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Section 1. Civil Procedure

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CONTRACT FOR RENT ACCORDING TO THE KOSOVO LAW ON OBLIGATIONAL RELATIONSHIPS

Abstract: contractual law numerates a big number of contracts for functionalizing the social relationships. All social relationships regulated by legal norms are legal relationships. After the contract of sales, the contract for rent is one of the most important contracts in the field of contractual law. The author with this paper covers the notion of this contract, conditions for concluding it, its characteristics, the rights and the obligations of the lessor and the tenant as well as the ways of termination of this contract. Author by using the method of legal analysis will analyze the contract and all its elements in the Kosovo legal system, so the paper could further be used for the practical and the academic debate.

Keywords: law, contract, rent, tenant, lessor.

Introduction

After the sales contract, the contract of rent is one of the most important contracts in the field of the contractual law. The paper gives the notion of this contract where in this case the lessor is obliged to give the object of the rent to the tenant, whereas the tenant is obliged to use the object/item according to the conditions foreseen with their contract agreement. For conclusion of this contract there should be fulfilled general and specific conditions. As the general conclusions are considered all conditions that are common for all types of contracts. Besides this, the specific conditions should be fulfilled like object-rent and its duration. With this contract as specific conditions are foreseen the ways of payment for rent, duration and the delivery of this reward. The payment of rent is only a reward that tenant shall pay in favor of lessor for the item which is in use, and this item cannot be alienated. Despite the conditions for concluding the contract of rent, papers deals with the characteristics of this contract. For doing so, this paper uses methods of legal analysis, method of comparison, etc. Further within the paper there are used the research questions like, which are the characteristics of the contract according to the Law on Obligational Relationships, which are the duties of contract parties of this contract and which are the ways of terminations of this contract.

Notion

Rent is contract by which one party (lessor) is obliged to give to the other party (tenant) a determined item for a temporarily use against a determined reward [3, article 801]. By the contract of rent, lessor is obliged to deliver determined item to the tenant for use, whereas tenant is obliged to pay the contracted rent [5, article 585]. The Law on Obligational Relationships by this wanted to explain that lessor is obliged to deliver the item to the tenant, but in this case we have to do with the rents in the general viewpoint and not in the specific viewpoint. Lessor

by all means is obliged to give the price of rent for the determined contract deadline. Apart of reward for rent tenant is obliged to turn back the item under the rent at the time and the place determined by the contract. It is important to mention that lessor should be the owner of the item given under the rent, this due to the fact that he has to transfer by authorization all acts to the tenant, except the right of alienation of the item.

Characteristics of the contract of rent

In the contract of rent wealth is given for the temporary use–this means that tenant uses the item according to the determined destination with the contract or according its nature after the end of contract deadline tenant shall turn back to the lessor the item which was under the rent contract [7, pg 52–53]. This contract has the following characteristics: it is the contract by name because it is foreseen as such by the law (articles 585–614 of the Law on Contractual Relationships); it is contract with mutual obligations based on the fact that both parties know their rights and the obligations; it is the contract by reward because one party delivers to the other party the item in use whereas the other party gives the reward for the used item. Reward in the contract of rent consists of amount of rent which is to be paid by tenant in favor of lessor for the item taken with the contract [6, pg 74]. It is a consensual contract because it is concluded as a result of consensus between contract parties. The contract of rent is a contract with continual prestations. Since the law doesn't determine strict form, this contract is not known as a formal contract. But it is important to underline that this contract in determined cases shall be in specific formal form and this especially in the cases when the rent object are the immovable items. In all cases this contract is causal contract because cause of its conclusion is known. The last characteristic of this contract is the fact that this contract is independent from other contracts [5, article 585, paragraph 1, point a].

Terms for the conclusion of the contract

All general conditions shall be fulfilled prior to conclusion of this contract. To the general conditions belong: working abilities of contract parties, the free expression of their will and the object of the contract [1, pg. 33]. Working ability of the contract parties is a general condition. The working ability is gained by the age of 18 respectively with the ability to act. This because the ability to act is achieved at the age of 18.

The expression of free will is the second general condition for concluding the contract. The free will shall be the free will of both parties it is that they agree on the essential elements of the contract. The will for concluding contract shall be free, real, possible and serious.

Object of the contract is general condition for its conclusion. The object of the contract is that on what parties agreed or for what the contract is concluded [6, pg 36]. The contract could be an item, an act or non act [5, article 59, paragraph 1].

Special conditions

Special conditions for concluding of this contract are: object of the rent (item shall by all means be non-consumable), rent (which is determined in monetary values or of any other nature) and the duration of the contract [4, pg 202–203].

Duties of lessor

Lessor has the obligation to deliver the item given for rent along with the accessories as its integral part. Item shall be delivered in the condition as parties agreed. Item shall be delivered in the regular condition. Delivery of the item shall be delivered in the way of physic delivery and in the symbolid form of delivery when it is impossible to be delivered physically. Tenant is obliged to maintain items in the regular condition during the duration of rent and he is obliged to make needed reparations on the item [5, article 587, pargraph 1]. If the needed maintenance of the item under the rent hinder the item's use in a considerable manner and for a long period of time, tenant can terminate the contract [5, article 588, paragraph 1]. With the agreement of tenant, lessor can make changes in the item under the rent. Lessor is held responsible for all short comings of the item under the rent. According the law the small short comings are not taken into the consideration.

Lessor is not held responsible for the short comings of the item if these short comings were known at the time when the contract was concluded or when it was not possible that tenant didn't know these short comings at that time.

Duties of tenant

Tenant is obliged to use the item as a good economist, respectively as the good householder. He can use the item only as determined by the contract or as destined. He is responsible for the caused damage in the item under the rent if the damage came as a consequence against the contract or against its destination, and no matter if the item was used by him or by any other person who this was [to use] made possible [5, article 598].

Payment of rent

Rent is a reward for the use of the item which is in rent. In the daily practice we talk about the monetary payment of rent [2, pg. 217]. Tenant is obliged to pay rent according ot the agreement reached with the lessor by the contract. Rent is to be delivered in the place and the time as foreseen by the contract. If there is a lack of determination of the place of payment, payment [rent] will be done in the place where the item is delivered. If there is a lack of time when the payment should be done, rent will be paid every sixth month after the item was put under the rent. Lessor shall denounce contract of rent if the rent is not paid 15 days after required and tenant did not do it.

The return of rented item

Tenant is obliged to save and care the rented item and he shall turn it back at the time and in the place as it is determined by the contact. Rented item is turned back there where ti was delivered by the rent contract. The item should be undamaged.

Quenching of the contract

The contract of rent in most cases is quenched after the deadline foreseen with the contract is reached. This according to the law is quenched in two ways: by missing or losing the rented item under the impact of vis major, by the death of the lessor or tenant, by the alienation of rented item and by quenching of the contract.

Conlusions

Contractual law is the special part of the law on obligations. As a part of the law itself it contains all contracts which are concluded by parties in functioning the social relationships. These contracts are concluded and quenched according the conditions set forth by the law. Contract of rent is a frequent contract which is used in the justice. This contract is an agreement between lessor and tenant. By this contract lessor is obliged to deliver the item to the tenant, whereas tenant is obliged to pay the rent. Rent in most cases are monetary, but it can be paid also in nature. The payment of rent is a reward for the use of rented item. In order to conclude the rent contract some several principle conditions shall be fulfilled, as are: working ability of contracting parties, the free will of contracting parties, object of the contract as well as the basis for concluding it. In addition, several special conditions shall be fulfilled which are characteristics of the contract of rent, only and not for other types of contracts.

Tenant is obliged to take care for the rented item and to pay the price of rent, respectively to make the payment for the use of the rented item. Lessor is obliged to deliver the rented item in the time and the place as set forth by the contract. Lessor is also the responsible for the material and legal short comings of the rented item. Lessor will not be responsible for small short comings and for the short comings which should have been known by tenant. Contract of rent is non formal, consensual, commutative and by reward. There are cases when the rented item is of big value and it is immovable item and in these cases a specific form of contract is required by the law.

Contract of rent is quenched as all other legal works and specifically in some ways. The most frequent cases of quenching of this contract are: expiration of the deadline, by missing or losing of rented item under the impact of vis major, by the death of lessor or tenant, by alienation of the rented item and quenching by denunciation.

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Section 2. Administrative law

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PUBLIC POLICY AND THE IMPACT OF GROUP INTERESTS ON THE PLANNING AND IMPLEMENTATION OF PUBLIC POLICY IN VIETNAM

Abstract: The process of making public policy is influenced by institutional factors, organizations, interest groups, and socio-cultural factors. In political institutions, interest groups have a great impact on the process of planning and implementing public policy. In Vietnam, interest groups have a twofold (positive and negative) impact on the formulation and implementation of public policy. Finding ways to reduce the negative impact of "interest groups" on the planning and implementation of public policies in Vietnam is very necessary.

