FEATURES OF THE LEGAL REGULATION OF RELATIONS IN THE CARRIAGE BY RAIL

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Abstract

Economic development is impossible without efficiently rendered services for the transportation of manufactured products to serve the needs of individuals and legal entities. In this regard, the problem of legal regulation of transportation relations continues to remain relevant. Regulatory regulation of transportation by rail in different countries is very specific. In this regard, the authors set a goal to establish and analyze certain features of the legal regulation of transportation relations and their impact on the efficiency of the transportation market. The extensive nature of the normative legal regulation of the carriage of goods by rail and its unsystematic nature are noted. It is substantiated that the procedure for concluding a contract for the carriage of goods and the peculiarities of protecting the violated rights and responsibilities of participants in transportation relations indicate an unfair distribution of rights and obligations between the parties to the contract for the carriage of goods.

The regulation of relations from the contract for the carriage of goods is archaic. The current normative legal regulation testifies to the extraordinary support of carriers by the state, which negatively affects the quality of their services to the population. According to many authors, the very model of regulation of transportation relations needs to be changed.

Keywords: *transport agreement, international norms, real damage, transportation of goods, rail transportation, carrier's responsibility, rights protection, natural monopoly.*

The social significance and public significance of the carriage of goods and passengers by rail, as well as a limited number of carriers and the presence of barriers to entry into the market of carriage by rail, along with the specifics of transport and cargo, determined the features of the regulatory legal regulation of transport relations by this mode of transport.

Various specific features of the regulatory regulation of transportation relations can be distinguished. The first feature is the extensive nature of legal regulation. Thus, many developed countries have adopted a large number of normative legal acts specifying the regulation of cargo acceptance for transportation, operation and maintenance of non-public railway tracks, transportation of dangerous goods, transportation of freezing cargo, transportation of goods in open rolling stock, etc.

The second feature is associated with a real model of concluding a contract for the carriage of goods by rail, which leads to a complication of the procedure for the emergence of civil rights and obligations between legal entities. To conclude a contract for the carriage of goods by rail, it is necessary either to conclude an agreement on the organization of carriage, or to agree on an application (therefore, liability is differentiated into liability for non-fulfillment of the application and for violation of obligations from the contract for the carriage of goods by rail).

The specifics of any type of contract is predetermined by the moment of rights and obligations. This issue in relation to the contract of carriage of goods by rail is quite relevant, because at the present stage among the civilists there is no consensus on this problem. This is largely due to different interpretations of the norms of the civil legislation relating to the regulation of transportation, as well as the provisions of special legislation.

An important feature of the contract of carriage of goods by rail is the obligation to draw up an application for the carriage of goods by rail. Thus, the legislator provides not only the necessity of its compilation, but also subordinate legislation defined by its content. To date, this

application is considered by some scientists as an independent contract, by others as a preliminary contract concluded for the purpose of subsequent agreement of the terms of the railway-contract, by others as a certain mandatory component of the contract of carriage, which does not have autonomy in relation to the main contract of carriage, but at the same time and is not subject to the rules on the preliminary contract [5, p.37-41].

The legal qualification of the application for the carriage of goods by rail is important to determine the nature of the contractual relationship for the carriage of goods by rail.

Despite the long development of the institute of railway transportation, there are many issues in the scientific literature on which researchers cannot form a unified view.

So, you can find different positions on the issue of the moment of occurrence of the obligation in the course of transportation by rail. Many eminent civil scientists have spoken out on this issue. At the same time, some of them believed that the contract for railway transportation was real [6, p.695], others - consensual [7, p.48], while others suggested combining both previously stated points of view and, depending on the circumstances, believed that the contract could be both real and consensual [3, p.58].

Of course, to a certain extent, the emergence of such a discussion is associated with the specifics of the legislative technique and the content of the corresponding norms. Thus, the prevalence in Soviet historiography of the position on the consensual nature of the transportation of goods by rail is associated with the presence in the Charter of Railways of the provision on the obligation to submit a special application prior to the transportation process (for transportation outside the plan), or to include transportation in the corresponding plan.

At present, the legal relationship between the shipper and the carrier is subject to settlement in the agreement on the organization of the carriage of goods, which is supplemented by the preparation of a special application of a certain form. The set of norms governing the drafting of the above documents makes it possible to more clearly form an idea of the nature of the contract for rail transportation.

In accordance with the civil legislation of many CIS countries, the carrier is obliged to d-liver the cargo transferred to him and hand it over to the authorized consignee. In this case, the issuance of a bill of lading indicates the conclusion of a contract for the carriage of goods.

These legal provisions make it possible to qualify the contract of carriage as real, although some sources still maintain a position about the duality of such an agreement and its possible consensual nature, at least if the carrier undertakes to provide transport before the transfer of goods occurs [9].

The situation is complicated by the fact that in the Model Statute of the CIS Railways the legislator proposed a consensual nature of the contract for rail transportation. In particular, Art. 32 of the Model Charter stipulates that, in accordance with this agreement, the railway undertakes to timely and safely deliver the cargo to the destination station, observing the conditions for its transportation and issue it to the consignee, and the consignor to pay for the transportation [10].

In such circumstances, in essence, we can say that today the nature of the contract within the framework of CIS transportation is made dependent on the territory on which the corresponding services were provided, which, of course, is irrational. It seems that the national legislator should develop a unified approach to the organization of railway transportation.

Of course, within the framework of the current legislation, the preparation and approval of an application for the carriage of goods is an integral element of railway transportation, which is quite logical, based on the nature of the contract itself and the actual actions to be performed by the carrier.

Rail transportation involves the coordination of many details, so even some supporters of the approach about the real nature of this type of contract believe the consensual model is more acceptable for participants in civil turnover.

The specificity of rail transportation is that the actual actions for the carriage of goods are preceded by the preparation of a special application form. In relation to this fact, the position is

expressed that the legal relations arising from the preparation and signing of such an application are of a contractual nature.

Many authors supplement this point of view with a statement about the lack of independence of such an agreement. It is very doubtful, from the position of the author, to speak, if there is one, about the possibility of the emergence of full-fledged contractual relations for the carriage of goods by rail.

