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**Редакция бағанасы.....7**

**Мемлекет және құқық теориясы**

**А.И. БИРМАНОВА, Д.К. РУСТЕМБЕКОВА,**  
**А.А. НУКУШЕВА** Негізгі мәдени құқықтарды іске асыру  
тетігі ..... 13

**Конституциялық және әкімшілік құқық**

**Э.С. МАЙШЕКИНА, М.К. АБДРАХМАНОВ,**  
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өзін-өзі басқарудың қалыптасуы мен дамуын құқықтық  
талдау ..... 22

**Б.О. АЛТЫНБАСОВ, А.Р. БАЯНБАЕВА** (Бристоль,  
Ұлыбритания) Академиялық ұтқырлықтың жергілікті  
туризмнің дамуына ықпалы: саяси және құқықтық  
аспектілері ..... 31

**М.С. БИСАЛИЕВ, К.Н. ШАКИРОВ** Заңды тұлғалардың  
жеке деректері – киберкеңістікте құқықтық қорғаудың  
арнайы объекті ретінде ..... 42

**Азаматтық және азаматтық-процестік құқық**

**Д.Б. РАЗИЕВА, Е.М. АЙТҚАЗИН, М.А. АМИРОВА**  
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кәсіби жауапкершілігін сақтандыру..... 53

**Э.Б. АБЛАЕВА, А.Р. ЕНСЕБАЕВА, А.Т. ИСМАГУЛОВА,**  
**М.А. УТАНОВ,** Қазақстанның өркениеті мен  
сот өндірісінде істер мен дауларды реттеу (жетістіктер,  
мәселелер, келешегі)..... 63

**Д.Н. БЕКЕЖАНОВ, Ғ.Б. АХМЕТ, К.А. ДЖУМАБАЕВА**  
Климатты қорғау ұғымының теориялық және заңнамалық  
аспектілері ..... 77

**Қылмыстық құқық және қылмыстық процесс**

**М.М. КУЛБАЕВА, А.Н. АХПАНОВ** Халықаралық  
стандарттар, тергеу сатысында сот бақылауының шетелдік  
заңнамалық тәжірибесі ..... 86

**Б.М. ИМАШЕВ** Маман мен сот сарапшысының  
қызметінде қылмыстық сот ісін жүргізу қағидаттарын іске  
асыру: проблемалар мен перспективалар. 2 бөлім. .... 97

**К.Ә. БӘКІШЕВ, А.Х. ФЕТҚҰЛОВ** Жарылыс қаупі бар  
объектілерде қауіпсіздік қағидаларын бұзу: Қазақстан  
Республикасы Қылмыстық кодексінің 281-бабындағы жаңа  
редакцияның ерекшеліктері ..... 108

**Е.В. МИЦКАЯ** Сыбайлас жемқорлыққа  
қылмыстық-құқықтық құралдармен қарсы іс-қимыл..... 117

**Ә.М. СЕРАЛИЕВА, Н.С. ДОСЫБЕКОВ** Жедел-ізвестіру  
қызметі қызметкерлерін психологиялық даярлаудың негізгі  
бағыттары ..... 128

### **Халықаралық құқық және салыстырмалы құқықтану**

Р.Қ. СӘРПЕКОВ Мүгедек адамдардың құқықтарын қорғаудың халықаралық-құқықтық стандарттары: Қазақстанда және шет елдерде енгізудің кейбір аспектілері .....	137
Е.М. АБАЙДІЛДИНОВ, А.Н. ЕРҒАЛИМОВА Мүмкіндік шектеуі балалары бар жұмыскерлердің толық емес жұмыс күні туралы ХЕҰ-ның №175 Конвенциясы нормаларын Қазақстан заңнамасына имплементациялау .....	148
М.А. АХМАДИ, С. НАРТ (Измир, Түркия) ICSID Конвенциясына сәйкес инвестициялық дауларды төрелікте шешудің тәртібі (Инвестициялық дауларды шешудің халықаралық орталығы) .....	159
Д.Ө. БАЙТӨҚАЕВА, Ф. АХИЛЛЕС (Париж, Франция) Әуе және ғарыш кеңістігінің құқықтық режимін реттеу саласындағы халықаралық заң шығару тәжірибесі .....	168
Р.Р. ЧАХОР (Краков, Польша) Польша Республикасындағы ұлттық азшылықтардың мәртебесін құқықтық реттеу .....	176

### **Құқықтық мониторинг**

С.И. КЛИМКИН, А.Ф. ҚАЗБАЕВА Қазақстан Республикасындағы медиацияны құқықтық реттеу.....	183
В.Т. КОНУСОВА Конституциялық мониторинг ұлттық құқықтық жүйені жасампаз дамыту құралы ретінде.....	193
К.Е. ИСМАҒҰЛОВ, Н.Н. ТУРЕЦКИЙ Арнаулы мемлекеттік органдар туралы заңнаманы жетілдірудің кейбір мәселелері .....	204
Е.Н. КАЛИАКПЕРОВА, Ж.Е. САДЫҚАНОВА «Қазақстан Республикасының халықаралық шарттары туралы» заңның тиімділігін талдау .....	213

### **Мемлекеттік тілдегі заңшығармашылық практикасынан**

А.А. МЕДИНАЕВА Қазақ тіліндегі кейбір терминдердің мәселелеріне орай.....	222
---	-----

### **Жас ғалым мінбері**

Э.М. МҰРАТОВА Мүгедектерді әлеуметтік қамсыздандыруды құқықтық реттеудің кейбір аспектілері .....	228
А.Б. САТАЕВА Англия мен Қазақстанның азаматтық процесінде дәлелдемелерді ашудың кейбір теориялық және құқықтық аспектілері туралы .....	234
Э.С. КУАНДЫҚОВА Қазақстан Республикасының агроөндірістік кешенін мемлекеттік басқару: құқықтық реттеудің мәселелері .....	243
М.К. РАКЫМБАЕВА Өзіне-өзі қол жұмсауға жеткізгені үшін қылмыстық жауаптылық туралы құқықтық нормаларды жетілдіру .....	253

### **«Жаршының» архивтегі беттері**

Е.Т. БАЙМОЛДИНОВА PhD М.Х. Хасеновтің «О результатах анализа законодательства Республики Казахстан о государственных гарантиях равных возможностей мужчин и женщин» атты ғылыми жарияланымына қайта оралғанда .....	259
<b>ЗҚАИ-ның ғылыми қызметі туралы ақпарат .....</b>	<b>264</b>



