs. And for a number of African countries, this figure reaches 50%, other developing countries spend 7% of GDP on these services, while industrialized countries spend only 4%. It is generally recognized that access to the sea is of fundamental importance not only for the economic activities of the country and, accordingly, to the trade routes. In this regard, the absence of such access creates certain problems: in particular, neighboring states may have economic or even military reasons for blocking access to the sea or transit through their territory.

It is also obvious that such a group of countries, i.e. those who do not have direct access to the sea coast, and who, accordingly, cannot participate in maritime trade, may have specific problems. Unlike their neighboring coastal countries, from the very beginning they may face many difficulties in their trading activities. This situation is almost always worse if the lack of access to the sea is aggravated by other factors, such as distance from main markets, tropical climate, long distance from the coast, poor infrastructure or lack of adequate political, legal or institutional conditions. In today's world of competition, landlocked countries tend to be in a difficult, unequal position.

It should be noted that, relatively recently, the United Nations began to pay closer attention to the problems of landlocked states, which was reflected, in particular, in the work of its Economic and Social Council[4]. In fact, at the beginning of the 21 century,

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[1] See A. Smith. *An Inquiry into the Nature and Causes of the Wealth of Nations*. Moscow, Nauka Publ., 1993.

[2] HDI is an integral indicator that is officially calculated annually by the UN for interstate comparison and measurement of living standards, literacy, education and life span, as the main characteristics of the human potential of the studied territory, and a tool for general comparison of the level of different countries and regions. The index is published in the framework of the UN Development Program in annual reports on human development since 1990 (for more information, see Wikipedia online).

[3] In other cases, according to the UN representative A. K. Choudhury in UN publications, there are 30 such countries named as the least developed countries, landlocked developing countries, and small island developing countries (see UN Chronicle no. 4., 2003, p. 13: https://www.un.org/chronicle).

[4] In particular, Economic Commission for Europe, Committee for Trade, Industry and Enterprise Development (sixth session, May 2002, subject: "Landlocked Countries"); see UN document TRADE/2002/23: this document was issued as a reference material for the International Forum on Trade Facilitation (May 29-30, 2002) and the round table of the Committee on the Implementation of Trade Facilitation Measures in Countries in Transition (May 31, 2002).

for the first time this doubly "destitute" group of states received the UN-approved Declaration and Program of Action, by which the representatives of transit countries, donor countries, UN specialized agencies, civil society organizations and the private sector expressed their support for this group.

Modern practice and statistics show that, in general, although the international community, including international organizations, banks, bilateral assistance agencies, foundations and non-governmental organizations, make some efforts to promote the development process, the difference in income between rich and poor countries is not decreasing, but, on the contrary, is increasing. Apart from a few landlocked countries located in Europe, most of these countries are not "rich". Many of the "poorest" countries in the world, including a large number of African countries, are landlocked, and their position requires the closest attention and study.

On the other hand, despite the fact that the lack of access to the sea creates certain problems, they are not insoluble. Many of the problems faced by landlocked countries, for example, have some practical solutions, including integrated approaches to the creation of transit corridors. There are general development activities for regional integration, regulatory reforms, fundamental institutional and administrative changes, special mechanisms for international protection, as well as an in-depth analysis of the structure of foreign trade of each landlocked country and its adequacy in terms of transportation.

As for the geographical factors, they are only one aspect of the problem. It is noteworthy that multilateral and regional trade agreements (in economic regions, customs zones, free trade zones, or developing trade regions) provide for a steady reduction of tariffs. The international exchange of goods and services and the integration of production and distribution systems are being increasingly stimulated, and therefore the improvement of the physical transfer of goods, i.e., the actual transportation within the sovereign territories of the countries, through and through them, plays a primary role.

As we can see, at present the problem is not mainly about access to world markets, but the actual delivery of goods without serious delays and cost increase due to legal, administrative, customs or technical barriers. This is a real problem for all countries, but it is especially acutely felt by landlocked countries, and in particular by developing or so-called "remote countries" that are landlocked.

Regarding the right of states to access to the high seas, in accordance with the fundamental provisions and principles of modern international law, enshrined, in particular, in the UN Convention on the Law of the Sea (1982, Part X), landlocked countries have the right of access to high seas.

In practice, this right is realized through the conclusion of special agreements between interested landlocked states and transit states. In addition, landlocked countries may own ships under their flag based in foreign ports, for example, Czech ships are using the port of Szczecin on the basis of an agreement with Poland.

Landlocked countries are known to enjoy all rights on an equal footing in the high seas: in particular, they have the right for navigation, fishery, flights of aircrafts, laying submarine cables and pipelines.

In our opinion, it is worthwhile to find and study the most common and significant problems that landlocked states face in practice. However, it is necessary to take into account examples showing how individual states or organizations manage to overcome some difficulties. Here, first of all, we have in mind the experience and practice of certain Eastern and Central European countries (Hungary), post-Soviet countries of Central Asia with transition economies, and Switzerland, as a country, which is although being landlocked, but achieved great economic success.

First of all, there is a so-called, double vulnerability of landlocked states which is one of their significant problems, i.e. they are a) vulnerable in their own right and b) vulnerable due to dependence on one, even several transit countries. In fact, they are not only deprived of access to the sea, but, often, their neighboring states are not interested in passing of goods through their borders. In practice and it usually the case, neighboring countries may have additional, economic or military grounds (incentives) in order to block access to the sea or transit of goods through their territory.

Secondly, as we know, the coordination of the functioning of the relevant transport infrastructure in one country is already an uneasy task, and handling it across borders with another state is even more difficult. It is therefore not surprising that the high transport costs caused by infrastructure deficiencies, delays, charges or certain procedures in a transit country make the land part of the transportation of goods for landlocked countries very expensive and force these countries to store large amounts of stocks. For most landlocked countries, high transport costs[1] remain the most serious obstacle to access, on fair and equal terms, to world markets and competition with other countries.

As it can be seen, the closer a landlocked country is located to the coast, the more it can benefit from relatively small transportation costs by sea. If a landlocked country is connected by navigable inland waterways with the coast, the isolation becomes a less acute problem. And if, in addition, there is the necessary infrastructure, that is, roads and railways, ports, then the severity of the problem associated with geographic remoteness is even further reduced.

However, on the other hand, this requires the appropriate cooperation and partnership with the transit country. For example, in order to increase the flow of goods to and from Rwanda and Uganda, it was necessary to modernize the rail system in Kenya. A coordinated approach towards infrastructure development is also needed. Over a long time an example of insufficiently coordinated infrastructure development

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[1] How the geographical position of a country determines transportation costs can be illustrated by the following examples. The cost of shipping a standard container from Baltimore (United States) to the Ivory Coast at that time was about $3,000. The cost of shipping the same container to the Central African Republic, which is landlocked, was $13,000 (see Hausmann, Ricardo, *Prisoners of Geography in "Foreign Policy", January 2001*). An even more illustrative example is the delivery of a standard container from Rotterdam in the Netherlands to Dar es Salaam in Tanzania, where the distance by air is 7,300 km, for $1,400, and then transporting it to Kigali in Rwanda by road, covering the distance of only 1,280 km for the fee twice as expensive (see Jeffrey D. Sachs, Andrew D. Mellinger, John L. Gallup, The Geography of Poverty and Wealth, *Scientific American*, April 2001).

was the Paraná River basin in Paraguay. Only after the agreement was signed with MERCOSUR in 1990s, which facilitated the use of inland waterways for the transport of goods by barges, was it possible to use part of the agricultural potential of landlocked Paraguay.

It should be noted that often the costs of landlocked countries are increased not only because of the lack of adequate infrastructure, but also because of industrial problems associated with production facilities. For example, it can happen due to the lack of containerization and poor development of cargo handling facilities as well as due to the unsatisfactory condition of the railway, rolling stock or ships and barges.

As a result, landlocked countries may miss the existing or potential opportunities, as they, and their transit partners, often do not show enough flexibility in responding to the increased demand for goods caused, for example, by the crop failure in another part of the world. Such problems with capacity, as a rule, are underestimated, and often there are even greater difficulties for the acquisition of new conveyances.

Obviously, many of the above-mentioned problems lead to weak economic growth in landlocked African countries that are far from markets and sea trade routes and which are generally not accessible to ocean vessels, since their river systems have impassable rapids and conditions for these vessels. Thus, it is known that in the West African Economic and Monetary Union (WUEMO) some of the most important railway lines were built in colonial times – in 1920s or 1950s. In order for landlocked countries to deliver their goods to ports, the problem of their reconstruction is crucial. According to the East African Cooperation Organization, an intergovernmental organization established by Kenya, Uganda and Tanzania, 84% of the three countries' road network require immediate action, i.e. only 16% of roads are being renewed or serviced from time to time[1]. However, it is noteworthy that in Africa there are three landlocked countries (Botswana, Lesotho and Eswatini), where to a certain extent most stable growth rates are observed.

In the modern era, economic and production difficulties for this group of countries are aggravated by the fact that nowadays in the world new methods of production and trade are increasingly spreading, such as global networks for the supply of raw materials, just-in-time production systems, as well as other factors.

Of course, it cannot be ignored that these trends make transport costs and delivery times in particular, the main factors determining the modern nature of the development of world trade, and the structure of foreign investment. And this, in turn, leads to the fact that landlocked states, due to high transport costs and geographical distance from ports and world markets, as a rule, find themselves at a disadvantaged position, when their competitiveness in these markets is being questioned.

There is no doubt that in order to achieve economic success, this group of countries must be able to compete in equal and mutually beneficial conditions, which, as we know, depends on the availability and condition of the so-called preferential access of their

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[1] See, for example, Economic Commission for Africa, *Economic Report on Africa 2000: Transforming Africa's Economies,* Addis Ababa, 2001.

export goods to ports and world markets. And their neighboring states, in particular, transit countries, should not only show their "good will", but also provide them with more preferential, easy access to seaports.

Naturally, this does not apply to those transit countries that belong to developing countries and have to export their products, goods, sometimes, of the same variety and nature as much as possible. Therefore, there is an additional need to support their economies from donor countries so that they, in turn, can provide assistance to countries that do not have access to the sea.

Transit countries may also be developing ones and they may need support, which, in turn, may benefit landlocked states as well. Especially if railways and highways, pipelines, ports, waterways and airports and their infrastructures are developed in transit countries, this will contribute to the development and achievement of economic success, both in transit countries and in landlocked states. Therefore, a situation may arise when the countries mentioned will have mutual benefit.

As a rule, when carrying out foreign economic activity, trade participants are faced with the need to cross state borders, the regime of which is established in accordance with its domestic legislation and its international treaties. Modern practice shows that usually there arise the issues of maintenance of the border, its intersection by passengers and vehicles, movement of goods and cargo, management of economic and other legal activities in the border area.

In this case, the issue of the strict observance of the international legal status of the state border takes on special significance, since its presence has corresponding legal consequences. Taking into account this circumstance, the legislation of the overwhelming majority of modern states, including the post-Soviet states, provides for the creation of an institution border representatives (commissioners) for resolving issues of compliance with the regime of state borders, regulation and inadmissibility of border incidents, maintaining cooperation and partnership, including foreign economic activity.

As for the economic aspect, the mere fact that there is a need to cross borders already significantly increases the total amount of expenses and formalities that trade participants have to perform. If the presence of a border leads to such significant costs in trade between highly developed countries, then it is quite obvious that countries with underdeveloped trade and customs infrastructure face even more costly obstacles, even including border conflicts. Therefore, it is imperative to find opportunities for the international legal settlement of such issues as, for example: a) simplification of customs procedures reflected in the relevant documentation; b) introduction and implementation of electronic processing of documentation; c) creation of a favorable institutional environment for progress in this area, etc.

The experience of some modern states, even in areas with a high level of economic integration and firm political commitments, such as the European Union, shows that it took some time to harmonize customs procedures and eventually abolish internal borders. This refers, in particular, to Hungary joining the EU, which required the

implementation of the necessary reforms with the adoption of appropriate legislative measures, and the strengthening of administrative and operational capacity, as well as the development of information technology systems and training, and the coordination of law enforcement and customs activities.

Of particular international legal importance was the development of agreements at the international level in order to expand cooperation and partnership in the customs field, which ultimately serves as an example of what should be done for any state to facilitate the movement of goods across national and international borders.

The consequences of being landlocked are also determined by factors such as proximity to markets and the structure of exports. There is a clear relationship between the presence of major markets "just outside the border", as is the case of landlocked European countries, and the ability to reduce the consequences of being landlocked, i.e., the need to bear high transportation costs.

There is also a relationship between lack of access to the sea and the choice to export high value goods, especially high value added goods. In this case, transport costs account for a much smaller part of the final cost, and the fact that there is no access to the sea becomes insignificant. This has been the case for Switzerland for centuries. In addition to other factors such as favorable trade agreements and proximity to large markets, the export of high value added goods was an important reason that lack of access to the sea did not play a particular role for the country.

At the same time, access to markets for landlocked countries and their ability to trade, i.e., to effectively and economically move exports and imports, are key elements in maintaining consumption levels and promoting economic growth. Trade is also of great importance in terms of economic restructuring of landlocked developing countries, which often seek to compensate for the effects of deteriorating terms of trade, civil unrest or natural disasters. Costly and unreliable transportation slows the development of trade and is complicated by the problem of transit.

In addition to these problems, another obstacle faced by landlocked countries is that they have to use the transit through the territory of another country, i.e. a sovereign subject of international law with their own economic political, military and transportation tasks. The competitiveness of landlocked countries in trade is further reduced due to "transit fees", which they cannot directly control. For example, harbor dues, tolls, forwarding fees may be set in bilateral or multilateral agreements with the country or countries of transit.

Modern practice shows that, for example, goods imported by a firm in Vienna and manufactured in Japan can enter the territory of the European Union in Hamburg, from where they are loaded onto vehicles for road transportation to Vienna. If they are subject to the transit regime[1], then duties and taxes are paid not in Hamburg, but in

[1] Among other documents, the following should be mentioned: the UN Convention on transit trade of landlocked countries in 1965; General Agreement on Tariffs and Trade (Article V); International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto, 1973); Convention

Vienna, where goods enter the market. In this case, on the way between the two cities, the goods, as a rule, are not subject to duties and cannot enter free circulation.