In this case, it is appropriate to say that a contractual obligation only makes sense if there is an economic and legal result that suits both parties.

The statement of the contractual conditions in the application for rail transportation does not allow reaching an agreement of ultimate interest for the parties to the transaction. It is obvious that loading and filling a wagon by itself has no economic value for the shipper and carrier. In this context, the application for the carriage of goods by rail can be regarded as a preliminary contract. However, such a qualification of legal relations would be, in our opinion, incorrect. In this regard, it should be noted that the design of the preliminary contract is essentially a superstructure and contractual legal relations may well develop without prior agreement on the terms of the final transaction.

In the case of railway transportation, the movement of goods in the absence of an application is impossible. At least from a legal point of view, such a transaction will lack an important formal element, which significantly increases the legal risks of each of the parties to the agreement in the event of a discrepancy in their position regarding its conclusion and proper execution.

But an equally important objection to the issue of qualifying an application for rail transportation as a preliminary contract is the fact that the specified document does not determine the conditions of the transportation itself, since the participants in legal relations only determine the procedure for loading, and this is why the purpose of drawing up the application is fulfilled. Expansion of the terms of the application seems to be highly doubtful in terms of the approval of its form by the executive authority.

In addition, the sanctions for non-fulfillment of the application for the carriage of goods by rail are also specific. The provisions on a preliminary contract embody a different concept of liability for non-performance.

In the scientific literature, it is also customary to distinguish between the application for railway transportation and the contract for the supply and cleaning of wagons due to the difference in the subject of regulation in each of these documents [8, p.253-288].

Meanwhile, despite the above circumstances, an application for the carriage of goods by rail, as already indicated above, cannot generate an independent obligation, and therefore, according to A.Dovgopolova, cannot be considered as an independent contract, but is one of the important components to the contract of carriage [1, p.30-38].

The totality of the above circumstances is given by A.Sokolova concluded that within the framework of the current legal regulation, the contract for the carriage of goods by rail is a consensual one, but such a design cannot be recognized as successful and needs to be adjusted.

Summarizing the above, it should be noted that today there is no consensus among civil scientists about the nature of the contract for the carriage of goods by rail and its integral component - applications for the carriage of goods by rail.

In our opinion, an application for the carriage of goods is a constituent and necessary element of railway transportation, however, it does not have the characteristics that would qualify it as an independent contract or a preliminary contract.

Having some features characteristic of a preliminary contract, an application for the carriage of goods, nevertheless, from a legal point of view, has obvious features, therefore such a qualification is possible only conditionally, in the presence of a significant number of reservations determined within the framework of special legal regulation of the relevant legal relationship.

Essential features are inherent in liability for violation of obligations in transportation relations. As D.Karkhalev, persons engaged in entrepreneurial activities in the field of transportation are responsible for non-fulfillment or improper fulfillment of an obligation, regardless of fault, i.e. the increased responsibility of carriers has been established.

In addition, a characteristic feature of the liability of carriers in transport relations is also that it is limited. Only real damage is subject to compensation in the event of loss, shortage or damage to the transported cargo or baggage. Thus, the principle of full compensation for losses in transport relations has its limitations. The third specific feature of liability in the field of railway transportation of goods is the normative consolidation of the grounds for exemption of the carrier from liability (for example, in connection with the natural loss of goods) [4, c. 35–36].

Liability in the field of transportation by rail includes some measures that are not inherent in civil law regulation, which include a fine for exceeding the carrying capacity of a wagon or container by the consignor; a fine for distorting the weight of cargo luggage in the application (in case of wagon shipment), for sending items that cannot be transported as luggage; the right not to execute the accepted application for carriage if the consignor has not paid the carriage charges for the previous carriage of goods. Such punishment for violation of the obligation to pay for the carriage of goods is unnecessary, since the use of other civil law instruments provided by law is not excluded (retention of cargo, payment for the use of wagons during idle time, interest for the use of other people's funds).

It is not quite typical for civil liability to calculate a penalty based on the minimum wage in case of violation of transport obligations. In this case, it is the carrier who records the violation of the obligation. The fee for not presenting goods for carriage is not a measure of property liability and is subject to write-off regardless of the presentation of a fine for failure to comply with the submitted application.

In addition, the features of the protection of rights in transport relations are highlighted. Among them, D.Karkhalev calls the existence of a mandatory claim procedure for the protection of violated rights and the specifics of the course of the limitation period (claims are filed within a year from the date of the events that served as the basis for the claims). With the introduction of a mandatory claim procedure in the settlement of disputes arising from civil legal relations by arbitration courts, it is unfair to assess the claim procedure as a feature of relations from transportation. The limitation period in transportation relations is shortened, since is equal to a year not from the moment when the violation was learned or should have been found out, but from the moment of the very legal fact underlying the claim.

The subject composition of transportation relations and the way in which rights and obligations are allocated during transportation also cause discussion in the scientific community. According to E.S. Phelps, the state continues to be a participant in public transport relations through budgetary financing of projects for the modernization of railways, subsidies for unprofitable directions of railway transportation, intergovernmental agreements on international freight traffic on specific lines, etc. All of the above is alien to civil law with its legal equality of business subjects and may indicate some return of the Soviet system of interaction with distributive justice [2, p.205]. Many authors are also of the opinion that carriers are still perceived by the state as a state structure, which contributed to the formation of a natural railway monopoly.

The regulation of transportation to the maximum extent by means of the imperative method excludes the application of the principle of equality of civil law, which results in greater protection of the interests of the carrier. We believe that the imperativeness of regulation cannot serve as a reason for the priority protection of the carrier, although, in our opinion, it is beyond doubt.

The above features are the basis for assessing the method of regulation of railway transportation as administrative and legal. In our opinion, the civil legal branch of rail transportation should not be in doubt. The regulation of transportation relations is distinguished by significant specificity due to the peculiarities of liability for violation of obligations by parti-

cipants in transport relations, the peculiarities of protecting violated rights, the public nature of the contract of carriage, as well as the actual structure of the conclusion of a contract for the carriage of goods.

