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NAS RK is pleased to announce that Bulletin of NAS RK scientific journal has been accepted for indexing in the Emerging Sources Citation Index, a new edition of Web of Science. Content in this index is under consideration by Clarivate Analytics to be accepted in the Science Citation Index Expanded, the Social Sciences Citation Index, and the Arts & Humanities Citation Index. The quality and depth of content Web of Science offers to researchers, authors, publishers, and institutions sets it apart from other research databases. The inclusion of Bulletin of NAS RK in the Emerging Sources Citation Index demonstrates our dedication to providing the most relevant and influential multidiscipline content to our community.

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НАН РК сообщает, что научный журнал «Вестник НАН РК» был принят для индексирования в Emerging Sources Citation Index, обновленной версии Web of Science. Содержание в этом индексировании находится в стадии рассмотрения компанией Clarivate Analytics для дальнейшего принятия журнала в the Science Citation Index Expanded, the Social Sciences Citation Index и the Arts & Humanities Citation Index. Web of Science предлагает качество и глубину контента для исследователей, авторов, издателей и учреждений. Включение Вестника НАН РК в Emerging Sources Citation Index демонстрирует нашу приверженность к наиболее актуальному и влиятельному мультидисциплинарному контенту для нашего сообщества.

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INTERNATIONAL AND NATIONAL LEGAL GUARANTEES FOR INVESTMENT ACTIVITIES IN UZBEKISTAN

Abstract. The article analyzes international and national guarantee investment activities on the territory of the Republic of Uzbekistan and discusses the issues of the implementation of the rights and legitimate interests of foreign investors using legal guarantee obligations in the national legislation of Uzbekistan.

The aim of the study is to study the international mechanism for guaranteeing the repatriation of foreign investors, a comprehensive analysis of the most important international legal mechanisms in this area.

The scientific novelty of the research is determined by the fact that the raised problem became for the first time the subject of a special comprehensive study. The author carries out research based on a significant number of international legal acts in the field of international legal guarantees for investment activities, constituent documents of intergovernmental organizations-subjects of international law, conducts a comparative analysis of various aspects of guarantees for investment activities.

The novelty of the article is also enhanced by the fact that the author studies in detail the problems of correlation between the international legal and national legal mechanisms for guaranteeing investment activity. In the article, based on the analysis of international legal material, for the first time are investigated:

- the international legal mechanism for guaranteeing investment activities, its constituent elements; the operation of multilateral and bilateral agreements in this area;
- national legal mechanism for guaranteeing investment activities;

To achieve this goal, taking into account the designated subject of research, the following results were obtained in the work:

- International legal guarantees have been studied and a legal description to them has been given;
- The main aspects of interaction between the international and national legal mechanism for guaranteeing investment activity have been identified;

Key words: international legal guarantees, national legal guarantees, general guarantees, universal guarantees, special guarantees, foreign investors, multilateral agreements, bilateral agreements.

Introduction. The implementation of the rights and legitimate interests of foreign investors is carried out with the help of legal guarantees provided for both in the national legislation of states and in international treaties. In this regard, the legal guarantees of foreign investors can be classified as international legal and national legal. The doctrine offers various definitions of international legal guarantees of the rights of foreign investors.

So, one of the general definitions of these legal guarantees is the following: "Guarantees of the rights of foreign investors are obligations adopted by the state in a legislative or international legal order to perform certain actions with respect to a foreign investor or refrain from actions that violate the legitimate rights and interests of the investor".

In accordance with another definition, international guarantees are understood as "international legal acts providing assurances or guarantees of a state or a group of states in relation to other participants in international relations about a certain course of action, ensuring the observance of the established rights or status of any state (group of states), fulfillment of international obligations or preservation of a certain level of international relations".

This definition characterizes international guarantees as international legal acts. However, one can hardly agree with this, since these guarantees are obligations enshrined in these international legal acts, and not the acts themselves.

International legal guarantees can be classified by the scope of the rights they grant as general and specific guarantees.

General international legal guarantees are guarantees of human rights in the field of civil and political rights, as well as economic, social and cultural rights; these guarantees are generally recognized basic international legal guarantees that must be followed by states.