Currently, there is a number of existing documents (with the appropriate additions and amendments) related to the problems of international legal regulation of the transit regime, one of which is TIR Convention – the Convention on International Transport of Goods using the International Road Transport carnets (1975)[1]. This Convention continues to be used by a huge number of transport companies in more than 50 countries across Europe, Central Asia and the Middle East, giving, for example, the right for road transport operators to cross borders during international and transit transportation without performing complicated transit and customs procedures and related costs[2].

The international legal significance of this Convention, in particular, is in the fact that it allows to limit the application of the document (TIR Carnet), and also provides for appropriate international guarantees in case of violations and during the coordination of customs procedures.

It is noteworthy that landlocked countries may depend on one or more transit countries or may have several options for accessing ports using highways, inland waterways or railways. Conditions for the use of transit corridors are usually contained in bilateral transit treaties, resulting in the fact that there is little choice left for landlocked countries.

Generally, treaties also include provisions regarding the carriage of dangerous goods and the rules to be followed in such cases, import / export procedures, detailing the necessary customs documents, the necessary insurance policies or bank guarantees. Some agreements may also include permit quotas, environmental restrictions and taxes

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on the Contract for the International Carriage of Goods by Road 1956; International Convention on the Harmonization of Frontier Controls of Goods 1982, etc.

Transit rights were also enshrined in much "older" documents, such as Convention and the Statute on Freedom of Transit of the League of Nations 1921; Convention and Statute on the International Regime of Seaports of the League of Nations 1923; Declaration recognising the Right to a Flag of States having no Sea-coast 1921; or one of the oldest transit documents, namely the Revised Convention on the Navigation of the Rhine of 1868 and others.

[1] Among other documents, the following should be mentioned: the UN Convention on transit trade of landlocked countries in 1965; General Agreement on Tariffs and Trade (Article V); International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto, 1973); Convention on the Contract for the International Carriage of Goods by Road 1956; International Convention on the Harmonization of Frontier Controls of Goods 1982, etc.

Transit rights were also enshrined in much "older" documents, such as Convention and the Statute on Freedom of Transit of the League of Nations 1921; Convention and Statute on the International Regime of Seaports of the League of Nations 1923; Declaration recognising the Right to a Flag of States having no Sea-coast 1921; or one of the oldest transit documents, namely the Revised Convention on the Navigation of the Rhine of 1868 and others.

[2] The TIR (International Road Transports) system can now be used, for example, for transporting goods from Kazakhstan to Portugal (East-West direction). There are signs with the letters "TIR" on thousands of trucks in Europe, which indicate that they use the customs transit procedure of the TIR (about 3 million TIR operations are carried out per year).

or tolls. Even in Europe, road transport services have traditionally been regulated by bilateral intergovernmental agreements, on the basis of which governments annually agreed on quotas for issuing permits for transit transport by both freight and passenger vehicles. In 1980s, with the introduction of Community quotas, gradual liberalization began, which has now led to an almost complete abolition of restrictions.

These circumstances and legal issues, although being not final, give a clear idea of a difficult situation the landlocked countries may encounter. In most cases, the situation is further complicated by lack of infrastructure, maintenance problems, lengthy customs procedures, poor handling of cargo at the terminals and lack of interaction between the various institutions involved in the transit process. Also poor organization of work in ports can lead to delays in ports exceeding the actual time of sea transport of goods. However, in many cases, transit countries as well as landlocked countries, are developing and face the same problems in terms of infrastructure, institutional, administrative and regulatory frameworks.

In the modern era, in addition to deficiencies in the transit transport system and infrastructure, transport security[1] remains a major problem of particular importance not only for transit countries, but also landlocked countries, since transit is essentially an expensive enterprise both for landlocked countries and for transit countries. It is easier and cheaper to conduct transit in the context of integration, cooperation and partnership,[2] taking into account the general perspective, growing potential of transit countries, coastal countries and landlocked countries.

It is generally recognized that ensuring transport security in any international traffic is also one of the key issues of modern international transport law. Its solution is not only an important task for international transport organizations, but is also considered as an integral part of the state's transport policy. Therefore, it is not by chance that some authors consider the concept of transport safety as the "situation reflecting the degree of protection of persons involved in transportation from traffic accidents and their negative consequences".[3]

Among the issues of international legal regulation of trade and economic problems of landlocked countries, a special place in solving them is taken by the issue of regional approach, in particular, in identifying and installing appropriate transport corridors that allow the maximum expansion of mutually beneficial and equitable foreign economic cooperation. One of the proofs of such expediency is the existing transport corridor Europe-Caucasus-Asia, existing in accordance with the TRACECA project.

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1 See, for example, O.F. Efendiyev, *International legal regulation of economic cooperation of states in the transportation sector*, ADS Grupp Publ., Moscow, 2011, p. 7-27; E. Aliyev, O. Efendiyev, *International transport law and its institutions*, Course book, "Gyunash-B" Publ., Baku, 2016, p. 168-206, etc.

2 See O. F. Efendiyev, On the issue of cooperation and partnership in international law, *Transport Law*, no. 4, Baku, p. 6-22, etc.

3 See E. Aliyev, O. Efendiyev, Ibid, p. 168.

Time has shown that the emergence and existence of the TRACECA transport corridor, organized in accordance with the EU program in 1993, not only contributes to the maximum expansion of beneficial interregional cooperation and partnership, but is also an important and effective example for the economic development of the participating states.

In practical terms, the efforts of some post-Soviet countries, for example, Azerbaijan, Georgia and Kazakhstan in increasing the volume of traffic along this corridor, are important for the implementation of container cargo using seaports like Aktau-Baku-Poti / Batumi for the development of infrastructure for this project and other projects, such as Kars-Akhalkalaki-Tbilisi-Baku.[1] Thus, the priority task of the economic development of these countries has become the task of establishing and using the multimodal transportation of goods in the western direction.[2] And since the beginning of 2006, the operation of the Poti-Baku-Aktau-Almaty route has thus created a favorable environment for improving the efficiency of the TRACECA transport corridor and the development of container (direct port) traffic.[3]

Today, this international transport corridor is officially recognized by leading international organizations as one of the natural transit bridges connecting Europe with Asia, as a revived Great Silk Road.[4] One of the main objectives of the corridor is the implementation of a coordinated approach to the concept of international freight transport. Another important task is to systematically harmonize laws and amend them so that they meet the requirements of international legal norms and principles, as well as the adoption of new legislation that will regulate and improve international freight traffic. The third, essential aspect of the TRACECA project from the start is to contribute to the covering of other countries. Thus, the project stimulated the signing of bilateral treaties, for example, with Romania – a country located in the Danube River Basin – and aroused interest in the Republic of Korea, China, Italy, Poland and Estonia to study the possibility of creating railway corridors.

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[1] On the significance of the solution for this problem, see, for example, R. Mirzayev, Transport communications and geopolitics in the Great Silk Road region, *Central Asia and the Caucasus*, 2005, no. 2 (38), p. 109-119.

[2] According to the project, already in December 2005, the first container ship of 26 carriages came from the port of Poti to Baku, which essentially increased the volume of freight traffic along this transport corridor.

[3] See E. Aliyev, O. Efendiyev, Ibid, p. 653.

[4] As is known, this corridor starts in the countries of Eastern Europe (Bulgaria, Moldova, Romania, Ukraine) and crosses Turkey. Further, the route follows through the Black Sea to the ports of Poti and Batumi in Georgia, then activates the transport network of the South Caucasus countries, as well as Iran, using land communication with this region from Turkey. From Azerbaijan through the Caspian ferries (Baku – Turkmenbashi, Baku – Aktau), the TRACECA route enters the railway networks of the Central Asian states – Turkmenistan and Kazakhstan, transport routes of which are connected with routes in Uzbekistan, Kyrgyzstan, Tajikistan and reaches the borders with China and Afghanistan, while Central Asia has both land and sea links with Iran.

However, in one way or another, in any transit agreement between landlocked countries and transit countries, the "activity" of any corridors requires careful analysis, since they ultimately define the most key issues such as the sum of total or unofficial expenses, or the time spent on transit. This is very important for landlocked countries, since, naturally, they may have certain opportunities to defend their economic interests. The flow of goods serves as a source of income for the transit country and is very necessary in order to make the available capacity profitable. For these reasons, transit countries are often very interested in concluding "favorable" treaties in order to attract wider flows of goods and passengers.

Among the basic criteria that allow to compare, evaluate and select transit corridors, there are some particularly important factors that deserve close attention and in some cases should be mentioned in formal transit agreements, for example, when transit routes through different countries are compared, as well as provisions for trade facilitating tools. These include, first of all, the procedures and documents necessary for import / export and customs procedures, the unification of regulations in the field of transport, control mechanisms enabling both the transit country and the landlocked country to control the compliance with the stipulated in agreement points, etc.

The issue of simplification and standardization of procedures and documentation, which significantly help to overcome the primary difficulties, is important for improving the transit transport processes, both for countries that have and do not have such access to the sea. One of the serious obstacles are, for example, outdated and inefficient transit procedures, which create opportunities for offenses, fraud and abuse in the transit of cargo flows.

Obviously, one of the most appropriate approaches to the issue of transit is an integrated regional approach, which covers all relevant issues, focuses on finding possible solutions and supporting positive reforms in all countries through which goods move, including landlocked countries. At the same time, it is believed that the relevant intergovernmental agreements are an important prerequisite, since they are able to regulate access to transit corridors and their use and potentially contribute to harmonizing regulations.

An effective means of implementing and enforcing the agreed provisions is cross-border cooperation and partnership between institutions, for example, between the customs authorities of one region or subregion, in which even transport operators can participate, making transit procedures more diligently followed and controlled. This is demonstrated by the example of the contact group on transit issues established under the auspices of the European Convention on Common Transit.

Currently, in the regional aspect, the Central Asian countries that do not have access to the sea, in contrast, for example, to the states of Central Europe, are geographically located relatively far from the markets, which is not only a serious factor, but also a clear disadvantage for the economic activity. This is especially true of those post-Soviet countries in which the process of market transformation is underway.

Although the countries of this region have a very peculiar historical heritage, until the beginning of the twentieth century the pace of their urbanization was very low, as was the participation in international trade. Moreover, in the twentieth century the geopolitical position of the Central Asian region has led to a reduction in the exchange of goods and services within the region, in order to strictly follow the centralized former Soviet policy of trade oriented mainly on the CMEA countries.

It is also noteworthy that the landlocked countries of Central Asia, in essence, have been trading since ancient times, with trade booming since 3000 BC. Being along the ancient Silk Road, they actively participated in trade, both with the East and with the West. Only in the last decade, due to fast-growing scientific, technical, technological and other achievements and factors, as well as searching for the alternative land and sea ways, transport and trade routes have become relatively stable and safe, although the excessively high transport costs in many cases add up to more than half of the cost of imported goods.

Nevertheless, over the past 10 years, the countries of Central Asia have been able to create and launch a number of transit routes, including important pipelines for the export of energy through the territory of the Russian Federation, the Azerbaijan Republic, Kazakhstan, and Turkmenistan. In addition, the territory of China, India, and Iran became more actively used for transit traffic by rail and roads. Ferry crossings across the Caspian Sea allow to conduct transit by rail, road, and pipeline transport on a large scale.

These main transport corridors have already created for landlocked Central Asian countries good prerequisites and opportunities for the development of trade, although much remains to be done, especially in terms of maintenance, modernization and rebuilding the infrastructure. And this, in turn, is a priority task for the implementation and development of projects that assist the development of transport, carried out with the support of several international institutions.[1]

Regarding both regional and subregional cooperation or integration, it can be noted that the countries of Central Asia have not yet achieved the desired success, which, apparently, is theoretically possible. In fact, the development of favorable border relations, and accordingly, the flow and transit of goods within the region towards other markets, is hindered by numerous difficulties, from security to armed conflicts.

However, for comparison, it can be noted that, in particular, Switzerland, being one of the most important European countries with high export quotas and transit routes, has achieved the greatest success among all landlocked countries, it does not suffer from being landlocked and experiences no negative consequences from it. Moreover,

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[1] For example, the special programs UNECE and ESCAP for the Countries of Central Asia (SPECA); European Bank for Reconstruction and Development; Asian Development Bank; United Nations Development Program (UNDP), World Bank; Islamic Development Bank; European Union TRACECA project). In addition, among the tasks of many of the above mentioned international institutions in the field of infrastructure development, the efforts to restore the former Silk Road play an important part.

Switzerland has a commercial fleet, which is enshrined in a number of authoritative international legal acts.[1]

In short, Switzerland has found solutions to remove barriers to transport, paying more attention to transport policy and alternative transport. The country has succeeded in reducing the impact of possible high transport costs, which are often associated with a lack of access to the sea, through industrial and trade policies that favor the export of high-value or high-value-added products and services. Switzerland looked for alternatives and responses in a regional context, without joining the main regional groupings. Moreover, very importantly, transport routes were laid, and transportation agreements were concluded taking into account economic rather than political considerations.

As it can be seen, the problems associated with the geographical location, in general, can be solved. The geographic location, i.e., the lack of access to the sea naturally affects decisions in the field of economy, infrastructure and politics, but it cannot be blamed for all the problems of economic, social and political development that the country faces.

It is clear that the lack of access to the sea is very closely intertwined and interconnected with a number of complex tasks and problems, and therefore this task cannot be solved in isolation. Landlocked and coastal governments, as well as the international community and donor agencies, tend to place more emphasis on this multi-faceted combination of objectives and aspects. Naturally, there are priority measures for which efforts are being made by the international community, for example, to simplify trade and customs procedures, develop infrastructure in border areas or coordinate and implement regional or sub-regional approaches. All of this is of exceptional, momentous significance for the formation and strengthening, in general, of a new economic law and order.

Precisely the solution of these tasks and other topical issues was sought at a high diplomatic level at the meeting of permanent representatives to the UN Group of Landlocked Developing Countries in July 2014 in Almaty.[2] The purpose of the event was to discuss the implementation of the Almaty Program of Action (APA), adopted at the International Conference of Ministers of Landlocked Developing Countries (August

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[1] For example, the League of Nations Declaration recognising the Right to a Flag of States having no Sea-coast (1921), the UN Convention on the High Seas (1958), the UN Convention on the Law of the Sea (1982) and other documents. Due to the needs that arose during the two world wars, the merchant fleet was maintained so that the Swiss transport companies had opportunities for development. The merchant fleet, which originally belonged to the government, was sold to private investors and shipping companies and continues to operate successfully.

