

Foreign Direct Investments – the Standard of Fair and Equitable Treatment of Investments on the Example of a Case of the International Center for Settlement of Investment Disputes (ICSID)

Musabegović Ismail¹, Union University, Belgrade Banking Academy – Faculty for Banking, Insurance and Finance, Belgrade, Serbia

Galetin Milena, Educons University, Faculty of Business in Service, Sremska Kamenica, Serbia

Mitić Petar, Educons University, Faculty of Business Economy, Sremska Kamenica, Serbia

ABSTRACT – Foreign direct investments (FDI) have a tendency of growth, which will, in accordance with projections, be continued in the future. The increasing number of FDI triggers an increase in the number of cases related to them. After defining the term of international capital movements and its manifestations in the first part of the paper, in its second part the authors give an overview of foreign direct investment, both globally and in the region. The third part deals with the investment disputes before the arbitration court, while in the fourth section, a case of the International Center for Settlement of Investment Disputes (ICSID) is presented. As the case of violation of the principle of fair and equitable treatment of investments is in the main focus of this paper, it is the subject of a deeper analysis. In this paper, the authors use methodology which is characteristic for social sciences: descriptive and historical method, comparative analysis and case study.

KEY WORDS: foreign direct investments, investment disputes, international investment arbitration

Introduction

International movement of capital is present for more than a century, and the majority of capital flows are going from developed countries to the developing countries and underdeveloped countries. In other words, those who possess an extra capital are ready to place it in those countries that have a shortage of capital.

As one of the most important forms of international capital movements, FDI play an important role in any economic system. Besides the potential problems that FDI can produce in the receiving country, most of the authors agree that FDI are certainly desirable and have

¹Zmaj Jovina 12, Belgrade, Serbia, ismail.musabegovic@bba.edu.rs



an overall positive effects on the receiving economy. It is, nevertheless, important to emphasize that foreign investors might be faced with different obstacles when investing in the economy of other countries. Therefore, during the negotiations in the course of implementation of the investment itself, as well as in case of a dispute, a special attention shall be directed towards the protection of foreign investors. In addition to other things, it is to be achieved through standards of treatment of investments and foreign investors. One of those is the standard of fair and equitable treatment, which is analyzed in this paper through an ICSID case.

International movement of capital

The conflict between the growing global economic interdependence, as well as the fragmentation of world political and economic system, composed of sovereign states, is a constant potential problem in the area that regulates international money flows.

This conflict, in essence, is the conflict between politics and economics. Therefore, the relation between the state and the market, as the materialization of the relation between politics and economics, represents a significant factor in international development. This relation is becoming more often a common topic in theoretical debates, and most importantly because of the fact that strong market forces in the form of cash, trade and foreign direct investments are trying to override national borders, to avoid political control and to integrate the world, while the tendencies of the governments, i.e. national states, are to restrict, channel and place economic activities in the service of certain state interests. The market logic is to locate economic activities, where they are most productive, and the state logic is, in essence, to control the process of economic development (Musabegović, 2007, p. vii).

International movement of capital considers the transfer of real and financial assets between entities of different countries with delayed countertransference for a certain period of time, with the purpose of achievement of certain economic and political interests of the transfer participants (Unković, 1980, p. 32). What stands out is the fact that, in the modern world ruled by globalization, international movement of capital is inevitable, because no country can exist as an independent entity, isolated from the need to import and export the capital. Motives for movement of capital are different, such as: earning profits, development of production capacities for product placement to third markets, reducing the difference on the level of economic development between the countries, technology transfer and so called know how transfer, entering and winning the new markets, using cheaper labor force and cheaper raw materials for production, etc.

