



DOI: 10.54919/physics/56.2024.72ik12

The concept and features of the settlement of investment disputes under the legislation of the Republic of Kazakhstan

Meruyert Akimbekova

Caspian University

A25D9B0, 85A Dostyk Str., Almaty, Republic of Kazakhstan

Gulmira Talapova

Almaty Management University

A15P8D0, 227 Rozybakiev Str., Almaty, Republic of Kazakhstan

Zakir Kudaibergenov*

Caspian University

A25D9B0, 85A Dostyk Str., Almaty, Republic of Kazakhstan

Maidan Suleimenov

Caspian University

A25D9B0, 85A Dostyk Str., Almaty, Republic of Kazakhstan

Abstract

Relevance. The relevance of the study is determined by the fact that investment activity serves as one of the most important factors for the formation of an effective economic system, and litigation in this category of disputes is one of the innovations in the legal sphere of Kazakhstan and has no analogues in the post-Soviet space.

Purpose. The objectives of this study are a theoretical analysis of the content of investment disputes, the procedure for resolving this category of disputes and identifying potential issues that may undermine the efficiency of dispute resolution.

Methodology. Among the main methodological approaches used in the investigation are theoretical, functional, and dogmatic approaches, along with the method of induction, legal hermeneutics, the method of synthesis and others.

Results. The study revealed that the characteristic features of investment disputes are the competition, confrontation, and interaction of private and public law categories. Notably, among the main categories of investment disputes were those involving the implementation of an investment project, and disputes related to the termination of investment activities and the admission of an investment; each category was defined and considered to have its own specific characteristics. As part of a detailed analysis, a judicial panel of the Supreme Court of the Republic of Kazakhstan was reviewed, which has jurisdiction over investment disputes involving large investors and appellate review of this category of disputes with other investors. Many conflicts and gaps in the current Kazakh and international framework have been identified.

Conclusions. The practical value of the findings provided is the detailed analysis of the inherent issues and the identification of possible solutions aimed at improving the efficiency of investment litigation.

Keywords: investment activity; Supreme Court; harmonisation of legislation; investment ombudsman; jurisdiction.

Suggested Citation:

Akimbekova M, Talapova G, Kudaibergenov Z, Suleimenov M. The concept and features of the settlement of investment disputes under the legislation of the Republic of Kazakhstan. *Sci Herald Uzhhorod Univ Ser Phys.* 2024;(56):722-729. DOI: 10.54919/physics/56.2024.72ik12

*Corresponding author



Copyright © The Author(s). This is an open access article distributed under the terms of the Creative Commons Attribution License 4.0 (<https://creativecommons.org/licenses/by/4.0/>)

Introduction

The judicial system of the Republic of Kazakhstan has undergone a significant amount of modernisation in recent years, particularly in the development of mechanisms that facilitate the resolution of disputes of an investment and commercial nature. As argued by S.A. Akimbekova and M.Zh. Bekturganov [1]. In modern conditions, Kazakhstan has a judicial system that meets international standards and performs its key functions in the form of the implementation of the principles of the rule of law, the rights and freedoms of citizens, state, and organisations. According to Y. Patil [2], the dynamic processes of modernisation of judicial proceedings and the system are facilitated by a set of coordinated activities that consist of information technology, scientific, methodological, and organisational issues, as well as high-quality staffing for the implementation of the activities of the judicial system. The Republic of Kazakhstan has implemented a set of measures designed to improve the justice system. A.T. Bulovsky [3] points out that when the principles of transparency were proclaimed to attract Kazakh and foreign investors, a special legislative framework was created to ensure the protection of investors' rights in the process of investment activity.

Investment is one of the most common economic categories used in business law and international law; this is a factor that underlines the interconnectedness of these two key systems of social relations. A broad definition of investment through an economic-theoretical lens includes funds that are invested in an economic system, its economic objects and projects that are designed to provide economic resources for future output [2]. Investments should also be termed as long-term contributions of private or public capital with the aim of generating a return after a significant period of time [4]. For instance, Article 276 of the Entrepreneurial Code of the Republic of Kazakhstan [5] provides that investors are granted unconditional and full protection of their rights, which is ensured by both national and international legal norms. According to E.V. Chuguevskaya [6], an important step that has contributed to a large flow of investment into Kazakhstan was the establishment of the Astana International Financial Centre. It is subject to a special legal regime based on the norms, precedents and principles of United Kingdom law and the standards set by the world's leading financial centres. This centre is regulated by the Constitutional Law of the Republic of Kazakhstan No. 438-V "On Astana International Financial Centre" [7].