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Date of receipt of the article in the Editorial Office
(18.04.2020)

LEGAL DIRECTIONS AND DEVELOPMENT PERSPECTIVES OF COOPERATION WITHIN OPEC IN THE FIELD OF OIL PRODUCTION AND EXPORT

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Abstract

The article analyzes in detail legal directions and development perspectives of cooperation within OPEC in the field of oil production and export based on disagreements in the legal literature and international documents. It is noted that OPEC plays a significant role in world oil supplies, serving mainly the interests of the member states and in accordance with the principle of ensuring energy security when supplying energy resources. Such an important role of OPEC in the international arena creates the basis for the participation of non-member states in this Organization. The author concludes that, the need for cooperation between oil-producing OPEC member states and non-member oil-producing states is due to the fact that interstate relations in the era of globalization are possible only on the basis of mutual benefit. The fact that oil exporting countries defended their interests as a result of joint activities within the framework of OPEC served as a legal guarantee in regulating relations with the main oil exporting countries of individual entities occupying unequal positions (large oil companies, countries with developed economies).

Keywords: *oil production, income, oil market prices, member states, exporting countries, cooperation, taxation, international energy law, oil companies, crude oil, OPEC.*

In the context of international energy law, OPEC is the most important international organization capable to influence the oil sector. This impact encompasses not only energy, but also related environmental issues, including oil production and trade, as well as investments in this area. Currently, OPEC member States control 75% of the world's oil resources and 40% of oil production. At the same time, the cheapest crude oil is produced in the OPEC member States. As a result, there is a drop in oil prices and an increase in the market share of the OPEC member States, which has been increasingly manifested in recent years. Nonetheless, geopolitical tensions and abnormally high oil demand in 2004 and 2005 pushed oil prices to their highest levels [11, p.190].

In general, during its existence, within the framework of OPEC, many achievements have been achieved, mainly not related to the regulation of market oil prices. During the first decade of its existence, the Organization sought to increase the revenues of oil-producing countries through collective bargaining to raise the mineral extraction tax and other taxes, despite the fall in crude oil prices. Reducing incomes of large oil companies, which were considered inviolable at that time, and increasing incomes of producing states per barrel of oil were achievements that no other economic organization could achieve [7, p.5]. In the 1960s, the OPEC member states could not influence the oil market prices. And international oil companies tried to preserve the concessions signed in the 1920s and 1930s, which, with the exception of tax collection, nullified the role of local authorities in oil production and determining oil market prices. In accordance with the agreements concluded in Tehran in 1971 and in Tripoli in 1973, OPEC achieved an agreement between the member states to increase oil market prices by transferring its members from the consumer market to the producer market, as well as through nationalization and participation as holders of shares in various consortia providing direct control over the oil production of their members. Despite the choice of different national strategies, cooperation within OPEC was of paramount importance to strengthen the capacity of member states to

control and monitor all aspects of their oil sector. Since 1973, OPEC member states have been able to control market oil prices. However, during the 1979-1980 oil crises, OPEC was unable to influence the sharp rise in oil prices, which led to unpleasant consequences. Thus, in 1982, OPEC established quotas for oil production for its member states in order to prevent a fall in oil prices. However, in the mid-1980s, OPEC lost control over the oil markets. Due to tensions within OPEC over different quotas between member states, national oil companies tended to compete rather than cooperate [8]. Only in the late 1990s, the growth in demand from China and other Asian countries as the main consumers ensured the growth of OPEC oil exports. The transformation of China, which became an oil-exporting country in the 1980s, into the world's largest oil consumer in 2015, affected its relations with OPEC not only economically, but also politically and ideologically [16, p.133-140].

The reality is that, despite serious attempts and even successes of the OPEC member states, changes in the oil market are much more important for oil-producing countries than for oil consumers. Oil exporting countries are considered more vulnerable than oil consumers and may benefit more from cooperation than from competition. Thus, when prices fall, the economies of oil and gas countries are threatened with destruction; this, in turn, can lead to a change in the political regime in the country and even to a social and economic downturn. On the other hand, when prices rise, consumer states are forced to radically change their energy policies, but crude oil prices act as a small factor influencing the development of the complex economies of industrialized countries in a positive way. Cooperation within the framework of OPEC has helped to establish new states such as Nigeria and the UAE as important members of the international community and strong states in their region. Despite being one of the poorest countries in Latin America in the 1920s, Venezuela had become the richest country in the region in terms of per capita income by the mid-1970s [19, 33-53].

Thus, from the point of view of coordinating the activities of the member states within the framework of OPEC, the following objective law is manifested: when cooperation between the member states increases, the well-being of their populations increases, however, when competition and anarchy prevail between the member states, governments are forced to apply tough economic measures and the country's population suffers from economic hardship and political instability. In this sense, cooperation within the framework of OPEC is essential for the development and economic stability of the member states.

In general, OPEC plays a significant role in world oil supplies, serving mainly the interests of the member states and in accordance with the principle of ensuring energy security when supplying energy resources. Such an important role of OPEC in the international arena creates the basis for the participation of non-member states in this Organization. So, since 1998, Mexico and Oman, having received observer status in OPEC and participating in its sessions, coordinate their oil strategies with the decisions adopted by this Organization. And, since the end of 2008, due to a sharp drop in prices on the world oil market, oil-exporting countries that are non-OPEC members (Russia, Azerbaijan and other CIS countries) have been taking part in OPEC sessions on quotas [2, 84]. These states participating in OPEC sessions as observers, in accordance with Article 7 of the Statute, are called associate members and they are not considered full members and do not have the right to vote at meetings [32].

Taking into account the current state of the world oil market, in order to coordinate the market, reduce the level of reserves and ensure the stability of the oil market in December 2016, a Declaration on Cooperation was adopted between the OPEC member states and 10 non-member oil exporting countries. In 2019, the Cooperation Charter was adopted, which is considered a long-term platform dedicated to cooperation, exchange of views and information within the framework of OPEC [31]. Later, on June 6, 2020, a Declaration of Cooperation was adopted at a ministerial meeting of OPEC and non-OPEC member states. According to the Declaration, all major oil-producing countries (OPEC member states and non-member oil exporting countries) agree on a proportional contribution to the stability of the world oil market.