There are three distinctive forms of international movement of capital: international lending or movement of loan capital, international portfolio investments and foreign direct investments (Rakita, 2006, p. 320). In the International economic relations the term loan capital implies the specific form of international movement of capital which transfers the purchasing power directly in the form of a loan from the country of the loan provider to the country of the loan recipient to be used for any kind of production or consumption purposes. The essence of loan capital is the tendency of international equalization of differences in supply of capital and the needs for capital from country to country (Gračanac, 2009, p. 34-35). When we consider the portfolio investments those imply holding of foreign

securities by local residents and *vice versa*. The sole objective of portfolio investors is gaining an income on the basis of securities, with no interest in control over the enterprise. The third form are foreign direct investments. "Foreign direct investments (FDI) are the category of investment that reflects the objective of establishing lasting interest by a foreign investor (direct investor) in certain or any other legal entity (direct investment receiver) in an economy that is different from the one of the direct investor. The lasting interest implies the existence of a long-term relationship between the direct investor and the direct investment enterprise, with the significant degree of influence on the enterprise management." (OECD, 2008, p. 234).

There are different forms of FDI, and a division to which most of the authors in this field agree indicates that there are following forms: (a) *Greenfield* investments - parent company (usually Multinational Corporation) starts a new venture in a foreign country by building a completely new operational, technological, organizational and financial infrastructure (b) *Brownfield* investments - a company with foreign investment initiates the operations in a building or in an area that has been previously used for manufacturing or other type of activities, where there is already a certain infrastructure existing (Gračanac, 2009, p. 41) (c) Joint ventures are business arrangements between two or more parties, usually economic entities, which have agreed to consolidate their resources in order to achieve the specific objectives of the partnership. Joint ventures provide the advantages by reducing the risks in penetrating the new markets, by allowing the consolidation of resources for large investment projects, etc. Each participant is responsible for profits, losses and expenses in connection with joint venture. Moreover, there are two additional forms of FDI frequently mentioned in economic literature as separate forms. (d) Cross-border acquisitions – take-over or incorporation of existing companies in one country to a company in another country. From a legal point of view, a company which is the subject of take-over ceases to exist. (e) Cross-border mergers - merging of two companies from different countries that continue to operate as a new, unique company.

Global and regional overview of FDI

Barrios, Gorg and Strobl (2005) state that FDI flows have increased dramatically over the last three decades or so, while Moosa and Cardak (2006) argue that FDI has assumed increasing importance over time, becoming a prime concern for policy makers and a trendy debatable topic for economists. This was further verified by Sandalcilar and Altiner (2012) who stated that the importance of FDI has increased almost in all countries with the globalization process intensified with 1980s due to their positive impact on economic growth.

According to data from the *World Investment Report 2014*², after a decrease in 2012, FDI record an increase at the global level, in 2013 by 9%, to \$1.45 trillion. Developing economies were leading by FDI inflows in 2013. FDI flows to developed countries were increased by 9% to \$566 billion (39% of global flows), while developing countries have reached a new maximum of \$778 billion (54% of global FDI flows). A total of \$108 billion were invested in

² UNCTAD, World Investment Report 2014,
http://unctad.org/en/PublicationsLibrary/wir2014_en.pdf

transitional economies. FDI outflows from developing countries also reached a record level. Transnational corporations (TNCs) from developing countries are increasingly investing in foreign companies from developed countries that are located in their regions, turning them into their branches. Developing countries and countries in transition have jointly invested \$553 billion i.e. 39% of global FDI outflows, compared with only 12% in the early 2000s. *United Nations Conference on Trade and Development (UNCTAD)* projections are that FDI flows could rise to \$1.6 trillion in 2014., \$1.7 trillion in 2015. and \$1.8 trillion in 2016. However, *UNCTAD* notes that regional instability, political uncertainty and sensitivity in some emerging markets may negatively affect the expected increase of FDI (*UNCTAD*, 2014, p. ix).

Lack of capital and modern technology, underdeveloped export channels and low domestic savings are characteristic for countries in transition. The inflow of FDI is significant primarily due to economic reforms and technological progress, human resource development, increase of foreign-currency reserves and creation of a competitive market. Some countries in transition have limiting factors that reduce the inflow of FDI, affecting primarily the unprepared ones, and are related to: trade deficit, unemployment due to transformation of the ownership structure in the process of privatization, increasing the competition, as well as the balance of payments deficit that may occur due to a greater influx of these investments in the non-tradable goods sector.