Keywords: Public policy in Vietnam.

1. Public policy

Public policy is a holistic program of action by the state that addresses community issues in the areas of social life in a certain way in order to achieve goals and ensure that The society develops sustainably and stably. Public policy is the product of the process of exercising the political power of the ruling class (through the state apparatus); So that policy must first be class (in accordance with the interests of the ruling class). Beside the class; Public policy also requires nationalism (in accordance with cultural, psychological, ethnic, religious and religious traits) and humanity (in line with the trends of progressive development of mankind).

Public policy-making processes are influenced by institutional factors, organizations, interest groups, and socio-cultural factors. The political system here refers primarily to the political system of ruling class. The political system of the ruling class dominates (largely decisively) the process of policy planning and implementation from start to finish. The political system consists of organizations and institutions as the subject of political decisions-those with the apparatus, legal status, constitutional law. Organizations and institutions in the system have the purpose, function to implement, participate in the exercise of state power, political power; making or participating in political decisions, into the implementation of national policies. In political institutions, interest groups have a great impact on the process of planning and implementing public policy. Beneficial

groups fight for their interests by influencing the direction and policy making of political parties and the government. These are groups of people who share the same interests in order to influence the state's law-making and enforcement processes as well as the state's social-economic policies (public policy).

2. Political, economic and operational interests

2.1. In broad terms, interest groups are a set of individuals who share the same viewpoints and objectives of action for each social issue. and together realize that goal by influencing the government's policy formulation. In the narrow sense, interest groups are lobbying groups, influencing the government to seek the privileges and privileges of its own groups in policy formulation and implementation. In Western countries, political interest groups are understood to be comprised of members of a society of the same opinion, with common interests interconnected by a voluntary regime, to a certain extent, certain modes affect state power for the sake of the interests, needs of the members of the group or serve the common interests of the community.

Political interest groups are an additional form of parliamentary representation, which is an important link in the mechanism for the exercise and transformation of political power, acting as an intermediary between the government and the citizen, reflecting the attitudes of different groups of people in society towards the state. The economic interest group is a voluntary gathering of those with similar views and economic goals to influence the planning process. Identify and implement government policies to seek the benefits of your team or the public interest.

2.2. The mode of operation of political interest groups and economic interest groups is mainly "lobbying" (with procedures for seeking contact, information – persuading the issues being asked; voters – through contacts, telephones, letters, newspapers, support for election campaigns); conduct hearings with lawmakers, submit petitions, inquiries or research findings, information to the government and relevant officials; sponsoring candidates for election to the legislature, the executive; Participating in or criticizing the bills …

3. The two sides of the interest group

3.1. Positive aspects: Objectively, economic interest groups have a positive and negative impact on the socio-economic development of a country, On the positive side, economic interest groups have also contributed a small part to the formation and promotion of socio-economic development through the development and implementation of government policies. Suggested many important policies, including the drafting of bills. Economic interest groups have also provided important information to agencies that draft and publish policies on practicality, urgent needs (through surveys of associations), standards technical and legal issues in the professional field. Economic interest groups also contribute to making policies go into the realities of life and overcoming the power of officials through supervisory activities. and social criticism. This shows that not all group benefits are bad, because in fact there are many group benefits that serve the interests of the community such as protecting the ecological environment, protecting the interests of farmers, protecting protect consumer interests …

3.2. Negative: In this respect, when the "interest groups" in any way, tricks to achieve their own interests (with privileges, privileges); Seriously infringing upon the common interests of the community, society, nation … by taking advantage of the "friendly" relationship to profit from the policy in many areas (many of them Capitalism – crony capitalism.

In the field of economics, it is profiting from land management and use (in planning, land use planning, changing land use and land acquisition …); In public investment (in capital construction investment, state-owned enterprises investment, procurement of public assets); mining of mineral resources (from licensing to mining); in the field of finance – banking (linked to unlawful acquisition of commercial banks by some major groups of banks, preferential in guarantee, credit for home businesses through

cross-ownership in the banking system ...); In the equitization of state-owned enterprises ...

In the political field, it is the phenomenon of lobbying the promulgation of resolutions, decisions and conclusions of the Party committees and organizations at different levels (in the areas of planning, infrastructure construction, land allocation, forest, mining ...); Taking advantage of the organizational, staff and / or inspection, supervision, inspection and auditing activities (reflected through the interests in advisory activities, in the reception, arrangement of work and rotation, appointment, promotion – the expression of the so-called "correct process" in the past time is typical example, intimidation, general suggestion when detecting signs of wrong ...). The Resolution of the Fourth Plenum of the Central Committee of the Communist Party of Vietnam, XII also indicated the manifestations of this "group benefit", such as: "... enlisted to appoint relatives, acquaintances, relatives It does not meet the criteria, conditions for holding leadership posts, management or arrangement and position in the position has many benefits ... Abuse, abuse of positions and powers assigned to tolerate, cover up hand for corruption, negative. Ability in the work of cadres; to run, to run, to run, to run, to run, to run, to run ... to use the power assigned to serve personal interests or to relatives and acquaintances take advantage of the position and authority of I want to profit ... "[1].

4. Causes and solutions to limit negative impacts of "interest groups" on the formulation and implementation of public policies in Vietnam

4.1. The cause of formation and development of "group interests" the lack of a legal framework to promote the positive and limit the positive aspects of group interests; lack of transparency and lack of science in the planning and implementation of policies; bureaucracy; "give-give" mechanism; the habit of accepting symbiotism and wrongdoing; the degeneration of ideology, politics, ethics, lifestyle of a large number of cadres, party members and weaknesses in the operation of some Party organizations; the unclear and clear about the competence and responsibility of the individual heads of the executive committees, administrations, agencies and units; If there is no blocking mechanism, the "group interests" (negative impacts) will inhibit the socio-economic development of the country and the region. units, agencies; degrading morality, the way of life of a "not a small part" of cadres and party members (especially those who are in office). That would undermine the "trust of cadres, party members and people in the Party, the regime is on the decline" [2].

4.2. In order to prevent, limit the negative side of "group interests" to the formulation and implementation of public policies in Vietnam, it is necessary to implement the following solutions:

– To build a mechanism of publicity and transparency, democracy in planning and implementing guidelines, guidelines and policies; Eliminate the "ask-give" mechanism, the monopoly in some economic fields. Complete state policies and laws to prevent and prevent the exploitation of legal gaps for self-seeking purposes; Improve legal regulations on associations, lobby law, laws on the issuance of legal documents, information access law, antitrust law.

– Build up the mechanism of inspection, supervision of the head is clear, clear. Publicity and transparency in the recruitment, reception, placement, appointment and promotion of cadres, and regular rotation of staff in sensitive fields and positions.

– Build a clean, strong party organization; Strengthening the management, supervision, cadre staff (especially the leaders); Leaders fight drastically, effectively prevent corruption, degraded ethics of lifestyle of Party members; To attach importance to cultivating culture within the Party, state agencies and unions; Consider this as an important factor for building a clean, strong political system.

– Regular education, moral revolution for cadres, party members; continue to accelerate the study of the Resolution of the Fourth Plenum of the Central Committee of the Communist Party of Vietnam,

XI, XII and Directive No. 05-CT/TW dated May 15, 2016 on promoting the learning and doing according to ideology, morality, Ho Chi Minh style:

– Strengthening social supervision and criticism of Vietnam Fatherland Front and mass organizations, raising the role of masters of citizens.

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Section 3. Commercial law

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EVALUATION OF ANALYSIS OF SECTION31(1) OF THE COMPANIES ACT 2006

Abstract: Critically evaluation of Analysis of "Section 31(1) of the Companies Act 2006 is a retrograde step in terms of a company's capacity. The provision re-asserts the ultra vires problem encountered by creditors in cases such as Ashbury Railway Carriage & Iron Co v. Riche (1875) LR7 HL 653" with reference to the changes brought by the Companies Act 1989 and Companies Act 2006 in relation to company constitutions.

Keywords: the Companies Act, doctrine, memorandum, contract, authority, charter.

A new legislative structure for company law was introduced on 8 November 2006 in the United Kingdom. Further, the so called the UK Companies Act (hereinafter CA) 2006 also received assent from royal on 8 November 2006, which pioneered some unique transformation to the English Company Law. Both the section 31 and 39 of the CA 2006 of UK chiefly diminish the applicability of the doctrine of ultra vires to the company law, especially in the United Kingdom. However, the doctrine of ultra vires is still applicable to Charity Companies in UK. Thus, an injunction can be applied by member of a Charity Company, in advance only, to hamper an act which is supposed to be ultra vires [15, 40].