As noted by N.R. Veselskaya and A.M. Kazbekova [8], Kazakhstan's experience shows that it is actively incorporating international case law into its legal system and considers the prospects of its implementation in national law. Analysing the concept of an "investment dispute", it is to be interpreted as a dispute that arises from contractual obligations between investors and public authorities in connection with the implementation of an investor's investment activities [2]. Where an investment contract has been concluded between a public body and an investor, and a dispute arises within this sector resulting from the obligations of the concluded contract, the investor has the right to apply to the Astana or the Supreme Court of the Republic of Kazakhstan to protect its rights and interests [7]. The Investment Board of the Supreme Court

has exclusive jurisdiction as a court of the first instance to hear this category of disputes. It is worth mentioning that the introduction of this institution has generated a great response among Kazakhstani and foreign lawyers.

Materials and Methods

The present investigation of investment disputes, highlighting the concept and features of its settlement in the Republic of Kazakhstan has been carried out using different methodological approaches, which reveal the theoretical and practical nature of the study. The theoretical approach has provided an opportunity to explore the concept of "investment disputes" and to highlight its characteristics and types. The functional approach allowed for a detailed analysis of the categories of investment disputes, such as investment project implementation disputes, investment termination disputes and investment admission disputes, outlining and examining the specificities inherent in each of the categories. The formal-legal approach provided an analysis of the legislative framework of the Republic of Kazakhstan, which regulates the provisions of the investment dispute resolution procedure, thereby distinguishing the inherent features in this legal category.

The dogmatic approach introduced an opportunity to review the practice of investment dispute resolution under international law, thus allowing the effectiveness of the procedure to be assessed. The method of legal hermeneutics, based on the theoretical and practical results presented, made it possible to identify the inherent legal conflicts in Kazakh and international law on the procedure for resolving this category of disputes. Using the induction method, the investment dispute resolution mechanism was analysed on the basis of its elements and features; the deduction method, in turn, based on these features and attributes, provided an opportunity to consider a holistic mechanism for the resolution of investment disputes. The method of logical analysis made it possible to assess the impact of legal conflicts in the current legislation of the Republic of Kazakhstan on the efficiency of investment dispute resolution; and to study the activity of the judicial board of the Supreme Court of the Republic of Kazakhstan on the resolution of investment disputes, the competence of which includes the review of investment disputes involving major investors and appeal review of this category of disputes with other investors.

The method of synthesis, based on the theoretical and practical results obtained, identified possible solutions to the inherent issues and proposed recommendations that would contribute to the efficiency of investment litigation activities. Thus, this study was conducted in several stages. The first stage presented a detailed analysis of the theoretical aspect of the piece; the concept of 'investment disputes' was examined and the key features, characteristics, and principles on which the dispute resolution mechanism is based were highlighted. The second stage involved analysis of the current legislation of the Republic of Kazakhstan, which regulates the provisions of the investment dispute resolution procedure; the activity of the judicial board of the Supreme Court of the Republic of Kazakhstan to settle investment disputes, which has jurisdiction over investment disputes involving major investors and appellate review of this category of

disputes with other investors, was studied. The third stage focused on the conflict-of-laws aspects of the Kazakh regulation of this category of disputes; a particular role was given to presenting recommendations that would contribute to the elimination and resolution of these issues.