International guarantees of the rights of foreign investors can be called **special** in relation to general international legal guarantees, since they have a special subject of regulation - the obligations of states accepting foreign investments in the field of ensuring the protection of the property of foreign investors.

International legal guarantees of the rights of foreign investors, being special guarantees, are contained in international multilateral and bilateral agreements and include guarantees of property rights of foreign investors, compensation, insurance, guarantees for the resolution of international investment disputes, but these guarantees are aimed at ensuring the protection of property rights foreign investors.

It should be noted that international legal guarantees of foreign investors are the legal obligations of the recipient states, enshrined in international multilateral and bilateral agreements, extending their effect in relation to foreign investors, through which foreign investors have the opportunity to exercise their rights and legitimate interests in the field of theirs. on the ownership of investments in recipient states.

National legal guarantees can be classified according to the extent of the general and specific rights they grant. It seems that the implementation of economic, political, spiritual, cultural and other guarantees is carried out through legal guarantees. In this regard, legal guarantees can be classified as **general guarantees**, with the help of which all other guarantees are realized.

In turn, guarantees of the rights of foreign investors contained in the national legislation of states are **special national legal investment guarantees**, since they regulate legal relations in the field of mutual rights and obligations of foreign investors and recipient states. At the same time, it should be assumed that the most important for foreign investors are guarantees for the protection of property rights and guarantees for the movement of property of foreign investors, which are referred to as special guarantees. National legal guarantees of the rights of foreign investors are the obligations of the recipient states, enshrined in their national legislation, ensuring the protection of the property rights of foreign investors.

General international legal guarantees are enshrined in the following documents: "Universal Declaration of Human Rights" 1948 (hereinafter - "Universal Declaration of Human Rights"), International Covenant of 1966 "On Civil and Political Rights" (hereinafter - International Covenant "On Civil and political rights "), the 1966 International Covenant" On Economic, Social and Cultural Rights "(hereinafter - the International Covenant" On Economic, Social and Cultural Rights ").

These documents contain the following guarantees:

All people are equal before the law and have the right, without any distinction, to equal protection of the law, equal rights for men and women to enjoy all civil and political rights, vocational education and training programs, ways and methods of achieving steady economic, social and cultural development and full productive employment in conditions that guarantee fundamental political and economic freedoms.

The role of general international legal guarantees is to ensure the realization of the rights and legitimate interests of the persons in respect of whom they are granted, which is an integral part of a democratic rule-of-law state, which "is characterized by the emergence of relations, mainly in line with the interests of its implementation".

These international legal acts contain general, universal guarantees of rights, which are guarantees of human rights, in the field of civil and political rights, as well as economic, social and cultural rights, these guarantees are generally recognized basic international legal guarantees that must be followed by states.

The guarantees of the rights of foreign investors, being special guarantees in relation to the above universal legal guarantees, are directly related to them.

For example, such a relationship is seen in the provisions of the preamble of the Convention on the Settlement of Investment Disputes between States and Natural or Legal Persons of Other States (concluded in Washington on 18.02.1965) (hereinafter — the Washington Convention) on the need for international cooperation for economic development and on the role that belongs to private international

investment in this area and which correspond to the content of paragraph 2 of Article 6 of the International Covenant of 16.12.1966" On Economic, Social and Cultural Rights", regulating ways and methods of achieving steady economic, social and cultural development and full productive employment in conditions that guarantee basic political and economic freedoms of the person.

Another example is the provisions of article 7 of the Universal Declaration of Human Rights that all people are equal before the law and have the right, without any distinction, to equal protection of the law and, as it seems, in which the guarantees of article 10 of the Energy Charter Treaty (signed in Lisbon 17.12.1994) (hereinafter-ECT) that each Contracting Party, in accordance with the provisions of the ECT, encourages and creates stable and equal, favorable and transparent conditions for investors of other Contracting Parties to make investments in its territory, and that such conditions include the obligation to provide, without exception, fair and equal treatment to investments of investors of other Contracting Parties.

Thus, it can be concluded that general international legal guarantees are the obligations of States that are contained in international universal multilateral agreements and in which the guarantees of the rights of foreign investors originate.