# ВЕСТНИК

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**Колонка редакции .....9**

#### Теория государства и права

**А.И. БИРМАНОВА, Д.К. РУСТЕМБЕКОВА, А.А. НУКУШЕВА** Механизм реализации основных культурных прав ..... 13

#### Конституционное и административное право

**Э.С. МАЙШЕКИНА, М.К. АБДРАХМАНОВ, Е.В. ДУШЕЧКИНА** Правовой анализ формирования и развития местного самоуправления в Республике Казахстан .....22

**Б.О. АЛТЫНБАСОВ, А.Р. БАЯНБАЕВА** (Бристоль, Великобритания) Влияние академической мобильности на развитие местного туризма: политические и правовые аспекты.....31

**М.С. БИСАЛИЕВ, К.Н. ШАКИРОВ** Персональные данные юридических лиц как возможный особый объект правовой охраны в киберпространстве .....42

#### Гражданское и гражданско-процессуальное право

**Д.Б. РАЗИЕВА, Е.М. АЙТКАЗИН, М.А. АМИРОВА** Страхование профессиональной ответственности медицинских работников в Республике Казахстан .....53

**Э.Б. АБЛАЕВА, А.Р. ЕНСЕБАЕВА, А.Т. ИСМАГУЛОВА, М.А. УТАНОВ** Урегулирование дел и споров в цивилистике и судопроизводстве Казахстана (достижения, проблемы, перспективы) .....63

**Д.Н. БЕКЕЖАНОВ, Ф.Б. АХМЕТ, К.А. ДЖУМАБАЕВА** Теоретические и законодательные аспекты понятия охраны климата .....77

#### Уголовное право и уголовный процесс

**М.М. КУЛБАЕВА, А.Н. АХПАНОВ** Международные стандарты, зарубежный законодательный опыт судебного контроля в стадии расследования .....86

**Б.М. ИМАШЕВ** Реализация принципов уголовного судопроизводства в деятельности специалиста и судебного эксперта: проблемы и перспективы. Часть 2.....97

**К.А. БАКИШЕВ, А.Х. ФЕТКУЛОВ** Нарушение правил безопасности на взрывоопасных объектах: особенности новой редакции ст. 281 Уголовного кодекса Республики Казахстан ..... 108

**Е.В. МИЦКАЯ** Противодействие коррупции уголовно-правовыми средствами .....117

**Э.М. СЕРАЛИЕВА, Н.С. ДОСЫБЕКОВ** Основные направления психологической подготовки сотрудников оперативно-розыскной деятельности .....128

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**Международное право и сравнительное правоведение**

Р.К. САРПЕКОВ Международно-правовые стандарты защиты прав лиц с инвалидностью: некоторые аспекты внедрения в Казахстане и зарубежных странах ....	137
Е.М. АБАЙДЕЛЬДИНОВ, А.Н. ЕРГАЛИМОВА Имплементация норм Конвенции МОТ №175 о неполном рабочем времени для работников, имеющих детей с инвалидностью, в законодательство Казахстана .....	148
М.А. АХМАДИ, С. НАРТ (г. Измир, Турция) Арбитражная процедура решения инвестиционных споров в соответствии с конвенцией ICSID (Международный центр по разрешению инвестиционных споров) .....	159
Д.У. БАЙТУКАЕВА, Ф. АХИЛЛЕС (г. Париж, Франция) Международный законодательный опыт в сфере регулирования правового режима воздушного и космического пространства .....	168
Р.Р. ЧАХОП (г. Краков, Польша) Правовое регулирование статуса национальных меньшинств в Республике Польша .....	176

**Правовой мониторинг**

С.И. КЛИМКИН, А.Г. КАЗБАЕВА Правовое регулирование медиации в Республике Казахстан .....	183
В.Т. КОНУСОВА Конституционный мониторинг как инструмент созидательного развития национальной правовой системы.....	193
К.Е. ИСМАГУЛОВ, Н.Н. ТУРЕЦКИЙ Некоторые вопросы совершенствования законодательства о специальных государственных органах .....	204
Е.Н. КАЛИАКПЕРОВА, Ж.Е. САДЫКАНОВА Анализ эффективности закона «О международных договорах Республики Казахстан» .....	213

**Из практики законотворчества на государственном языке**

А.А. МЕДИНАЕВА К вопросам некоторых терминов на казахском языке .....	222
---	-----

**Трибуна молодого ученого**

Э.М. МУРАТОВА Некоторые аспекты правового регулирования социального обеспечения инвалидов .....	228
А.Б. САТАЕВА О некоторых теоретических и правовых аспектах раскрытия доказательств в гражданском процессе Англии и Казахстана .....	234
Э.С. КУАНДЫКОВА Государственное управление агропромышленным комплексом Республики Казахстан: проблемы правового регулирования .....	243
М.К. РАКЫМБАЕВА Совершенствование правовых норм об уголовной ответственности за доведение до самоубийства .....	253

**Архивные страницы «Вестника»**

Е.Т. БАЙМОЛДИНОВА Возвращаясь к научной публикации PhD М.Х. Хасенова «О результатах анализа законодательства Республики Казахстан о государственных гарантиях равных возможностей мужчин и женщин» .....	259
--	-----

