ISSN: 2450-8160

Herald pedagogiki. Nauka i Praktyka

wydanie specjalne

Warszawa
2021

Editorial Team

ARCHIVING

*Sciendo archives the contents of this journal in **ejournals.id** - digital long-term preservation service of scholarly books, journals and collections.*

PLAGIARISM POLICY

*The editorial board is participating in a growing community of **Similarity Check System's** users in order to ensure that the content published is original and trustworthy. Similarity Check is a medium that allows for comprehensive manuscripts screening, aimed to eliminate plagiarism and provide a high standard and quality peer-review process.*

About the Journal

Herald pedagogiki. Nauka i Praktyka (HP) publishes outstanding educational research from a wide range of conceptual, theoretical, and empirical traditions. Diverse perspectives, critiques, and theories related to pedagogy – broadly conceptualized as intentional and political teaching and learning across many spaces, disciplines, and discourses – are welcome, from authors seeking a critical, international audience for their work. All manuscripts of sufficient complexity and rigor will be given full review. In particular, HP seeks to publish scholarship that is critical of oppressive systems and the ways in which traditional and/or "commonsensical" pedagogical practices function to reproduce oppressive conditions and outcomes.Scholarship focused on macro, micro and meso level educational phenomena are welcome. JoP encourages authors to analyse and create alternative spaces within which such phenomena impact on and influence pedagogical practice in many different ways, from classrooms to forms of public pedagogy, and the myriad spaces in between. Manuscripts should be written for a broad, diverse, international audience of either researchers and/or practitioners. Accepted manuscripts will be available free to the public through HPs open-access policies, as well as we planed to index our journal in Elsevier's Scopus indexing service, ERIC, and others.

HP publishes two issues per year, including Themed Issues. To propose a Special Themed Issue, please contact the Lead Editor Dr. Gontarenko N **(info@ejournals.id)**. All submissions deemed of sufficient quality by the Executive Editors are reviewed using a double-blind peer-review process. Scholars interested in serving as reviewers are encouraged to contact the Executive Editors with a list of areas in which they are qualified to review manuscripts.

LEGAL NATURE OF COMMERCIAL ARBITRATIONS RESOLVING INTERNATIONAL INVESTMENT DISPUTES

Akhunov Sherzod
Independent researcher of High school of judges at the High Judicial Council,
ORCID: 0000-0002-5623-3984
E-mail: sherzod424@umail.uz

Abstract.The article reflects the historical development, formation, international legal framework of the Institute of international commercial arbitration and the scientific and theoretical views of representatives of this field. At the same time, today the settlement of international investment disputes in international law has an impact on international relations between states. Study international legal documents of a natural and peremptory nature and draw the necessary conclusions; such questions are reflected in the article. In addition, the advantages of international commercial arbitration over local courts, the process of adopting the UNCITRAL arbitration rules and its assessment as the most appropriate tool for resolving disputes today, include scientific views on the international legal regulation of international commercial arbitration and reforms in this area. There are also many contradictions between the settlement of international investment disputes through international commercial arbitration and the national legal system.

Keywords: arbitration, UNCITRAL, international commercial arbitration, international investment disputes, administrative or judicial authorities, international law

Today, international law recognizes that the rights and legitimate interests of entrepreneurs operating in the territory of another state are exercised through various means. When investment disputes arise between the parties during a business activity, it is important to resolve them as an alternative. The means of resolving international investment disputes are different and can be considered in the administrative or judicial authorities of the host country, in the courts of a foreign state and in international commercial arbitration.

While the concept of international investment disputes between states and foreigners on the issue of arbitration is used in public international law, the institution of arbitration is also widely used in the framework of private international law.

