Реалії сьогодення свідчать, що за сучасних умов та розширення кола господарських процесів, Цивільний кодекс України не зможе охопити весь спектр відносин, що виникають у сучасному суспільстві. У зв'язку з цим не можна зменшувати роль та призначення Господарського кодексу України, який повинен посісти значне місце у сфері публічно–правових відносин. Тож, розв'язання практичних проблем застосування Цивільного та Господарського кодексів України можливе лише шляхом узгодження цих двох Кодексів. Отже, можна зробити висновок, що однією з умов функціонування господарського права є правове забезпечення господарської діяльності, яке включає, зокрема, створення її законодавчої основи, тобто системи нормативних актів, що визначають правовий статус суб'єктів господарювання та регламентують різні аспекти господарської діяльності. Становлення національного господарського законодавства в Україні пов'язане з труднощами, спричиненими насамперед економічними та соціально-політичними факторами. Дані проблеми необхідно негайно усунути, тому що недосконаліть господарського законодавства призводить до гальмування економічного розвитку держави в цілому.

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RES JUDICATA AND ESTOPPEL OF INTERNATIONAL ARBITRAL AWARDS IN THE EUROPEAN UNION AND REPUBLIC OF BELARUS

The preclusion effects, such the res judicata and the estoppel, of an arbitral award is fundamental and important in international commercial arbitration, since parties to a dispute choose it to obtain a final and binding award. Moreover, the central question that I proposed to investigate in this Thesis was whether international commercial arbitral tribunals should apply the res judicata doctrine or the doctrine of estoppel to coordinate their relations with state courts and other arbitral tribunals.

1. The doctrine of *Res judicata*

In a general, the doctrine of *res judicata* prohibits the re-litigation of a dispute that has finally been adjudged by a judicial court or arbitral tribunal. In this matter, the same dispute cannot be re-litigated again between the same parties, same grounds, same dispute. However, most national courts have declined to accord preclusive effect to prior recognition decisions in other Contracting States in accordance with a New York Convention. Comparable

with the New York Convention's requirements, the UNCITRAL equates arbitral awards to judicial judgments, entitled to the same preclusive effects as such a judgment.

The basic principle of preclusion in civil law jurisdictions is that *res judicata* is referred to as «claim preclusion». In England, the *res judicata* effects are subject to party disposition. Furthermore, in many EU members, the principle of *res judicata* is codified.

In accordance with the Belarusian legislation, the final arbitral award completes the function *functus officio* and courts shall refuse to accept *res judicata* on the «triple identity test» grounds.

However, international arbitration law contains no rules that go beyond stating the general principle that awards have *res judicata* effects. If an arbitral award has *res judicata*, it should have only claim preclusive effects in subsequent arbitration proceedings. With regard to the *res judicata* requirements, while arbitral tribunals should generally apply the «triple identity test», it is contended that arbitral tribunals should seek to develop a test that is guided by the *abus de droit* principle. Furthermore, save for few exceptions, there is no established practice among arbitral tribunals with regard to doctrine of *res judicata*.

Finally, with regard to the *res judicata* requirements, while arbitral tribunals should generally apply the «triple identity test», it is contended that arbitral tribunals should seek to develop a test that is guided by the *abus de droit (abuse of rights)* principle.

2. The doctrine of Estoppel

The Common Law distinguishes different categories of estoppel, such as «equitable», «substantial» and «issue». Nowadays, the doctrine of estoppel is regarded as a general principle of international procedural law, and means «preclusion». In fact, issue of estoppel applies to international commercial arbitration as it does to litigation. The issue preclusion or collateral estoppel prevents a party from re-litigating, against a counter-party, an issue of fact or law that was previously contested and decided in a litigation between the same parties. In English law, cause of action estoppel and issue estoppel have been considered by courts.

Most common law jurisdictions recognize the doctrine of estoppel. However, there is no notion of estoppel in civil law jurisdictions. Nevertheless, the principle of issue estoppel has been recognised in international commercial arbitration, at least where related to common law systems.

In civil law jurisdictions, the doctrine of estoppel in international commercial arbitration means denial of benefits and burdens of an arbitration clause or «preclusion», and is comparable to equitable estoppel on common law.

The difference between issue of estoppel under the Common law and the Belarussian law such as implied the principle of estoppel as preclusion and the

doctrine of abuse of right. Moreover, in regard with the doctrine of abuse of process the arbitral awards should give rise to a plea of issue estoppel, it is highly unlikely that the abuse of process of doctrine of estoppel may apply in international arbitration.

The arbitral tribunals have interpreted the estoppel doctrine in that sense, applying it in practice in a growing number of cases to avoid possible situations of abuse of process and arrive to a just decision. As no formal rules in international commercial arbitration regulate the doctrine of estoppel, as most countries does not accept the doctrine of estoppel in their jurisdictions and case law. However, the frequent usage of this doctrine may have extended the boundaries of arbitration, especially when it comes to the intertwined method of estoppel, which might no longer be in line with the rules of international commercial arbitration.

3. Legal comparison between Res judicata and Estoppel in international commercial arbitration

In common law jurisdictions, rules of preclusion are generally not codified, but instead based largely or entirely upon judicial authority. In addition, in Civil law jurisdictions there is no a specific doctrine of estoppel *per se*, but some arbitral tribunals may reach some legal issues via the doctrine of *res judicata.* The basic principle of preclusion in both civil and common jurisdictions is that of *res judicata* as «claim preclusion» and estoppel – «issue of preclusion». As a consequence, preclusion rules for arbitral awards vary substantially between different legal systems, with common law jurisdictions having generally afforded awards broader preclusive effects than civil law jurisdictions.

In conclusion, there are some possible solutions in this Thesis. One possible solution to address the issues of *res judicata* is that the arbitral tribunals should seek to develop a «triple identity test», which is guided by the *abus de droit* principle. The second potential solution to address the issues of *res judicata* and estoppel in the international commercial arbitration context is to seek international guidance from Common Law and Civil law jurisdictions. Hence, rather than applying domestic rules of two doctrines, arbitral tribunals could create more harmonised case law. Moreover, the difficulty I see about the doctrine of estoppel is a practical one. It is hoped that estoppel will be allowed in the future for arbitral awards on a worldwide basis «as justice requires».

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ВЗАИМООТНОШЕНИЯ ОПЕК И ВТО В ПРАВОВОМ РЕГУЛИРОВАНИИ НЕФТЯНОЙ ЭКСПОРТИРОВКИ

С развитием международной торговли нефтью возникла возможность слияния двух разных путей по экономическим вопросам торговли нефти; с