The acts that were ultra vires the competence of the company, and that could not be approved by seeking its member's approval were first time differentiated by an English court in 1875. The phrase "ultra vires" refers the acts of the company which falls outside objects of the company. Ultra vires includes the acts of directors of the company who took the decision which falls outside the authority granted to the directors under the articles of association of the company [9, 190]. In theory, the authorities of a company are restricted to those listed in the main objects clauses of its memorandum. If a company or its directors have done any acts, which fall outside the main objects of the company, then such acts will be regarded as ultra vires or void. This has been laid down in the famous Ashbury case [14, 191].

The House of Lords in Ashbury Railway Carriage and Iron Co Ltd v Riche held that a company did not possess the contractual authority to sign business contracts that fall outside the defined main objects of the company as defined in the memorandum of association. The Law Lords were of the opinion that this Ashbury rule would safeguard the interest of the outsiders who deal with the company [14, 191]. The directors of the company derive the authority to enter business contracts as stated in the main objects of the company as defined in the memorandum of association of the company and if the directors do enter contracts which fall outside the main objects of the company, then actions of the directors would

not bind the company and would be regarded as ultra vires [20, 18]. However, as per section 31 of the CA 2006, a company may have unrestricted main objects unless their article of association specifically, limits the objects of the company. Where a company enters into business contracts with a third party in good faith, the authority of the directors to bind the company or to permit others to act so is presently considered to be free from any restriction under the company's articles and memorandum of association. This indicates as long as the articles of a company does not restrict any object, specifically, the company is free to enter into a contract with the third parties on any main objects, which is not restrained by the articles of the company. Further, the directors are now empowered to approve any business transaction or can authorise others to do so, if such objects are not restrained by the articles of the company [2, 36].

The introduction of section 31(1) of the CA 2006 has resulted in "death of doctrine of ultra vires." Thus, this research article will analyse how section 31(1) of CA 2006 makes the doctrine of ultra vires as held in Ashbury Railway Carriage and Iron Co Ltd v Riche a redundant one and how this section will be applicable to charitable companies or companies not for profit by restricting their objects in articles in a depth manner.

Analysis of Doctrine of Ultra Vires in the background of CA 2006, section 31(1) of the CA 2006 offers a new approach to the issue of company's main objects. Section 31 of CA 2006 is unique in nature as the companies are not needed to state their main objects as they will have unrestricted objects unless its objects are explicitly restricted by its articles [1, 57]. This is clearly a retrograde step as compared to what was held in Ashbury's case. In Ashbury's case, it was held that every outsider who deals with the company should know what its objects are by going through its articles or memorandum of association. Without knowing this, if an outsider enters into a business deal with the company, and if it falls outside the main objects of the company, then such contract will become ultra vires and directors, and even members cannot ratify the same later [8, 22]. This really connotes that until a company makes a purposeful option to limit its objects, the company can pursue whatever objects it wants to do. The main intention of the section 31(1) of CA 2006 is to make sure that companies enjoy liberty to engage in business dealings without any limitations or bar in the object clause. Thus, the section 31(1) of CA 2006 makes the doctrine of ultra vires a redundant [6, 36].

Further, section 39 of the CA 2006 states that any action that is embarked on by the company in its corporate capability will not be questioned despite whatever thing in its charter. The collective impact of section 31 and 39 of the CA 2006 connotes that there are restrictions to the company's goals or capacity in which it can conduct its business. In dealing with the third parties, in its commercial dealings, a company has complete independence and freedom. The brunt is that the operations of a company cannot be queried thereby dismantling the remaining of any external impacts of the doctrine of ultra vires [18, 251].

Nonetheless, under section 31 of CA 2006, some type of companies like charitable companies or some community interest oriented companies may elect to limit the extent of their main objects. Though under section 39 of the CA 2006, the company's action will not be called into a query despite the company's main goals, particularly, which restricted the ambit of a company's capability as detailed in the company's charter or in the articles, the internal impacts of the doctrine of ultra vires still rule. If a company peruses any restricted acts or objects, directors of the company will be still held responsible to the shareholders. This has also impact on the authority of directors of a company to peruse restricted objects or acts. Thus, section 31 of CA 2006 make sure that authority of directors will also be restricted or constrained from perusing into restricted objects or acts, as in such cases, the directors would have surpassed the company's capability. If the directors indulge in such restricted activities, they would be held responsible by

the shareholders for their deeds and actions as this would tantamount a contravention of their statutory duty of authority imposed on directors [18, 252].

After the introduction of section 31(1) of the CA 2006, the companies are not now required to express any objects in their charter. If the companies do express their main objects, then there will be some limit on their functioning or capacity. However, Community Interest Companies and Charities will still require state their objects, mainly to fulfil the legal requirements in this regard [18, 252].

Section 171 of CA 2006 deals with the duty of directors to function within their authority and if this section read along with the section 39 of the CA 2006, which has offered some additional legal safeguard where the company through its charter limits the authority of its board of directors, or if it has a definite object clause [18, 252]. It is to be noted that there is no mention about the rights of a shareholder of a company to stop an ultra vires action in advance which is not specifically mentioned in the CA 2006 [15, 42].

The CA 2006 has made a death knell to the doctrine of ultra vires. For example, as regards to a company's capacity, the section 39 of CA 2006 specifically states that the legality of an act perused by a company shall not be questioned on the footing of lack of authority by reason of anything in the company's charter. Thus, under CA 2006 of UK, the main objects of a company may be unlimited and where if any company has limited its objects, then the authority of directors of that company is also restricted accordingly. Further, as per section 171 of the CA 2006, a director has a specific duty to stick out with the company's charter. Further, section 40 of the CA 2006 offers protection to every third party engaging with a company with a good faith. It is to be noted that the authority of directors to permit others to bind the company or to bind the company is said to be limited by the company's charter. Thus, a third party who is engaging with a company in good faith need not worry itself about whether a company is performing within its charter or not [15, 42].

Thus, a third party who is dealing with a company is not required to find out whether there exist any restrictions on the authority of directors of a company. This is concerned with limitations in a company's charter that restrict a company's capacity to act and ultimately, the authority of the directors to obligate the company which is christened as the doctrine of ultra vires. However, under CA 2006, the object of a company is no longer impacts the company's capability to function [15, 40].

As per Sulkowski and Greenfield, the doctrine of ultra vires has traditionally facilitated a member of a company to initiate a legal action to bar a company from indulging in an act which falls outside of the exact boundaries of its company charter. Sulkowski and Greenfield's observation are also reflected in an immunity to a general rule in Foss v Harbottle, permitting for an individual member of a company to initiate a derivative action on behalf of the company to bar the company directors from indulging in ultra vires actions [15, 40].

In normal parlance, object clauses are broadly outlined so that acts are much likely to be less that can be considered as ultra vires or void. Each clause or paragraph in the objects' clause can contain a split and main object which can be perused separately of the others as laid down in 1918 in Cotman v Brougham. Due to this, fundamentally, a company can now be incorporated as simply as "a general commercial company [17, 42].

The directors may have surpassed their power despite the fact that the validity of an act perused cannot be called into question on the footing of lack of authority. It is to be observed that the section 40 of CA 2006 however states that if a person has dealt with the company in good faith, then the directors are bound by their action. To a far extent, we can say, that even if a company can be said to be responsible even if the third parties recognise that the envisaged business is ultra vires of the object clause of the company [14, 191]. Further, those companies registered immediately under CA 2006

after October 2009 will have no bar at all on their contractual capability, unless they select to restrict the same, if they want to have any restriction in their object, which should be ostensibly done in the Articles of Association of the company.

The term "General Commercial Company" was initiated through the CA 1989 which allowed the companies to peruse "any legal or lawful business or trade" [12, 239]. To counterbalance the difficulties caused by the doctrine of the ultra vires to third parties, the doctrine of ultra vires was abandoned effectively by CA 1989 by the inclusion of a new section 35 into the CA 1985. An activity of a company cannot be queried on the footing of a lack of corporate capacity under section 35(1) of the CA 1985 and hence where an act falls beyond company's objects, it becomes effective and binding [16].

A sea change to the company's constitution has been introduced by the CA 2006 as it is now prescribes a single constitution for incorporation of a company. Now, the significance to the memorandum of association of a company has been relegated, and it is now just a shorter document and requires the subscribers to state that they wish to incorporate a company, consent to be the members of that company and is prepared to subscribe at least one share each. Now, under CA 2006, the Articles of Association has become the company's constitution [4].