Results and Discussion

Investment disputes are a special type of commercial conflict that is of great interest in global economic development. The movement of capital serves as a precondition for the effective functioning of the international economic system mechanism. According to A. Thompson, T. Broude, Y.Z. Haftel [9], the assessment of industrialised economies is mainly determined by the rotation of industrial capital based on the investment cycle. In any legal relationship, there is a high probability for a situation to arise that involves investment disputes, which in turn have a number of distinctive features. G. Gertz, S. Jandhyala, L.N.S. Poulsen [10] argue, that these characteristic features are related to the essence of investment relations, where the key role is assigned to the state. On this basis, the state has the power to enter a bilateral investment treaty with other countries to determine further options for the settlement of investment disputes. Accordingly, the state is the party to the investment dispute with the defendant. Overall, U. Kriebaum [11] interprets the concept of 'investment disputes' as those involving a private person and the state that are related to investments by investors in the former's territory. Also this concept, as C. Moehlecke [12] points out, can be seen as a set of legal relationships that arise from resolving disagreements or finding the most advantageous option for resolving conflicts that arise during the realisation of activities of an investment nature.

The international legal doctrine defines this term in Article 26 of the Energy Charter Treaty [13], recognising as a category of disputes those conflicts, which originate between one party and an investor of another party, concerning investments of the latter in the territory of the former; it also recognises that this category of disputes concerns allegations of breach of obligations under Part III "Promotion and Protection of Investments" by the first Contracting Party. Article 25 of the Washington Convention [14] defines investment conflicts as those disputes that arise from agreements that are related to investments between a State and a natural or legal person of another state. The category of investment disputes includes those that arise in connection with foreign direct investment between a contracting State and persons of other States, namely, disputes that arise from relations related to foreign investment; disputes that arise between a foreign investor and the State; disputes that relate to the nature and scope, rights and obligations of the parties, conditions and amounts of compensation for violation of obligations under this investment contract. That is, based on the provisions of the convention, it is possible to define the concept of an "investment dispute".

Article 296 of the Entrepreneurial Code of the Republic of Kazakhstan [5] states that an investment dispute should be understood as a dispute that arises out of obligations of a contractual nature between investors, including large investors, and public authorities because of an investor's investment activity. The procedure for this category of

disputes in Kazakhstan is set out in Article 27 of the Civil Procedure Code of the Republic of Kazakhstan [15]. Under this legal provision, investment disputes are heard by the court of Astana, the Supreme Court as the court of the first instance for investment disputes involving a major investor. Other disputes arising from legal relations involving an investor, but not related to investment activities, and those related to investor participation, may be subject to summary proceedings in the jurisdiction of district and equivalent courts. Based on the above provision in Article 27 of the Civil Procedure Code of the Republic of Kazakhstan [15], particular attention should be paid to the issue of the classification of investment disputes. Thus, there is currently no unified doctrinal approach to defining the classification of categories of investment disputes. For example, M.A. Akimbekova [16] notes that they should be categorised by the composition of the participants, the investor's sphere of activity, the dispute resolution body, and the grounds on which they arise.

The second approach to the classification of investment disputes, according to R.J. Spalding [17], includes two categories: disputes that arise between a foreign investor and a host state; commercial disputes that arise between enterprises with foreign investors and firms in the country of location of the foreign-invested enterprise. Particularly noteworthy is the classification according to which investment disputes should be divided into public law and private law. Thus, C. Titi and K.F. Gómez [18] believe that in this case, the private law should include the invalidation of the investment agreement, challenging the early termination or termination of the investment agreement, forcing the conclusion, modification or continuation of the investment agreement, and appealing decisions or actions of the authority in exercising control over compliance with the terms of the contract. Under public law, C. Titi and K.F. Gómez [18] recognise the compulsion to return the property that has been provided to the investor as a public grant or the recovery of its value by the authorities upon early termination of the contract, the compulsion to return the contract area after the end of the contract, the challenge or recovery of customs, tax, environmental, social and other amounts accrued under the investment contract, and other disputes that arise on the claim of an investor or a state body that is related to the fulfilment of mutual obligations under an investment agreement.

