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ABOUT THE QUESTION OF THE ESSENCE OF INTERNATIONAL ECONOMIC PROCEDURAL LAW

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Стаття присвячена сутності міжнародного економічного процесуального права та його суб'єктів. В ній розглядається взаємовплив і взаємозалежність міжнародно-правової та національних правових систем, їх матеріальних і процесуальних норм права. Аналіз системи міжнародного права дає можливість виділити в ній міжнародне матеріальне та міжнародне процесуальне право
Ключові слова: *міжнародне економічне право, законодавчий процес, процесуальна діяльність, міжнародні організації*

1. Introduction

First of all, it must be accented, that despite the considered international legal system or national legal ones, each of them includes first of all legal norms that determine rights and duties of correspondent subjects of law. If consider a national legal system of a certain state formation, a state, its bodies and their officials, citizens as physical persons, their associations and some others act as these subjects. The system of their rights and duties is juridically fixed in constitutions, correspondent laws and other regulative acts and forms the base of the legal status of such subjects. It is an axiom today that norms that determine rights and duties of aforesaid subjects and regulate correspondent social relations are norms of material law. So, these norms determine the content of their rights and duties. The juridical expression of the system of rights and duties of subjects gives a possibility to guarantee their legal protection and also creates necessary grounds for realization of juridical responsibility of guilty persons in a case of their disturbance. Taking into account the subject of legal regulation – the circle of social relations, norms of material law, they are combined in correspondent legal branches: constitutional, administrative, labor, civic, economic, financial, criminal and other, and regulatory acts, in which they are fixed, systematized in correspondent codes if necessary. It is especially native to states that created their legal systems on the base of continental law.

The presence of norms of national law sets the task of the necessity of their guaranteeing that is realization. This task must realize norms of procedural law that indicate what and how must be done to provide realization of norms of material law. In other words they determine the order of realization of norms of material law by using procedural norms that is – the order of realization of correspondent rights and duties of concrete subjects. There we may remind C. Marx, who noted that material law has its necessary, native procedural forms … a process is only a form of a *law* life … manifestation of its internal life [1]. The mutual influence and interaction of norms of material and procedural law reflect dialectic-functional connections between them. Thus, the presence of norms of material law of any branch is in this case the original conditioned form of the necessity of "generation", development and realization of correspondent norms of procedural law. Norms of procedural law are primary, ones of procedural law – secondary, derivative that must provide realization, observance of material norms of law.

2. Literary review

Under conditions of globalization of world processes legal systems of states have more and more active mutually conditioned connection and interaction with the system of international law, influence it and vice versa are influenced by it. It is conditioned first of all by structural and functional interrelations between their subjects.

The analysis of the system of international law and its branches gives a possibility also to separate in it norms of both international material law and international procedural law, which functional destination generally a little differ from analogous forms of national legal systems. As Koretsky V. M. noted it in his time, this phenomenon is called legal uniformism. Considering, for example, world economic relations, he paid attention to the fact that if the same norms that regulate this institute are established in all states, numerous legal relations of international circulation will become simple, clear and so, strong… Thus the task of regulation will be solved by the fact that all national legal systems will become identical. Law will become world instead of national. Just this fact explains the circumstance that the problem of uniformism in law is usually considered as a problem of world law [2]. Sharing this idea, it is desirable to accent that national and international law – are like two mutually combined "legal arteries" with the interrelated content: the condition of one is reflected on the condition of another. And really, processes of mutual dependence and interaction, harmonization of the national legislation with international and European law, their research and scientific substantiation are observed more and more often every year [3]. These processes were especially actualized after signing the agreement about association between Ukraine and the European Union that became valid at 1 of September of 2017. This is a bright example of the real support of integration strivings of Ukraine by the European Union. All these processes condition the need for all states, international organizations and other subjects of international law to realize requirements of not only international material, but also international procedural law.

The system of international norms and principles of procedural law forms such branch as international

procedural law that guarantees practical realization of material norms of international law, its separate branches, especially international economic law.

3. Aim and tasks of research

The aim of the research – to explain the essence of international economic procedural law.

The following tasks were set for attaining this aim:

1. To explain the notion of international economic procedural law.

2. To consider the mutual dependence and interconnection between material norms of international economic law and ones of international economic procedural law.

3. To prove that international economic procedural law cannot be reduced only to regulation of international jurisdictional activity and is a wider category that includes the system of norms and principles in other directions of realization of international economic cooperation.