The first international document on the Institute of Arbitration was the The Geneva Protocol on Arbitration Clauses, signed in Switzerland in 1923, which contained two main objectives. These included the separation of arbitration disputes in national courts in different countries and the enforcement of those arbitral awards in the territory of the State in which they were made. Initially, the protocol was signed by 13 European countries, as well as Brazil, India, Japan, Thailand and New Zealand. However, shortly after the adoption of this Protocol, the expansion of international trade necessitated the further development of international commercial arbitration mechanisms. Under

the auspices of the League of Nations, Geneva Convention on the Execution of Foreign Arbitral Awards of 1927 was signed. However, the provisions of the Geneva Protocol and Convention did not adequately meet the requirements of the rapidly developing international trade turnover after World War II. The International Chamber of Commerce (ICC) prepared a draft convention on the Recognition and enforcement of international arbitration decisions in 1953 and submitted it to the United Nations Economic and Social Council (ECOSOC). In 1955, the United Nations Economic and Social Council (ECOSOC) turned it into a draft convention on the recognition and enforcement of foreign arbitral awards, which was adopted in 1958.

Today, the New-York convention remains the most important source in the field of international commercial arbitration, and according to UNCITRAL, in 2013, 148 countries participated [1].

At the same time, there are a number of documents in the international legal regulation of international commercial arbitration, some of which are signed by states and committed to their implementation, while others are of a recommendatory nature. In particular, European Convention on International Commercial Arbitration of 1961, Convention on the settlement of investment disputes between States and nationals of other States of 1965, United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, Convention on Conciliation and Arbitration within the CSCE of 1992 and Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards of 1972 falls into the first category, documents of a recommendatory nature include UNCITRAL Model Law on International Commercial Arbitration of 1985, UNCITRAL Arbitration Rules of 1976, UNCITRAL Conciliation Rules of 1980 and Arbitration rules of the United Nations Economic Com-Mission for Europe of 1966.

On December 17, 1966, by resolution 2205 (XXI) of the UN General Assembly, the UN Commission on international trade law (Unicitral) developed the "Unicitral Model Law on International Commercial Arbitration" and today many countries of the world have been implementing themselves as the basis for the development of national legislation in this area.

The practice of recent years shows that as a result of the adoption of UNCITRAL arbitration regulations, it is undoubtedly regarded as the most appropriate means of resolving large cross-border commercial disputes. Among them was the consideration of mutual property claims between Iran and the United States in 1980, which was applied by arbitration (Iran-United States Claims Tribunal). Naturally, the activity of this arbitration has attracted the attention of the international legal community and has already considered several thousand cases [2].

Regarding the functions of the competent authority under the UNCITRAL Arbitration Rules, it should be noted that the new edition of 2010 significantly increases its role and importance in the organization and conduct of arbitration proceedings compared to the previous version. For example, if it is not possible to establish arbitration in accordance

with the Rules, the competent authority shall establish an arbitral tribunal at the request of one of the parties [3].

It is also stated that in accordance with the new version of the Regulations, the parties may use any means of communication in sending notifications for arbitration proceedings. Article 2 of the Regulation stipulates that the delivery of the notice by electronic means, such as fax or e-mail, may be carried out only at the address specified or authorized for this purpose.

In the scientific literature, special attention is also paid to issues of international commercial arbitration, opinions are expressed by representatives of many spheres. In particular, there are various debates between the settlement of international investment disputes through international commercial arbitration and the national legal system, which can be conditionally divided into three. In the first case, international commercial arbitration is an integral part of the national legal regulation, and the resolution of disputes is carried out through the law of the country where the arbitration is located [4]. In the second case, international commercial arbitration is based on pluralism [5]. The third case is the theory of delocalization, which is based on the theory that there is no direct connection between the place of arbitration and the order of transfer [6].

According to B.R. Karabelnikov, international commercial arbitration has the following advantages over national courts: the ability to enforce international arbitration in all countries party to the convention; limitation of interference by state courts in dispute resolution and arbitration decisions; limited ability to recognize and refuse to enforce foreign arbitral awards; consideration of arbitral awards as a final feature; truly independent and competent resolution of disputes; arbitration in a simple and informal format; simplification of the procedure for collecting evidence and submitting documents; availability of an expert in the field; the wide range of options available to the parties to the case and the confidentiality of the arbitral proceedings [7].

However, in the opinion of B.B. Samarkhodjaev, views on international commercial arbitration are not always the same, as a number of experts are skeptical due to the lack of state control over the decision-making process in arbitration courts, and the strong party can convince them of the correctness of their will. State courts appear to be a guarantee of protection for the socially vulnerable [8].