<b>Информация о научной деятельности ИЗПИ .....</b>	<b>267</b>
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<b>Editorial</b> .....	<b>11</b>
<b>Theory of State and law</b>	
A.I. BIRMANOVA, D.K. RUSTEMBEKOVA, A.A. NUKUSHEVA Mechanism for the realization of basic cultural rights .....	13
<b>Constitutional and Administrative Law</b>	
E.S. MAISHEKINA, M.K. ABDRAKHMANOV, E.V. DUSHECHKINA Legal analysis of the formation and development of local self-government in the Republic of Kazakhstan .....	22
B.O. ALTYNBASSOV, A.R. BAYANBAYEVA (Bristol, UK) Impact of academic mobility on the development of local tourism: political and legal aspects.....	31
M.S. BISSALIYEV, K.N. SHAKIROV Personal data of legal entities as a potential special object of legal protection in cyberspace .....	42
<b>Civil and Civil Procedure Law</b>	
D.B. RAZIEVA, Y.M. AYTKAZIN, M.A. AMIROVA Professional liability insurance of medical workers in the Republic of Kazakhstan .....	53
E.B. ABLAEVA, A.R. ENSEBAYEVA, A.T. ISMAGULOVA, M.A. UTANOV Settlement of cases and disputes in civil law and proceedings in Kazakhstan (achievements, problems and prospects) .....	63
D.N. BEKEZHANOV, G.B. AKHMET, K.A. JUMABAYEVA Theoretical and legislative aspects of the concept of climate protection .....	77
<b>Criminal law and Criminal procedure</b>	
M.M. KULBAEVA, A.N. AHPANOV International standards, foreign legislative experience of judicial control in the investigation stage .....	86
B.M. IMASHEV Implementation of the principles of criminal justice in the activities of a specialist and a forensic expert: problems and prospects. Part 2 .....	97
7K.A. BAKISHEV, A. KH. FETKULOV Violation of safety rules at explosive objects: features of the new edition of art. 281 of the Criminal code of the Republic of Kazakhstan .....	108
E.V. MITSKAYA Countering corruption by criminal law means .....	117
A.M. SERALIYEVA, N.S. DOSSYBEKOV The main directions of psychological training of employees of the operational and investigative activities .....	128

<b>International law and Comparative law</b>	
R.K. SARPEKOV International legal standards for the protection of the rights of persons with disabilities: some aspects of implementation in Kazakhstan and foreign countries .....	137
Y.M. ABAIDELDINOV, A.N. YERGALIMOVA Implementation of the norms of ILO convention no.175 on part-time work for workers with children with disabilities into the legislation of Kazakhstan .....	148
M.A. AKHMADI, S. NART (Izmir, Turkey) Arbitration procedure for resolving investment disputes in accordance with the ICSID convention (the International centre for settlement of investment disputes) .....	159
D.U. BAITUKAYEVA, PH. ACHILLEAS (Paris, France) International legislative experience in the sphere of regulation of airspace and outer space legal regime .....	168
R.R. CZACHOR (Poland, Krakow) The legal status of national minorities in the Republic of Poland .....	176
<b>Legal monitoring</b>	
S.I. KLIMKIN, A.G. KAZBAYEVA Legal regulation of mediation in the Republic of Kazakhstan .....	183
V.T. KONUSOVA Constitutional monitoring as a tool for constructive development of the national legal system .....	193
K.E. ISMAGULOV, N.N. TURETSKIY Some issues of improving the legislation on special state bodies .....	204
E.N. KALIAKPEROVA, ZH.Y. SADYKANOVA Analysis of the effectiveness of the law «On international treaties of the Republic of Kazakhstan» .....	213
<b>From the lawmaking practice in the official language</b>	
A.A. MEDINAYEVA To the questions of some terms in the kazakh language.....	222
<b>Young researchers' tribune</b>	
E.M. MURATOVA Some aspects of the legal regulation of social security for the disabled .....	228
A.B. SATAYEVA On some theoretical and legal aspects of disclosure of documents in civil proceedings in England and Kazakhstan .....	234
E.S. KUANDYKOVA State administration of the agro-industrial complex of the Republic of Kazakhstan: problems of legal regulation .....	243
M.K. RAKYMBAEVA Improvement of legal norms on criminal liability for incitement to suicide .....	253
<b>The archive pages of the «Bulletin»</b>	
Y.T. BAIMOLDINOVA Returning to the scientific article by PhD M.KH. Khassenov «On the results of the analysis of legislation of the Republic of Kazakhstan on state guarantees of equal rights and equal opportunities of men and women».....	259
<b>Information about the scientific activities of ILLI RK.....</b>	<b>264</b>

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## ARBITRATION PROCEDURE FOR RESOLVING INVESTMENT DISPUTES IN ACCORDANCE WITH THE ICSID CONVENTION (THE INTERNATIONAL CENTRE FOR SETTLEMENT OF INVESTMENT DISPUTES)

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**Abstract.** *The ICSID Convention provides a well-established arbitration system that has been utilized by both states and investors for over 50 years. To date, ICSID arbitration has considered 19 lawsuits filed against Kazakhstan, with the number expected to rise in the future. The aim of this paper is to uncover the content of the ICSID arbitration process. The article examines the jurisdiction of the ICSID, including the criteria for a dispute to be considered for resolution. The paper provides an example of a case in which Kazakhstan challenged the ICSID's jurisdiction. The procedure for ICSID arbitration, starting with the request for arbitration and culminating in a binding arbitral award, is outlined. The study concludes by emphasizing the importance of the ICSID system for resolving investment disputes fairly and impartially, and the significance of the binding nature of the arbitral award. The methodology is based on legal literature analysis and a comprehensive literature review of Convention, including its rules and jurisdiction, with a focus on relevant legal precedents and cases involving Kazakhstan. The author emphasizes that the future of global arbitration is facing scrutiny due to the challenges in enforcing ICSID arbitration awards and suggests that reforms are imperative. Additionally, the author notes that arbitration law in Kazakhstan is under-researched and emphasizes the importance of increasing research in this field, as it will assist the country in cultivating its own arbitration lawyers and enhancing the judiciary's understanding of the subject. This will certainly improve the country's image as a place for conducting business and increase its attractiveness for foreign investments.*

**Keywords:** *ICSID Convention, Investment disputes, Arbitration, Kazakhstan, Enforcement, Arbitral awards.*

## ICSID КОНВЕНЦИЯСЫНА СӘЙКЕС ИНВЕСТИЦИЯЛЫҚ ДАУЛАРДЫ ТӨРЕЛІКТЕ ШЕШУДІҢ ТӘРТІБІ (ИНВЕСТИЦИЯЛЫҚ ДАУЛАРДЫ ШЕШУДІҢ ХАЛЫҚАРАЛЫҚ ОРТАЛЫҒЫ)