FDI inflows towards the countries in transition are taking place simultaneously with the abandonment of centrally planning systems while introducing modern market business mechanisms. The role of FDI in countries in transition grew in proportion to the speed of transformation and reform towards a market economy, while attaining a certain degree of economic stabilization and growth (Veselinović, 2004, p. 31). In addition to the economic transformation, macroeconomic stability, the government's readiness to support FDI inflows, the adequacy of leading the economic policy, political factors (sanctions, wars, bilateral and multilateral agreements with other countries) are factors that influence the FDI.

The following table shows the FDI inflows of selected countries of the region.

Table 1. FDI inflow in the countries of the region from 2004 to 2013. (million \$)

	2005.	2006.	2007.	2008.	2009.	2010.	2011.	2012.	2013.
Serbia	1.609	4.256	3.439	2.955	1.959	1.329	2.709	365	1.034
Bosnia and Herzegovina	595	555	1.819	1.002	251	230	435	366	332
Albania	262	324	659	974	996	1.051	1.031	855	1.225
Macedonia	97	433	693	586	201	211	422	93	334
Montenegro	478	622	934	960	1.527	760	558	620	447
Bulgaria	3.923	7.805	12.389	9.855	3.385	1.601	1.864	1.375	1.450
Romania	6.483	11.367	9.921	13.909	4.844	2.940	2.670	2.748	3.617
Croatia	1.788	3.423	4.925	5.938	3.346	490	1.517	1.356	580

Source: World Investment Report 2007; World Investment Report 2008; World Investment Report 2012; World Investment Report 2014.

Bulgaria, Romania and Croatia, all three members of the European Union (EU) had the most significant FDI inflows over the past ten years. The assumption of most of the experts is that this was primarily due to improved infrastructure and greater political and economic stability in these countries, which reduces the potential risks for foreign investors. An upward trend of FDI in most countries is noticeable until the drastic fall that was most evident in 2009, which was a direct consequence of the Global Financial Crisis. At that time, FDI records a decrease in all countries except Albania and Montenegro. Furthermore, if we look at other countries in the region, we can notice that during the crisis Romania, Bulgaria and Croatia achieved significantly higher FDI inflows than other countries in the region, which again points to the importance of political and economic stability, and developed (or more developed) infrastructure.

Investment disputes

Together with the inflow of FDI, there has been a constant growth in the number of disputes between one State (host state) and investors (nationals of another contracting State)³. The majority of these cases have been entrusted to the International Center for Settlement of Investment Disputes (ICSID), an autonomous international institution founded in 1966 on the basis of Convention on the Settlement of Investment Disputes between States and Nationals of Other States⁴. According to the ICSID Annual Report 2013⁵, the number of newly registered disputes that are solved before the Center was 43. It represents the largest number of such cases in one fiscal year until now and indicates that *ICSID* is very important institution regarding international investments and economic development.⁶Anyhow,

³ This type of arbitration between individuals (natural persons/legal persons) and the state is of a more recent date, while the disputes between states with regard to this issue are known from the late 18th century. Namely, the disputes related to foreign investments were international disputes between investor's state and the receiving state, and they were based on diplomatic protection, which has been proved ineffective. See: Singh, Sachet and Sharma, Sooraj, *Investor-State Dispute Settlement Mechanism: The Quest for a Workable Roadmap* (January 31, 2013). Merkourios, Vol. 29, No. 76, pp. 88-101, January 2013. Available at: <http://ssrn.com/abstract=2219248> and Stanivuković, M., *International arbitration, Official Gazette*, 2013, pp. 26.