International guarantees of the rights of foreign investors can be called special in relation to general international legal guarantees, since they, unlike these guarantees, have a special subject of regulation – the obligations of states receiving foreign investment in the field of ensuring the protection of the property of foreign investors.

Recipient States that provide legal guarantees to foreign investors implement their foreign investment policy in this way, since a state can become a party to a multilateral agreement regulating investment relations with foreign investors, thus voluntarily accepting the obligations contained in it or for any reason refuse to participate in it. At the same time, States, concluding bilateral agreements on the promotion and mutual protection of investment, also implement their policies in the field of foreign investment, establishing certain guarantees for foreign investors, as well as certain mutual obligations.

In this regard, the following statement seems to be true. "The State, when resolving issues related to civil relations with a foreign element, in its internal laws or international agreements concluded by it, in all cases determines its attitude to issues of international cooperation in one way or another."

Thus, the recipient countries independently determine their attitude to issues of international cooperation, including in the field of providing guarantees of rights for foreign investors.

In order to attract foreign capital to the development of the economy, States need to provide appropriate legal guarantees, without which it is impossible to create a favorable investment climate.

In addition, according to one of the points of view contained in the general theory of law, "the institution of rights and freedoms ensures the individual's access to the use of material and spiritual goods, encourages public authorities to adhere to generally accepted international standards in this regard."

In international investment relations, such international standards for guaranteeing the rights of foreign investors are contained in such multilateral agreements as the "Convention on the Establishment of a Multilateral Investment Guarantee Agency" (concluded in Seoul in 1985) (hereinafter referred to as the Seoul Convention), the ECT, and the Washington Convention .

The international body responsible for insuring foreign investment against political risks is the Multilateral Investment Guarantee Agency, established under the Seoul Convention.

So, according to N. N. Voznesenskaya: "The task of the established Agency is to stimulate the flow of investment between member countries and especially in developing countries, thus complementing the activities of the IBRD, the International Finance Corporation (IFC), etc."

It seems that such stimulation of the flow of investment is regulated by the provisions of the Seoul Convention, since this international document contains guarantees to protect the property of foreign investors from the following political risks: currency transfer, expropriation or similar measures, treaty violations, wars and civil unrest.

Another international document containing guarantees of the rights of foreign investors in terms of resolving disputes between foreign investors and recipient States is the Washington Convention .

In accordance with the Washington Convention, the International Center for Settlement of Investment Disputes (hereinafter – ICSID) was established as an institution that promotes the resolution of international investment disputes.

As stated in the legal doctrine: "the main idea of the Convention is to organize the settlement of such disputes between foreign private investors and States that accept these investments at the international level through the establishment of a special center for the settlement of investment disputes at the IBRD."

According to article 2 of the Washington Convention, "The task of the Center is to provide structures for conciliation and arbitration in connection with investment disputes between Contracting States and natural or legal persons of other Contracting States in accordance with the provisions of this Convention."

The guarantees contained in the Washington Convention are international guarantees for the settlement of international investment disputes.

It should be noted that, in addition to these international legal guarantees contained in multilateral international agreements, the guarantees of the rights of foreign investors enshrined in bilateral agreements on the promotion and mutual protection of investment play an important role.

Thus, according to A. G. Bogatyrev: "bilateral investment agreements create the foundations of international legal regulation necessary for regulating international investment relations in combination with the investment national legislation of the contracting states»

As stated in the legal literature: "Currently, bilateral international treaties contain more detailed regulation of the relevant relations, and most importantly, it is in these agreements that the initial fundamental provisions that determine the investment climate are formulated."

As a vivid illustration of the role of international agreements in the field of guarantees of the rights of foreign investors, the following statement can be cited.

International agreements can serve as a mechanism by which Governments provide foreign investors with irrevocable obligations and guarantees that correspond to the interests of foreign investors and are aimed at protecting these interests from any political acts.

Based on the above, it can be concluded that international legal guarantees of foreign investors are legal obligations of recipient States, enshrined in international multilateral and bilateral agreements, extending their effect to foreign investors, through which foreign investors have the opportunity to exercise their rights and legitimate interests in the field of investments owned by them in the recipient States.