At the same time, the mandate of the Joint Monitoring Committee of Ministers and its members was approved. The Monitoring Committee, with the support of the Joint Technical Committee and the OPEC Secretariat, should carefully consider the general conditions of the energy market and other related factors, study the activities of the member states and non-members on the basis of this Declaration. To this end, it was planned to hold a monthly meeting of the Joint Monitoring Committee of Ministers by December 2020. In accordance with the methodology applied by the OPEC Secretariat, compliance by OPEC and non-OPEC member states with a Declaration of Cooperation should be monitored, taking into account the production of crude oil, based on information obtained from secondary sources [9].

Since decisions on production and export quotas are made collectively within the framework of OPEC, this testifies to the Organization's unique status in the global energy market. Such decisions made by OPEC, and the way they are implemented, have a serious impact on oil market prices. Undoubtedly, since stable prices themselves are of decisive importance for both consumers and exporters, this activity was also enshrined in the OPEC Statute adopted in 1961. Consequently, the adoption of such decisions allows OPEC to monitor the situation in the oil markets and, if necessary, make new necessary decisions. The OPEC agreements set maximums for total oil production distributed among member states through a quota system. For example, on June 3, 2004, at a Ministerial Conference in Beirut, it was noted that for OPEC-10 (all members except Iraq), production should be increased in a maximum of 2 stages – from July 1 to 2 million barrels, an increase of 25.5 million barrels, and from August 1, up to 26 million barrels. The purpose of this decision was that the conference was to "provide adequate supply, demonstrate commitment to OPEC's intentions to achieve market stability and maintain prices for both miners and consumers, and maintain a stable and stable global economy" [18].

The high production threshold is specified by the Conference from time to time based on the fundamental indicators of the world oil market. The frequency of such revisions depends on price changes and innovations that affect the market [17, p.209].

With the independent determination of group and individual maximum oil production quotas in order to maintain the stability of the international oil market under certain market conditions, important requirements can be put forward for countries that are significantly dependent on oil incomes for their national development. That is why OPEC, always pointing out the stability of the oil market, assigns this responsibility to all parties, including exporting states, consumer states that are not members of OPEC, as well as multinational oil companies and international financial institutions [22]. When analyzing oil data, it turns out that most of them are uncertain and require revision [14].

It should also be noted that Iraq was excluded from the OPEC quota system in 1998. Thus, compliance with OPEC quotas mainly implies actual production versus previously set high limits. In the literature, sometimes the phrase "compliance" is used in different meanings, and the accrued interest on such a match differs from each other. The reasons for the difference may be the lack of accurate production data, as well as the different indicators for determining compliance [15].

Taking into account the issues of technical and technological support of cooperation between the member states within the framework of OPEC, as well as the regulation by the member states within the Organization of quotas for oil production and prices, one can see how important the role of the cartel is in the world oil market. At the same time, the important role of OPEC in the development of international energy law determines the interaction of international energy law with other branches of international law (international trade law, international economic law, international environmental law, international competition law, international sustainable development law) [23, 560].

OPEC's activities in this direction are directly expressed in the Statute of the Organization. Thus, according to the OPEC Statute, the Organization must seek stability and harmony in the oil

market between oil producers, consumers and investors (Article 2(A)(B)(C)). To this end, the OPEC member states coordinate their oil policies to ensure stability in the international oil market, focusing on fundamental market factors. The limitation of production is the most important measure determined by the Member States in this direction. When demand rises or some oil-producing countries produce small amounts of oil, OPEC raises oil production quotas to prevent a sudden rise in prices. In other cases, the entity reduces oil production quotas in accordance with market conditions in order to prevent price declines. It is in this form that the process of regulation of the world oil market by OPEC takes place [5, p.12-13].

If in the 1970s and 1980s the market prices for crude oil were determined by OPEC, now the situation has changed dramatically. Of course, in order to stabilize the oil market and prevent sharp price fluctuations, the OPEC member states voluntarily limit the production of crude oil, which meets the interests of not only the OPEC member states, but also the consumer states and investors.

Currently, the price of crude oil in complex world markets is driven by the mobility that occurs across three major oil exchanges: the New York Mercantile Exchange (NYMEX) [29], the London International Petroleum Exchange (IPE) [28], and the Singapore International Currency Exchange (SIMEX) [34].

The current role of OPEC in the development of international energy law stems from two main problems. First, the Organization was formed on the basis of the natural interests of the member states in the "lease of natural resources" subject to increased income and maintenance of stability, as well as preservation of sovereignty over oil and gas resources. These interests are still considered the main pillars of the Organization's existence. The general idea is that a balance must be maintained within the Organization between short-term price and production optimization and long-term strategy. Long-term strategies are aimed at maintaining a high share of OPEC in the oil market compared to competing countries that are not members of OPEC. At the same time, there is a division of interests between the OPEC policy and high rates of excise taxes on oil and oil products from Western states, in particular Great Britain [25, 363]. For example, in the UK, a high excise tax of 4 times the price of gasoline is justified by environmental factors in terms of the impact of gasoline on the environment and road infrastructure. However, this justification appears to be a justification used to offset the perceived reduction in income tax rates [27]. In this sense, the conflict between OPEC and consumer countries is not based on high oil prices, but on who gets more oil incomes [24]. In a sense, the European Union and the United States tried to present the rise in oil prices as a result of the work of OPEC [26]. In the 2000s, these states did not want to admit that OPEC was interested in maintaining stable oil prices [13]. In this sense, as A.I.Sadigov noted, OPEC members are concerned about "green" taxes on oil in developed countries [1, p.143].

And in the context of global problems of the 21st century, claims against OPEC began to be justified by the amount of carbon emissions generated by burning fuel derived from oil. Already in 2020, a tendency was formed that if low or zero carbon emissions in the oil industry are not achieved, the participants in the oil market will lose their "social license" [12, p.346]. So, in January 2020 in Aberdeen, the chairman of the UK Department of Oil and Gas, Tim Eggar, speaking to the heads of the oil departments of the oil exporting countries, noted that the existence of an industrial license for the extraction, export and import of oil is under threat; the oil and gas industry has a leading role to play in addressing a range of climate change issues [30].