⁴ *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (the ICSID Convention), 575 UNTS 159, 4 ILM 524 (1965), also called the Washington Convention, concluded in 1965, entered into force in 1966; currently has 159 States Signatories; The Republic of Serbia ratified the Convention in 2007; it is interesting to note that some states abandoned the Convention (for example, Bolivia 2007, Ecuador 2010, Venezuela, 2012), see: Schreuer, C., *Denunciation of the ICSID Convention and Consent to Arbitration*, Chapter 15 in *"The Backlash against Investment Arbitration"*, Waibel, M., Kaushal, A., Kyo-Hwa Chung, L., Balchin, C., pp. 353-368, 2010, available at:

http://www.univie.ac.at/intlaw/wordpress/pdf/denunciation_icsid.pdf

⁵ Source: ICSID Annual Report, available at:

<https://icsid.worldbank.org/ICSID/FrontServlet?requestType=ICSIDPublicationsRH&actionVal=ViewAnnualReports>

⁶ The conditions for the dispute to be resolved by conciliation or arbitration organized by ICSID are available at: www.worldbank.org. According to the UNCTAD data for 2013, 61% of disputes between investors and the host state were resolved before the ICSID, 26% before the UNCITRAL, and 5%



besides the resolving of investment disputes before the ICSID, which are to be discussed in this paper, it is important to point out that there is a possibility that disputes between the host state and a foreign investor could be resolved before other institutions and in accordance with different rules, such as UNCITRAL Arbitration Rules⁷, International Chamber of Commerce⁸, London Court of International Arbitration⁹, Arbitration Rules of the Chamber of Commerce in Stockholm¹⁰, The Dubai International Arbitration Center¹¹ and others¹².

Settlement of investment disputes before international court of arbitration is sometimes provided by Bilateral Investment Treaty (BIT)¹³ or the provisions of the multilateral / regional agreement, such as, for example, North American Free Trade Agreement (NAFTA)¹⁴ and the Energy Charter Treaty¹⁵ (ECT). In the arbitration dispute, which is the subject of our analysis, the dispute between the company *Swisslion LLC Skopje and Republic of Macedonia*, there was such an agreement - *Agreement between the Macedonian Government and the Swiss Federal Council on the Promotion and Reciprocal Protection of Investment*, signed on 26 September 1996.¹⁶

Infringement of Standard of Fair and Equitable Treatment of Investment (FET) - SWISSLION LLC SKOPJE V. MACEDONIA (ICSID CASE NO. ARB / 09/16)

Prior to reviewing the case, it is necessary to point out the characteristics of BIT's concerning the protection of the foreign investor's rights. Namely, the majority of bilateral investment agreements foresees that, in the event of an investment dispute, it will be

before the Chamber of Commerce in Stockholm. Source: UNCTAD, *Recent Developments in Investor State Dispute Settlement (ISDS)*, May 2013, p. 4,

http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf

⁷ Arbitration Rules of the United Nations Commission on International Trade Law, source:

http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/2010Arbitration_rules.html

⁸ International Chamber of Commerce Arbitration Rules, 2012, available at:

<http://www.iccwbo.org/products-and-services/arbitration-and-adr/arbitration/icc-rules-of-arbitration/>

⁹ London Court of International Arbitration, available at:

http://www.lcia.org/Dispute_Resolution_Services/LCIA_Arbitration_Rules.aspx

¹⁰ Stockholm Chamber of Commerce, Arbitration Institute of the Stockholm Chamber of Commerce, available at: <http://www.sccinstitute.com/skiljedomsregler-4.aspx>

¹¹ The Dubai International Arbitration Center, available at:

<http://www.dubaichamber.com/en/about-us/initiatives/dubai-international-arbitration-Center>

¹² As a rule, *ad hoc* arbitral tribunals act on the basis of the UNCITRAL Arbitration Rules, while other systems of resolving disputes in arbitration contained herein are constitute the so called institutional arbitration.

¹³<http://www.italaw.com/investment-treaties>, <https://icsid.worldbank.org/ICSID/FrontServlet>

According to the UNCTAD, Serbia has concluded 49 BITs until June 1, 2013.

¹⁴ North American Free Trade Agreement, 1992,

http://www.naftanow.org/agreement/default_en.asp; 2012- investment agreement between China, Japan and South Korea.

