УДК 347.9

МЫСАЛ РЕТІНДЕ ӨТПЕЛІ ЭКОНОМИКАСЫ БАР ЕЛДЕРДІҢ ДАМУЫНДАҒЫ ХАЛЫҚАРАЛЫҚ АРБИТРАЖДЫҢ РӨЛІ: БАЛТЫҚ ЖӘНЕ ТМД МЕМЛЕКЕТТЕРІ

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Түйіндеме. *Мақалада өтпелі экономикасы бар елдерде халықаралық коммерциялық арбитраждың қалыптасуы, дауларды қарау жүйесіндегі арбитраждың рөлі, заңнамалық база және даму перспективалары қарастырылады. Халықаралық коммерциялық арбитраж жергілікті мекемелердің назарында олардың өтпелі экономикасы бар елдерде даму перспективасы ретінде талданады. Төрелік ескертпенің заңдылығын жасау, төрелік шешімнің орындалуы, Нью-Йорк конвенциясын осындай мысалдарда қолдану мәселелері өте өзекті. Реформалаудың ең күрделі саласы сот және төрелік талқылау мәселелері екені сөзсіз. Қазақстан, көптеген мемлекеттер сияқты, экономикалық саланы құқықтық реттеуді тиімді өзгерту процесінде тұр. Экономиканы дамыту, сыртқы нарықтарға шығу және инвестициялар тарту үшін күшті сот жүйесі қажет. Кәсіпкерлер үшін халықаралық төрелік көптеген жылдар бойы сыртқы экономикалық дауларды шешудің аналогы және ыңғайлы тәсілі болып табылады. Елде халықаралық арбитраждың болуы мен жұмыс істеуі нарық үшін оң белгі болып табылады. Сонымен қатар, статистика көрсеткендей, халықаралық төрелік туралы тиімді және бәсекеге қабілетті Заңның және терең қараудың да, қашықтықтан қараудың да жаңа құралдарының болуы бұл сотқа нарықтың жергілікті қатысушыларын ғана емес, сонымен қатар аймақтық орталыққа айналуы мүмкін. халықаралық төрелік. Экономикасы дамып келе жатқан елдер сот жүйесін белсенді түрде өзгерте бастады. Балтық елдерінде реформалар көп деңгейлі болып табылады. Нәтижесінде елдердегі реформалар мемлекеттік экономикалық соттардан бас тартты. Әр түрлі мемлекеттердің жеке тұлғаларын өз дауларын аралық сотқа беруге көбірек тартатын ерекшелігі-бұл процедураның икемділігі. Алайда, төрелік пен сот талқылауы арасындағы айырмашылықтар тек іс жүргізу сипатында ғана емес, сонымен қатар тараптардың істерінің мәніне де қатысты. Бұл халықаралық арбитраж саласында істің мәніне қолданылатын құқық жарғылық соқтығысу нормаларына қарағанда басқа ережелерге сәйкес анықталатындығына байланысты. Орналасқан жерінің төрелік құқығына байланысты халықаралық жеке құқықтың барлық жарғысы бір Ережеде көрсетілуі мүмкін:»Тараптар таңдалмаған жағдайда төрелік сот ол орынды деп санайтын құқық нормаларын қолданады».*

Түйін сөздер: *төрелік, Литва, халықаралық даулар, коммерциялық құқық, ТМД, қорғау, инвесторлар*

РОЛЬ МЕЖДУНАРОДНОГО АРБИТРАЖА В РАЗВИТИИ СТРАН С ПЕРЕХОДНОЙ ЭКОНОМИКОЙ: ГОСУДАРСТВА БАЛТИИ И СНГ В КАЧЕСТВЕ ПРИМЕРА

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Аннотация. *В статье рассматривается становление международного коммерческого арбитража в странах с переходной экономикой, роль арбитраж в системе рассмотрения споров, законодательной базы и перспектив развития. Международный коммерческий арбитраж*

анализируется в фокусе локальных учреждений как перспектива их развития в странах с переходной экономики. Вопросы составления легальности арбитражной оговорки, исполнения арбитражного решения, применения Нью-Йоркской конвенции в таких примерах крайне актуальна. Несомненно, самой сложной сферой реформирования являются вопросы судебного и арбитражного разбирательства. Казахстан, как и многие государства, находится в процессе эффективного изменения правового регулирования экономической сферы. Для развития экономики, выхода на внешние рынки и привлечения инвестиций необходима сильная судебная система. Для предпринимателей международный арбитраж является аналогом и удобным способом разрешения внешнеэкономических споров на протяжении многих лет. Существование и функционирование международного арбитража в стране является положительным знаком для рынка. Более того, как показывает статистика, наличие эффективного и конкурентоспособного закона о международном арбитраже и новых инструментов, как углубленного рассмотрения, так и дистанционного формата, привлекает в этот суд не только местных участников рынка, но и может стать региональным центром международный арбитраж. Страны с развивающейся экономикой активно начали модифицировать судебную систему. В странах Балтии реформы представлены многоуровневыми. В результате реформы в странах отказались от государственных экономических судов. Особенностью, которая больше всего привлекает частных лиц из разных государств к передаче своего спора в третейский суд, является гибкость процедуры. Однако различия между арбитражным и судебным разбирательством носят не только процессуальный характер, но и касаются существа дел сторон. Это связано с тем, что в сфере международного арбитража право, применимое к существу дела, определяется в соответствии с иными положениями, чем статутные коллизионные нормы. В зависимости от арбитражного права места нахождения весь статут международного частного права может быть отражен в одном положении: «при отсутствии выбора сторон арбитражный суд применяет нормы права, которые он сочтет целесообразными».