S.I. Krupko said that international arbitration is not directly limited in the arbitration rules applicable to a particular investment dispute, and that international arbitration has the power to consider disputes with a public legal basis and claims in accordance with the normative legal act and (or) arbitration agreement. has jurisdiction over investment disputes [9].

In our view, international commercial arbitration is a method of resolving disputes complicated by a foreign element, which is an alternative means of resolving in state courts. It is important to resolve the dispute through arbitration, if there is an arbitration agreement signed by the parties in these processes or another legal document based on the right of arbitrators to consider the dispute; appointment of arbitrators from among

the persons independent of the parties to the case; the finality and binding nature of the arbitral award for the parties to the dispute; the relationship of international commercial arbitration with the state courts; one of its most important issues is that international commercial arbitration can in no way be considered an instance subordinate to state courts.

According to B.B. Samarkhaldjaev, the activity of international commercial arbitration helps to attract foreign investment to the country, as it provides a method of legal protection of capital investments, which foreign investors are accustomed to. Today, when concluding contracts between business entities of different countries, it is customary to indicate where to go in case of disputes. It should be noted that in most cases, international commercial arbitrations are indicated, not state courts [8].

International commercial arbitration occurred as a result of goods, capital and services in the field of international trade. The term "international commercial arbitration" is used to refer to the general mechanism for resolving commercial disputes, to appoint a body set up to consider such disputes and an arbitrator to hear a particular dispute [10].

Today, modern international commercial arbitration operates in three forms. These include permanent, ad hoc and administrative arbitration courts.

An arbitration institute for international investment disputes was also established on the basis of the International Center established under the Washington convention on 1965. Arbitration pays special attention to bilateral agreements in resolving disputes between states and foreign investors, which are parties to international investment disputes. These include bilateral agreements to support and protect foreign investment, the first in the world to be signed in 1959 between Germany and Pakistan. As of 2014, there were more than 3,200 such agreements and 568 investment disputes [11].

Today, there are several directions for reforming the institution of international investment arbitration. The first direction envisages the organization of arbitration for international investment disputes under the International Center (ICSID), the second direction promotes the idea of establishing special international investment courts [12].

Modernization of international commercial arbitration legislation is the harmonization of national legislation with approaches to the regulation of international commercial arbitration. This trend is recognized by many experts [13].

Today, the Institute of International Commercial Arbitration has its own development in the Republic of Uzbekistan. In 2006, the Law "On arbitration courts" was adopted and a number of arbitration courts were established. However, this law did not cover the settlement of disputes outside the country, as much attention was paid to the resolution of internal arbitration disputes.

At the same time, in accordance with the Decree of the President of the Republic of Uzbekistan "On the establishment of the Tashkent International Arbitration Center (TIAC) under the Chamber of Commerce and Industry of the Republic of Uzbekistan" dated November 5, 2018 №PP-4001, the International arbitration center was established. and the resolution instructed to develop a draft law "On international commercial

arbitration" in accordance with the requirements of the Model Law of the UN ECOSOC. The Legislative Chamber of the Oliy Majlis discussed the draft law on October 24, 2019, focusing on the arbitration agreement, its concept, form and content, the procedure for filing a lawsuit on the merits of the dispute [14].

It should be noted that the draft law "On international commercial arbitration" adopted by the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan on October 24, 2019 was rejected by the Senate of the Oliy Majlis on February 28, 2020. At the suggestion of the Senate, the formation of a conciliation commission was proposed [15]. The Conciliation Commission revised the draft law "On international commercial arbitration" and sent it to the Senate of the Oliy Majlis of the Republic of Uzbekistan [16].

Then, at the seventh plenary session of the Senate of the Oliy Majlis of the Republic of Uzbekistan on September 11, 2020, the Law of the Republic of Uzbekistan "On international commercial arbitration" was discussed. It was noted that the establishment of mechanisms for the acquisition and implementation of the agreement, and on this basis to enhance the country's prestige in the region in resolving disputes over international agreements [17].

Following the above steps, the Law of the Republic of Uzbekistan "On international commercial arbitration" №LRU-674, Chapter 8, Article 56 was adopted on March 16, 2021 [19].