¹⁵ Energy Charter Treaty, 1994, 34 ILM 360 (1995),

http://www.encharter.org/fileadmin/user_upload/document/EN.pdf

¹⁶ *Swisslion LLC Skopje v. Macedonia, former Yugoslav Republic of* (ICSID Case No. ARB/09/16)

resolved before the international arbitration (and not before the courts of the host country)¹⁷. In addition, BITs generally contain the provisions which protect the foreign investors from expropriation, provide Standard of Fair and Equitable Treatment of Investment (FET), the Standard of National Treatment, Most-Favored-Nation treatment, Full Protection and Security of investment.¹⁸ In the dispute *Swisslion LLC Skopje v Macedonia*, among other things, there was a violation of the standard of fair and equitable treatment (FET)¹⁹, which, according to some of the authors (Maniruzzaman, 2012), more broadly could be considered as a breach of The principle of good faith and honesty, so it will be analyzed in more details.

The prosecutor in this dispute-Company Swisslion LLC from Skopje initiated in 2009 the arbitral proceeding against the Republic of Macedonia, according to the Arbitration Rules of ICSID, due to breach of the Agreement between the Macedonian Government and the Swiss Federal Council on the Promotion and Reciprocal Protection of Investment.

The Swisslion LLC is a Swiss company owned by Rodoljub Drašković, Serbian citizen. The Company has successfully operated in Macedonia, and decided, at a certain point, to acquire shares of Agropold, socially owned Macedonian company facing bankruptcy. It was done in two installments – with the first installment Swisslion LLC acquired 26.58% stakes in Agropold. Soon after, Swisslion LLC won the tender where the Government offered to sell Agropold shares owned by Macedonian fund for pension and disability insurance and thus gained additional 5,339 shares. Finally, Swisslion LLC bought another 788 shares from private persons and thus became the majority owner in Agropold, with a share of 55.72%. When the company Swisslion LLC succeeded in its intention and Agropold began to operate efficiently and to make profit, the Macedonian authorities have taken radical steps to restore its stake in Agropold.

According to claims of the company Swisslion LLC, Macedonian authorities have requested from Second Basic Court in Skopje to order interim measures which would make the Company unable to exercise its rights on the basis of Agropold's shares. Since this has not produced the expected results, the State Attorney has initiated the proceeding against the company Swisslion LLC before the Commission for Securities, with the intention to freeze the second tranche of shares. The decision of the Constitutional Court was that the Securities Commission is not authorized to do so. The Commission then issued an order that incapacitates the company Swisslion LLC to vote and gain dividend based on the part of shares acquired in the first tranche. However, the Supreme Court annulled this decision.

After that, following the Governments' request, the Court determines interim measures in order to restrict the disposal of shares from the second tranche. Accordingly, the court makes a decision that the Agreement on Sale of Shares (the Agreement), which was

¹⁷ In fact, most of the modern BITs contain a so-called *cafeteria clauses* that allow the foreign investors to choose whether to initiate proceedings before International Arbitration Court or a national court. Closely related to this is the so-called *fork in the road clause* which means that once the choice has been made between these two options, it is binding.

¹⁸ See: Cvetković, P., *International Law of of Foreign Investments*, Zadužbina Andrejević, Belgrade, 2007, pp. 22-32.

¹⁹ See: *Fair and Equitable Treatment Standard in International Investment Law*, OECD Directorate for Financial and Enterprise Affairs Working Papers on International Investment, 2004.



concluded when purchasing shares from the second tranche, was terminated and performs their transfer to the Ministry of Economy (Ministry), without any compensation.

Macedonian officials have initiated the criminal proceeding against the General Manager of the company *Swisslion LLC*, Executive Director of Agropold and *Swisslion* representatives, stressing that the company *Swisslion LLC*, wants to arrogate Agropold by concluding a fictive loan agreement. As a mean of security for the fulfillment of this contract a mortgage was put over the society Agropold's property. Although the State Attorney rejected all allegations, the following day the most important news in media was "Criminal charges against Agropold and *Swisslion*", while the decision of the State Attorney was never published.