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**Аннотация.** *ICSID (Инвестициялық дауларды реттеу жөніндегі халықаралық орталық) конвенциясы елу жылдан астам уақыт мемлекеттер мен халықаралық инвесторлар дауларын шешу мақсатында қолданып келе жатқан, жақсы қалыптасқан арбитраж жүйесі болып табылады. Қазірге дейін ICSID ережелеріне сәйкес инвестициялық арбитражда Қазақстан Республикасына қарсы 19 дау қаралды. Мақаланың мақсаты ICSID Конвенциясына сәйкес арбитраждық дауларды шешудің ең өзекті мәселелері мен рәсімдерін талдау болып табылады. Мақалада ICSID Төрелік орталығының юрисдикциясы мәселесі, оның ішінде дауды шешу шарттары қарастырылады. Бұл бөлімде мысал ретінде Қазақстанның бір дау шеңберінде ICSID арбитражының юрисдикциясына наразылық білдіргені келтірілген. ICSID төрелік процедурасы, талап арыз беру процесі, төрешілер алқасын құру, тараптар үшін міндетті арбитраждық шешімді шығару, шешімді даулау және шешімді орындатудың мәселелері жан жақты сипатталған. Қорытындылай келе, зерттеуде инвестициялық дауларды әділ және бейтарап шешу үшін құрылған ICSID жүйесінің маңыздылығына, сондай-ақ арбитраждық шешімді орындаудың бірегей жүйесінің ерекшеліктеріне назар аударылады. Зерттеу әдістемесі Қазақстанға қатысты тиісті сот тәжірибесі мен істерге назар аударып, Арбитраждық ережелерді қоса алғанда, ICSID Конвенциясы бойынша құқықтық әдебиеттерді талдауға және жан-жақты шолуға негізделген. Нәтижесінде, автор ICSID шешімдерінің орындалуына байланысты туындаған проблемалар жаһандық деңгейде арбитраждың болашағына қатысты түрлі сауалдар туындататынын және бұл салада реформалар қажет екенін айтады. Сонымен қатар, автор Қазақстан құқық ғылымында арбитраждың жеткілікті зерттелмегенін атап өтіп, осы саладағы зерттеулерді көбейтудің маңыздылығына назар аударуда. Өйткені бұл зерттеулер елдің өз арбитраждық заңгерлерін жетілдіруіне және сот жүйесінің бұл тақырыпты жіті түсінуіне септігін тигізеді. Бұл бизнесті жүргізуге қолайлы жер ретінде еліміздің имиджін жақсартып, шетелдік инвестиция үшін тартымдылықты арттырары сөзсіз.*

**Түйін сөздер:** *ICSID Конвенциясы, Инвестициялық дау, Арбитраж, Қазақстан, Орындау, Арбитраж шешімдері.*

## **АРБИТРАЖНАЯ ПРОЦЕДУРА РЕШЕНИЯ ИНВЕСТИЦИОННЫХ СПОРОВ В СООТВЕТСТВИИ С КОНВЕНЦИЕЙ ICSID (МЕЖДУНАРОДНЫЙ ЦЕНТР ПО РАЗРЕШЕНИЮ ИНВЕСТИЦИОННЫХ СПОРОВ)**

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**Аннотация.** *Конвенция ICSID (Международный центр по урегулированию инвестиционных споров) представляет собой хорошо зарекомендовавшую себя арбитражную систему, которая используется как государствами, так и инвесторами уже более пятидесяти лет. На сегодняшний день по правилам ICSID рассмотрено 19 исков, против Республики Казахстан в инвестиционном арбитраже. Целью данной статьи является анализ наиболее актуальных вопросов и процедуры рассмотрения арбитражных споров в рамках Конвенции ICSID. В статье изучен вопрос юрисдикции Арбитражного центра ICSID, включая условия рассмотрения спора. В этой части приводится пример дела, в котором Казахстан оспаривал юрисдикцию арбитража ICSID. Подробно описана процедура арбитража*



*ICSID, процесс предъявления иска, формирования состава арбитража, вынесение обязательного для сторон арбитражного решения, процесс оспаривания решения и заканчивая вопросами приведения решения в исполнение. В заключении исследования подчеркивается важность системы ICSID для справедливого и беспристрастного разрешения инвестиционных споров, а также значение уникальной системы исполнения арбитражного решения. Методология основана на анализе и всестороннем обзоре юридической литературы по Конвенции ICSID, включая регламент арбитража, с акцентом на соответствующие судебные прецеденты и дела, связанные с Казахстаном. В результате автор подчеркивает, что будущее глобального арбитража находится под пристальным вниманием из-за проблем с обеспечением исполнения арбитражных решений ICSID, и предполагает, что реформы необходимы. Кроме того, автор отмечает, что арбитражное право в Казахстане недостаточно изучено, и подчеркивает важность расширения исследований в этой области, поскольку это поможет стране в воспитании собственных арбитражных юристов и улучшении понимания предмета судебными органами. Это, безусловно, улучшит имидж страны как места для ведения бизнеса и увеличит привлекательность для иностранных инвестиций.*

**Ключевые слова:** Конвенция ICSID, Инвестиционный спор, Арбитраж, Казахстан, Приведение в исполнение, Арбитражные решения.

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### Introduction

Direct and indirect foreign investments play a crucial role in international trade and are highly sought after by states. Recognizing foreign investment as a key tool for development, states enact domestic laws that incentivize, encourage and protect international capital, and also become signatories to international agreements in this regard [1, p.501]. One such international agreement is the ICSID Convention, or the Convention on the Settlement of Investment Disputes between States and Nationals of Other States<sup>2</sup>. Drafted under the leadership of the World Bank, the ICSID Convention is one of the most widely ratified international agreements, having been signed by 165 states and in force in 158 states<sup>3</sup>. The Republic of Kazakhstan became a party to the ICSID Convention on July 23, 1992<sup>4</sup>.

The ICSID provides an international framework for resolving disputes that arise from worldwide investment activities. ICSID arbitration is unique compared to other arbitration systems as it seeks to balance the interests of the foreign investor and the host state where the investment is made [2, p.447]. However, achieving a harmonious mechanism that fosters mutual trust between the parties can be challenging. As a result, the ICSID system is

sometimes criticized and alternative solutions are sought. Nevertheless, it is important to recognize that ICSID arbitration provides a rare opportunity for foreign investors to have their disputes resolved in a fair and impartial manner [3, p.491]. The equality of the interests of the parties involved has been ensured throughout the entire arbitration process, from application to arbitration, formation of the arbitral tribunal, decision-making, and execution [4, p.41].

