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ADVANTAGES AND DISADVANTAGES OF INVESTOR-STATE DISPUTE SETTLEMENT THROUGH ARBITRATION

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The article is dedicated to the very contemporary issues of State-investor disputes, which are mainly in commercial locality. This article will try to explore both positive and negative sides of dispute settlement in the international investment law through arbitration. The critical and reproving views of the arbitration process will be analyzed. Several international expert group evaluative reports will be presented in this research. State-investor commercial dispute settlement problems will also be examined in the light of ICSID platform.

Key words: *Investor-State dispute, arbitration, ISDS, ISCID, investment law, investment dispute, arbitrator, London Court of International Arbitration, arbitral system, investment treaty*

Foreign investments are primarily crucial for every single state. The large portion of the financial development of each country depends on foreign investment activity. International investments are mainly seen as a catalyst for economic growth for both developing and developed countries.

It is noteworthy that before making investments, foreign shareholders should have an assurance that in case of financial damages, they may sue host countries for alleged discriminatory practices and therefore protect their ownership rights.

First of all, these guarantees include the readiness of host states to elain their national legal framework with the international independent forum for international investment disputes.

The mechanism and the legal procedure of international investment rights protection are mainly designed in bilateral, regional and multilateral investment agreements and investment contracts between two or more sovereign states. As a matter of fact, every international investment agreement includes principles of international investment dispute resolution procedures and rules. With attention to consequences of increased globalization of world trade and investment, international arbitration currently is the conceptual method of resolving disputes in international economic affairs between states, individuals and financial corporations.[1]

This article will try to explore both positive and negative sides of dispute settlement in international investment law via arbitration. The critical and reproving reviews of the arbitration process will be presented. Several international expert group evaluative reports will be analyzed in this research.

With the intention to the fact that investment controversies between sovereign states and international corporations may not be settled in diplomatic nego-

[1] Nigel Blackaby, Constantine Partasides QC, Alan Redfern and Martin Hunter, Redfern and Hunter on International Arbitration (Oxford University Press, 2015) 6

tiations and business conciliations, arguing parties refer to the disinterested party. So, the parties have opportunity to avoid any judicial system. The final decision is legally binding for both parties and represents a closing solution.[2] The final award is presented to the national court for enforcement.

Commercial arbitrations are known since the middle ages from Ancient Greece, where the Pope acted as a "judge" and gave solutions to disputes.[3] But as it was mentioned above, the increasing number of international investment agreements influenced the statistics of conflicts between the sovereign states and foreign investors. Also, the strong need for international alternative dispute resolution system raised when the decolonization process began in the 1960s. Generally speaking the nationalization of foreign corporations by new developed and independent countries escalated a massive number of disputes between international investors and the states. Mainly this was related to the creation of discriminatory legislation, natural resources extraction and above all, unfair expropriation of property.[4]

After the establishment of The International Center of Settlement of Investment Disputes (ISCID) in 1965 with the adoption of the Washington Convention (entered into force in October 1966), a new platform for investment conflicts resolution was created. Since then, many legal and also political debates have been held about the advantages and disadvantages of arbitration in the light of the dispute resolution mechanism. Despite those debates, arbitration is primarily considered as the most effective and shortest way for resolving the convoluted conflicts between actors of international economic affairs. Without any doubt, international organizations share this approach. The importance and benefits of arbitration in the commercial affairs were again highlighted in the United Nations General Assembly sixty first session. During mentioned session resolution was adopted underlining "*the value of arbitration as a method of settling disputes arising in the context of international commercial relations".*[5]

To analyze the international investment relations, firstly, we need to review the advantages and disadvantages of arbitration as a tool for investment dispute resolution and as the main guarantee for safe foreign investments.

The main beneficial point of resolving international investment disputes via arbitration is the neutrality of this institution. Arbitration is a neutral platform where each party has an assurance of fair hearings and equitable solution for existing investment problems.

