Concerning the Need to Extend the Use of Mediation Proceedings to Resolve Disputes in the Field of Subsoil Use

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During the past few years, a increasing trend could be observed in Russia toward the growing scope and the heightened role of the norms and institutions governing the proprietary rights to natural resource objects and affecting the contractual and other civil law relations in the field of natural resource use, something that has been reflected in the Russian Federation's new codes "On Land", "On Water" and "On Forests" in the Concept of the Draft Russian Federation Law "On Subsoil" approved by the Russian Federation Government in November 2002 and in the new drafts of the Water Code and the Forest Code (January-July, 2004).

Under the existing Federal Law "On Subsoil"[1], the respective parties' contractual discretion options are quite insignificant, given that most of the corresponding relationships are governed by the administrative procedure. The area, where the parties to a contractual relationship can enjoy a truly equitable position, is quite small and is limited to the provisions of Article 50.3, Federal Law "On Subsoil", under which, by the parties' mutual consent, property disputes involving subsoil use can be submitted to a mediation tribunal, plus some provisions of the Russian Federation Law "On Production Sharing Agreements"[2].

Consequently, under the existing Russian Federation laws in the field of subsoil use, mediation proceedings can only apply to the disputes arising out of the parties' property *relations.*

However, the analysis of the theory and practice in this field has revealed a significant number of legal barriers to the possibility of submitting such a dispute to a mediation tribunal, something that will be discussed at greater length below.

1. **The existing Russian Federation Arbitration Procedure Code**[3] (hereinafter the "APC") grants the arbitration courts practically unlimited jurisdiction over the economic disputes and other matters arising out of the administrative or other public law relationships.

Falling within the jurisdiction of the arbitration courts are the economic disputes and other matters relating to entrepreneurial activity or other economic activities; disputes arising out of the civil, administrative, or other public law relationships; all economic disputes and other matters in connection with entrepreneurial and other economic activities involving foreign legal entities; matters involving the disputed decisions of mediation tribunals or international commercial arbitration courts on the arguments in connection with the conduct of entrepreneurial or other economic activities; disputes over the receiving of orders in connection with the enforcement of such decisions; matters involving the recognition and enforcement of the decisions of foreign courts or foreign arbitral awards in disputes arising out of the conduct of entrepreneurial or other economic activities [4].

The existing administrative-and-licensing system, underlying the relations in the field of subsoil use and providing the basis for subsoil use rights, requires a license, which is an administrative document rather than an instrument of legal regulatory nature. Under Article 197 of the Russian Federation Arbitration Procedure Code, the arbitration

[1] Russian Federation laws as amended: #27-FZ dated 03.03.1995, #32-FZ dated 10.02.1999, #20-FZ dated 02.01.2000, #52-FZ dated 14.05.2001, #126-FZ dated 08.08.2001, #57-FZ dated 29.05.2002, and #65-FZ dated 06.06.2003.

[2] Article 22. Dispute Resolution. Disputes between the state and the investor arising out of performance, termination or invalidation of agreements shall be resolved pursuant to the terms and conditions of the agreement in a law court, arbitration court or mediation tribunal (including international arbitration institutions). Russian Federation laws as amended: #19-FZ dated 07.01.1999, #75-FZ dated 18.06.2001, and #65-FZ dated 06.06.2003).

[3] Law 95-FZ dated 24 July, 2002.

[4] Regarding the application of Article 190, please refer to the Russian Federation Supreme Arbitration Court's Plenary Session's Resolution #11 "Concerning Some Matters Regarding the Introduction into Effect of the RF Arbitration Procedure Code" dated 09.12.2002.

courts have jurisdiction over matters in connection with those instruments and over disputes involving the decisions and actions (or failure to act) of government agencies, local self-government bodies or other agencies or officials in the field of entrepreneurial or other economic activities.

Consequently, concerning the disputes between the subsoil users' and the state *involving subsoil use licenses,* no clear formal definitions exist regarding the object of mediation, while the mediation tribunals' own jurisdiction is almost non-existent, given that, in the subsoil use field, it is very difficult to draw a clear line between the dispute that is purely over property rights and the administrative dispute. Besides, the arbitration courts' own jurisdiction is couched in such broad terms as to cover almost the entire range of all possible dispute situations (Article 29, APC).

2. The persistent lack of confidence in the Russian state judicial system on the part of the investors in general and the subsoil users in particular.

