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Resolution of investment conflicts between the state and foreign companies in the context of crisis prevention

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Abstract. Currently, there are no conditions in Ukraine to ensure a high-quality business climate that would guarantee the security of investments. In the past, this has already led to conflict situations, which has resulted in a number of cases being brought against the state. The purpose of the study is to investigate the mechanism of resolving investment conflicts between the state and foreign companies. For this task, such methods as formal legal, dogmatic, legal hermeneutics, logical analysis, deduction, induction, and others were used. In the course of the study, an analysis of the international doctrine that regulates the provisions for resolving investment disputes, namely, the Washington Convention and the Seoul Convention, was carried out. It is determined that the number of foreign direct investments in Ukraine from 2012 to 2023 significantly decreased, and the investment attractiveness index reached a critically low value over the years, which indicates a negative attitude of business to current conditions. It is indicated that as a result, 15 proceedings were initiated at the International Centre for Settlement of Investment Disputes. It is revealed that in these cases, violations such as failure to provide equal and fair treatment are most often reported. Based on this, the need to improve the investment climate in Ukraine is determined. It is proposed to reduce the cost of access to the protection system for small and medium-sized enterprises; reduce the time for dispute resolution; and ensure the consistency and accuracy of arbitration decisions. The practical value of the results obtained is that the implementation of the recommendations provided will help to attract foreign investment necessary for the recovery and development of the country's economy, and will also eliminate the problematic factors that lead to the opening of proceedings against the state

Keywords: disputes; international agreements; subjects of legal relations; investments; financing; dispute resolution

Introduction

Receiving foreign investment by the state significantly affects the implementation of foreign and domestic policies. This is conditioned by the fact that the country's economic growth depends on it. In modern conditions, there is an increase in international investment, but the national legislation of many countries, especially developing ones, cannot fully implement their protection. As a result, the number of disputes has increased and the issue of legal protection of foreign investments has arisen. These mechanisms for resolving disputes in this category are regulated in international

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doctrine and bilateral treaties, and specialised legislation of countries. However, there are some problematic aspects with compliance with the established mechanism in Ukraine, the investment attractiveness of the state is at a low level, as a result of which the regulation of all activities in this area requires regulation. Based on this, the issue of conducting an analysis of the procedure for resolving investment conflicts in Ukraine is quite relevant.

All independent states have the right to pass laws for the public good. The government may invoke its powers as justification for a measure that has an expropriation aspect. According to O. Karintseva *et al.* (2020), discussions in such cases tend to focus on the nature and purpose of the authorities' actions. According to O. Nechiporuk (2023), most governments are also regaining control of natural resources to combat climate change and inequality. The researcher's paper does not say that sometimes employees of an enterprise with foreign investments may be at risk of losing their place of employment, since the possibility of expropriation deprives the company of the opportunity to carry out economic activities and pay salaries. According to I. Khomenko *et al.* (2021), political and economic climate of an investment-attracting country can change rapidly. In addition to initial due diligence, changes in political leadership, economic conditions, and government policies should be monitored to capture trends that could threaten investments and workers on the ground, as suggested by V.M. Matsuka (2023).

I.O. Moshlyak (2020) argues that attracting foreign investment plays one of the leading roles in strengthening the economic direction of any of the states. The researcher does not mention that attracting foreign capital to the national economy not only creates modernising infrastructure and provides additional jobs, but also contributes to improving the efficiency of industrial production and increasing tax revenues to the state budget. Therefore, it is foreign investment that helps to overcome financial crises and achieve rapid economic growth. R. Hrytsko and G. Hryshyn (2020) note that China's experience demonstrates how, due to attracting foreign investment, a country with a huge population was able to turn into one of the fastest-growing economies in the world. The growing number of investment disputes has led to the need to create effective mechanisms for resolving them. Following V.V. Panchenko and A.V. Matveeva (2023), there are disadvantages and advantages to each of these systems. The sequence of applying to various dispute resolution systems can be clearly regulated or chosen independently by the plaintiff.

The purpose of the study is to analyse the legal mechanisms for resolving investment disputes, the subjects of which are the state and a foreign company. To do this, it is necessary to solve the following tasks: to characterise the essence of the investment conflict, to consider the current legislative framework, to identify problems and ways to overcome them.