Considering the concept of other disputes that can be attributed to investment disputes, it is necessary to consider the following:

- appeals against decisions of the authorities in relation to the protection of intellectual property rights;
- the invalidation of actions of authorities and their officials who violate investor rights during inspections in various fields;
- the invalidation of decisions of state authorities on imposing tax, customs and other obligatory payments to the budget;
- recovery by the state authority from the investor of the amount of economic damage assessment;
- forced seizure of the investor's property for state needs and compensation for losses;

- recognition of illegal actions to refuse to provide a state in-kind grant and the imposition of obligations to provide a natural grant;

- compensation to the investor for damage as a result of the issuance of acts by state bodies, which do not comply with the current legislation;

- other disputes that may arise between government agencies and investors and are related to violations of legal requirements [4].

This classification is particularly significant in the current legislation of the Republic of Kazakhstan as it would provide an opportunity to form a unified judicial practice. One of the most necessary criteria for the creation of a favourable environment for the functioning of the investment environment is the legal protection of investors. The mechanism for this legal protection includes the effective functioning of the regulatory and judicial systems that are designed to enforce investors' rights.

Further analysing the provisions of the Civil Procedure Code of the Republic of Kazakhstan [15], it should be mentioned that investment disputes are heard by the Astana City Court and the Supreme Court of the Republic of Kazakhstan. Thus, Article 27(4) of the Civil Procedure Code of the Republic of Kazakhstan [15] provides that the Astana City Court shall hear disputes under the rules of the first instance and shall decide civil cases of an investment nature, in addition to the category of cases that fall within the jurisdiction of the Supreme Court, and other types of disputes that arise between private persons and public authorities and are related to private person investment activities. The Astana Court examines disputes that are related to amendment, conclusion or termination of the investment contract, disputes about the return of state grants, customs duties, and tax amounts, from payment of which the investor was exempt under the investment contract, and disputes about appealing actions of tax or other controlling bodies on additional tax and other payments based on the results of investment plan activities. According to Article 28 of the Civil Procedure Code of the Republic of Kazakhstan [15], the Supreme Court is authorised to resolve disputes of an investment nature to which a large investor is a party. Referring further to Article 77, the Court has the power to implement a request for expert opinion from the International Council of the Supreme Court.

The International Council of the Supreme Court is an advisory and consultative body whose expertise is the improvement of the justice system; its members are specialists who have extensive practical experience, a doctoral or candidate's degree in law or a reputation in legal circles [19]. Article 63 of the Civil Procedure Code of the Republic of Kazakhstan [20] provides that evidence in a case is legally obtained information on facts from which the court can establish the existence or absence of circumstances which justified the parties' objections and claims and other circumstances which are relevant to a more accurate and correct examination and resolution of the dispute. Information about facts that may be obtained in the course of explanations of the parties to the dispute or third parties, as well as the testimony of witnesses concluded by physical evidence, experts, records of court hearings, records of procedural actions, video and audio materials that were obtained through the use of

videoconferencing, reflecting the process and course of actions, etc.; however, it should be noted that this article does not regulate the obligation on the procedure, the purpose of calling a specialist, and the procedure, sequence of interrogations and forms of consultations [19; 21; 22].

That is, essentially, the procedure goes as follows: if necessary, the court makes a formal request to a specialist, which includes a request for a specific question on a certain subject and attaches to this request the documents necessary for the investigation; the result of this procedure will be a written report to be submitted to the court, and the presence of written conclusions at the stage of preparing a case for trial is a factor that provides an opportunity to more specifically determine the subject of the dispute. According to the above, investment disputes serve as an element of investment legal relations, but their settlement is a rather difficult process due to the imperfect legislative framework, which makes it important to analyse possible challenges and methods of dispute settlement with the objective of finding a more effective mechanism for resolving investment disputes. It is important to mention that the investor's interests should be considered when determining the jurisdiction of this category of disputes; if investors want their disputes to be heard by the investment panels, this signifies that they do rely on getting a fairer and more objective examination of the dispute. A statistical analysis shows that 73 cases and applications relating to investment disputes were filed; 22 of them were returned, of which 8 were returned because the Astana court did not have jurisdiction over them; a total of 44 cases were closed, of which 29 were decided, 11 were sent to the courts, 3 were left without consideration and 1 was discontinued [20].