ICSID does not directly participate in the dispute resolution process as a mediator or arbitrator. Instead, it provides a panel of internationally recognized experts for the parties to choose their arbitrators or mediators from. If the state and foreign investor agree to utilize ICSID's dispute resolution methods, they are committed to abide by the recommendations of the mediator or the decision of the arbitrator. Furthermore, all states that are parties to ICSID, whether they are directly involved in the investment dispute or not, are required to accept the binding nature of the arbitral award given in accordance with the convention and to enforce the execution of any monetary debts determined by the award (as specified in ICSID Article 54).

### Materials and methods

During the research process, the general

<sup>2</sup> The Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965, 575 U.N.T.S. 159. 4 ILM 532 (1965) (ICSID Convention), available on the website of the Centre at [www.worldbank.org/icsid](http://www.worldbank.org/icsid).

<sup>3</sup> <https://icsid.worldbank.org/about/member-states/database-of-member-states> The access date: 29.01.

<sup>4</sup> There is conflicting information about the date of the entry into force of the ICSID Convention for The Republic of Kazakhstan. The ICSID Convention website states that it took effect on October 21, 2000. However, according to the Republic of Kazakhstan's International Treaties Bulletin, the date of entry into force is July 20, 2004.

scientific methods of analysis and synthesis were employed. Specifically, the present practical situation in the field of resolving investment disputes was scrutinized, and a comprehensive review of legal literature on the Convention was conducted, taking into account relevant court cases.

## Discussion and results

### THE ICSID CENTER'S JURISDICTION

It is significant to remember that ICSID arbitration will not take place only because the accepting state or the investor's state approves the convention. The drafters of the convention deemed it necessary to include such provisions in the preamble, anticipating the possibility of interpretations that participation in the convention implies such an obligation. The ratification of the convention by the relevant states signifies their intention to resolve investment disputes through ICSID arbitration; however, there is no obligation to do so merely by being a party to the convention. The decision to arbitrate is left to the express consent of each state. Furthermore, states can also notify certain matters they do not wish to be subject to the jurisdiction of ICSID arbitration by recording them as a reservation<sup>5</sup>.

The convention regulates the cases in which disputes between the investor and the host state, where the investment was made, can be brought to ICSID arbitration under the section on the center's jurisdiction (Article 25). For a dispute to be heard in ICSID arbitration, the following three conditions must be met. As is demonstrated below, some of these conditions pertain to the consent of the parties, some to their identity, and some to the type of conflict.

#### 1. Consent of the Parties

The parties must provide express consent for ICSID arbitration to occur. This declaration of consent can be made prior to or after the emergence of a conflict [5, p.540]. The ICSID convention does not stipulate any specific form requirements for the written consent, although it is common for investment agreements between

the parties to include a clause declaring their willingness to participate in ICSID arbitration [6, p.288].

Alternatively, states may incorporate such provisions in their investment protection and promotion laws or investment treaties<sup>6</sup> with other states, giving the investor the ability to apply for ICSID arbitration in the presence of specific conditions, together with the host country. It is important to note that all bilateral investment treaties (BITs) signed by Kazakhstan with other countries contain provisions for the resolution of investment disputes through ICSID arbitration or other arbitration centers.

#### 2. Identity of Parties

The second requirement for ICSID arbitration is that one of the parties must be a state<sup>7</sup> and the other must be a national of another state party to the Convention<sup>8</sup>. In the case of dual citizenship, the Convention regulates which citizenship will be considered as the basis [7, p.290].

Firstly, if the investor has dual citizenship and is a citizen of both the state party to the conflict and another state, then the condition for ICSID arbitration will not be met (Article 25/2-a). This means that the investor will not be entitled to initiate ICSID arbitration against the host country, which is also their home country.

In the second case, if the investor is not a citizen of the state where the investment was made but holds dual citizenship with at least one state party to the Convention, then ICSID arbitration can be initiated. It is important to note that the concept of citizenship in the Washington Convention poses challenges for legal entities. The determination of citizenship for legal persons is not as straightforward as it is for individuals. As a result, the Convention has decided to determine the citizenship of legal entities based on the place of establishment. For example, if a UK-based company has an investment dispute in Kazakhstan, it can be brought to the ICSID. The determination of citizenship based on place of establishment presents an important issue for companies with foreign capital established in Kazakhstan.

<sup>5</sup> Some countries have ratified the Convention with varying reservations. For example, Türkiye has excluded disputes arising from the same property in its jurisdiction from the ICSID due to the exclusive jurisdiction of Turkish courts.

<sup>6</sup> Bilateral Investment Treaties (BITs) are agreements that provide protection and incentives for bilateral investments. To date, Kazakhstan has entered into BITs with 52 countries. A list of these countries can be found at: <https://investmentpolicy.unctad.org/country-navigator/110/kazakhstan>. The access date: 29.01.2022.

<sup>7</sup> It is important to note that resolution of investment disputes through ICSID arbitration has been a viable option if both the state party and the investor's state are parties to the Convention simultaneously. To increase the jurisdiction of ICSID, the Additional Protocol was signed, which is referred to as the "Additional Ways to Resolve Investment Disputes" and includes Additional Rules. This protocol introduced the Additional Rules of Procedure, granting ICSID the authority to determine whether a dispute between a state and an investor of another state falls within the jurisdiction of ICSID arbitration.

<sup>8</sup> The Convention does not apply to stateless individuals and refugees, as it specifically mentions state citizenship.

The Civil Code of Kazakhstan determines citizenship for legal entities based on the place of registration. Hence, in the case of a dispute between a company established in Kazakhstan with foreign capital and registered in the Kazakh legal entities registry, and the Kazakhstan state or state-affiliated institutions, it becomes necessary to determine if ICSID arbitration is applicable.

The ICSID Convention provides a unique perspective on the issue of a legal entity having citizenship in a state different from the state in which it is in conflict. Pursuant to Article 25/2-b of the Convention, even if an investor company holds the nationality of the conflicting state, if it is determined that the company is under foreign control, it will be considered a "citizen of another state". As a result, even in the presence of foreign control in Kazakhstan, the investor has the right to be treated as a citizen of another state and to bring the dispute to ICSID arbitration. The inclusion of this principle in the Convention is due to the fact that many countries globally recognize that companies established in their jurisdiction with foreign capital possess their own citizenship. As a consequence, these companies, despite being established with foreign capital, are deemed local companies in terms of citizenship, thus exempting them from ICSID arbitration. The Convention aims to address this by treating such companies as "foreign" entities on the basis of foreign control [8, p.291].

