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Reflections over the Legal and Constitutional Status of Transnistria

Keywords: Transnistria, unrecognized states, Pridnestrovian Moldavian Republic, definition of a state, nation, people, territory, public power, sovereignty, the right of nations to self-determination.

Słowa kluczowe: Naddniestrze, państwa nieuznawane, Naddniestrzańska Republika Mołdawska, definicja państwa, naród/ludność, terytorium, władza publiczna, suwerenność, prawo narodów do samostanowienia.

Summary

The present legal status of Transnistria neither seems to be obvious, nor distinctly determined. Its estimation in the context of the region's statehood has been a subject of disputes of, and divides at the same time, the theorists of state, international lawyers, as well as experts in international relations and political sciences. The hereby paper is an attempt of making the analysis of the selected issues determining Transdnier's status, first and foremost from the perspective of the theory of state and constitutional law, but also taking into account the international law point of view. It aims at finding an answer to the question on its legal and constitutional status as it is seen by both the unrecognized Transnistria's state and Moldavia. The subject of the work contains the analysis of the elements of a state's definition in the context of Transnistria. Moreover, it comprises considerations over the right of nations to self-determination and the problem of sovereignty as regards to the region. It also concentrates on the analysis of Transnistria's status based on the Moldavian legislation, as well as different possibilities and opportunities/chances to solve the conflict lasting for almost thirty years.

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Streszczenie**Rozważania nad prawno-ustrojowym statusem Naddniestrza**

Obecny status prawny Naddniestrza nie jest jednoznaczny, a jego ocena w kontekście posiadania odrębnej państwowości stanowi przedmiot sporów i dzieli badaczy zajmujących się problematyką teorii państwa, prawa międzynarodowego, stosunków międzynarodowych i nauk politycznych. Niniejsze opracowanie stanowi próbę analizy wybranych zagadnień determinujących status Naddniestrza przede wszystkim z punktu widzenia teorii państwa i prawa konstytucyjnego, ale również z uwzględnieniem perspektywy prawa międzynarodowego oraz ma na celu znalezienie odpowiedzi na pytanie na temat jego statusu prawno-ustrojowego zarówno z perspektywy nieuznanego państwa naddniestrzańskiego, jak i Mołdawii. Przedmiot opracowania stanowi analiza elementów definicji państwa w kontekście Naddniestrza, a nadto obejmuje on rozważania na temat prawa narodów do samostanowienia oraz problemu suwerenności w odniesieniu do tego regionu. Uwzględni również analizę statusu regionu w oparciu o ustawodawstwo mołdawskie, a także różne możliwości i szanse rozwiązania trwającego od prawie trzydziestu lat konfliktu w regionie.

**I. Introductory remarks**

The analysis of the problems of unrecognized states, first of all from the perspective of the theory of state, but also from the international law viewpoint, brings to mind an extremely interesting case of creating an independent state at Transnistria lands: the Prednistrovian Moldavian Republic (Mold. *Република Молдовеняскэ Нистрянэ*, Rus. *Приднестровская Молдавская Республика*, Ukr. *Придністровська Молдавська Республіка*), colloquially also called Transnistria. The legal status of this creature from the prospective of its separate statehood is not explicit at all. Similarly to the cases of Abkhazia, South Ossetia, Nagorno-Karabakh and over a dozen of other entities over the world², Transnistria's status is still a matter of disputes among the-

² In the newest history there are known the cases of over 30 unrecognized states created after 1945. Among contemporary known unrecognized states there are at least over a dozen

orists of state, international lawyers, as well as experts in international relations and political sciences³.

Hence, to be able to make any reliable conclusions in this matter, containing explicit determination of this status, if in the present international political situation it is possible at all, it seems necessary to deeply examine numerous important for it issues. Therefore, wider research demands the analysis of the origin and development of the government and politics of Transnistria lands, the forming of a nation on this territory, the process of establishing the state itself (the Pridnestrovian Moldavian Republic), its constituent elements

(their number is difficult to precisely determine). They include those which have not been recognized by any member of the UN, like e.g. Nagorno-Karabakh, Somaliland or ISIS, as well as those which have been partly recognized by one or several states, like e.g. Northern Cyprus (recognized only by Turkey) or Abkhazia and South Ossetia (recognized by four states: Russia, Nicaragua, Venezuela and Nauru), or even several dozen states, like e.g. the case of Kosovo and the Republic of China (Taiwan). All of them differ from each other by the advanced degree of their internal organization and remain on distinct levels of development and effectiveness of functioning, and first and foremost each of them to the diverse extent meets or not the requirements following from the definition of a state.