As it can be seen, the parties are free to choose the platform and the main actors for resolving their investment disputes. It means that non-governmental decision-makers will give the solution to the investment conflicts. In other words, the arbitrators are not biased with any national attachment to any state. Meanwhile, in the civil litigation process, the judges usually embarrassed with attached obligations towards the states and may have national interests. Also, if

[2] Stephen M. Schwebel, Luke Sobota and Ryan Manton, International Arbitration: Tree Salient Problems (Cambridge University Press 2020) 16

[3] N. G.L. Hammond, Arbitration in Ancient Greece, Arbitration International Volume 1, issue 2, July 1985, 188-190

[4] Lucy Reed, Jan Paulson and Nigel Blacksburg, Guide to ICSID Arbitration (2nd edition, Aspen Publishers 2011) 5

[5] UNGA Res 61/133 (18 December 2006) UN Doc A/Res/61/453

the foreign investment dispute is somehow related to the public affairs (the dispute may concern to the natural resource extraction or other environmental conflicts), the social pressure of the society may affluence the fair and impartial resolution making. Moreover, the usual civil litigation process is too long as the national courts are extremely busy. The civil procedure code of Republic of Lithuania envisages up to 800 days only for first stage of hearing organization.[6] It means that the solution of every single dispute may last several years.

Furthermore, the foreign investor and host state disputes are usually related to a very specific kind of economic and financial affairs. It means that the domestic courts may have a lack of experienced specialists of the field, especially in emerging countries.[7] It is essential to underline, that investor state disputes always accompanied with international legal documents and instruments which may require special skills and knowledge to analyze. During the arbitral process the contracting parties may choose the arbitrators. Usually the arbitral tribunal consists of tress arbitrators. They may hold different nationality, be representatives of unsimilar culture, language. The arbitrators may have very different legal background.[8] That may explain the intention of international corporations to proceed their future investment dispute settlement to the more experienced and proficient institution as Arbitration. By all means, the national courts proceed hearings in their native languages.[9] This fact is also constrained foreign investors to turn to the local courts of host states and recover their damaged interest. Another advantage of investment dispute settlement through arbitration is the enforceability of the awards. As a matter of fact, the final arbitration award is a legally binding document. It is not a recommendation or advisory opinion which may be ignored by any party of the investment dispute.[10] Immediate enforcement of arbitration award gives the foreign investor or host state opportunity to keep away from complicated appellation processes. To put it in another way, parties involves in investment conflicts are expecting not only the solutions but also their immediate realizations. According to the New York Convention on the recognition and enforcement of foreign arbitral award, arbitration awards in majority cases are final and "*cannot be appealed or reheard by other national or international court*."[11] Provision of recognition and enforcement of the arbitral awards are highlighted in Energy Treaty Charter *"the awards of arbitration, which may include an award of interest, shall be final and binding upon the parties to the dispute. An award of arbitration concerning a measure of a sub-national government or authority of the disputing contracting party shall provide that the contracting party may pay monetary damages in*

[6] Civil Procedure Code of Republic of Lithuania, 28 February 2002

[7] С. В. Николюкин, Международный гражданский процесс и международный коммерческий арбитраж (Москва, Юстиция 2017) 145

[8] Gary Born, Internationnal Arbitration: Law and Practice (2nd edition, Kluwer Law International 2015) 26

[9] Nigel Blackaby, Constantine Partasides QC, Alan Redfern and Martin Hunter, Redfern and Hunter on International Arbitration (Oxford University Press, 2015) 31

[10] Paul Friedland and Loukas Mistelis, 2015 International Arbitration Survey: Improvements and Innovations in International Arbitration (White and Case, Queen Mary University of London and School of International Arbitration) < http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2015_International_Arbitration_Survey.pdf> accessed 2 May 2020

[11] Convention on the recognition and enforcement of foreign arbitral award, 330 UNTS 38 (10 June 1958)

lieu of any other remedy granted. Each contracting party shall carry out without delay any such award and shall make provision for the effective enforcement in its area of such awards."[12]

Financial corporations cannot afford to drag the commercial dispute resolution for a long time. The reason for this stems from the cost of uncertainty for investing corporations. On this condition, arbitration is an extremely active forum for the foreign investor and host state dispute settlement.

Another essential detail of the Investor-State Dispute Settlement (ISDS) is a striking lack of formality. In other words, the hearings of the investment disputes are mostly taking place in private offices, on the neutral territory and at a negotiated time.[13] The informal ambience allows the contracting parties to negotiate easily and definitely influence positively to the entire dispute settlement process. Moreover, the arguing parties are sitting around the same table and without any formal symbols of authority negotiating for the dispute solution.[14]

Equally important to mention that ISDS mechanism provides the contracting parties to choose the sources of law, which will be used during their arbitral proceeding.[15] In the international legal document, the parties are designing the applicable laws and rules of investment dispute resolution. As a matter of fact, the parties are free to choose any international document, even national legislation of any country to proceed their case. It should be remembered that the arguing parties of investment disputes, usually are residents of different states, even representatives of different legal systems. So, it is essentially important that the conflict must be resolved using customary international law and in accordance with the principles widely accepted by the international legal community.

