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INTERNAL AND INTERNATIONAL COMMERCIAL ARBITRATION AS A PRIVATE FORM OF LAW ENFORCEMENT

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The subject. The issues of the arbitration's place in the civil justice system as well as its place in a whole system of social governance in the scope of Russian arbitration reform.

The purpose of the article is to provide a comprehensive analysis of internal and international commercial arbitration as a peculiar form of private law enforcement, as well as to present a doctrinal description of the arbitration's role in law enforcement system and its managerial impact mechanism.

Methodology. Research of general functions of law enforcement in social governance. Essential features of arbitration and basic foundations of civil litigation also have been compared.

The results and the scope of its application. The results are both doctrinal and practical. Domestic and international commercial arbitration can be considered as a peculiar form of managerial impact, as a subsystem of civil justice subordinated to general patterns of the social governance. Arbitration is a special, private on its origin, form of managerial impact, whereas arbitration tribunal is an independent nongovernmental element of the social governance system. Despite the fact of its private origin arbitration is in full measure a law enforcement activity. Theoretical comparison of arbitration's substance with civil litigation became a convincing proof of the existence of public elements in a private segment of civil justice system.

Conclusions. Application of law by arbitration tribunals, both domestic and international, has the imperious character. Arbitration is a legal activity, private on its origin and to a great extent public by its essence. It embraces the expansion of general legal directions on individual social relationships by means of making arbitral awards which are law enforcement acts of individual character.

Key words: arbitration, international commercial arbitration, private jurisdiction, law enforcement, social governance, managerial impact.

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Introduction to the study of the subject

Freedom of participants of civil turnover in the choice of forms of protection of their rights and legal interests is based on the possibility of their use of both public and private jurisdiction. Norms of protective nature regulate relations between the resolution of conflicts in the private sphere and are implemented by state and arbitration courts. Then, can we consider the private enforcement as an element of a social management system? This issue become particularly relevant in connection with the current arbitration reform in Russia and the adoption of new legislation on arbitration and international commercial arbitration.

2. Arbitration in the system of social management

Social management is commonly understood as a conscious, purposeful human impact on the social system as a whole or on individual units based on the knowledge and use inherent in the

system of objective laws and trends in order to ensure its optimal functioning and development [1, p.109-110]. The regulatory (managerial) impact is purposeful. The purpose of arbitration as a dispute resolution process by the arbitral tribunal and the decisions of the arbitral tribunal is to ensure the optimal functioning of complex social relations. Achieving such a goal through arbitration decision (arbitration), which are similar to problems of civil proceedings is the correct resolution of civil disputes in a fair trial within a reasonable time by an independent and impartial jurisdictional authority.

A necessary condition for the implementation of any managerial influence is the cognition and use of regularities and tendencies inherent in the controlled system. Such influence is drawn to the individual elements of the system of relations, which have become the subject of arbitration, the arbitrators after knowledge of statics and dynamics of specific social relations (procedure proving) through the adoption of individual acts of the authorities. That enforcement character distinguishes arbitration (international commercial arbitration) as an element of private-civil jurisdiction of the other non-state forms of settlement of legal disputes.

The arbitration control similar to civil proceedings is drawn as a system of social relations as a whole and its individual elements, which lie in the sphere of material and procedural regulation. For example, the principles of arbitration, enshrined in Article 18 of the Federal Law of 29.12.2015 number 382-FZ "On arbitration (arbitration) in the Russian Federation" provide a cross-cutting regulatory effect on the whole complex of relations arising in connection with the resolution of legal cases, private legal conflicts in the arbitration court.

Methodologically it is justified to consider the process of legal influence on the behavior of people as a specific form of administrative influence, which is subject to the general control laws [3, p. 10]. S.S.Alekseev rightly pointed out that the legal affairs of a decision on the social nature can be characterized as administrative decision [4, p. 548]. Enforcement acts are a legal form of managerial decisions addressed to personally identifiable individuals, taken on specific issues, in connection with the onset of specific conditions. They serve as a means of ensuring the management of existing regulations [5, p. 58].

Arbitration and international commercial arbitration are special forms of enforcement, and therefore they must be considered as a form of purposeful influence on the social system as a form of social control. Arbitration proceedings and international commercial arbitration may be seen as a special form of administrative influence, due to common control laws, but also having its own distinctive features. **Arbitration is a special form of administrative influence, of private law in its origin, and an arbitration court (international commercial arbitration) is a private-element system of social management.** Analysis of the norms of the Federal Law "On arbitration (arbitration) in the Russian Federation" and the Federal Law of 07.07.1993 № 5338-1 "On International Commercial Arbitration" leaves no doubt that the regulation of such relations is largely dispositive rather than mandatory (compulsory) character.

