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Limitation of State Immunity in Investment Contracts

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Abstract

Today, most foreign investment of the most disputed issues in trade and economic relations between states are considered. Meanwhile, with the increasing amount of investment, all communities, including First Capital and investee are trying to take advantage of it. First from the perspective of capitalist society, creating political and economic domination and power and prestige internationally and continuing financial and economic income, will be factors encouraging foreign investment. Investee communities in order to finance economic projects,

Access to technology and technology as well as provide employment and enhance the skills of human resources, to bring these ideologies Since today in most economic contracts and agreements, as well as investment treaties, provided that the claims arising from the investments referred to arbitration, there. And the government is bound by its acceptance of the arbitration agreement. Survival and limits of state immunity in the courts of the place of arbitration is discussed that the research will be discussed

Keywords: State, immunity, immunity government investment contracts

Introduction:

Meet the needs of the domestic market, increase competitiveness, strengthen small and medium businesses in the internal management arrangements for international marketing, access to global markets and improve the export capacity of the host country, All and all of the other factors that particularly developing countries to attract foreign investment ever greater calls.

In this regard, the economic ties between countries in terms of foreign economic contracts and agreements are formed. The bilateral or multilateral investment treaties in order to facilitate and encourage foreign investment has been welcomed in the international arena.

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With the expansion of economic relations in the international arena, it is obvious that the volume of disputes arising from foreign economic contracts and agreements are on the rise. In foreign investment disputes, a party to the dispute, the private investor and on the other hand, the host state has its own power before foreign courts. Recognizing the importance of the protection of foreign investments in the category of disputes is essential.

State immunity is rooted in the fundamental principle of equality and independence of States, absolutely applied in the past, But over time the development of economic relations between countries and promote concepts such as human rights, public order and justice in society, limited government views shifted toward safety. Limited immunity based on the separation of governance and the exercise of governmental functions was During this process communities to adopt measures to restrict immunity and if possible remove it walked. It is clear that by extending this approach to the immunity and the subsequent fragility of state power is created. Recognition of the inviolability of state investment contracts and procedures to limit the scope of this contract is important.

Theoretical basis of research:

Immunity:

Impunity literally means special status that exempts holders of special attacks and reserved (Langroodi,). It also means "exemption from punishment or assignment or special privilege" is said (Aghaei,). The term immunity rights often with the word "advantage" confused, in many dictionaries and encyclopedia-and the two are mixed together and are often used interchangeably, If you can somehow put these two items is two sides of one coin. There may be due to the integration concept of "exemption" is in both words (soor esrafil).

Each word has its own meaning, immunity, exemption from duties and a lack of practice and contains,

But in the positive sense of the term advantage to follow, however, the two concepts are mixed intensively. Here is what the word "immunity" is the term used state immunity, but immunity itself is actually a benefit that has been paid to foreign governments. What is the subject of this paper is to translate the term immunity immunity of jurisdiction immunité de jurisdiction in French and the word in the English language Also in this study, executive immunity or "immunity from enforcement actions" we'll explore some researchers have examined it under the general title immunity But in practice, precedent, domestic laws and international instruments governments of these two separate investigations. Executive privilege or immunity enforcement immunity of execution is the translation of the word.

Government:

Each entity based on international law have the potential to be an actor is the subject right and duty And can in any way be advocated their legal rights. Similarly, an independent state, typically a major player in international law has the capacity and competence And consequently for any error in its own international responsibility to carry .To commit any act of international law. From a technical point of international law defines the state is not a new topi And regardless of the nature of the political regime

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and the interior is the same concept as a common denominator to all the entities claiming the government is being expanded. Montevideo Convention defines elements of the state" The state as a person of international law should possess the qualities that are: a) a permanent population; b) a defined territory; c) government; and d) capacity to enter in relation with other countries." It is obvious that such definitions lack of accountability in many cases have prompted the International Law Commission Up in 1949 and is expressed in the form of a report that To provide any definition of the concept of state or enumerate the features of this phenomenon to shed light on the cases related to not see the point. However, it seems that the elements enumerated in the definition of the Montevideo Convention findings have common values. The government claimed at the same time recognizing the existence of, either "de facto" or "de jure" the conclusion of the legal entity that is not a necessary element. In other words, with the identification identify a foreign government to function and durability necessarily essential character appears ,But the government recognizes the value of established and simply declare that aspect.

