INTERNATIONAL LAW AND INTERNATIONAL RELATIONS

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PROTECTION OF HUMAN RIGHTS IN THE TERRITORIES OF UNRECOGNIZED GEOPOLITICAL ENTITIES: INTERNATIONAL LAW ANALYSIS

The article provides for the analysis of the problem of guarantees and protection of human rights in the territories of unrecognized geopolitical entities. The article emphasizes that the very existence of unrecognized entities represents a threat to adequate protection of human rights. The article highlights the following main issues: 1) attitude of international human rights institutions to acts issued by unrecognized entities; 2) effect of non-recognition on the increase in the number of stateless persons; 3) international obligations of unrecognized states in the field of human rights protection. The conclusion is made that the impossibility of reducing the level of protection of human rights in the territory concerned should be determined by international law as a condition for recognition; but now such a requirement cannot be considered universal.

Keywords: international law, recognition, human rights, unrecognized entities, violations of international law, international obligations.

Today, the respect for and protection of human rights is an important goal of the international community. It is indisputable that in the modern world the universality of the problem of protection of human rights is recognized by the states on the international level[1]. At the same time, the existence of unrecognized entities has its influence on such protection, creating certain special conditions for it. Taking into account that the international community is developing dynamically, and the non-recognition of certain entities as international law subjects continues to take place in the practice of international relations, the question of the impact of this phenomenon on the protection of the rights of people living in a particular territory is of paramount importance. The purpose of the article is to study the problems of human rights protection in the territories of unrecognized geopolitical entities.

The link between human rights protection and the institute of recognition exists at the theoretical level, since it is often used to deny the possibility of applying exclusively constitutive theory of recognition. In particular, it is noted that the essential disadvantage of this theory is that if, before recognition, a new entity is not a subject of international law, then it has not only no rights in question but also no responsibilities. That is why the question about the existence of a duty to adhere to the principle of human rights protection is controversial. In practice, this can lead to extremely negative consequences and looks somewhat absurd in the light of the principles of modern international law, and this example can explain the need to combine constitutive and declaratory theories of recognition[2].

In addition, today it is often noted that almost all self-proclaimed unrecognized entities are not independent in the economic and political sense. Such entities should constantly take into account the interests of the state, which is their original patron, and coordinate their own policies with that state. They need to approve their own actions or, at least, cannot substantially deviate from the instructions of a particular subject of international law. Moreover, provided that the state in question has a low level of human rights protection, this problem is automatically transferred to the unrecognized entity. In addition,

[1] Мицик, В.В. (2010). *Права людини у міжнародному праві. Міжнародно-правові механізми захисту*. Київ: Видавничий дім «Промені», 17.
[2] Shaw, M.N. (2008). *International law: Sixth edition*. Cambridge: Cambridge University press, 447.

persistent economic problems do not promote the establishment of a regime that can abandon human rights violations as an instrument to preserve its own influence on society[1].

For example, in 2001 at the meeting of the so-called foreign ministers of Abkhazia, the Nagorno-Karabakh Republic, Gagauzia, the Pridnestrovian Moldavian Republic (Transnistria) and South Ossetia a Commonwealth of Unrecognized States was established (as an informal association created for consultations, mutual assistance, coordination and joint actions by unrecognized self-proclaimed states). Subsequently, on 4 July 2006, in Moscow the so-called leaders of the parliaments of three unrecognized republics (Abkhazia, Transnistria and South Ossetia) signed bilateral cooperation agreements, the texts of which contained identical provisions. The place of signing the agreements and the identity of the texts testify the artificial negotiations and the subordination of these processes to the Russian Federation. Paragraph 4 of these agreements contained the following provision:

"The parties intend to systematically exchange information on current legislative activity, databases and official publications, as well as to further harmonize their law-making activity with the legislation of the Russian Federation as a state of developed parliamentarism and legal system".[2]

That is, it can be stated that all human rights violations taking place in Russia will, at least, be copied in unrecognized entities. At the same time, questions arise from the very wording of the agreement, since it is not entirely clear how the law-making activity and legislation (in fact, the process and the result of such a process) can be harmonized.