The company *Swisslion LLC* argued that there has been violation of the following provisions of the Agreement:

1. Macedonia illegally expropriated the shares of the second tranche, which is contrary to Article 5. of the Agreement
2. Macedonia has failed to fulfill its obligations towards *Swisslion LLC*, and thereby violated Article 12. of the Agreement
3. Macedonia unreasonably diminished the right of disposal of the company *Swisslion LLC* in the investment, which is contrary to Article 4(1) of the Agreement
4. Macedonia treated the investment of company *Swisslion LLC* unjustly and unfairly, which is in contradiction with Article 4(2) of the Agreement.²⁰

The Arbitration court determined that Macedonia violated the Article 4(2) of the Agreement because it failed to act in accordance with the principle of fair and equitable treatment towards the investment of the company *Swisslion LLC*, while other claims of the company *Swisslion LLC*, on violations of the provisions of the Agreement, were rejected.

As for the standard of fair and equitable treatment, the following is predicted by the Agreement: Each Party shall, within its territory, ensure equitable and fair treatment to investments of investors of another Contracting Party ...²¹

Court of Arbitration considered that it was not necessary to go into a detailed analysis of the principle of fair and equitable treatment of investments, but it took into consideration the guaranties which foreign investors have on the basis of it²². Moreover, interpretation of Article 4 of the Agreement should include the intention of the parties, which was stated in the preamble... among other things "creation and maintaining the favorable conditions in the territory of one Contracting Party/State for the investments by investors of the other

²⁰ *Swisslion LLC Skopje v. Macedonia, former Yugoslav Republic of* (ICSID Case No. ARB/09/16); Onayeva, S., Torterola, I., *International Arbitration Case Law, Swisslion LLC Skopje v. The Former Yugoslav Republic of Macedonia*, School of International Arbitration, Queen Mary, University of London,

<https://docs.google.com/viewer?a=v&pid=sites&srcid=aW50ZXJuYXRpb25hbGFyYml0cmF0aW9uY2FzZWxhdY5jb218d2VifGd4OjQ4YTVjZTgzYTdjM2NiMGQ>

²¹ Para. 272.

²² Para. 273.

Contracting Party” and recognizing “the need to promote and protect foreign investments with the aim of fostering the economic prosperity of both States”²³.

According to the opinion of the Court of Arbitration, there was a violation of the *FET* standard in this case, especially relating to the response of the Ministry, or the lack of timely response to *Swisslion* LLC company’s requests that its investments were made in accordance with the Contract of sale of shares; some actions of the Securities Commission; and finally, the publication that the Ministry of Internal Affairs launched an investigation against the company *Swisslion* LLC, while the public prosecutor's decision has never been published²⁴. In fact, taking into account all the facts, the Court of Arbitration found out that the Ministry had an obligation to respond to *Swisslion* company’s written and verbal requests about justification relating their decisions regarding investments²⁵. There is also violation of *FET* in the failure of Ministry to include company *Swisslion* LLC in consideration of questions regarding the violations of the Agreement.²⁶ As for the actions of the Securities Commission, the standpoint is that the request of the State Prosecutor was aimed at imposing additional obligations to *Swisslion* LLC company through an administrative procedure²⁷. Besides that, the Court of Arbitration points out that the publication of the Ministry of Internal Affairs, that an investigation was launched against the company *Swisslion* LLC, contributed to the deterioration of the status and reputation of the company *Swisslion* LLC in Macedonia. Also, the Court of Arbitration fully accepted the statement of the witness, the general manager of the company *Swisslion* LLC that all these actions caused a lot of media attention and affected both the production as well as the confidence that the company had among clients and suppliers.²⁸

The Court of Arbitration in Washington brought the decision that Macedonia is obliged to pay the indemnity in the amount of 350,000 euros to *Swisslion* LLC company for the minor breach of *FET* standard in the BIT concluded between Switzerland and Macedonia²⁹.

