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THE LAW OF NON-RECOGNISED STATES IN INTERNATIONAL ADMINISTRATIVE LAW

ABSTRACT

Very recently, the question of the applicability of normative systems, established by non-recognised states, has been quite intensively discussed in the scholarship of international private law. Here, arguments were presented in support of the notion of application of these normative systems in certain relations of private law. However, the problem is also of importance with regard to the relations of administrative law, where a product of the application of law of these entities (such as a travel passport, a university diploma, or a driving licence) may also appear. This article aims to address the problem of non-recognised states from the standpoint of international administrative law. In line with the existing scholarship, this article argues that a strict distinction must be made between the recognition of a state in the sphere of international public law on one hand and the recognition of acts issued by non-recognised states on the other. The mere fact that an entity hasn't been recognised by the means of international public law does not automatically imply that the acts issued by the administration of such an entity can not be recognised abroad. This is in particular true in those cases where the basic human rights of an individual are concerned (the cases of humanitarian reservation). However, such recognition of acts issued by non-recognised states, can only serve to protect the rights of an individual and can not imply recognition of the entity by the executive of the concerned state.

KEYWORDS: Non-recognised states, de facto regimes, normative theory, factual theory, humanitarian reservation, recognition of foreign administrative acts, international administrative law

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1. Introduction

Since the collapse of the ‘Iron Curtain’, Europe^{1,2,3} has faced the emergence of territorial entities, which haven’t been recognised as sovereign ‘states’ by other members of the international community. In literature, these entities were once referred to by a myriad of terms, such as the ‘non-recognised states’⁴, the “unrecognised states”⁵ or the ‘de facto regimes’.⁶ Consequently, for the sake of uniformity, the first of these terms will be used throughout this article.

Several of these ‘non-recognised states’ have emerged as product of the collapse of the USSR and the consequent establishment of new regimes in the waste region of Eastern Europe. This was the case of the Pridnestrovian Moldavian Republic (Transnistria), which emerged as a breakaway state in the narrow strip between the Dniester River and the Moldovan-Ukrainian borders. In the post-Soviet Caucasus, several other non-recognised states have emerged, in

1 This research was funded by Czech Science Agency through its project 20-01320S “International Administrative Law: Legal Discipline Rediscovered”.

2 This is a written and much expanded version of my lecture at the European Law & Governance School in Athens, which was organised by the European Public Law Organisation on 26th October 2022.

3 In this paper, the term ‘Europe’ will be understood in its geographical meaning as a densely inhabited continent, which is bordered by the Arctic Ocean to the north, the Atlantic Ocean to the west, the Mediterranean Sea to the south and the Ural Mountains to the east.

4 See M. MINAKOV, *On the Extreme Periphery. The Status of Post-Soviet Non-Recognised States in the World System*, in *Ideology and Politics* 12/2019, pp. 32-79.

5 See A. TATARYN & E. ERTÜRK, *Unrecognised States: The Necessary Affirmation of the Event of International Law*, in *Law and Critique* 32/2021, pp. 331-345.

6 See J. VAN ESSEN, *De facto regimes in International Law*, in *Utrecht Journal of International and European Law* 28/2012, pp. 31-49 and J. ONDREJ, *The creation of new states and de facto regimes*, in *Czech Yearbook of Public and Private International Law* 6/2015, pp. 131-147. See also A. CULLEN & S. WHEATLEY, *The Human Right of Individuals in De Facto States under the European Convention on Human Rights*, in *Human Rights Law Review* 13/2013, pp. 691-728.

particular the Republic of Abkhazia, the Republic of Artsakh (formerly the Nagorno-Karabakh Republic) and the State of Alania (the Republic of South Ossetia).

In the 2010s, three other 'non-recognised states' appeared in Eastern Europe. While the existence of the non-recognised Republic of Crimea was a short-living one⁷, the Donetsk and Lugansk People's Republics lasted from their unilateral declarations in 2014 until their subsequent annexation by Russia in 2022.

In all the above-mentioned cases, these entities possessed effective control over certain territories. At the same time, the international community of states haven't recognised this control as being in compliance with international law and thus, most of the states haven't recognised these entities as sovereign states.⁸ It must be stressed that all these 'non-recognised states' emerged in situations of crisis, military and ethnic conflicts and are interconnected with the suffering and despair of their inhabitants.

The fact is that the emergence of 'non-recognised states' in Europe hasn't been isolated within the post-Soviet space. Several of them have also emerged in South-East Europe; the Turkish Republic of Northern Cyprus may serve as a salient example of such an entity. The existence of Kosovo as an independent state hasn't been recognised by several European states so far.⁹ Fur-

7 The independence of the Republic of Crimea was declared, in violation of the Ukrainian Constitution, by the Crimean Parliament and the Sevastopol City Council on 11th March 2014. The annexation of the newly declared republic by the Russian Federation followed at the end of the same month.

8 The Republic of Abkhazia was recognised by the Russian Federation (2008), Nicaragua (2008), Venezuela (2009), Nauru (2009) and Syria (2018). Formerly, it was also recognised by Tuvalu and Vanuatu, but both withdrew their recognition in 2013 and 2014 respectively. While both the Donetsk and Lugansk People's Republics have been considered proxy states of the Russian Federation, they haven't been recognised by the Russian Federation during the period of their existence. The same applies to the Republic of Artsakh, which has never received any recognition from the side of his closest ally in the region, the Republic of Armenia.

9 This is the case of Cyprus, Greece, Moldova, Romania, Russia, Serbia, Slovakia, Spain and Ukraine.

ther afield in the Middle East, the State of Palestine still remains to represent an entity which hasn't gained recognition by many of the states of Europe.

Despite the non-recognition of these entities by the international community of states, their existence remains a matter of fact.¹⁰ They maintain economic relations with other territories and, to some extent, also attempted to establish their own diplomatic relations abroad.¹¹ These 'non-recognised states' establish their own systems of public administration and judicial power.¹² They support their own primary and higher education and, in several cases, their own institutions that provide university education. The Taras Shevchenko State University of Tiraspol and the Abkhaz State University of Sukhumi are salient examples of such university institutions.¹³ Several authors presume the existence of these entities will extend into the following decades.¹⁴ What is most interesting from the standpoint of public law, these 'non-recognised states' both produce and enforce their own law in the territories which they effectively control.¹⁵

10 See L. HAMID & J. WOUTERS, *De facto regimes in the areas of limited statehood and the international rule of law*, in *Rule of Law and Areas of Limited Statehood: Domestic and International Dimensions*, edited by L. HAMID & J. WOUTERS, Cheltenham, Edward Elgar 2021, pp. 49-72.