However, for this principle to be applied, the parties must have agreed on this matter in advance. This means that for disputes between the government of Kazakhstan and a foreign investor to be resolved through ICSID arbitration, it is necessary for the investor to agree to classify the company established in Kazakhstan as a foreign entity in their investment agreement.

### 3. Subject of Dispute

The third requirement for the jurisdiction of ICSID arbitration is that the dispute must arise from an investment. It is important to note that the Washington Convention does not provide a definition for the term "investment." The majority of disputes submitted to ICSID arbitration are related to investments in the commonly accepted modern sense.

The definition of investment is based on the types of investments expressed in the bilateral investment agreements between the state in question and the investor's state. However, it should be noted that these agreements do not

provide precise parameters for defining the concept of investment. For example, the Israel-Kazakhstan bilateral investment agreement allows for arbitration in the resolution of "any legal disputes arising...related to the investments made by the investor in the territory of the host state." Similarly, the bilateral investment agreement between Kazakhstan and Qatar states that "any dispute under the provisions of this Agreement between one Party and the investor of the other Party in connection with an investment" may be submitted to arbitration.

In practice, ICSID arbitral tribunals refer to the "Salini test" [9, p.298] to determine the concept of "investment." Accordingly, the following five criteria are considered essential for an asset to be deemed an investment:

1. The duration of the investment project;
2. The investor's assumption of risk;
3. The significance of the contribution;
4. The project's importance for the development of the host state;
5. The regular generation of profit or income.

In the matter of "Anatolie Stati and Others v. The Republic of Kazakhstan," a case brought before the ICSID, Kazakhstan challenged the jurisdiction of the ICSID arbitration tribunal on the basis that the licenses issued by the state for the development of oil and gas fields, liquefied natural gas facilities, and other assets held by the claimants cannot be considered investments [10].

Kazakhstan's counsel argued that the criteria established in the "Salini test", developed by ICSID arbitration, were not met by the claimants. It was suggested that the claimants did not assume a significant risk in acquiring these assets, nor did they make a substantial investment in Kazakhstan, leading to the conclusion that the assets in question could not be considered investments. The arbitral tribunal determined that, as the concept of "investment" is unambiguously defined in the applicable international investment treaty, the Energy Charter Treaty in this case, there was no requirement to reference additional investment criteria, including those found in the interpretation of the treaty [11].

### PROCEDURE FOR ICSID ARBITRATION

In accordance with the ICSID Convention, if the parties have agreed to engage in arbitration and have not made alternative arrangements, in the event of a dispute between them, either the contracting state or the investor may submit a written request to the ICSID General

Secretariat for resolution. However, the parties may choose to exhaust all local, administrative, and judicial remedies before proceeding with arbitration as a means of resolving the dispute (Article 26). Pursuant to the ICSID Arbitration Rules<sup>9</sup>, documentation should be submitted electronically as a general rule. However, in cases where special circumstances require a different mode of submission, alternative arrangements may be made (Article 4).

An arbitration request must contain documents establishing the parties' identities, details of the dispute, evidence of the parties' consent to arbitration, and information relating to the investment, ownership, and control thereof<sup>10</sup>. The General Secretariat will conduct a preliminary assessment of the request and take one of two actions. It may reject the request on the grounds that the dispute falls outside the jurisdiction of the ICSID arbitration as determined by the information contained in the request, or if the request satisfies the necessary requirements, it will be recorded<sup>11</sup>. Upon acceptance of the application by the General Secretariat, an arbitral tribunal will be established to resolve the dispute (as per articles 37/2ab, 38-40).

The tribunal will first assess its jurisdiction over the dispute, either of its own accord or in response to an objection raised by one of the parties, which may be considered a preliminary question (per article 41/1). The principle of freedom of choice governs the law to be applied in the dispute. In accordance with Article 42 of the Convention, the tribunal will resolve the dispute in accordance with the rules of law agreed upon by the parties, or, in the absence of agreement, with the host country's law, including conflict of laws rules. The tribunal may apply both relevant international law and the rules of the host country, or, upon agreement of the parties, may resolve the dispute through the application of rules of equity without reference to the contracting country or international law

[12]. It is worth noting that the parties determine the procedural rules to be followed by the tribunal, and if left unaddressed, the applicable ICSID arbitration rules will apply.

#### ARBITRAL AWARD

The arbitral tribunal shall issue its decision, which shall be made by a majority of its members and shall be in writing and signed by all members who participated in the voting. Any member of the tribunal may add a dissenting opinion to the award. The award must be reasoned and shall address all issues submitted to the tribunal in the petition. The Tribunal shall render the award as soon as possible and in any event no later than within 60 days from the submission of the last document, as provided for under Article 58 of the ICSID arbitration rules.

The award is conveyed to the General Secretariat of the ICSID by the tribunal. The General Secretariat then notifies the parties of the availability of certified copies of the award. The award becomes effective from the date of notification. The Center shall not automatically publish the award without the consent of the parties, as per Article 48 of the ICSID Convention<sup>12</sup>. In the event that the arbitrators overlooked a matter while rendering their award, the arbitral tribunal may make additional award upon the request of either party within 45 days from the date of the award. This can be done through an additional award or written letter, as deemed necessary by the tribunal. If there are any inaccuracies in the award, they may be corrected in accordance with Article 49. These additional awards are considered part of the original award and are communicated to the parties in the same manner as the original award.