Ключевые слова: *арбитраж, Литва, международные споры, коммерческое право, СНГ, защита, инвесторы*.

THE ROLE OF INTERNATIONAL ARBITRATION IN THE DEVELOPMENT OF TRANSITION COUNTRIES: BALTIC STATES AND CIS COUNTRIES AS EXAMPLE

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Abstract. *The article examines the development of international commercial arbitration in countries with economies in transition, the role of arbitration in the dispute resolution system, the legislative framework and development prospects. International commercial arbitration is analyzed in the focus of local institutions as a prospect for their development in countries with economies in transition. The issues of drafting the legality of an arbitration clause, enforcement of an arbitration award, and application of the New York Convention in such examples are extremely relevant. Undoubtedly, the most difficult area of reform is the issues of judicial and arbitration proceedings. Kazakhstan, like many states, is in the process of effectively changing the legal regulation of the economic sphere. To develop the economy, enter foreign markets and attract investment, a strong judicial system is necessary. For entrepreneurs, international arbitration has been an analogue and convenient way to resolve foreign economic disputes for many years. The existence and functioning of international arbitration in the country is a positive sign for the market. Moreover, as statistics show, the presence of an effective and competitive law on international arbitration and new tools, both in-depth consideration and remote*

format, attracts not only local market participants to this court, but can also become a regional center for international arbitration. Countries with developing economies have actively begun to modify their judicial systems. In the Baltic countries, reforms are multi-level. As a result of the reform, countries abandoned state economic courts. The feature that most attracts individuals from different states to submit their dispute to arbitration is the flexibility of the procedure. However, the differences between arbitration and judicial proceedings are not only procedural in nature, but also relate to the merits of the parties' cases. This is because in the field of international arbitration, the law applicable to the merits of the case is determined in accordance with provisions other than statutory conflict of law rules. Depending on the arbitration law of the location, the entire statute of private international law can be reflected in one provision: "in the absence of a choice of the parties, the arbitral tribunal will apply the rules of law that it deems appropriate".

Key words: *arbitration, Lithuania, international disputes, commercial law, CIS, protection, investors*

DOI 10.61995/bela/2023.1.93

INTRODUCTION

This paper analyses whether arbitration is an effective mechanism for settlement of trade dispute for the developing countries and increasing interest in mediation, compared with arbitration which appears to be becoming more formalized and may be losing some of the features that distinguished it from litigation. Formation and development of the legal system and the functioning of the market depend directly on the reforms and signals that are received for market participants. Undoubtedly, the most difficult sphere for reforming is the issues of litigation and arbitration. Azerbaijan, like many states, is in the process of effectively changing the legal regulation of the economic sphere. To develop the economy, enter foreign markets and attract investment, a strong judicial system is needed. For entrepreneurs, international arbitration is an analogue and a convenient way of resolving foreign business disputes for many years. The existence and functioning of international arbitration in the country is a positive sign for the market. Moreover, as statistics show, the existence of an effective and competitive law on international arbitration and new instruments, as an in-depth consideration or a distance format, attracts not only local market participants to this court, but can also become a regional center for international arbitration. An integral part of the development of the economy is the confidentiality of disputes, especially, this is important in the formation of market relations. International arbitration provides this opportunity in developing countries. Moreover, in the case of two regions (Baltic and CIS countries), it is important to analyze the development of international arbitration. Experience in the field of international disputes, both with Western countries, and the CIS is huge. For 10-12 years the Baltic countries managed to become attractive arbitration centers and develop a non-state dispute resolution tool. According to foreign investors, the existence and excellent practice of international arbitration in the Baltic's was one of the factors of choice for investment in these countries. Also, the existence of non-state courts avoids delaying the consideration of disputes in state courts. The CIS countries are on the way to reforming international arbitration as one of the most effective instruments of a market economy. Among the main conclusions can be called promoting institutional arbitration in the developing countries, encouraging trade bodies and commerce chambers to start private sector arbitration centers, publishing a model fee schedule to restrain escalation of costs, encouraging more flexible rules of procedure and the use of modern information technology, clarifying the relationship between the judiciary and arbitration, speeding up the appointment of arbitrators and resolution of challenges to awards

Transitional countries, economics and judiciary.

