УДК 347.44:347.78

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ENFORCEMENT OF PRIVATE LAW IN UNRECOGNIZED AND OCCUPIED TERRITORIES

Political map of the world constantly changing: some states disappear and others arise. But the above-described process not always passes calmly and in accordance with the procedure which generally recognized in the international treaties. Thus, newly formed states, such as Luhansk and Donetsk National Republics in Ukraine, Transnistria in Moldova, South Ossetia in Georgia, etc. do not gain international recognition. This means that recognized states don't interact with non-recognized one in public law relations: do not establish consular and diplomatic institutions, do not became a part of international organizations and the party in international treaties, don't get loans for the development of the economy and the social sphere and so on. Non-recognition of newly formed state leads to appearance of territory with unclear legal status, and it arises new problem: on the one hand in case emergence of conflicts in the private sphere with a foreign element the court should use conflict of law rule and apply foreign legislation and on the other hand non-recognition of a state lead to contradictory status of mandatory rules of conduct in force in its territory, which called de facto regime law.

Analyzing the position of ICJ and ECHR we concluded that the law of the de facto regime should apply if it protects the interests of the private person. But it is still important to determine the possibility of using de facto regime law as a conflict of law rule.

Another problem, which one can meet in this situation, concerns the *renvoi* concept. Renvoi is a traditional concept that can be found in the general part of various Private International Law acts, and literally means to send back or return [1]. According to the application of non-recognized state law, the court should investigate:

- Should foreign law apply as a whole, i.e. including its conflict-of-law rules?
- Is reference actually made only to substantive law?

If the court applies de facto regime law as a whole, the collision norm, which such law contains can sent situation to regulation by some third material law. Such use of non-recognized state law automatically excludes purpose, based on which the

court use de facto regime law (in order to protect the rights of an individual most adequately).

The possibility of choosing the law of de facto regimes contains The Law of Ukraine On International Private law from 23.06.2005. The art.1 provide that:

choice of law – is the right of participants in the legal relationship to determine **the law of which state, should be** applied to the legal relationship with a foreign element [2].

But this provision does not directly provide non-recognition of the state as a limitation of using its law. But the system of national private law created a complicated complex of rules, which allowed to national court not use the law of the non-recognized state, even if by collision norm it should use it. from among these restrictions, the Ukrainian law provides imperative norms, warning about public order, reciprocity, evading the law, the impossibility for a reasonable time to establish the content of foreign law [2], but non-recognition of state missing in this list [3].

The Ukrainian courts deny applying the law of de facto regimes in any form. As an exemplification of this may serve the judgment of the Odessa Commercial Court of appeal in case №15/2002/06 from 18 of July 2006, the legal capability of the appellant can't be defined by Transnistria Law, because "Transnistria does not exist as a separate State, which is a well-known fact."

In accordance with the actual circumstances of the case, the court did not give a legal value of legal actions of the appellant, which was legal under his personal law – the law of Transnistria [4].

The court does not take into account that even though Transnistria isn't officially recognized by Ukraine, it makes an effective control over its territory by the law, public authorities, etc. And what is the main important thing – the law of Transnistria is completely different from the Moldovan one.

Asserting that Transnistria does not exist as a separate State, Odessa Commercial Court of appeal denied existence on the territory of Transdnistria any public relations, because they one way or another does not comply with the law of Moldova [5].

However, events that occurred in 2014-2015 in Ukraine (annexation of the Crimea by Russian Federation, the proclamation of Luhansk and Donetsk People's Republic) lead to the necessity of developing a unified approach for application of law, which is valid on annexed territories and regulate private relations by the Ukrainian courts and other public authorities.

Events, as mentioned above, lead to occurrence a situation, when a citizen of Ukraine, who lives on temporarily occupied territories, faced with problems of obtaining documents, issued by Ukrainian public authorities. Instead of this, documents, confirming the registration of birds, marriage, and death are issued by de facto state authorities.

Ukrainian courts meet with the problem of recognition of higher specified documents, in time when Ukraine totally denies the existence of independent states on its occupied territories. The way out of this situation may become using practices of ICJ, namely Namibian exception when despite the public non-recognition of one state by another, the documents issued in the interest of private persons are recognized [6].

According to with information from Uniform State Register from July 2015 to May 2019, 30 718 judgments were passed in which judges referred to "Namibian exceptions", it should be noted that from January 1991 to June 2015 no such decision has been made [7].

But, although documents issued de facto regime authorities are recognized by Ukrainian courts, they still not allowed using the law of de facto regime as the applicable law in private law relations with a foreign element. In our opinion, this disregard of application de facto regime law as material law to international private law relations testifies only a lack of awareness of Ukrainian judges with the main task of private law – despite any public interest protect the rights of a private person on a maximum level.

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