Determination of the nationality of the legal entity on the basis of the theory of control

Determinación de la nacionalidad de la entidad jurídica sobre la base de la teoría del control

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ABSTRACT

The purpose of this article is to analyze the theory of control as a specific method of determining the nationality of a legal entity in international private law. The search for the definition and content of the control theory is usually accompanied by the statement that, unlike all other theories, the application of this theory takes into account not the legal entity itself as a whole, but the nationality of natural persons behind it (founders, participants). On the basis of the present study, it can be concluded that the theory of control is an exceptional and the only method guaranteeing the determination of the real nationality of the legal person with a view to conferring on it certain rights (benefits, privileges). This also coincides with the protection of state sovereignty and national security as confirmed by numerous examples from practice.

Keywords: Nationality, legal person, personal law, theory of control.

RESUMEN

El propósito de este artículo es analizar la teoría del control como un método específico para determinar la nacionalidad de una entidad jurídica en el derecho privado internacional. La búsqueda de la definición y el contenido de la teoría de control suele ir acompañada de la afirmación de que, a diferencia de todas las demás teorías, la aplicación de esta teoría no tiene en cuenta la entidad jurídica en sí, sino la nacionalidad de las personas físicas que la respaldan (fundadores, participantes). Sobre la base del presente estudio, se puede concluir que la teoría del control es un método excepcional y único que garantiza la determinación de la nacionalidad real de la persona jurídica con el fin de conferirle ciertos derechos (beneficios, privilegios). Esto también coincide con la protección de la soberanía estatal y la seguridad nacional, como lo confirman numerosos ejemplos de la práctica.

Palabras clave: nacionalidad, persona jurídica, derecho personal, teoría del control.

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INTRODUCTION

The changes taking place in the world, manifested in the unification and harmonization of private law of different states, do not affect the issue of regulation of the legal status of a legal entity globally: there is an enviable consistency, even despite the emergence of European legislation on the Statute of the European Company. It is understandable, because the unification of law is justified and useful when it provides common interest for all participating states, but in the event of a clash of opposing economic interests it can be harmful (Voznesenskaya, 2017); in other words, in matters of legal regulation of a legal entity, foreign investment, not to mention economic security, the interests of states with different levels of economic development are extremely different. The Statute of the European Company has unified some of the questions regarding the most common forms of legal entities in the business sphere, leaving the key ones to the discretion of the national legislator and thus preserving the approach to the legal entity as a generation of national law; therefore, the thesis that it is impossible to create one legal entity simultaneously on the basis of two national laws is still valid. The practice of the European Court of Justice "squeakily" tries to pave the way for the obligations of European States in terms of the free movement of goods, works and services resulting from the signing of the 1957 Treaty on the Functioning of the European Union.

In other States, the issue of unification of legislation, in particular on legal entities, is not even on the agenda or in its infancy. As for the Russian Federation, since 2013 there has been a tendency to detail the collision regulation of the legal status of legal entities: the number of criteria for determining the personal law of a legal entity has increased, their hierarchy has been established, and exceptions to the general rule have been added. Federal Law No. 290-FZ of 3 August 2018 "On International Companies" (Collection of Legislation of the Russian Federation. 2018. No. 32 (part I). Art. 5083) Russia has launched a "pilot project", which allows for changes in the personal law of a legal entity (an international company) in strictly defined areas.

However, there may still be situations in which a State is obliged to provide diplomatic protection to private actors or to provide, under an international treaty, a certain regime for the conduct of economic activities on its territory; under such circumstances, it is clear that the question of the establishment of the nationality of a legal person for legal science and practice does not lose its importance.

In this regard, it is very appropriate to recall the words of N.N. Voznesenskaya, who pointed out that the problem of determining the nationality of a legal entity rarely arises as an independent one, usually it is tied to another problem, which helps to solve (Voznesenskaya, 2017). However, there is a long-standing dilemma regarding the unity and/or priority of the criteria for determining the nationality of a legal entity. The most controversial among them is the theory of control, which has determined the research interest in it.