[2] It should be noted that already in Almaty in August 2003, a Declaration and Program of Action were adopted to ensure access to maritime transport for the states. This Program is practically the only "roadmap" meeting the special needs of landlocked developing countries. It contains specific measures and recommendations regarding transit transport policies and the development of transport infrastructure.

At the latter event among the participating representatives there were: Deputy UN Secretary-General, High Representative for the Least Developed Countries, Landlocked Developing Countries and the Small Island Developing States Mr Gyan Chandra Acharya, Minister of Foreign Affairs of Kazakhstan, Executive Secretary of the Ministry of Transport and Communications of Kazakhstan, as well as representatives of some international organizations such as UNCTAD, ESCAP and WTO.

2003). This program is practically the only one that is a "road map" in the interests of meeting the trade and economic needs of landlocked developing countries. It contains specific measures and recommendations regarding the strategy and policies in the field of transit traffic and the development of transport infrastructure, as well as provisions for the financial and technical assistance to the countries of this group.

The efforts of Kazakhstan, as the largest landlocked country, are not accidental, since, in fact, it has achieved significant political and economic success on the path to sustainable development, despite the absence of a coast. Kazakhstan plays a special role in promoting the interests of this group of countries both in the sphere of attracting foreign investors, and in the sphere of adopting legally binding means and instruments of a global and regional nature.

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GOLDEN SHARE AS A SPECIAL PRIVILEGE OF THE STATE TREASURY IN THE POLISH LEGAL SYSTEM

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Abstract: The main purpose of this article is the synthetic analysis of the golden share institution in the Polish legal system. In the face of the progressing privatization process of the majority of state-owned enterprises after – which began in Poland in 1989 – the State Treasury wished to ensure itself a real possibility to influence the strategic companies decisions. The perfect instrument to do this was nothing but golden share. The author wants to present the functioning of the golden share in the Polish legal system and also briefly discuss the term State Treasury company. The explanation of this term – from the author's point of view – is necessary for the reader to understand the divagations about the golden shares of State Treasury companies. The author intends to make it possible for the readers who do not deal with these issues during everyday business to understand the basics and the core of the institution of golden share as well as to enable more experienced persons to extend and consolidate their knowledge and furthermore – via rulings of Polish Supreme Court and Court of Justice of the European Union included in the article – to allow them to see this type of contract in practical terms.

Keywords: Golden share, State Treasury company, commercial law, Commercial Companies Code, company, enterprise, Supreme Court, rulings, European law.

Introductory remarks

The core of this article is an analysis of the golden share (owned by State Treasury companies) in the Polish legal system. First and foremost it should be stressed that

this kind of share is not and also has never been defined by law[1]. In accordance with the *Lexicon of commercial companies*[2], golden share in the broadest sense is a specific privilege which enables its owner to retain a significant influence on decisions taken by the company, related *inter alia* to the shareholding structure or management of the company[3]. Moreover, this privilege is associated with the specific, precisely defined share[4]. In this article the author will focus on the golden share as an impact instrument of State Treasury companies. To enable readers to understand this topic well, the author will also explain the term State Treasury company as well as the specificity of this company. The author is aware how broad the issue of golden share is in Polish and European law. For that reason is should be noticed in the introductory remarks that the aim of this work is the description of a special privilege of the State Treasury in the Polish legal system in the context of the golden share instrument. Therefore – due to limited scope of this work – the author will not be dealing with the issues connected to the trading process with the participation of State Treasury companies. It should be emphasized that in this article the author will discuss such issues as specificity of the State Treasury ownership policy, special treatment of the State Treasury in the context of golden share and the statutory privileges of the State Treasury.

The choice of this topic seems natural for the author, especially in the context of the high influence that State Treasury companies still have on the financial market. From the economical point of view, ownership of the State Treasury has got a social nature – it belongs to the society. Therefore it can be claimed that the State Treasury and – consequently – State Treasury companies represent the general public[5]. Furthermore – as the has author already pointed out – in this article readers will find some examples from the judicature. The author would like to stress that he is aware of the fact that the Republic of Poland adheres to the continental civil law system, as opposed to case-based common law systems. Nonetheless, certain trends arise in Polish case law, which contribute to the growing uniformity of the interpretation of some provisions and are not without influence on their functioning.

State Treasury company – significance and legal regulations

As the author pointed out earlier, the explanation of this term (State Treasury Company) is necessary to understand the divagations about golden shares, which belong to these type of companies. *Ad rem*, State Treasury company is a special type of company used for running a business by the state. It is a state-owned legal entity, which

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[1] J. Dąbrowska [w:] A. Kidyba, *Szczególne formy spółek,,* Warszawa 2017, p. 296.

[2] B. Gliniecki, *Leksykon spółek handlowych,* Warszawa 2012.

[3] *Ibidem*, p. 437.

[4] J. Okolski, J. Jacyszyn, E. Marszałkowska-Krześ, S. Krześ, *Leksykon Kodeksu Spółek Handlowych,* Wrocław 2004, p. 243.

[5] J. Kruczalak-Jankowska [w:] A. Kidyba, M. Michalski, *Spółki skarbu państwa na rynku kapitałowym,* p. 115.

is based on state-owned property and its shareholder is the State Treasury. State Treasury Company remains a state legal entity as long as all its shares are the property of the State Treasury or another state legal person[1]. The company, which is formed as a result of the commercialization of a state-owned enterprise, enters into all legal relationships of this enterprise[2]. Employees of a state-owned enterprise *ex lege* become employees of the State Treasury Company and the company's opening balance sheet is also the closing balance of the state-owned enterprise. The relevant provisions of the Commercial Companies Code[3] apply to State Treasury Companies[4]. From the historical point of view, it is worth to note that after 1990 in Poland many state-owned enterprises have become municipal and most of them are now a municipality sole proprietorship companies (for instance local transport companies or waterworks *et cetera*)[5].

Polish Civil Code is also important for the discussed topic. In accordance with article 34 of this Code, the State Treasury is considered as the entity having rights and obligations related to state property which does not belong to other state legal persons[6]. Whereas the State Treasury's legal personality results directly from article 33 of the Civil Code. In accordance with this article, the legal persons are the State Treasury and organizational units which are given legal personality by specific regulations[7]. What is also important in this context, due to the wording of article 44 paragraph 1 of the Civil Code, ownership and other property rights constituting state properly are vested in the State Treasury or other state legal persons[8]. In accordance with the ruling of the Polish Supreme Court[9], the special nature of the State Treasury as a legal person stems from the fact that the State Treasury does not have classical authorities which are acting on behalf of the company. The State Treasury operates by state organisational entities which do not have legal personality (so-called *stations fisci*). In the literature it is indicated that empowerment of state units and granting them property rights does not invalidate the principle that – in the economic sense – the owner of state property is the state and the personification of the state is the State Treasury[10]. A feature which distinguishes the

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1 W. J. Kanter, *Prawo gospodarcze i handlowe,,* Warszawa 2018, p. 138.

2 Art. 1, ustawa z 30.08.1996 r. o komercjalizacji i niektórych uprawnieniach pracowników, Dz.U. z 2017 r. poz. 1055 ze zm.

3 Ustawa z dnia 15 września 2000 r. Kodeks spółek handlowych, Dz. U. 2000 no. 94 poz. 1037.

4 W. J. Kanter, *Prawo gospodarcze i handlowe,,* Warszawa 2018, p. 139.

5 *Ibidem*, p. 139

6 Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny, Dz. U. 1964 no. 16 poz. 93.

7 *Ibidem*

8 *Ibidem*

9 Wyrok SN z 04.08.2006 r., III CSK 138/05, OSNC 2007, no.4, poz. 63.

10 M. Bednarek, *Przemiany własności w Polsce, podstawowe koncepcje i konstrukcje normatywne,* Warszawa 1994, p. 92 and following.

State Treasury as a legal person is the lack of a registered office and the fact that it is not incorporated into any register. It exists as long as the state exists[1]. From the statements presented above it can be concluded that the State Treasury is the state's emanation in the sphere concerning civil law aspects[2].

Golden share as a special privilege of the State Treasury

Having discussed the term State Treasury Company, we can now move on to the subject (in the strict sense) of this article, *id est* – to a golden share. First of all it should be pointed out, that the term "golden share" has never been defined in any statute or law act[3]. In the Polish legal doctrine, the golden share is defined as a right or set of rights (mostly corporate) that facilitates control by the shareholder over strategic decisions in the company. However, we have to notice that these rights are not related to the shareholder's capital share[4]. The concept of a golden share does not imply the necessity of incorporating special rights in the share itself. Any special right (also personal right) results from the company's statute[5]. Moreover, it should be pointed out that any additional privileges may arise directly from provisions of law (for instance from appropriate Act of Parliament) or from acts of public authorities (including administrative acts)[6].

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[1] A. Brzozowski, W. J. Kocot, E. Skowrońska-Bocian, *Prawo cywilne. Część ogólna*, Warszawa 2010, p. 128.

[2] A.-M. Weber-Elżanowska, Wpływ instytucji prawnych rynku kapitałowego na efektywność spółek skarbu państwa, Warszawa 2017, p. 140.

[3] J. Dąbrowska [w:] A. Kidyba, *Szczególne formy spółek,* Warszawa 2017, p. 296.

[4] J. Dąbrowska [w:] A. Kidyba, *Szczególne formy spółek,* Warszawa 2017, p. 297, za: Ł. Gasiński, *Dopuszczalność wprowadzenia „złotej akcji" do konstrukcji spółki,* Przegląd Prawa Handlowego 1999, no. 3, p. 28; A. Szumański, *„Złota" akcja w prawie polskim*, Przegląd Prawa Handlowego 1998, no. 12, p. 1; M. Bałtowski, *Spółki Skarbu Państwa – próba typologii* [w:] A. Kidyba, *Spółki z udziałem Skarbu Państwa a Skarb Państwa*, p. 24; S. Sołtysiński, M. Mataczyński [w:] S. Sołtysiński, A. Szajkowski, A. Szumański, J. Szwaja (red.), *Kodeks spółek handlowych*, t. III. *Spółka akcyjna. Komentarz do artykułów 301-490*, Warszawa 2013, p. 417; S. Sołtysiński [w:] S. Sołtysiński, A. Szajkowski, A. Szumański, J. Szwaja (red.), *Kodeks spółek handlowych*, t. IV. *Łączenie, podział i przekształcanie spółek. Przepisy karne. Komentarz do artykułów 491-633,* Warszawa 2012, p. 1600; A. Opalski [w:] Sołtysiński (red.), *System Prawa Prywatnego,* t. 17B, *Prawo spółek kapitałowych*, Warszawa 2016, p. 361.

[5] Wyrok SN z 30.09.2004 r., IV CK 713/03; Ł. Gasiński, *Dopuszczalność wprowadzenia „złotej akcji" do konstrukcji spółki*, p. 28.

[6] J. Dąbrowska [w]: A. Kidyba, *Szczególne formy spółek,* Warszawa 2017, p. 297, za: S. Sołtysiński, *„Złota akcja" Skarbu Państwa w świetle prawa unijnego i polskiego* [w:] A. Łazowski, R. Ostrihansky (red.), *Współczesne wyzwania europejskiej przestrzeni prawnej. Księga pamiątkowa dla uczczenia 70. Urodzin Profesora Eugeniusza Piontka,* Kraków 2005, p. 307; I. Karasek-Wojciechowicz, *Komentarz do ustawy o szczególnych uprawnieniach Ministra Skarbu Państwa oraz ich wykonywaniu w niektórych spółkach kapitałowych lub grupach kapitałowych prowadzących działalność w sektorach energii elektrycznej, ropy naftowej oraz paliw gazowych* [w:] S. Sołtysiński, A. Szajkowski, A. Szumański, J. Szwaja (red.), *Kodeks spółek handlowych,* t. V. *Pozakodeksowe prawo handlowe. Komentarz,* Warszawa 2015, p. 1261 oraz M. Szydło, *Złote akcje posiadane przez państwo w prywatyzowanych przedsiębiorstwach a swoboda przepływu w Unii Europejskiej,* Prawo Spółek 2006, no. 3, p. 22-23; A. Bodnar, D. Sześciło, *„Złote weto" Skarbu Państwa a prawo wspólnotowe*, Europejski Przegląd Sądowy, no. 5, p. 12.

In general, the idea of the golden share institution is to strengthen the privileges of its shareholder in relation to the other shareholders inside the company. It is demonstrated in a number of issues such as veto right, need for the shareholder's (who holds a golden share) approval to pass a resolution by the company and so on and so forth[1]. Golden share may also entitle a shareholder to appoint or dismiss members of the management board and the supervisory board[2]. With regards to all these regulations and privileges, it is important to take any action in accordance with the proportionality principle. In this context it is worth to note one of the judgments of the Supreme Court. This court ruled that the statutory provision which makes the validity of resolutions dependent on the participation of a representative of the State Treasury (holding a personal, privileged share) in the general meeting is invalid and does not have legal significance[3]. This ruling is related to the Polish Civil Code and to the Commercial Companies Code. In accordance with article 58 paragraph 1 of the Civil Code, a legal action which is contrary to the law or which is designed to circumvent the law is invalid unless a relevant regulation envisages a different effect, in particular that the invalid provisions of the legal act are to be replaced with relevant provisions of law[4]. This ruling is also connected with article 20 of the Commercial Companies Code, which covers the issue of equality of shareholders. In accordance with this regulation, the shareholders in a capital company shall be treated in the same manner where similar circumstances apply[5]. Therefore the Supreme Court found that – in accordance with article 58 of the Civil Code – the aforementioned provision of the company's statute is contrary to article 20 of the Commercial Companies Code and – consequently – it has no legal force[6]. However, there are a couple of exceptions which justify the differentiation of shareholders' rights. Nevertheless there are some circumstances under which those exceptions can exist. If there are no relevant reasons justified by the company's interests or other circumstances in which shareholders are involved, than the limits of differentiation of the rights and obligations of the shareholders should be determined only by the principle of proportionality, which I have mentioned in the previous part of this article[7]. We shall now continue this article with discussing some examples in which the shareholders privileges, as mentioned above, could exist legally.