As the memorandum of association of a company has already lost its significance under CA 2006, for the existing companies that were incorporated before 1 October 2009, which contains their main objects in their memorandum will now be automatically contained in its articles despite the fact that these may be amended or deleted by special resolution [5, 135].

As of 1 October 2009, a latest model form articles will substitute Table A as the default articles. For private and public companies, there will be separate forms of model articles. Now, companies in UK can follow either the model articles, peruse or alter them or neglect them or peruse bespoke articles for their use. Unless new articles are adopted, for existing companies, Table A in force at the time of its corporation will prolong to apply.

The introduction of the section 31 (1) of CA 2006 makes the doctrine of ultra vires a redundant. Now, section 31 of CA 2006 make sure that authority of directors will also be restricted or constrained from perusing into restricted objects or acts. Under CA 2006, the object of a company is no longer impacts the company's capability to function. The CA 2006 Act has made a death knell to the doctrine of ultra vires. Further, both the CA 1989 and 2006 have made a considerable changes in the constitution of the company thereby making the doctrine of ultra vires a thing of past now.

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Section 4. Constitutional law

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BACK TO BASICS: THE MULTIDIMENSIONAL CONCEPT OF CONSTITUTION

Abstract: This article systematizes ideas of theoreticians from different countries and who advocate divergent conceptions about Constitution, a circumstance that reinforces the usefulness of this research in the current context of an increasingly global and cosmopolitan Constitutional Law. The inherent complexity of a Constitution can not admit that its meaning is reduced to a single point of view. It is time to reflect ad build a multidimensional concept of Constitution.

Keywords: Constitution, Multidimensional Concept, Constitution Law.

Introduction

The Science of Constitutional Law has been built in a complex, careful and refined way over the years. New theories are born every day in the most diverse parts of the world, engaged with problems and constitutional questions of different kinds. The advance towards the proliferation of theories and approaches, however, is not irreconcilable with the meditations on traditional concepts of Constitutional Law. It is often necessary to make a return to the basics. Through the consolidation of elementary notions, the way to research about new institutes becomes more secure and structured.

If we make a cosmopolitan analysis of the constitutional and inter-normative problems that characterize the worldwide network of legal systems, we will identify a plurality of conceptual divergences in all spheres of juridical phenomenology (in the practice of judges and courts, in legislative work, in university debates, in political discourses) on elementary institutes of the constitutional system. In a context where Constitutional Law transcends the sphere of the State and becomes increasingly global, it is important that scholars and all society of interpreters of the Constitution be able to continue the reflection related to the essence of Constitutional Law. From this premise, I undertake to revisit the theme of the Constitution concept. In this study, I explain the ideas of theoreticians from different countries and who advocate divergent conceptions about Constitution, a circumstance that reinforces the usefulness of this research in the current context of an increasingly global and cosmopolitan Constitutional Law.

The different meanings of Constitution and the construction of a multidimensional concept

There are three most well-known meanings attributed to the Constitution: juridical, political and sociological. The first belongs to Hans Kelsen [1], the prestigious theoretician from Prague, and is bifurcated into legal-logical Constitution and legal-positive Constitution. The positive Constitution refers to the Constitution created by the State from the exercise of the constituent power. The logical Constitution is

the Grundnorm, which is a fundamental hypothetical rule, prior to the original constituent power and, therefore, prior to the state legal order.

Carl Schmitt's political concept of the Constitution [2] expresses the set of fundamental political decisions of a people. From this point of view, only those norms that regulate fundamental matters for the structure of the State will be considered standards with constitutional status. For example, the rules on the three powers (Judiciary, Legislative and Executive) are norms with constitutional value.

The spanish jurist and scholar Sanchez Agesta [3] identifies another definition, divergent in relation to the ideas of Kelsen and Schmitt: the institutionalist conception that the essence of the Constitution is not in the hypothetical fundamental norm and in the fundamental decision, but in the social equilibrium in which this decision and standards are supported.

The realist sociological conception, whose author is the polish jurist and philosopher Ferdinand Lassalle [4], sees in the real factors of power that govern a society the true constitutional phenomenon. That is, the real and effective constitution would not be the sheet of paper created by the constituent power, but the set of sources or agents from which emanate the effective power of directing the course of a community. Financial agents, religious entities, newspaper companies and representatives of political powers are examples of real power factors.

Other theories on the idea of Constitution were developed among the scholars of Constitutional Law and deserve to be remembered in this article. I explain each one of them.

There are other realistic theories about the concept of Constitution. They assume an orientation comparable to the realism of Ferdinand Lassalle. Italian professor Sergio Bartole [5], for example, defines the Constitution as the plexus of values and repeated practices of hegemonic political forces in a given community. His compatriot Costantino Mortati [6], adopting a point of view very similar to that of Lassalle, states that written norms are not the true Constitution, because the Constitution does not have its essence in purely formal but instrumental elements. Mortati argues that the Constitution derives from two instrumental elements: the political party and the purpose of conceiving as a single whole the set of interests gathered around the State.

Georg Jellinek [7], a german scholar who is considered to be the systematizer and creator of autonomous science known as the General Theory of State, adopts a concept that links the Constitution and State in relation to symbiosis: a factual power suffices to maintain a the unity of the State. The essence of the state would be the Constitution and vice versa. The Constitution is the main normative expression of the State.

Karl Olivecrona, swedish author, deals with the idea of the Labor Constitution, that is, the existing and operative Constitution, composed of rules effectively operative and characterizing a political regime. Olivecrona explains: "a functioning constitution implies that some men have power over others, that there are rules that define their powers, and that there is some established way of succession to positions of power" [8].

There are also deliberative theories, for which the essence of the Constitution is the dimension of consensus around procedural norms that enable legitimate decisions. These theories are less concerned with the material values to be pursued and more with the consensus in a democratic context. Examples are the theories of John Rawls, Bruce Ackerman, John Hart Ely and Jürgen Habermas.

John Rawls [9] conceives of the Constitution as a process of public reason. For him, the constitutional consensus is neither deep nor broad: its scope is restricted and does not cover the basic structure, but only the political procedures of democratic government. Rawls says that there are three requisites necessary to the quest for constitutional consensus: the existence of a reasonable pluralism capable of extracting democratic principles from calculations of social interests; the application of these principles

in accordance with the guidelines of a correct and reasonably reliable public argument; the encouragement of the cooperative virtues of political life (such as reasonableness, a sense of justice, a spirit of conciliation, and a willingness to compromise) by political institutions.

Bruce Ackerman [10], american scholar, elaborates a dualistic concept of Constitution. He says that the Constitution is more democratic and political than both legal and substantive or material. Democracy prevails over rights. The people are the ultimate authority. Thus, it will always be possible to restrict rights if this is the will of the people.

"Contrary to the characterization of the Constitution as an enduring but envolving statement of general values, John Hart Ely conceives the Constitution as a guarantee of due political process, in a clearly deliberative attitude. Subject to certain political rights and related freedoms (for example, freedom of expression and freedom of the press), all other rights must be defined by those democratically legitimated through due process of law. These are Ely's words: "my claim is only that the original Constitution was, indeed, I would say overwhelmingly, dedicated to concerns of process and structure and not to the identification and preservation of specific substantive values" [11].

The german philosopher Jürgen Habermas [12] proclaims a model of a discursive or communicational Constitution, capable of streamlining procedures for the elaboration of the discursively informed right in the context of a radical democracy. The procedural profile of the Constitution, however, does not lead to a pure legal formalism, according to Habermas' theory, because there are material contents that must necessarily be present in the form of normative statements, especially those referring to fundamental rights.

All these meanings about the constitutional phenomenon have a certain degree of coherence and accuracy. However, these conceptions fail because of a characteristic common to all of them: unidimensionality. The inherent complexity of a Constitution can not admit that its meaning is reduced to a single point of view. The Constitution is not just a sociological phenomenon. It is not a mere political entity. It is not just a strictly legal institute. The understanding of a multidimensional Constitution, which is able to cover all those conceptions in a single concept, is the most viable of all the theoretical proposals. J. H. Meirelles Teixeira [13] adopts a truly comprehensive conceptualization of the Constitution that may be related to the perspective I defend here. He argues that the Constitution is an objective formation of culture that includes, at the same time, historical, social, and rational elements. Meirelles Teixeira proposes the concept of Total Constitution, which covers economic, sociological, juridical and philosophical aspects. José Adércio Leite Sampaio [14] proposes a multidimensional concept of the Constitution as a result of the dialectical conjugation of normative-textual dimensions (normative statements), phatic-limiting-interactive (the complexity of the real) and volitional-pragmatic (of will and action).