11 For example, the Republic of Artsakh operates five permanent Missions (in Armenia, Australia, Germany, Russian Federation and in the United States) and one Bureau of Social-Political Information in France. However, due to non-recognition of the Republic of Artsakh from these states, neither of the missions is of official diplomatic nature. See C. RYNGAERT & S. SOBRIE, *Recognition of States: International Law or Realpolitik*, in *Leiden Journal of International Law* 24/2011, pp. 467-490.

12 See L. HOCH, *De facto statehood*, in *De facto states in Eurasia*, edited by L. HOCH & V. KOPEČEK, London, Routledge, 2019, pp. 16-26.

13 See B. COPPIETERS, *A Struggle over Recognition and Nonrecognition, The Internationalisation of the Abkhaz State University*, in *Nationalities Papers*, 69/2022, pp. 1-22.

14 See B. BOWRING, *International Law and Non-recognized Entities. Towards a Frozen Future?*, in *Unrecognized Entities, Perspectives in European, International and Constitutional Law*, edited by B. C. HARZL & R. PETROV, Leiden, Brill Nijhoff, 2022, pp. 9-29. Other authors have paid considerable attention to the process of failure and disappearance of non-recognised states. See eg. See V. KOPEČEK, *Possible ends of de facto states*, in *De facto states in Eurasia*, edited by L. HOCH & V. KOPEČEK, London, Routledge, 2019, pp. 320-336.

15 The fact is that academic works on public law of the 'non-recognised states' are still scarce. See eg. J. WOLFSCHWENGER & L. LEONTIEV, *The Legal System of Transnistria*, in *Unrecognized Entities, Perspectives in European, International and Constitutional Law*, edited by B. C. HARZL & R. PETROV, Leiden, Brill Nijhoff, 2022, pp. 249-269; in the same volume, see also G. GABRICHIDZE, *The Legal Systems of Georgia's Breakaway Regions*, pp. 229-248 and T. GHAZARIAN,

The phenomenon of the law of 'non-recognised states' recently triggered the scholarship interest of international private law.¹⁶ Here, the question was posed whether a court can or cannot apply the (private) law which has been established by these entities, in order to govern certain relations of private law in their respective jurisdictions. In other words, the authors have asked, whether the law of the 'non-recognised states' may produce effects in other jurisdictions in the same vein as the law of sovereign states.

A marriage officiated in Somaliland, the succession of someone who died without leaving a will in Transnistria, Abkhazia or the State of Alania, as well as the capacity of the Republic of China (Taiwan) to stand in court may serve as few examples of these situations. In this regard, D. Gruenbaum recently argued¹⁷ that *"foreign law is applied neither as a favour nor as a service to a foreign state, nor as a means of maintaining diplomatic relations; rather, it is applied to resolve a legal problem in accordance with the most appropriate (...) normative order as determined by private international law. The reasons for recognising a state in international relations are not to be confused with the reasons for applying its law, so the application of the law of a foreign state does not imply recognition of that state"*. One must bear in mind that this discussion concerns the applicability of laws produced by 'non-recognised states' in relations between two equal individuals, which means in the relations of private law.

However, the fact is that products of the law, established by 'non-recognised states' may also appear in the relations between the administration and

The Legal System of Nagorno - Karabakh, pp. 229-248 and R. PETROV, *The Legal Systems of the Donetsk/Lugansk Peoples Republics*, pp. 209-228. For a comparative analysis of the normative regimes, which have emerged in the 'non-recognised states' of the post-Soviet space, see V. TOSTYKH, M. GRIGORIAN & T. KOVALENKO, *Legal Systems of the Post-Soviet Non-recognised States*, in Russian law Journal 7/2019, pp. 81-100. For an outstanding and quite unique analysis on the law of the Islamic State, see F. L. RAMAIOLI, *Islamic state as a legal order: To have no law but Islam, between Shari'a and Globalisation*, London, Taylor and Francis, 2022.

16 See J. BASEDOW, *Non-recognised states in private international law*, Yearbook of Private International Law 20/2018-2019, pp. 1-14. Also see B. R. ROTH, *Governmental Illegitimacy in International Law*, Oxford, Oxford University Press, 1999, pp. 158-159.

17 See D. GRUENBAUM, *From Statehood to Effectiveness: The Law of Unrecognised States in Private International Law*, Rabel Journal of Comparative and International Private Law 86/2022, p. 599.

the individual, which are subjects of interest to this journal. In these kinds of relations, the following questions may appear: how should the administrative authority address a diploma, issued by the university in Transnistria; a travel passport, issued by the Lugansk People's Republics, a laissez-passer for a corpse, issued by the Republic of Artsakh, an act issued by a tax authority of the Turkish Republic of Northern Cyprus, or a driving licence, issued by the authority of the State of Palestine?

The fact is that these states have established various regimes of administrative law that aim to address the phenomenon of a foreign element appearing before administrative authorities. In the scholarship, these regimes have often been referred to by the term 'international administrative law'¹⁸ and, consequently, this article will use this term throughout.

In a similar vein as in the field of international private law, the regimes of international administrative law are neither universal, nor global. On the contrary, we refer to specific sets of norms that are applicable in each of the jurisdictions. Thus, we must reference French, Italian, Greek, or Moldavian international administrative law. However, again, the issues that may appear before the administrative authority in each of these jurisdictions are very similar to the field of international private law and, consequently, call for a uniform approach by legal scholarship.

While the problem of the application of law, established by the 'non-recognised states', has been recently quite extensively discussed in the scholarship of international private law, so far the topic has been subject to only limited attention in the recent literature of administrative law.¹⁹ Reflecting the emergence and continuous existence of several 'non-recognised states' on the geographic periphery of Europe, this article aims to argue that the mere fact

18 See J. HANDRLICA, *A treatise for international administrative law*, in *The Lawyer Quarterly*, 10/2020, pp. 462-475.

19 See eg. H. WENANDER, *Recognition of Foreign Administrative Decisions*, in *Heidelberg Journal of International Law* 71/2011, pp. 778-779.

that an entity hasn't yet been recognised by international public law does not automatically imply that the acts issued by the administration of such an entity cannot produce legal effects in the relations of administrative law abroad.

In concert with the recent debate in the scholarship of international private law, this article asserts that the law of the 'non-recognised states' must be taken into consideration, in particular, in those cases where the basic human rights of an individual are concerned. Simultaneously, this article also argues that recognition of acts, issued by 'non-recognised states', can only serve to protect the rights of an individual and cannot imply recognition of the entity by the executive of the concerned state.