State Immunity:

Based on the principle of immunity of foreign state is immune from the jurisdiction of local governments. Questions of this chapter is to mind, What is the basis and topics Although the domestic courts, despite the principle of inviolability of territorial jurisdiction in the case of exercise of jurisdiction are prohibited.

First Speech: Legal basis of political immunity

Understanding the basis of any rule that it is fundamentally important to the survival of the validity of any rule because its existence depends And if things have gone the principles of the rule of necessity meant the destruction of the rule is the rule and therefore their prescriptions

The first paragraph: the principle of independence and equality of states (sovereign equalitys). The principle of "independence and equality of states (sovereign equality s)" has its roots in ancient Rome, according to which "equality of each jurisdiction (Superior) not" in the sixteenth century, in the wake of the reform movement in Christianity and reducing the authority of the Pope and treaties peace of Westphalia established and was determined (phalsafi). Later the idea was strong corollary of independence, equality them. Characterized by equality of States, sovereign equality and consequently it is impossible to exercise jurisdiction over another one. To require a respect for the autonomy of governments, civil duty Supreme Court refusing to exercise jurisdiction over foreign states, and it is the duty of the rules of international law.

Section II: Theory dignity of the government: The dignity of the government's theory, rooted in the mastery of the concept of the rule to the effect that the sanctity and dignity of Governors, the state's jurisdiction over them impossible to build. Beginning with the formation of the dignity of the heads of state and government were attributed. Third paragraph: theory of international comity: Although more common theory, the principle of equality and sovereignty of states, but other theories have been proposed, including international comity as one of the fundamental principles of state immunity is raised. If claims-for example, "Parliament Belgium", to justify the immunity was invoked. Paragraph IV: The principle of non-intervention. The principle of "non-intervention" as the basis of state have been raised Countries

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some of his claims, citing the principle of non-interference in internal affairs, Governments are prohibited from exercising jurisdiction over foreign governments. Chapter VI: The rule of reciprocity. This theory is based on the extent of the immunity granted to foreign state immunity in any case must be measured. The government said in its court granted the government's court And thus identify the immunity of foreign state based on "reciprocity" of government is the government seat of the Court However, a limited number of governments in some cases attached to this theory. Now it is said that the concept of reciprocity, more than it is assumed that the immunity of one of its sanctions-is effective. In summing up the above theory must be said that. None of them are absolutely not accepted in case law and doctrine, most theories sometimes individually and sometimes in combination is used What the consensus is that this doctrine is rooted in the fundamental principle of sovereign equality on each other is old.

Its immunity and the investment contracts

The risks facing private investors more than behalf of the state;One of the main risks facing private person with immunity government of of the contract. Due to the heavy volume with an increase in investment and financing infrastructure projects And being in a state party to the dispute, may make a difference in the investment contracts of more than ordinary contracts It also disputes occurred while actually surprisingly also growing,. When conflicts arise, the private investors who are in a weaker position and allow the rights and overhead the government to pay more than he is right Sovereignty because the government actually not comparable with the power of a private person. If the dispute is essentially a non-judicial dispute through diplomatic channels not settled amicably or, inevitably the two hosts and investment mechanisms judicial battle will unfold. In the field of judicial mechanisms, with the two sides of the court facing the first and second national courts, arbitral tribunals have often choose one of the references to the investor will be granted or agreed. Faced with government investment in national courts, it must be said that basically very very rarely or never that the government invested parties take to the courts This is why the advent of the entire theory of state immunity in the courts investor will be The investor is not inclined to discuss their fights in the courts Obviously, the government would be interested in it, In addition, the courts do not have contracts with the government, investor relations; and therefore never fights in practice not apply to state courts investor. With regard to the jurisdiction of the state courts of the host country That traditionally many investment contracts settle disputes were referred to it There are also discussed Due to possible violations of the neutrality of the courts of the host country and in many cases lack of expertise in investor rights issues Perhaps not so good for the investor.. It seems that Only the courts of Investment Disputes A number of courts, public, or at least allocate to this area and is expected to handle specific rules Which can be efficiency and attractiveness of national courts as an appropriate mechanism to resolve disputes increase in investment rights (Eftekhari). In addition to all the above, Since the immunity of the courts of another State is essentially a state of immunity, The immunity issue is resolved in the courts of the host state will not be the location of our discussion. The second mechanism for resolving disputes both as a result of the negotiations not be used, for judgment .This judgment is of interest to investors looking for the settlement of disputes faster, more specialized, more fair, more certain and more likely to be given more enforcement And for the host country also has the advantage that With the adoption of international arbitration as much as possible in your country more attractive investment climate to attract investors to his country more And so today due to the benefits of