Russia's only existing institutional mediation tribunal, which in principle is available to hear the investment disputes involving subsoil users, is the International Commercial Arbitration Court (hereinafter the "ICAC") with the Russian Federation Chamber of Commerce and Industry. It has to be added, however, that it is not available to the domestic entrepreneurs. Regarding the foreign businessmen, however, there are a number of things that make it difficult to have recourse to that institution. This will be discussed in greater detail later in the paper.

3. Concerning property disputes between the subsoil users and the state, there is no clear definition of what may constitute an object of mediation proceedings.

In the context of the vastly increased complexity of the nature use control system, of increasingly growing concern is the search for the optimum interrelationship between the contractual and the administrative-law foundations underlying the governance of subsoil use. Its single most important element is the formulation of clear-cut definitions of the legal nature of all existing mutually complementary instruments, both in the administrative and in the civil law fields.

The strengthening of contractual foundations, in accordance with the above mentioned government Concept of the Draft Federal Subsoil Law and in accordance with the legal technique requirements, can be achieved through the inclusion in, or the spilling over into, the contractual sphere of relations previously recognized, merely by force of habit, as having the administrative nature.

The issue, therefore, is how to, in the absence in Russia of corresponding legislative criteria, draw separation lines between what is essentially a property dispute and an administrative dispute in the field of subsoil use and what to do about the category of disputes that might conditionally be called "border-line" disputes?

Judging by the available international experience, mediation proceedings can only address the subject matter of property disputes, but not the disputes of administrative nature. That fully conforms to the international standards laid by the UNCITRAL and is in line with the past international commercial arbitration practices. However, there are no *clear guidelines in the form of criteria* that might be laid down, in particular, in the Federal Law "On Subsoil" or in some other legislative instrument with regard to the nature use. The literal and rather narrow interpretation of the provisions of Article 50 of the Federal Law "On Subsoil" makes it possible to single *out just a small circle of property relations directly issuing from the administrative law instruments in the field of subsoil use* that could become the subject matter of mediation proceedings.

At the same time, there is a whole body of so-called "border-line" relations that could be singled out from the existing Subsoil Law and examined in the context of possible contractual regulation.

In the following pages, a preliminary list will be made of relationships regulated by the Federal Law "On Subsoil". Accordingly, in this writer's opinion, the disputes listed therein could well fall within the scope of the parties' contractual discretion and, as such, could well become the matters for arbitral examination in any mediation tribunal, including the International Arbitration Court. As that sphere of relations is quite significant in its content, it can provide a graphic illustration of the options already available today, within the framework of the existing, albeit conceptually and legally antiquated, Federal Subsoil Law, in respect of relationships, primarily those relating to the exercising or termination of the subsoil enjoyment rights.

Disputes arising out of the exercise by the subsoil users of their respective rights as laid down in Article 22, Federal Law "On Subsoil" should become matters for the mediation tribunals to settle.

More specifically, that involves unhindered exercise by the subsoil users of their respective rights to:

(1) use the allocated subsoil area for any type of entrepreneurial or other activity in line with the aim shown in the license and/or in the respective production sharing agreement; (Russian Federation Law #32-FZ as amended on 10.02.1999);

(2) (independently decide on the particular form of such activity in keeping with the laws of the land;

(3) (use the results of their activity, including the extracted minerals, in keeping with the license or production sharing agreement and in accordance with the existing laws (Russian Federation Law #32-FZ as amended on 10.02.1999); and

(4) (use the waste products of their mining operations and those of their associated industrial facilities, unless otherwise provided for in the license and/or production sharing agreement (Russian Federation Law #32-FZ as amended on 10.02.1999); and in some other cases.

The subject matter for settlement through arbitration also could and should be the disputes involving the *subsoil users' performance of their respective duties and obligations.*

For example, Article 22 of the above Law lists, among other things, the following obligations:

(1) (Observance of legislative requirements;

(2) (Presentation to the federal and corresponding territorial geological information foundations and to the government statistics agencies, of correct and reliable data on proven resources, recoverable reserves and resources left in the subsoil and on mineral resource components; information on the use of subsoil for purposes unrelated to the mining of mineral resources;

(3) Compliance with the duly established standards (norms and rules) governing the environmental protection of subsoil, atmospheric air, land, forests and waters as well as buildings and structures against the adverse effects of activities involved in the subsoil operations;

(4) (Restoration of land tracts and other natural objects disturbed in the process of subsoil use to adequate condition allowing for their continued use;

(5) (Preservation of the exploration mine workings or drilling wells that could be used for field development and/or other industrial purposes; and, in accordance with the established procedure, abandonment of mine workings or drilling wells not suitable for exploitation;

(6) (Compliance with the provisions laid down in the respective license or production sharing agreement; timely and correct payments for the subsoil use (Russian Federation Law #32-FZ as amended on 10.02.1999).