2. Overview of existing theoretical approaches to the problem

As for the notion of recognition of a state rank among classical topics of international public law, it has been argued that a statehood in general presupposes the following three elements: 1) a population, 2) a territory and 3) an independent executive that exercises effective control over this territory. The ability of the state to enter into international relations with other states represents a fourth element, which has been widely discussed in the scholarship. While some authors²⁰ have argued that the fact of recognition of a state by other states is of a constituting nature for the state's own statehood, others have claimed that international recognition is merely of a declaratory nature.²¹

At the same time, various hybrid approaches also appeared²² for international recognition in the scholarship. Despite the absence of agreement on this issue in the legal scholarship, it is undeniable that the absence of recognition of a state constitutes a major obstacle in the existence and function of such a

20 See H. Kelsen, *Recognition in International Law; Theoretical Observations*, in *American Journal of International Law* 35/1941, pp. 605-617, C. Hillgruber, *The Admission of New States to the International Community*, in *European Journal of International Law* 9/1998, pp. 491-509 etc.

21 See J. Frowein, *Recognition*, in *Max Planck Encyclopedia of International Law*, edited by R. Wolfrum, Oxford, Oxford University Press, 2010, p. 10.

22 See H. Lauterpacht, *Recognition in International Law*, Cambridge, Cambridge University Press, 1947, pp. 73-75 (here, the author argues, that the states have an obligation to recognise).

state. Given the importance of the issue in international relations, the notion of recognition may seem of exclusive interest to the scholarship of international public law. However, the realities of international relations and the necessity to address the acts issued by those states, which haven't been recognised by the respective state, have caused interest in this problem among the scholars of international administrative law. Several theoretical approaches have emerged in this regard and the following paragraphs will provide an overview.

2.1. Normative approach (the 'one voice theory')

In case the executive of a state denies, or hesitates to recognise another state, that same executive cannot admit any legal effects of acts, issued by such a 'non-recognised states' in the relations between the administration and individual. This is the so-called *normative approach*²³, which strictly connects the notion of non-recognition by the means of international public law and the practice of application of law by the authorities of the state – including both courts and administrative authorities. According to this approach, the state must speak with 'one voice' in both international relations and in matters of the internal execution of powers. Under the normative approach, it would be absurd, if a state would confer legal effects to the acts issued by another executive to which – at the same time – the state denies its own recognition.

The fact is that the normative approach, in particular, found much appraisal in the scholarship of international private law.²⁴ At the same time, however, the 'one voice' theory also gained significant reflection in the literature, addressing international administrative law. The essay, authored by S. Gemma, represents²⁵ a very early demonstration of reception of the normative approach in the scholarship of international administrative law. Here, the author denies

23 See J. BASEDOW, *The Law of Open Societies: Private Ordering and Public Regulation in the Conflict of Laws*, Leiden, Brill Nijhoff, 2015, p. 565.

24 See D. GRUENBAUM, *From Statehood to Effectiveness*, pp. 585-587.

25 See S. GEMMA, *Les gouvernements de fait*, in *Recueil des Cours* 3/1924, pp. 297-322.

that the application of law produced any of 'non-recognised states' may be permissible in those states belonging to the international community. A decade later, this rigid stance was repeated in the monograph on mutual recognition of foreign administrative acts, authored by K. Weiss.²⁶ In one line commenting on the normative approach, K. Weiss argued on the very first pages of her book that "*it is natural, that only acts of recognised states can be recognised by the administrative authorities in inland.*"²⁷

No classical scholars of international administrative law, that favoured the normative approach, paid any attention to various self-proclaimed entities that emerged in the course of the late 1910s and early 1920s and who represented an interesting parallel to the 'non-recognised states', which have currently emerged on the very eastern periphery of Europe. S. Gemma must be well aware of the existence of the short lived and internationally non-recognised proto-fascist state in Fiume (September 1919 – December 1920) that was later referred to as a 'living work of art' by fascist ideology.²⁸ K. Weiss must also be well aware of the establishment of a myriad of self-proclaimed 'de facto regimes' in Germany after the end of WWI: the Alsace-Lorraine Soviet Republic (November 1918), the Bremen Soviet Republic (January – February 1919) and the Bavarian Soviet Republic (April – May 1919) are salient examples of such entities. Similarly to the Donetsk and Lugansk People's Republics, the above-mentioned self-proclaimed entities of the post-WWI era did effectively, albeit for a very short time, also controlled certain territory. The executive of all these self-proclaimed entities have certainly issued administrative acts, which consequently circulated in other states. The fact is, however, that neither of the classical authors, pleading for the normative approach, have paid any considerable attention to the feature of (non)recognition of acts, issued by these enti-

26 See K. WEISS, *Die Anerkennung ausländischer Verwaltungsakte*, Göttingen, Georg-August-Universität Göttingen, 1932, p. 1.

27 Ibid.

28 See M. BRESCIANI, *Beyond D'Annunzio: The fiume crisis between paramilitary experiences and imperial legacies*, in *Passato e Presente* 113/2021, pp. 145-154.

ties. This is regrettable, as such a stance would provide us a valuable resource for the situation today.

2.2. A proposal for using the *ordre public* reservation

On 11 January, 1923, France and Belgium invaded the centre of German coal, iron and steel production in the Ruhr Area (Ruhrgebiet) in order to ensure the payment of reparations, which Weimar Germany was obliged to pay pursuant to the Versailles Treaty. The occupation, which was greeted by a campaign of both passive resistance and civil disobedience from the local population, lasted until August 1925, when the last troops were withdrawn.

The problems for the potential recognition of acts, issued by occupation authorities in the Ruhr Area, was discussed by K. Neumeyer in the 4th volume of his monumental 'International Administrative Law'.²⁹ Here, Neumeyer presented another legal approach to the problem. He strictly differentiated between relations of international public law on one hand and the relations of administrative law on the other. From this perspective, he argued that the impossibility of the recognition of acts issued by occupation authorities does not directly stem from the relations between the occupying states (France and Belgium) on one hand and Weimar Germany on the other. The reason for non-recognition of the acts of occupation authorities was caused – as Neumeyer argued – in an *ordre public* reservation, which hindered the administration of Weimar Germany from any support from occupying authorities. This understanding caused a rigid stance of German authorities, which refused any legal effects to acts, issued by either Belgian, or French authorities in the Ruhr Area.

The concept of *ordre public* reservation, which undeniably has its origin in the theory of international private law, enabled prospective *emancipation* of the relations of administrative law from the international relations between the

29 See K. NEUMEYER, *Internationales Verwaltungsrecht. Allgemeiner Teil*. Zürich – Leipzig, Verlag J. Schweitzer, 1936, pp. 325-326.

states. The 'one voice' was challenged in this regard. Under Neumeyer's concept, the administrative authorities must not necessarily follow the line of international politics. On contrary, they have their *free discretion* to some extent in how to approach the acts issued by executives of other states and entities. Curiously enough, Neumeyer addressed³⁰ the acts issued by occupation authorities during the international intervention in Crete (1897-1898), but did not deny the possibility of their recognition abroad. Consequently, the door for the factual approach, which will be discussed below, was opened.