³ On the problems of Transnistria's status in various dimensions see: A. Gil, *Naddniestrzańska Republika Mołdawska jako element przestrzeni politycznej Europy Środkowo-Wschodniej*, Lublin 2005, *passim*; M. Kosienkowski, *Federacja Rosyjska wobec Naddniestrza*, editory series: *Analizy Instytutu Europy Środkowo-Wschodniej*, t. 21, eds. J. Kłoczowski, A. Gil, Lublin 2009, *passim*; *idem*, *Naddniestrzańska Republika Mołdawska: determinanty przetrwania*, Toruń 2010, *passim*; *idem*, *Ukraina wobec Naddniestrza*, editory series: *Analizy Instytutu Europy Środkowo-Wschodniej*, t. 27, eds. J. Kłoczowski, A. Gil, Lublin 2009, *passim*; J. Solak, *Mołdawia – republika na trzy pęknięcia: historyczno-społeczny, militarny i geopolityczny wymiar „zamrożonego konfliktu” o Naddniestrze*, Toruń 2009; *idem*, *Konsekwencje zamrożonego konfliktu o Naddniestrze dla bezpieczeństwa europejskiego*, an annex to “Zeszyty Naukowe Akademii Obrony Narodowej”, Warszawa 2010. In the Russian language literature worth reaching are: Н.В. Бабилунга, Б.Г. Бомешко, П.М. Шорников, *Государственность Приднестровья: история и современность*, Бендеры 2007; *Бессарабский вопрос и образование Приднестровской Молдавской Республики*, ред. В.Н. Яковлев, Тирасполь 1993; Г.С. Брусалинская, *Органы законодательной и исполнительной власти Приднестровской Молдавской Республики на современном этапе*, Москва 2007; А.В. Девятков, *Международно – политические последствия «Де-факто государственности» Приднестровья*, “Вестник Тюменского государственного университета” 2014, № 2; А.Н. Сквозников, *Феномен непризнанных и частично признанных государств и особенности их правосубъектности*, “Вестник Самарской гуманитарной академии. Серия: Право” 2011, № 2; *Феномен Приднестровья*, ред. Н.В. Бабилунга, Тирасполь 2003.

(nation, territory, public power), its basic laws, legal order, the system of the supreme state authorities and relations between them, home and foreign policy, international relations with other, particularly neighbouring states, the problem of sovereignty, non-recognition by the international community, and moreover the conflict lasting in the region, as well as political situation around Transnistria. The matter of the citizenship, as well as the recognition of the legal and administrative acts, i.e. the whole huge area of the international private law also seem to be extremely interesting in this context. Unfortunately, there is no way to touch upon all the research threads in such a small work, because each of them, without any doubts, needs to be developed.

Therefore, this paper undertakes an effort to determine the legal and constitutional status of Transnistria and its subject covers the analysis of only some of the abovementioned issues, which according to me are necessary to shortly refer to. Among the most significant there are the following key ones: the estimation of the conditions of creating a state, especially from the perspective of the right of nations to self-determination and sovereignty analyzed from Transnistria's perspective. Not less essential for determining the region's status seems to be here the reference of Moldavia to this problem as it is seen from its perspective, as well as the estimation of the political and military situation from the international prospective, including the problem of international safety in the region, both in the local and global scale, which is connected with the lasting for almost thirty years conflict, as well as some potential possibilities of solving it.

II. Selected Elements and Determinants of the Legal and Constitutional Status of Transnistria

Transnistria is a region situated in the Southern-Eastern part of Europe, to the North from the Black Sea, at the borders between Moldavia and Ukraine. Its territory covers a strip of land about 200 km long, with the average width of around 12–15 km (in its narrowest point it is 6 km, while in its widest one it is 38 km), spreading along the left (Eastern) bank of the Dniester River (except the town Bendery, earlier called Tighina, placed on its right bank), west to the Bug River. The region's area is about 4163 m² and is inhabited by about

555 thousand people. On 2 September 1990 Transnistria declared independence and undertook all the formal steps necessary to create a separate independent state. However, in the international relations it is still recognized as an autonomous region of a special status within the borders of the Republic of Moldova and its independence is not recognized by the prevailing majority of the international community.

The origin and evolution of the Transnistrian lands go back to the ancient times. Through the centuries, the region has developed and shaped its multicultural Transnistrian people (nation?), rather explicitly determined the territory inhabited by it, and the process of creating a state, possessing all belonging to it attributes, resulted in establishing public power, as well as allowed to determine its sovereignty, and even to some extent make it effective⁴.