Tasks

Accordingly, the purpose of this article is to analyse the theory of control as a specific method of determining the nationality of a legal person in private international law, with specific objectives: 1) analysis of the concepts of "nationality", "state affiliation" and "personal law (personal statute)" of a legal entity, their ratio; 2) consideration of the history of the theory of control, including the definition of the legal nature of the theory of control, the mechanism of action of the criterion of control; 3) analysis of the spheres of application of the theory of control in modern conditions and the prospects of its use in determining the nationality of a legal entity.

Methods

In order to check and substantiate the author's position on the subject of this article, there was a need to refer to the analysis of regulatory sources, respectively, an important place in the study is occupied by the regulatory-dogmatic method. Since one of the objectives of this article is to build a perspective for the use of control theory in international private law, its achievement is impossible without legal modeling. When writing this article at the stage of systematization of approaches to the theory of control, revealing its legal nature, a descriptive method was widely used, which allowed by disclosing their content to highlight the most relevant information. Later on, the selected data were processed by using logical methods (deduction, induction, analysis, synthesis). The key method used in this article is the comparative legal method, since the study of international legal problems is inconceivable without comparative jurisprudence. An important role in the study was played by the historical-legal method: within the framework of this article, the works of both Soviet and foreign international experts, dating back to the beginning of the 20th century, were analyzed. In addition, the historical method is invaluable from the point of view of the need to identify outdated norms and approaches in domestic international private law, which should be abandoned. Taking into account the various situations of implementing the theory of control, as well as the search for areas of its possible application predetermined the need to apply the heuristic method. Since the very appearance and further application of the theory of control is connected with the protection of national security, internal and external interests of the state, the rejection of the axiological method of research is also impossible. By means of the method of functional analysis, the advantages and disadvantages of the theory of control were systematized. Due to some grammatical and terminological drawbacks of the formulations accepted in the theory and practice of private international law, the linguistic method was used to a sufficient extent.

DEVELOPMENT

In international private law, when determining the nationality vs. nationality of a personal law (personal statute) of a legal entity, it is customary to distinguish four basic theories (criteria): incorporation (law of the place of registration); sedentarization (law of the place of location of management bodies); center of exploitation (law of the place of economic activity); control (Ladyzhenskiy, 1957; Lunts, 2002; Boguslavsky, 2009; Doronina, 2018; Asoskov, 2015; Inshakova, 2015; Kadysheva, 2002; Young, 1908; Rogerson, 2013; Briggs, 2013; Drury, 2009).

As can be seen from the list presented, the legal status of a legal person remains that almost exclusive area of conflict of laws regulation where there is no or virtually no room for party autonomy, although the idea of giving the personal law of a legal person to the discretion of private entities is not new and has previously been proposed by the French scientists P. Armignon and J. Mazeau (Voznesenskaya, 2013). Here, for the sake of justice, it is necessary to make a small clarification, according to which the opinion of the domestic international lawyer of the last century, M.I. Brun, that "the will is not so autonomous that the legal entity may have the nationality that the national legislator does not want to recognize" (Brun, 1915), is no longer absolutely true today in the light of the decision of the European Court of Justice in the case of S-378/10, VALE Építési Kft, which authorized the transformation of the legal entity by changing its personal law.

In some studies, the authors develop mixed theories (e.g., the theory of G.Grasman's differentiation, O.Sandrock's theory of superposia, D.Zimmer's theory of limited incorporation criterion) (Asoskov, 2015) or apply multiple criteria (tests) to determine the nationality of a legal entity (Fillers, 2014; Voznesenskaya, 2013; Novikova, 2013).

Among the plenty of discussion issues related to the establishment of nationality vs. state affiliation vs. personal law (personal statute) of a legal entity, one should start with the ratio of these three concepts. Characteristically, already here begins the disagreement and the formulation of the general concept does not differ in certainty among the scientific community: that as a result all criteria and the theory of control as one of them are defined.