2.3. Factual approach

The realities of Europe in the post-WWII period facilitated more flexible theoretical approaches to application of law, established by 'non-recognised states' in the relations of administrative law. The West-East divide caused several situations in which states having no official relations in the sphere of international public law were in need for mutual cooperation and thus, in need for facilitating circulations of acts issued by their administrations. In this regard, we must bear in mind that official recognition of the USSR was absent from the side of several states of Europe until the 1970s. Ireland officially recognised the USSR not earlier than in 1973, Portugal in 1974 and Spain in 1977. The Federal Republic of Germany (FRG) wasn't recognised by the states of Eastern Europe until the 1960s and 1970s. Thus, Romania gained recognition in the FRG only in 1968, Poland in 1970 and Czechoslovakia in 1973. Despite the absence of mutual recognition in the field of international public law, commercial and cultural relations among these states were realised and together with circulation of persons and goods, also acts of administration circulated and were recognised.

Under this situation, the stance of the normative approach seemed to be untenable. In the scholarship, a number of authors reflected upon the free cir-

³⁰ Ibid, p. 525.

culation and factual recognition of various documents issued by those states, which haven't been recognised by the executive. At the end of 1950s, A. Verdross argued³¹ in his handbook on international public law that, despite absence of international recognition, a practice of recognition of acts issued by officially non-recognised executives had emerged in the relations between the states of Western and Eastern Europe. Acts approving state citizenship, various types of concessions and legalisation of documents represented salient examples of such acts. In this respect, I. Seidl-Hohenveldern presented³² another argument in favour of application of law of the 'non-recognised states'. He argued that the absence of international recognition must be considered a temporary one and, consequently, such absence cannot constitute a barrier for legal effects of foreign acts in the relations of administrative law.

A decade later, K. König presented³³ his thesis that the recognition of both international public and foreign acts in administrative law represent two different concepts, which are mutually independent. König argued for a strict separation of international relations, which are – according to his opinion – a product of politics, and the relations of administrative law. In this regard, he argued that what really matters in administrative law, is not official recognition of the other state, but merely the fact that this state effectively controls certain territory, produces its own law and applies it accordingly.

This approach in principle implies a negation of the 'one voice theory', as it leads to a total emancipation of the relations of administrative law from the realities of international relations. The fact is that the viability of factual approach was also spontaneously approved in the decades after the collapse of the 'Iron Curtain'. This can be demonstrated on the realities of the mutual re-

31 See A. VERDROSS & K. ZEMANEK, *Völkerrecht*, 4th ed., Wien, Springer Verlag, 1959, pp. 181-182.

32 See I. SEIDL-HOHENVELDERN, *Internationales Konfiskations- und Enteignungsrecht*, Berlin – Tübingen, W. de Gruyter, 1952, pp. 22-23.

33 See K. KÖNIG, *Die Anerkennung ausländischer Verwaltungsakte*, Köln, Carl Heymanns Verlag, 1965, pp. 40-41.

lations between the Czech Republic and the Principality of Liechtenstein, where official recognition was missing for the period from 1993 to 2009.³⁴ The absence of official relations was mainly caused by pending restitution claims, which the ruling dynasty of the Principality submitted in cases of property expropriations that occurred after WWII. The fact is, however, that in the reality of mutual relations, the authorities of the Czech Republic have neither denied the validity of travel passports, issued by Liechtenstein, nor recognition of school graduate certificates issued by education institutions in the Principality.

Having analysed obvious advantages of the factual approach to the circulation of persons and products, one must bear in mind that the existing scholarship has mainly addressed cases of non-recognition among those states which were considered members of the international community by a number of other states. Consequently, the question arises whether the factual approach can also be applied *vis-à-vis* such self-proclaimed entities as the Pridnestrovian Moldavian Republic (Transnistria), Republic of Abkhazia, Republic of Artsakh, or the State of Alania (the Republic of South Ossetia).

Undeniably, all these entities would fulfil the requirement of factual control over a compact territory, as promulgated by K. König. On the other hand, the *character of relations* of these self-proclaimed entities with other states is very different from the *nature of relations* the Federal Republic of Germany once had in the course of the 1960s and 1970s. Consequently, application of the factual approach would more than daring, as developed in the scholarship of international administrative law decades ago, as well as on those self-proclaimed entities that emerged in the post-Soviet space after the fall of the 'Iron Curtain'.

2.4. Humanitarian approach

34 See R. MARXER, *Die diplomatischen Beziehungen zwischen Liechtenstein und der Tschechoslowakei bzw. Tschechien 1945 bis heute*, in *Studia historica Brunensia* 67/2020, pp. pp. 115-133.

Bearing in mind that the arguments, presented by the authors advocating the factual approach were not formulated *vis-à-vis* application of the law of self-proclaimed entities, the problem of recognition of acts produced by these entities remains. The fact is that two quite different situations must be distinguished here.

On one hand, the question arises whether an act, issued by an authority of the 'non-recognised state' may imply effects in cases where any sort of mutual cooperation between the administrative authorities of the host and home states is required. On the other hand, the question is whether such act can provide any legal effects in case it is demonstrated by an individual *vis-à-vis* the administrative authority.

The first question was touched upon regarding the regime of mutual recognition established by means of EU law by the Court of Justice. In the case of 'The Queen v Minister of Agriculture, Fisheries and Food'³⁵, the Court had to address the problem of recognition of phytosanitary certificates issued by the authorities of the Turkish Republic of Northern Cyprus. In this case, the executive of the United Kingdom argued³⁶ that 'in practice, certificates issued by the entity in the northern part of Cyprus are just as dependable as those issued by the Republic of Cyprus and that the reliability of such certificates may always be checked at the frontier by the authorities of the importing Member State. Consequently, to reject phytosanitary certificates issued by the Turkish community in the northern part of Cyprus would constitute an arbitrary discrimination against the population of that part of the island.' This line of argument was aligned with the above-outlined factual approach to the acts of 'non-recognised states', as it focused more on the existence of official recognition on the factual circumstances of the issuance of the act.

35 See Judgement of the Court of 5 July 1994, The Queen v Minister of Agriculture, Fisheries and Food, ex parte S. P. Anastasiou (Pissouri) Ltd and others, C-432/92, ECLI:EU:C:1994:277.