In its origin the process of creating a Transnistrian state resembles very much the attempts to strive for the most degree of autonomy or reaching full independence by other regions and autonomous subjects constituting the former Soviet Union⁵. The first free elections conducted in Moldavia in spring 1990⁶ were won by the nationalist Moldavian Popular Front (Rom. *Frontul Popular din Moldova*), in consequence of which on 2 September 1990 Transnistria, being then a part of Moldavia, during II Extraordinary Session of the People's Deputies of Transnistria of all levels held in Tiraspol, declared forming the Pridnestrovian Moldavian Soviet Socialist Republic (PMSSR) as one of the Republics constituting the USSR. On 5 November 1991, just after the split of the Soviet Union, it was renamed into the Pridnestrovian Moldavian Republic (PMR)⁷.

⁴ The origin and evolution of Transnistria is in detailed analyzed by: V. Serzhanova, *The Origin and Evolution of the Government and Politics of Transnistria Lands*, [in:] *Dialectica necesității și libertății în educație*, Conferința științifică internațională Chișinău 30 martie–1 aprilie 2016, eds. V. Constantinov, N.G. Pikuła, J. Bartoszewski, J.M. Łukasik, K. Jagielska, Chișinău 2016, pp. 262–277. In Polish also see: eadem, *Geneza ustrojowa ziem nadniestrzańskich*, “Przegląd Prawa Konstytucyjnego” 2016, no. 5 (33), pp. 203–221.

⁵ Among the examples it is worth mentioning: Ingushetia, Chechnya, Dagestan, Northern Ossetia, Kabardino-Balkaria, finally also Abkhazia, Southern Ossetia and several others.

⁶ P. Hare, *Who are the Moldovans?*, [in:] *Reconstituting the Market: the Political Economy of Microeconomic Transformation. Competition Policy, Privatization and the Regulation of Public Utilities in Central Europe, the Baltics, Russia, Ukraine and Moldova*, eds. P. Hare, J. Batt, S. Estrin, Amsterdam 1999, p. 363.

⁷ A deeper analysis of the process of creating an independent Transnistrian state and its implications is made by: V. Serzhanova, *The Process of Forming the Pridnestrovian Moldavian*

Independently from lack of Transnistria's recognition by the international community, for over of its a quarter century's existence the Republic's authorities have attempted to rule on its territory and organize the state according to all the principles of its correct and effective functioning. From the point of view of the theory of state, the Pridnestrovian Moldavian Republic possesses all the basic elements characterizing a state, following from its definition: people, territory and public power. In 1995 Transnistria adopted its (second already) Constitution, which created a system of the supreme state authorities and is still in force⁸. It has its own Parliament, Government and President as the head of state, its legal system, administrative division, as well as: flag, anthem, coat of arms, currency, army, central bank and all the other attributes of statehood. It has also strived for achieving full sovereignty and recognition of the international community, though with no. obvious effects so far.

It seems worth considering, whether in this case there is any justification for approving Transnistria's decision on secession, if one recognizes it to be an expression of the right of a people to self-determination⁹, which is one of

Republic and Its Implications, "Acta Universitatis Lucian Blaga, Jurisprudentia" 2016, no. 1, pp. 94–106; in Polish also see: *eadem*, *Powstanie Naddniestrzańskiej Republiki Mołdawskiej i jego implikacje*, "Studia Europejskie" 2017, no. 1, pp. 253–269.

⁸ Detailed deliberations on both the first Transnistrian Constitution of 1991 and its presently binding basic law are found in the following works: V. Serzhanova, *The First Constitution of the Pridnestrovian Moldavian Republic of 1991*, "Annales Universitatis Apulensis, Series Jurisprudentia" 2016, no. 19, Alba Iulia 2017; *eadem*, *The Constitution of the Pridnestrovian Moldavian Republic*, "Przeгляд Prawa Konstytucyjnego" 2016, no. 6, pp. 165–183; in English also see: *eadem*, *Pierwsza ustawa zasadnicza Naddniestrzańskiej Republiki Mołdawskiej*, "Przeгляд Sejmowy" 2016, no. 6 (137), pp. 235–243; *eadem*, *Obowiązująca Konstytucja Naddniestrzańskiej Republiki Mołdawskiej z 1995 r.*, "Studia Prawa Publicznego" 2016, no. 4, pp. 13–32.

⁹ The right of peoples (nations) to self-determination (or also: self-determination of peoples/nations) is commonly comprehended as a right of peoples to freely determine their political, social, economic and cultural status, as well as a right to establish their own states or join to the states already existing. In the international law it is regarded as a *jus cogens* rule. It is a result of an adopted by the United Nations interpretation of the provisions of the UN Charter signed on 26 June 1945 (entered into force on 24 October 1945), particularly its chapter I 'Purposes and Principles', as well as Art. 55 and indirectly also chapters XI and XII. They imply that every people, based on the respect for the principle of equal rights and fair equality of opportunity, has a right to decide on (or choose) its sovereignty and international political status with no. interference. And although the provisions of the Charter themselves do not

the fundamental rules of the contemporary international law, determined both in the United Nations Charter and the International Covenant on Civil and Political Rights.