Thus, for example, a number of domestic scientists speak about the state ownership of a legal entity and the criteria for its definition (Luntz, 2002; Boguslavsky, 2009), others - about nationality (Ladyzhensky, 1957; Doronina, 2018; Inshakova, 2015; Kanashevsky, 2009; Kadysheva, 2002; Monastyrskaya, 2011), and the third - on the personal law (personal statute) of the legal person (Dmitrieva, 2009; Asoskov, 2015). There are also such scholars who extend the criteria jointly to the concepts of "nationality" and "personal law" of a legal entity, which obviously suggests their equivalence (Voznesenskaya, 2017). At the same time, although there is a differentiation between "nationality" and "state affiliation" of a legal entity, some nuances are noted: homogeneity of concepts, their belonging to public law, as opposed to the concept of "personal law (personal statute)" of a legal entity, which is a concept of private international law; a more complete scope of the concept of nationality of a legal entity in determining its legal status, the personal law of a legal entity defines its concept only in the volume of private law (Asoskov, 2015). In the third edition of the textbook on private international law, edited by G.K. Dmitrieva, the criteria for determining the personal law were separated), and the criteria for determining the nationality of a legal entity (control theory).

The concept of "nationality" is widely used in foreign English-language legal studies (Young, 1908; Fillers, 2014; Muchlinski, 2009; Rodley, 1971; Astorga, 2007), and within the framework of conflict law - the concept of "personal law" (Rogerson, 2013; Calster, 2016; Briggs, 2013). However, the use of the concept of "nationality" poses a certain danger, because it contains not only a legal but also a political context (Young, 1908; Kadysheva, 2002). In the legal sense, the author understands the nationality of a legal person as the application of the legislation of a state to a legal person as a personal law (Young, 1908).

As noted by Y.I. Monastyrskaya, the attempts to define the criteria of nationality of a legal entity began to be undertaken by scientists from different countries for a long time. And the author classifies all the above mentioned theories (criteria) after A.M. Gorodissky into two groups: 1) collision; 2) material-legal; the latter include, in addition to the theory of sedentarization and the center of exploitation, also the theory of control (Monastyrskaya, 2011).

The search for the definition and content of the theory of control is usually accompanied by the statement that, unlike all other theories, when applying the abovementioned one, not the legal entity itself as a whole is taken into account, but the nationality of natural persons behind it (founders, participants). According to E.H. Young, this is a natural conclusion from another theory - the nature of the legal entity, which is supported in the U.S. (Young, 1908; Monastyrskaya, 2011). According to this theory, "a legal entity is no more than a light veil, thrown on the members of the group, in order to unite them; it condenses them into one person, which is no different from them, because it is they themselves. His nationality cannot be other than their nationality" (Ladyzhensky, 1957). The criterion of control requires the use of the formula "removal of the corporate veil"; and then the nationality of the participants (shareholders) comes first (Astorga, 2007). The corporate veil descends and hides the participants when it comes to corporate responsibility; and vice versa, the corporate veil rises as soon as it comes to the rights and interests of participants.

As O.V. Kadysheva rightly points out, the application of the criterion of control, when the very figure of a legal

entity is discarded, is exceptional in international practice and its application is always determined by special purposes (Kadysheva, 2002). Indeed, if we recall the history of the appearance (World War I) and application of this theory (World War II, the fight against terrorist organizations, international sanctions), we can understand these special goals: the preservation of state sovereignty, maintenance of its economic security (Lunts, 2002; Boguslavsky, 2009; Dmitrieva G.K. (2009).

The disadvantages of the theory of control, which are shared by many domestic and foreign scientists, are the following. First, there is no consensus among scholars on the definition of this criterion: control can be established by nationality of the majority of persons owning shares, or by nationality of persons owning shares for a larger sum (Ladyzhensky, 1957; Kadysheva, 2002) which generally illustrates the low effectiveness of the criterion for a legal entity with a multinational composition (Boguslavsky, 2009; Ladyzhensky, 1957). Secondly, this criterion is not characterized by stability and staticity: usually the legal category "nationality" of individuals and legal entities serves for permanent application and is rarely subject to change. At the same time, it is clear that the composition of participants of a legal entity and their shares in it may change over time, which will entail a change in the nationality of the legal entity. In some cases, the phrase "over time" is equivalent to "during the day" (Boguslavsky, 2009). Third, for some types of legal entities the criterion of control is difficult to apply, due to a specific subject or object, for example: it is difficult to establish the origin of capital in anonymous companies or the nationality of shareholders of bearer shares (Ladyzhensky, 1957). As a result, according to N.N. Voznesenskaya, the practical significance of this criterion is not great, because it is not clear how to apply it (Voznesenskaya, 2017; Young, 1908).