36 Ibid, paragraph 60.

However, the Court of Justice opted for a position which is – in the relation to the self-proclaimed entities – closer to the normative approach. In this regard, the Court ruled³⁷ that “*cooperation, which is necessary in order to achieve the objectives of the directive, cannot be established with authorities who are not recognized either by the Community or by its Member States. It would be impossible for an importing State to address enquiries to the departments or officials of an entity which is not recognized, for instance concerning contaminated products or certificates that are incorrect or have been interfered with. Clearly only the authorities of the Republic of Cyprus are in a position to take action following complaints connected with the contamination of plant products exported from Cyprus.*” One should bear in mind, however, that the reasoning of the Court addresses, in particular, the notion of cooperation between administrative authorities. Consequently, while one may argue for the application of the normative theory *vis-à-vis* the self-proclaimed entities, such application can (and must) be limited only to the cases when mutual administrative cooperation is required in order to recognise the foreign act.

The second question, as outlined above, concerns those situations where a fact is demonstrated by an individual by the means of an act which was issued pursuant to the law of a self-proclaimed entity. This situation may arise when the existence of university education is demonstrated by a university diploma, issued by an institution operating within the territory of a self-proclaimed entity.³⁸ The fact is, that universities conduct educational programmes in Transnistria and Abkhazia, as well as in Northern Cyprus and issue diplomas to their graduates. Another situation may occur when a refugee is demonstrating his or her identity by a travel passport, issued by either the self-proclaimed entities, existing in the territory of Ukraine, or by the authorities of the Islamic Emirate of Afghanistan. Would the absence of international recognition in

37 Ibid, paragraph 63.

38 See N. PUTINA, *Linguistic and Educational Policy in the Transnistrian Region*, in Anuarul Laboratorului pentru analiza conflictului transnistrean 5/2021, pp. 96-112 (the author is analysing the problems arising by mutual recognition of university diplomas between Moldova and Transnistria).

these situations constitute a barrier for any effects of these documents in the relation between the administrative authority and the individual?

Having posed this question, we must bear in mind that even the fiercest opponents of the application of the law of 'non-recognised states' admitted certain exemptions, which must be taken due to humanitarian considerations of the interests of individuals residing under an illegitimate regime. In this respect, W. Wengler used the term 'humanitarian reservation'³⁹ and this term has been acknowledged by subsequent authors.⁴⁰

The fact is, that states can decide not to recognise or enter into diplomatic relations with other states. And despite the serious problems it raises, states can also ignore law of the 'non-recognised states' and disregard their administrative acts. Yet, the populations of these entities are prevented from such actions. For them, the administrative authorities of these entities are the only executive bodies to whom they can resort.⁴¹ These concerns were addressed in the decision making of the European Court of Human Rights, which – with respect to the situation with the Pridnestrovian Moldavian Republic (Transnistria) – ruled that *“it cannot automatically regard as unlawful, for the limited purposes of the Convention, the decisions taken by the courts of an unrecognised entity purely because of the latter’s unlawful nature and the fact that it is not internationally recognised. In line with this rationale the Court finds it already established in its case-law that the decisions taken by the courts of unrecognised entities, including decisions taken by their criminal courts, may be considered “lawful” for the purposes of the Convention provided that they fulfil certain conditions. This does not in any way imply any recognition of that entity’s ambitions for independence.”*⁴²

39 See W. WENGLER, *Fragen der Faktizität und Legitimität bei der Anwendung fremden Rechts*, in Festschrift Hans Lewald (bei Vollendung d. 40. Amtsjahres als Ordentl. Prof. im Oktober 1953), Basel, Helbing & Lichtenhahn, 1953, p. 619.

40 See D. GRUENBAUM, *From Statehood to Effectiveness*, p. 602.

41 Ibid.

42 See Judgement of the ECHR of 23 February 2016, *Mozer v. Moldova and Russia*, 11138/10, paragraphs 142 and 143.

The application of the 'humanitarian reservation' certainly constitutes a measure that may help to facilitate grave situations, where acts issued by an illegitimate self-declared entity are demonstrated by an individual. However, the fact is that the purpose of this reservation is to serve as an exception, not as a rule. At the same time, the question arises where the limits of application of this reservation exist. The limits between facilitating the human rights of an individual and legitimising an illegitimate entity haven't yet been clarified and certainly deserve more attention by the scholarship of administrative law in the future. Certainly, application of the 'humanitarian reservation' cannot imply any legal effects of those norms, which are contrary to the public order, democratic values and the protection of human rights.⁴³

3. A critical appraisal of existing theoretical approaches

In September of 2022, a proposal was presented⁴⁴ by the European Commission for a decision of the European Parliament and the Council, banning the recognition of travel passports issued by the occupation authorities of the Russian Federation in the territory of Ukraine, South Ossetia and Abkhazia. This proposal was to be understood as a reconfirmation of the long-existing practice of refusing any support to occupation authorities that are deemed to be illegal.

Undeniably, the proposed decision will reconnect international relations with administrative decision making and, consequently, may be identified as an acknowledgement of the 'one voice theory'. At the same time, the proposed measures can also be understood as a kind of sanction which does not necessarily imply conformation of the normative theory. The following paragraphs aim to claim that, with respect to the application of law of the 'non-recognised

43 See R. PETROV, G. GABRICHIDZE & P. KALINICHENKO, *Constitutional Orders of Non-Recognized Entities*, in *Review of Central and East European Law* 45/2020, pp. 92-125.

44 See Proposal for a Decision of the European Parliament and the Council on the non-recognition of Russian travel documents issued in occupied foreign regions, COM(2022) 662 final.

states', there are persuasive arguments against the use of the normative approach in the relations of administrative law.

Consequently, the nature of international relations between the states and the character of administrative relations between the states and the individual are separated, albeit interconnected. The *fact* of non-recognition of a state does not automatically imply denial of recognition for any administrative acts issued by the non-recognised execution. At the same time, the following paragraphs aim to argue that the feature of 'non-recognition' of a state certainly also plays role within the relations of administrative law. The aim of the following paragraphs is to argue in favour of the factual approach to foreign administrative acts if international recognition is absent and to support use of the 'humanitarian reservation' *vis-à-vis* the law of self-proclaimed entities.

3.1. The relevance of foreign statehood for administrative law

The 'one voice theory' argues for mutual intercedence between the relations of international public law and the relations of administrative law. In this regard, it was argued that "*if recognition, de facto, operates as an acknowledgment of the validity of the acts of the government established in a foreign state, the giving or withholding of it must be consistent with the general law of nations.*"⁴⁵ One must, however, pose the question whether the existence of the statehood of another state is indeed a precondition for applicability of the law of that state in the relations of administrative law.