In the same time, for the more productive final result in an investment dispute resolution system, we must highlight the importance of confidentiality. Investor-state disputes in majority cases contain information about trade secrets, copyrights, financial and banking details of multinational corporations. The cases may be engaged with state secrets. Eventually, in ISDS system is closed to public sector participations. The privacy and confidentiality are attracting factor in this system, which gives additional guarantees and confidence to the business representatives in their actions.

As it was mentioned above, the caseload of Arbitration, both institutional and ad hoc, highly increased in the past twenty years. Growth of cases transferred to the ISDS mechanism is the result of economic collaboration enlargement between states and more specifically, the creation of new International Investment Agreements.

It is also important to state that foreign investor host state disputes may have political content. The national courts may not be able to bear the pressure from the governmental authorities and resolve the financial dispute with justice. Very sharp example of above mentioned pressure may be noticed in Yukos

[12] Energy Treaty Charter (16 April 1998) Art 26(8)

[13] Vijay K. Bhatia, Christopher N. Candlin and Maurizio Gotti, Discourse and Practice in International Commercial Arbitration (Issues, Challenges and Prospects) (Ashgate Publishing Limited 2012) 105

[14] Ibid. 106

[15] Phillip Capper, International Arbitration: A handbook (3rd edition, London Singapore 2004) 112

Universal Limited (Isle of Man) v. The Russian Federation arbitral case. The founder of Yukos Enterprises Mikhail Khodorkovsky, who had been political prisoner in Russian Federation over twelve years, finally could prove that he and the company he founded pursued on their political views. The national courts were unable to provide Khodorkovsky and his company representatives with fair platform to defend their rights.[16]

The increasing number of cases in past decades and consequently unfavorable decisions obtained against many countries give a start to many critical approaches towards the ISDS system.

Critical reviews mainly concerned the pro-investor interpretation of international investment agreements provisions, also the perceived unpredictability. Similarly, lack of transparency of arbitral proceedings, insufficiency of impartiality of arbitrators and doubts regarding their independency are mentioned as the downsides of the ISDS arbitration system.[17] But the highly criticized side of the ISDS is the opportunity of foreign investors to bypass the domestic legislation and also national courts of host states. These approaches will be discussed in detail below.

Regarding the opinion that the ISDS system operates in favor of investors rather than sovereign states, we need to analyze the final awards of arbitral institutions and check the statistics of every current institute. For our research, we investigated the case load of The International Center of Settlement of Investment Disputes (up to 2015).[18] Qualitative and quantitative analysis of investment conflict arbitration awards confirmed the anxiety that the ICSID final decisions are in favor of foreign investors (approximately 52 percent of total cases).

Also, as it is mentioned in many political and legal discussions, ISDS tribunals exegesis the international investment agreements in favor of foreign investors.[19] Accordingly, the sovereign states are in disadvantaged situation, as pro-investor interpretation of any international treaty consequently limits their ability to win any case. This critical view is extremely debatable as during IDSD arbitral proceeding the interpretation of any international treaty is done in accordance to the General Rule of Interpretation mentioned in Article 31(1) of the Vienna Convention on the Law of the Treaties:

"A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose."[20]

The criticism towards being pro-investor dispute settlement platform was also largely discussed in UK leading newspapers. The Economist, famous British right wing publication referred to this problem:

"If you wanted to convince the public that international trade agreements are a way to let multinational companies get rich at the expense of the ordinary people, this is what you would do: give foreign firms a special right to apply to a

[16] Yukos Universal Limited (Isle of Man) v. The Russian Federation UNICITRAL case AA227

[17] A response to the criticism against ISDS, European Federation for Investment Law and Arbitration (EFILA), 7 < https://efila.org/wp-content/uploads/2015/05/EFILA_in_response_to_the-criticism_of_ISDS_final_draft.pdf> accessed 4 May 2020

[18] ICSID Caseload-Statistics, Issue 2015-1, 6 < https://icsid.worldbank.org/en/Documents/resources/ICSID%20Web%20Stats%202015-1%20(English)%20(2)_Redacted.pdf

[19] Surya P Subedi, International Investment Law: Reconciling Policy and Principle (Oxford and Portland Oregon, 3rd edition, 2016) 142

[20] Vienna Convention on the Law of the Treaties 1969, Article 31(1)

secretive tribunal of highly paid corporate lawyers for compensation whenever a government passes a law to, say, discourage smoking protect the environment or prevent a nuclear catastrophe. Yet this is precisely what thousands of trade and investment treaties over the past half-century have done, though a process known as "investor-state dispute settlement", or ISDS. Multinationals have exploited woolly definitions of expropriation to claim compensation for changes in government policy that happen to harm their business."[21]

Another critical review was presented left wing British newspaper The Guardian, appointing the ISDS system as *"a full-frontal assault on sovereignty and democracy"*[22] In this article, the ISDS through arbitration was described as a legal procedure of impoverishing the emerging countries.