The circumstances in connection with which the statements of claim were returned include:

- the claimant's failure to request the return of the submitted claim;

- the established pre-trial procedure for dispute settlement was not observed and the possibility of applying this procedure was lost;

- the case is not within the jurisdiction of this court, since it does not belong to this category of disputes and disputes that are related to the activities of the investor;

- evidence that confirms the investment activity has not been attached to the statement of claim, and at the stage of acceptance of the statement of claim, it is not possible to verify the jurisdiction of the dispute to the court of the city of Astana.

Analysing these circumstances under which the claims were returned, it should be noted that the reason for this is an imperfection of the legal regulation, particularly in relation to the distinction between the jurisdiction of investment disputes and other disputes, which are determined by the nature of investment disputes. It is therefore important to examine in more detail the possible causes behind a delineation of jurisdiction. This factor is of an artificial nature. That is, finding a clear delineation of jurisdiction over investment-related disputes is difficult enough as the judicial system has created conditions for competing for subject matter jurisdiction of judicial bodies such as the Specialised Inter-District Economic Court and two new institutional benches in the Astana City Court and the Specialised Judicial Panel under the Supreme Court. It

is worth mentioning that the factor that can aggravate this situation is a competing subject jurisdiction.

Another reason worth noting is of a more traditional nature, as it is generated in courts with highly specialised judicial procedures. The reason for this is the lack of specification of court procedures, which is due to the close organic relationship between the substantive circumstances of one civil case and another. Another reason is the poor theoretical development of a large number of basic categories that the legislator must account for. These include "investment disputes", "investment" and "other disputes"; the inconsistency of the theoretical segment and the emergence of legal conflicts leads to a lack of a uniform approach to the distribution of the criteria for distinguishing jurisdiction over their application to investment disputes. To address this problem, it is important to create a special Supreme Court ruling that can provide clarification to the courts and facilitate an objective and more accurate review of cases involving investors. Fair and lawful decisions of the courts on the settlement of investment disputes will provide an opportunity to increase investor confidence in the judicial system, thereby contributing to the improvement of the investment climate in Kazakhstan.

Among other possible solutions for improving the efficiency of investment dispute settlements in Kazakhstan is the introduction of alternative means, as this would ensure transparency, speed, and openness of dispute resolution between the parties to the conflict. Among the main advantages of this innovation are cost and time savings, flexibility, the parties regaining control over the conflict situation, and the possibility of avoiding litigation, which could have a negative impact on the partnership between the parties. This system comprises a set of instruments and mechanisms that constitute a procedure for the resolution and extrajudicial settlement of disputes that arise between subjects of legal relations; the ultimate goal of the alternative dispute resolution system is the process of conflict resolution at the lowest possible cost for all parties involved. One of the most typical forms of alternative dispute resolution is negotiation, since during its conduct the parties voluntarily work out a mutually beneficial agreement to resolve the dispute, and also have the opportunity to independently control the process and decision [23-25].

The advantage of mediation is that the mediator can facilitate the structuring of an amicable settlement but is not authorised to give a verdict. In mediation, meetings with the parties are held separately to make every possible effort to establish the causes of the dispute, which in turn sets the stage for a solution to be reached in a non-controversial, amicable manner [17; 26]. The mediator can apply a large number of different techniques, such as encouraging cooperation and effective communication between the parties, offering different options for resolving the dispute and providing the parties with consequences for non-resolution, identifying their real interests, or narrowing down the questions arising. As an alternative dispute resolution option, arbitration has the advantage of having two forms of legal application, namely mandatory and non-mandatory. Thus, an optional form of alternative dispute resolution should include the process of negotiations, mediation, and reconciliation since these

forms depend on the desire of the parties to the dispute to reach a settlement agreement. Binding arbitration is a process of completion in the form of a third-party award that will be binding on the parties, even if they do not agree with the verdict; whereas non-binding arbitration involves a third-party award, but the parties have the right to reject it [4; 27]. Foreign investors and enterprises established by them on the territory of the State have the right to turn to institutional mechanisms to protect their rights and resolve investment disputes since intergovernmental agreements on mutual protection and investment promotion provide an opportunity to ensure the relative stability of the legal field for foreign investment and provide an additional tool for investors to protect their own interests and rights [28; 29].