4. The study of the essence of international economic procedural law

Considering the question of international economic law and process, the necessity to explain several initial theses appears first of all. As it is known, the notion "process" is rather closely related with such notion as "procedure".

The word "process" derives from the Latin world processus –"progress". In the wider understanding it is an order of trials at courts or other state bodies, legal proceedings, legal ceases.

The word "procedure" (from French procedure or Latin procedo – to proceed) means a fixed order of performing, considering any business (for example, juridical procedure). Thus, based on the given meanings of these terms ("process" and "procedure"), it is possible to make a conclusion that more equality, similarity than difference are observed in their content. Despite this fact, that there is an attempt to distinguish these two categories in the literature, we'll characterize them as equal ones, and in several cases as such that add each other.

Before considering correlations and interaction of international economic law (that, from authors' point of view, is already studied enough) and process, authors must explain what international procedural law is just in general. It has been already noted above, that the analysis of the system of international law gives a possibility to separate two subsystems: norms of international material law and ones of international procedural law. If we try to understand with which part of international law – international public or international private law – international procedural law is connected, the absolute majority of specialists in international law give reasons to state that international procedural law is a branch of international public law [4, 5]. Especially, the questions of international procedural law are considered in the monograph by E. A. Pusmin, in which he also made a conclusion that it is a subsystem of general international public law [6]. It is well-known, that international public law it is a system of norms and principles that regulate public international relations, first of all, with the participation of states and international associations in different spheres of international cooperation. Norms of international public law determine rights and duties of the aforesaid subjects of international law. But despite definiteness of these elements, they need guaranteeing of their realization. The important form of their realization, as it has been shown above, is a procedural form, fixed in norms of international procedural law. Thus, the aim of international procedural law (as well as procedural law of national legal systems) is in guaranteeing realization of material norms of international law. In literary sources (monographs, scientific articles, textbooks, manuals) attention is in any way paid to the essence of international procedural law. Based on the theory of international law, it is possible to make a conclusion that international procedural law, at first, is a branch of international public law, at second, it is a system of norms and principles that must provide realization (completion) of rights and duties of states, international organizations (their bodies) and other subjects of international public law. And really, just in such a way it is possible to realize norms of international public law of material content. We think that in such a case it is necessary to understand the international procedural activity of, first of all, states and international organizations that must realize the legal-applying (procedural) activity, directed on realization of own right and duties, defined in correspondent norms of international material law, just in such a way. Despite the idea that international procedural law (and its part – international economic procedural law) regulates only the jurisdictional activity of international courts and arbitrations, that dominates among specialists in international law, we offer to consider the role of this law in a wider diapason of its action. If to reduce the destination of international procedural law only to guaranteeing of the jurisdictional activity, it results in narrowing its real role, from authors' point of view. The process of activity of states, international organizations, their bodies along with problems of the jurisdictional character includes a lot of problems that need to use procedural norms of organizational, managerial, international legal character, determined in the international legal status of the aforesaid subjects of international public law.

It must be noted, that at realization of authorities of such state bodies the procedural activity, regulated by procedural norms, is also observed also within states – most active subjects of international public law. In this aspect authors can, for example, talk about procedural guaranteeing of one of main directions of activity of the single organ of legislative power in Ukraine – Verkhovna Rada. This direction is called legislative activity, realized within the legislative process on the base of correspondent procedural norms. It must be noted, that the legislative process is considered as the normative-regulated totality of successively realized actions as to elaboration, acceptance (change) of laws and other legislative acts and their promulgation. There are special features of the legislative process as to acts, accepted in order of the general Ukrainian referendum and also laws, directly accepted by Verkhovna Rada of Ukraine [7]. The legislative process is regulated mainly by section IV, named "The legislative procedure", Regulations of Verkhovna Rada of Ukraine, accepted by the Law of Ukraine of 10 of February of 2010 [8]. Just this section include norms that regulate the order of introduction and recall

of draft laws, their consideration; the order of preparation of accepted laws for signing by the President of Ukraine, repeated consideration of laws, returned by the Head of the state, by Verkhovna Rada of Ukraine and other questions of procedural character.