As explained above, the theory of international public law argues that a statehood in general presupposes the following elements: a population, a territory, an independent executive that exercises an effective control over this territory and the capacity to enter into international relations. The existence of the-

45 See J. STINSON, *Recognition of the de facto governments and the responsibility of the states*, in Minnesota Law Review IX/1924, p. 3.

se elements have been acknowledged both in the scholarship⁴⁶ and in international conventions.⁴⁷ The practice of international public law was used to deny recognising statehood to 'fictional', or 'utopian states', such as the Grand Duchy of Westarctica, the Principality of Seborga and the Nation of Celestial Space.⁴⁸ There is, in principle, no space to apply any forms of normative systems produced by these 'fictional states' in the relations of administrative law.

While this issue may seem harmless, the fact is that several of these 'fictional states' have served as 'recognition mills', providing for the fictional recognition of dubious university degrees. The case of the Principality of Seborga, whose 'Department of Education' had recognised university degrees awarded by the Pebble Hills University, ranks among the most salient examples of such 'recognition mills'.⁴⁹

While any factual signs of statehood are missing in the case of these 'fictional states', in other cases a state has either lost control over a portion of its territory, or has entirely lost control over its own country.⁵⁰ Currently, most of the states of Europe still officially recognise the Islamic Republic of Afghanistan as a legitimate executive and, thus acts issued by the executive are to be recognised. In the relations of administrative law, a passport issued by this executive will be recognised, although its administration does not possess any control over the claimed territory. The same applies also for the so called 'failed states',

46 See T. GRANT, *Defining Statehood: The Montevideo Convention and Its Discontents*, in Columbia Journal of Transnational Law 37/1999, pp. 403-458, P. RADAN, *Recognition of states in international law*, in Routledge Handbook on State Recognition, edited by G. VISOKA, J. DOYLE & E. NEWMAN, Milton Park, Routledge, 2021, pp. 48-58 etc.

47 See the Montevideo Convention on the Rights and Duties of the States (1933), Art. 1: 'The state as a person of international law should possess the following qualifications: a. permanent population; b. defined territory; c. government; and d. capacity to enter into relations with the other states.'

48 See V. SERZHANOVA, *Concept and status of fictional states*, in Annales Universitatis Apulensis Jurisprudentia 17/2014, pp. 82-88. Also see H. HOBBS & G. WILLIAMS, *Micronations: A lacuna in the law*, in International Journal of Constitutional Law 19/2021, pp. 71-97.

49 See E. BEN COHEN & R. WINCH, *Diploma and Accreditation Mills, New Trends in Credential Abuse*, Bedford, Verifile Limited, 2011, p. 7.

50 See V. BÍLKOVÁ, *A State Without a Territory?* in Netherlands Yearbook of International Law 47/2016, pp. 19-47.

which have lost effective control over a portion of their territory. Recognition of travel passports issued by the Syrian Arab Republic may serve as a reasonable example.

In other cases, however, the official recognition by the means of international public law may exist, although trust in the reliability of the executive is missing. Consequently, administrations in several states denied the acceptance of Somali passports issued before certain date, as well as vaccination certificates issued in Nigeria and certificates of clear record issued in Ghana, etc.⁵¹

One final remark on the difficult co-existence between the concepts of international public law and the application of administrative law is to be done here. In several cases, international recognition is missing, however the executive is obliged to recognise an act of a 'non-recognised state' by means of an international convention. For example, the *Vienna Convention on Road Traffic* provides⁵² for mutual recognition of driving licenses issued by the competent authorities of each of the Contracting Parties. The accession of the State of Palestine to the Convention in 2019 implied that the driving licences, issued by this Contracting Party, must be recognised by the authorities of other states participating in the Convention. Thus, the Convention provides for an obligation to recognise acts, issued by a state, which hasn't yet been internationally recognised by many of the executives. The application of the factual approach to this situation would undeniably imply that the driving licence issued by the authorities of Palestine will also be recognised in the relations of administrat-

51 See N. STREMLAU, *Governance without government in Somali territories*, in the *Journal of International Affairs* 71/2018, pp. 85-86 (here, the author analyses the fact of (non)recognition of passports, issued by Somalia).

52 See the *Vienna Convention on Road Traffic* (1968), Art. 41.2.: 'Contracting Parties shall recognize: (a) any domestic permit drawn up in their national language or in one of their national languages, or, if not drawn up in such a language, accompanied by a certified translation (...) as valid for driving in their territories a vehicle coming within the categories covered by the permit, provided that the permit is still valid and that it was issued by another Contracting Party or subdivision thereof or by an association duly empowered thereto by such other Contracting Party. The provisions of this paragraph shall not apply to learner-driver permits«.

ive law of those states that haven't recognised the State of Palestine by the means of international public law.

Having presented the above mentioned cases, one can argue that the mutual relations between the concept of statehood are complex, as existing in international public law and the relations of administrative law. At the same time, the practice of administrative law clearly demonstrates that recognition of the effects of foreign acts in administrative law is not necessarily interconnected with the existence of all four basic elements of statehood. Having said this, one can clearly doubt whether the 'one voice theory' represents a viable concept that reflects the realities of the recent situation.

3.2. The mirage of the private-public divide

Another argument can be presented in favour of the application of the factual approach to the law of 'non-recognised states'. As outlined above, both the practice and the scholarship of international private law support the argument on the applicability of the law of 'non-recognised states' in the relations of *private* law. The courts in various continental jurisdictions have approved applicability of the law of the Republic of China (Taiwan) for the relations of private law.⁵³ This specific situation, where the laws of 'non-recognised states' are being applied by courts of other states, has recently triggered the question of whether the law of self-proclaimed entities has a similar ability to produce effects in the relations of private law.⁵⁴

The question, which hasn't been addressed by the contemporary scholarship so far, is what consequences the applicability of the law of 'non-recognised states' have in private law for the relations of administrative law?

53 See R. RUOPPO, *Lo status giurizionale di Taiwan e i suoi riflessi sul piano internazional-privatistico*, in *Rivista di diritto internazionale privato e processuale* 56/2020, pp. 325-362.

54 See H. STAKHYRA, *Applicability of Private Law of De-Facto Regimes*, *Osteuropa Recht* 65/2019, pp. 207-222 and N. MARTSENKO, *Peculiarities of Recognition of Judgments and other Acts Issued by Unrecognized Authorities – The Example of the Autonomous Republic of Crimea, and Luhansk and Donetsk Oblasts*, *Osteuropa Recht* 66/2019, pp. 207-222.

In fact, this question isn't entirely new and has already been posed⁵⁵ by G. Dahm back in the late 1950s. He argued that the recognition of certain acts of 'non-recognised states' in the relations of *private* law automatically implies a necessity to also recognise such acts in the corresponding relations of *administrative* law. Any other stance would either make realisation of the relations of private law more complicated, or tame such relations entirely.