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1 J. Dąbrowska [w:] A. Kidyba, *Szczególne formy spółek,* Warszawa 2017, p. 298.

2 W. J. Katner, *Prawa mniejszości w spółkach kapitałowych*, p. 4; A. Szumański [w:] A. Szumański (red.), *System prawa prywatnego*, t. 19, *Prawo papierów wartościowych*, p. 141.

3 Wyrok SN z 30.09.2004 r., IV CK 713/03.

4 Ustawa z dnia 23 kwietnia 1964 r. Kodeks cywilny, Dz. U. 1964 no. 16 poz. 93.

5 Ustawa z dnia 15 września 2000 r. Kodeks spółek handlowych, Dz. U. 2000 no. 94 poz. 1037.

6 J. Dąbrowska [w]: A. Kidyba, *Szczególne formy spółek,* Warszawa 2017, p. 298,

7 M. Romanowski, *Zasada „jedna akcja – jeden głos" a natura spółki akcyjnej,* Czasopismo Kwartalne Całego Prawa Handlowego, Upadłościowego oraz Rynku Kapitałowego 2008, no. 4, p. 465 and 476.

Realization of public interest

Special rights can be obtain considering realization of public interest. First and foremost, in accordance with the Court of Justice of the European Union, a Member State fails to fulfil its obligations under Article 56 EC when it maintains for that State and for other public bodies special rights in a limited liability company, allocated in connection with golden shares held by that State in the share capital of that company, relating to the exemption from the 5% voting ceiling applying to the votes of other shareholders, the right to appoint a director of the company, when the State has voted against the nominees successfully elected as directors of that company and the right of veto over resolutions of the general assembly of the shareholders in relation to: a) amendments of the articles of association, including increases of share capital, mergers, divisions and winding-up, b) the conclusion of certain contracts concerning the structure and control of groups of companies, c) the removal or restriction of the preferential rights of shareholders in the case of an increase in share capital[1]. Special rights and privileges connected with such actions shall be considered as activities in the exercise of public authority (not as private actions)[2]. The free movement of capital, as a fundamental principle of the Treaty on European Union, may be restricted only by national rules which are justified by reasons referred to in Article 73d(1) of the Treaty on European Union or by overriding requirements of the general interest and which are applicable to all persons and undertakings pursuing an activity in the territory of the host Member State. Furthermore, in order to be so justified, the national legislation must be suitable for securing the objective which it pursues and must not go beyond what is necessary in order to attain it, so as to accord with the principle of proportionality[3].

To conclude – in accordance with the Court of Justice of the European Union judicature (*inter alia* mentioned above in footnotes) – golden share is admissible if:

- the restriction on free movement of capital is justified by the necessity of protection of important public interest,
- it is adequate and proportional to the assumed purpose,
- it takes the form of a subsequent control of the company's decision,
- important national interest would be jeopardized,
- it is temporary limited and it can be launched within a strictly specified period,
- it is based on clear and transparent criteria that the company can challenge in court,
- this preference is non-discriminatory and provides legal procedural guarantees[4].

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[1] Wyrok TSUE z 11.11.2010 r. w sprawie C-543/08 *Komisja Wspólnot Europejskich przeciwko Republice Portugalskiej,* LEX no. 612138.

[2] Wyrok TS z 07.05.2009 r. w sprawie C-443/08 *Komisja Wspólnot Europejskich przeciwko Republice Francuskiej,* LEX no. 504565.

[3] Wyrok TS z 04.06.2002 r. w sprawie C-503/99 *Komisja Wspólnot Europejskich przeciwko Królestwu Belgii*, LEX no. 111986.

[4] J. Dąbrowska [w]: A. Kidyba, *Szczególne formy spółek,* Warszawa 2017, p. 303-304.

State Treasury privileges in the Commercial Companies Code

In accordance with article 625 paragraph 1 of the Commercial Companies Code (which provides voting privileges of State Treasury shares), prior to 31st December 2004, the statutes of companies formed after the entry into force of this Act, with the State Treasury as a shareholder, may provide for a voting privilege of State Treasury shares greater than that stipulated in article 352; however, the State Treasury may not be granted more than five votes per share. But – in accordance with article 625 paragraph 2 of the Commercial Companies Code – the provisions of paragraph one shall cease to apply on the date on which the Republic of Poland accedes to the European Union. As of the date of the accession of the Republic of Poland to the European Union, the statutes of the companies in which the State Treasury is a shareholder may provide for a preference for State Treasury shares as far as the matters referred to in articles 351-354 are concerned. Moreover, in accordance with article 625 paragraph 3 of the Commercial Companies Code, article 613 shall apply to the rights of the State Treasury in joint-stock companies acquired in accordance with the paragraph one. Meanwhile, this article 613 provides that the rights of shareholders of commercial companies acquired prior to the date this act enters into force shall remain valid (paragraph one). What is more, the contents of the rights referred to in paragraph one shall be governed by the existing provisions. The provisions of this act shall apply to a change to the contents of the rights and to dispositions of the rights of the shareholders effected after the entry into force of this act[1].

The abolition of limitation of the possibility of privileging State Treasury to cases (issues) where it is important for the public interest (in particular protection of state security) has been criticized in doctrine[2]. The current regulation excludes a possibility of privileging shares in a wider scope than the scope resulting from the Commercial Companies Code. The shape of this regulation is (in a large extent) a result of the approach that the Supreme Court presents in this matter. This court ruled that the privileges of the State Treasury shares cannot violate the regulations of articles 351-354 and also article 625 paragraph 1 of the Commercial Companies Code and they shall not unduly restrict the interests of the owners of ordinary shares and violate the equality of shareholders rule determined in article 20 of the Commercial Companies Code, according to which the shareholders in a capital company shall be treated in the same manner where similar circumstances apply[3].

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[1] Ustawa z dnia 15 września 2000 r. Kodeks spółek handlowych, Dz. U. 2000 no. 94 poz. 1037.

[2] A. Kidyba, *Komentarz aktualizowany do art. 1-300 Kodeksu spółek handlowych.* LEX/el. 2017, stan prawny: 31 marca 2017 r.

[3] J. Dąbrowska [w]: A. Kidyba, *Szczególne formy spółek,* Warszawa 2017, p. 306; wyrok SN z 30.09.2004 r., IV CK 713/03, OSNC 2005, no. 9, poz. 160; ustawa z dnia 15 września 2000 r. Kodeks spółek handlowych, Dz. U. 2000 no. 94 poz. 1037.

Conclusion

To sum up it should be noted that while discussing the golden share in the Polish law system, it shall be always considered in compliance with the European law. In the light of those deliberations, it is necessary to consider whether the rules vesting in any Member State a golden share in the State Treasury company, whereby any holding of shares or voting rights which exceeds certain limits must be authorised in advance by Member State and a decision to transfer or use as security the majority of the capital of four subsidiaries of that company may be opposed, constitute a restriction on the movement of capital between Member States[1]. Article 73b of the Treaty on the Functioning of the European Union lays down a general prohibition on restrictions on the movement of capital between Member States. That prohibition goes beyond the mere elimination of unequal treatment, on grounds of nationality, as between operators on the financial markets[2].

Admittedly, the Court of Justice of the European Union in most cases recognizes special rights granted by Member State to State Treasury companies as incompatible with the Treaty but in some cases the Court allows exceptions, which the author have already mentioned in this article. As it has been said previously, the abolition of limitation of the possibility of privileging State Treasury to cases (issues) where it is important for the public interest (in particular, protection of state security) has been criticized in the Polish doctrine[3]. It is also argued that currently there are no particular restrictions on the privileging of State Treasury shares in the Commercial Companies Code whereas in the light of Court of Justice of the European Union rulings such privileging should only be allowed exceptionally if there are specific reasons (such as, for instance, public security). It seems that it was necessary to clarify precisely cases in which State Treasury shares may be favored in the Commercial Companies Code[4]. The author cherishes the hope that the legislator will take this into consideration on the occasion of next amendments in the Polish law.

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1 Wyrok TSUE z 04.06.2012 r. w sprawie C-483/99 *Komisja Europejska przeciwko Francji,*

2 *Ibidem*

3 A. Kidyba, *Komentarz aktualizowany do art. 1-300 Kodeksu spółek handlowych.* LEX/el. 2017, stan prawny: 31 marca 2017 r.

4 J. Dąbrowska [w]: A. Kidyba, *Szczególne formy spółek,* Warszawa 2017, p. 306-307.

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BASIC ASPECTS OF LEGAL REGULATION OF MERCHANT SHIPPING

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Abstract: In the article, the author addresses very significant issues of regulation of the emergence and functioning of merchant shipping. The article analyses the activities of the legal section of All-Russian Congress of Sea Pilots on August 1, 1923 in Petrograd and outlines the development of shipping globally. The author is concerned with the current difficult situation with the domestic system of commercial shipping, which has not fully recovered in recent years. Fixed assets of the merchant sea and river fleet in Russia are old and in need of serious renovation. The issue of an objective need to improve the legal regulation of maritime interstate relations and to improve the legal regime of the seas and oceans in Russia and on the international level is also discussed in the article. The author shows the history of creating the legislation and regulations of merchant shipping, suggests the causative factors and possible ways of renovation.

Keywords: maritime shipping, pilots, pilotage, Russia, crew of a marine vessel.

The relevance of the chosen research topic arises from the current difficult situation in the activities of the domestic system of merchant shipping, which has not fully recovered in recent years.

This is not a secret today that there is a very substantial depreciation of the main assets of the merchant marine and river fleet of our country. This factor also requires creation of an effective system for examining all ships and floating equipment, creation of a clear mechanism for monitoring their condition in order to prevent possible accidents, breakdowns and crashes that might happen on a voyage[1].

[1] Zmerzlyy B.V. *Legal regulation of merchant shipping in the Black Sea-Azov region in the late XVIII – XX centuries*. Simferopol, ChR "Predpriyatiye Feniks" Publ., 2014, p. 512.

The study of the legal components of various economic policies of a state in the era of the emergence and development of macroeconomic and political unions as well as other forms of associations is very important and necessary from various points of view. The processes of globalization in the formation of the world community predetermine the growing importance and the need to improve foreign economic activity, which is facing tasks that are ever more complex.

The development of foreign economic activity is usually accompanied by the improvement of the means of delivery of exported and imported goods. One of such means is merchant shipping, which is of fundamental importance both for the harmonization of international economic relations in general and for transportation in particular.

Shipping is the most common and most significant permanent source of pollution of the marine environment. However, the existence of modern civilization as well as its further effective functioning is impossible without shipping and navigation. Therefore, the international legal aspect is becoming increasingly important in resolving the current problematic situation. Both in the scientific and in the practical approach there is an objective need to improve the legal regulation of maritime interstate relations, to improve the legal regime of seas and oceans[1].

Shipping is sailing of ships on waterways. Based on the region of the shipping, it can be divided into maritime, domestic, and mixed navigation, while based on the function – into commercial, fishery and other types. In the past, navigation was undertaken by observation of coastal features along the rivers, lakes, or the sea shore. The development of nautical astronomy, the use of the compass and the improvement of the design of ships brought navigation into the open seas and oceans. Modern shipping is based on highly developed technical means that provide for its implementation (ships and their equipment) and shipping services (ports, hydrometeorological, hydrographic, rescuing, repair services, etc.).

Addressing the main issues related to trade, shipbuilding, training skippers, customs authorities within one department is certainly an important step towards the development of commercial shipping. Participation of experienced merchants in the Collegium of Commerce[2] in olden times should have enhanced the authority and professionalism of the decisions made.

For making management decisions, the creation of the institute of employees of commercial shipping and the development of education system for that was imperative. The main document regulating the legal status of merchant shipping employees in the Russian Empire was the "Charter of Merchant Shipping" (15176), which was adopted on 25 June 1781. Further decrees were adopted in 1823, 1830, 1857. The most significant

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[1] Nikitina A.P. International legal aspects of the protection of the marine environment, *Public and private law*, no. IV (XXXVI), Moscow, 2018, p. 216-223.

[2] The governmental body of the Russian Empire created in the early 18 century that provided for development of trade (Translator's note).

changes in the training of domestic merchant sailors were made by decrees of 1867. From 1909 until 1926, laws and decrees were adopted concerning the training of merchant shipping employees. By the Resolution of the Central Executive Committee and the Council of People's Commissars of the USSR of 14 June 1929, the Merchant Shipping Code of the USSR was adopted which, with changes and additions, was the legal basis for organizing the operation of the Soviet merchant fleet for many years. In connection with the adoption of the Geneva Conventions of 1958 and significant changes in the field of management of maritime transport, on 17 September 1968, a new Merchant Shipping Code was approved by Decree of the Presidium of the USSR Supreme Council No. 3095-UP.

After the collapse of the Union of Soviet Socialist Republics, it was necessary to make significant changes in the main legislative acts of the country, including the acts regulating commercial navigation. On the basis of Federal Law No. 81-FZ of the Russian Federation of 30 April 1999, the Merchant Shipping Code of the Russian Federation was adopted.

At the same time the unification of legal relations in this area is complicated by the difference in national legal and international legal regulation in the field of international sea transportation.

Maritime shipping is a universal means of distributing goods in the field of both national and international trade. Various types of maritime freight transportation have emerged in merchant shipping and currently continue to develop and improve, in particular, with the advent of new technologies in linear traffic, the global containerization of maritime freight and the evolution of the regulatory framework in this area[1].

The norms and international legal principles that govern relations between states in the sphere of maritime navigation together constitute the most important sub-branch of modern international maritime law. Undoubtedly, the regulation of various types of marine activities must necessarily take into account environmental aspects and their various consequences for the marine environment, taking into account the existing national and international legislation[2].

World shipping is not possible without the work of navigation pilots and pilotage. The legal regulation of pilotage activity is determined by the need for the normative consolidation of its main principles.

The activity of pilots who are on-site guides of ships in different specific conditions is still one of the most important means of ensuring the safety of navigation in many ports, straits, canals, rivers and seas. The first normative provision appeared at the All-

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[1] Ivanova T.N. *Legal regulation of the sea transportation of goods in a linear communication in the Russian Federation*: Dissertation ... Doctor of Legal Sciences: 12.00.03, Russian Academy of National Economy and Public Administration under the President of the Russian Federation. Moscow, 2014, p. 174.