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arbitration, What a way to resolve disputes to both parties in terms of investment in the field of international investment dispute settlement system has been dominant. Because state immunity arises in their non-national courts, the issue of immunity when the case to arbitration courts of the host state used non-national .But since that judgment on the basis of mutually agreed basis, the claim of immunity of the host state will find here a lot of questions that will be discussed in detail in the judgment

Limitation of state immunity in investment contracts:

government, such as reduced immunity to foreign investment and create uncertainty for foreign investors and injustice, governments seek to limit the immunity sought. Limited immunity, the separation of governance and government takeover started, and today has led to a multiplicity of many exceptions to this principle. The next section reviews the limitation of immunity, In order to support the private investor, waiver of immunity limitation implicit and procedures in the field of investment protection in existing laws, agreements and investment treaties is explained It should be noted in this context that the exact translation of the English word signs (waive), instead opting the term is used. It has been written in order to increase legal precision.

Theoretical principles and limits on State Immunity

Limited immunity theory that a significant historical roots even before the rule of absolute immunity theory, Is based on the view that the function of government can be different levels and types of imaging. According to this view, at least two different functions of the state rises: first, government and other public functions and private functions. While the first group of functions of government, the issue of sovereignty and immunity in the shade known, The second group was excluded from this privilege and subject to the jurisdiction of any court to which entry is found. To put it more clearly we can say, if governments assume some private aspects of their transactions and relationships that are more general aspects And thus more criteria are applied to private rights, do, Saleh's government can be prosecuted in the national courts. Such as buying goods from a foreign supplier specified private For use in the project business in the public sector by one of the ministries that regulate the foreign trade relations, Taken place, if the supplier in relation to the alleged transaction of the government shall Based on the theory of limited immunity, In certain circumstances, it could be relevant especially against government Government domestic courts that the law governing the contract has been adjusted accordingly and implemented, used and out of the national courts pursued Can be the first to identify the name and form of the theory In the late nineteenth century by some European higher courts found in their vote For example, the Supreme Court Florence, Italy in 1886, In which the Supreme Court expressly intended to apply to the dual nature of the separation of state immunity condemned it to rule. Switzerland's Federal Court decision dated March 13, 1918 Referring to the governments of Italy and Belgium competence procedures applied to foreign governments that were applied in private. The distinction between "acts Enterprise" and "sovereignty" of its kind of the most controversial issues of state immunity under international law, and nowadays almost all countries this resolution to the government's actions Identify the different roles of government in entering into investment contracts in separate acts of tenure and governance, the legal texts Iran also accepted.

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Conclusion:

Article 8 of the Law on Civil Service Management practices those things that defines Its realization under the authority and sovereignty of the country Including without limitation the interests of all segments of society and benefit from this type of service is not limited to use others such as policy, planning, establish justice, create a healthy competitive environment and so on. In doctrine and practice of governments traditionally two criteria "objective" and "nature" is known An action based on the nature of foreign governments and other performance-based and goal This action is to be taken into account. The traditional breakdown among the supporters of this view led to state recognition criteria applied in making the business of governance issues, has been released And thus may be applied by national courts to assess Similarly, various criteria to operate

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