Nevertheless, there are still a number of limitations in investment activities to guarantee investors' rights, arising from the inefficiency of traditional institutions and their relationships, and the lack of an alternative mechanism for the resolution of investment disputes, which provides an additional mechanism for the protection of investors' rights [10; 30]. An analysis of the state of law enforcement practice and current legislation in Kazakhstan in this segment reveals a lack of general practice in the application of alternative dispute resolution in the investment sphere. In other countries, foreigners avoid taking their disputes to state courts; this is because these courts generally rule in favour of local parties. When this situation occurs, quite often the Kazakh party, which does not have sufficient information about all the dispute resolution mechanisms and the consequences of choosing any dispute resolution mechanism offered to it by the foreign partner, agrees to apply it without realising the disadvantage. Therefore, it is important to actively introduce and develop alternative ways to settle investment disputes in Kazakhstan, in particular with foreign investors, such as the introduction of conciliation, arbitration, international arbitration and mediation procedures into law enforcement practice. This presents an opportunity to address a number of challenges:

- providing a more effective mechanism for parties to resolve disputes, particularly in terms of the quality of the review, time and cost, preserving the reputation and business relationships;
- giving parties to a dispute greater freedom to choose a forum for resolving future and arising disputes;
- providing an institutional framework for developing international dispute resolution arbitration in the country;
- resolving possible issues of the Kazakh party with subsequent enforcement abroad;
- unloading the state court system with all the ensuing consequences and offsetting the difficulties of creating additional links between the courts.

Conclusions

Having conducted an academic study of the investment dispute settlement procedure in the Republic of Kazakhstan, it was observed that it operates quite effectively at this stage of formation, but certain recommendations have been proposed to improve this indicator, which involve the introduction of more active use of alternative dispute resolution to ensure openness and transparency of the procedure under study. The dispute resolution procedure in Kazakhstan is set out in Article 27

of the Civil Procedure Code of the Republic of Kazakhstan; under this legal provision, investment disputes are heard by the Astana City Court; the Supreme Court as the court of the first instance hears investment disputes involving a major investor. Other disputes arising from legal relations involving an investor, but not related to investment activities, and those related to investor participation, may be subject to summary proceedings in the jurisdiction of district and equivalent courts. A statistical analysis shows that 73 cases and applications relating to investment disputes were filed; 22 of them were returned, of which 8 were returned because the Astana court did not have jurisdiction over them; a total of 44 cases were closed, of which 29 were decided, 11 were sent to the courts, 3 were left without consideration and 1 was discontinued.

The circumstances in connection with which the statements of claim were returned include:

- the claimant's failure to request the return of the submitted claim;
- the established pre-trial procedure for dispute settlement was not observed and the possibility of applying this procedure was lost;
- the case does not fall within the jurisdiction of this court, as it does not relate to investment disputes and

disputes which are interrelated to this type of investor activity;

- evidence that confirms the investment activity has not been attached to the statement of claim, and at the stage of acceptance of the statement of claim, it is not possible to verify the jurisdiction of the dispute to the court of the city of Astana.

Potential solutions to address the above causes have been considered; among the most effective is the introduction of a wider range of alternative dispute resolution options. Further studies on investment dispute settlement in Kazakhstan will focus on the prospects of introducing alternative dispute resolution methods and digitalisation of proceedings to generate more efficient and innovative opportunities.

Acknowledgements

This research has been funded by the Science Committee of the Ministry of Science and Higher Education of the Republic of Kazakhstan (Grant No. AP09260554 "The participation of the state and international organizations in civil law relations: problems of theory and practice").

Conflict of Interest

The authors declare that there is no conflict of interests.

