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Arbitration in Economic and Legal Aspects

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Abstract: **Arbitration is a procedure that efficiently resolves disputes between parties. As alternative procedure, arbitration has begun to dominate globally in disputes between businesses. More complicated disputes and those with larger amounts, all over the world are solved by arbitration tribunals. While in economic terms, arbitration is the process of taking advantage of price differences in money, precious metals or stocks. If we assume that buying and selling is to be fulfilled at the same time, then the arbitrator is not responsible for any risk. Positive differences between the sales price and the purchase price, is the benefit of an arbitrator. During the study of literature research we did the evaluation of arbitration made in economic and legal terms. Making clarification of arbitration, the article will include possible differences and similarities in these two different areas, additionally its application in the international field.**

Keywords: **Arbitration, Economics, Law, International.**

1. ARBITRAGE IN LEGAL ASPECT

This chapter provides an introductory presentation on arbitration as a form of dispute resolution. Chapter describes the development of arbitration over time, its advantages and disadvantages compared with the judiciary and other forms of dispute resolution.

1.1. Summary for Arbitration:

Disputes shown between the parties which are based on any contract or agreement for a long time have been resolved only by the competent court. But with the development of economy and trade, these disputes have evolved and therefore appeared the necessity for alternative and more efficient ways to resolve such disputes besides the courts.

One of these methods is also arbitration. Although considered a new method and alternative way, arbitration along with mediation and negotiation, present methods that have been used since the earliest times to resolve disputes, thus we can say that these alternative methods are ancestors of the courts to which we turn today.

Arbitration can be defined as an agreement between two or more persons, that some or all legal disputes which have arisen or which may arise between them, to subject to arbitration (Assembly of Kosovo, Law no. 02/L-75, Article 2).

So, arbitration is based on a preliminary agreement whereby the parties agree that in case of dispute the resolution will be made in the midst of arbitration rather than court, this agreement explicitly excludes the jurisdiction of the courts and gives competence to arbitration. It should be noted that the arbitration agreement is valid only if it is written down.

This order is beginning to popularize every day more and more because the businesses are aware that in addition to court proceedings, arbitration is a more informal, faster, cheaper and also more private and confidential.

Arbitration compared with the proceedings has its advantages and disadvantages. Can be considered as priority the speed of dispute resolution, low cost, confidentiality, the expertise of the arbitrator in the relative field, the selection of arbitrators by the parties themselves and the decision shall be final and binding on the parties.

While the shortcomings of arbitration can count impossibility of appeal against decisions of arbitrator, the possibility of verification of the actual situation is more limited compared to courts, arbitrators when necessary cannot take action against the parties, execution of the arbitration decision is more difficult compared to court's decision.

But we must emphasize that what is considered an advantage for one party to the other party can be a disadvantage. A good example of this may be the inability to appeal against the final decision, this feature for the winning party presents an advantage but for the party that loses the dispute represents a deficiency. Unsatisfied party only in certain cases can appeal to the competent court.

1.2. Division of Arbitration:

Arbitration as a form of dispute resolution between the parties can be institutional or ad hoc (USAID, 2014, pp. 9). Institutional Arbitration is a permanent organization which is administered on the basis of certain procedural rules (Krasniqi, 2015, pp. 94). In Kosovo in 2011 was shaped such arbitration institution named Kosovo Permanent Tribunal of Arbitration within Kosova Chamber of Commerce. While in terms of international institutions, we can mention the International Chamber of Commerce, the International Centre for Dispute Resolution, London Court of International Arbitration, etc.

Ad hoc arbitration is an institution established by agreement of the parties in dispute to solve only the case at hand, after completion of the case ceases to exist. The ad hoc arbitration is not a formal administration by any particular organization, the parties themselves establish the procedural rules under which the dispute will be resolved (Krasniqi, 2015, pp.94).

Priority of institutional arbitration could be considered the content of the procedural rules which are designed by professionals, thus resolving the dispute will be based on these rules, and we could say that these rules offer safety and efficiency for the parties during the procedure.

Above we mentioned that one of the advantages of arbitration is the selection of arbitrators by the parties themselves in the proceedings, concerning this, institutional arbitration offers the parties a list with the names of arbitrators who are more convenient and more professionalized to resolve the dispute in question.

On the other hand, ad hoc arbitration offers a higher flexibility compared with institutional arbitration. This flexibility mainly has to do with freedom of the parties to the procedural rules to adapt to their needs and desires. But we must emphasize that the parties are free to follow the rules drafted by some ad hoc arbitration professionals.

Another advantage of ad hoc arbitration are lower costs and speed of the completion of the procedure. Compared with institutional arbitration ad hoc has lower costs because the parties are not obliged to cover the expenses of the institution but only the costs of the chosen arbitrators.

1.3. Arbitration in Kosovo:

Kosovo arbitration procedure takes place under the Law on Arbitration adopted in 2007, the Law on Civil Procedure and on the basis of the Law of Execution Procedure.

Arbitration Law contains rules that apply to arbitration agreements, arbitration proceedings and the recognition and enforcement of arbitral decisions made inside and outside of Kosovo. Thus, this Law regulates the procedure of arbitration since its inception, namely the initiation of proceedings until a final stage which is the recognition and enforcement of the ruling.