Although the Charter neither explicitly defines the concept of a nation, nor does it determine its constitutive features, or establish any boundaries between particular nations, the interpretation authoritatively adopted by the UN and its practical application allow to distinguish three conditions, to my mind also being very vaguely specified: 1) a requirement of the people constituted on the basis of an ethnical criterion, 2) considerable and permanent violation of human rights regarding the people who demand secession

precisely define the concept of the peoples' self-determination, neither do they explain the notion of 'a people', both doctrine and the hitherto international law output, as well as their practical application in the last several decades seem to deliver a rather clear interpretation of these vague notions, which in addition have intensively evolved since the Charter of the United Nations came into force. Helpful in this scope was the resolution of General Assembly of the United Nations 1514 (XV) of 14 December 1960, adopting the Declaration on the Granting of Independence to Colonial Countries and Peoples, which in Art. 2 states: 'All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'. The most explicit and precise at the same time, though to a certain extent following the example of the Declaration's content, seems to be Art. 1 of the International Covenant on Civil and Political Rights of 16 December 1966 (entered into force on 23 March 1967): '1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. 2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence. 3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations'. As a consequence of the binding force of the Covenant as an international law act (opposite to the Declaration) and its universal character, the interpretation of this provision does not rise any doubts and does not need any comment either. More extendedly also see: J. Tyranowski, *Integralność terytorialna, nienaruszalność granic i samostanowienie w prawie międzynarodowym*, Warszawa–Poznań 1990, p. 189 & the following. This problematics is exhaustively and competently analyzed, as well as the scope of the right to self-determination from the perspective of its subject and object are deeply discussed by: W. Żbikowski, *Samostanowienie narodów w prawie międzynarodowym*, "Zeszyt Studenckich Kół Naukowych Wydziału Prawa i Administracji UAM" 2015, no. 5, pp. 237–256.

or 3) some other circumstances which unable to solve the conflict by a different way than secession.

From the first glance it is seen, that the first condition does not explain, whether the ethnic criterion is identical to its homogeneity, though one can undoubtedly assume it. In other words, whether this condition ought to be comprehended narrowly, meaning that creating an ethnically inhomogeneous people, nation (understood as people of a state) established on the basis of another/other criterion/a (e.g. a multinational people or a people of a differentiated ethnical origin, historically residing on a certain territory; a multinational and multi-ethnic society integrated in a state's people by other factors, like lingual, psychological, religious and other; etc.) cannot meet this requirement. In fact, nowadays, in the area of globalization and integration, as well as migration of people on a hitherto unprecedented scale, fulfilling the condition of ethnical homogeneity of a people creating a state would be very difficult, if possible at all.

In case of Transnistria we can by no means state, that here we have a separate, ethnically homogeneous people (nation) which does not have its own state and because of this strives for independency. The people residing Transnistria is definitely multinational: about 32% of it are Moldovans and Romanians, about 30% are Russians, about 29% are Ukrainians and 9% represent other nationalities. Wishing to simplify it, we might say, that each of these nationalities has its own state already. But according to me, this argument is not convincing, especially when we take into account such cases as Kosovo, Kurds or many others¹⁰. The problem of defining a people/nation of a state is addi-

¹⁰ The case of Kosovo shows, that possessing of one's own state by a certain people (nation), basing on the ethnical criterion, does not stand in the way of creating another state for the representatives of the same ethnical (national) group. In other words, a people of the newly established state may consist of the nation which formally possesses its separate state already. The nation, i.e. the Kosovo people, consist of the Albanians which formally have their own separate national state already – Albania. Nevertheless, there was established another state for them. Therefore, Kosovo does not have its separate national or ethnical identity, but only a state one. From this it clearly follows, that in principle the existence of a national state, established for a given nation or ethnical group, does not stand in the way of creating another state for it, if there are conditions and circumstances of other kind supporting this. On the other hand however, lack of a separate state of a certain nation (which may have struggled with the unsuccessful attempts of its establishing for centuries) is not any basis to create one at all. This

tionally complicated by the phenomenon of people's migration on a unique global scale. It becomes particularly essential in the context of defining, who really establishes this nation (people)¹¹.