This critical approach towards ISDS mechanism, mainly against ICSID, was highly encouraged by some Latin American States. Under those circumstances in 2007, the government of Bolivia announced about their intention to denounce the ICSID Convention and withdraw from the International Monetary Fund and World Bank. Later, the same plans followed by

Ecuador in 2009 and the Bolivarian Republic of Venezuela in 2012.

The reason for such drastic political decisions was the investment dispute claims filed to the ICSID against following Latin American States.[23] [24] [25]

The financial penalties imposed after settlement of the dispute between these countries and foreign multinational corporations raised discontent among the civil society and government authorities.

Another critical view against ISDS system is the lack of transparency. As it was mentioned earlier, the ISDS via arbitration has a fundamentally different procedure of hearings. The arbitral process is not open for the public, even for the representatives of NGO's. The documents of arbitral processes cannot be disclosed for the people under any circumstances. The problem of the lack of transparency was discussed since the ISDS system began to operate. From one hand, it is important for the parties to discuss financial and corporate relations privately, but on the other hand, this is decreasing the accountability of the arbitrators. It is vital to understand that confidentiality is not identified in same way as lack of transparency. To dispel doubts about accountability of the IDSD platform, The United Nations Commission on International Trade Law adopted convention on transparency for investor-state dispute resolution. This document is widely known as 2014 UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration. The new document regulates the questions of third party participation, the publication of the information regarding the arbitral hearings, also disclosure of the documents.[26]

[21] Investor-State Dispute Settlement: The Arbitration Game, The Economist, 11 October 2014, number 82

[22] G. Monbiot, "The Real Threat to the National Interest from the Rich and Powerful", The Guardian, 15 October 2013

[23] Aguas del Tunari S.A. v. Republic of Bolivia (ICSID Case No. ARB/02/3) (2006)

[24] E.T.I Euro Telecom International N.V. v. Plurinational State of Bolivia, (ICSID case No. ARB/07/28) (2007)

[25] Murphy Exploration and Production Company International v. Republic of Ecuador (ICSID Case No. ARB/08/4) (2010)

[26] UNCITRAL Rules on Transparency in Treaty-based Investor-State Arbitration 2014, Art 2,6,7,8

The relevant regulations are also provided in ICSID rules, which give the non-dispute parties to attend arbitration hearings and intervene in arbitration proceedings.[27] A move to transparency in investment arbitration was increased by the new institution, so called amicus curiae, which means "friend of the court".[28] This means that in particular cases the public-sector representatives, mainly the NGOs may participate in arbitral proceedings.

Another weak side of the ISDS through arbitration is the high costs of the process. The typical cost of investor-state dispute settlement is counted in several million euros. This amount usually covers the expenses of arbitrators' salary, the payments of building facilities. The large portion of the arbitration fees includes the wages of lawyers. As a general rule, the lawyers involved in investment dispute settlement are incredibly high qualified and accordingly are highly paid. The key question is who is responsible for the cost of the arbitral process. Eventually, the financial obligations usually regulated in International Investment Agreements. The contracting parties are free to negotiate and regulate the financial responsibilities themselves. If by any chance the contracting parties did not regulate these questions, the arbitration cost will be settled by the arbitrators. The UNCITRAL rules state that: *"the costs of the arbitration shall in principle be borne by the unsuccessful party or parties. However, the arbitral tribunal may apportion each of such costs between the parties if it determines that apportionment is reasonable, taking into account the circumstances of the case".*[29]

As it can be noticed from most ICSID awards, this institution also uses the practice of shifting the costs to the losing parties.[30] [31]

Though in most ISDS arbitral cases the financial obligation transferred to the losing party, but there are several cases, when the winning party paid the whole amount of the process.[32]