Materials and methods

A number of methods were used to reveal all the fundamental aspects of the study. The formal legal method was used to investigate the laws and regulations governing the resolution of investment disputes. In particular, the provisions of the Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States are disclosed. Washington Convention (1965), Convention Establishing the Multilateral Investment Guarantee Agency. Seoul Convention (1985), UNCITRAL Model Law on International Commercial Arbitration (1985), United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), Law of Ukraine No. 93/96-BP "On the Foreign Investment Regime" (1996). This method was used to study the wording of legal provisions, their legal technique, and terminology in order to clarify the content and essence of regulation, and to identify the provisions of international and national law in order to identify gaps, conflicts, and contradictions.

Based on the formal legal method, conclusions were drawn regarding the completeness and consistency of the legal regulation of investment dispute resolution, which allowed comprehensively analysing the current legislation. The dogmatic method was used to study the basic concepts and categories used in this area of legal regulation – such as "investment", "investment disputes", "arbitration". This method established the content, connections, and correlation of the main legal structures and models used to resolve investment disputes, to characterise laws and regulations for their compliance with the basic principles of law in this area, which allowed making theoretical generalisations about the legal nature and content of regulating the resolution of investment disputes. The method of legal hermeneutics was used to conduct a thorough philological study of the texts of laws and regulations governing the procedure for resolving investment disputes, to investigate the systemic links between certain terms, concepts and rules to establish their exact content and meaning, and to apply logical and systematic interpretation with a view to harmonising the rules of international and national law to clarify the real content and purpose of regulatory provisions in the field of investment dispute resolution.

The method of logical analysis was used to reveal the mechanism of investment disputes by identifying the main elements of such a mechanism and their interaction. This allowed characterising the concept of an "investment dispute", its inherent features, and implementation principles. The functional analysis provided an opportunity to highlight the functions of investment in the economic sector of states, their impact and role in the country development. This method also allowed characterising the role of investment conflicts in determining the country's investment climate indicator. Statistical analysis helped to identify statistical data that indicate the number of foreign direct investment in Ukraine in the context of years, and to study the indicator of investment attractiveness of the state from 2013 to 2022. The deduction allowed determining the mechanism for resolving investment conflicts based on its concept, inherent features, and principles of implementation. In turn, the induction was used to characterise the current dispute resolution mechanism based on the regulated provisions in the current legislative doctrine. The synthesis helped to combine the results obtained to develop recommendations.

Results

International investment arbitration is a procedure for resolving disputes between a foreign investor and the host state. It guarantees the investor the protection of their rights in case of violation by the state of its obligations. This type of arbitration has the characteristics of both public and private arbitration, since its subject is the protection of the rights of a private investor, but the state is the defendant in the dispute. Table 1 provides statistical data on the number of foreign direct investment in Ukraine by year.

Table 1. Foreign direct investment in Ukraine from 2013 to 2023, million USD

Year	Foreign direct investment in Ukraine	Foreign direct investment from Ukraine	Balance
2013	4,499	420	+4,079
2014	410	111	+299
2015	-458	-51	-407
2016	3,810	16	+3,794
2017	3,692	8	+3,684
2018	4,455	-5	+4,460
2019	5,860	648	+5,212
2020	-868	82	-950
2021	6,687	-198	+6,885
2022	1,152	529	+623
2023	2,468	19	+2,449

Source: compiled by the authors based on Direct foreign investment (2023)

These data allow for the conclusion that with the beginning of the Russian-Ukrainian war and the full-scale invasion, the indicator of foreign direct investment has significantly decreased. It should be noted that they are one of the most promising forms of investment for developing countries. However, after 2015, based on statistics, the recovery of previous indicators began; in 2021, the indicator was one of the largest, but as a result of a full-scale invasion in 2022, it declined again. It is worth considering in more detail another indicator – the Investment Attractiveness Index (Fig. 1).

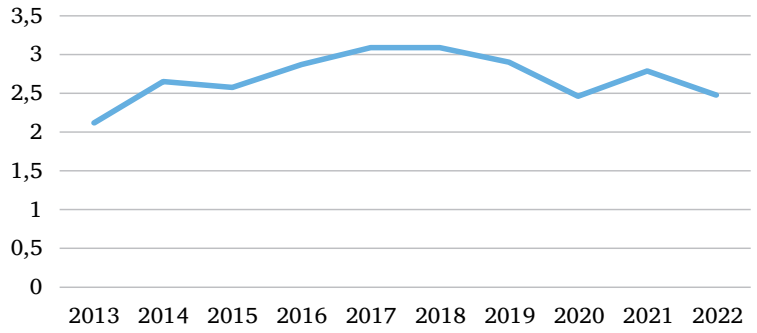

Figure 1. Investment Attractiveness Index in Ukraine from 2013 to 2022
Source: compiled by the authors based on European Business Association (2022)