Another controversial issue is the attitude of international human rights institutions to acts issued by unrecognized entities. For example, the European Court of Human Rights in the *Loizidou Case* affirmed that only the government of Cyprus was internationally recognized as the Government of the Republic of Cyprus. The ECtHR noted that this fact was confirmed by international practice, while numerous unambiguous resolutions indicated that the international community did not recognize the TRNC as a state in accordance with the principles of international law. In those circumstances, the Court did not, for the purposes of the Convention, recognize the validity of such provisions as Article 159 of the TRNC Constitution. Therefore, the applicant in a case who had no access to his property in northern Cyprus, as a result of the presence of Turkish troops there, was not considered by the Court to lose his ownership of his property. At the same time, in another judgement, which somewhat contradicted the above-mentioned arguments, the ECtHR reached other conclusions than in the *Loizidou Case*. In the case of *Cyprus v. Turkey*, the ECtHR noted that life is continuing for the inhabitants of certain territory. This life, according to the Court, must correspond to a certain level, which must be defended de facto by the existing authorities, including the courts; and, precisely in the interests of the local population, the acts of such a government should not simply be ignored by third countries or international organizations, especially the courts, including the ECtHR itself[3]. Thus, the ECtHR does not have a single approach to accepting or not accepting acts issued by unrecognized entities and takes into account the circumstances of each particular case.

Another issue is the enforcement of ECtHR judgments in cases of non-recognition of one entity by another. A striking example is Turkey's recent refusal to comply with the ECtHR judgment of 12 May 2014 on the recovery to the Republic of Cyprus of compensation in the amount of 90 million euros. The next day Turkey officially refused to comply with this judgment of the ECtHR. Turkish Foreign Minister Ahmet Davutoğlu then commented on the following: "We do not intend to pay this amount to a state that we do not recognize"[4]. It is obvious that solving such problems is possible only by refusing to use non-recognition as an instrument for political pressure and creating a universal codification on recognition.

In general, the Western doctrine almost unanimously supports the idea that one of the functions of protecting human rights in the world community is to determine the responsible authority in a certain

[1] Nuta, C. Human Rights in Internationally Unrecognized Entities: The Cases of Abkhazia and Transnistria. What Role for the European Union? *College of Europe*. <https://www.coleurope.eu/system/files_force/research-paper/nuta_correct.pdf?download=1> (2019, March, 12).

[2] Соглашения между парламентами Абхазии, Приднестровья и Южной Осетии. *ИА REGNUM*. <https://regnum.ru/news/667681.html> (2019, March, 12).

[3] Akgün, C. The Case of TRNC in the context of Recognition of States under International Law. *Ankara Barosu*. <http://www.ankarabarosu.org.tr/siteler/AnkaraBarReview/tekmakale/2010-1/1.pdf> (2019, March, 12).

[4] Туреччина відмовилася платити Кіпру компенсацію за військову інтервенцію. *Західна інформаційна корпорація*. <http://zik.ua/ua/news/2014/05/17/turechchyna_vidmovylasya_platyty_kipru_kompensatsiyu_za_viyskovu_interventsiyu_488684> (2019, March, 12).

territory, as well as the conditions for the exercise of such power, regardless of its form. The practice of the ECtHR indicates that the actual existence of unrecognized entities and regimes in the European region and beyond, establishes the need to deepen research concerning the conceptualization of human rights in the "non-state space"[1].