Disputes arising in connection with certain grounds for termination of the subsoil use right can and should become the subject matter for mediation proceedings.

More specifically, from the list supplied in Article 20 of the Federal Law "On Subsoil" the following could be singled out.

The subsoil use rights can be terminated early, suspended or restricted by the licensing authority in the following cases: failure by the subsoil user to comply with material provisions of the license; systematic violation by the subsoil user of the established subsoil use regulations; the subsoil user's failure to start subsoil operations at the scope and within the time limits as laid down in the license.

That potential is even greater in the case of the investor, which is party to the production sharing agreement.

Disputes arising in connection with early termination of the subsoil use right (Article 21, Federal Law "On Subsoil") or in connection with the use of subsoil areas in the event of early termination of the subsoil use right (Article 21.1), too, can and should become matters settled through arbitration.

Obviously, it is pointless to grant the party to a legal relationship any rights without giving it the means of legal redress or recovery.

The making of corresponding clarifications and amendments to the new subsoil legislative instrument, in the context of adequate interpretation of the existing Federal Law "On Subsoil," should allow for the substantial expansion of the material foundations of impartial defense of the legitimate rights and interests of the nature use investors. Corresponding proposals may be well developed both in terms of new legislative amendment

proposals and in respect of the interpretation of the current provisions of the existing law.

Analysis of respective provisions of the international conventions and treaties concerning the encouragement and reciprocal protection of investment, to which the Russian Federation is a party, also gives some hope concerning the feasibility of the approach being proposed here. More on this subject in the following pages.

The practical significance of the proposed interpretation of the legislative provisions, whereby a much greater number of relationships could become parties to the contractual discretion, lies in the following. Even the possible yet directly legislated prospect of such contractual discretion alone could lead to significant improvement in the investment climate, secure greater stability of the natural resource use relationships and help promote a healthier Russian judicial system.

4. **One of the more serious obstacles to the expansion of the remedial options available to the subsoil users is the absence of a sovereign immunity waiver mechanism.** Yet it is imperative that the state should put in place a legal mechanism of sovereign immunity with a view to ensuring the government's and investors' equal participation in the contractual relationships in the field of subsoil use.

Due to its special role as a party to the civil law relationships, the State enjoys virtually unlimited opportunities for manipulating its obligations, including the so-called "government's waiver of sovereign immunity", something that hugely complicates any legal defense *irrespective of* which country's arbitration court reviews the matter.

Most of the nature use agreements are concluded with the central government. The formal application to such agreements of the common Russian Federation civil law regime does not necessarily mean that the content of such legal relationships becomes a "common civil law relationship" nor does it mean that the civil law defense mechanism would fully apply in such cases. In any such relationship, one must not forget that the state wears many hats and is represented by numerous government structures. Consequently, while accepting *contractual obligations,* the state does not stop functioning as a *public law subject.* In reality, the guarantees stipulated under any existing agreement that the state would live up to its obligations do not necessary apply automatically.

In this connection, therefore, it is not accidental that the Russian Federation's Civil Code carries the sovereign immunity clause.

The significance of the provisions lies in the fact that the state has agreed to waive its sovereign immunity rights in the civil law relationships, with all the resulting legal consequences. That had been done to normalize the state property denationalization process and to promote the growth of civil transactions in the new market conditions. Nevertheless, experience shows that it was not enough just to amend the law making the government an equal party to the civil law relationships and then apply to the state the Civil Code norms applicable to legal entities.

This circumstance also graphically illustrates the complexity involved in using, in the nature use field, such private law elements as the contract and shows the need for further developments toward the formation of a mechanism ensuring the state's legal liability for performance of its obligations. *Neither the legislation nor the court practice* has yet developed a legal responsibility arrangement reflecting the specific character for the state as a legal entity.

Therefore, it would seem advisable, first of all, to start with the development of that element of law-governed state in present-day Russia.

In this connection, of tremendous importance is the Russian Federation Government's declared intention to develop a draft Federal Law "On State Immunity" (a tentative name so far). That draft law, in principle, should present an opportunity to lay down procedures and mechanisms securing the state's waiver of sovereign immunity in civil law relations in general and possibly even in the sphere of nature use relationships in particular.