Based on the presented indicators, in the period 2013-2022, the Investment Attractiveness Index did not reach the positive zone; it has a value from 1 to 5, where from 1 to 3 – negative business attitude, from 3 to 4 – neutral, from 4 to 5 – positive. The highest indicator in the context of years was in the period 2017-2018, and its corresponding decrease gives reason to believe that the attitude of business to investment activities in Ukraine is deteriorating. Based on this, it is worth focusing on analysing one of the factors of the establishment of the investment climate and the index of corresponding attractiveness – the mechanism for resolving conflicts in this activity.

At the international level, the resolution of disputes in this category is regulated by the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, "Washington Convention (1965), and Convention Establishing the Multilateral Investment Guarantee Agency". Seoul Convention (1985). The adoption of The Washington Convention (1965) was an important event in the development of international investment law. This convention has established a universal mechanism for resolving conflicts that arise between investors and the host states. This settlement, established by the Washington Convention (1965), does not require the mandatory existence of an investment insurance system or the conclusion of an agreement to protect them. Accession to the convention applies the conflict resolution mechanism established by it in any cases where the object is private foreign investment or the circle of subjects includes a foreign element and a state. The International Centre for Settlement of Investment Disputes (ICSID), founded on the basis of the Washington Convention (1965), is an independent international organisation that provides dispute resolution between foreign investors and states. Most of the permitted conflicts of an investment nature are disputes related to the immutability of the terms of concession plan agreements. Multilateral Investment Guarantee Agency (MIGA), established in 1988, provides financial support to investors in case of violation of their rights by the state. MIGA can also act as a plaintiff in investment disputes. The contract between the investor and MIGA is private law. The investor pays the insurance premium annually, and MIGA undertakes to compensate for losses within the limits of this contribution. If the state violates the investor's rights, MIGA gets the right to subrogation, that is, replaces the investor as a plaintiff in an investment dispute. This allows considering such disputes in international arbitration instances, which reduces the risk of negative impact of the dispute on the relations of states.

The issue of payment of compensation in the event of nationalisation or other seizure of foreign property in a compulsory aspect is only one of the possible grounds for the emergence of an investment conflict. For example, such cases may include early termination of the concession plan agreement or modification of its terms, unjustified refusal to register an enterprise with foreign investments, or refusal to move profits abroad (Bryhinets & Kovalova, 2021). The Washington Convention (1965) provides that arbitration between an investor and the state can be applied in the event of a violation by the state of the investor's rights arising from an investment treaty or international law. MIGA has developed a draft agreement that provides for an effective mechanism for resolving investment disputes. In the context of the agreement, a mechanism for conciliatory negotiations is provided, the purpose of which is to reach an amicable agreement; the relevant decision should be binding. An analysis by the Seoul Convention (1985) confirms that it has created a single mechanism for protecting foreign investment, which is based on special regulatory principles. The main part of investment disputes considered by ICSID is disputes related to concession agreements and the immutability of their terms; therefore, it can be concluded that there is a wide range of grounds for investment disputes (Bryhinets & Kovalova, 2021). Each of the international bodies for resolving such disputes has its own advantages and disadvantages. The number of bodies that have the competence to consider investment disputes, and the scope of procedural features of the decision is increasing. This indicates the absence of a single systematised international legal mechanism for resolving investment disputes.

Investment arbitration is an alternative way to resolve disputes between investors and states. It is divided into two types: institutional and *ad hoc* (Marceddu & Ortolani, 2020). Institutional arbitration takes place within the framework of international organisations such as ICSID, Ukrainian National Committee of the International Chamber of Commerce (ICC Ukraine), London Court of International Arbitration (LCIA). Arbitration *ad hoc* is carried out according to the rules determined by the parties to the dispute. A total of 15 proceedings have been initiated against Ukraine in ICSID. Ukraine is generally successful in defending itself in investment arbitrations. Two cases ended in a settlement agreement, and three cases were resolved in favour of investors. The latter case concerned non-enforcement of a settlement agreement, as reflected in the case of Joseph C. Lemire v. Ukraine (Vivcharyk, 2019). From the practice of ICSID, where Ukraine is the defendant in cases, it follows that investors often claim violations of fair and equal treatment and unfair expropriation. Ukraine has a positive balance in investment arbitrations: 7 cases in favour of the state, 7 – in favour of the investor, 3 – pre-trial settlement, 6 – not resolved. Ukraine has also initiated 11 disputes against Russia over the expropriation of assets in Crimea (Investment Dispute Settlement Navigator, 2022). Since Russia did not ratify the Washington Convention (1965), all disputes were considered under the regime of *ad hoc*. According to the Ministry of Foreign Affairs of Ukraine, during the annexation of the peninsula, the Russian Federation nationalised more than 400 Ukrainian enterprises and 18 fields (Vivcharyk, 2019). The precedent and impetus for increasing the number of investment-related lawsuits in connection with the annexation of the peninsula was Ukraine's winnings in the disputes of Oschadbank v. Russia and Everest and others v. Russia (Investment Dispute Settlement Navigator, 2022).