At one time the juridical literature also had no unitary point of view as to the notion of an administrative process (procedure), although a lot of attention was paid to it. An administrative process was defined as an order of realization of administrative jurisdiction, established by law [9]. So the essential part of another executive-administrative activity, not connected with considering concrete administrative infringements, but reduced to the positive non-jurisdictional activity of state government bodies and their officials, remained beyond the administrative process. Today there is a dominating idea that administrative-procedural norms provide the practical realization of prescriptions of all material norms of administrative law that is regulation of relations by procedural norms of administrative law is a specific and relatively independent phenomenon, conventionally called an administrative process.

5. Research results

So, the specificity of an administrative process is reflected also by its structure – the totality of interconnected administrative proceedings that have both jurisdictional and non-jurisdictional character [10]. Non-jurisdictional proceedings include the following types:

– preparation and acceptance of normative legal acts; preparation and acceptance of individual normative legal acts;

– conclusion of administrative treaties;

– consideration of offers and declarations of citizens; registration and licensing ones;

– registration and control authorities;

– executive;

– office work;

– privatization of state public property;

– proceedings in agrarian, ecological, financial-budgetary, taxation and some other matters.

It is impossible to present the exhaustive list of non-jurisdictional (positive) proceedings. Because this list is as dynamic as movable and unpredictable the management practice in different spheres of social development is [10].

Thus, the national legislation of Ukraine as the one of other countries separates the procedural activity of bodies of not only forensic, but also legislative and executive power. Based on the practice of the procedural activity of states – one of main subjects of international economic relations, we can also consider international economic procedural law much wider, without limiting ourselves by only jurisdictional activity of forensic and arbitral bodies in this sphere. From the authors' point of view, the statement that international economic procedural law (international economic process) it is a complex of international legal norms that provide a solution of international economic controversies is debatable [4]. By the way, this point of view is rather widespread in the international legal literature. But if one observes it, the essential part of the procedural activity of both correspondent international organizations and states remains beyond the international economic process. One time it was also noted by the famous scientist Lukashuk I. I., who pointed out, that the priority importance for forming procedural law belongs to the acceptance of Viennese Convention about the law of international treaties in 1969, which essential part has a procedural character, regulating conclusion and suspense of the action of treaty norms. Along with it he accented, that the important place in procedural law belongs to norms of the law of international organizations. And in general, practically every treaty has own procedural norms, argued the scientist [11]. I. I. Lukashuk's position one more time confirms that states and international organizations also have their own procedural activity, especially in the sphere of international economic cooperation that is also regulated by norms of international procedural law. The authors have undertaken an attempt of a wider approach to international procedural law as the one of forms of realization of norms of international economic law too.

It is known, that international public law includes its different branches, and international economic law is one of them. There are different concepts of international economic law (IEL), its correspondent definitions exist on their base. The analysis of concepts and definitions gives a possibility to make a conclusion, that international economic law is an independent branch of international public law that combines the system of norms and principles that regulate relations between states, between states and international organizations, between international organizations in the process of economic cooperation and in cases, provided by law – relations within a state too. At considering the system of IEL, material norms of international economic law, that need the use of correspondent procedural for their realization, may be found in it. Based on it, some lawyers-international specialists introduce the term "international economic procedural law" into the scientific circulation [4].

Knowing the subject of regulation of international economic law and also the destination of its material and procedural norms and principles, we can make a conclusion that international economic procedural law must be understood as the system of norms and principles that establish an order, form of providing realization of material norms of international economic law by states, international organizations and other subjects in the process of international economic cooperation realization and also regulate the activity of international arbitral and forensic institutions in this sphere.

Based on the fact that international economic law is a part of international public law, international economic procedural law must be also considered as a part of general international public law, its sub-branch.

As to the question of the system of sources of international economic procedural law, international agreements and treaties, international legal acts of international, especially, international economic organizations and their bodies, international customs, court decisions (Decisions of UNO International court, other international forensic and arbitral organs), main principles of international law must be related to them.

The question about the system of subjects of international economic procedural law is important. From the authors' point of view, it is necessary to separate two

groups of such subjects. The first group must include states and international organizations that are, in first turn, agents of norms of material law, that is have the system of rights and duties in the sphere of international public law, especially in the sphere of international economic cooperation. Just they use possibilities of international economic procedural law for successful realization of own rights and duties that form the base of international economic material law. The other group of subjects of international economic procedural law includes international forensic and arbitral structures that must consider international controversies, especially ones of international economic character, that is realize the jurisdictional activity.