²³ Para. 274.

²⁴ Para. 275, 276.

²⁵ Para. 285.

²⁶ Para. 291.

²⁷ Para. 296, see para. 292. etc.

²⁸ Para. 297-299.

²⁹ According to Dolzer: " *In a broad sense, acceptance of the standard is a response to the danger of the "obsolescent bargain" which may threaten an investor who was welcomed by the host state before his investment, who sunk its money into the project, but who later on finds itself subject to the upper hand of the host state.... The acceptance of the standard is directly linked to the fundamental moral and legal grounding of the notion of fairness, anchored in a universally accepted sense of justice, but also in classic rules of customary law governing the protection of foreign nationals and companies... Often it has been assumed that the traditional capital-exporting countries in general have stood for a wide version of the standard, whereas southern countries preferred a narrow one. However, from today's perspective, this generalisation is flawed. What is well-known is that the United States has turned to a narrow approach. What has received less attention is that China, with the most BITs worldwide except for Germany, has adopted the widest possible approach, that is, an unqualified version of FET. Essentially, the United States has become concerned about the need to defend cases concerning inward investments as respondent, while China has focused on its role as outward investor and the need for fair treatment of Chinese investments abroad. In other words, the FET standard does not, at least not today, pitch northern and southern states against each other. The landscape of investment arbitration has been transformed*



Conclusion

The importance of FDI is undeniable, especially from the aspect of the receiving country. In our region, the FDI inflow was satisfactory, and most of the states recognized the positive effects of this form of international movement of capital. Countries have created official incentives for foreign investors, such as: tax incentives, various subsidies and other incentives, shortening of procedures for registration of enterprises, etc. After the decrease of FDI inflow in the region, which was a direct consequence of the global financial crisis, there are significant potentials for increasing the inflow, on the basis of an extensive analysis of relevant institutions and authors, although we still have no quantitative confirmation of this tendency. With the expectation of an increased inflow, and the increased number of FDI in the region, it is necessary to pay due attention to the potential disputes that may arise as a result of the movement of capital, especially those that may arise between an investor who is a citizen of one country and another country – the receiving country.

From the case presented in this paper, one can see the importance of conduct of the receiving country, and (dis)respect of the standard of substantive treatment of FDI, and that protection of FDI in the region is still not an adequate one. In the specific case of the Securities and Exchange Commission of the Former Yugoslav Republic of Macedonia (MSEC) has violated the basic principles of investor protection, making regulatory and supervisory role of the International Organization of Securities Commissions (IOSCO) meaningless. In this way, MSEC has sent a message to future investors that there are still significant difficulties in applying market mechanisms. All in all, market mechanisms were not applied, or are being applied selectively, and only in certain cases, and to a certain point these mechanisms are respected and have institutional support.

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Strane direktne investicije – Standard poštenog i pravičnog tretmana investicija na primeru slučaja Međunarodnog centra za rešavanje investicionih sporova (ICSID)

REZIME – Strane direktne investicije (SDI) imaju tendenciju rasta. Prema projekcijama, ovaj trend će se održati i u budućnosti. Sve veći broj SDI izaziva i povećanje broja slučajeva koji se odnose na njih. Nakon definisanja pojma međunarodnog kretanja kapitala i njegovih manifestacija u prvom delu rada, u drugom delu autori daju pregled stranih direktnih investicija, kako u svetu tako i u regionu. Treći deo se bavi investicionim sporovima pred arbitražnim sudom, a potom, u četvrtom delu je prikazan slučaj Međunarodnog centra za rešavanje investicionih sporova (ICSID). Kako je slučaj kršenja standarda poštenog i pravičnog tretmana investicija u fokusu ovog rada, on je detaljnije prikazan. U ovom radu korišćena je metodologija karakteristična za društvene nauke: deskriptivni i istorijski metod, uporedna analiza i studija slučaja.

KLJUČNE REČI: strane direktne investicije, investicioni sporovi, međunarodna investiciona arbitraža

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