The specific feature of international investment plan arbitration is that the role of an arbitration agreement is often played by an international agreement on securing foreign investments concluded between the investor state and the receiving state of the investment. As for the enforcement of arbitral awards, Article 54(3) of the Washington Convention (1965) states that it is implemented in accordance with the regulation on the enforcement of judicial decisions of the state where it is subject to implementation. According to the Washington Convention (1965), decisions of international investment arbitration are binding on all contracting states. Currently, Ukraine does not have a special procedure for the recognition and enforcement of investment arbitration decisions, since ICSID decisions are executed in civil proceedings in accordance with the legislation of the Russian Federation, United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and New York Convention (1958). In the case of Western NIS Enterprise Fund v. Ukraine (2004), refusal to recognise and enforce a foreign court decision was one of the reasons for the dispute in ICSID; however, practice shows that there are no obstacles in this aspect in Ukraine. Investment arbitration is an effective mechanism for protecting the rights of investors, which should be as accessible and effective as possible, which will lead to an increase in the inflow of investment to the state.

Modern realities determine the need to radically improve the investment climate in Ukraine. This is a key factor in attracting foreign investment, which is necessary for the recovery and development of the country's economy. However, the existing investment protection system based on ICSID has a number of disadvantages. In particular, it is too expensive and available only for large companies. In addition, ICSID disputes can take years to resolve, and arbitration decisions are often inconsistent and inaccurate. Despite the growing popularity of ICSID, its security system is not perfect. It has a number of disadvantages that can negatively affect the investment climate in Ukraine. To improve the investment climate in Ukraine, it is necessary to reform the investment protection system. In particular, it is necessary to: reduce the cost of access to the protection system for small and medium-sized enterprises; reduce the time for dispute resolution; ensure the consistency and accuracy of arbitration decisions. Reforming the investment protection system is an important step to create a favourable investment environment in Ukraine. This will help attract foreign investment necessary for the recovery and development of the country's economy.

Ukraine is a party to numerous investment protection agreements. This means that foreign investors who invest in Ukraine have the right to protect their rights in case of violation of these agreements, but Ukraine is also the leader in the number of investment lawsuits filed against it. As of 2023, eight lawsuits have been filed against Ukraine under ICSID, and in addition, there are several other cases initiated against Ukraine that are being considered outside of ICSID (Khomenko *et al.*, 2023). Most of the lawsuits against Ukraine relate to investments in the energy, mining, and real estate sectors. In some cases, the lawsuits are related to the violation of investors' rights as a result of energy and land reforms. A large number of lawsuits against Ukraine negatively affect the investment climate of the state. This

can lead to an outflow of investment and make it difficult to attract new investment. To improve the investment climate in Ukraine, it is necessary to take measures to reduce the number of lawsuits against the state. In particular, it is necessary to improve investment legislation and practice, ensure the protection of investors' rights, including through the introduction of effective dispute resolution mechanisms, and create a transparent and predictable investment climate. The implementation of these measures will increase investor confidence in Ukraine and will help attract investments that are necessary for the recovery and development of the country's economy.

Discussion

Investment activity involves interaction between the investor and the host country. The issue of investment protection arises in case of violation of the rights of either party. One of the most important issues of protecting foreign investment is guarantees against illegal encroachment on the investor's assets. As noted by A.A.A. Hammad and G. Dexiang (2022), when new ways of making investments appear, it becomes necessary to determine the appropriate guarantees. Internationally, guarantees to protect foreign investment are consolidated in documents such as the Washington Convention (1965) and the Seoul Convention (1985). In Ukraine, the issue of foreign investment protection is regulated by the Law of Ukraine No. 93/96-BP "On the Foreign Investment Regime" (1996). This Law provides that foreign investments on the territory of Ukraine enjoy protection equal to that provided to Ukrainian investments.