[2] Nikitina A.P., Krykhtina V.V. International legal issues of the protection and preservation of marine environment, *Student of the Year: Collection of Articles of the II International Scientific and Practical Competition*, part 2. Penza, Nauka i Prosveshcheniye Publ. 2017, p. 139-142.

Russian congress of sea pilots on 1 August 1923 in Petrograd, where the legal section was charged with the development of such questions as processing of the current pilot charter; the aim of uniting sea pilots; the activities of societies; composition of societies; pilots' societies; management of societies' affairs; Central Committee or permanent bureau; audit commission; rights and obligations of members of societies; rights and obligations of pilotage societies; management of pilotage societies; exclusion from the union number; termination of activities of companies. The financial section dealt with the following issues: means of the association and individual societies; the basis for charging the pilotage fee and the size of the fee according to local conditions. The organizational section had the following tasks: special duties of members of the association as pilots; rights and obligations of pilots and candidates; relations between pilots and captains, as well as the procedure for receiving special training[1].

The historical experience clearly shows that the international community has been forming the legal foundation of the regime of the seas and oceans for a long time and with great difficulty. Now since the United Nations Convention on the Law of the Sea has clearly and precisely defined the status of the territorial sea, the contiguous zone, exclusive economic zone, high seas, international straits and archipelagic waters; there is the extremely relevant issue of compatibility of shipping activity of states via the open world transportation routes in the World ocean which have the status and the regime of the sea spaces. The latter are recognized by the UN Convention on the Law of the Sea as a sphere of public law rights and interests of all states.

The basic element of the maritime transport regime is the freedom of navigation, which serves as a criterion for the legality and legitimacy of the activities of states in the oceans, aimed at the use of ships for the purpose of transporting goods by sea. Freedom of navigation ensured the creation in the system of international maritime law of a special institute – the institute of "law of navigation" – within which the regulation of navigation is always carried out in accordance with the specifics of all types of commercial and transport shipping.

By the time the incorporation of the coastal regions of the Black Sea and the Sea of Azov into the Russian Empire had started, there was no single management system for such an industry as merchant shipping. During this period, there was an active creation of various structures together with the restructuring of the state authorities. In the ports of the Black Sea and the Sea of Azov, various structures were created designed to ensure the interests of the state in this direction, but were not directly involved in the regulation of navigation.

In 1800 two important fundamental steps were taken in this direction. Firstly, "The Charter of Border and Port Quarantines» was adopted on 7 July 1800 (19476). It absorbed

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[1] Nikitina A.P., Sharmoyants A.P. Attempts to reform the organization of pilotage in 1923 in the Black Sea-Azov region, *Uchenye zapiski Krymskogo federalnogo universiteta imeni V.I. Vernadskogo*. Simferopol, 2018, vol. 4, no. 2, p. 308-315.

not only the new medical knowledge at the time and an objective state approach, but also the accumulated domestic and foreign experience of such institutions[1].

The other important event that took place in 1800 was the adoption on 13 September of the «Highly Approved Decision of the Collegium of Commerce» (19554), duties of which included: "1) the state of foreign trade; 2) the state of domestic trade; 3) internal and external merchant shipping; 4) the customs office with a foreign merchant punishment and the court departments."

The main document that regulated the legal status of employees of merchant shipping in the Russian Empire for a long time was the Charter of Merchant Water Shipping (15176) adopted on 25 June 1781. Its sections 6-9 prescribed to hire experienced sailors on the ship, though the charter itself stipulated that it should have been done only «when there is a sufficient number of jury sailors or shipmen, helmsmen or navigators and pilots at harbours or cities». In other cases, the statute allowed to recruit anyone. Provision was made for a mandatory entry of shipbuilders, shipmen, helmsmen and pilots in the brokerage book. It was recommended to give preference to people recorded in such a book during the recruitment. Given the acute shortage of the experienced sailors, the charter allowed people to sign up as sailors: «It is allowed to sign up at a city or at a wharf any time yearly». This right was extended not only to free people, but also to the non-free who had the corresponding document.

The ship broker was required not only to register, but also, if necessary, to search for the registered sailors at merchants' demand. The broker also received notes from the owners, where they wrote a review on the sailors. If it was positive, the sailors were entered in the column «good sailors» (sections 10-12). Those who received such a status could "sign up as sailors and hire themselves freely in the cities and marine harbours for Russian merchant ships or vessels, and sail on those Russian merchant ships or vessels across the sea and sail everywhere according to their contract, where merchant industries or circulation requires so, the prohibition is not imposed."

The sailors recorded in the brokerage book were allowed to choose the head of the work association (artel) and several senior officers at the beginning of navigation. They were entrusted with the further keeping records in the broker's book, the distribution of work among the artels, the enforcement of contracts with the merchants, the timely payment of money to other sailors.

Pilot services that carry out pilotage of ships in the seaports of the Russian Federation perform an important role in ensuring shipping. The purpose of the pilotage is to assist navigators in the safe passage of vessels on the domestic waterways of the Russian Federation, where, due to navigational and/or hydrometeorological conditions, the density of navigation, the nature of cargo traffic and other reasons, the navigation conditions pose the increased danger or difficulty (hereinafter – the pilotage areas), as well as to prevent

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[1] The complete collection of laws of the Russian Empire. Since 1649. Vol. XXVI. 1800 – 1801. St Petersburg, 1830, p. 875.

traffic accidents with ships, damage to hydraulic structures and navigation equipment. The state control (supervision) of the activities of pilotage services and organizations is carried out by the Federal Service for the Supervision of Transport.

The activity of pilots who are guiding the vessels under specific conditions is one of the important means of ensuring the safety of navigation in ports, straits, canals, rivers and seas. For a long time, due to the lack of access to the sea, only the category of amateur river pilots developed[1].

The following decrees confirmed the relevancy of the pilotage for Russia. Thus, the decree of December 31, 1758 (10912) "On enrolment of coachmen and different peasants as pilots for shipping of barques at Vyshny Volochok"[2] regulated the order of entry as pilots and their jurisdiction. During the serfdom coachmen, monastery and landowner peasants were allowed to sign up as pilots and receive corresponding certificates. The decree ordered them to hold a trial by the collegiate assessor Serdyukov and at Yamskoye department. Thus, the foundations were laid for the legal independence of pilots.

Also the formation of the status of pilots and pilotage services was supported by the following decrees: "On the prohibition for the Governors of the provinces to enter the Nobility Assemblies"[3] (no. 16733); "On the enrolment of Vyshny Volochok pilots, and on giving a moderate pay to them"[4] (no. 10029); "The exemption from conscription of pilots of Vyborg province"[5] (no. 20222); "Turning pilots-serfs of Borovitsk rapids into the employees of the government department"[6] (no. 22400); «The exemption from paying bread contribution into shops for pilots at Arkhangelsk port»; "On the settling of Vyshny Volochok pilots"[7] (no. 26797); "On the supply of pilots of Noshkinsk and

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1 Nikitina, A.P. *Legal regulation of pilots' activity in the Black Sea-Azov region (end of XVIII – beginning of XXI centuries)*. Moscow, RUSAINS Publ., 2018, p. 276.

2 On the enrolment of coachmen and different peasants as pilots for shipping of barques at Vyshny Volochok of 31 December 1758, *Full collection of legislation*, First collection: vol. XV (1758 – 1762), no. 10912. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office,1830, p. 312.

3 On the prohibition for the Governors of the Provinces to enter the Nobility Assemblies dated November 1788, *Full collection of legislation*, First collection: vol. XXII (1784 – 1788), no. 16733. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office, 1830, p. 1135.

4 On the enrolment of Vyshny Volochok pilots, and on giving a moderate pay to them of 5 July 1799, *Full collection of legislation*, First collection: vol. XXV (1798 – 1799), no. 10029. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office, 1830, p. 699.

5 The exemption from conscription of pilots of Vyborg province of 9 April 1802, *Full collection of legislation*, First collection: vol. XXVII (1802 – 1803), no. 20222. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office, 1830, p. 94-100.

6 On the purchase of pilots from Borovitsk rapids by the government of 19 December 1806, *Full collection of legislation*, First collection: vol. XXIX (1806 – 1807), no. 22400. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office,1830, p. 934-935.

7 On the settling of Vyshny Volochok pilots of 16 April 1817, *Full collection of legislation*, First collection: vol. XXXIV (1817), no. 26797. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office, 1830, p. 215-217.

Basugin quays with tickets for rafting ships from the Gzhatsk and Upper Volga quays to Vyshny Volochyok and Novgorod"; «On the dismissal of pilots of the Arkhangelsk port due to old age and illness, from such position, with exemption from paying State taxes and duties»[1] (no. 650), etc.

Each of these decrees regulated one or several minor problems in determining the legal status of pilots. As a result, at the beginning of the nineteenth century the general approach was formed, according to which the pilots were free people (not serfs), they received fixed payment for their service, they could not be forced to do anything other than escorting vessels, they had certain benefits in paying taxes or conscription and certain social guarantees, for example with regard to elderly pilots; separately there were established the responsibility of pilots and the rules of their relationship with the skippers. All these provisions were disparate and not always sufficiently detailed, but later they became the basis for most pilotage charters.

With the development of shipping, trade and ports the value of different straits, rivers, canals and estuaries changed. Later the associations of pilots (on the Dnieper, Bug, Kerch, etc.) were created. The association of Sulinsk Pilots Company was the least fortunate: as a result of the Crimean (Eastern) War, the Russian Empire lost control over the estuary of the Danube as well as the right to form their own pilotage associations there[2].

Given the role of foreigners in merchant shipping, they were also allowed to sign up in the work associations, with the payment of only the bourgeois-level tax and with the exemption from conscription for themselves and for those families with whom they entered the work associations. Within 10 years from the issuance of the decree, foreign skippers and navigators who presented good certificates of their abilities and behavior from foreign authorities, supported by Russian diplomatic agents, could sign up in the port cities with the permission of the local authorities without taking the oath of allegiance, but they had to purchase real estate or move their families to Russia. They were given the rights of Russian citizens and the right of ownership for the ships, but only for the ones built in Russia. At the same time, if they also wanted to trade they had to sign up at the trade associations[3].

Complaints on the actions of the pilot gathering and officials of the association could be brought to the authorities of local shipping supervision department, who could punish pilots and pilots' interns for misdemeanors, which did not entail judicial liability, but violated the order of pilotage service. The punishment included a fine of up

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[1] On the dismissal of pilots of Arkhangelsk port due to old age and illness, from such position, with exemption from paying State taxes and duties of 6 November 1826, *Full collection of legislation*, First collection: vol. I, (1825 – 1827), no. 650. St Petersburg, Printing House of II Office of His Own Imperial Majesty's Office, 1830, p. 1170-1172.

[2] Nikitina, A.P. *Legal regulation of pilots' activity in the Black Sea-Azov region (end of XVIII – beginning of XXI centuries)*. Moscow: RUSAINS Publ., 2018, p. 276.

[3] Zmerzlyy B.V. *Legal regulation of merchant shipping in the Black Sea-Azov region in the late XVIII – XX centuries*. Simferopol: ChR "Predpriyatiye Feniks" Publ., 2014, p. 512.

to 5 rubles, arrest up to 3 days and deprivation of the pilotage right for ships and rafts for a period not exceeding one navigation period.

The amounts received from monetary fines were used for the construction and the maintenance of detention facilities. For navigation, the owners of the ships and rafts were charged with the fee the size of which was also determined by the Minister of Communication lines.

According to the rules issued on this issue by the Minister of Communication lines for provision of assistance to ships and rafts in case of accidents the association was obliged to keep the guard and rescue vessels.

The duties of pilots, in addition to piloting ships and rafts, included: monitoring the due designation of the fairways, informing the local shipping authorities about any changegloballys in fairways that could affect the safety of navigation, and helping ships and rafts in accidents.

It was traditionally established that pilots and pilots' interns assigned to ships or rafts did not have the right to enter into agreements with the owners of ships and rafts or their representatives regarding the loading and unloading of rafts, as well as to undertake the trade instructions of these persons.

In turn, people present on ships and rafts were forbidden to interfere with the orders of the pilot to navigate the vessel or raft.

The pilot is required to monitor compliance with the requirements of the legislation of the Russian Federation and the regulatory legal acts governing navigation on the domestic waterways of the Russian Federation.

Thus, the international community for a long time and with great difficulty formed the legal foundation of the regime of the seas and oceans. In Russia, maritime shipping began in the XVIII century, during this period the institute of merchant shipping employees and the development of the education system were formed, and the training system for merchant navy personnel developed. There was a regulation of issues of ownership and operation of vessels, the legal activities of pilots and pilotage.

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COMMENTARIES

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DEPENDENT AGENT IN DOUBLE TAX TREATIES OF RUSSIA: A LEGAL ANALYSIS OF CRITERIA

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Abstract: The article is devoted to dependent agent in double tax treaties of Russia. Current market conditions force companies to look for new jurisdictions to expand their activity. Under certain conditions, a foreign company's activity in another jurisdiction may create a permanent establishment (hereinafter – PE). Profits of foreign legal entity (non-resident) is taxable in the Russian Federation if its activity creates a PE. Of course, companies are often concerned that this has not happened as it is related to tax economy. There are two types of PE in Russia – general PE and dependent agent. In this article, the authors conduct a legal analysis of the criteria for determining the agency type of the PE. A special attention is paid to Russian double tax treaties (hereinafter – DTT). The article also discusses the «Oriflame» case which addresses the issue of recognition of a legal entity as a dependent agent.

Keywords: permanent establishment, dependent agent, International Tax Law, double tax treaty, OECD Model Tax Convention, United Nations Model Convention, «Oriflame» case.

Introduction

In the globalization era, companies can no longer carry out their activities under a single jurisdiction, therefore the problem of legal regulation of the status of permanent establishments is of particular relevance in the Russian Federation. Under the Russian Tax Code, profits of foreign legal entities (i.e. non-resident) is taxable in Russia if their business activities create a PE[1]. If no PE exists, foreign entities are exempt from Russian profits tax.

Concept of PE under the Russian law

The concept of PE under the domestic law is defined under Article 306 of the Russian Tax Code, where an affiliate, representation, department or bureau, an office, agency or any other subdivision or other place of activity of this organization through which the organization regularly performs its business activity in Russia.

