

різняються у кожній країні і призводять до унікальних умов існування лобізму, які, в свою чергу, диктують унікальні методи і засоби впливу.

У такій чисельності координат можливість приймати рішення зі знанням справи як при ініціації дій, так і придушуючи спонукання, є свободою волі, вибір є самою суттю вольового акту. Тому безумовно, що головна проблема зростання ефективності демократії полягає у підвищенні загального інтелектуального рівня як окремої особи, так і глобалізуючого людства в цілому. Адже свобода волі знаходить свій прояв у самокерованості суб'єкта права своєю поведінкою, що передбачає не лише свободу вибору, але й свободу формування самого суб'єкта, який здійснює цей вибір.

Література:

1. Зайцева Л.А. Понятие выбора в современной психологической науке.
2. Васильева Н.А. Теоретическая модель феномена выбора: социальный идеал и реализация (теоретико-методологический аспект). – Автореферат дис. к.ф.н. – Иркутск, 2004.
3. Ильин И.В. Глобалистика в контексте политических процессов: Автореферат дис.д.п.н. – М, 2011.

Ashykhmin I. M.

*Postgraduate Student, Department of International and European Law,
National University «Odessa Law Academy»*

THE FORUM SHOPPING DOCTRINE AND ITS APPLICATION IN INTERNATIONAL INVESTMENT DISPUTES

In the modern world there is a huge number of international regulations, international organizations that monitor the implementation of the obligations of participants in international economic relations and regulate the procedure for resolving disputes between them. At the same time, the polymorphism of international institutions that form the dispute resolution mechanism poses a threat to the participants in the dispute, which consists of making several different decisions on the

same subject of dispute, which may give rise to a conflict of interest and problems at the stage of execution of the judicial (arbitral) solutions.

The diversity of dispute resolution tools developed by the international community makes it difficult to reach an agreement as to the choice of a dispute resolution method. In this regard, participants in international contractual relations (counterparties) often agree on a potential dispute resolution forum when concluding a transaction. This may be in the form of a separate agreement or it may be spelled out in the main agreement (arbitration clause). However, the main question is: how and on what grounds to choose the place of probable consideration of the dispute – in other words, to display alternative approaches for resolving the dispute.

One of the institutions provided for by international investment agreements is the forum shopping doctrine, which provides for the plaintiff's choice of a convenient place for conducting proceedings on an international investment dispute by preferring one potentially accessible forum to another.

It is quite logical that the recipient state in almost every dispute on the basis of a bilateral investment treaty (hereinafter referred to as BIT) disputes the competence of the arbitration to resolve the dispute [1, c. 5].

Each proceeding on the basis of a BIT begins with the stage of determining the competence of the arbitration, since this is a necessary prerequisite for resolving the dispute on the merits. Determining the competence of arbitration is key to resolving a dispute. If the arbitration comes to the conclusion that there is no competence to resolve the dispute, the investor will not be able to rely on the protection of the rights granted by the BIT in international arbitration.

It should be underlined that the use of forum (treaty) shopping in the resolution of disputes is not always beneficial for both parties. Quite often, the arbitration has a doubt regarding the reference to the norms of the BIT, to which the claimant refers to defend his violated right.

For example, in the *Saluka Investment BV v. Czech Republic* case, the arbitral tribunal expressed "concern over the argument that a legal entity that does not have a real connection with the state party

BIT and which is in fact an affiliate fake company that does not operate in the territory State Party BIT should not be entitled to rely on the provisions of this treaty” [2].

Thus, it can be noted that this possibility is directly relevant to abuses in the arbitration procedure regarding the practice of “choosing a venue for resolving a contract dispute”, which can share many of the shortcomings of the widely criticized practice “forum shopping”.

Nevertheless, arbitration still holds the view that the provisions of the treaty determine the place of resolution of a probable dispute, and that it cannot impose a narrower definition of an “investor” than the one entered into by the States parties to the agreement.

The practice of “gaining access to protecting one’s rights through ICSID arbitration” is quite popular among investment subjects. Another example of abuse of rights is the use of the Netherlands system to protect the rights of investors in the case *Mobil v. Venezuela*, the dispute over which is associated with the nationalization of oil and gas projects by the state of Venezuela.

In the above case, arbitration noted that Mobil had restructured its investments through the Netherlands for the sole purpose of gaining access to ICSID arbitration. The arbitration took an approach to resolving pre-existing disputes, stating that “investment restructuring only for the purpose of obtaining jurisdiction under BITs for such disputes would constitute [...] an abuse of the international investment protection system” [3, para. 190, 204-205].

The place of arbitration is one of the most important aspects that are necessary for solving the problems of parallel arbitration. The choice of favorable jurisdiction and the place of settlement of disputes that may arise within the framework of the contractual obligations of the parties is a matter that must be considered by a foreign investor at the pre-contractual (initial) stage of investment activity. For the recipient state, a more convenient option is to consider possible disputes in the national judicial system, since court costs and the amount of possible compensations are different from litigation in international institutional bodies. Accordingly, the question regarding the jurisdiction and venue of the forum cannot be left out of attention and is always relevant.

However, it is worth noting that the place for resolving a dispute may become an “apple of discord” between the parties. The parties may abuse and manipulate the provisions of the BIT and the specific investment contract in their favor. In order to avoid collisions in this aspect, it is necessary to resolve this issue by regulation, which, unfortunately, is not closed at the moment and is relevant.

Bibliography:

1. Гармоза А.П. Определение компетенции состава арбитража, сформированного на основании международного инвестиционного соглашения: автореф. дис. ... канд. юрид. наук. 12.00.03. Москва. 2011. 28 с.
2. Частичное арбитражное решение по делу Saluka Investments Bv (The Netherlands) v the Czech Republic от 17 марта 2006 года [Электронный ресурс]. 2006. URL: <https://www.italaw.com/sites/default/files/case-documents/ita0740.pdf>.
3. Mobil Corporation, Venezuela Holdings B.V.; Mobil Cerro Negro Holdings, Ltd.; Mobil Venezolana de Petróleos Holdings, Inc.; Mobil Cerro Negro, Ltd.; and Mobil Venezolana de Petróleos, Inc. v. Bolivarian Republic of Venezuela, Decision on Jurisdiction, 10 June 2010, ICSID Case No. ARB/07/27.

Белогубова О. О.

*кандидат юридических наук, доцент кафедры международного
та европейского права Национального университета
«Одесская юридическая академия»*

МІЖНАРОДНЕ ПРИВАТНЕ ТРУДОВЕ ПРАВО В СИСТЕМІ МІЖНАРОДНОГО ПРИВАТНОГО ПРАВА

У галузі міжнародного приватного права відокремлюють самостійну сферу правового регулювання трудових відносин з іноземним елементом.

Причиною віднесення трудових відносин з іноземним елементом до сфери регулювання міжнародного приватного права є те, що «трудові і цивільні відносини ... об'єднані спільними принципами приватноправового регулювання. Ця їхня властивість і дає змогу у трудових відносинах з іноземним елементом застосувати до них інструментарій міжнародного приватного права...» [1, с. 13].