Many legal and political scholars mention, that one of the disadvantages of the ISDS through arbitration is *the lack of effective sanctions during arbitral process*.[33] At the same time in the civil litigation process judges are in charge to impose variety of sanctions in case of disorder or procedural violations. A survey conducted by *the School of International Arbitration at Queen Mary University of London in 2015 called International Arbitration Survey: The evaluation of International Arbitration*[34] appointed the worse sides of the Investor State Dispute Settlement system. As it can be seen from the survey, "*forty-five per cent of respondents to the QMUL survey identified lack of effective sanc-*

[27] ISCID Rules, Art 48 <https://icsid.worldbank.org/en/Documents/icsiddocs/ICSID%20Convention%20English.pdf> accessed 04 May 2020

[28] Eric de Brabandere, Amicus Curiae in Investment Arbitration, (Oxford Public International Law 2018)

[29] UNCITRAL Rules, Art 42(1)

[30] Renee Rose Levy and Gremcitel v Peru, ICSID Case No ARB/11/17 (2019)

[31] Hassan Awdi v Romania ICSID Case No. ARB/10/13 (2015)

[32] David Collins, International Investment Law, (Cambridge University Press, 1st edition 2017, reprinted 2019) 248

[33] Margaret L. Moses, The Principles and Practice of International Commercial Arbitration (Cambridge University Press 2017) 34

[34] International Arbitration Survey: Improvements and Innovations in International Arbitration (White and Case, Queen Mary University of London and School of International Arbitration) < http://www.arbitration.qmul.ac.uk/media/arbitration/docs/2015_International_Arbitration_Survey.pdf> accessed 6 May 2020

tions during the arbitral process as one of the three worst characteristics of international arbitration."[35] The lack of sanctions may bring to unnecessary delays and to tactic delays which are very common in arbitral processes. On this side, the productivity of the dispute settlement may be decreased.

The next critical point in ISDS arbitral process is the appointment of the arbitrators. Many critics state that the large amount of cases is referred to the same arbitrators. In ICSID tribunals they are known as *"elite fifteen arbitrators"*[36]. It means that the same individuals are chosen to lead the ISDS arbitral process. The same arbitrators have the approximately 60 per cent of all investor state dispute cases. Due to their rankings, these arbitrators are randomly involved in most significant cases and it may have negative impact on the impartiality of the system. This critical review also is not justified. The ISDS arbitral tribunals provide guarantees regarding independence and impartiality of arbitrators with specific regulations. As an illustration, we can mention the arbitral rules of ICSID. The ICSID Convention provides an adequate influence on the matter mentioned above. Moreover, 57th article of the ICSID Convention declares following:

"A party may propose to a Commission or Tribunal the disqualification of any of its members on account of any fact indicating a manifest lack of the qualities required".[37]

To put it differently, any contracting party, including states, may have even a shred of slight evidence or hesitancy regarding proficiency or impartiality of the arbitrators of the tribunal can proceed to the process of disqualification. Also, it is essential to mention that the national courts in the majority of countries are financed from the state budgets. But this fact never put any doubt on the independence of the judges, even in administrative cases.

One can hardly deny that investments involved from foreign corporations are incredibly vital for the economic growth of every single country despite of its development level. But more significantly emerging countries are interested in participating in capital flows from developed countries. That is the reason why states put efforts to attract foreign investors to establish new business activities in their countries. There is no doubt that the creation of BIT's and other investment treaties, increased the flow of financial actives from one country to another, gave the sense of security to the foreign investors. The development of Investor State Dispute Settlement platforms gives guarantees to the foreign investors in case of the damages of their rights. International multinational corporations have an assurance that their future financial conflicts will be transferred to the independent and professional forum and will be settled in a concise period of time.

Like every other legal institution, Investor State Dispute Settlement arbitral system has excellent number of advantaged and also disadvantages. Nobody

[35] Id.

[36] A response to the criticism against ISDS, European Federation for Investment Law and Arbitration (EFILA) < https://efila.org/wp-content/uploads/2015/05/EFILA_in_response_to_the-criticism_of_ISDS_final_draft.pdf> accessed 8 May 2020

[37] Convention on the settlement of investment disputes between states and nationals of other states, art 57 < https://icsid.worldbank.org/en/Documents/icsiddocs/ICSID%20Convention%20English.pdf> accessed 4 May 2020

can deny that the Investor State Dispute Settlement neutral and independent system is the cornerstone of international investment law. As it was mentioned above, the main advantages of current dispute resolution system are neutrality, confidentiality of the process, highly skilled and proficient arbitrators, fast and organized arbitral procedures, comfortable and well-equipped building (office) conditions, informal and professional environment makes Arbitration the most productive and constructive platform for both capital importing and exporting states of the world.