A number of participants in the oil industry have already begun to respond to this issue to some extent after the six largest European oil and gas companies (BG Group, BP, ENI, Shell, Statoil and Total) sent an open letter to the UN in June 2015. The letter said that the governments of states involved in the extraction, export and import of oil should implement systems for estimating carbon emissions at the national and regional levels, as well as form an international plane that will ultimately unite national systems [33]. These companies have developed an

internal carbon footprint to influence investment agreements of oil exporting countries [6]. And in May 2020, executives from a number of major energy companies, including BP and Royal Dutch Shell, prepared a new appeal stating that in the wake of the COVID-19 pandemic, government stimulus measures should be aimed at creating a healthier and more resilient economic network [3]. In addition, Repsol, BP, Royal Dutch Shell, Total, Equinor and ENI have announced plans to reduce the intensity of carbon emissions, which will be reduced to zero by 2050. Unlike major European oil companies, US oil companies have generally not disclosed any plans [12, p.347].

In addition, one of the most important challenges facing OPEC today is preventing global warming. The OPEC Fund for International Development [21, p.879-890], founded in 1976, is currently implementing important projects aimed precisely at solving this problem. This is due to the fact that at present the main problem facing the states of the world is no longer a colonial regime that exploits natural resources, or a cartel of international companies limiting incomes from natural resources in the host state, but a global crisis related to climate change. ... The threat of global climate change has pushed OPEC to the fact that at present the Organization prefers to conduct the international struggle to mitigate the effects of global warming, rather than to exercise control over the management of the oil market since the 1970s [10]. In the coming years, in the event of a tightening of national and multilateral international climate rules and a decrease in oil demand, it will be impossible to maintain oil prices at the desired level through any production quotas. This will lead to the fact that in the future more and more OPEC members will leave the cartel, and oil-producing countries will remain in the cartel with minimal costs. As an alternative, a number of opinions are put forward on the prospects for further development and cooperation of OPEC:

- it is necessary to inform the countries of the world, especially the developed countries with a high level of income, that climate change will lead to more severe consequences for the population of countries with a low level of income;

- despite the fact that oil will remain the most important source of energy for a long time to come, the goals of the 2015 Paris Convention on Climate Change can only be achieved if most of the oil reserves are not being produced. Currently, a number of large oil companies have recognized this need and have begun to significantly reduce their oil reserves [35];

- Member States should be assisted in assessing the possibilities of using renewable energy sources in petroleum operations, thereby reducing oil consumption and carbon emissions by Member States. From this point of view, Norway has some experience in the production, transportation and processing of oil [4, p.300-311];

- OPEC should encourage oil saving, carbon reduction and carbon pricing among its member states. A number of large oil and gas companies have benefited from this experience over the years [20, p.83-87];

- OPEC should implement programs that provide for mutual assistance in diversifying the economies of its member states, encourage cross-border direct investment between member states, instruct the Secretariat to study the potential for diversifying the economies of member states;

- The Organization should include and publish in the World Oil Outlook or in the annual OPEC statistical bulletin information reflecting the internal capabilities and activities of member states towards economic diversification and shared access to energy.

The adoption of these measures is possible only at OPEC summits, regardless of the will of the governments of the member states [12, p.351-352]. By implementing these measures, the OPEC member states can ensure the long-term sustainable development of their economies and the existence of OPEC as an Organization for Economic Cooperation.

OPEC is also making efforts to expand dialogue on a number of issues with interested structures and states in the field of oil exports. In recent years, these have included the International Energy Agency, the European Union, as well as China, Russia and other non-OPEC states.

Legal regulation of interaction with international organizations in the context of OPEC's involvement in issues related to oil and energy, resolved on high-level political platforms, such as the G20, is one of the main intentions of the OPEC member states. The need for such cooperation between oil-producing OPEC member states and non-member oil-producing states is due to the fact that interstate relations in the era of globalization are possible only on the basis of mutual benefit.

Thus, summing up what has been said about cooperation between oil companies, consumers and investors within OPEC, a number of important points should be noted. So, if the 20th century was considered the oil century, then already in the 21st century the importance of alternative energy sources, in particular, "green energy" that does not affect the environment, is highlighted. However, a significant drop in demand for oil on world markets does not look realistic in the next few decades. During the evolutionary period from the creation of OPEC to the present, there have been two important achievements and two major bankruptcies of the organization. The first achievement was the regulation of market oil prices to ensure a sufficient level of profitability for the member states as a goal set when the organization was created by setting production quotas. During the oil crises, OPEC held full power in this sense. However, after 1983, this force became relative. At present, OPEC, by regulating the total oil exports by its member states (by determining production quotas), indirectly affects oil prices on the world market. The second achievement during the existence of OPEC was the development of the national economies of the member states at the expense of incomes from oil exports. Despite the obvious differences between the levels of economic development of the member states, undoubtedly, as a logical result of cooperation within the framework of OPEC, the economies of the member states reached a sufficiently high level than 50 years ago, which can be expressed as a result of the satisfactory activity of OPEC in the field of production and export of crude oil.

As for the failures that the organization relied on during the period of its activity, the first of them is the weak diversification of the economies of the OPEC member states (economic diversification). The economies of the member states continue to be heavily dependent on oil exports, which lead to their weakening in the event of a fall in oil prices. At the same time, it can be assumed that with the depletion of oil reserves, a number of member states will fall to the level of economic development that they had before obtaining the status of an oil exporter. The UAE and Venezuela may be listed as an exception. Thus, both states, at the expense of oil incomes, have diversified the country's economy, which will allow maintaining a stable level of economic development in the region where they are located. The second setback is that the Organization, as a common platform for action by member states, has failed to end serious historical, political and economic divisions among oil-exporting countries. Sometimes even such conflicts led to military clashes.