In the doctrine, there are various definitions of legal guarantees, one of which is the following: "*Legal guarantees are legal means expressed in normative legal prescriptions, the implementation of which can provide or provides the possibility of implementing other normative legal prescriptions.*"

The procedure for concluding international legal instruments in the Republic of Uzbekistan is governed by the following legal documents: Law "On international treaties of the Republic of Uzbekistan" of 22 December 1995, regulations of the Cabinet of Ministers from January 12, 1998 n 15 "About the order of conclusion, execution, suspension, termination and denunciation of international treaties of the Republic of Uzbekistan of interdepartmental nature" of 12 December 2000 No. 473 "order of drafting international treaties and commitments of the Republic of Uzbekistan according to international treaties".

The law of international treaties determines the modern development of relations between subjects through the process of international law-making, further conclusion of agreements between them.

It seems that the main legal requirements are the constitutions of States, which contain general, fundamental national legal guarantees. For example, in accordance with article 23 of the Constitution of the Republic of Uzbekistan, foreign citizens and stateless persons located on the territory of the Republic of Uzbekistan are guaranteed rights and freedoms in accordance with the norms of international law. They bear the duties established by the Constitution, laws and international treaties of the Republic of Uzbekistan.

General guarantees are considered economic, political, spiritual and cultural guarantees, special ones include legal, psychological and managerial guarantees. In turn, legal guarantees as a type of special guarantees include:

- a) measures to improve legislation;
- b) measures to detect violations of the rule of law;
- c) protection measures;
- d) liability measures;
- e) measures of supervision and control over the state of law and order;
- e) measures to prevent violations of the rule of law and order .

Meanwhile, it seems that the implementation of economic, political, spiritual, cultural and other guarantees is carried out through legal guarantees. In this regard, legal guarantees can be referred to as general guarantees, with the help of which all other guarantees are implemented.

Foreign investors can be called special subjects of private international law, since foreign investors who invest in the development of the economy of the recipient country, on the one hand, are provided with guarantees, and on the other hand, the flow of these investments into strategically important sectors of the economy of the receiving state is restricted, in order to protect state sovereignty and national security.

In the Republic of Uzbekistan, guarantees of the rights of foreign investors are enshrined in various regulatory legal acts.

According to Article 54 of the Law of the Republic of Uzbekistan "On Investments and Investment activities».

In accordance with the decree of the President of the Republic of Uzbekistan №up-4434 10.04.2012 **"On additional measures to stimulate the attraction of direct foreign investments"** stipulates that newly established enterprises with foreign investments where the foreign investor's contribution in cash is not less than 5 million USD, while changes in the tax law may apply within 10 years from the moment of their state registration rules and regulations for tax on profit of legal entities, value added tax (turnover on realization of goods, works, services), property tax, unified social payment the unified tax payment and obligatory deductions to the Republican road Fund and off-budget Fund of development of material-technical base of educational and medical institutions under the Ministry of Finance of the Republic of Uzbekistan effective on the date of their state registration.

In accordance with the Decree of the President of the Republic of Uzbekistan No. UP-5495 dated 01.08.2018 **"On measures to radically improve the investment climate in the Republic of Uzbekistan"** from August 1, 2018, the procedure is established, according to which:

- a bona fide investor and business entity is compensated for property damage caused by trust in the legal force of an administrative act of a state body (official) adopted in respect of them, relying on the legal force of which, they used the property, made a transaction or otherwise took advantage of the benefits and advantages provided, in case of subsequent recognition of this act as invalid or its cancellation;
- the issue of cancellation or modification of an administrative act of a state body (official), in cases where it affects the legitimate interests of a bona fide investor and a business entity, is considered in court, except in cases where its preservation poses a threat to public interests.

We believe that the following document is the central and most important legal source of legal guarantees of investment activity in the territory of the Republic of Uzbekistan.

According to the Law of the Republic of Uzbekistan No. ZRU-598 of 25.12.2019 "On Investments and investment activities", the main principles of investments and investment activities are:

- legality;
- transparency and openness;
- freedom to carry out investment activities;
- fairness and equality of subjects of investment activities;
- non-discrimination against investors;
- presumption of good faith of the investor.