Conclusion

The conclusion of this study is that the term "Constitution" has several meanings and it is impossible to achieve a consensual and unambiguous final result around a definitive concept. The different conceptions presented vary according to the approach or perspective of analysis adopted by the cognoscent subject. For example, while some authors prefer the material focus, others opt for a formal concept. However, the conceptual variation within the same analysis profile is not ruled out, a fact that makes the mission of defining what a Constitution is even more complex.

It is possible to accept a plurality of meanings attributed to the term, considering them coherent and valid. It is feasible to construct a multifaceted or multidimensional concept of Constitution: because it is a complex phenomenon, the Constitution can not be conceptualized from a single point of view. They sin the one-dimensional views by incompleteness. The Constitution is a multidimensional phenomenon: legal, normative, political, sociological, historical, cultural, communicational. This concep-

tion is more comprehensive, complete and realistic, because it expresses accurately the real constitutional phenomenology. In addition, the open and plural profile of this concept is more in line with the vision of a globalized Constitutional Law.

The identification of a multidimensional concept of the Constitution does not mean that every meaning of the Constitution makes sense and must be accepted. From a democratic point of view, I understand that any conceptual proposal that admits to conciliate the idea of the Constitution with autocratic, totalitarian, dictatorial, absolutist political regimes lacks legitimacy. The democratic principle and respect for fundamental rights are required elements of the essence of the Constitution. This characteristic is expected and required in a Constitution of a Democratic State of Law. Thus, the so-called "Semantic Constitutions," whose formulations betray the desired constitutional essence, should not be considered valid Constitutions.

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Section 5. International law

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MECHANISM OF STATE COUNTERCLAIMS AS MEANS OF REACHING THE BALANCE BETWEEN PRIVATE AND PUBLIC INTERESTS IN INTERNATIONAL INVESTMENT ARBITRATION REGIME

Abstract: Current article is aimed to analyze the mechanism of counterclaims in investment arbitration and its potential to strike the balance between private interests of foreign investors and public interests of host states. It also covers the evaluation of advantages and obstacles related to this procedural mechanism.

Keywords: international investment arbitration, foreign investment, state counterclaims, balance of interests, investor-state dispute settlement.

Introduction

Initially, the international investment law and arbitration system was created with a specific objective to protect foreign investment. International investment arbitration has been considered the most efficient means for dispute settlement between foreign investors and host states. History of development of the law on foreign investment has led to the fact that this purely commercial system was 'threatened' with competing objectives of public interests, such as protection of human rights and environment from the bad impact of multinational commercial enterprises.

Investment protection has always been the main goal of investment agreements providing complex guarantees and rights to foreign investors. However, until recent years, the question of investors obligations has never been aroused, although it created the issue of imbalance between public and private interests within the regime. This issue has become pressing and threatening the legitimacy of the system and resulted in 'dilution' of international investment law with other non-investment implications, in particular human rights and environmental protection.

Various stakeholders of the regime have been seeking means to eliminate the flaws of the system, to impose obligations on foreign investors and strike the balance between public and private interests. However, the recent mechanism of state counterclaims within international investment arbitration is considered to be potentially the most effective one.

Imperfections of Allegedly the Most Efficient System for Investor State Dispute Settlement

Historic path of the international investment arbitration regime predetermined its current ambiguous position. In general, investment arbitration has been acknowledged as the most efficient means of resolving disputes between investors and states. Popularity of investor-state arbitration has resulted in growth of the caseload in arbitral institutions, as well as a great number of new challenges stated briefly below. As a result, investment law and arbitration as a regime is being challenged by various controversies and its interactions with non-investment obliga-

tions. Such points are raised by investors, states and non-party actors.

As for the procedural flaws of the regime of international investment arbitration, it is crucial to name the lack of appellate review mechanism, which leads to states not having a possibility to defend public interest issues within one complex proceeding, and the relation of the scope of tribunal's jurisdiction on the compromissory clause of the BIT, as many of these clauses do not permit to defend public interests within the scope of investment arbitration proceedings. Substantive flaws of the investment arbitration regime include alleged pro-investor interpretation of substantive BIT provisions. Pre- and post-arbitration issues within the system include "regulatory chill" problem, state's lack of will "to enact or enforce *bona fide* regulatory measures because of a perceived or actual threat of investment arbitration" [1, 68], and alleged diversion of public funds.

Procedural Framework of Counterclaims as the Means of Balancing Private and Public Interests in IIA Regime

International investment arbitration is frequently perceived as a mechanism for quasi-judicial review of states authoritative actions when a host state's regulatory action is analysed from the standpoint of violation of treaty obligations towards a foreign investor. Host state counterclaims method proves this conventional concept as obsolete and, hence, is met with relative resistance [2]. Still, mechanism of counterclaims is considered to be a procedural novelty within the system of investment arbitration. Although most of counterclaims cases were decided in the last five years, the case law on counterclaims is constantly developing. For instance, recent case law depicts the tendency of host states to bring a counterclaim based on its own domestic law rather than investment contracts, as it was before. Therefore, host states are becoming more assertive in fighting by means of counterclaims regardless of the fact that most of these efforts are usually unsuccessful.

Role and Value of State Counterclaims Mechanism in Investment Arbitration Regime

Successful admission of state counterclaims in the system of international investment arbitration results not only in the advantages of procedural economy and better administration of justice but also aligns with the general goal of the arbitration to facilitate investor state dispute settlement in a neutral way. In case a counterclaim would not be heard, a host state is most likely to seek relief within its own domestic judiciary system or in other forum agreed by the parties [3, 130]. Hence, such circumstances would lead to incongruous situation where foreign investors and states resolve their disputes in domestic courts, while the core benefit of investment arbitration is avoiding the national judicial systems [4, 146]. Dividing the same proceedings in different tribunals, in particular international and national ones, would also extend the risks of inconsistent decisions in the same dispute [5].

The host states would obtain a possibility to commence an offensive claim rather that just providing defence on the merits. Without an ability to launch an independent claim, although related to the initial dispute, "a state cannot win; the most it can hope to do is not lose" [6, 464]. Therefore, states will become more eager to arbitrate and enforce the arbitration awards. Moreover, the effective framework for counterclaims would deter foreign investors from bringing weak cases, which will save time, efforts, and money, in particular public funds of a host state [6, 476].

The counterclaim mechanism also has a potential to resolve the recent perception that investment arbitration regime creates structural bias against host states. Nowadays, repercussions against the conventional understanding of investment arbitration as a regime created exclusively for foreign investment protection pose a threat to legitimacy of the system [7, 214]. The problem of imbalance within the system leads also to the problem where the arbitral tribunals ignore the social and political public interests of host states, *e.g.* human rights protection, environmental issues etc. Thus, the counterclaims could

become an effective means to strike the balance between the private and public interests within the regime and to provide for human rights protection.

To conclude, an effective framework for admission of counterclaims in investment arbitration has a great value and a greater potential to resolve the systematic challenges within investment arbitration regime. Moreover, a more permissive tribunals' approach to states counterclaims has a potential to alleviate systems' drawbacks and provide a balance of private and public interests within the regime.

Counterclaims Effectiveness and Obstacles Analysis

Generally, in the current investment arbitration regime, host states counterclaims are rarely pleaded and even more rarely are successful. One commentator even named the history of counterclaims admission as "thirty years of failure" [8]. Until recently, it was not even clear if the host states could successfully admit the counterclaims at all [9, 5]. An interesting part is that most of these cases have been decided in the past ten years [10, 2]. Host states are undertaking more zealous and assertive and admitting counterclaims against foreign investors regardless the fact that most of their efforts go unsuccessful [6, 464].

The obstacles that arise regarding host state counterclaims usually stem from the imbalanced structure of investment treaties. The obstacles are related to the requirements necessary to successfully submit a counterclaim. The first obstacle is related to the scope of disputes and tribunal's jurisdiction over the counterclaim. The investment agreements determine the scope of tribunal's jurisdiction making the scope of the disputes consented by the parties to be fundamental. Hence, the broader scope of arbitration provisions is more counterclaim-friendly in contrast with provision limiting the jurisdiction only to violation of protection standards enshrined in a relevant BIT. The recommendation should be given to states to renegotiate their BITs in order to encompass opportunity to counterclaim or to draft investment contracts with such provisions.

Another obstacle is related to the requirement of requisite connection to submit a counterclaim. Two main approaches exist in international law to establish such connectedness, a more flexible one followed by the ICJ, and the more strict one, followed by the Uran-US Claims Tribunal. Recent tribunal practice in *Saluka* [11] and *Paushok* [12] has followed the more stringent approach. However, nothing suggests that such approach is necessary in investment arbitration regime. Unfortunately, the current test for connection makes it almost impossible for host states to bring counterclaims successfully.