This law sets that disputes can be settled by arbitration only when there is a prior written agreement between the parties, who agree to such a solution. Disputes that can be resolved by arbitration must be civil or commercial, issues which do not fall into these categories cannot be resolved through arbitration (Assembly of Kosovo, Law no. 02/L-75, Article 5).

Regarding arbitrators, law states that the arbitral tribunal consists a sole arbitrator or a number of arbitrators with condition that this number must be an odd number. Parties are free to decide on the number of arbitrators, but in case of disagreement between the parties law offers a solution where the body consists of 3 arbitrators, where each party chooses one arbitrator and the chosen arbitrators choose the third one. Arbitrators appointed by the parties can be challenged only in cases of alleged impartiality or independence, or if the arbitrator does not meet the qualifications specified (Assembly of Kosovo, Law no. 02/L-75, Article 9).

Every decision of the tribunal is made by majority of all arbitrators, unless the parties agree otherwise. The tribunal's decision is issued in the written form and is final and mandatory to the parties. The decision for the parties has the same legal effect as a final judgment of the court.

Decisions issued in Kosovo can only be executed once declared enforceable by the Court. The application for recognition and enforcement of an arbitral ruling made outside of Kosovo shall be submitted to the Economic Court.

Finally, it should be pointed out that arbitration as an alternative dispute resolution has an irreplaceable role in the justice system. Kosovo must make numerous efforts that our citizens become aware of the importance of arbitration. Applying this method significantly would facilitate the work of the courts, because it is an indisputable fact that a very small number of judges in our courts are faced with a very large number of cases.

2. ARBITRATION IN ECONOMIC ASPECT

In this part of article, we research about economic Arbitrage. We explain for model price of arbitrage, about International economic law and connectivity about International arbitrage and economic law.

2.1. Model Price of Arbitration:

Theory of Price Arbitration (Arbitrage Pricing Theorem-APT), the pattern of asset prices of equity (Capital Assets Pricing Model-CAPM), is presented by Ross as alternative approach to model variance average, and it is this model in years following is tested by the author (researcher) different in order to verify the applicability of the model and as a result, has become the object of many studies relation between these two models (Khan and Sun, 1997, pp. 4430).

Securities markets, which, depending on the degree of correlation comprising a homogeneous group of securities, IE, between each common economic factor affecting the securities and have a complex structure. Therefore, to understand the mechanism of prices in the securities market, it has significant weight in order to understand the interaction between these securities (EOM and others, 2007, pp. 142).

In the absence of arbitration APT shows that there is a linear relationship between risk and overall revenue expected, and, therefore, it assumed to be identical risk factors arising from loads portfolio (Dybvig Ross, 1985, pp. 1181).

The general hypothesis of the theory of asset prices, presupposes that the asset (wealth) depends respectively correlates with the risk of return expected. Usually, financial risk measured by beta assets. CAPM approach has an impact on the expected returns, which then returns on assets and returns of the market measured by covariance.

While the APT approach the expected return on assets has conjunction with the premium, resulting in the risk factors and this is equivalent to multiplying the beta. Here, beta represents the sensitivity of the return of risk factors assets. Also, these theoretical models help to make comparisons between assets (assets), based on the investor's risk measured by beta technique. In the original formulation of the theory of expected returns are defined as follows:

1. Beta is consistently over time,
2. Between and return of assets to the market portfolio (CAPM) or risk factors (APT) there is a linear relationship,
3. The CAPM approach to the market portfolio, there is a source of danger; while the APT approach are numerous sources of risk and those risks are not clear. Therefore, any selection is made, cannot affect other observed risk sources (Gonzales-Rivera, 1997, pp. 437).

According to Ross's, APT is based on three fundamental assumptions:

1. Markets do not offer opportunities for the chances of arbitration,
2. The return of assets is determined by the factor models and
3. By creating a diversified portfolio, it is possible to eliminate the risk.

Under these assumptions, the main results obtained from the APT IMF, represent unsystematic risks may be varied character, and thus less number of factors in asset prices can be explained based on their prices (Kelsey and Yalçın, 2007, pp. 97).

In price arbitrage model (Arbitrage Pricing Model-APM), the return of the securities market form factors and sector and it can be said that there is a positive relationship between risk and return. These factors include the perpetrator in these variables, such as: Gross National Product, inflation, currency and interest. By increasing the number of securities in a non-systematic risk will drop, but will not change the systemic risk. The proceeds of the securities may be submitted (expressed) as the total risk-free interest rate and variable risk factors Securities (Atan and others, 2005, pp. 8).

2.2. Literature Review:

APT was first tested by Roll and Ross, in New York Stock Exchange and American Stock Exchange between 1972 and 1962 saw continuous process in 1260 Total creating a portfolio of 42 stocks in alphabetical order were tested APT. Results in affecting asset returns by APT source of systematic risk are at least 3 units shown as APT can be tested (Roll and Ross, 1980, pp. 1083).