Returning to the question of the origin and development of the theory of control, it is necessary to point out that its appearance is normatively connected with the publication of legislation on trade with hostile aliens, originally in the United Kingdom (1914, 1939) and the United States (1917). In the English law of Trading with the Enemy Act of 1939, "enemy" is understood, among other things, according to part 2 (c), to mean any organization (corporate or unitary) operating in any place, if and because this organization is controlled by a person understood as "enemy" according to this part (URL: http://www.legislation.gov.uk (contact date: 08.08.2019). The serious consequences of classifying a legal entity (companies, corporations) as an enemy in the Anglo-Saxon group of countries are restrictions on substantive and procedural rights, such as: allowing the use of the institution of private property confiscation, deprivation of the right of access to the national court of the respective state as a plaintiff (Cheshire, 1982; Monastyrskaya, 2011).

The present legislation was developed for the case of wartime and for military conditions, but it has been in force for 100 years in the mentioned states, and has also become widespread in other countries, differing only in the specifics of restrictive measures - material, procedural or mixed. Moreover, in the U.S., it became the basis for the draft international sanctions applied by the President in both wartime and peacetime (Coates, 2018). What began as an attempt to "define, regulate and punish trade with the enemy has become a broad document for all time, everywhere and against undefined enemies" [Ibid.] And then the historian concludes: "Peacetime has become a permanent war, and centuries-old legislation on past wars continues to define the present.

Thus, today, in addition to vs. also for the purposes of international sanctions, the theory of control is widely applied in international investment law, which is illustrated both by international treaties and national legislation of different states. Among the first ones is the Convention on the Settlement of Investment Disputes of 18 March 1965.

Thus, "persons of a Contracting State" shall be understood to mean, inter alia, any legal person who is a legal person of a Contracting State other than a State acting as a party to the dispute on the date of agreement to submit disputes to the Centre for conciliation or arbitration, as well as any legal person who is a legal person of the Contracting State acting as a party to the dispute on the date of agreement, if by reason of control exercised by foreign nationals.

The practice of ICSID investment disputes, analyzed by scientists, shows that the court often proceeds from a literal interpretation of the provisions of international treaties, which often leads to the problem of migration of investors (Novikova, 2013; Fillers, 2014); that is why we hear proposals on the use of a set of criteria for determining the nationality of an investor, the use of not only the legal (formal) method, but also the economic (Voznesenskaya, 2017; Astorga, 2007; Fillers, 2014), which actually implies a reference to the theory of control, since "for any state that allows foreign capital to enter its territory, especially in important areas of the economy, it should be not indifferent to who actually owns this or that large enterprise, whose capitals and interests are represented in it".

A departure from the literal interpretation is provided, among other things, by reforming the national legislation of states. Thus, in Russia on September 30, 2016, to replace the Resolution of the Government of the Russian Federation No. 456 dated June 9, 2001, the Resolution of the Government of the Russian Federation No. 992 "On Conclusion of International Treaties of the Russian Federation on the Issues of Investment Promotion and Protection" was adopted (Collection of Legislation of the Russian Federation No. 41. Art. 5836), in paragraph 10 of Annex No. 2 to the Regulation on Conclusion of International Treaties of the Russian Federation on the Issues of Investment Promotion and Protection, which contains a protective clause according to which the agreement should not be applied to the Investor.