According to J. Arato (2019), when making venture investments, there is a question of fixing special guarantees in the contractual and legislative direction. This is a valid point, as venture capital investments may differ from traditional investments in terms of the composition of participants, the nature of interaction between them and other parameters. Special guarantees for the protection of venture investments include guarantees against forced withdrawal of investments, from non-fulfilment of obligations by the recipient of investments and from unfair treatment of the investor, as noted by G. Kaufmann-Kohler and M. Potestà (2020). The consolidation of special guarantees for the protection of venture investments in the legislation and contract will help protect the rights of investors and stimulate the development of venture entrepreneurship.

Investment relations are regulated at two levels: international and domestic. International legal regulation is carried out through the conclusion of international agreements, such as bilateral investment treaties, multilateral investment protection agreements, and international treaties from other areas that contain investment provisions (Liu, 2022). It aims to create a favourable investment climate for foreign investors, ensure the protection of the rights of foreign investors, and promote the development of international trade and cooperation. The international legal nature of investments is regulated at three levels – universal, regional, and bilateral. The first is carried out based on international agreements that are open to accession by all states of the world – an example of such regulation is the Washington Convention (1965); the regional level is implemented based on international agreements that are concluded between states of the same region – an example of such regulation is the European agreement on the procedure for resolving investment disputes between member states of the European Economic Community; the bilateral level is the level of regulation that is carried out based on international agreements that are concluded between two states – an example of such regulation is the bilateral investment agreements between Ukraine and other states, as noted by R. Brutger and A. Strezhnev (2022). It should be added that domestic regulation is carried out based on the national legislation of the host state, while the state has the right to regulate the admission of investments. A. Simonyan (2022) notes that open access to foreign investment is a solution to the problem of regulating their governance mechanism. It is reasonable to agree that the state should allow foreign investors to invest in any sector of the economy, except for a limited number of sectors that may be closed to foreign investment or require special assessment of the conditions of admission or licensing.

The legislation of the host state defines the procedure for foreign investors' access to investment activities. In most countries, there are two main approaches to regulating this issue: prohibition or restriction of access, in which the state sets out a list of industries or activities that are closed to foreign investors or require a special permit (license) or registration; this approach applies, for example, in industries such as arms production, oil and gas production, nuclear energy production; free access – the state does not restrict foreign investors ' access to any investment activity; this approach applies in industries such as trade, manufacturing, services, as noted by Y. Tang (2022). It should be added that states that are interested in attracting foreign investment usually provide foreign investors with certain guarantees and protection. These guarantees are aimed at ensuring the rights and legitimate interests of foreign investors and creating a favourable investment climate.

Methods of legal regulation of investment relations are methods of legal influence that are used to regulate these relations, according to M. Michalska-Guzik (2022). Based on the researcher's opinion, the methods of legal regulation of investment relations include the legislative method (providing for the establishment of legal norms regulating investment relations), the administrative and legal method (the use of administrative and legal means of influence, such as permits, licenses, registration) and judicial regulation (resolving disputes related to investment relations in court), the use of various methods of legal regulation of investment relations provides a comprehensive impact on these relations (Benedettelli, 2022).

Foreign investment is a key factor in the economic growth and development of any state. However, in the process of making investments, investors may face a violation of their rights by the recipient state, as stated by Y. Patil (2022). It is worth agreeing with this and adding that in such cases investment disputes arise, which can negatively affect the investment climate and contribute to the outflow of investment. To effectively resolve investment disputes, the World Bank adopted the Washington Convention (1965). G. van Harten and A.Y. Vastardis (2023) note that this convention created ICSID, which is one of the most reputable arbitration institutions in the world. ICSID has the competence to resolve disputes that arise between foreign investors and the host state. In order for disputes to be considered by ICSID, a written agreement between the investor and the state is required. Such an agreement may be concluded in the form of a bilateral investment agreement, an investment agreement,

or a separate agreement to transfer the dispute to ICSID. ICSID decisions are binding on the parties to the dispute. They have the force of an international decision and can only be appealed within the limits set by the Washington Convention. In Ukraine, the Washington Convention was ratified in 2000. This allowed foreign investors who invest on the territory of Ukraine to enjoy the protection guarantees provided for in this convention.