The second condition cannot be observed in case of Transnistria either, because Moldavia does not conduct and has never conducted any massive actions aiming at violating the human rights of Transnistrian people or its endanger¹².

thesis is proved by the example of the Kurds, not possessing their own separate national state, as well as many other nations. Here, as one can see, we have a kind of an opposite case. This, as well as many other examples, including multinational states, though of much larger territories and numbers of inhabitants, show that the national (ethnic) criterion, or in other words, the principle of creating a state basing on a nation, ought to be comprehended and treated very flexibly – in such a way, which would enable to define the concept of a people/nation of a state not only strictly basing on the ethnical criterion, and not as a result of giving a simple respond to the question, whether this or that nation has 'its own' state already or not yet.

¹¹ To be able to determine this, it seems to be necessary to give definite answers to at least the following questions: should the citizens of a given state, who temporarily or permanently reside on the territory of another state, be counted as the people of the state of their origin and citizenship, or the state of their residence, and the people of which state do they create? Is possessing some citizenship and, therefore, some ethnical, national or linguistic relations by a person, appear to be more significant and essential than his place (territory) of living, with which he identifies the majority of his life goals (in a more durable way, or maybe only on a certain stage of his living)? How will this state of affairs change as a result of his further migration or his permanent flow from one country to another? And finally, how is this phenomenon (situation) influenced by the fact of possessing of two or multiple citizenships, or other residents' rights (e.g. the right to a temporal or permanent stay)? Presently, finding the answers to these questions seem very difficult, however, if possible at all.

¹² Though such endanger was clearly observed at the end of the nineteen eighties, which was connected with the strengthening of nationalistic tendencies not only in Transnistria, but also in many other regions and Republics of the then falling USSR. It effected in the increasing display of extremely anti-minority, ethnocentric and chauvinistic viewpoints, encouraging the people being national minorities, especially of the Slavic origin (mostly Russians and Ukrainians), as well as the Gagauz people, to leave Moldavia, and even calling to displace them from the territory of the Republic, which were manifested by the most radical factions of the nationalist Moldavian Popular Front. More detailed compare: V. Serzhanova, *Powstanie Naddniestrzańskiej...*, pp. 256–257; also *eadem*, *The Process...*, pp. 97–98. See also: W. Kymlicka, M. Opalski, *Can Liberal Pluralism Be Exported?*, Oxford 2001, p. 208; A. Lieven, *Chechnya: Tombstone of Russian Power*, New Haven 1999, p. 246; H. Demirdirek, *The Painful Past Retold Social Memory in Azerbaijan and Gagauzia*, "Postkommunismens Antropologi", University of Copenhagen, 12–14.04.1996.

And lastly, the third condition seems to be the most vague and difficult to define. For what such a circumstance, which would be unable to solve the conflict by a different way than secession, might be is a matter of estimation and recognition. In consequence, there arises a question, whether secession was the only way to solve the dispute and finish the conflict, which has not been answered clearly and explicitly so far¹³.

Self-determination is also connected with the concepts of independency and sovereignty, which are characterised, among others, by such criteria, as: an ability to exercise control over its own territory, successfully maintain internal order and external relations, including the subjects of international law, as well as an ability to individually shape its sovereignty. Although we cannot state that Transnistria is fully able to maintain public safety and economical order without the interference of its informal Russian patron, as well as conduct international relations, who can undoubtedly respond to the question, whether it controls its territory or not? Does it exercise it better than Moldavia or Russia? And what about Moldavia's ability to control its territory, especially of its autonomous region of Transnistria, and assuring the state's territorial integration? Although maintaining control over one's territory and assuring its territorial integration is undoubtedly one of the most important principles of a state's functioning, its practical application is often very difficult, because this matter may be, and frequently is, a very delicate and sensitive issue. For, on one hand there exists a factual state which controls its own territory, though remains unrecognized, while on the other hand this by no means questions the matter of the other state's recognition, in which secession took place, despite its disability to permanently control its territorial integrity presently and in the past. The above reflections also lead to one more undoubtable conclusion: the principle of territorial integrity is contradictory to the right of the states to keep their territories in the context of the right to self-determination, and principally even to the realization of this right¹⁴.

¹³ See: B. Musiałowicz, *Separatystyczne dążenia Nadniestrza, Abchazji i Osetii Południowej a prawo międzynarodowe*, "Bezpieczeństwo Narodowe" 2006, no. 2, pp. 98–102; M. Kosienkowski, *Następstwa wojny w Gruzji dla „zamrożonego konfliktu” w Nadniestrzu*, "Bezpieczeństwo Narodowe" 2009, no. 9–10, p. 348.

¹⁴ See also: А.Н. Головченко, *Приднестровье: проблема реализации права на самоопределение народа, проживающего на территории Республики*, "Наука и современность" 2014, № 27.