The following areas of activity are expressly listed as giving rise to the creation of a PE:

- exploration for, or extraction of, natural resources;
- construction, installation, assembly, adjustment, maintenance and operation of machinery and equipment, including gambling equipment;
- sales from warehouses owned or rented by a foreign legal entity in Russia;
- rendering services or performance of any other activity, apart from «preparatory and auxiliary» activities or activities explicitly defined as not creating a PE.

Basically, there are two grounds for creation of a PE in Russia[2].

- *General PE*

A PE includes an affiliate, representation, department or bureau, an office, agency or any other set apart subdivision or other place of activity of this company, through which the company regularly performs its business activity on the territory of the Russian Federation.

- *PE through a dependent agent*

A foreign company shall be seen as having a PE if this company performs business activities through a person (a dependent agent) who, on the grounds of contractual relations with this foreign company, represents its interests in the Russian Federation, acts on the territory of the Russian Federation on behalf of this foreign company, possesses and regularly exercises the powers for concluding contracts or negotiating their essential terms on behalf of the foreign company, thus creating the legal consequences for the foreign company.

Regarding an agent with independent status, all DTTs of Russia contain this concept in a fairly standard wording proposed by the OECD and United Nations Model Conventions, as well as approved in the Russian Federation Model Agreement. Thus,

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[1] Russian Tax Code (second part) of August 5, 2000, No. 117-FZ (version of April 15, 2019), ConsultantPlus, http://www.consultant.ru/document/cons_doc_LAW_28165/ (reference date: 15.04.2019)

[2] Konnov O.Yu., Institute of Permanent Representation in Tax Law: Study Guide, ed. by S.G. Pepelyaev, Moscow: Academic Law University Publ., 2002, p. 38.

an enterprise is not considered to have a PE in another state if it carries out activities in another state through a person who is a broker, commission agent or other agent with independent status, provided that such persons act within the framework of their normal activities.

According to Article 7 of the Russian Tax Code, double tax treaties have priority over the domestic legislation. Provisions of the most DTT which relate to PE issues are very similar to the provisions of the Russian Tax Code.

This article focuses on the dependent agent as a type of PE in double tax treaties. Special emphasis will be placed on the analysis of DTTs.

In 2017 Russia joined the Multilateral Treaty to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting of 24 November 2016 (MLI).

It will enable the signatories to implement BEPS principles swiftly, as it covers a large number of double tax treaties. The instrument is quite flexible. At their own discretion, signatories may define which treaties will be covered and which specific provisions will apply.

The MLI provides for a number of key measures. For example, one of such optional provisions is tightening of the provisions relating to agency (commissionaire) arrangements. It stipulates that where an agent is acting on behalf of an enterprise and, in doing so, habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts, that enterprise shall be deemed to have a permanent establishment. According to Action 7 of the BEPS Plan it is proposed to recognize organizations operating on the basis of a commissionaire agreement and regularly carrying out business activity as intermediaries of the foreign company, a dependent agent of the latter[1].

In Russia, MLI will be not be effective until ratified. Thus, currently PE issues are regulated by the DTT and the Russian Tax Code. MLI will be applied after the official ratification.

The main purpose of the concept of agency type of PE is to expand the application of the rules on permanent representation in relation to a foreign enterprise, by adjusting to various forms of business activity in the source state[2].

The Russian Tax Code provides that if the foreign legal entity engages in business activities through a person who, on the grounds of contractual relations with this foreign organization, represents its interests in the Russian Federation, acts on the territory of the Russian Federation on behalf of this foreign organization, possesses and regularly exercises the powers for concluding contracts or for coordinating their essential terms on behalf of the given organization, thus creating the legal consequences for the given foreign organization (a dependent agent).

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[1] Action Plan on Base Erosion and Profit Shifting, OECD Publishing. URL: http://dx.doi.org/10.1787/9789264202719-en (reference date: 18.04.2019)

[2] Yarullina G.R., Agency type of permanent establishment as an extension of the concept of permanent establishment: Russian and international approaches, *Financial Law*, 2016, no. 11, p. 46.

The foreign organization shall not be seen as having a PE if it performs an activity in Russia through a broker, a commission agent, a professional Russian securities market trader or through any other person acting in the framework of his principal (regular) activity.

Describing this type of permanent establishment, the legislator refers to the implementation of activities that meet the requirements of paragraph 2 of Article 306 of the Russian Tax Code. In addition, the provisions on the regulation of the agency type of the permanent establishment are not singled out in a separate article, such as the provisions on the construction site (Art. 308 of the Russian Tax Code).

Model OECD Convention and the UN Convention

Discussions arise in determining the ratio of the main and agency types of PE. The Model OECD Convention and the UN Convention define the agent type of the permanent establishment without using a reference to the characteristics of the main type. Independence is recognized for this type of PE.

The OECD Model Convention uses the following main criteria for a dependent agent as a type of PE (paragraph 5 of article 5):

- acting on behalf of an enterprise;
- habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts in the name of the enterprise (routinely concluded without material modification by the enterprise) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or for the provision of services by that enterprise[1].

The main criteria are specified in paragraph 5 of Article 5 of the UN Model Convention:

- acting on behalf of an enterprise;
- habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts in the name of the enterprise (routinely concluded without material modification by the enterprise) for the transfer of the ownership of, or for the granting of the right to use, property owned by that enterprise or that the enterprise has the right to use, or for the provision of services[2].

Let us consider the provisions of DTTs concluded by the Russian Federation. Currently, Russia has 84 DTTs[3].

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[1] Model Tax Convention on Income and on Capital: Condensed Version 2017, OECD Publishing, http://dx.doi.org/10.1787/mtc_cond-2017-en (reference date: 18.04.2019)

[2] United Nations Model Double Taxation Convention between Developed and Developing Countries, https://www.un.org/esa/ffd/wp-content/uploads/2018/05/MDT_2017.pdf (reference date: 18.04.2019)

[3] List of Applicable Double Taxation Treaties, ConsultantPlus, http://www.consultant.ru/cons/cgi/online.cgi?req=doc&ts=104514336401987800293787393&cacheid=8F67CA313925F64E0AF5E1DE9710C265&mode=splus&base=LAW&n=63276&rnd=3DB866D222724FC0BE8BB8ED31E26BCF#h1plmzka3p (reference date: 18.04.2019)

The Russian Government Resolution No. 84 dated February 24, 2010 "On Concluding Intergovernmental Agreements on Avoiding Double Taxation and Preventing Tax Evasion on Income and Property" approved the Model Agreement between the Russian Federation on avoiding double taxation and preventing tax evasion on income and property[1]. The criteria used in the Model Agreement are focused on the criteria used in the OECD Model Convention.

DTTs contain different criteria for the dependent agent. This issue requires further research. A number of Russian DTTs practically repeat the criteria provided for in the Russian Tax Code (except for meeting the general criteria of the permanent establishment) and the criteria of the OECD convention (in particular, with Albania, Austria, Algeria, Belarus, Brazil).

A number of other DTTs are more focused on UN criteria (storing stocks of goods and products belonging to the enterprise, from which these goods and products are regularly supplied on behalf of the enterprise). This is combined with Australia, Azerbaijan, Armenia, Botswana, Venezuela, Vietnam, etc. Also, some DTTs separately specify the criteria for the recognition of the insurance agent as a dependent agent (in particular, Mexico, Ecuador, Chile).

An interesting criterion is specified in Russia-India DTT. It says that the activity of a dependent agent is fully or almost fully on behalf of the enterprise itself or on behalf of this enterprise and other enterprises that control, control, or are subject to the same control as such an enterprise[2].

It is interesting that the Russian Ministry of Finance agreed with such an expanded concept of a dependent agent with India and Kuwait. The conclusion of DTT with an extended list of criteria for recognition of a person as a dependent agent by some researchers is explained by the level of economic development of the states with which such agreements are concluded. Most often, an extended list of criteria is used in agreements with countries with a low level of economic development.

As for the wording "wholly or almost wholly" in Russia-India DTT, such vague wording is found in other DTTs as well. For example, in Russia-South Africa DTT on the regular execution of orders exclusively or almost always for the enterprise[3].

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1 Decree of the Government of the Russian Federation of February 24, 2010 No. 84 (version of the act of April 26, 2014) "On the conclusion of international agreements on the avoidance of double taxation and on the prevention of tax evasion on income and property", ConsultantPlus, http://www.consultant.ru/document/cons_doc_LAW_98013/ (reference date: 17.04.2019)

2 Agreement between the Government of the Russian Federation and the Government of the Republic of India of March 25, 1997 "For the avoidance of double taxation with respect to taxes on income", https://www.dezshira.com/library/treaties/double-taxation-agreement-between-india-and-russian-federation-3712.html (reference date: 18.04.2019)

3 Agreement between the Government of the Russian Federation and the Government of the Republic of South Africa of November 27, 1995 "For the avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income", *Bulletin of international agreements*, No. 9, 2001.

In Russia-Italy DTT, the exception for recognizing a person's activity as a dependent agent is to restrict this activity solely to the purchase of goods or products for this enterprise[1]. In the Russia-Malaysia DTT, the processing of goods or products is also noted as a criterion[2].

When using the design of a dependent agent in practice, there are often contradictions. An example of one of these contradictions is the «Oriflame» case. Oriflame Cosmetics LLC filed a claim for invalidation of the FTS decision on additional accrual of income tax and VAT. The basis was the analysis of royalties transferred by Oriflame Cosmetics LLC to Oriflame Holding BV (Netherlands) as a tax optimization tool, which allowed the Russian company not to pay income tax in Russia[3].

The court established a scheme of relations between the organizations of Oriflame Cosmetics SA (Luxembourg) and its subsidiary organization Oriflame Cosmetics B.V. (The Netherlands) (Fig. 1).

Thus, for 2009-2010, the Russian company transferred over 2 billion rubles to Oriflame Cosmetics BV (Netherlands) and included these payments as expenses that reduce the amount of income received when determining the income tax base for the years 2009-2010.

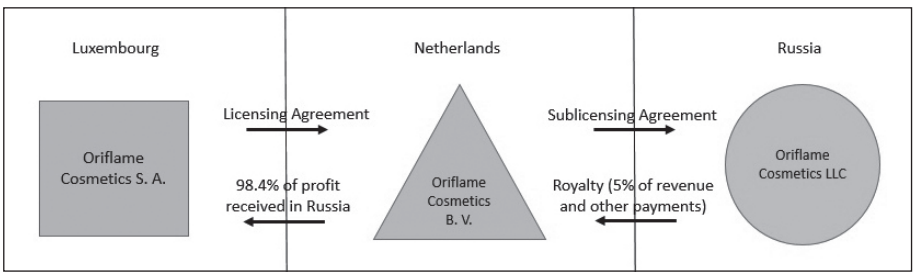

Fig. 1. The contractual relationship between organizations

When exercising tax control, the tax authority determined that the above-described business building scheme is not motivated from the point of view of entrepreneurial

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[1] Convention between the Government of the Russian Federation and the Government of the Italian Republic of April 9, 1996 "On avoidance of double taxation with respect to taxes on income and on capital and prevention of fiscal evasion", https://www.nalog.ru/html/sites/www.eng.nalog.ru/treaties/italy.pdf (reference date: 18.04.2019)

[2] Agreement between the Government of Malaysia and the Government of the Union of Soviet Socialisn Republics of July 31, 1987 "For the avoidance of double taxation with respect to taxes on income", *Acting intergovernmental and interstate agreements of the USSR with other countries on taxation issues*, issue 2, Moscow, 1989.

[3] Moscow Arbitration Court Decision of 04.12.2014 in case No. A40-138879/2014, Kadarbitr., https://kad.arbitr.ru/PdfDocument/837554e8-24a2-4cde-a55f-babf9107c22f/01d83dc7-c12a-4e7d-9a6a-fbd170f847a4/A40-138879-2014_20141204_Reshenija_i_postanovlenija.pdf (reference date: 17.04.2019)

activity and its goal is only to obtain unjustified tax benefit. The tax authority argued this conclusion by saying that Oriflame Cosmetics LLC is not an independent organization, but a permanent representative office (dependent agent) of a Luxembourg company.

The court «pierced the corporate veil» and reclassified Oriflame Russia (a limited liability company) as a representative office of Oriflame Luxembourg based on the following facts:

- Russian company's website was a part of the global website of Oriflame Luxembourg;
- advertising materials and catalogues featured the name of Oriflame Luxembourg;
- Russian company's top management personnel also were employees of Oriflame Luxembourg;
- Russian company had limited decision-making powers and had to have most of its decisions approved by Oriflame Luxembourg and other facts.

Summing up, the court of first instance established that the taxpayer actually performs the functions of a permanent representative office of the Luxembourg Oriflame Cosmetics SA, and therefore the additional charge of income tax and VAT is justified.

The case began to gain rapid turnover, when the Plaintiff, not agreeing with the decision of the ACLU, filed an appeal. The 9th Arbitration Court of Appeal also disagreed with the applicant's arguments and upheld the decision, and the complaint was not satisfied[1].

The court of appeal in its ruling emphasized that an agent with authority to conclude contracts on behalf of a foreign company is recognized as independent only if it does not depend on the principal either legally or economically.

Thus, there is an automatic equating of the notions PE and "dependent agent" to a Russian company with a majority share of foreign participation, which is incorrect.

Then Oriflame Cosmetics LLC was lodged with the cassation instance. It became clear that such a practice could soon touch many international investors doing business in Russia under a similar scheme. The importance of the outcome of this case is noted by the fact that in order to assist justice, specialists in the field of tax law sent letters to the Arbitration Court of Moscow District "Amicus curiae". However, the court of cassation also dismissed the complaint of Oriflame Cosmetics LLC[2].