At the same time, the scope of application of the theory of control in international and foreign legislation is not limited to the issues of sovereignty of the state, protection of national security of the state. For example, the theory of control is uniquely refracted in the rules of the current international law governing the procedure of arbitration disputes, in particular, in the Arbitration Rules of the London Court of International Arbitration as amended in 2014. Thus, as a general rule, it is prohibited to select arbitrators of the same nationality as the parties if the latter have different, distinct nationalities. At the same time, it is envisaged that the concept of citizenship of a party includes the citizenship of the owners of the controlling interest or the majority of shares in the share capital (Art. 6.2. Arbitration Rules of the London Court of International Arbitration (URL: https: //lcia.org/Dispute_Resolution_Services/lcia-arbitration-rules-2014.aspx (reference date: 08.08.2019)). Thus, in this case, the theory of control is applied to justify the prohibition on selecting an arbitrator (unless the parties have agreed otherwise) in order to achieve an impartial, independent arbitration, which ultimately serves to establish and maintain the rule of law.

For Russia, the urgency of the problem of determining the nationality of a legal entity became apparent only with the adoption of the Law of the RSFSR No. 1545-1 "On Foreign Investments" dated July 4, 1991. At the time of the existence of the USSR, there were no foreign legal entities in the country, no foreign capital was allowed, and the whole problem was limited only to the determination of the legal status of foreign counterparties of Soviet foreign trade associations in foreign trade transactions (Voznesenskaya, 2017).

As far as Russian private international law is concerned, a cursory glance at Article 1202 of the Civil Code of the Russian Federation leads to a hasty conclusion that there is no such criterion in Russian private international law. In this regard, it is customary to say that in domestic legislation the theory of control is used indirectly, in addition (Boguslavsky, 2009), in particular, when establishing restrictions on the involvement of foreign capital in certain areas of activity: para. 5 h. 2 Article 18 of the Federal Law No. 395-1 of December 2, 1990 "On Banks and Banking Activities" (Collection of Legislation of the Russian Federation. 1996. No. 6. Article 492); para. Article 6, paragraph 3, of Federal Law No. 4015-1 of 27 November 1992 "On the organization of insurance business in the Russian Federation". (News of SNA and RF Armed Forces. 1993. N2. Art. 56); part. Article 19.1, paragraph 2, of Act No. 2124-1 of 27 December 1991 on the mass media (News of SNA and RF Armed Forces. 1992. N7. Art. 300); part. Article 5, paragraph 3, of Federal Law No. 57-FZ of 29 April 2008 "On the Procedure for Making Foreign Investments in Economic Entities of Strategic Significance for Ensuring the Country's Defence and State Security" (Collection of Legislation of the Russian Federation, 2008, No. 18, Article 1940), etc.

At the same time, within the framework of international treaties with Russia's participation, on the one hand, and as a reaction to unfriendly actions at the international level (the principle of reciprocity), on the other hand, this theory is applied periodically in order to ensure the security of the state. The mechanism of action in the first case is provided by the norms of international law: the UN Security Council issues a resolution binding on all participating States, it is implemented in the Russian Federation in the form of a corresponding decree of the President of the Russian Federation, for example: On measures to implement the UN Security Council Resolution No. 1267 of October 15, 1999 (Collection of Legislation of the Russian Federation. 2000. No. 19. Art. 20159); On measures to implement the UN Security Council resolutions No. 1388 of January 15, 2002 and No. 1390 of January 16, 2002 (Collection of laws). In particular, according to paragraph 1 (b) of Decree No. 786 of the President of the Russian Federation, sanctions apply to property owned or controlled directly or indirectly by the Taliban (the Taliban is an organization whose activities are prohibited in the Russian Federation); according to paragraph 1 (a) of Decree No. 393 of the President of the Russian Federation - owned or controlled directly or indirectly by them or by persons acting on their behalf or at their direction.

With regard to the second case, characterized by a reaction to unfriendly actions of other states and consisting in the introduction of restrictive measures by virtue of the principle of reciprocity, the President of the Russian Federation issues a decree, which may be specified by resolutions of the Government of the Russian Federation, for example: On the application of certain special economic measures to ensure the security of the Russian Federation of 6 August 2014 (Collection of Legislation of the Russian Federation. 2014. N 32. Art. 4470).