3. Arbitration as the implementation of the right to judicial protection.

At the same time, we believe it is possible to disagree with the view expressed in the position of the doctrine that "like any private right, the right to arbitration is based on the initiative of private individuals in the arbitration agreement reached by them, involves the voluntary execution of the decision of the arbitration court" [7]. The idea of the right to arbitration only as a private law is, in our opinion, excessively narrowed. The Constitution of the Russian Federation establishes the right of everyone to protect these rights and freedoms in all ways not prohibited by law. As noted by the Constitutional Court of the Russian Federation in its judgment of 26.05.2011 number 10-P "On the case on the constitutionality of the provisions of paragraph 1 of Article 11 of the Civil Code, paragraph 2 of Article 1 of the Federal Law "On arbitration courts in the Russian Federation", article 28 of the Federal Law" on state registration of rights to real estate and transactions therewith", paragraph 1 of article 33 and article 51 of the Federal law" on mortgage (pledge property)"in connection with the request of the Supreme Court of Arbitration, the appeal to the arbitration court belongs to a number of generally accepted ways of resolving civil disputes arising from the freedom of contract. The court specifically noted that "in the Russian Federation, the right

of parties to a civil dispute for its transfer to an arbitral tribunal is based on Article 45 of the Constitution of the Russian Federation in conjunction with its Article 8, which guarantees freedom of economic activity and the support of competition, and Article 34 that establishes the right for the free use of abilities and property for entrepreneurial and other economic activities not prohibited by law. By concluding an agreement on its transfer to the arbitration court and thereby realizing the freedom of the contract, the parties to the dispute voluntarily agree to obey the rules established for the particular arbitration court. In such cases, the right to judicial protection, which must be complete, effective and timely, is provided by the possibility of applying in cases provided for by law to the state court, in particular by filing an application for cancellation of the decision of the arbitral tribunal or for issuing a writ of execution for the enforcement of the decision of the arbitral tribunal".

In making this decision, the Constitutional Court of the Russian Federation took into account the position of the European Court of Human Rights, reflected in a number of its decisions. In applying the Convention for the Protection of Human Rights and Fundamental Freedoms, the European Court of Human Rights also assumes that parties to civil law relations may, without recourse to a public court, conclude an appropriate agreement, including in the form of an arbitration clause in the treaty , And to resolve the dispute through arbitration proceedings - such a waiver of the right to consider a case by a court does not violate the Convention, provided that it is committed without compulsion. According to the European Court of Human Rights, as reflected in the decision on the case *«Lithgow And Others v. The United Kingdom »from* 08.07.1986 (Complaint № 9006/80), Article 6 does not preclude the creation of arbitration to resolve disputes between individuals; The term "court" need not be understood as a classical court built into the country's standard judicial machinery, and may imply an authority established to deal with a limited number of special issues, with the same condition that they are subject to the necessary safeguards. According to the judges of the Constitutional Court this fact confirms the validity of the treatment of individuals - within the limits of realization of them on the basis of the autonomy of the right to freedom of contract - to arbitration in civil relations where disputes resolution permitted by the public self and public interest provided legal regulations, establishing arbitration procedures, which implies the existence of guarantees of fairness and impartiality and inherent in any trial.

4. What is the mechanism of Regulatory Impact of arbitration? I.Ya. Dyuryagin rightly noted that the legal side of public administration is not limited to the establishment of regulatory and legal provisions as general regulations designed to regulate typical social relations. Management also involves dissemination of regulatory requirements for individual public relations, on personal-defined by their members through the adoption by public authorities of administrative decisions of individual character through the application of the rule of law [5, p. 51]. Can we say that the content side of arbitration (arbitration) is law enforcement, the extension of legal norms to individual social relations, by making managerial decisions of an individual character?

The substantial characteristics of arbitration and international commercial arbitration can be compared with the justice in civil matters. Justice is strictly regulated by law activity aimed at extending the operation of general regulatory requirements (norms of law) to specific individual social relations through the issuance of law enforcement acts of an authoritative nature. Through the application of the law is carried out to bring the control system into line with the established rules. Analysis of the provisions of Article 31 of the Federal Law "On arbitration (arbitration) in the Russian Federation", article 28 of the Law "On International Commercial Arbitration" convinces us that the content of the activities is implemented by the arbitrators.

B Azov methods of management in law enforcement are the recognition (validation) Jurisdictional authority of law and order to the subject obliged to carry out actions required for its implementation by an authorized entity. It is necessary to take into account the fact that in the sphere of administrative activity of the Arbitration Court is the behavior of the subjects of the regulatory relationship that took place before the arbitration. As is known, oud notes that the committed participants in the process, and through the prism of the law specifies the consequences of such actions [8, p. 38] . In fact, it is about control of the legality of the ordinary forms of

implementation of legal norms, and this activity can not remain exclusively in the field of private interests.

It is believed that through the procedural activities are carried out by procedural means of state power [9, p. 95]. As noted by I.Ya.Dyuryagin, communication application of the law to the exercise of public authority is that the application is achieved by submission to the will of specific individuals of the state, and the control and submission to the will of the state is a manifestation of the government. Thus, the application of the law is state-imperious character, which is expressed in the following: a) the enforcement activities are undertaken within the competence of state authorities; b) in the implementation of law enforcement on the unilateral will of the competent authorities it is not required for use of bilateral agreements; c) compulsory execution of law acts adopted in strict accordance with the law for all persons to whom they are addressed or activities to some extent in contact with them [5, p. 77] .