At the same time, according to Article 63 of the Law "On investments and investment activities", the settlement of international investment disputes in the Republic of Uzbekistan is settled through negotiations and mediation [18]. An unresolved investment dispute through negotiations and mediation must be resolved by the relevant court of the Republic of Uzbekistan. Such a dispute may be settled through international arbitration, if the international agreement of the Republic of Uzbekistan and (or) the agreement between the investor and the Republic of Uzbekistan provides for an appropriate and valid arbitration condition. Only the written consent of the Republic of Uzbekistan in the framework of signed and existing international agreements and (or) the agreement between the investor and the Republic of Uzbekistan when applying for international arbitration is the consent of the Republic of Uzbekistan to arbitration settlement of the investment dispute [20].

In conclusion, it can be noted that today the institution of arbitration is an important tool in the regulation of economic relations in society, and when faced with this situation, first of all, compliance with the law helps to restore relations as soon as possible.

References

1.www.uncitral.org

2.Lew J.D.M., Mistelis L.A., Kroll S.M. Comparative International Commercial Arbitration. Kluwer Law International, 2003. P. 42-44.

3.Komarov A.S. New edition of the UNCITRAL Arbitration Rules in the context of modern practice of international arbitration. Bulletin of International Commercial Arbitration №1, 2011

4.Gaillard E. Aspects philosophiques du droit de l'arbitrage international. Leiden, Boston: Martinus Nijhoff Publishers, 2008. P. 34-35.

5.Gaillard E. Aspects philosophiques du droit de l'arbitrage international. Leiden, Boston: Martinus Nijhoff Publishers, 2008. P. 46.

6.Goldman B. Les conflits de lois dans l'arbitrage international de droit prive // Recueil des cours. Leiden, Boston: Martinus Nijhoff Publishers, 1963. T. 109. P. 347-485; Gaillard E. Aspects philosophiques du droit de l'arbitrage international. Leiden, Boston: Martinus Nijhoff Publishers, 2008. P. 60-100.

7.B.R. Karabelnikov International commercial arbitration. Textbook. 2nd edition

8.Samarxodjaev B.B. Investment law. Textbook for higher education institutions. - Tashkent: JIDU, 2014. - 392p.

9.S.I. Krupko Investment disputes between the state and a foreign investor: Study guide. - M: BEK, 2002 .- P, 106.

10.Private International Law / Ed. G.K. Dmitrieva. P. 627.

11.Recent development in investor-state disputes settlement // UNCTAD.2014.№ 6. P.1.

12.Harten G. Van. A Case for International Investment Court. Inaugural Conference of the Society for International Economic Law. 2008. July 16 // URL: http:// papers.ssrn.com/sol3/papers.cfm?abstract_id=1153424.

13.Bockstiegel K.-H. Past, Present and Future Perspectives of Arbitration // Arbitration International. 2009. Vol. 3. P. 298, 301.

14.Website of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan: http://parliament.gov.uz/uz/events/chamber/29030/sphrase_id=5138119

15.Website of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan: https://parliament.gov.uz/uz/events/chamber/30525/sphrase_id=7315120

16.Website of the Legislative Chamber of the Oliy Majlis of the Republic of Uzbekistan: https://parliament.gov.uz/uz/events/other/31644/sphrase_id=7315120

17.Website of the Senate of the Oliy Majlis of the Republic of Uzbekistan: https:// senat.uz/uz/lists/view/1831

18.Мухитдинова Ф. А., Хайитов Ш. Р. СОВРЕМЕННЫЕ ПРОБЛЕМЫ ДУХОВНО-НРАВСТВЕННОГО ВОСПИТАНИЯ МОЛОДЕЖИ В СОВРЕМЕННЫХ УСЛОВИЯХ //ЕВРАЗИЙСКИЙ СОЮЗ УЧЕНЫХ (ЕСУ). - С. 33.(Mukhitdinova F. A., Khayitov Sh. R. MODERN PROBLEMS OF SPIRITUAL AND MORAL EDUCATION OF YOUTH IN MODERN

CONDITIONS // EURASIAN UNION OF SCIENTISTS (ESU). - P. 33.)

19.Website of the National Database of Legislation of the Republic of Uzbekistan: https://www.lex.uz/docs/5294106

20.Website of the National Database of Legislation of the Republic of Uzbekistan: https://www.lex.uz/docs/4664142