The Supreme Court of the Russian Federation did not recognize the taxpayer as a dependent agent but denied the company to satisfy the complaint on the basis of

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[1] Ninth Arbitration Appeal Court Ruling of 06.03.2015 in case No.A40-138879/14, Kadarbitr., https://kad.arbitr.ru/PdfDocument/837554e8-24a2-4cde-a55f-babf9107c22f/f7439f50-9d49-47ed-8242-f2b730cc0136/A40-138879-2014_20150306_Postanovlenie_apelljacionnoj_instancii.pdf (reference date: 17.04.2019)

[2] Moscow District Arbitration Court Decision of 11.06.2015 in case No. A40-138879/14, Kadarbitr., https://kad.arbitr.ru/PdfDocument/837554e8-24a2-4cde-a55f-babf9107c22f/6e80aaa3-adc8-419d-9961-d769e85021e2/A40-138879-2014_20150611_Reshenija_i_postanovlenija.pdf (reference date: 17.04.2019)

an overestimated amount of payments, which was not economically justified[1]. This definition caused a mixed reaction from legal scholars[2].

Thus, the focus of the case shifted from the question "on the presence of a permanent establishment (dependent agent)" to the question "on the advisability of license payments made" since the tax authority could not get information about the reasons for concluding such concession contracts involving large license payments. In our opinion, in this dispute, the use of the concept of a PE was not justified.

Summing up the work done, it is worth saying that the considered case is contradictory. Acknowledging the obviousness of building a business along such a structure for tax optimization purposes, the positions of the tax authority and the courts raise doubts. The courts have left a lot of room for arguing about who can be considered a dependent agent.

Thus, the dependent agent as a type of PE at the moment is a deep scientific and practical problem that requires in-depth study. Of particular interest are the criteria of the dependent agent used in several Russian DTTs, since they are presented in a wide variety.

It seems that in the future the courts, and equally the legislator, still have to face a number of problems associated with the application of the criteria of a dependent agent in practice. The "Oriflame case" is a kind of measure, by the example of which the instability of the position of subsidiaries of foreign companies is demonstrated, as well as the existing problems of determining PE.

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[1] Supreme Court of Russian Federation Ruling of 14.01.2016 No.305-КГ15-11546 in case No.A40-138879/14, File of arbitration cases, https://kad.arbitr.ru/PdfDocument/837554e8-24a2-4cde-a55f-babf9107c22f/e3766a93-2271-4635-88df-7dc51e5d83e8/A40-138879-2014_20160114_Opredelenie.pdf (reference date: 17.04.2019)

[2] Kopina A.A., Tax control in foreign economic activity, *Laws of Russia: experience, analysis, practice*, 2017, No. 7, p. 34.

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CONFERENCE REVIEWS

Elena Bogdanova
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ALL-RUSSIAN SCIENTIFIC AND PRACTICAL CONFERENCE "RUSSIAN CIVIL LAW IN THE XXI CENTURY: TRADITIONS AND MODERN CHALLENGES"

DEDICATED TO THE 200TH ANNIVERSARY OF THE BIRTH OF PROFESSOR DMITRY IVANOVICH MEYER

WITHIN THE FRAMEWORK OF VI MOSCOW LEGAL FORUM "RUSSIAN LEGAL SYSTEM IN THE CONTEXT OF THE FOURTH INDUSTRIAL REVOLUTION"

DOI: 10.30729/2541-8823-2019-4-2-132-135

Abstract: Doctor of Law, Dmitry Meyer is a famous Russian civil lawyer and public figure (1819-1856). A graduate of Saint-Petersburg Chief Pedagogical Institute and Berlin University, from the spring of 1845 to 1855 he taught at the University of Kazan and was one of our best professors of jurisprudence. Dmitry Meyer is also famous for his positive influence on Leo Tolstoy, who studied Law at Kazan University but was not interested in jurisprudence – Tolstoy got writing inspiration with the help of Professor of Civil Law Dmitry Meyer. The All-Russian Scientific and Practical Conference "Russian Civil Law in the XXI Century: Traditions and Contemporary Challenges" held on April 5, 2019 was dedicated to the 200th birthday of Professor D.I. Meyer. The conference united many outstanding scholars and practicing lawyers who made great presentations and discussed current issues of Russian law, which developed inter alia under the influence of D. I. Meyer's ideas.

Keywords: conference, review, Dmitry Meyer, Kutafin University (MSAL), Kazan (Volga) Federal University, Moscow Legal Forum.

On April 5, 2019, the All-Russian Scientific and Practical Conference "Russian Civil Law in the XXI Century: Traditions and Contemporary Challenges" (dedicated to the 200th birthday of Professor Dmitry Ivanovich Meyer), conducted by the Department of Civil Law of Kutafin University (MSAL) and the Faculty of Law of the Kazan (Volga) Federal University.

Conference leaders were: **Elena Evgenievna Bogdanova**, Doctor of Legal Sciences, Acting Head of the Department of Civil Law of Kutafin Moscow State Law University (MSAL); **Damir Khamitovich Valeev**, Doctor of Legal Sciences, Professor, Deputy Dean for Research Activities at the Law Faculty of Kazan (Volga Region) Federal University; **Kamil Maratovich Arslanov**, Doctor of Legal Sciences, Associate Professor, Head of the Civil Law Department at the Law Faculty of Kazan (Volga Region) Federal University.

Deputy Head of the Conference: **Daria Sergeevna Ksenofontova**, Doctor of Legal Sciences, Deputy Head of the Department of Civil Law of Kutafin Moscow State Law University (MSAL).

At the conference the presentations were made by the following leading experts in the field of civil law.

– **Damir Khamitovich Valeev**, Doctor of Legal Sciences, Professor, Deputy Dean for Research Activities of the Law Faculty of Kazan (Volga Region) Federal University presented a paper "The life and career of Professor of the Imperial Kazan University D.I. Meyer", dedicated to Kazan period of activity of the famous civil law scientist Dmitry Ivanovich Meyer.

– **Boris Ivanovich Puginsky**, Doctor of Legal Sciences, Honored Lawyer of the Russian Federation, Professor of the Department of Commercial Law and Fundamentals of Legal studies of the Law Faculty of Lomonosov Moscow State University gave

a presentation "The development of the categories of private law", in which he emphasized the need to continuously improve the categorical apparatus of the civil law sector.

– **Andrey Vladimirovich Gabov**, Doctor of Legal Sciences, Honored Lawyer of the Russian Federation, Corresponding Member of the Russian Academy of Sciences, in his talk pointed out the new challenges for the science of Russian civil law, which entails a change in the technological structure, in particular, the issue of the legal personality of artificial intelligence.

– **Natalia Vladimirovna Kozlova**, Doctor of Legal Sciences, Professor of the Department of Civil Law, Faculty of Law, at Lomonosov Moscow State University presented gave a talk on "Real and consensual contracts", where examining the nature of these types of civil contracts she raised questions about the significance of this classification and the existence of real contracts in civil law.

– **Lyudmila Yuryevna Vasilevskaya**, Doctor of Legal Sciences, Professor of the Department of Civil Law of Kutafin Moscow State Law University (MSAL) made a presentation on the "Civil Code of the Russian Federation on Digital Rights: Problems and Contradictions", in which she studied a new category of rights for Russian civil law – the digital rights, analyzing the latest changes in civil legislation.

– **Irina Aleksandrovna Mikhaylova**, Doctor of Legal Sciences, Professor of the Department of Civil and Business Law of the Russian State Academy of Intellectual Property presented to the conference participants a paper on "The Beginning and the End of a Physical Person in the Works of the Founder of Russian Civil Laws" where she analyzed, in particular, the theoretical provisions related to defining the moment of occurrence of the civil legal capacity of individuals.

– **Olga Mikhaylovna Rodionova**, Doctor of Legal Sciences, Associate Professor at the Department of Civil Law of Saratov State Academy of Law, gave a presentation "Legal regulation of relations in the field of digital public procurement and investment attractiveness of the European Union", where she addressed the issues of legal regulation of digital public procurement and ways to harmonize the legislation in this area.

– **Irina Aleksandrovna Emelkina**, Doctor of Legal Sciences, Professor of the Department of Civil and Business Law of the Higher School of Economics, National Research University, in her presentation "Real estate security rights in modern Russian civil law" pointed out the need to reform Russia's property law in the development of the system of real estate security rights.

– **Marina Nikolaevna Maleina**, Doctor of Legal Sciences, Professor of the Department of Civil Law of Kutafin Moscow State Law University (MSAL) made a presentation "The right of access to cultural property as a constitutional right and a subjective civil right".

– **Olga Aleksandrovna Serova**, Doctor of Legal Sciences, Professor, Head of the Department of Civil Law and Process of Immanuel Kant Baltic Federal University talked about the impact of changing the technological structure on such traditional civil law categories as will and will expression.

– **Vladimira Vladimirovna Dolinskaya**, Doctor of Legal Sciences, Professor of the Department of Civil Law at Kutafin Moscow State Law University (MSAL) in her talk outlined the trends in the development of the doctrine and legislation on the subjects of civil legal relations, having discussed among other issues some of the results of the reform of civil legislation in this area.

– **Valery Gennadyevich Golubtsov**, Doctor of Legal Sciences, Professor, Head of the Department of Business Law, Civil and Arbitration Process at Perm State National Research University analyzed in his presentation the works of Professor Dmitry Ivanovich Meyer, devoted to the treasury as an object of civil rights.

– **Dmitry Evgenievich Bogdanov**, Doctor of Legal Sciences, Professor of the Department of Civil Law of Kutafin Moscow State Law University (MSAL) presented a talk on the topic "3D printing technology as a trigger of the fourth industrial revolution: new challenges to the legal system", in which he pointed out the need to improve civil legislation in the sphere of responsibility for causing harm to the life and health of citizens due to the use of products produced by 3D printing technology.

– **Julia Gennadievna Leskova**, Doctor of Legal Sciences, Professor, Head of the Department of Business, Labor and Corporate Law, Faculty of Law named after M.M. Speransky of Russian Academy of National Economy and Public Administration under the President of the Russian Federation described the trends of development and improvement of legislation on legal entities in the light of building digital economy.

– **Kamil Maratovich Arslanov**, Doctor of Legal Sciences, Associate Professor, Head of the Department of Civil Law of the Law Faculty at Kazan (Volga Region) Federal University, made a presentation "The Importance of legal traditions for the development of modern Russian civil law".

In total, more than 120 representatives of legal science took part in the conference. It was a fruitful event and organizers express hope it will be continued next year again.

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REVIEW OF THE XV ANNUAL STUDENT MODEL TRIAL "ALL-RUSSIAN JUDICIAL DEBATES 2019"

DOI: 10.30729/2541-8823-2019-4-2-136-144

Abstract: The article tells about the student model trial "All-Russian Judicial Debates", which was held at the Law Faculty of Kazan (Volga Region) Federal University on 19-20 April 2019. The article highlights the main stages in the emergence of the Debate idea. It reveals topical issues of legal reality, raised in the framework of the event, and also outlines the results, which were reached at the discussion of these legal issues. In addition, the scientific-educational and scientific-practical components of the project are discussed. In addition to the above, the article tells not only about debates at the Law Faculty of KFU, but also about the functioning of the "schools" of debates at the law faculties of Russian universities. Further, the article mentions the researchers and representatives of the judicial and law enforcement system, who are not only judges of the competition, but are long-term partners and friends of the project.

Keywords: Law Faculty of Kazan (Volga Region) Federal University, All-Russian Judicial Debates, student self-government, student scientific society, conference, debates.

On 19-20 April 2019, for the fifteenth time the Law Faculty of the Kazan (Volga Region) Federal University opened its doors to students from all over Russia, who participated in a project that is essentially unique – the All-Russian Judicial Debates. The purpose of the All-Russian Judicial Debates is to understand the problems of legal reality in the field of national law, strengthen relations with Russian universities, share theoretical and practical knowledge in the field of jurisprudence, and prepare students to participate in real trials as close as possible to the real "combat" situation. Events of this kind, in addition to these goals, perform another very important and relevant function – they increase the level of professional competence of future graduates. This idea is supported by the fact that this form of education is as practice-oriented as possible, and therefore it increases the competitiveness of participating students.

The Law Faculty of Kazan University is rapidly developing as a center of classical legal education, talented scientists and scientific breakthroughs of modern jurisprudence. The foundation of Kazan Law School was initially formed at the intersection of theory and practice, a proportionate combination of the educational process and the research work of teachers and students. Currently, the faculty is actively promoting the idea of improving the quality of education of students through their participation in research activities. The research work of the students of the faculty in a way is a "workshop" of young scientists, a guarantee of their successful professional training.

One of such forms of research activity is the annual large-scale event for the legal community – All-Russian Judicial Debates. The interaction of Kazan Federal University with leading higher educational institutions of the country, the dynamics of legal processes in the field of national law, as well as the development of civil, criminal, administrative and constitutional legal procedures create good conditions for conducting a student moot court "All-Russian Judicial Debates".

These debates are the "founder" of such projects for law students. This format of research and practical activities goes beyond the traditional conferences, forums, seminars and other similar events. All-Russian Judicial Debates make the process of teaching students more effective, interesting, lively and as close as possible to their future profession.

All-Russian Judicial Debates have their origins back in 2005. Then the debates were held only on the basis of the Faculty of Law of Kazan State University named after V.I. Ulyanov-Lenin at the time, and were held for the students of the Faculty, but already then the great prospects for this project became apparent. Already in 2006, students could try themselves in the new direction of Debate – in criminal proceedings.

The implementation of this direction in the Project involved new coaches, new participants and new judges. Thus, the training of the teams of Kazan University in this area became the responsibility of the Department of Criminal Procedure and Forensic Science of the Law Faculty. Under the leadership of the Head of the Department *Igor Olegovich Antonov* and with the support of the lecturers of the Department *Marina Evgenievna Klyukova* and *Marat Minifetovich Shamsutdinov,* more than one generation of

good debaters were raised. Such debaters do not only defend the honor of the department and the university, but also successfully realize themselves in their professional life.

Also, since 2006 the Judicial Debates have acquired the status of All-Russian, gathering the best students of the country each year in April, which undoubtedly marked a new round in the history of the Debates.

Further, the story takes another turn, and since 2010 based on the results of the model trial, a book of All-Russian Judicial Debates containing the legal positions of the participating teams is being issued.

Since 2016, two more areas have emerged in the structure of the Judicial Debates – Constitutional Justice and Civil Justice in the Courts of General Jurisdiction.

In 2017 for the first time a section entitled "Trade Union Debates" was held – a model process on social and educational law, the purpose of which was to develop and identify students' knowledge and practical skills on educational law.