Are there are grounds to say that the law enforcement by arbitration and commercial arbitrations has imperative character? It is easy to notice that the arbitration is the best case when law enforcement activities are carried out is not public. The arbitration court is a body of the jurisdiction governing the subjects with respect to the managed system. Jurisdictional activities implemented by arbitral tribunals of their unilateral expression of the will in response to a request of the person whose rights and legitimate interests are to be protected.

These circumstances suggest the public nature of the content aspect of the arbitration proceedings, the action began to reflect the public began to power and subordination. The foregoing does not allow to agree with the M.A.Rozhkova who speaks exclusively about the nature of private law arbitration, the arbitration procedure, the arbitration agreement and the award, completely denying the existence of grounds for the recognition of the arbitration procedure features public law [10, p. 233] . There is no doubt that the work on the formation of the Arbitral Tribunal, determining the rules of procedure, based on their own interest in the person, free choice of destination, the means of its achievement and implementation process. Completely different properties are characterized by enforcement management activities of the arbitral tribunal, aimed at the organization of interaction of individuals. It is not free, as it is based on the functional specification of objectives - resolution of the dispute. As indicated Constitutional Court of the Russian Federation in claim Stopped and from 26.05.2011 № 10-P, arbitration courts act as civil society endowed publicly significant functions. Thus, it is an arbitration court as an organ, but not all of the arbitration, a private law element of social control. These arguments allow also disagree with the conclusions E.V.Slepchenko that arbitration is the institution of private, rather than public law, an alternative (non-governmental) form of dispute resolution [7, p. 11] .

5. The importance of the rule of law for the arbitration proceedings .

Analysis of arbitration as a form of private enforcement would be incomplete without the characteristics of the role of legal rules governing it.

In relation to the control subsystem - arbitration - a set of relevant law serves as a means of its organization. Actions for improving the functioning of the arbitration procedure, both external and internal core of their relations, legal regulated. Legislation for arbitration reinforces the powers of arbitration courts (their competence), formalizes the functional links with other elements of the jurisdictional system (eg courts), regulates the relations connected with the recognition and execution of arbitration decisions , other subordination and coordination bonds within arbitration as the controlling subsystem. Law imperatively set minimum standards of jurisdictional activity (guarantee of the rights of the participants), dispositive - the conditions to optimize it, to create the most efficient management algorithm. In this sense, the procedural rules to form a complex of safeguards to ensure the balancing of the interests of the parties of the process, the minimum standards of law enforcement than with high probability determine the appropriate content of the rules of law enforcement acts.

Considered rules largely indicate the nature of private law of the arbitral proceedings. In its most general form the subject of private law, at a fair valuation T.V.Kashaninoy, can be equated to the subject of decentralized management and to include in the content of individual private law and

local regulations [11, p. 23] . Rule of law and the rules of arbitration in their totality provide conditions and other relevant data necessary for management (conditions and legal facts (compounds) necessary for carrying out arbitration), organize activities to review cases, the methods of (evidence) and the procedure of preparation and decision management solutions (excitation, preparation and commit enforcement act); methods of registration of administrative decisions (the imposition of arbitration decisions), bringing to the attention of artists (so in this case becomes the subject, who are subject to the legal validity of the decision of the arbitral tribunal).

What is the role of procedural norms in law enforcement? Many scientists believe that managerial impact of law is also in determining the content of administrative decisions and in providing an organizing influence on the controlled persons in determining what and how they should have the right to do this [5, p. 51]. Although this thesis is characterized by a greater degree for the sphere of substantive law, which made organizing the (regulatory) impact on managed entities in the definition of the boundaries of the permissible and possible behavior, it also retains its value and procedural sphere. Administrative action is *the lex arbitri* consisting in determining the nature and content of arbitration decisions - enabling legislation, through the establishment of the rules commission proceedings and procedures for preparing and committing acts of law (disposition). In this sense, the procedural rules of the law of arbitration (arbitration) to form a complex of safeguards to ensure the balancing of the interests of the parties of the process, the minimum standards of law enforcement than determine with a high degree of probability corresponding to the "spirit and letter" of the law content of arbitration decisions - enabling legislation .

In conclusion we note the following. Arbitration (arbitration proceeding) is a special private in origin form of deliberate action on the individual elements of the system of social relations, a special form of private enforcement. Such exposure through the application of the rule of law is carried out in order to bring real social relations in accordance with the established rules in the interest of achieving the optimal functioning of the public system. **Arbitration is a privately owned genesis and to a large extent on the public nature of the activity,** the content of which is the spread of common regulatory requirements for individual public relations, implemented by the adoption of the decisions and the enforcement of acts of individual character.

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