The most significant advantage of the Investor State Dispute Settlement arbitral system also has political content. No single state is insured of political fluctuations. New developed governmental authorities may take a chance to escape from the obligations designed in international investment treaties. As it can be noticed above, many Latin American States tried to escape of their contract obligations and the only barrier was the International Center of Settlement Investment Disputes. Even with the intentions to extremely politicized ICSID withdrawal process, Latin American States did not manage to escape arbitral processes regarding compensations of the financial damages of foreign investors. Moreover, we can notice that some countries delayed the ratification of the ICSID convention until got final solution of several investment disputes in their national court system.[38]

In April 2018, the political revolution took place in the Republic of Armenia. After the so-called "velvet revolution" the new government announced about the denunciation of several international investment agreements, accusing the former authorities in corruption and blaming them in ignorance of the national interests of the country. At the same time, five international corporations announced about their intentions to file claims to different Arbitrations against the government of the Republic of Armenia as they insist on unreasonable and unproven actions towards them. In March 2019, Lydian International Limited, Canadian gold mining company announced about the submission of the notice to the Government under the BIT protection created in 1999 between Canada and the Republic of Armenia.[39] According to the mentioned investment treaty after three months from the submission of such formal notification the company can file claim to the London Court of International Arbitration. In case of success of foreign investor, the Government of Armenia would be forced to compensate financial damages and promised interest fairs. After receiving the notice the Government of the Armenia starts negotiations with representatives of the company, trying to escape the arbitral processes.

At the same time in this article we discussed the downsides of the Investor State Dispute Settlement Arbitration system. As it was shown in survey conducted by the School of International Arbitration at Queen Mary University of London the most unfavorable sides of Arbitration are the costs and financial expenses connected with arbitral processes. Correspondingly, sixty-five per cent

[38] *"Costa Rica signed the ICSID Convention in 1981 and ratified it in 1993 because of the Santa Elena case. The government of Costa Rica waited 12 years until the national courts could resolve the situation with expropriation of the property owned by American investors. Despite the maneuver of Costa Rica State authorities, anyway, the case was finally resolved in ICSID in 2000"*

[39] https://www.lydianinternational.co.uk/news/2019-news/452-

of respondents of the survey mentioned that the financial expenses may play negative role both for states and foreign investors. Also, the lack of transparency and lack of effective sanctions were discussed as negative factors of the Arbitration.

To sum up, we need to mention that ISDS mechanism without any doubt must be improved as the financial affairs are developing incredibly fast. But nowadays, the Investor State Dispute Settlement Arbitration mechanism is the most productive tool to resolve investment conflicts. It can also be confirmed by the number of claims filed to the ISID system, which progressively increased in recent years.

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ԱՆԻ ՍԻՄՈՆՅԱՆ – *Պետության և ներդրողների միջև վեճերի արբիտրաժային կարգավորման առավելություններն ու թերությունները* – Հոդվածը նվիրված է օտարերկրյա ներդրողների և պետությունների միջև ներդրումային վեճերի լուծման արբիտրաժային ընթացակարգի վերլուծությանը: Աշխատանքում ներկայացվել են ներդրումային վեճերի արբիտրաժային կարգավորման առավելությունները և առանձնահատկությունները արբիտրաժային հարթակներում քննվող առանձին գործերի համատեքստում: Քննարկվել են նաև պետությունների և ներդրողների միջև առկա վեճերը միջազգային արբիտրաժներում քննելու անկատարության խնդիրները:

Բանալի բառեր – *օտարերկրյա ներդրողներ, ներդրումային վեճեր, արբիտրաժ, արբիտրաժային վեճ, արբիտր, ներդրումային պայմանագիր, Լոնդոնի արբիտրաժ, պայմանագրային վեճեր, արբիտրաժային համակարգ, ներդրումային իրավունք*

АНИ СИМОНЯН – *Преимущества и недостатки урегулирования споров между инвесторами и государством в арбитражном порядке: ключевые концепции.* – В статье детально рассмотрены положительные стороны и преимущества урегулирования инвестиционных споров между иностранными инвесторами и государствами. Были обсуждены также политические и юридические недостатки разрешения споров между государствами и инвесторами. Проанализированы некоторые ключевые прецедентные арбитражные решения, демонстрирующие как положительные, так и отрицательные стороны обсуждаемого вопроса.

Ключевые слова: *арбитраж, арбитражный порядок, иностранные инвесторы, арбитраж Лондона, арбитражная система, инвестиционный спор, инвестиционный договор, арбитр*