References

- [1] Akimbekova SA, Bekturganov MZh. International Council under the Supreme Court of the Republic of Kazakhstan and its role in civil proceedings. *Bull Inst Legisl Leg Inform Rep Kazakh*. 2020;4:66-72.
- [2] Patil Y. Norms for the Disqualification of Arbitrators under the International Centre for Settlement of Investment Disputes Convention. *Supremo Amicus*, 2022;28:article number 631.
- [3] Bulovsky AT. The over-and under-enforcement of anti-corruption law in investment disputes and international development. *Camb Int Law J*. 2020;2:264-293.
- [4] Qalandar MAG. Arbitration in investment disputes. *Tikrit Univ J Rights*. 2022;2:482-514.
- [5] Entrepreneurial Code of the Republic of Kazakhstan; 2015. https://online.zakon.kz/document/?doc_id=38259854#sub_id=0.
- [6] Chuguevskaya EV. Development of International Investment Law within the Eurasian Economic Union. *Euras Integr Econ Law Pol*. 2021;3:77-81.
- [7] Constitutional Law of the Republic of Kazakhstan No. 438-V "On Astana International Financial Centre"; 2015. https://online.zakon.kz/Document/?doc_id=39635390.
- [8] Veselskaya NR, Kazbekova AM. Guarantees and protection of investors' rights in Kazakhstan. *Colloquium-J*. 2019;1:33-35.
- [9] Thompson A, Broude T, Haftel YZ. Once bitten, twice shy? Investment disputes, state sovereignty, and change in treaty design. *Int Organiz*. 2019;4:859-880.
- [10] Gertz G, Jandhyala S, Poulsen LNS. Legalization, diplomacy, and development: Do investment treaties depoliticize investment disputes? *World Dev*. 2018;107:239-252.
- [11] Kriebaum U. Evaluating social benefits and costs of investment treaties: depoliticization of investment disputes. *ICSID Rev Foreign Investm Law J*. 2019;33(1):11-28.
- [12] Moehlecke C. The chilling effect of international investment disputes: limited challenges to state sovereignty. *Int Stud Quart*. 2020;1:1-12.
- [13] Energy Charter Treaty; 1991. <https://www.energycharter.org/fileadmin/DocumentsMedia/Legal/ECT-ru.pdf>.
- [14] Washington Convention; 1965. <https://treaties.un.org/doc/Publication/UNTS/Volume%20575/volume-575-I-8359-English.pdf>.
- [15] Civil Procedure Code of the Republic of Kazakhstan; 2015. https://online.zakon.kz/document/?doc_id=34329053#sub_id=0.
- [16] Akimbekova MA. Problems of the conceptual apparatus of the investment legislation of the Republic of Kazakhstan and their impact on the consideration of investment disputes. *Law State*. 2017;1:82-92.
- [17] Spalding RJ. After Cafta: Anti-mining Movements, Investment Disputes, and New Organizational Territory. In: *Contesting Trade in Central America (pp. 158-187)*. Texas: University of Texas Press; 2014.
- [18] Titi C, Gómez KF. Mediation in international commercial and investment disputes. Oxford: Oxford University Press; 2019.
- [19] Akimbekova MA, Moroz SP. Investment disputes under the legislation of the Republic of Kazakhstan. *Colloquium-J*. 2021;1-2(88):33-35.