Countries with developing economies have actively begun to modify the judicial system. In the Baltic countries, the reforms are presented in multi-level. In the outcome of the reform in the countries, they abandoned state economic courts. They existed in independent Lithuania for several years. Only 4 years there was an economic court in Lithuania, which would have been liquidated in 1998. As Professor V. Nekrosius points out, there were good reasons for that. First and foremost, it was, in fact, the only body in Lithuania that was empowered to deal with all commercial disputes, which could be an excellent prerequisite for corruption. The conduct of cases on commercial disputes

after the abolition of the economic court was transferred to courts of general competence.

From 1990 to 1994, Lithuania had an interim law on the judiciary, which introduced nothing new, but was only a preparatory stage for the adoption of a new modernized law.

In 1995, a new law on courts comes into force. The law clearly and consistently establishes the judicial system. In the period from 1994 to 2002, amendments to the amendment were actively amended, which made it possible to form a very effective judicial system.

A feature of the delineation of powers and jurisdictions is an accurate and very justified graduation for such courts as the Appeal and the Apilinke (district court), which avoids questions about jurisdiction. The jurisdiction of the Court of Appeal is the consideration of appeals against decisions made at first instance by district courts.

And the jurisdiction of the District Court includes all civil cases by the amount of the claim of more than 30 thousand euro, and it also considers certain issues in civil and criminal cases. All this allows you to solve matters promptly and by a qualified specialist. Appeals against decisions made by the District Court are made in the Court of Appeal, which, in fact, is an excellent way for a justified judicial decision within the framework of another judicial institution

In addition to the rapid development of reforms of the judicial system in Lithuania, there was an active modernization of the civil procedure sphere. The new Lithuanian state realized, basically, implemented the principles of active court, the principle of economy and concentration of the process, exclusion of opportunities for delaying the process.

One of the main duties of the parties, along with the duty to exercise their procedural rights in good faith, is also the obligation to make efforts to facilitate the process.

For the post-Soviet republics, the Baltic States can be as a model for reforming the judicial system. However, German experts remind that in the Baltic republics the conditions for reforms were more favorable than in the CIS countries.

Judicial reform in the Baltic countries lasted several years. The powers of the judiciary have been changed, and a new legislative framework has been prepared. The first of the constitutional courts currently functioning in the post-Soviet republics was created in one of the Baltic states - Lithuania.

The Baltic lawyers and society had a desire to build a new judicial system and a law-based state, which, in general, was realized.

In Lithuania, as well as in other Baltic countries, we undertook a thorough reform of the judicial sphere in a rather crucial period of the history of the state. Without a modern judicial system, it would be impossible to integrate into the European Union.

One of the evidence of effective work of courts in Lithuania is a rather small number of citizens' complaints that are submitted to the European Court of Human Rights.

Membership in the EU affected the substantive law, but after the integration the Lithuanian judicial system was not affected. The principles and norms of the European Union were already laid in the judicial reform.

Undoubtedly, the reform of courts in Lithuania will continue, but the legal foundation that was created during the early years of the legal system will allow the Republic of Lithuania to carry out reforms quickly and efficiently.

In other post-Soviet countries, the reform took similar steps, but in most countries state arbitration courts remained. In Russia, the association of courts into general jurisdiction is being implemented.

NON-STATE COURTS AND INTERNATIONAL ARBITRATION. REFORMS OF ARBITRATION LAW IN DEVELOPING COUNTRIES AND COMPETITION OF ARBITRATION.

Thus, for the developing countries one of the most convenient models, of course, is the arbitration court and international arbitration. Statistics showed the opening and registration of such vessels in recent years in the CIS countries. Legislation in the field of international arbitration began to adopt the experience of Western countries. A notable process began when disputes with counterparties from Almaty or Baku increasingly began to be considered in international arbitrations of these countries.

The feature that most attracts private parties from different states to referring their dispute to an arbitral tribunal is the flexibility of the procedure. However, the differences between arbitration and court litigation are not only procedural, but they concern the substance of the parties' cases. This is because in the realm of international arbitration the law applicable to the merits of the case is determined according to other provisions than the statutory con-

flict of laws rules. Depending on the arbitration law of the seat, the entire private international law statute can be captured in a single provision – "absent the parties' choice, the arbitral tribunal shall apply the rules of law which it determines to be appropriate". It follows that arbitral tribunals, unlike state courts, are not bound by the conflict of laws rules of the forum. What's more, the merits of a dispute submitted to arbitration may be governed not only by some national body of law (e.g. the Polish Civil Code) but also by a non-state, non-national set of provisions – "rules of law" (e.g. the UNIDROIT Principles of International Commercial Contracts). The aim of this article is to analyze how the parties and tribunals may make use of their autonomy in determining the law applicable to a dispute [1, P. 265].