#### OBJECTION TO AN ARBITRATION AWARD

As per the provisions of the ICSID

<sup>9</sup> *The ICSID Convention, Regulations, and Rules were adopted in 1967 and have undergone four amendments since then, with the latest coming into effect in July 2022. These changes are the most comprehensive in ICSID's history. The key modifications include (1) improvements to the proceedings' efficiency; (2) provisions for third-party financing; (3) provisions regarding litigation expenses; (4) reforms to the formation of the arbitral tribunal and the rejection of arbitrators; (5) increased transparency; (6) provisional measures; and (7) expansion of access to the ICSID Supplementary Service Rules.*

<sup>10</sup> *Article 3 of the ICSID Institutional Rules recommends additional information that parties may include in their arbitration request to facilitate the early stages of proceedings. These recommendations include: (i) the method of appointment and number of arbitrators; (ii) the language of the proceedings; (iii) agreements and proposals regarding the use of expedited arbitration; and (iv) if the submitting party is a legal entity, the names of its owners or controllers, and the real and legal persons holding it.*

<sup>11</sup> *The revisions made to the ICSID Arbitration Rules in 2022 encompass new provisions relating to serial arbitration. These modifications allow for the parties to opt for a streamlined trial procedure if they so choose. The expedited trial procedure is characterized by shorter timelines and fewer filings, thereby potentially reducing the overall duration of the trial by half.*

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Convention, the arbitral award rendered under the jurisdiction of ICSID is considered to be final and binding on the parties. No appeal or any other form of remedy, other than those specified in the Convention, can be sought against such an award (Article 53/1). Furthermore, if there are no circumstances necessitating the interpretation, revision, or annulment of the award, the parties are obligated to comply with and fulfill the requirements of the decision (Article 53/1). In addition, every country that is a party to the ICSID Convention shall recognize the arbitral award, which has been rendered in accordance with the provisions of the Convention and the relevant arbitration rules, as binding. Such an award shall be enforced in the same manner as a final decision of the state court within the territorial borders of the country (Article 54/1).

The ICSID Convention provides three methods for recourse to an arbitral award. These include:

1. Requesting an interpretation of the award, as stipulated in Article 50.
2. Requesting a reconsideration of the award due to the emergence of new material facts, as outlined in Article 51.
3. Requesting the annulment of the award in the presence of certain reasons, as specified in Article 52.

Generally, the procedure for annulment of arbitral awards in international arbitration law and domestic legislation of countries is commonly based on the UNCITRAL Model Law and sought from the national courts of place of arbitration [13, p. 41]. However, the ICSID Convention has introduced a different system for objecting the final arbitral award. Unlike the systems accepted in international arbitration law and globally, there is no authorized state court to which the parties can appeal the award. Instead, objections raised by the parties are discussed and resolved within the ICSID Centre.

#### ENFORCEMENT OF ARBITRAL AWARDS UNDER THE ICSID CONVENTION

In accordance with Article 54(2) of the ICSID Convention, a party seeking recognition or enforcement of an ICSID arbitration award in a member state must submit a copy of the award, as approved by the Secretary General, to a court or authority designated by the contracting state for this purpose.

One of the key benefits of ICSID arbitration is the immunity of arbitral awards from review

by national courts. These awards are not subject to annulment and local courts are required to provide legal assistance to facilitate their enforcement. In addition, a court of a state party cannot refuse to enforce an award that has not been annulled and was issued as a result of ICSID arbitration [14, p. 215].

Consequently, the enforcement of ICSID arbitration awards in the realm of international investment law is commonly carried out smoothly by states [15, p.25]. The ICSID Convention provides a special procedure for the recognition and enforcement of arbitral awards, allowing for the bypassing of domestic laws and international agreements. As a result, objections based on the New York Convention or the UNCITRAL Model Law cannot be raised during the recognition or enforcement process. It is also not possible to assert that the arbitral award is in violation of the public order of the country where enforcement is sought, and recognition or enforcement cannot be denied on these grounds [16, p.13 ].

The execution of the arbitral award will be carried out in accordance with the procedural laws for the enforcement of domestic court decisions in the country where enforcement is sought (Article 54/1). This aims to eliminate the potential disputes arising from differences in laws and legal systems between countries regarding the execution of arbitral awards. Each state is required to enforce the decision in accordance with its domestic law as if it were a judgment of its own domestic courts.

In accordance with Kazakh law, the Astana City Court [17] has jurisdiction over the enforcement of investment dispute arbitral awards in which the Kazakh state is the defendant, including those made by the ICSID. It is important to note that ICSID arbitral awards are not subject to the procedure for foreign or international arbitral awards in Kazakhstan (Article 54/1 Each Contracting State shall recognize an award ... as if it were a final judgment of a court in that State.), but rather, they must be enforced through the ordinary provisions established for Kazakh state court decisions. As a result, the enforcement order necessary for the execution of the ICSID award should not be issued under Article 253 of the Kazakhstan Civil Procedure Code, which governs the compulsory enforcement of arbitral awards, but rather, under Article 241 which governs the execution of court decisions.

In the *AIG Partners v. Kazakhstan* case under the ICSID, the government of Kazakhstan disregarded Article 54(1) of the ICSID

Convention and refused to honor the arbitration award. The plaintiff secured a lien on assets of the Kazakhstan central bank held in UK banks (ABN AMRO Mellon Global Security Services BV), but Kazakhstan contested the lien by claiming immunity from jurisdiction [18, p.217] and lien. It is worth mentioning that the government's behavior in cases like AIG Partners and Anatolie Stati makes Kazakhstan an unreliable destination for international investment, as it fails to uphold its contracts and shirks its international obligations [19].

### Conclusion

The ICSID Convention provides a well-established arbitration system that has been utilized by both states and investors for over half a century. Despite its popularity, several challenges still arise in practice, particularly in regards to jurisdiction and the enforcement of arbitral awards before the host state. This article provides an overview of the ICSID arbitration process and highlights some of the main issues encountered in practice.

It is noteworthy that there is limited

research on the ICSID arbitration procedure and its application in Kazakh legal doctrine. Nevertheless, data from the United Nations Conference on Trade and Development (UNCTAD) reveals that there have been 19 lawsuits filed against the Republic of Kazakhstan in investment arbitration, with the number expected to increase in the future due to the increasing use of third party founding (TPF) in investment arbitration.

Given these circumstances, we believe that further research on ICSID arbitration is crucial for the legal doctrine of Kazakhstan. In particular, cases where Kazakhstan is a party should be examined from both theoretical and practical perspectives. This will enable Kazakhstan to train its own arbitration lawyers and state courts, allowing them to be better prepared to handle investment arbitration cases. In conclusion, ICSID arbitration plays an important role in promoting foreign investment and ensuring the protection of investor rights, and it is imperative for Kazakhstan to fully understand and engage with this system.