Still, there is a vast space for development of the jurisprudence and case law on the relevant topic. Moreover, it is commonly acknowledged that the counterclaims mechanism can be an efficient means of striking a balance between private and public interests in international investment arbitration regime. Therefore, the challenge to overcome these obstacles and make the counterclaims framework more effective and workable is established and accepted in academic and practical legal worlds of investment arbitration.

Conclusions and recommendations

The system of international investment arbitration is not devoid of flaws that result in imbalance between public and private interests within the regime. As the practical conclusion, we assert that the mechanism of counterclaims could become effective in providing for public interests promotion on behalf of the states and reaching the balance between all stakeholders interests, provided that a more permissive approach of arbitral tribunal towards establishing the jurisdiction over counterclaims would exist.

We recommend the states to actively engage in BITs renegotiation to provide the explicitly stated procedural opportunity to counterclaim, so the tribunals will not have problems of establishing jurisdiction over counterclaims and human rights.

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Section 6. Political regionalism

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EURO-CORRIDORS CONCERNING BULGARIA

Abstract: This article explores the geographic location of Bulgaria in relation to the development of the transport infrastructure in the European Union and more precisely in the countries that have been members since 1995. The transport corridors designed to connect the countries of the eastern part of the Union, both with each other and with its western countries, have, besides transport connectivity, also an important economic effect. The Euro-corridors passing through Bulgaria contribute to the development of the country and its connection with both the old EU members and the countries of the political project known as: Three Seas summit/ Trojmorze/ Iniciatíva Trojmoria.

Keywords: Euro-corridors, motorway, railway, transport connectivity, Sea 2 Sea, Three Seas model.

Introduction

Historical overview of Bulgaria's transport links

After the rebuilding of the Bulgarian state in 1878 due to the increased Russian influence the importance of the roads along the north-south axis increased, the project for the railway track Sofia – Rousse (The Danube River) was launched and the railway construction started through the gorge of the river Iskar. Still predominantly significant for the movement, as a commitment from the Berlin Congress (1879), remains the northwest-southeast direction: Vienna – Budapest – Belgrade – Sofia – Plovdiv – Istanbul (1888) railway track, and Rousse – Varna (1866) railway line. However, other routes which were built for strategic purposes in the North-South direction, such as the Istanbul -Simeonovgrad – Galabovo – Radnevo – Nova Zagora – Yambol railway line, based on the idea of English military consultants (in operation since 1875, suspended for the movement of passenger trains from Simeonovgrad to Nova Zagora since 2002).

After 1944 and until nowadays the "Corridor Bulgaria" has changed its direction and, on the international level, the predominantly important direction of movement has become north-south. Originally, it opens mainly to the north due to the total influence of the Soviet Union, as proof is the construction (1954) of the Danube Bridge at Rousse, and after 1989 the "corridor" opens to the south.

Undoubtedly for the development of Bulgaria, the most important are the parallel (horizontal) transport axes. This is imposed by the way of spreading the territory of the country, which is in the direction east-west. This obvious fact is realized by the statesmen who ruled Bulgaria, and therefore the roads along these transport axes have always been built up with an advantage. This is what happens now: Trakia Highway, Maritza Highway, Hemus

Highway, doubled Railways from Sofia to Bourgas, Varna and Svilengrad are fully or partially built and are currently being completed.

The only place with strong European interest, however, is in the East-West direction is the Danube River (Corridor 7) where there is an international strategy for the development of the region – The Danube Strategy. As evidence of little interest in other projects in this direction, there are stated intentions that the EU will not finance sections in this direction because it considers them internally Bulgarian rather than part of European transport corridors – the EU will not even allocate the requested €970 million for Vidin – Botevgrad high-speed road.

The North-South direction is what is a priority for the EU. This is the direction linking large parts of Western Europe and Central Europe through the Rhine-Main-Danube Canal and through the Bulgarian Danube ports, especially Rousse, Lom and Vidin with the Greek ports of the Aegean Sea open to the ocean, eg Thessaloniki, Alexandroupolis, Kavala.

The conclusion clearly shows that the EU wants to build the meridional roads. "Europe's main geopolitical axis is the North-South axis. It has been the subject of European enlargement and unification, it points to the direction of European revival, survival and prosperity" [1]. Today, we can say that one of the main geopolitical reasons for the accession of Bulgaria (and Romania) to the EU was the egress of the North (EU members) and the Central European countries on the eastern Mediterranean. Another major reason was the accession of Greece and Cyprus to the Single European Space through the territories of Bulgaria and Romania and its transformation into a territorial entity. Looking at this aspect, Bulgaria's meridional transport infrastructure does not stand well: only three railway lines cross state northern border and two – the southern (with Greece). Despite the status of Bulgaria as a crossroads and strategic location, its territory is already detoured south, west and north of new highways. The main cargo freight and passenger traffic flows around the Bulgarian territory due to the fact that the Bulgarian transport infrastructure is not completed, it is being built slowly and with lagging pace and there is not built a whole highway along the Euro-corridors passing through the country. The situation in this area is aggravated by the fact that there is no strategic vision for the construction of a whole direct highway along the EU-priority corridors No. 4 and No. 9. The 45-year-old Black Sea Highway project is still expected to be built. There is not a whole Bulgarian highway to go to the European (EU) border checkpoints, nor is there a high-speed railway line on Bulgarian territory.

As a Sea 2 Sea idea, the corridor was approved by the European Commission in 2012. The idea of creating a land-based railway corridor surrounding the Bosphorus and Dardanelles is coming from the Greek side. This project is not an exclusively Greek initiative, it is a simplified version of the Sea 2 Sea multimodal corridor approved by the European Commission under the TEN-T program. The main objective of the project is to reduce the dependency of EU countries on the "overloaded" sea route and to build a new, alternative route. The corridor in question must be connected to high-speed railways, in the northern Greece ports of Alexandroupolis, Kavala and Thessaloniki with the Bulgarian ports of the Black Sea – Bourgas and Varna and the Danube port – Rousse. On September 6, 2017 the transport ministers of Bulgaria and Greece signed a document, which regulates the preparation and joint management of the project for the construction of this fast-track railway corridor. The project also envisages the further development of ports as part of the core TEN-T network. It is envisaged the construction of a double, electrified railway line with an ERTMS implemented rail traffic management system. The project is expected to cost about 4 billion euros, and the Bulgarian account will probably be about 1.7 billion euros.

Commentary on Euro-corridors concerning Bulgaria

The Pan-European Transport Corridors were approved at a conference in Crete in 1994 and further developed at a conference in 1997 in Helsinki.

Euro-corridor 4. On the Bulgarian territory it is situated along the route **E79** in the direction Vidin – Sofia – Blagoevgrad – Kulata border checkpoint. This layout of the corridor makes it a key to the successful realization of the Three Seas project for Bulgaria. It has to become one of the connecting routes of the country with a dozen countries of this initiative.

The words of Minister Nankov best describe this corridor: "Corridor number 4 – the only one that passes through EU Member States and links the North and South vertically between Dresden, Bratislava, Budapest, Sofia and Thessaloniki" [2].

To date, the Bulgarian state has placed a great deal of attention and resources on the completion of the Struma Motorway, which is the southern part of Corridor 4, and the chance of this happening is great.

Right at the opposite pole is the situation in the northern part of Corridor No. 4, which should bring economic development to the Northwest. A series of Bulgarian administrations refused to start building this section of the multimodal corridor by building a highway and a modernized railway due to shorten the distances to the capital, which is not far away provided the necessary infrastructure is built.

Each country determines the details of exactly where the Euro-corridor will pass on its territory. Construction of a speed road in the chosen direction Vidin – Vratsa – Mezdra – Botevgrad is necessary for the development of the region but the direction of a future highway and modern railway track should be different. The main transport position of Sofia cannot be realized without the construction of the northern part of corridor No. 4 as an motorway on the direct route Sofia – Petrohan tunnel – Vidin. Without this route, carriers will direct their cargo through Nis, which is set to become the largest transport crossroads in the Balkans.

Euro-corridor 7. (Danube River) "The Danube River is a primary geopolitical reality for Bulgaria. It is a northern border and a gateway that has provided important and diverse connections with Central and Western Europe over the centuries" [3]. The Trans-European Corridor Rhine-Danube is the longest transport corridor in Europe that crosses it completely. In this form, the corridor was formed in 1992, when the centuries-old effort was made to connect the Rhine and the Danube. The status of corridor No. 7 is defined by "Memorandum of Understanding …". Thanks to the understanding, today there are great opportunities for trans-European river traffic, for river-sea transport to Odessa, Georgia and Turkey, as well as transports on the huge river and canal system of Ukraine and Russia, for technical improvement of ports and vessels and coverage on the whole Danube bay of tourist cruises.