ICSID is an autonomous international organisation that has an international legal personality. This means that ICSID has the right to determine the procedure for implementing actions of a procedural nature; to ensure the performance of its functions in the territory of contracting states, ICSID has immunities and privileges (Yu, 2022). This means that ICSID is not subject to the jurisdiction of the national courts and authorities of the contracting states. The decisions of the ICSID arbitration court are binding on the parties to the dispute. Each of the contracting states is obliged to ensure the fulfilment of monetary obligations imposed by arbitration in its territory. A state with a federal structure can enforce a decision within or through federal judicial authorities. In such a case, judicial bodies will consider the decision of the arbitration court as the final decision of the judicial body of the state that is part of the state that has a federal structure.

Consequently, there is an international legal mechanism for resolving investment disputes that arise between a state and a foreign element. However, it is not very efficient and affordable. This leads to the emergence of problematic aspects for developing countries to obtain a high-quality investment climate. Based on this, there is a need to develop a single international standard and an appropriate authorised body.

Conclusions

The study was conducted in order to implement an analysis to determine the legal mechanism of investment disputes between a state and a foreign company. Statistics show a sharp decline in foreign direct investment in Ukraine after the start of a full-scale Russian invasion; after 2015, there was a certain recovery, in 2021 – the figure was one of the highest, but in 2022 it fell sharply again. During the period 2013-2022, the investment attractiveness index of Ukraine never reached a positive value, and after 2018 it began to decline rapidly. This indicates deterioration in the attitude of businesses to investing in Ukraine.

It is determined that the creation of MIGA can be considered a successful international legal mechanism for resolving investment disputes. A characteristic feature is that it, as an interstate organisation, enters into private-law contracts with investors. In the event of a dispute, MIGA pays compensation to the investor and then makes claims against the relevant state. Thus, the conflict takes on an international legal character and occurs not between two states, but between one state and MIGA. This reduces the negative impact on the relations of interested states. Although 15 cases have been initiated against Ukraine in ICSID, the country is considered one of the most successful defendants, since out of 23 disputes, only 7 cases were decided in favour of the investor. Investors often complain about unequal treatment and unfair expropriation. In turn, Ukraine initiated 11 disputes against Russia over the expropriation of assets in Crimea; Ukraine's victory in two cases set a precedent and prompted the filing of new lawsuits in connection with the annexation of Crimea.

To improve the investment climate in Ukraine, it is necessary to reform the investment protection system by reducing the cost of access for small and medium-sized businesses, reducing the time frame for reviewing cases and ensuring the consistency and accuracy of arbitral awards. In addition, there is a need to improve legislation, protect the rights of investors, and introduce effective dispute resolution mechanisms. This will increase business confidence in Ukraine and help raise funds for economic recovery. Further study will be aimed at analysing the experience of foreign countries in terms of investment policy.

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Conflict of interest

None.

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Вирішення інвестиційних конфліктів між державою та іноземними компаніями в контексті запобігання кризових ситуацій

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Анотація. Наразі в Україні не існує умов щодо забезпечення якісного бізнес-клімату, що гарантувало б безпеку інвестицій. У минулому це вже призвело до конфліктних ситуацій, через що проти держави порушено низку справ. Мета роботи – вивчити механізм вирішення інвестиційних конфліктів між державою та іноземними компаніями. Для цього було використано такі методи, як формально-юридичний, догматичний, юридичної герменевтики, логічний аналіз, дедукція, індукція та інші. У процесі дослідження проведено аналіз міжнародної доктрини, яка регламентує положення щодо вирішення спорів інвестиційного характеру, а саме – Вашингтонської конвенції та Сеульської конвенції. Визначено, що кількість прямих іноземних інвестицій в Україні з 2012 по 2023 роки значно знизилася, а індекс інвестиційної привабливості упродовж років досяг критично низького значення, що свідчить про негативне ставлення бізнесу до поточних умов. Зазначено, що внаслідок цього в Міжнародному центрі з врегулювання інвестиційних спорів порушено 15 проваджень. Виявлено, що в цих справах найчастіше заявляють про такі порушення, як ненадання рівного і справедливого ставлення. Виходячи з цього визначено необхідність покращити інвестиційний клімат в Україні. Запропоновано знизити вартість доступу до системи захисту для малих і середніх підприємств; скоротити строки розгляду спорів; забезпечити послідовність і точність рішень арбітражу. Практична цінність отриманих результатів полягає у тому, що дотримання наданих рекомендацій сприятиме залученню іноземних інвестицій, необхідних для відновлення та розвитку економіки країни, а також дасть змогу усунути проблемні чинники, через які порушуються провадження проти держави

Ключові слова: спори; міжнародні договори; суб'єкти правовідносин; вкладення; фінансування; урегулювання суперечок