The resolution of the problem of going to an international arbitration court, along with the other above-mentioned factors, will depend also on the specific arbitration clause of a given subsoil use agreement (production sharing agreement, work contract, lease contract, etc.) whereby the government agrees to refer the disputes to a selected arbitration court. In this connection, what should be considered, too, is the degree of probability, with which the state as a party to the agreement may choose to refuse to submit to such arbitration proceedings.

Based on the experience of other CIS countries (in particular, that of Kazakhstan and Azerbaijan), the possibility of the government, as a party

to the subsoil use relationship, refusing to submit the dispute to mediation proceedings may be overcome by the inclusion, in the Law "On Foreign Investments", of an appropriate provision giving the foreign investor the right to choose the mediation body to settle possible future disputes when concluding an agreement with the state as a party. It is possible to draft specific proposals to amend the Law accordingly.

Possible approaches to the resolution of the problem

The following proposals are based on the analysis of provisions of international conventions and treaties, signed by the Russian Federation, concerning the encouragement and reciprocal protection of investors, with particular regard for the interests of the subsoil users.

One of the ways of expanding the possibilities of going to the international arbitration court is the acceptance by the Russian Federation of appropriate international instruments and its accession to the corresponding international treaties and conventions. The provisions of respective Treaties Concerning the Encouragement and Reciprocal Protection of Investment, which are in effect in Russia today, lay down legal norms providing for submission to an arbitration court of "any" dispute arising between the investor as a party and the other contracting party[5].

However, of all the OSCE member-countries the Russian Federation has only ratified, to date, the appropriate treaties with the governments of France and Great Britain. Obviously, the continued development of economic relations with the United States and the substantial increase in the general investment level should be given the added legal security of *adopting a similar Agreement, the absence of which today constitutes a serious drawback for potential investors.*

One multilateral agreement that provides for arbitral examination of investment disputes is the 1965 Washington Convention on the settlement of *investment disputes between states and nationals of other states.* The Convention treats as investment disputes all disputes arising out of relations between a private foreign citizen and a given state with regard to that foreign individual's investment. Past experience in dispute mediation proceedings shows that the most typical are the disputes over the indemnification of loss resulting from the unilateral change of the agreement provisions, the improper performance of obligations or the payment of indemnity associated with expropriation or nationalization[6].

The special arbitration body established pursuant to the Convention under the auspices of the International Bank for Reconstruction and Development and known as the International Center for the Settlement of Investment Disputes (hereinafter the "ICSID") has the following advantages: neutral venue; non-interference on the part of national courts; enforcement of arbitral awards; possibility of settling the investment disputes between a given state and the business entity of another contracting state; inadmissibility of appealing against the arbitral awards or contesting the decisions; broad interpretation of the concept of the investment; and the state's participation.

In order for a dispute to be referred to the ICSID mediation, the following conditions must be met: the respective parties written consent without the right of unilateral rejection or the appropriate provisions in a bilateral international agreement (see above); the presence, in a multilateral treaty, of a clause regarding the referral of the dispute to alternative resolution, as, for instance, in the Energy Charter (not ratified by Russia).

The Washington Convention has been signed by more than 150 states. Russia, however, is among the signatories which have not ratified it. One can only guess as to what the reasons might be, but the fact remains that the *non-applicability of the said convention to the protection of foreign investors in Russia* in their disputes with the government remains a serious obstacle to the development of a favorable investment climate.

The International Commercial Arbitration Court (under the auspices of the Russian Federation Chamber of Commerce and Industry) operating in Russia today cannot be regarded as an efficient instrument to meet the task, as it is only designed to resolve the disputes involving foreign entrepreneurs, with the subsoil users being only a tiny minority due to various political and legal reasons. Besides, it has not yet become customary practice for the investors to refer their dis-

[5] Besides, the extension of arbitral protection of the investors' rights should proceed taking into account the provisions of the new Federal Law "On Foreign Investments" signed by the Russian Federation President on 9 July, 1999 including, first and foremost, the provisions regulating the concepts of "foreign investor", "foreign investment" and the like.

[6] M.M. Boguslavsky, *Current Trends toward the Expansion of the Sphere of Activity of Institutional Arbitration Courts in the symposium "Current Issues in International Commercial Arbitration".* Spark Publishers, Moscow, 2002, p. 42.

putes to that arbitration body, and, from a purely professional viewpoint, the makeup of the ICAC arbitrators fails to account for the specifics of the subsoil use sector. As a result, experience shows that this category of disputes is virtually non-existent in the International Commercial Arbitration Court's practice.