The document [4] reflects the decisions of the V4+2C meeting and we can see the connection of the Danube through channels with Elbe and Odra, ie with the Czech Republic and Poland. These facts show that the Danube will connect Bulgaria practically with all the countries of Central and Western Europe.

Bulgaria's intermediate position on the north-south axis has long been appreciated. From a geopolitical point of view, the territory of Bulgaria is a "bridge" between the Danube and the Aegean Sea – an advantage which has been repeatedly and convincingly highlighted since the 20's. In order to fulfill Bulgaria's role as a geopolitical bridge, however, through the Bulgarian territory, the ports of the Danube and the Aegean Sea must be connected to multimodal highways along Euro-corridor routes.

Euro-corridor 8. This is the route that should connect the Adriatic coast with the Black Sea coast in the direction: Durres – Tirana – Skopje – Sofia – Burgas – Varna – Constanta.

As far as the Bulgarian national interest is concerned, this corridor should not end but should begin from the northeast. The Constanta – Varna – Bourgas section of Corridor No. 8 is the most important for Bulgaria both internally and externally.

Internally, its construction will achieve the effect of economic unification of the North with the South Black Sea coast. Bulgaria would have much greater

economic benefits than the construction of the Black Sea Motorway, which is a priority for construction due to a proven need (especially for Bulgarian tourism) already in the 70 s of the last century.

Internationally, the Constanta – Varna – Bourgas section will become part of a much larger route starting from Constanta and continuing northwards to Vilnius – Riga – Tallinn. This route has already been agreed by Romania and the countries north of it with the EU in March 2000. It will be the strategically important transport highway linking the countries of the eastern flank of the Trimorie/Intermarium project, an extremely important link for Bulgaria as a member of this initiative.

For the construction of the highway along Corridor No8 through Albania and Macedonia is spoken of as a variant of the distant future. However, construction of individual railway sections is foreseen.

In Bulgaria, the vast part of this corridor, between Sofia and Burgas, is already built – Thrace Motorway, as well as an electrified railway line, which in some sections is double. The construction of a railway line between Sofia and Skopje has over 100 years of history. At the moment, the Bulgarian side has refrained from real construction activities, as there is no EU funding. However, Bulgaria is actively seeking funding and has not given up on this corridor. Geotechnical and geodetic surveying and design were carried out. This proves that the Bulgarian side is ready and expects real action from Macedonia to build its section. There is reason to wait due to the accumulated negative experience. At present, there is a good desire on both sides, but there is no resource. With the availability of financial resources, the construction of the railway section on Bulgarian territory could start in 2020, the Bulgarian transport minister estimates.

Euro-corridor 9. The need for a North-South Central Meridian Transport Corridor was confirmed in the 1930 s by the countries through whose territory it has to cross its route: Poland, Romania, Bulgaria and Greece – called: from Baltic to the Aegean. This central vertical corridor (in its western variant running along the route: Tallinn – Riga – Warsaw – Budapest – Bucharest – Rousse, along Corridor 5 (Western option: Gdansk – Warsaw – Budapest – Zagreb – Ljubljana), as well as the horizontal Euro-corridor No. 4: Prague – Bratislava – Budapest – Bucharest – Constanta should become the geographical pivots on which to build the structure of the unification of countries Three Seas model. This is evidenced by the fact that the prevailing geographic location of the "Intermediate Europe" countries is in the north-south direction. Maps give statistics – the northern Estonia has a 6th rank limit with Croatia and a 7th rank with Bulgaria, which are the southernmost of that dozen countries of Three Seas summit, while the easternmost Romania has a border of 3rd rank with the highest -west from the Czech Republic. This cohesive group of Three Seas has only recently begun to coalesce, so the number of members is sufficiently for now. "Expansion is fine, but history shows that it has to be systematic and thoughtful" [5].

The fastest construction of the motorway and the railway highway in the direction of the central corridor № 9 should be the Bulgarian response for the successful integration of the state geospatial space with the geopolitical initiative Three Seas.

Come to the conclusion that besides the East Route, as defined by the European Commission, from Helsinki – reaching from the northeast (via Kiev) to the Danube, there is another, far more important western route forming along the corridors: No1 Helsinki – Tallinn – Riga – Vilnius – Warsaw; Corridor No6 Gdańsk – Warsaw – Brno; and Corridor No4 Prague – Brno – Bratislava – Budapest – Bucharest – Rousse. On the Bulgarian territory, the route of Euro-corridor No. 9 passes in the direction of Rousse – Veliko Tarnovo – Gabrovo – Tunnel Shipka – Stara Zagora (connection with Thrace Highway) – Haskovo (connection with Maritza Highway) – Kardzhali – Makaza border checkpoint. The route through the Bulgarian territory in this direction Ruse – Makaza – Alexandrupolis border checkpoint is the most direct and shortest route

from the banks of the Danube River to the shores of the Aegean Sea. A multimodal terminal designed to build a Rousse harbor can route a huge amount of cargo arriving along the river just by the shortest and quickest route to the deepwater port of Alexandroupolis.

Even in the 2010 road strategy, the goal is to set the whole route along the corridor 9 to build a high-speed gauge. These modest intentions are no longer sufficient and the events to date prove it. The section Dimitrovgrad – Haskovo is already built with motorway gauges. The Rousse – Veliko Tarnovo section is approved for the construction of a motorway route. It is also thought of the stretches in southern Bulgaria. The planned construction of a second bridge at Rousse – Giurgiu shows the acute need for the construction of the vertical highway on Euro-corridor No. 9. The reasons for this changed thinking are clear – the huge permanent congestion, due to the fact that the Danube Bridge 1 can not take up the modern traffic go through it. Kilometric queues of cars, however, are already being observed at the other end of corridor No. 9 on Bulgarian territory – at the Makaza border checkpoint, especially during the summer months, when thousands of Romanian tourists leave the most direct route to the shores and Aegean islands by ferries of Alexandroupolis, Kavala and other ports. At the ready highway and the Bulgarian winter ski resorts in the Rhodopes would enjoy such attendance.

The Greek Via Egnatia is a drainage and distributor of passenger flows and freight flows coming along Corridor No. 9 from Bulgaria. It connects them with the ports of Alexandropoulos, Kavala (with a huge amount of tourists and many ferry connections to the Aegean Islands), Thessaloniki and others.

The efforts of the three EU Member States should become a guarantee for the construction of a motorway and a highway along the corridor: Bucharest – Ruse – Stara Zagora – Makaza – Komotini – Via Egnatia.

Euro-corridor 10. Branch C This is the main international road artery crossing the Bulgarian lands in the direction Nis – Sofia – Istanbul, known since the time of ancient Rome with the names Via Militaris / Via Diagonalis. The Diagonal Road from the time of the Roman Empire until nowadays is the most important land-based communication axis between Europe and the Orient. Construction of the road 924 km. long from Singidunum (Belgrade) to Constantinople was begun by Emperor Nero (37–68) and completed by Emperor Trajan (53–117).

Today the road section Sofia – Kalotina border checkpoint (48 km.) is waiting for European funding for construction to turn it into a motorway.

Serbia without waiting and relying on its own forces has already completed the motorway from Nis to Kalotina border checkpoint. For Serbia, the main route, as already indicated, is in the direction of Belgrade – Nis – Skopje – Thessaloniki. It is possible, due to Serbia's acute need of access to ports, that this route is built as a backbone for problems at the borders to the south or in the regions of Presevo, Bujanovac or Macedonia. The Serbian section will also help make Nis the biggest crossroads in the Balkans. The fact that the motorway sections in Bulgaria, which are not under construction, such as Corridor No. s10 and Corridor No. 4, although strategically important for Sofia's crossroads ambitions, suggest that Sofia will soon be marginalized as an important car transport center.

The railway line in the direction of Corridor No. 10 is built with the gauge of a high-speed route allowing speeds of up to 160 km/h to connect with the high-speed railways of Turkey and Serbia. The Bulgarian section is part of the Orient / Eastern Mediterranean Railroad Corridor of the Trans-European Transport Network (TEN-T).

Conclusion

As part of the regional and European transport area, the transport sector must provide adequate conditions for transit traffic and, by integrating into the EU, become part of Europe's general transport system and its bridge to the Eastern Mediterranean.

In order to optimize the transport accessibility to Bulgaria, the spatial and functional linking of the

Pan-European transport corridors with the configuration of the national motorway and railway network in accordance with the EC White Paper 2011 [6] is of strategic importance. Arrangement of the territory and location of the transport networks in the direction of the Euro-corridors according to the National Strategy for Regional Development 2012–2022 [7].