In spite of the fact, that Transnistria has *de facto* existed as an independent state for over 25 years so far, from the perspective of the international law its case is seen differently, as it has been shown already¹⁵. No UN member-state recognizes the Pridnestrovian Republic's sovereignty, including Russia. It is recognized only by three other quasi-states, i.e. the subjects which unilaterally declared their independency: Nagorno-Karabakh, Abkhazia and South Ossetia. Transnistria maintains diplomatic relations with them and has its posts on their territories. Because of the fact that international law does not determine the number of states necessary for the recognition of a new state organism, we can suppose that theoretically one might be enough to start existing in this space¹⁶. Practice shows, however, that this thesis is far too untrue, for to a large extent it is a political decision¹⁷.

As a consequence of Transnistria's non-recognition by the international community, it is worth referring to its status provided by the Moldavian legislation. Being unrecognized by the UN, it is *de iure* still an Autonomous Territorial Unit of a Special Legal Status (Mold. *Unitatea teritorială autonomă cu statut juridic special Transnistria*), colloquially also called the Left-Bank Dniester (Mold. *Stînga Nistrului*) within the territory of the Republic of Moldo-

¹⁵ An interesting and worth attention discourse on this matter is conducted by: B. Janusz-Pawletta, *Separatystyczne dążenia Nadniestrza, Abchazji i Osetii Południowej a prawo międzynarodowe*, "Bezpieczeństwo Narodowe" 2006, no. 2, pp. 95–109.

¹⁶ The process of recognizing a state in international law is deeply and competently discussed by: E. Dynia, *Uznanie państwa w prawie międzynarodowym. Zarys problematyki*, Rzeszów 2017, *passim*.

¹⁷ Opposite to the recognized by no-one Nagorno-Karabakh, Abkhazia and South Ossetia might be treated as partly recognized by the international community, because their sovereignties have been recognized by Russia, Nicaragua, Venezuela and Nauru (an interesting fact is connected with the recognition of Abkhazia, for on 23 May 2011 its independence was also recognized by Vanuatu, but on 20 May 2013 its Prime Minister announced the break of their bilateral relations; the second similar case was of Tuvalu, which on 18 September 2011 recognized Abkhazia, but withdrew it on 31 March 2014), after all there are no provisions in the international law which would explicitly confirm or negate their statehood. The same statement may principally be also referred to Transnistria. However, in the international space this is not true, for it is still classified as an unrecognized state. Another interesting case exemplifying this thesis is that of Northern Cyprus, officially the Turkish Republic of Northern Cyprus, recognized only by Turkey. However, the case of Kosovo has been treated absolutely differently.

va¹⁸ on the basis of the Law no. 173 of 22 July 2005 on the Basic Provisions of the Special Legal Status of the Locations of the Left Bank of the Dniester River (Transnistria) (Mold. *cu privire la prevederile de bază ale statutului juridic special al localităților din stînga Nistrului (Transnistria)*)¹⁹, adopted by the Moldavian Parliament.

According to its provisions, Transnistria is an integral part of the Moldavian state and may decide on its own only on those matters which have been delegated to it by this law. As the supreme authority of the representative power of autonomous Transnistria there has been stipulated the establishing of the Supreme Council. It has been empowered with some legislative competences and may create laws and other local legal acts binding on the territory of the autonomous unit. It can be elected in free, clear and democratic elections conducted by the International Electoral Committee on the OSCE consent, under the supervision of the Council of Europe. The conditions of their conduction are democratization and demilitarization of Transnistria. Then, the Council elected according to this procedure, may adopt a constitution (statute) of Transnistria, which is to conform with the basic law of Moldavia. It is also worth adding, that the autonomous status of the region determined in the above law, besides the Supreme Council, does not provide any separate for Transnistria system of authorities: courts, prosecutor's offices, security organs, etc. It should be underlined, that these provision have never been applied so far. All the attempts aiming at easing and permanently solving the conflict at the territory of Transnistria, which have been undertaken for almost three decades by the international community, including states and international organizations, have obviously not succeeded²⁰.

¹⁸ On government and politics of Moldavia see: R. Rajczak, *System konstytucyjny Mołdawii*, Warszawa 2014, *passim*.

¹⁹ The law is available in the Moldavian and Russian languages in the electronic collections of the legal acts of the Republic of Moldova at: <http://lex.justice.md> (1.11.2017).

²⁰ About the efforts of the international community, undertaken by different states and international organizations in order to solve the conflict following from the factual independence of Transnistria, in detail see: V. Serzhanova, *The Process...*, pp. 102–104; also in Polish: *eadem*, *Powstanie Naddniestrzańskie...*, pp. 262–265.

III. Concluding remarks

From the very beginning of the rise of the Pridnestrovian Moldavian Republic the case of Transnistria divides the researchers of constitutional law, as well as international law and international relations, who still dispute in the matter of explicit determining the region's status, for its *de iure* status diverges the *de facto* one, and is even in contradiction with it.