Human rights activists argue that cases of non-recognition of states also result in the appearance of stateless persons who are not protected adequately. For example, "during 2014-2015, the Odessa Regional Organization of the All-Ukrainian NGO "The Committee of Voters of Ukraine" and the All-Ukrainian Public Partnership "The Initiative on the Elimination of Statelessness in Ukraine", with the financial support of the European Union, identified significant problems of statelessness in Ukraine on the example of individual pilot regions". According to the information of the State Migration Service of Ukraine, as of 30 June 2013, permanent or temporary residence permits in Ukraine were received by about 6,5 thousand stateless persons. At the same time, UNHCR considers that at the end of 2013 in Ukraine there were over 33 thousand stateless persons or persons with indefinite citizenship. The study found that among such persons there are those who immigrated to Ukraine with documents of unrecognized states (for example, the Pridnestrovian Moldavian Republic)[2]. That is, the analysis allowed to conclude that "Ukraine, for its part, does not recognize documents (passports, birth certificates, etc.) issued by the actual authorities of the Pridnestrovian Moldavian Republic (PMR), considering this territory as an integral part of the Republic of Moldova. Thus, persons born on the territory of the PMR and having exclusively documents issued by the PMR are, in fact, stateless persons. At the same time, in most cases, such persons have the right to obtain the citizenship of the Republic of Moldova (it is worth noting that the practice of obtaining the citizenship of a recognized state, Moldova or the Russian Federation, is widespread among the inhabitants of the PMR)"[3].

Accordingly, a situation occurs in which a person either is forced to obtain the citizenship of the recognized state, or becomes a stateless person. Indeed, even if some countries recognize documents of unrecognized entities that relate to the daily life of people (that is, passports), it is a question of the need to identify a person. Citizenship as a political and legal relationship between a person and a state (which is also a guarantee of personal protection by the state) has no place. For example, a person cannot rely on consular protection.

The current practice of international relations also demonstrates that human rights protection can be used as justification for violating international law (in particular, concerning recognition issues). For example, on 18 February 2017, the decree of the President of the Russian Federation "On recognition in the Russian Federation of documents and registration marks of vehicles issued to citizens of Ukraine and stateless persons who are permanently residing in the territories of certain districts of Donetsk and Luhansk regions of Ukraine" was officially published[4]. The declared (but not true) purpose of this act is the protection of human rights and freedoms.

Given the existence of different interpretations of this decree and its legal consequences, an international law analysis of this issue is necessary in the context of the aggression of the Russian Federation against Ukraine.

The given decree established that "temporarily, for the period before the political settlement of the situation in certain districts of Donetsk and Luhansk regions of Ukraine on the basis of Minsk arrangements", certain documents as well as registration marks of vehicles, "issued by the relevant authorities (organizations), which actually operate in the territories of the indicated districts, to citizens of

[1] Cullen, A., Wheatley, S. (2013). The Human Rights of Individuals in De Facto Regimes under the European Convention on Human Rights. *Human Rights Law Review*, *13, 4*, 691–728.

[2] Юридичні привиди: моніторинговий звіт. *Legal Space*. <http://legalspace.org/en/odesa-oblast/odeska-oblasna-organizatsiya-vseukrajinskoji-gromadskoji-organizatsiji-komitet-vibortsiv-ukrajini/item/download/1021_e30e15792e4c79931f5ae2b0acee25ac> (2019, March, 12).

[3] Юридичні привиди: моніторинговий звіт. *Legal Space*. <http://legalspace.org/en/odesa-oblast/odeska-oblasna-organizatsiya-vseukrajinskoji-gromadskoji-organizatsiji-komitet-vibortsiv-ukrajini/item/download/1021_e30e15792e4c79931f5ae2b0acee25ac> (2019, March, 12).

[4] *Указ о признании документов, выданных гражданам Украины и лицам без гражданства, проживающим на территориях отдельных районов Донецкой и Луганской областей Украины 2017* (Президент России). *Официальные сетевые ресурсы Президента России.* <http://kremlin.ru/events/president/news/53895> (2019, March, 12).

Ukraine and stateless persons, who permanently reside in these territories" are valid in the Russian Federation.[1]. The decree also gave these persons the right to enter the territory of Russia without visas on the basis of the said documents.

Comments concerning the decree of the Russian President were very different; while a number of journalists, politicians and civil society representatives not only said that such a document contradicted international law and Minsk arrangements, but even stated that this decree testified to the international recognition of the so-called "People's Republics". For example, the Secretary of the National Security and Defence Council of Ukraine argued that "by signing this decree, Putin legally recognized quasi-state terrorist groups"[2]. «*The New York Times*» stipulated, «Mr. Putin's decree stopped short of formally recognizing the two breakaway provinces as independent states»[3].