Under the circumstances, what we see here is a kind of vicious circle situation whereby, while Russia is interested in attracting major domestic and foreign investors in the nature use sector, the level of investment is far from being adequate.

One of the serious obstacles to making the appropriate investment decisions is illiquidity. In the situation where the government is an obligatory party to all legal relationships in that sector, with those relationships, primarily, being of administrative nature due to the underlying licensing requirement, what becomes of principal importance to any investor is the degree of legal protection of its property interests. Consequently, in the absence in present-day Russia of appropriate legal and institutional foundations securing the liquidity of all business transactions involving the government, it is difficult to speak of any serious investment prospects. A major component of such defense mechanisms could be the state-secured opportunity for the subsoil user to seek redress against the government in a professionally competent and respected independent mediation body.

The existing situation provides a clear proof of the obvious need for the Russian Federation to:

(1) (speed up the ratification process of the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States in order to gain access to the ICSID dispute resolution mechanism and/or;

(2) (use additional tools, in settling the investment disputes with the state in the subsoil use field, to defend their rights both within the framework of current arbitration laws and regulations and expand and make more specific the existing judicial possibilities of resolving the disputes; and

(3) (develop a new specialized mechanism of institutional dispute mediation. Let us examine the above in greater detail.

Proposal 1. Obviously, the narrow interpretation of what constitutes the property dispute category subject to jurisdiction of any mediation court, including international mediation bodies, can, in itself, significantly restrict the subsoil use dispute category based on the administrative law.

Subsequently, when implementing the ICSID rulings, it will be important to follow the provisions of the Convention on the Recognition of Enforcement of Foreign Arbitral Awards (New York, 1958), based on the premise that the Convention *only* applies to the awards of private-law nature. From the viewpoint of the foreign investors' interests, the above circumstance is seen as a serious drawback of the licensing subsoil-use model existing in Russia today.

Besides, from the viewpoint of the interests of a Russian party to the dispute (if ever one should be referred to the ICSID mediation), a further drawback to the dispute resolution process would be the use of a foreign language in proceedings and an unpredictable choice of applicable substantive law, something that could create additional difficulties to the subsequent enforcement of the mediation agency's award in Russia.

One further thing to bear in mind is that, in the Russian Federation, the Russian Arbitration Procedure Code provisions apply regarding the exclusive jurisdiction of the Russian Federation's arbitration courts in matters involving foreign parties to the disputes involving the Russian Federation's state-owned property, including: disputes over state-owned property or the government's eminent domain; or disputes over immovable property in the territory of the Russian Federation or the rights to such property. Within the exclusive jurisdiction of the Russian Federation's arbitration courts is the category of disputes involving foreign parties and arising out of the administrative or other public law relationships (Article 248, APC).

And finally, when drafting new subsoil legislation, it will be necessary to specify which particular courts will engage in any such arbitration or mediation proceedings so as to eliminate any future misunderstandings and the need to prove the obvious to the various officials involved, and, consequently, it might make sense, to write, into the subsoil legislation, a special provision whereby the right to refer the dispute to mediation should also include the right to go to an international arbitration court.

To the lawyers, it is clear that the provisions of the Federal Law "On International Commercial Arbitration", which is based on the UNCITRAL standards, refer to any mediation agency.

Proposal 2 is a more realistic one as it relates to the use of possibilities present in the existing arbitration process laws and there should be no conflict of laws there.

The task of finding arbitrators with specialist professional knowledge in the subsoil use field to serve on government arbitration courts can be accomplished by setting up specialist arbitration panels or just a single federal specialist arbitration board to examine disputes in the field of subsoil use, with panel members drawn from among respected experts with appropriate experience and specialist knowledge in the fields of mining and environmental law.

For instance, under Article 11, Federal Constitutional Law "On Arbitration Courts", within the Russian Federation's Supreme Arbitration Court (hereinafter the "SAC") and following the SAC Plenary Session resolution, various specialist arbitration panels can be established to review separate categories of disputes. It is up to the SAC to decide on the establishment, within the lower arbitration courts, of arbitration panels to examine specialist matters (Article 13. 5.1).[7]

Within individual arbitration courts, specialist arbitration panels can be set up to hear disputes arising out of the civil law or other legal relationships or settle disputes relating to the administrative law relationships (Article 35, APC). Matters arising out of the administrative or other public law relationships are heard under the general rules of adversary proceedings as laid down by the APC (Article 189).