From the point of view of the theory of state, the Pridnestrovian Moldavian Republic possesses the fundamental features of statehood: people, territory and public power, derived from the definition of a modern state, as well as all its legal and factual attributes. It strives to reach full sovereignty and recognition by the international community. However, from the perspective of international law this case presents itself totally diversely. No United Nations member-state recognizes its sovereignty and, as it could be seen, does not even intend to. Transnistria maintains diplomatic relations only with several unrecognized *de facto* states of a similar status.

Transnistria's secession in 1990 did not liquidate at all the tension, which had cumulated in this region for a long while and revived from time to time. Because of its geographical position, peculiarity of this territory following from the multinational character of its inhabitants and being permanent borderland of states and nations for centuries, in its political history Transnistria repeatedly became the embers of conflicts, especially between the neighbouring states in its different historical periods. Those conflicts were caused by the wish to maintain influences over this very small, but always having strategic significance strip of land, being such a little point on the map of Europe indeed. This situation has survived till today and still seems to be current.

Despite the lapse of time, one can distinctly see the reluctance of the international community towards the recognition of Transnistria's independence. While the conflict, started over a quarter of the century ago in connection with the rise of independent Transnistria, still remains unsolved, by this means deepening its division with Moldavia. The neighbouring countries, however, which formally undertake certain steps intending to finish this conflict (Moldavia strives for the region's reintegration, while Russia and Ukraine – each in their own ways and by using different methods and

impact means – fight for increasing their influences on its territory), in fact seem to maintain the hitherto *status quo*, though each of them, undoubtedly, because of diverse reasons.

Surrender of Transnistria's authorities and their consent to create a federation with Moldavia seem to be very much improbable. Solving the question of Transnistria is more an interest of Moldavia, because of its pro-European Union aspirations, than Transnistria itself. Equally less probable, or even impossible seems to be the opportunity of attaching the region to Romania.

In the view of the fact, that both Moldavia and Transnistria use financial aid coming from Russia to a wide extent, the latter still and unchangingly seems to be the most important factor, on which the success of the further negotiations intending to finish the conflict will depend. Simultaneously, against the aspirations of Transnistria itself, Russia does not care about its incorporation into the Russian Federation at all, and even opposes it. In this way it still contributes to the region's destabilization, which in fact seems to be its only goal, enabling to maintain real control not only over the whole territory, including first and foremost Transnistria, but also over Moldavia and Ukraine.

And here it is worth putting a rather paradoxical and at the same time contrary question: does Transnistria really care about its independency? After all Transnistrian authorities, as well as its political and business elites are aware of the fact, that in this form and shape the state is not able to ensure its sovereignty and effective functioning without the interference of Russia. Hence are the attempts of integration with Russia, undertaken by the Transnistrians. The latter, however, has absolutely different intentions in this matter. In consequence, for a long time Transnistria has been lasting in a certain clinch, from which it is difficult to find a way out.

Therefore, as it seems at the moment, along with the laps of time the chances to unite with Moldavia will probably reduce, but paradoxically this way potential chances for Transnistria's recognition might increase, though presently it does not look like and is even difficult to believe in. One should not also underestimate the influence of the conflict between Ukraine and Russia and the case of Crimea on the situation, which have undoubtedly averted the possibility to peacefully solve the question of Transnistria for some time.