For the purposes of the issue under study, the statement of the President of the Russian Federation V.V. is indicative. The statement of the President of the Russian Federation V.V. Putin during the "straight line" on April 14, 2016, stating that in the scandal with the "Panamanian dossier" everywhere "ears" of the customers are "sticking out". According to the President, the German newspaper Süddeutsche Zeitung, which published the documents, allegedly belongs to the American bank Goldman Sachs (see: Peskov was "left behind" by Putin for an error during the "hotline" // http://www.rbc.ru/politics/17/04/2016/5713e3cd9a79477b24a15f3d (reference date: 08.08.2019)).

Results

To date, the theory of control remains the exclusive and the only method of determining the nationality of a legal person, which leads to a goal where other methods somehow do not show the real connection between the legal person and the state.

On the one hand, the concepts of "nationality" and "nationality", as well as "personal law (personal statute)" of a legal entity, on the other hand, are related as a whole and part of it; the concept of "personal law (personal statute)" of a legal entity is used in private international law, while the concept of "nationality" of a legal entity has a public-law nature. Accordingly, only the theory of control is applied to determine the nationality of a legal person.

The application of the control criterion implies the "removal of the corporate veil" in which the nationality of the legal entity is identified with the nationality of the natural persons behind it (founders, participants, etc.); the limits of sensitivity are set by the state depending on the national interests.

The theory of control is applied there and when it is necessary to define the real nationality of the legal entity in order to give it certain rights (benefits, privileges), while the protection of the sovereignty and national security of the state are at the forefront, as evidenced by numerous examples from practice.

On the basis of the research carried out within the framework of the present article, it is necessary to point out that all three concepts of "nationality", "nationality" and "personal law (personal statute)" of a legal entity lie in the same plane and therefore all three concepts can be interchangeable in certain cases. It is advisable to consider the concept of "nationality" as a general, collective concept encompassing both public and private law aspects of a legal entity; the concept of "nationality" of a legal entity characterized solely by its public law nature is absorbed by the concept of "nationality" of a legal entity and they are related as a part and as a whole.

The same can be said about the relationship between the concepts of "state affiliation" and "personal law (personal statute)" of a legal entity: based on the conceptual apparatus revealed both in the Russian doctrine and law and in foreign sources, we can agree with the statement that the personal law (personal statute) of a legal entity is used in the framework of private international law, conflict of laws and emphasizes the private law aspect of the legal entity. It seems that the concept of "nationality" has appeared in the doctrine of private international law and its use today is justified in relation to the theory of control, when the nationality of a legal entity is derived from the nationality of natural persons. If one wonders whether the concept of "personal law (personal statute)" of a legal person can be fully consistent with the concept of "nationality" of a legal person, one should rather answer in the negative, since the criterion of control is only applied when it is impossible to determine the true nationality of the legal person by means of "ordinary", undisturbed integrity of the legal person (without removing the corporate veil), collision links. Only if a national law or international treaty clearly permits or even prescribes the definition of a legal person's personal law initially and/or exclusively on the basis of a theory of control can one speak of synonymy, which is unlikely, however, since the theory of control as a means of determining the legal person's personal law is traditionally the last in the hierarchy and requires special conditions to legitimise its application.

However, it should be recognized that differentiation of concepts (especially the triple one, adopted in Russian international private law) is more often an illustration of their nature, but not always necessary in a practical sense: in the absence of violations, including "circumvention of the law", of any extraordinary circumstances, it is presumed that a legal entity has, for example, French nationality, its personal law is French law and it has French nationality.

Continuing the thesis about the legal nature and place of the control criterion, it is necessary to repeat that it is of a public-law nature, and is comparable to such an institution of private international law as a public order clause: both perform a protective function, and both are used when other means do not help to achieve the desired goal. It is therefore logical that, from the point of view of the hierarchy of application of the criteria, the theory of control is a subsidiary method. If we analyze the theories of origin of a legal entity, the theory of control, as mentioned above, is genetically closest to the legal entity, and therefore refers to the original ways of establishing the applicable law to the legal entity (Young, 1908).