- [20] Supreme Court of the Republic of Kazakhstan; 2022. <https://sud.gov.kz/rus/tag/investicionnye-spory>.
- [21] Kerimkhulle S, Obrosova N, Shaninin A, Tokhmetov A. Young Duality for Variational Inequalities and Nonparametric Method of Demand Analysis in Input–Output Models with Inputs Substitution: Application for Kazakhstan Economy. *Mathem.* 2023;11(19):4216.
- [22] Cristea V-M, Baigulbayeva M, Ongarbayev Y, Smailov N, Akkazin Y, Ubaidulayeva N. Prediction of Oil Sorption Capacity on Carbonized Mixtures of Shungite Using Artificial Neural Networks. *Process.* 2023;11(2):518.
- [23] Chorna NP. Development of Agrarian business in Ukraine under influence of world financial and economic crisis. *Act Probl Econ.* 2009;11:40-48.
- [24] Prokopov VG, Fialko NM, Sherenkovskaya GP, Yurchuk VL, Borisov YuS, Murashov AP, Korzhik VN. Effect of the coating porosity on the processes of heat transfer under, gas-thermal atomization. *Poroshk Metall.* 1993;(2):22-26.
- [25] Kiesewetter D, Krivosheev S, Magazinov S, Malyugin V, Varzhel S, Loseva E, Koshkinbayev S, Smailov N. Application of Fiber Bragg Gratings as a Sensor of Pulsed Mechanical Action. *Sens.* 2022;22(19):7289.
- [26] Kerimkhulle S, Dildebayeva Z, Tokhmetov A, Amirova A, Tussupov J, Makhazhanova U, Adalbek A, Taberkhan R, Zakirova A, Salykbayeva A. Fuzzy Logic and Its Application in the Assessment of Information Security Risk of Industrial Internet of Things. *Symm.* 2023;15(10):1958.
- [27] Golyshev LV, Vinnitskii IP, Fil' SA, Mysak IS, Sidenko A, Mishchenko YM. Economic parameters of the coal-fired TPP-210A boiler under nonstationary operating modes. *Pow Tech Eng.* 2003;37(5):302-305.
- [28] Parkhomets M, Uniiat L, Chorny R, Chorna N, Hradovyi V. Efficiency of production and processing of rapeseed for biodiesel in Ukraine. *Agricult Res Econ.* 2023;9(2):245-275.
- [29] Korzhik VN. Theoretical analysis of the conditions required for rendering metallic alloys amorphous during gas-thermal spraying. III. Transformations in the amorphous layer during the growth process of the coating. *Sov Pow Metall Metal Ceram.* 1992;31(11):943-948.
- [30] Sydorets V, Korzhyk V, Khaskin V, Babych O, Bondarenko O. Electrical characteristics of the equipment for the hybrid plasma-MIG welding. In: *58th Annual International Scientific Conference on Power and Electrical Engineering of Riga Technical University, RTUCON 2017 (pp. 1-6); 2017.*

Поняття та особливості вирішення інвестиційних спорів за законодавством Республіки Казахстан

Меруерт Акімбекова

Каспійський університет
A25D9B0, вул. Достик, 85А, м. Алмати, Республіка Казахстан

Гульміра Талапова

Алматинський університет менеджменту
A15P8D0, вул. Розибакієва, 227, м. Алмати, Республіка Казахстан

Закір Кудайбергенов

Каспійський університет
A25D9B0, вул. Достик, 85А, м. Алмати, Республіка Казахстан

Майдан Сулейменів

Каспійський університет
A25D9B0, вул. Достик, 85А, м. Алмати, Республіка Казахстан

Анотація

Актуальність. Актуальність дослідження обумовлена тим, що інвестиційна діяльність виступає одним з найважливіших факторів формування ефективної економічної системи, а судовий розгляд даної категорії спорів є одним з нововведень у правовій сфері Казахстану і має не має аналогів на пострадянському просторі.

Мета. Завданнями даного дослідження є теоретичний аналіз змісту інвестиційних спорів, порядку вирішення даної категорії спорів та виявлення потенційних проблем, які можуть підірвати ефективність вирішення спорів.

Методологія. Серед основних методологічних підходів, використаних у дослідженні, можна виділити теоретичний, функціональний, догматичний підходи, а також метод індукції, юридичну герменевтику, метод синтезу та ін.

Результати. Дослідження виявило, що характерними ознаками інвестиційних спорів є конкуренція, протиборство та взаємодія категорій приватного та публічного права. Зокрема, серед основних категорій інвестиційних спорів були спори щодо реалізації інвестиційного проекту та спори щодо припинення інвестиційної діяльності та допуску інвестицій; кожна категорія була визначена та вважалася такою, що має свої специфічні характеристики. У рамках детального аналізу була розглянута судова колегія Верховного Суду Республіки Казахстан, до компетенції якої входять інвестиційні спори за участю великих інвесторів та апеляційний розгляд цієї категорії спорів з іншими інвесторами. Було виявлено багато конфліктів і прогалин у поточній казахстанській та міжнародній системі.

Висновки. Практична цінність наданих висновків полягає в детальному аналізі внутрішніх проблем та визначенні можливих рішень, спрямованих на підвищення ефективності інвестиційних судових процесів.

Ключові слова: інвестиційна діяльність; Верховний суд; гармонізація законодавства; інвестиційний омбудсмен; юрисдикція.