However, in our opinion, the overall balance in OPEC activities continues to be a positive trend and can be assessed by two main criteria: the approach of the member states and from the point of view of the world oil market. Joint activities within the framework of OPEC allowed member states to advance personal interests, and control over oil prices in the world market led to significant income growth and further economic development. Consequently, at present, cooperation within the framework of OPEC is essential for the development and economic stability of the member states.

With regard to the world oil market, we believe that OPEC provides a balance of power between exporting and importing states. The fact that oil exporting countries defended their interests as a result of joint activities within the framework of OPEC served as a legal guarantee in regulating relations with the main oil exporting countries of individual entities occupying unequal positions (large oil companies, countries with developed economies). Thus, tensions between oil exporting states and oil importing states were resolved at the negotiating table (through oil export and sale agreements). In the absence of OPEC, numerous oil wars and oil crises could have erupted.

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Date of receipt of the article in the Editorial Office
(14.03.2020)

THE PROBLEM OF DUAL (OR MULTIPLE) CITIZENSHIP IN INTERNATIONAL LAW AND WAYS TO SOLUTION

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Abstract

Differences between the legislation of the states on the rules of acquisition and loss of citizenship play an important role in the emergence of problems of citizenship (bipatrism, apartheid, etc.). For example, the existence of conflicts between "blood law" and "land law", as well as differences of opinion on naturalization, etc. can be noted. In addition, the reasons for the emergence of dual citizenship and statelessness are insufficiently regulated territorial changes that lead to a change in the jurisdiction of states, population migration, the influx of refugees, and so on. need to be attributed. Although dual citizenship can have some negative consequences, there is a growing trend in most European countries to encourage the institution of dual citizenship due to the intensification of integration processes around the world. At the same time, the problems in this area are being successfully resolved..

Keywords: *dual citizenship, blood law, land law, place of birth, state sovereignty, population migration, naturalization, 1997 European Convention, effective citizenship, legal status*.

Introduction.

Citizenship law has a complex internal structure. The norms of civil law are united in different groups, creating a sub-institution related to the institution of citizenship as a whole. Such sub-institutions include, for example, the acquisition and termination of citizenship, the citizenship of children and parents, the citizenship of the subjects of the federation, dual citizenship, and so on. can be attributed.

By its nature, citizenship is directly related to state sovereignty, territorial structure, and the legal status of the individual, as it is a prerequisite for citizens to have rights and responsibilities.

The problem of citizenship is considered one of the most difficult issues in the institution of citizenship. The approach of states to the problem of citizenship is mainly based on the population of the state, ethnographic situation, geographical position, political and cultural characteristics, etc. is determined depending on a number of factors such as.

The main causes of the problem.

The main reasons for the emergence of dual citizenship are changes in the territory and population migration [5, p.15-20]. Under the conditions of feudal formation, especially during the period of dictatorship, population migration was minimal due to the settlement of peasants, and in some countries even the death penalty was imposed for leaving the land. For this reason, the emergence of dual citizenship was a rare occurrence, and in most cases, the impossibility of such a situation manifested itself in the treatment of the lower classes. Among those belonging to the upper class, dual citizenship was common. This is because such individuals often entered into mixed marriages and owned land in various countries to which they were bound by the oath of allegiance.

Active economic and political migration of the population had already begun during the development of capitalism. Today, due to the rapid development of international relations, the migration process has an objectively strengthened trend and is considered the main source of bipatrism (dual citizenship). In modern society, the rapid development of international relations expands the migration process, and therefore states face new challenges, such as the settlement of issues related to dual citizenship.

Another major reason for the emergence of dual citizenship in the modern world is the existence of differences in the legislation of different countries regarding the acquisition and loss of citizenship. Legislation in different countries applies two principles in this regard: "right to blood" (ius sanquini) and "right to land" (ius soli) [3, p.197]. In other words, in the first case, the acquisition of citizenship is determined on the basis of the citizenship of the parents (or one of them). That is, in this case, citizenship is associated with the origin of the person. In the second case, the acquisition of citizenship is related to the fact of birth in the territory of the state concerned. For example, in Latin America, the United Kingdom, and the United States, the principle of "land law" is used to obtain citizenship, and in Germany, Switzerland, Japan, and most other European countries, the principle of "right to blood" is used in matters of citizenship [8, p.21].

Peter J.Spiro, a well-known scholar on citizenship, notes that dual citizenship has gained an unspoken status after globalization, but is no longer supported by states. In any case, dual citizenship must be protected as a human right. In practice, there are cases when dual citizenship hinders stability between states and does not have a positive effect on the solidarity of states. However, for the sake of the rights and interests of the people, legal regulation of such cases is a must [6, p.111].

Thus, a child born to a citizen of a state that exercises "right to blood" will have dual citizenship if he or she is born in the territory of a state that enforces "right to land." Under the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, "land rights" do not apply only to the children of foreign diplomats and consuls.

Bipatristism also occurs regardless of the child's place of birth, if the legislation of the relevant country allows the transfer of citizenship of a citizen of a country with two or more nationalities to a child on the basis of "blood rights". Dual citizenship is also possible when entering into a marriage with a foreigner, provided that the laws of this country automatically grant the citizenship of the husband (or wife) and do not deprive him of the original citizenship under national law.

In order to reduce the incidence of dual (multiple) citizenship, many countries have abolished the automatic granting of citizenship due to marriage, and the concept of independent citizenship for those who marry foreigners is increasingly supported. Since the 1957 Convention on the Citizenship of Married Women abolishes the principle of automatic change of citizenship of a woman marrying a foreigner, it reduces the likelihood of women being granted dual (multiple) citizenship at the time of marriage.

The Problem of Naturalization.

In most cases, dual citizenship is the result of naturalization: one person acquires the citizenship of another country without losing the citizenship of the country of birth [1, p.26-28].

Sometimes the basis of dual citizenship is the policy of any state aimed at strengthening political influence and trying to "gather" citizens of certain nationalities under one roof. Some authors emphasize that the most pressing problem of the institution of dual citizenship is the difficult legal status of a person holding the citizenship of two or more states, because a citizen has both dual rights and double obligations.