The basic principles of the legislation on investments and investment activities are applied at all stages of the investment process and implementation of investment activities.

According to article 16 of this Law, the income of an investment entity obtained as a result of investment activities may be reinvested or used in any other way at its discretion after payment of taxes and payments.

According to this Law, a foreign investor has the right to terminate investment activities in the Republic of Uzbekistan. After the termination of the investment activity, the foreign investor has the right to free repatriation in cash or in kind of its assets received as a result of the termination of the investment activity, without prejudice to the fulfillment of the obligations of the foreign investor in respect of the Republic of Uzbekistan or other creditors. Moreover, the state guarantees the protection of investments in accordance with the legislation and international treaties of the Republic of Uzbekistan.

Investments and other assets of investors are not subject to nationalization.

Investments and other assets of investors are not subject to requisition (expropriation), except in cases of natural disasters, accidents, epidemics, epizootics and other circumstances of an extraordinary nature.

The decision on the requisition and expropriation of investments is made by the Cabinet of Ministers of the Republic of Uzbekistan in compliance with the requirements under which the requisition or expropriation:

- is limited to the minimum size of investments or other assets of investors necessary to solve problems arising from the cases specified in Part three of this Article;
- it is not carried out on a discriminatory basis;
- accompanied by payment of compensation adequate to the loss caused.
- The State acts as a guarantor of the timely implementation of these compensation payments.
- The investor has the right to challenge in court and arbitration, in particular:
- legality of the purpose used to carry out the requisition (expropriation);
- amount of requisition (expropriation);
- assessment of requisitioned (expropriated) investments and other assets;
- compliance of the payment of compensation to be paid;
- the procedure followed by the state administration and local government authorities in carrying out the requisition (expropriation).

Insurance of investments and risks of investors is carried out on a voluntary basis.

According to article 46 of the Law "On Investments and Investment Activities", foreign investors and foreign investments are granted fair and equal treatment, full and permanent protection and security. Such a regime cannot be less favorable than the regime defined in the international treaties of the Republic of Uzbekistan.

The legal regime for foreign investments cannot be less favorable than the corresponding regime for investments made by legal entities and individuals of the Republic of Uzbekistan.

Restoration of violated rights and interests of foreign investors guaranteed by the laws of the Republic of Uzbekistan is regulated by the legislation and international treaties of the Republic of Uzbekistan. Also, foreign investors, their representatives and employees who are in the Republic of Uzbekistan in connection with investment activities have the right to free movement throughout the territory of the Republic of Uzbekistan.

Conclusion.

In the final part of our article, summarizing all the above arguments, grounds and sources and norms of international law and legislation of the Republic of Uzbekistan, we can conclude that all other national legal guarantees of the rights of foreign investors (legal guarantees, compensation guarantees, guarantees for the resolution of international investment disputes, financial guarantees), being derived from the basic guarantees that ensure the right of ownership, and guarantees of the movement of property of foreign investors, they perform a supporting role in the implementation of the rights and legitimate interests of foreign investors in the sphere of their property.

Thus, national legal guarantees of the rights of foreign investors are the obligations of the recipient States, enshrined in the national legislation of these states, ensuring the protection of the property rights of foreign investors.

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ЎЗБЕКСТАНДАҒЫ ИНВЕСТИЦИЯЛЫҚ ҚЫЗМЕТТІҢ ХАЛЫҚАРАЛЫҚ ЖӘНЕ ҰЛТТЫҚ ҚҰҚЫҚТЫҚ КЕПІЛДІГІ

Аннотация. Мақалада Ўзбекстан Республикасының территориясындағы инвестициялық қызметтің халықаралық және ұлттық құқықтық кепілдіктері талданып, шетелдік инвесторлар құқығы мен заңды мүдделерін Ўзбекстанның ұлттық заңнамасында көзделген заңдық кепілдіктер арқылы жүзеге асыру мәселелері қарастырылды.

Зерттеудің мақсаты – шетелдік инвесторлар репатриациясына кепілдік берудің халықаралық және ұлттық құқықтық механизмін зерттеу, аталған саладағы маңызды халықаралық құқықтық құжаттарға жан-жақты талдау жасау.

