

OBJECTIVIZATION OF PROCEEDINGS BEFORE INTERNATIONAL JUDICIAL AND ARBITRAL BODIES ON THE EXAMPLE OF AN INSTITUTION OF PRELIMINARY OBJECTIONS

(summary for the general public)

The research project aims to investigate and explain a practice of international judicial and arbitral bodies of assigning an objective significance to preliminary objections. The key objective of the project is to make this analysis in the context of constitutionalization of international law. Preliminary objections can be defined as a procedural tool, that can be used by States, when they are sued to international judicial or arbitral body. The effective submission of preliminary objections makes impossible not only making a decision on merits by a relevant international body, but prevents even any discussion on the merits. Very often this leads to situation, that it is not possible for a given judicial or arbitral body to rule on a question of international responsibility of a State. Preliminary objections are perceived as a subjective right of a State in proceedings before international judicial or arbitral body. Their original and primary function is to protect the interests of sovereignly equal States. In addition to such a subjective function, some international adjudicative authorities began to attribute objective significance to preliminary objections, perceiving them not only as a guarantee of State sovereignty, but as an important tool enabling them proper performance of their judicial function. As part of the project, a comparative analysis of the practice of various international judicial and arbitral bodies will be made in order to identify specific cases of objectivization of preliminary objections, its justification, forms and methods, as well as effects. An important part of the research will be the identification of common values that are implemented as part of objectivization of preliminary objections. Next, results of research on these questions will be analyzed from the perspective of the constitutionalization of international law. It is one of the fundamental problems of international law, which is currently being discussed in the academic world. For the purposes of the project, the constitutionalization of international law is understood broadly, assuming that it encompasses limiting the role of the particular interests of States as a factor shaping the international legal order, while stating at the same time that this order should reflect and protect common and higher values. The initial premise of the project is that the constitutionalization of international law understood in this way may also concern procedural issues. The overriding common value that should be reflected and protected in proceedings before international bodies is justice. As a result of the project, it will be possible to indicate, how justice as a common value is precisely expressed, and thus what elements create this concept in the procedural dimension.