Dual citizenship can also arise for various objective and subjective reasons. The objective reasons for the emergence of dual citizenship can be attributed to the differences in the laws of the states related to the acquisition and loss of citizenship, as well as territorial changes that led to the change of jurisdiction, population migration and refugee flows. As an example of the emergence of dual citizenship, we can cite the uncoordinated actions of the ruling circles (China-Taiwan, Moldova-Transnistria) in the regions, which are formally united, but in fact divided into two or more places.

At the same time, there are international agreements that allow for the establishment of dual citizenship. For this reason, we can say that bipatrism arises both on the basis of the norms of national legislation of different countries, as well as international agreements.

In scientific literature and practice, the term "dual citizenship" is used in at least two senses. According to some experts (Conway W. Henderson, Alfred M. Ball)[2, pp.13-14; 4, pp.135-137], "dual citizenship" is a set of legal norms governing the acquisition of citizenship of another state by a person with the consent of the country of citizenship (on the basis of a permit, agreement or mutual agreement) is an institute. Another group of scholars concludes that bipatristism is a social phenomenon that embodies the state of an individual having two or more nationalities without the knowledge (permission or consent) of the state of his or her citizenship.

Attitudes of states towards the issue of dual citizenship have changed over time. This attitude has gradually changed from attempts to abolish dual citizenship to its regulation and strengthening in international treaties. We can see this trend in the example of agreements adopted by European international organizations.

In the 1960s, Western European member states of the Council of Europe agreed that dual citizenship was undesirable and should be avoided as much as possible. A person who acquires the citizenship of another Member State and is a national of one of the Member States under the 1963 Convention on the Reduction of Citizenship and on Military Service in Cases of Citizenship loses his previous citizenship. In addition, the parties to the Convention undertake to provide information on the acquisition of the citizenship of another Member State by the nationals of the Member States [11]. Clearly, without such an exchange of information, it would be impossible to implement the terms of the Convention.

At present, a number of European countries believe that dual citizenship is appropriate due to the increase in population mobility, the development of migration processes and the relocation of refugees. Refugees are, as a rule, naturalized more often and faster than other migrants, and are rarely required to renounce their previous citizenship as a prerequisite for naturalization. Even countries that have officially declared the abolition of dual citizenship as a target, in practice, are positive about it, highlighting the advantages of this process.

In 1997, European countries adopted the European Convention on Citizenship, preferring a more liberal approach to the issue of citizenship. This Convention contains provisions that will be applicable to most European countries, and in this regard it is important to note the maximum flexibility of the document. Thus, the Convention does not create barriers to citizenship, nor does it require states to recognize citizenship as a general principle.

In some countries, it is believed that a person's citizenship of another country makes it difficult for him or her to fully integrate into the society in which he or she lives. However, there are a number of states that think that this is not a problem and do not oppose the retention of citizenship by the country to which they belong. Member States shall not view the loss or renunciation of the citizenship of another country as a condition for the acquisition or protection of their citizenship. Because in many cases it is impossible to carry out such a procedure. Under the Convention, persons of other nationalities also have equal rights in the country of residence.

The Convention also stipulates that member states in some cases guarantee the protection of different nationalities: children who have acquired several nationalities automatically at birth [10, p.379].

Thus, as mentioned above, the legal regulation of citizenship is the exclusive right of the state to provide opportunities for both its citizens and others to acquire and lose citizenship.

State Sovereignty and Dual Citizenship.

Most post-Soviet countries strongly oppose the introduction of dual (multiple) citizenship and are not interested in obtaining a second citizenship by a significant portion of the population. Most of the countries of the former Soviet Union consider the existence of dual citizenship as an attempt to strengthen the presence of other states (mostly Russia) in their countries. Unilateral recognition of dual (multiple) citizenship by countries leads to conflicts in the future between states on issues of citizenship, as each state prefers to regulate this area within the framework of national legislation.

The complexity of the issue of dual (multiple) citizenship does not allow different states to form a common approach to the issue. For this reason, different approaches to this issue have emerged in international practice.

First, the recognition of dual (multiple) citizenship - dual (multiple) citizenship is freely allowed by the state (Albania, Liechtenstein, Yemen, Canada).

Second, the possibility of dual (multiple) citizenship: when obtaining a new citizenship, a person is not required to renounce the previous citizenship (England, Italy, USA, France).

In Italy, there is no need to renounce previous citizenship during naturalization. However, if a person has dual citizenship from birth, only one of these nationalities is required to be retained when he or she reaches adulthood. If a person chooses Italian citizenship, there is no need to provide evidence of renunciation of the second citizenship. However, the choice of citizenship of another state automatically leads to the loss of Italian citizenship [12].

There is an interesting case in Spain on the issue of allowing dual citizenship. Thus, according to Article 11 of the Spanish Constitution, the state has the right to conclude dual citizenship agreements with Latin American countries and countries with special relations with Spain [9, p.6]. The strictest measures to restrict dual (multiple) citizenship are taken by Germany and Switzerland. The main condition for naturalization here is the renunciation of previous citizenship.

It should be noted that the issue of dual (multiple) citizenship has a number of negative consequences for both states and persons with dual citizenship. As we know, citizenship means a stable political and legal relationship between the state and the citizen, and maintaining loyalty to two or more states at the same time is quite a difficult task.

In international legal practice, there is a rule based on the principle of state sovereignty that in all cases, the state applies to a citizen of another country the relations directly related to its citizens, regardless of the fact of citizenship of another state. Another factor complicating the legal status of a person with dual citizenship is that any state that considers a person to be its own citizen may require him or her to fully perform his or her citizenship duties. In addition, the provision of full citizenship to persons with dual citizenship in the countries of which they have citizenship also leads to a number of undesirable consequences for states.

One of the most undesirable consequences of dual citizenship for states is that the exercise of rights to persons with dual citizenship is not always possible for both states and third countries. Bipatristism also poses a number of challenges to espionage control. For this reason, in some cases, even the presence of dual (multiple) citizenship in the state is considered a serious threat to national security.

In addition to the negative aspects of dual citizenship, there are at least two other serious problems that require international legal regulation in the field of dual citizenship. These are issues of diplomatic protection and military service for persons with dual (multiple) citizenship.