It seems necessary to amend the classification of concepts for determining the nationality of a legal entity proposed by A.M. Gorodissky and supported by Y.I. Monastyrskaya with regard to the distribution of criteria: based on the results of this study, in addition to the criterion of incorporation, the criteria of residence and place of business should be referred to as a conflict of laws method, since all of them, in accordance with the national conflict of laws laws, may serve as a means of determining the identity of a person These three criteria should be contrasted with the theory of control, the only material criterion, as it represents a change of perspective and a departure from the integrity of the legal entity.

The disadvantages of the theory of control as a long-term method of determining the nationality of a legal entity are its advantages as a rapid method of establishing a real link between the legal entity and the state at a particular time when it is necessary to decide to grant the legal entity certain rights, in other words, "to reveal the real nature of the company's activities from the point of view of public law" (Luntz, 2002). Therefore, for the purposes of public law, the situation is not defective if the nationality of the legal person does not coincide with its personal law or changes depending on the requested rights. The state has the right to establish any requirements in respect of subjects of civil legal relations, including in terms of restrictions for foreign subjects. Speaking above about the difficulties of determining the nationality of participants (founders) in certain types of legal entities, it should be borne in mind that the difficulty does not mean impossibility, and when using appropriate legal techniques, the result will not be

long overdue (see, for example, Federal Law No. 57-FZ of April 29, 2008 "On the Procedure for Making Foreign Investments in Business Entities of Strategic Significance for Ensuring the Defense of the Country and Security of the State", where to determine the controlling persons are applied quantitative) In particular, to trigger an effective control criterion, the legislator may use language prescribing the establishment of a national composition of the board or audit commission. However, even despite all the disadvantages and complexities of applying control theory, it does not go off the agenda and will not go off the agenda, as exemplified by the development of English company law. For example, as of 6 April 2016, all English private companies, limited liability partnerships (LLPs), European companies (SEs) are required to maintain a register of people with significant control, which includes their nationality, place of residence, place of business, place of residence (Companies Act 2006, Section 12A; Part 21A // URL: http://www.legislation.gov.uk (contact date: 08.08.2019)).

The history of the emergence and development of the theory of control predetermined the scope of application of this criterion. In the most general sense, it can be said that the theory of control in order to determine the nationality of a legal entity is used when it comes to granting a legal entity certain rights (benefits, privileges) in the state. The theory of control is widely enough applied in international investment law, when it is necessary to control the implementation of economic activities in a particular sector of the economy. On the other hand, the theory of control is mandatory in emergency situations, wartime, for the purposes of diplomatic protection of legal entities. A separate purpose of the application of the theory of control may be to protect the foundations of the rule of law.

CONCLUSIONS

Thus, the analysis of literature and sources on the issue of control theory in private international law leads to the assertion that this is the exclusive and unique method of determining the nationality of a legal person, aimed at determining the real connection between the legal person and the State at a specific time when other methods fail to meet the objective.

If we think about the prospects of using the theory of control, namely, whether there may come a time when private international law, international investment law will cope without the theory of control, then this question should be answered negatively. This is explained by the fact that the theory of control is applied, firstly, as a means of implementing the principle of reciprocity; secondly, as a means of protecting national security. These functions mimic the theory of control and guarantee its preservation in private international law. In other words, even if a legal entity functions in peacetime, in the absence of a state of emergency, the theory of control, as a method of determining the nationality of the legal entity, is invisibly present in a "sleeping" regime and manifests itself if international relations so require.

To date, in the context of the ongoing mutual sanctions against individual States, as well as the ongoing fight against international terrorism, there has been a differentiation and concretization of the national legislation of States governing the legal status of legal persons, manifested through the introduction of new rules based on the theory of control. In fact, this means developing this criterion, which again demonstrates its vitality and relevance in international (private) law. Concretization of national legislation on legal entities is a kind of counterbalance to the existing unification and harmonization of law, which demonstrates the eternal processes of convergence and divergence of law.

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