Furthermore, arbitration proceedings are not limited to reviewing just the property disputes arising out of civil-law relationships or other legal relationships but, as indicated above, they also cover the disputes relating to the administrative law relationships.

Consequently, the above proposal involves the implementation of possibilities provided directly under the new set of arbitration process laws.

The experiences of some other countries offer good examples of addressing similar problems. More specifically, of considerable interest is the experience of organizing and directing the work of the Federal Patents Tribunal in Germany. The Tribunal comprises 14 Senates with a total of 144 judges. The Tribunal hears appeals against the State Patents Service following a specialist legislation procedure.

Furthermore, there are 207 Labor Disputes Tribunals successfully operating on the basis of the Labor Disputes Tribunals Law of 2 July 1989. In 1996 alone, those tribunals heard a total of 656,207 first instance disputes. According to the law-givers intent, such disputes should be reviewed promptly and economically. There are also numerous social and financial tribunals (8).

Proposal 3 regarding a new specialist mechanism for the institutional settlement of disputes through the process of mediation.

As an entirely new provision, it is proposed to complement the existing dispute resolution system with a new mechanism, provisionally called the "Russian ICSID", specially designed to resolve various conflict situations between the Russian Federal Government and the subsoil users, both foreign and domestic.

In conclusion, a few words concerning another major problem, which in itself could become an object of independent investigation.

Creating an obstacle to the further expansion of the resolution possibilities of disputes in the field of subsoil use are the provisions of the new Administrative Procedure Code *regarding the challenging by the Arbitration Court of the awards of mediation tribunals or international commercial arbitration courts* made in the territory of the Russian Federation (Articles 230-233) or foreign arbitration awards entered using the provisions of the Russian Federation laws (Articles 230-233).

Without overburdening the text with the mention of all the possible causes for canceling the mediation tribunal's award, it needs to be emphasized that, in this writer's opinion, the most problematic is the grounds, whereby the arbitration court rules that the *mediation court's decision infringes on the fundamental principles of the Russian Federation's law.*

"If the mediation court's decision infringes on the fundamental principles of the Russian Federation's law" (Article 239) is also sufficient grounds for the arbitration court to refuse the issuance of an enforcement order for the compulsory execution of the mediation tribunal's decision.

Among the causes for the Arbitration Court to refuse recognition or enforcement of the foreign

court's decision or foreign arbitral award is "...when the enforcement of the foreign court's decision might contradict the *public policy* of the Russian Federation" (Article 244).

Where the problem lies is that the conformity with public policy and compliance with the Russian Federation laws are two separate things which should not be equated; conformity with public policy means also compliance with the fundamental principles of international law (in particular, the principle of respecting the international treaties).

Untenable appear the views, as expressed in some judicial decisions that the mediation tribunals' awards might conflict with the Russian Federation's public policy due to the alleged contradiction to the laws of the land. Such finer points do not always find faithful reflection in positions taken by the government arbitration courts, particularly, given the entrenched attitudes to the idea of dispute resolution through mediation proceedings[9].

In view of the above, the risk is great that unreasonably broad interpretation of the above stipulation could be used to justify the refusal to accept or enforce the awards entered by mediation tribunals. This author shares A.M. Muranov's view that, given the historical lack of legislative regulation in Russia, of international private-law relations and the absence of a developed law-enforcement practice, it is important to take into account the approaches that have been developed in respect of the "contradiction-to-public-policy" category[10].

The presence, in Russian law, of the provision allowing the use of the legal norms of a foreign state (Article 28, Russian Federation Law "On International Commercial Arbitration") presupposes the application of the public-policy clause only in those individual cases where the use of a foreign state's law could lead to results unacceptable in terms of the Russian legal mind. It is only in situations like this that would it seem justified to accept such a reason for rejecting or overruling (or taking some other procedural steps) the awards of the mediation agencies.

The extended opportunities of dispute mediation proceedings in the field of subsoil use could lead to fundamental improvements in the general investment climate in this country and help promote the development of more civilized legal behavior habits of the parties to the subsoil use relationship. □

[9] A.I. Muranov, *Enforcement of Foreign Court Judgments and Arbitral Awards,* Moscow, Justicinform Publishers, 2004, pp. 126-137.

[10] *Ibid.* pp. 133-134.