Issues related to the fulfillment of military obligations by bipatrids in both peacetime and martial law have often become the main topic of interstate disputes. A situation may arise in which a person with dual (multiple) citizenship may be called up for military service in the countries of which he is a citizen, in which case the person must serve in the military only in one state. Such persons may be prosecuted by other States of their nationality for evading military service or for military service in a foreign state if they are within the jurisdiction of the State concerned.

States seek to agree on bipartisan military obligations by concluding bilateral and multilateral international agreements that restrict, facilitate or allow dual citizenship. Examples of such agreements are the 1963 Convention on the Reduction of Multi-Citizenship and Conscription in the Case of Multi-Citizenship, the European Convention on Citizenship of 7 November 1997, and many bilateral agreements.

International Legal Framework.

Without going into specifics on each of these international agreements, let us consider the general points emphasized in them.

First of all, it should be noted that all the above-mentioned agreements stipulate that citizens of each of the contracting states must serve in the military in only one of these states. For example, the 1963 Convention on the Reduction of Citizenship and Conscription for Citizenship gives bipatrids the right to serve in one of the countries of their citizenship until they reach the age of 19, otherwise they are called up for military service in the country of their permanent residence [7, p.121]. Similar provisions are reflected in the 1997 European Convention on Citizenship.

Second, if a person with dual citizenship has served in one of the Contracting States under the above-mentioned treaties in accordance with the national law of that State, he shall be deemed to have completed his military service in the other State of which he is a national.

Third, most of these treaties stipulate that a military service performed by one of the Contracting Parties to which the bipatrid is a national is also valid for the other party to which he is a national until the treaty or convention enters into force.

In some cases, the problem of compulsory military service for persons with dual (multiple) citizenship can be partially resolved through domestic legislation. Thus, in most countries, conscription applies only to citizens living in the country, and exceptions are made for citizens permanently residing abroad.

The most difficult situation for an individual in terms of military service may arise in the event of a war between the states of which he is a citizen. From the point of view of international law, it is impossible to give an unequivocal answer to this question. It is possible that due to the fact that he was in the territory of the state where he did not live permanently during the mobilization, this duty will be imposed directly on the citizen.

This approach is explained by the provision in a number of agreements on dual citizenship that the declaration of mobilization in any of the Contracting States in accordance with the principle of "effective citizenship" eliminates the need for that State to fulfill its obligations. However, in such a situation, it is inevitable that after the end of hostilities, the person who fought against the state of which he is a citizen will have negative consequences, even though he fought on the side of the other state of which he is a citizen.

If the obligation to serve in peacetime can be settled on the basis of effective citizenship or the voluntary election of one of the states, in the event of a military conflict, bipatrids may be considered traitors by another state for military service in one of their states and may even be deprived of citizenship. can be deprived.

The ability of persons with dual (multiple) citizenship to participate in the political life of the state and to serve in public administration has often been the subject of various internal disputes. The regulation of these issues is within the competence of the states, and the issue of what rights and freedoms to grant to bipatrids is determined by the states themselves. Thus, in addressing these issues, it is important to take into account a number of factors such as the state's policy on citizenship, economic and political independence, population and ethnographic situation. In almost all countries, the right to public and civic services is enforced. Provisions on the right to serve in the State are enshrined in both the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights. However, in some countries the exercise of this right is restricted due to national security.

As it is known, the main subject that ensures the security of an individual, society and the state is the state itself. There are different approaches in countries regarding the admission of persons with dual (multiple) citizenship to the civil service. For example, there are countries that do not allow people with dual citizenship to be civil servants (Sweden, Greece). Bipatrids who want to become civil servants in Israel must serve in the army of that state, even if they have served in another state. In some Latin American countries, people with dual (multiple)

citizenship automatically lose their citizenship from the moment they are admitted to the civil service.

Conclusion.

In order to objectively assess the institution of dual (multiple) citizenship, it is necessary to take into account the various possible negative consequences, as well as the positive aspects of this institution. There is currently ample scientific analysis highlighting the benefits of dual citizenship. Acquisition of dual (multiple) citizenship by a person usually serves to achieve greater freedom and liberty, although this situation ultimately reduces the level of state control over the actions of bipatrids. Among the positive consequences of dual citizenship are additional guarantees for the protection and exercise of personal rights and freedoms, retention of citizenship in mixed marriages, simplification of residence, re-immigration and mitigation of repatriation. Also, the high proportion of people with dual (multiple) citizenship can help intensify existing interstate relations.

Recognition of dual citizenship has a number of advantages for people who are not in a "superior position" in the country. Thus, in addition to having all the rights in the area where they currently live, this group of people has unimpeded access to the "historical homeland", contact with relatives living there, free education at any time, free medical care, entrepreneurship and the need to if it arises, they have a number of advantages, such as moving there permanently. In a complicated situation created by the disintegration of a once unified state, the prohibition of dual citizenship can create a number of difficulties. For this reason, allowing dual citizenship, even under certain conditions, is a more democratic step than a complete ban on dual citizenship.

When addressing the issue of recognition of dual citizenship, it is necessary to pay attention to the optimal balance of the pros and cons of the institution of dual citizenship in the appropriate context. That is, to be able to jointly resolve all existing difficulties related to citizenship and eliminates the harmful consequences. In this context, it is necessary to encourage the adoption of effective measures to address the problem effectively and, at a later stage, to achieve the establishment of a single legal framework governing the institution of dual (multiple) citizenship.

At the same time, in order to create such a single legal framework governing the institution of dual (multiple) citizenship, it is important, first of all, to have a coordinated and purposeful policy based on a common universal outlook, moral values and moral principles. It is also necessary to try to bring the existing legal systems of states in this area as close as possible. It should be noted that in practice we are witnessing an increasing number of citizens of several countries. As noted above, most states either allow or formally promote dual (multiple) citizenship, as well as successfully address problems in this area. In short, finding a legal solution to this problem based on the expansion of human rights and freedoms should be considered the right way.

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Date of receipt of the article in the Editorial Office
(02.07.2020)