There is no doubt that there was no recognition of states. First, this fact is confirmed by separate wording of the decree (for example, references to certain districts of Donetsk and Luhansk regions as territories of Ukraine)[4]. In addition, the Russian Federation officially denied recognition. In particular, the press secretary of the President of Russia Dmitry Peskov said: "These are not documents of an officially recognized state ... No, it is de facto issued document"[5].

In addition, modern international practice proves that the recognition of certain documents, statuses in no way indicates the recognition as a state. British *Foreign Corporations Act 1991*[6] or a relatively new court judgment *Kibris Turk Hava Yoralli and CTA Holidays v Secretary of State for Transport*[7] may serve as examples. In particular, the said law allows the determination of the status of foreign corporations in accordance with the legislation of an unrecognized state, if such legislation is applied in such territory by the established judicial system. In this case, the British court stressed that acts of an unrecognized state could not be ignored if they were not public in nature and were related to the everyday life of people.

An important position was formulated by the International Court of Justice in one of its advisory opinions (*the Namibia case*). It was specified: "In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory"[8]. This situation has many differences with the Ukrainian case, but it shows the general tendency of modern international law, which is reflected in the institute of recognition: the need to protect human rights prevails over almost any other factor. That is why the recognition of certain documents that are

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[1] *Указ о признании документов, выданных гражданам Украины и лицам без гражданства, проживающим на территориях отдельных районов Донецкой и Луганской областей Украины 2017* (Президент России). *Официальные сетевые ресурсы Президента России*. <http://kremlin.ru/events/president/news/53895> (2019, March, 12).

[2] Турчинов: Підписавши указ про визнання паспортів та інших документів так званих ЛНР та ДНР, Путін вийшов з Мінського процесу. *Рада національної безпеки і оборони України*. <http://www.rnbo.gov.ua/news/2704.html> (2019, March, 12).

[3] Russia Will Accept Passports Issued by East Ukraine Separatists. *The New York Times*. <https://www.nytimes.com/2017/02/19/world/europe/russia-east-ukraine-separatists.html?_r=0> (2019, March, 12).

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[6] Foreign Corporations Act 1991. *The National Archives*. <http://www.legislation.gov.uk/ukpga/1991/44/section/1?view=extent#extent%3Dwales> (2019, March, 12).

[7] *Kibris Turk Hava Yoralli and CTA Holidays v Secretary of State for Transport* [2009] EWHC 1918 (Admin). <http://users.ox.ac.uk/~sann2029/Judgment%20-%20Kibris%20Turk%20Hava%20Yollari%20v%20SS%20for%20Transport%20and%20The%20Republic%20of%20Cyprus.pdf> (2019, March, 12).

[8] *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)* [1971]. ICJ. <https://www.icj-cij.org/files/case-related/53/053-19710621-ADV-01-00-EN.pdf> (2019, March, 12).

necessary for residents of a particular territory does not indicate the recognition of the state or government and, as a rule, is not considered as an internationally wrongful act.

However, the decree of the President of the Russian Federation of 18 February 2017 has a completely different legal nature, because it is not about abstract unrecognized entities, but about the occupied territories. Ukraine's loss of control over these territories was caused by the aggression of Russia, which, among other things, has led to widespread human rights violations. That is why the said decree cannot be considered as aimed at protecting human rights, but is an integral part of aggression and violation of the sovereignty of Ukraine. At the same time, the wording of the decree "issued by the relevant authorities (organizations), which actually operate in the territories" (in relation to the relevant documents) is rather vague and gives Ukraine the opportunity to speak about another proof that Russia established in certain districts of Donetsk and Luhansk regions the occupation administration (i.e. to declare that the above-mentioned authorities are occupational bodies of Russia). Accordingly, conclusion may be made that the Russian Federation recognized its own occupation, and not the so-called "People's Republics".