The phenomenon of overriding mandatory norms in international private law makes the issue more complex. In the relations of international private law, it has been acknowledged that certain norms of public law of the home state must also be applied in the relations of private law.⁵⁶ Consequently, if one would accept applicability of the law of 'non-recognised states' in the relations of private law, the applicability of at least certain norms of public law - such as those of tax law, cultural heritage law, law governing export control - of the same entities would seem to be inevitable.⁵⁷ It would lead to absurd consequences, if application of the overriding mandatory norms were required in cases of private law of recognised states, while such application was denied in cases of the 'non-recognised states'. However, if these provisions are to be applied in the relations of private law, would it be viable to deny any effects of the law of 'non-recognised states' in the sphere of public law?

Another consideration must be mentioned here. If application of the (private) law of the 'non-recognised states' is discussed in the field of international private law, we don't merely speak about the application of such law by courts. In many cases, it is the duty of administrative authorities to deal with those private relations, where a foreign element appears. Consequently, one must seriously ask whether it is plausible that an administrative authority will

55 See G. DAHM, *Völkerrecht*, Bd. I, Stuttgart, W. Kohlhammer Verlag, 1958, p. 190.

56 See T. SZABADOS, *Overriding mandatory provisions in the the autonomous private international law*, in ELTE Law Journal 9/2020, pp. 9-18.

57 See S. BAJRAMI & M. PAYANDEH, *Die innerstaatliche Anerkennung ausländischer Gerichtsentscheidungen im Lichte der völkerrechtlichen Nichtanerkennungspflicht*, in Praxis des Internationalen Privat- und Verfahrensrechts 6/2018, p. 580.

be allowed to apply the laws of an 'non-recognised states' in matters of private law, while the same authority chooses to deny such application in the matters of public law.

3.3. Against 'limped' legal relations

The risk of 'limped' legal relations has been extensively discussed⁵⁸ in the scholarship of international private law and, very recently, this risk was posed⁵⁹ as one of the arguments in favor of the applicability of law of the 'non-recognised states'. In this regard it was argued that non-application of normative systems of those entities which haven't been officially recognised will cause undesirable consequences when, in particular, the legal relation existing in the field of family law would be recognised as existing in one jurisdiction and – at the same time – as non-existing in the other.

The fact is that, to some extent, this argument is also valid in the field of administrative law.⁶⁰ In several jurisdictions, a clear criminal record is required from a foreigner who intends to gain a temporary residence in that state. In this respect, a certificate approving such record must be submitted by the foreigner and such certificate must originate from those jurisdictions where the applicant dwelt in the previous period of time. The clear criminal record may serve as a good example of legal relations which may be potentially 'limped' if a host state would deny certificate approving this fact because it was issued by a 'non-recognised state'. If the only authority, which can factually approve a clear criminal record, is the authority of the Republic of Artsakh, would be such an approval be denied? If yes, the individual will have virtually no possibility to prove his or her clear criminal record. Consequently, one may claim that

58 See D. BUSSE, *New Political Entities and the Conflict of Laws*, in *New Political Entities in Public and Private International Law*, edited by A. SHAPIRA & M. TABORY, Leiden, Brill, 1999, pp. 115-138.

59 See D. GRUENBAUM, *From Statehood to Effectiveness*, p. 604.

60 See A. GROSSMAN, *Nationality and the Unrecognised State*, in *International & Comparative Law Quarterly* 50/2001, pp. 849-876.

the risk of 'limped' legal relations obviously also appears in the relations of administrative law. This risk represents another argument, supporting application of the law of the 'non-recognised states' in administrative law.

Having said this, we must also take into consideration the recent developments in the field of recognition of university diplomas issued by some of the universities situated in 'non-recognised states'. In his very recent study, B. Coppieters analyses⁶¹ the practice of recognition of the university diplomas, issued by the Abkhaz State University (ASU) in those states which do not recognise Abkhazia as a state. The example of Germany is illustrative: In Germany, the *Central Office for Foreign Education* has created a database that makes a distinction between recognized and non-recognized universities. Although theoretically autonomous when it comes to making decisions on application procedures, German universities work with this list to evaluate diplomas. B. Coppieters identified a substantial shift, that took place in Germany regarding the status of the ASU. While in 2013 database still indicated⁶² that the ASU was officially a non-recognized university, the 2021 database no longer contains such an unequivocal assessment. The ASU is still described as Georgian, but the database further indicates that the ASU is located on a breakaway territory of Georgia. As a consequence of this re-ranking, it is now in a category of institutions 'for which no clear statement can be made' and, despite the lack of accreditation, German universities are invited to make a careful examination of individual applications from students with an ASU diploma. In this regard, we must also take into consideration that a similar shift towards recognition of university diplomas issued in Transnistria also occurred in Moldova.

Thus, with respect to the risk of 'limped' legal relations', one may argue that this risk is also being considered in the relations of administrative law. A

61 B. COPPIETERS, *A Struggle over Recognition and Nonrecognition*, pp. 18-19.

62 This meant that it was not accredited by the home country – that is, Georgia. This classification would generally have led universities in Germany to reject any applications by students with an ASU degree to study there for a master's degree.

recent shift in the practice of recognition of university degrees, obtained in the 'non-recognised states', clearly demonstrates that, in various jurisdictions, the risk is being considered and that 'limped' legal relations - at least in the area of university education - are deemed undesirable. At the same time, these developments also clearly show that, in the practice of recognition, the normative approach to the 'non-recognised states' hasn't yet gained preference as a practical solution.

3.4. A treatise for the humanitarian reservation in administrative law

The concept of the 'humanitarian reservation' aims to address those situations where the non-application of the law of 'non-recognised states' would produce harmful implications to the individual. At the same time, the rationale of this concept is that this application does not imply any official recognition of the executive which has applied the respective law.

Authors pleading in favour of application of the 'humanitarian reservation' often refer⁶³ to paragraph 125 of the advisory opinion in the 'Namibia Case', which reads as follows:

*"In general, the non-recognition of South Africa's administration of the Territory should not result in depriving the people of Namibia of any advantages derived from international Co-operation. In particular, while official acts performed by the Government of South Africa on behalf of or concerning Namibia after the termination of the Mandate are illegal and invalid, this invalidity cannot be extended to those acts, such as, for instance, the registration of births, deaths and marriages, the effects of which can be ignored only to the detriment of the inhabitants of the Territory."*⁶⁴

In the scholarship of international private law these arguments have led into the practice, certain acts have been accepted by courts deciding in the mat-

63 See D. GRUENBAUM, *From Statehood to Effectiveness*, p. 601.

64 See International Court of Justice (ICJ), Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion of 21 June 1971, ICJ Reports 1971, pp. 16-66.

ters of private law, irrespective of whether they originate from a recognised state, or an unrecognised entity. The question is, to what extent this is also relevant for the relations of administrative law?