Literature

- Бабилунга Н.В., Бомешко Б.Г., Шорников П.М., *Государственность Приднестровья: история и современность*, Бендеры 2007.
- Бессарабский вопрос и образование Приднестровской Молдавской Республики*, ред. В.Н. Яковлев, Тирасполь 1993.
- Брусалинская Г.С., *Органы законодательной и исполнительной власти Приднестровской Молдавской Республики на современном этапе*, Москва 2007.
- Девятков А.В., *Международно – политические последствия «Де-факто государственности» Приднестровья*, “Вестник Тюменского государственного университета” 2014, № 2.
- Demirdirek H., *The Painful Past Retold Social Memory in Azerbaijan and Gagauzia*, “Post-kommunismens Antropologi”, University of Copenhagen, 12–14.04.1996.
- Dunia E., *Uznanie państwa w prawie międzynarodowym. Zarys problematyki*, Rzeszów 2017.
- Феномен Приднестровья*, ред. Н.В. Бабилунга, Тирасполь 2003.
- Gil A., *Naddniestrzańska Republika Mołdawska jako element przestrzeni politycznej Europy Środkowo-Wschodniej*, Lublin 2005.
- Головченко Л.Н., *Приднестровье: проблема реализации права на самоопределение народа, проживающего на территории Республики*, “Наука и современность” 2014, № 27.
- Hare P., *Who are the Moldovans?*, [in:] *Reconstituting the Market: the Political Economy of Microeconomic Transformation. Competition Policy, Privatization and the Regulation of Public Utilities in Central Europe, the Baltics, Russia, Ukraine and Moldova*, eds. P. Hare, J. Batt, S. Estrin, Amsterdam 1999.
- Janusz-Pawletta B., *Separatystyczne dążenia Naddniestrza, Abchazji i Osetii Południowej a prawo międzynarodowe*, “Bezpieczeństwo Narodowe” 2006, no. 2.
- Kosienkowski M., *Federacja Rosyjska wobec Naddniestrza*, [in:] *Analizy Instytutu Europy Środkowo-Wschodniej*, t. 21, eds. J. Kłoczowski, A. Gil, Lublin 2009.
- Kosienkowski M., *Naddniestrzańska Republika Mołdawska: determinanty przetrwania*, Toruń 2010.
- Kosienkowski M., *Następstwa wojny w Gruzji dla „zamrożonego konfliktu” w Naddniestrzu*, “Bezpieczeństwo Narodowe” 2009, no. 9–10.
- Kosienkowski M., *Ukraina wobec Naddniestrza*, [in:] *Analizy Instytutu Europy Środkowo-Wschodniej*, t. 27, eds. J. Kłoczowski, A. Gil, Lublin 2009.
- Kymlicka W., Opalski M., *Can Liberal Pluralism Be Exported?*, Oxford 2001
- Lieven A., *Chechnya: Tombstone of Russian Power*, New Haven 1999.
- Musiałowicz B., *Separatystyczne dążenia Naddniestrza, Abchazji i Osetii Południowej a prawo międzynarodowe*, “Bezpieczeństwo Narodowe” 2006, no. 2.
- Rajczak R., *System konstytucyjny Mołdawii*, Warszawa 2014.

- Serzhanova V., *Geneza ustrojowa ziem naddniestrzańskich*, "Przeгляд Prawa Konstytucyjnego" 2016, no. 5 (33).
- Serzhanova V., *Pierwsza ustawa zasadnicza Naddniestrzańskiej Republiki Mołdawskiej*, "Przeгляд Sejmowy" 2016, no. 6 (137).
- Serzhanova V., *Powstanie Naddniestrzańskiej Republiki Mołdawskiej i jego implikacje*, "Studia Europejskie" 2017, no. 1.
- Serzhanova V., *The Constitution of the Pridnestrovian Moldavian Republic*, "Przeгляд Prawa Konstytucyjnego" 2016, no. 6.
- Serzhanova V., *The First Constitution of the Pridnestrovian Moldavian Republic of 1991*, "Annales Universitatis Apulensis, Series Jurisprudentia" 2016, no. 19, Alba Iulia 2017.
- Serzhanova V., *Obowiązująca Konstytucja Naddniestrzańskiej Republiki Mołdawskiej z 1995 r.*, "Studia Prawa Publicznego" 2016, no. 4.
- Serzhanova V., *The Origin and Evolution of the Government and Politics of Transnistria Lands*, in: *Dialectica necesităţii şi libertăţii în educaţie*, Conferinţa ştiinţifică internaţională Chişinău 30 martie–1 aprilie 2016, eds. V. Constantinov, N.G. Pikuła, J. Bartoszewski, J. M Łukasik, K. Jagielska, Chişinău 2016.
- Serzhanova V., *The Process of Forming the Pridnestrovian Moldavian Republic and Its Implications*, "Acta Universitatis Lucian Blaga, Jurisprudentia" 2016, no. 1.
- Сквозников А.Н., *Феномен непризнанных и частично признанных государств и особенности их правосубъектности*, "Вестник Самарской гуманитарной академии. Серия: Право" 2011, № 2.
- Solak J., *Konsekwencje zamrożonego konfliktu o Naddniestrze dla bezpieczeństwa europejskiego*, dodatek do "Zeszytów Naukowych Akademii Obrony Narodowej", Warszawa 2010.
- Solak J., *Mołdawia – republika na trzy pęknięcia: historyczno-społeczny, militarny i geopolityczny wymiar „zamrożonego konfliktu” o Naddniestrze*, Toruń 2009.
- Tyranowski J., *Integralność terytorialna, nienaruszalność granic i samostanowienie w prawie międzynarodowym*, Warszawa–Poznań 1990.
- Żbikowski W., *Samostanowienie narodów w prawie międzynarodowym*, "Zeszyt Studenckich Kół Naukowych Wydziału Prawa i Administracji UAM" 2015, no. 5.