Undoubtedly, a state is the one of main subjects of international economic procedural law. Even international organizations occupy the second position after states, because they are derivative from states. Let's remind, that an international organization it is an association of states on the base of many-sided articles of incorporation. The role of states in international cooperation, especially in international economic cooperation, is determined by constitutions of these states. Each state cooperates with other states of the world on the base of two-sided and many-sided treaties and tries not only to determine own rights and duties, but to protect own interests, especially ones of economic character, properly. This process is favored by the Charter of economic rights and duties of states, accepted by the General Assembly of UNO at 12 of December of 1974 that fixes bases of economic relations (Chapter I), economic rights and duties of states (Chapter II), general responsibility to the international community (Chapter III) and final statements (Chapter IV). In general all chapters fixes 33 articles, aimed at favoring the successful development of international economic relations between states. Many treaties with the participation of states determine not only their rights and duties that establish the content of material norms of a concrete treaty, but also statements that are the content of procedural norms. For example, the Viennese Convention about the right of international treaties of 1969 that fixes the essential part of norms of international procedural law, obligatory for countries that ratified it. The statement about the fact that the text of a treaty is accepted by the consent of all states that participate in its conclusion, and treaties, accepted at an international conference, by positive voting of two thirds of states, that were present and took part in voting, if the same majority of votes didn't decide to use another rule (art. 9); ways of expressing the consent for the obligation of a treaty, realized by a state by its signing, exchange of documents that it is based on, treaty ratification, its acceptance, confirmation, joining it or by any other agreed way (art. 11); conditions of formulating limitations, their acceptance and objections on them (art. 19–20) may be related to such procedural norms. A series of procedural norms relates to acquiring force by treaties (art. 24), introduction of corrections into many-sided treaties (art. 40), stopping of treaties and suspense of their action (art. 54–64), determined procedure of juridical proceedings, arbitration and conciliation (art. 66) and other.

Norms of procedural law may be found also in many two-sided treaties, concluded with the participation of states and also international organizations, if analyze them well. An example of it may be norms of a treaty that regulate the procedural order of creation and functioning of arbitration in controversies that appear from a concrete treaty (arbitral court ad hog).

International organizations, especially international economic organizations must be considered as the other rather active subject of international economic procedural law. If one talks about an international organization in general, it must be noted, that several of them must also realize organization of international economic cooperation together with other directions of international activity. Thus, according to the Statute of UNO, this organization must realize international cooperation as to solving international problems of economic, social, cultural and humanitarian character (art.1, p. 3). Thus, we can see, that international economic problems are the subject of UNO activity along with other ones. For providing the activity in this direction, special international economic organizations are created in the UNO system: the economic and social UNO council, UNO Conference of trade and development, World food council, International fund of agricultural development, International monetary fund, Organization of United Nations of industrial development, International bank of reconstruction and development, International center of regulation of investment controversies, International financial corporation and other. They realize the procedural activity in a correspondent sphere of international economic cooperation. Along with these organizations, UNO structure includes the main forensic body of UNO – International court, that Chapter XIV of the UNO statute is devoted to (art. 92–96).

International economic organizations together with other international organizations also realize the international economic procedural activity through their institutional mechanism, especially through bodies that must consider international economic controversies. In this aspect we can talk about European communities, World trade organization that have their jurisdictional bodies and other international organizations.

The international legal procedural activity of all international organizations is provided by correspondent constituent documents and also by other international legal acts. For example, Viennese convention of 1986 includes many norms of international procedural character. These norms relate to acceptance of a treaty text (art. 9), determination of ways of expressing the consent for obligation of a treaty (art. 11–14), acceptance of limitations and objections to it (art. 20–23). Correspondent procedural norms that regulate the use of treaties are included in Section 2 of this Convention. Questions of introducing corrections and changes to treaties, stopping or suspense of treaties and other are procedurally regulated in a certain way.

The system of subjects of international economic procedural law also includes international forensic and arbitral organs that realize the procedural activity of jurisdictional character.

6. Conclusions

1. International economic procedural law must be understood as the system of norms and principles that establish the order, provision form of realization of material

norms of international economic law by states, international organizations and other subjects in the process of realization of international economic cooperation.

2. Material norms of international economic law and ones of international economic procedural law in their totality are the part of international public law and have structural-functional connections with each other. The aforesaid norms of material right in this case condition their realization as procedural norms.

3. Norms of international economic procedural law regulate not only the activity of international arbitral and forensic institutions, but in necessary cases – also another activity, inherent to the sphere of international economic cooperation.

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