### REFERENCES

1. Lucas Clover Alcolea, *Arbitral Activism and Choice of Law under the ICSID Convention*, *Chinese Journal of International Law* // - 2022, Volume 21, Issue 3, pp.499–546, <https://doi.org/10.1093/chinesejil/jmac027>, access date: 06.02.2023.
2. Julien Fouret, Rémy Gerbay and Gloria M. Alvarez, *The ICSID Convention, Regulations and Rules: A Practical Commentary*: Edward Elgar, *European Yearbook of International Economic Law* // - 2019, pp. 445-448, <https://doi.org/10.4337/9781786435248.00014>, access date: 29.01.2023.
3. Moehlecke, C. & Wellhausen, R. *Political Risk and International Investment Law*. *Annual Review of Political Science* // -2022, pp 485-507. <https://doi.org/10.1146/annurev-polisci-051120-014429>; access date: 29.01.2023
4. Nmehielle, Vincent O. "Enforcing Arbitration Awards Under the International Convention for the Settlement of Investment Disputes (ICSID Convention)," *Annual Survey of International & Comparative Law* // 2001, Vol. 7: Iss. 1, Article 4, pp.21-48.<https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1058&context=annlsurvey>, access date: 06.02.2023.
5. Lucas Clover Alcolea, *Arbitral Activism and Choice of Law under the ICSID Convention*, *Chinese Journal of International Law* // - 2022, Volume 21, Issue 3, pp.499–546, <https://doi.org/10.1093/chinesejil/jmac027>, access date: 06.02.2023.
6. Gölcüklü İ, *ICSID Tahkiminde Yetkiden Kaynaklanan Bazı Sorunlar*, *Public and Private International Law Bulletin* //-2018, -N38(2): 285–309, <https://dergipark.org.tr/tr/download/article-file/630908>, access date: 29.01.2023.
7. Gölcüklü İ, *ICSID Tahkiminde Yetkiden Kaynaklanan Bazı Sorunlar*, *Public and Private International Law Bulletin* //-2018, -N38(2): 285–309, <https://dergipark.org.tr/tr/download/article-file/630908>, access date: 29.01.2023.
8. Gölcüklü İ, *ICSID Tahkiminde Yetkiden Kaynaklanan Bazı Sorunlar*, *Public and Private International Law Bulletin* //-2018, -N38(2): 285–309, <https://dergipark.org.tr/tr/download/article-file/630908>, access date: 29.01.2023.
9. Broches, Aron, "The Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Volume 136)", in: *Collected Courses of the Hague Academy of*

*International Law*. [http://dx.doi.org/10.1163/1875-8096\\_pplrdc\\_A9789028606333\\_03](http://dx.doi.org/10.1163/1875-8096_pplrdc_A9789028606333_03), access: 08.02.2023

10. Kenzhebaeva A.T, *Informacionno-analiticheskaja spravka «O mezhdunarodnom opyte po rassmotreniju investicionnyh sporov»* (Кенжебаева А.Т, Информационно-аналитическая справка «О международном опыте по рассмотрению инвестиционных споров») // - 2016, [https://online.zakon.kz/Document/?doc\\_id=37179478](https://online.zakon.kz/Document/?doc_id=37179478), access date: 29.01.2022.

11. Kenzhebaeva A.T, *Informacionno-analiticheskaja spravka «O mezhdunarodnom opyte po rassmotreniju investicionnyh sporov»* (Кенжебаева А.Т, Информационно-аналитическая справка «О международном опыте по рассмотрению инвестиционных споров») // - 2016, [https://online.zakon.kz/Document/?doc\\_id=37179478](https://online.zakon.kz/Document/?doc_id=37179478), access date: 29.01.2022.

12. Baetens, Freya, *Enforcement of Arbitral Awards: 'To ICSID or Not to ICSID' is Not the Question*, Todd Weiler, Ian Laird, eds., *Investment Treaty Arbitration and International Law, Juris Arbitration Series* // -2012, -Juris New York, Vol. 5, pp. 211-228, Available at SSRN: <https://ssrn.com/abstract=2130694>. access date: 29.01.2022.

13. Calamita, N. Jansen, *The Challenge of Establishing a Multilateral Investment Tribunal at ICSID*, *ICSID Review, Forthcoming*// -2017, Available at SSRN: <https://ssrn.com/abstract=3007581>, access: 08.02.2023.

14. Baetens, Freya, *Enforcement of Arbitral Awards: 'To ICSID or Not to ICSID' is Not the Question*, Todd Weiler, Ian Laird, eds., *Investment Treaty Arbitration and International Law, Juris Arbitration Series* // -2012, -Juris New York, Vol. 5, pp. 211-228, Available at SSRN: <https://ssrn.com/abstract=2130694>. access date: 29.01.2022.

15. Nmehielle, Vincent O. "Enforcing Arbitration Awards Under the International Convention for the Settlement of Investment Disputes (ICSID Convention)," *Annual Survey of International & Comparative Law* // 2001, Vol. 7: Iss. 1, Article 4, pp.21-48.<https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1058&context=annlsurvey>, access date: 06.02.2023.

16. Grabowski, Alex (2014) "The Definition of Investment under the ICSID Convention: A Defense of Salini," *Chicago Journal of International Law* // -2014, Vol. 15: No. 1, Article 13. pp. 287-309, <https://chicagounbound.uchicago.edu/cjil/vol15/iss1/13>, access date: 29.01.2023.

17. Sulejmenov M.K. *Priznanie i ispolnenie reshenij inostrannyh tretejских i gosudarstvennyh sudov po investicionnym sporam: opyt Kazahstana* // - 2009, (Сулейменов М.К. Признание и исполнение решений иностранных третейских и государственных судов по инвестиционным спорам: опыт Казахстана) // - 2009, [https://online.zakon.kz/Document/?doc\\_id=31644606&pos=5;-116#pos=5;-116](https://online.zakon.kz/Document/?doc_id=31644606&pos=5;-116#pos=5;-116), access date: 29.01.2022.

18. Horn, H. and T. Tangerang. *Economics of international investment agreements. Journal of International Economics* // - 2021, -131, - <https://doi.org/10.1016/j.jinteco.2021.103433>, access date: 29.01.2023.

19. Baetens, Freya, *Enforcement of Arbitral Awards: 'To ICSID or Not to ICSID' is Not the Question*, Todd Weiler, Ian Laird, eds., *Investment Treaty Arbitration and International Law, Juris Arbitration Series* // -2012, -Juris New York, Vol. 5, pp. 211-228, Available at SSRN: <https://ssrn.com/abstract=2130694>. access date: 29.01.2022.