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Section 7. Family law

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NORMATIVE REGULATION OF DIVORCE AS A PART OF THE MARITAL LAW

Abstract: Marital law as a part of family law contains the most important part of the family law. Due to its importance, marriage is being given a special treatment with the law and in literature for the procedure of marriage or its establishment.

Apart of judicial establishment of marriage, its continuation there are also cases taxatively numerated with the legal disposals on in which cases we could face the divorce where there should be applied a special court procedure and very strict one. Paper analyses judicial norms and various theories regarding this problem which is actually the main goal of the paper. Procedure of divorce is regulated with the Kosovo Family Law and with the Law on Civil Procedure. If we come to the procedure of divorce, which are conditions to be fulfilled in order to initiate the procedure, then if the principle of publicity is to be in use, if the procedure of reconciliation is successful, if there is an extension of deadline for this procedure. Paper in addition to introduction, in its main body analyses the court competence for marriage breakdown, the start of the procedure always by being based in the method of analysis and the method of comparison. Further it goes with the procedure development for marriage breakdown during the procedure of divorce and the issuance of final decision.

Keywords: law, marriage, marriage breakdown, procedure, decision.

Introduction

Marriage is one of the most important institutes of the family law. Family law pays attention to the marital law by requesting fulfillment of conditions for its establishment. Like any other judicial relationship marriage as well is finished for various reasons. Family Law and the Law on Civil Procedure regulates precisely the breakdown of marriage.

The main goal of the paper is analysis of national judicial norms and the analysis of various theories on marriage breakdown. If marriage is an important part of the life and the family law especially, then it comes to the marriage breakdown. What are the disposals which should be used for the marriage breakdown? Paper during the analysis will give answers to the questions: which are the ways of marriage breakdown regulated by the Kosovo Family Law and for what reasons they should be present.

Termination of marriage based on the law is done by the death, by declaring a missing person dead, with the annulment and with the divorce. Each of these will be treated separately. Which is the competent court to develop procedure and how we come to the final decision as well as is there any right to

appeal and in which cases the appeal can be used. Paper will be supported by methods of description, method of analysis, teleological method and some other methods that will explain different problematic for the procedure of marriage breakdown, for both valid marriage or invalid one.

Marriage breakdown

There exist different ways of marriage breakdown which are numerated by the family law. Kosovo Family Law regulates in some ways the breakdown of this institute. According to the article 60 of the Family Law, marriage ends in some cases: the death of spouse, declaration dead a missing person, divorce and marriage annulment. Positive law in Albania emphasizes that marriage: ends with the death of a spouse, by declaring dead a missing person or by divorce [2, article 123]. Within the part of marriage breakdown they wanted to include annulment and the divorce.

Competent court

In order to initiate procedure of marriage breakdown we should make sure about who is competent [which court] and whom interested persons should address. The issue of marriage breakdown is not regulated expressively with the disposal of Kosovo Family Law. Law for dispute procedure is the law which regulates the procedure of divorce and it determines the competences for this issue. Principal Court has the functional competence to decide on marital disputes. In marital contests (disputes) apart from the court of general territorial competence the court where spouses had their last residence is the competent one [3, article 72]. Kosovo Supreme Court will determine the territorial competence for a principal court which will decide upon disputes when none of spouses have permanent residence or last residence in Kosovo even though they are Kosovo citizens [7, 127]. This because many Kosovo citizens do not live in Kosovo and around 30% of population is actually outside of Kosovo territory and most of them hold two or more citizenships. With the rules of substantial competence there is defined the scope of work of regular courts and then this goes to principal courts but which are regular of different sort or of different range [1, 51].

Functional competence is determined for courts to decide on means of appeal against decisions or on courts to exercise determined duties [1, 51]. The procedure in marital contests in the second instance is developed by court college composed of one judge and two panel judges, whereas in the second instance decisions are taken by court college composed of three judges [3, article 73]. From the content of the judge panel in the second instance we see that a special attention is paid to the breakdown of marriage. As the second instance court, based on the Law on Courts, is the Court of Appeal. According to the Kosovo Family Law, article 75 during the court procedure the principle of publicity is not applied because during the trial there could be issues which belong only to the spouses.

Efforts for reconciliation

Procedure on marriage breakdown is a burden not only for spouses, it is also a stress for other members of family especially if spouses in the process of breakdown of marriage have infant children.

Without a doubt this is a heavy event for the family marital life and it includes also the court in the legal process and at the same time social and emotional because this interweave many elements which in many aspects continue to exist even after the marriage breakdown [6, 321]. Before the suit is delivered to the indicted spouse, the court calls on a special session with the aim of trying to reconcile spouses [1, 119]. After the procedure of divorce the procedure of reconciliation starts as well in special sessions only for cases when of spouses is not able to act, when one or both spouses do not live within the country and when the residence of one spouse is not known [3, article 76].

Such a session could be extended every three months if there are indications that the reconciliation is seen to have a progress.

Kosovo Family Law, article 76, par. 2 underlines that a space should be given to the spouses in order to recon ciliate, before the procedure of divorce.

Based on this we see that the procedure of reconciliation could be extended more than it is based on the law (3 months) if a progress is seen. Taking into the consideration all circumstances court gives to the spouses some determined time so they can evaluate and review their decision. During the all time court tries to reach a formal agreement between spouses. This reconciliation is attempted to be reached even during the main session up to the date when the court is to take the final decision. After the end of the procedure the court delivers the divorce verdict when the reconciliation was not successful.

In cases when court finds that there exists the possibility for reconciliation it develops additional sessions so the reconciliation could be reached. Procedure of marriage breakdown cannot be developed if spouses are not present and it could not be developed by their authorized legal representatives. Spouses have to be present personally in the procedure. When both spouses are called regularly in the sessions and one of them doesn't appear in the efforts for reconciliation, court will decide for additional session or it can conclude that the procedure of reconciliation has failed.

When the session is called and when the court has started the session based on the spouse's joint proposal and they do not appear in the session of reconciliation, it is considered that they withdrew the proposal for divorce.

In cases when spouses have children the procedure of divorce (reconciliation) is developed by the organ of guardianship, while in other cases procedure of reconciliation is executed by the court, if the head of the judicial college doesn't see it useful to transfer to the Organ of Guardianship [3, article 80, paragraph 2].

The procedure of reconciliation before the organ of guardianship cannot last more than three months. If it seen that the procedure of reconciliation has achieved results, then it can be extended. Yet written report is sent by the organ of guardianship to the competent court and the minutes are kept related to the developed procedure by explaining the procedure and the result of reconciliation. When the procedure is developed by the joint proposal for divorce the facts based on which the proposal so made will not be investigated. This based on the fact that the joint proposal represent a kind of agreement for marriage breakdown. There are cases when the court decides to developed the procedure of administration of evidences.

Suit withdrawal

Suit in the procedure of marriage breakdown could be withdrawn. In the divorce disputes the plaintiff may withdraw his/her suit until the end of the main session without agreement of the other party (spouse), whereas with the agreement of the other spouse up to the phase the procedure has ended with the final decision [3, article 86, paragraph 1]. The court verdict by which the marriage is finished based on the agreement between both spouses can be appealed only if there were violated essentially disposal of dispute procedures [3, article 87] or because the proposal was given against the will of spouses. When the divorce has taken the final form, the verdict cannot be attacked by the extraordinary legal means.

Decision

After the procedure for divorce and after the review of evidence the Principal Court takes the decision for divorce of spouses. Verdict may contain paragraph about which from the parents will exercise the parent rights on the joint children. Decision also contains alimony or material obligation of a parent which is not on the care of children. There also are determined the meetings – how many times per months children are to be met by the parent to which are not given children or to the parent whose parental rights were taken off.

Conclusion

Termination of marriage happens with: the death of one of the spouses, declaring dead the missing person, annulment of the illegal marriage and by divorce.

Competence for divorce or for marriage breakdown belongs to the principal court where the last residence of spouses is whereas as the second instance court in these issues serves the court of appeal. In the procedure of marriage breakdown the reconciliation procedure is developed which as the procedure can be developed also by the organ of the guardianship if spouses have children. The organ of guardianship provides the court with the report regarding the procedure of reconciliation. The procedure of reconciliation lasts three months. It may be extended if there is seen that there was a progress on reconciliation of spouses. During the procedure suit can be withdrawn all the time during the procedure before the verdict is declared. Verdict is delivered to both ex spouses after it is taken.

After the court verdict the unpleased party has the right on appeal before the second instance court. Appeal is submitted through the first instance court-the court that has taken the decision. And it then delivers the appeal to the second instance court-the court of appeal. The verdict becomes final if it is not appealed within the legal deadline and if the suit was done with the joint proposal of spouses for divorce.

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