The year 2019 was marked by another change. The debates "lost" the section of Civil Proceedings in the courts of general jurisdiction, it was merged again with the section of Civil Proceedings. Simultaneously with this "loss", the contest acquired a new direction, and became the first and only one in Russia where students can try to test their knowledge and skills in the Administrative Procedure section, where the trials are held according to the general rules of the event and with the use of the rules of the new Code of Administrative Procedure of the Russian Federation.

Throughout the long history of Debates, scientific debate schools have appeared all over Russia. So the representatives of Kazan School of Debates were the mentors of the participating teams: *Yury Mikhailovich Lukin*, Advocate of the Bar of the Republic of Tatarstan, head of scientific research work of students of the Law Faculty of Kazan University, Senior Lecturer of the Department of Theory and History of State and Law; *Marat Vladimirivich Fetyukhin*, Honored Lawyer of the Republic of Tatarstan, Candidate of Legal Sciences, Associate Professor of the Department of Environmental, Labor Law and Civil Procedure at the Law Faculty of Kazan Federal University; *Marina Evgenievna Klyukova*, Honored Lawyer of the Republic of Tatarstan, Candidate of Legal Sciences, Associate Professor of the Department of Criminal Procedure and Forensics at the Law Faculty of Kazan Federal University. The representative of Rostov School of Debates was *Elena Sergeevna Smagina*, an expert of the Constitutional Court of the Russian Federation and the Supreme Court of the Russian Federation, Candidate of Legal Sciences, Associate Professor of the Southern Federal University. Saratov School of Debates was represented by *Mikhail Yuryevich Lebedev*, Candidate of Legal Sciences, Associate Professor of Saratov State Law Academy. The school of Debates of Yekaterinburg was represented by *Evgeniya Rudolfovna Rusinova,* Candidate of Legal Sciences, Associate professor of the Department of Civil Process at the Ural State Law University. Among others were *Natalia Gennadyevna Narbikova,* Candidate of Legal Sciences, Associate Professor, Head of the Department of Criminal Law and Law Faculty of Orenburg State Agrarian University; *Elena Alexandrovna Borisova*,

Doctor of Legal Sciences, Professor of the Department of Civil Procedure of Moscow State University; *Oksana Nikolaevna Yurgel*, Senior Lecturer of the Department of Civil Law and Procedure of the National Research Lobachevsky State University of Nizhni Novgorod; *Inna Viktorovna Kosheleva*, Advocate, Senior Lecturer at the Department of Criminal Procedure Law and Criminology, Volga-Vyatka Institute (branch) of the Kutafin University (MSLA).

Understanding the need to give a better start to the junior students, *Yury Mikhailovich Lukin* founded the club "Judicial Debates. Junior League", which is a launching pad for the future lawyers, future debaters. The preparation and participation of newly enrolled students of the Faculty became not just an element of maintaining the prestige of Kazan school of debates, but also acts as a real part of the educational process and an objective need for practice-oriented work among students.

In addition, the Student Scientific Club "Judicial Debates" operates at the Faculty, which also functions under the guidance of *Yuri Lukin*.

Speaking about the coaches of the teams of the Civil Law branch of Kazan Law School, it is worth noting that Yuri Mikhailovich, being a practicing lawyer, does not just prepare students for the "adult life" and participation in debates. He shares his knowledge and professional secrets, interesting and funny cases from his practice, tactics of speaking in court, tactics of presenting your position, as well as his rich experience. Therefore, touching on the issue of preparation, it is more correct to speak about the preparation of a worthy new generation, about maintaining elitism and prestige of the profession and the title "Lawyer". However, it is impossible to talk about the coach and his contribution without mentioning what his students have become. The graduates of the club "Judicial Debates" today occupy leading positions in the largest law firms in Russia, they can be managing partners or remain at the Faculty and transfer the gained knowledge to new students, they also become representatives of the judiciary, executive and legislative branches.

However it is worth mentioning that graduating from the university or club does not mean breaking connections and contacts. Both the coach and the debaters will forever remain one big strong family, each member of which is ready at any moment to give advice, to share new experience and to support.

It is necessary to emphasize that both real and model trials cannot do without decent judging. Every year, the leading experts of jurisprudence are invited as judges: scientists, lecturer, judges, prosecutors, lawyers, legal advisers and others. Traditionally, the judges for the sections are the following experts: Professor of the Ural State Legal University *Dmitry Borisovich Abushenko*, Doctor of Legal Sciences; judge emeritus *Vyacheslav Yuryevich Gusyakov*, Candidate of Legal Sciences, Senior Lecturer of SamSU; Professor *Kuzbagarov Askhat Nazargalievich*, Doctor of Legal Sciences; Associate Professor of Moscow State University *Sergey Vladimirovich Moiseev*; solicitor *Andrey Alekseevich Pavlov*, Candidate of Legal Sciences; judges of the Supreme Court of the Republic of Tatarstan: *Rafail Valiyevich Sakiryanov*, *Eduard Ilsiyarovich Abdullin, Radik Shamilevich*

Adiyatullin, Ramil Gapteraufovich Bikmiev; Head of the Military Prosecutor's Office of Kazan garrison *Sergey Vladimirovich Gorb*.

Moreover, the representatives of the business community are invited as guests who may become future employers of promising talented young lawyers participating in the All-Russian Judicial Debates. The annual participation of students from leading universities of Russia, a professional judiciary, and an excellent event organization with an exciting finale make the All-Russian Judicial Debates a unique scientific project.

Thus, students of the best universities, academies and institutes of Russia meet annually in Kazan to try themselves in five areas: civil proceedings in commercial (arbitration) courts, civil proceedings in courts of general jurisdiction, criminal proceedings, constitutional proceedings and the trade union section. Each university that took part in this event was represented by one or several teams in each area. The All-Russian judicial debates unite hundreds of students across Russia.

The year 2019 was no exception: more than 450 students sent their applications for the participation, of which only the best 190 became the participants in the Debates. The teams competed among each other in several rounds, demonstrating their oratory, knowledge in various branches of law, and the ability to analyze legal facts.

The All-Russian Judicial Debates were covered in such media as the TV channel "Efir 24", the official portal of the Prosecutor's Office of the Republic of Tatarstan and the Supreme Court of the Republic of Tatarstan, as well as other sources.

Debates traditionally take place at the end of April and the whole event takes two busy days.

The opening of the event, which took place in the beautiful and oldest auditorium of Kazan University, was a starting point for this event. The first speaker to address the participants was the vice-rector for scientific activities of KFU *Denis Karlovich Nurgaliyev*, who gave the welcome speech, where he emphasized the importance of practice-oriented education. Then, the Dean of the Law Faculty of KFU *Liliya Talgatovna Bakulina* welcomed the participants. In addition, the Deputy Chairman of the Constitutional Court of the Republic of Tatarstan *Raisa Abdullovna Sakhieva* addressed the participants with greetings and good wishes as well as did the Deputy Chairman of the Supreme Court of the Republic of Tatarstan on civil matters *Lenar Arturovich Valishin*, Assistent at the Law Faculty of MSU *Elena Viktorovna Zaychenko*, Candidate of Legal Sciences, and Head of the Civil Procedure Department of the Law Institute of the Southern Federal University *Elena Sergeevna Smagina*, Candidate of Legal Sciences.

The administration of the Faculty and the honored guests expressed their sincere wishes to the participants: they wished them fruitful work, vivid discussions and expressed the hope that this celebration of science would make a real contribution to the integration between universities, and will help to establish contacts between scientific schools.

Later the participants were invited to attend informational and educational workshops for students from professionals in their field who shared their rich and

invaluable experience with the participants. This year there were offered three topics, three areas of law.

One of the workshops was devoted to the peculiarities of dealing with a certain categories of civil cases, and its headliner was the Chairman of the judicial panel, acting Deputy Chairman of the Supreme Court of the Republic of Tatarstan in civil matters *Lenar Arturovich Valishin*.

Second workshop was called "Model Contests in Constitutional Justice: Popularization of Reasoning Techniques and Personal Experience". The speaker was *Sergey Sergeyevich Zaikin*, Candidate of Legal Sciences, Lecturer at Moscow State Law University, "Crystal Themis" Contest Judge, member of the editorial board of the scientific journal "Comparative Constitutional Review", laureate of the 3rd prize at the competition of the Central Electoral Commission of the Russian Federation for the best work on the issues of electoral law and the electoral process, legal and political culture of voters (referendum participants), election organizers, election campaign participants.

The third workshop was devoted to criminal proceedings, where the representative of Kazan Garrison Military Court gave a paper on "The Basics of the Military Prosecutor's Office".

The first round of fights became the final chord of the first day. At Kazan Alma mater about thirty trials were taking place simultaneously for about two hours. The "battle" atmosphere prevailed in the auditoriums, it seemed that the spirit of rivalry was even in the air. At each of the sections students fiercely defended their point of view as highly qualified specialists in an atmosphere of heated discussion, bringing arguments in defense of their legal position. Practicing lawyers and judges acted as judges at the trials of the model process: *Vyacheslav Yuryevich Gusyakov* – Deputy Chairman of the International Union of Lawyers, judge emeritus*; Igor Nikolaevich Smolensky* – judge of the Commercial (Arbitrazh) Court of the Volga District; *Aydar Rustemovich Sultanov* – Head of the Legal Department of PJSC "Nizhnekamskneftekhim"; *Emil Amirovich Gataullin* and *Mikhail Grigorievich Raskin* – lawyers of the "Raskin and Partners" law firm; *Sergey Sergeevich Zaikin* – Candidate of Legal Sciences, Senior Lecturer at Kutafin Moscow State Law University; *Elena Sergeevna Smagina* – Head of the Department of Civil Procedure and Labor Law of the Law Faculty of the Southern Federal University; *Airat Damirovich Iskhakov* – Candidate of Legal Sciences, Associate Professor of the University of Prosecutor's Office of the Russian Federation; *Rosaliya Zakiyevna Gayfutdinova* – Candidate of Legal Sciences, Associate Professor of the Law Faculty at Naberezhnye Chelny Institute (branch) of KFU; *Airat Ramilevich Davletshin* – alumnus of the "Judicial Debates" club; *Konstantin Valentinovich Egorov* – Director of the law firm "StroyCapitalConsulting"; *Ilgiz Abrarovich Khasanshin* – Candidate of Legal Sciences, judge of the Commercial (Abritrazh) Court of the Republic of Tatarstan; *Igor Yuryevich Zagoruyko* – Doctor of Economic Sciences, Professor of Perm University; *Rafail Valievich Shakiryanov* – judge emeritus of the Supreme Court of the Republic of Tatarstan and *Yury Mikhailovich Lukin* – lawyer of the Advocate Bar of the Republic of

Tatarstan, Head of the Student Scientific Society of the Law Faculty at Kazan Federal University. This was the end of the official, educational and practical part of the first day of the event.

The second day of the All-Russian Judicial Debates began with the announcement of the results of the first round. The eyes of the participants were full of eager anticipation. After the results were announced, the semi-final of the model trial took place, where the best students could compete for the title of the finalists of the event. They were asked to complete written assignments. After a few hours, the teams that reached the final were announced – those who were only a step away from the final battle and a step away from the main prize – the statue of Themis.

The outcome of the day and the whole event was the closing ceremony, where the winners of the sections were awarded. The results of the prize draws organized together with the partners of the event were also announced at the ceremony.

Prizes in the sections were distributed as follows:

Civil Procedure:
1st place – Team A 43-19 Kazan (Volga region) Federal University,
Danil Vyacheslavovich Shadrin,
Ruslan Olegovich Nikolaev,
Aynur Ilgizovich Salakhov.
2nd place – Team A 18-19 Lomonosov Moscow State University.
3rd place – Team A 53-19 Higher School of Economics – National Research University – Saint Petersburg.

Criminal Procedure:
1st place – Team V 18-19 Kazan (Volga region) Federal University,
Vladislava Sergeevna Sycheva,
Anna Sergeevna Polovnikova,
Mikhail Yakovlevich Zhuk,
Emil Zagitovich Sultanov,
2nd place – Team V 07-19 Volga-Vyatka Institute of Kutafin Moscow State Law University.
3rd place – Team V 32-19 Crimean branch of the Russian State University of Justice.

Constitutional Procedure:
1st place – Team S 21-19 Financial University under the Government of the Russian Federation,
Sergey Vladimirovich Petukhov,
Roman Andronikovich Ambahtsumov,
Elena Vladimirovna Buzykina,
Anastasia Andreevna Solovyova,

2nd place – Team S 30-19 Ural State Law University.
3rd place – Team S 06-19 Ural State Law University.

Administrative Procedure:
1st place – Team D 14-19 Kazan (Volga region) Federal University,
Vladislav Viktorovich Anisimov,
Alexey Vladimirovich Bilalov,
2nd place – Team D 02-19 Saint-Petersburg Institute (branch) of the All-Russian State University of Justice (RLA of the Ministry of Justice of Russia).
3rd place – Team D 12-19 Southern Federal University.

Summarizing the above, we can safely say that the Debates significantly differ in format from the scientific and practical conferences and forums that students are used to. This is a one-of-a-kind project of the Law Faculty of Kazan (Volga Region) Federal University, inspired by the traditions of Kazan Law School and the trends of the new time.

The student model trial "All-Russian Judicial Debates" is one of the most effective and useful forms of teaching students, because it allows them to feel and experience not only the heat of emotions experienced by legal practitioners in their activities, but also the difficulties of the legal profession: namely preparing the legal argument, fending off the criticism of the opponent, drawing an impartial judge to their side, as well as experiencing the bitterness of defeat. However, speaking of defeat, it is worth noting that this event allows you to test your strength without fear of letting down your client. Thus, defeat in judicial debates is also a victory, a victory over oneself, because the defeat here is an impetus and impulse for further development in the professional sphere.

Summing up, it should be mentioned that the All-Russian Judicial Debates in 2019 were held in a new way, they have become more fruitful and more compelling. This year the Debates broke new ground, which, of course, has raised their status. Also, the informative and practice-oriented workshops were held for the first time. Thus, in two days the Debate participants acquired not only practical experience, public speaking skills, the ability to defend their position, but also gained new interesting acquaintances, positive and exciting emotions, as well as vivid impressions that will remain with them for life. A year later, the All-Russian Judicial Debates will again greet the students for new exciting "trials." All-Russian Judicial Debates are not just an event, but a big and friendly family!

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