Зерттеудің ғылыми жаңалығы мәселенің алғаш рет арнайы кешенді зерттеу нысанына айналу барысынан бай-қалады. Автор инвестициялық қызметке арналған халықаралық құқықтық кепілдік саласындағы халықаралық құқықтық акті, үкіметаралық ұйымдар – халықаралық құқық субъектілерінің құрылтай құжаттары санына негізделген зерттеу жүргізеді, инвестициялық қызмет кепілдіктерінің түрлі аспектілеріне салыстырмалы талдау жасайды.

Сонымен қатар, авторлардың инвестициялық қызметке кепілдік берудің халықаралық құқықтық және ұлттық құқықтық тетіктері арасындағы корреляция мәселелерін егжей-тегжейлі зерттеуі мақаланың жаңашылдығын білдіреді. Халықаралық құқықтық материалдарды талдауға негізделген бұл жұмыста:

– халықаралық инвестициялық құқықтағы халықаралық құқықтық кепілдік ұғымының анықтамасы мен құқықтық сипаттамалары;

– инвестициялық қызметке кепілдік берудің халықаралық құқықтық механизмі мен элементтері, осы саладағы көпжақты және екіжақты келісім арқылы жұмыс атқару;

– инвестициялық қызметке кепілдік берудің ұлттық құқықтық механизмі;

– халықаралық және ұлттық құқықтық реттеу қатынасы, инвестициялық қызметке кепілдік беру әдістері мен тәсілдері алғаш рет зерттелген.

Түйін сөздер: халықаралық құқықтық кепілдіктер, ұлттық құқықтық кепілдіктер, жалпы кепілдіктер, әмбебап кепілдіктер, арнайы кепілдіктер, шетелдік инвесторлар, көпжақты келісімдер, екіжақты келісімдер.

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МЕЖДУНАРОДНЫЕ И НАЦИОНАЛЬНЫЕ ПРАВОВЫЕ ГАРАНТИИ ИНВЕСТИЦИОННОЙ ДЕЯТЕЛЬНОСТИ В УЗБЕКИСТАНЕ

Аннотация. В статье проводится анализ международных и национальных правовых гарантий инвестиционной деятельности на территории Республики Узбекистан, и рассматриваются вопросы реализации прав и законных интересов иностранных инвесторов с помощью правовых гарантий, предусмотренных в национальном законодательстве Узбекистана.

Целью исследования является изучение международного и национально-правового механизма гарантии репатриации доходов иностранных инвесторов, комплексный правовой анализ важнейших международно-правовых документов в данной сфере.

Научная новизна исследования определяется тем, что поднятая проблема стала впервые предметом специального комплексного исследования. Автор осуществляет исследование, опираясь на значительное количество международно-правовых актов в области международно-правовых гарантий инвестиционной деятельности, учредительных документов межправительственных организаций-субъектов международного права, проводит сравнительный анализ различных аспектов гарантий инвестиционной деятельности.

Новизну статьи усиливает и то обстоятельство, что автор подробно изучает проблемы соотношения международно-правового и национально-правового механизма гарантии инвестиционной деятельности. В статье на основе анализа международно-правового материала впервые исследованы:

- определение понятия международно-правовых гарантий в международном инвестиционном праве, дана его юридическая характеристика;

- международно-правовой механизм гарантии инвестиционных деятельности, его составные элементы; действие многосторонних и двусторонних соглашений в данной области;

- национально-правовой механизм гарантии инвестиционной деятельности;

- соотношение международного и национального правового регулирования, методов и способов гарантии инвестиционных деятельности.

Для реализации поставленной цели с учетом обозначенного предмета исследования в работе получены следующие результаты:

- изучены международно-правовые гарантии, дана им юридическая характеристика;

- определены роль и место международно-правовых гарантий в международном инвестиционном праве.

Ключевые слова: международно-правовые гарантии, национально-правовые гарантии, общие гарантии, универсальные гарантии, специальные гарантии, иностранные инвесторы, многосторонние соглашения, двусторонние соглашения.

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