The fact is that one could barely argue that the obtaining of a driving license in the Donetsk or Lugansk People's Republics will automatically imply the right to drive a car in those jurisdictions which have not recognised these entities. At the same time, one must ask whether a document containing the personal information of an individual would be denied acceptance by the executive only because this executive does not recognise the above mentioned entities in the field of international public law. With respect to answering this question, one must bear in mind that for the population living in the territories under the governance of the Donetsk and Lugansk People's Republics, or in the territory of the Republic of Artsakh, the local authorities are de facto the sole governmental body to whom they can resort.⁶⁵

Under this situation, it would not be unlikely that the only piece of identity a person may have will be the document issued by a non-recognised executive. Denying to accept such a document would undeniably cause undesirable consequences for the individual. Would the executive consider the individual in the above outlined case as an *anonymous* person, just because his, or her travel passport was produced by a self-proclaimed entity?⁶⁶ In this respect, the 'humanitarian reservation' presents a viable solution, which is based on the strict separation between international recognition among the states and recognition of acts in the relations of administrative law.

3.5. A proposal for treatment of law of 'non-recognised states'

65 See P. MAURITZ, *Zuordnung okkupierter oder annerkrierter Gebiete im IPR und IZVR*, in Bucerius Law Journal 12/2018, pp. 39-48.

66 See J. HANDRLICA, *A treatise for international administrative law, Part II – On overgrown paths*, in The Lawyer Quarterly 11/2021, p. 190.

Having presented several arguments against the 'one voice theory' concerning the application of law of the 'non-recognised states', this article would propose the following approach to this problem:

1. Reflecting both the practice and the scholarship, one must differentiate between the notion of recognition which *exists* in the relations of international public law on one hand and the notion of recognition as *practiced* in the relations of administrative law. The fact of non-recognition in the field of international public law does not necessarily imply that the executive cannot confer certain legal effects to those acts that have been issued by a non-recognised state.

2. There has been a general tendency to deny recognition to the acts of occupation authorities, as such recognition would imply support to illegal occupation. Self-proclaimed terrorist entities, which in principle disregard human rights, must gain no support and their acts need to be refused. Consequently, acts issued by the Islamic State can gain no effects in the relations of administrative law.

3. International cooperation between administrative authorities can, in principle, not be realised with those executives who represent a self-proclaimed entity. Such cooperation could be identified as a support to such entity and may therefore interfere with the principles of international public law.

Having said this, we must distinguish the regimes of administrative cooperation between the states on one hand and the relations between administration and an individual on the other hand. In such relations, acts issued by self-proclaimed entities may gain legal effects, in particular in those cases where the basic rights of the person are concerned. However, such legal effects can not be interpreted as a step towards official recognition of such an entity by the means of international public law.

4. A quest for international administrative law of the 'non-recognised states'

Very recently, international administrative law again became the subject of scholarly attention.⁶⁷ To a great extent, this has been the result of the work of the international ‘*Réseau de droit administratif transnational*’ platform, which – however – has preferred the term *transnational administrative law* to describe the subject of its interest. Notwithstanding the terminology used, we are referring to normative systems in various jurisdictions that aim to govern relations of administrative law where certain ‘foreign elements’ appear. The fact is – however – that despite the terminology used to describe the subject, most of the research done so far in this field focused on the normative systems of those states that are members of the international community of states.

This article also represents a product of this approach, as it is primarily addressing the notion of how norms of the states in Europe approach the laws that have been produced by the ‘non-recognised states’. The fact is, however, that the problem can also be seen from the viewpoint of the normative systems, which were established by non-recognised entities.⁶⁸ In this respect, one may argue that the normative systems of ‘non-recognised states’ also have their own international administrative law, as they feel a necessity to address the notion of foreign elements in their own normative framework.

The law of the State of Palestine may serve as a good demonstration for this argument. Palestine not only acceded to the Vienna Convention on Road Traffic, but also to the Global Convention on the Recognition of Qualifications Concerning Higher Education. Both steps were made to provide for reciprocity of recognition and, consequently, to strengthen its own regime of international administrative law. In this regard, one may argue that the basic precondition for the existence of an international administrative law is that the state intends to enter into relations with other jurisdictions. There were salient

67 See eg. J. HANDRLICA, *Burnt by the sun of international administrative law; a sketch of a legal chameleon*, in P. A. Persona e Amministrazione 9/2021, pp. 562-584.

68 See V. KOPEČEK, *Inside a de facto state*, in *De facto states in Eurasia*, edited by L. HOCH & V. KOPEČEK, London, Routledge, 2019, p. 300.

exceptions to this stance. According to the literature, the legal regime of the Islamic State represented such an exemption. This argument becomes more clear when examining the stance of this entity to travel passports issued by other states. Islamists saw the Islamic State as the only and exclusive representative of God and, consequently, there was no space for other nationalities, nor any space for travel passports of other states.⁶⁹ In a regime, which considers himself as exclusive, there is obviously no space for any international administrative law.

5. Conclusions

The existence of 'non-recognised states' in the wider space of Europe remains a fact. At the same time, as some authors⁷⁰ argue, there is a high probability that these entities will also remain a phenomenon that we will need to face in the next few decades. Considering these perspectives, one may expect that the problem of the law established by these entities will become even more urgent for the relations of administrative law in various jurisdictions.

This article aimed to pose some answers, which may appear with respect to acts issued pursuant to the law of these entities and also to propose viable solutions. In particular, this article aims to claim that the fact of non-recognition in the sphere of international public law does not necessarily imply that acts issued by these entities will not gain any legal effects abroad. This argument is not only supported by the existing scholarship, but also with existing practice and decision-making.

Having argued in favour of the 'factual approach' to the law of the 'non-recognised states', one need also bear in mind that this argument can not be understood as a legitimisation of the self-proclaimed entities, or occupation authorities.

69 See W. L. YOUMANS, *The Islamic State's Passport Paradox*, in *The Media World of ISIS*, edited by R. PENNINGTON & M. KRONA, Bloomington, Indiana University Press, 2019, p. 62.

70 See B. BOWRING, *International Law and Non-recognized Entities. Towards a Frozen Future?*, p. 28.

The relations of international public law and those between an individual and the administration must be strictly separated. One cannot deny the importance of international relations. At the same time, an individual can not be held hostage to these international relations when he enter into the (unequal) relation with the administration of a host state.