Another issue is the commitment in the field of human rights of entities not recognized by the international community or recognized by just a part of the states. In the doctrine of international law it is assumed that unrecognized regimes (entities) have a partial international legal personality and must adhere to both treaty and customary international law. The obligation to adhere to basic human rights arises for such entities primarily due to the fact that the international customary law operates, and such obligations have *erga omnes* nature. At the same time, reference is also made to the provisions of the treaty law, when the creation and establishment of the regime became possible due to the military presence of a state that falls under a particular treaty. Such a state will be responsible for making compensations to victims of human rights violations.

If human rights abuses are related only to unrecognized entities, the only means of ensuring the protection of human rights are the customary international law and political pressure from the UN and the international community. Since unrecognized regimes tend to seek international recognition, this pressure can be effective[1].

Other important issue is the existence of obligations of the new entity not to worsen the level of human rights protection that existed in the respective territory. Most unrecognized entities appear as a result of separation from the existing state – that is why human rights defenders insist that the population, which finds itself in an unrecognized formation, should not lose the amount of rights that it had before.

Unfortunately, such a statement is not always true. First of all, when it comes to social and economic rights, they can often not be preserved for objective reasons (for example, the right to social protection, etc.). After all, unrecognized entity due to a number of economic reasons may not be able to maintain the level of social benefits that existed. Similar problems can arise with the level of unemployment, free education or medicine, and so on.

In addition, for example, Vienna Convention on succession of States in respect of treaties[2] declares, that "succession of States" means the replacement of one State by another in the responsibility for the international relations of territory; "predecessor State" means the State which has been replaced by another State on the occurrence of a succession of States, "successor State" means the State which has replaced another State on the occurrence of a succession of States; "date of the succession of States" means the date upon which the successor State replaced the predecessor State in the responsibility for the international relations of the territory to which the succession of States relates. That is, if a state, which for a specific situation should be defined as a "predecessor State", and a significant part of the international community do not recognize a certain entity as a state, this entity cannot be considered as the successor as to treaties, in particular in the field of human rights.

However, all these facts do not deprive the relevant entity of the need to adhere to the customary rules of international law. That is, universal customary norms, obligations *erga omnes* create the most effective guarantee of the observance of human rights in the territory of unrecognized entities.

[1] Heintze, H.-J. (2009). Are De Facto Regimes Bound by Human Rights? *OSCE Yearbook*. <https://ifsh.de/file-CORE/documents/yearbook/english/09/Heintze-en.pdf> (2019, March, 12).

[2] *Vienna Convention on succession of States in respect of treaties 1978* (United Nations Conference on the Succession of States in respect of Treaties). <https://treaties.un.org/doc/Treaties/1996/11/19961106%2005-51%20AM/Ch_XXIII_02.pdf> (2019, March, 12).

Some examples of actions of recognized states are not in favour of the thesis that a new entity cannot reduce the level of protection of human rights that existed in the territory. For example, the case when, on 12 December 1969, Greece denounced the European Convention on Human Rights is well-known. The denunciation should have been effective on 13 June 1970. On 18 November 1974, Greece again became a party to the Convention[1]. That is, the state may, at its own discretion, change the mode of protection of human rights in its territory (in particular, restrict it), if it does not contradict its obligations *erga omnes.*

The impossibility of reducing the level of human rights protection in the area concerned is currently not a clear requirement for unrecognized entities within the framework of international law (the requirement is only respect for human rights in general and in accordance with customary rules).

Thus, conclusion may be made that the existence of unrecognized entities has a tangible impact on the effectiveness of the protection of human rights, and the above issues should be taken into account when developing a universal codification on recognition issues. Today all international law has a humanist orientation, and aspects that are more or less related to human rights must receive a well-grounded and coherent settlement.

Another conclusion may be made that in the universal codification on issues of recognition it is expedient to declare the inability to reduce the level of human rights protection in the territory concerned as a condition for recognition. After all, a person living in the territory concerned should not become hostage to geopolitical changes. In addition, a certain new entity can claim the status of the state in the XXI century only if it is able to guarantee an adequate level of human rights protection.

A particular problem is an attempt by certain states to use human rights protection to justify their own internationally wrongful acts, which is unacceptable.

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