Foreign arbitration institutions also need to obtain the appropriate authorization to exercise the functions of institutional arbitration in the territory of the Russian Federation. However, only one criterion is established for them: the existence of a widely recognized international reputation. Obviously, the assessment of the criteria relating to reputation is purely subjective, and in connection with this, during the discussion of the bill, it was suggested that theoretically there could be a situation in which obtaining such a permission would be virtually impossible. Representatives of the arbitration community believe that such increased state control is contrary to the nature of the arbitration proceedings.

Dispute settlement procedures should be the same in arbitration and arbitration, therefore, when we first drafted the Laws on Arbitration Courts and on International Commercial Arbitration, we tried to make one Law, but for different reasons it did not happen.

As the experience of the CIS countries shows, unlike international practice, the legislator in these countries has taken the path of adopting two different laws for arbitration and arbitration. We believe that in the long term in Kazakhstan it is quite possible and appropriate to adopt a single law [2].

Arbitration in Kazakhstan, despite all the difficulties and obstacles, continues to develop and will undoubtedly take a worthy place in the system of ways to protect the rights of citizens and legal entities.

TEACHING INTERNATIONAL ARBITRATION IN UNIVERSITY OF DEVELOPING COUNTRIES.

Now we are proud to reveal the progress of Lithuania in improving not only of international arbitration law, but the study and teaching of law. Outstanding reform of legal education included individual Masters Degree programs, additional courses on international arbitration law in Lithuania, the EU arbitration law, and international arbitration law of foreign countries. Also, it can be stated and the trend to a detailed teaching of subjects of international arbitration law in the Lithuanian legal school as international contract law.

After such a massive change in international arbitration law associated primarily with Russia's entry into the WTO we were expecting the following reform of the teaching of international arbitration law. We can state that in addition to a number of leading Russian universities, where the function of the Department of international arbitration law, there is no systematic approach to the teaching of international arbitration law. The educational program at the federal level subject international arbitration law is optional. Due to the lack of specialists in the field of international arbitration law they have a tradition of the study of international and foreign arbitration law in foreign educational institutions. From 2009 the Republic of Kazakhstan has the Law of the Republic of Kazakhstan "On Arbitration», which is directly applicable law and regulations which combines the Laws of the Republic of Kazakhstan "On Competition and Restriction of Monopolistic Activity" and "Unfair Competition". The main innovations, specified in the Act are: defining the principles of fair competition, the list of grounds and forms of state involvement in business activities, the admissibility of cases agreements or concerted actions of market participants, extraterritoriality, exemption from liability in connection with active repentance, consideration of a group of persons as a single entity law, collegiality in decision-making by the antimonopoly body; grounds for granting state aid and other [3, P. 97]. Kazakhstan system of teaching is similar to the teaching of international arbitration law in Russia. Before the state is a similar system reorientation of the economy with raw materials on non commodity sectors to the maintenance of market relations.

Unlike foreign science of international arbitration law in Ukraine is only in its infancy, which is subjective and objective reasons is pretty slow. However, the need of lawyers in legal expertise and a deep study of the economic competition protec-

tion legislation is constantly growing, complicated legislation itself, works enough administrative and judicial-economic practice, there are many pressing and unresolved problems. All of this highlights the need for sustainable development of the theory of international arbitration law and making on its base of effective protection of economic competition.

Legal education system of Azerbaijan has absorbed the best achievements of Soviet law school, experience of foreign countries and achieving modern education of Azerbaijan. Undoubtedly, we are now on the path of new educational reforms and teaching international arbitration law should be on the list of such transformations.

As for recommendations on reforming the teaching of international arbitration law, they are as follows. In addition to expanding the teaching of the importance of national arbitration law, it is worth paying attention to the course of international arbitration law, since the Republic of Azerbaijan is an active participant in international relations. Azerbaijan is open for investment and foreign investors are actively investing in global markets. The State must have specialists in this field. Furthermore, as practice shows the conflict of laws, it is important to pay attention to the study of the arbitration law of foreign countries. This course can be as an integral part of the master's education in Azerbaijan. It is worth paying attention to the restructuring of teaching international competition law subjects in foreign practice. We may need to provide training for some master's programs on mergers and acquisitions, which have systematically addressed mergers and acquisitions both in the national jurisdiction and international practice.

CONCLUSION

The key words for the development of transitional countries are the free economy, competition, reputation and independent courts. International commercial arbitration has become a foundation for protecting the interests of both national and foreign investors. It is necessary to focus not only on reforms, but also on training in international commercial arbitration in our countries.

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