Fama in his study, real action with the stock price has examined the interaction between inflation and money supply. Consequently, stock returns and industrial production, GDP, money supply, in real variables such as interest rate and lagged values of inflation is found to be a strong positive correlation (Fama 1981, pp. 551).

Cho, the study by Elton and Gruber, Roll and Ross have used their work to bring the rates they find with the simulation method as renewing the dependent variable. The research has found that macroeconomic factors that affect the returns of the portfolio 3 result (Cho and the others, 1984, pp. 4).

Chen, Roll and Ross in their study, the team studied systematically the impact on stock returns and economic variables securities prices. Stock returns are affected by economic news as a result of the study and the results they have achieved in this line pricing (Chen, 1986, pp. 493).

Rapach in his study examined the long-term relationship between inflation and stock prices for 16 different countries and his work result has been determined will not cause a strong decrease in the value of the shares rise in inflation (Rapach, 2001, pp. 337).

2.3. International Arbitration and International Economic Law:

In his article La Fontaine and Eisemann (1997) international arbitration is a well-established method of resolving international disputes. Its origins date back to the earliest records in history. Hundreds arbitration conducted between the period of 1794 and the beginning of the twentieth century in the form of Arbitrators sovereign, independent experts, courts collegiate, tribunals and arbitration committees for General Requirements, commissions ad hoc, etc. (La Fontaine and Eisemann, 1997, pp.210).

Jay Arbitration Treaty until the first quarter of the 20th century have performed at least a triple function. Another function was to provide a legal alternative method as a solution to disputes available to countries that were not willing to submit their agreements authorized third party to resolve the binding price.

Arbitration (interference) for that time were alternative / single legal possibility for resolving disputes in competition with political and diplomatic methods, such as negotiations or agreement from. The second function of these interventions was to contribute to the development of principles and justice international rules. Many of the decisions contained prices for observation, clarity and ensuring a better understanding of the rules and principles of international law as sources of international law (Coussirat-Cousterem and others, 1989, pp. 100-101).

International intervention has been and is now more than ever, the most favorite among a sounder means available to deal with disputes of international law both in public as well as in private. Faced with the shortcomings of international justice, it mandatorily softened lack of legal intervention and was used as an alternative form. While each dispute has to solve in accordance with the rules and principles of international law, arbitration/ intervention was dominant resource for meeting the shortcomings of international justice (Carlstone, 1946, pp.7).

Other assets including arbitration instability/flexibility of the intervention process, confidentiality and privacy of the parties, delivery and expertise, among others.

2.4. Connectivity between the Arbitration and Economic Law:

The notion of legalism of international affairs means application of mandatory rules and procedures together with the efficient application of remedies to ensure compliance of international commitments. Legalization of international relations began in 1945 with the creation of the United Nations and is going through extraordinary development in other areas of international law such as human rights, humanitarian law, international criminal law, environmental protection and progressively in the field of international economic relations (Winham, 2009, pp.9).

Increases in relations between arbitration and international economic laws should easily evaluate dramatic changes taking place in the international community after the end of World War II. These changes were especially crucial in the development of an international legal order economic (Qureshi, 2008, pp. 1158).

Prevalence of arbitration IEL was nothing but the conclusion of an international economic atmosphere, carved into the multilateral trade system and the protection of foreign investments, was. Regarding international trade, countries require to guide the global economy, while creating a multilateral agreement able to apply to the Member States; in the case of foreign investment rationale is to regulate the legal protection of a particular source of economic promotion of mechanisms that encourage foreign investment as stated in the proliferation of bilateral investment treaties and the restoration of the laws of arbitration at national level (Daza, 2011, pp. 15-16).

3. SWOT ANALYSIS

Analysis is a strategic planning method used to evaluate the Strengths, Weaknesses, Opportunities, and Threats involved in a project or in a business venture. SWOT analysis is a technique to analyze the Strengths, Weakness, Opportunity and Threats of a decision, problem ad place etc. (Singh, 2010, pp. 16).

Table 1: SWOT Analysis

	Arbitration in Economic Aspect	Arbitration in Juridical Aspect
Strengths	- Arbitrage, risk-free revenue opportunities are explored with positions taken simultaneously in two or more markets. - Another effect of the arbitration process, making the market more liquid assets have been. Thus, it is possible to reduce processing costs.	- The speed of dispute resolution. - Low Cost. - Confidentiality. - The expertise of the arbitrator in the relevant field. - The decision final and binding on the parties.
Weaknesses	- Beginning to be used as a model. - Not tested enough by the researchers.	- Inability to appeal against decisions in certain cases. - Difficulties in the actual condition. - Difficulties in the enforcement of decisions.
Opportunities	- Risk-free opportunity to gain data. - Used to determine Price - Arbitrage Pricing Theory explains better the concept of risk, shows the importance of systematic and unsystematic risk as a model laid out.	- Provides an informal setting to resolving the issue. - Provides a choice of arbitrators by the parties themselves.
Threats	- Fluctuations in the market is seen as the biggest threat.	- The rejection of the decision by the Court in the case of certain. - Limiting the resolution of the case in the initial trade agreement with the sides.

Source: USAID (2014), Daza L.R. (2010), Khan M.A. and Sun Y (1997), Roll R. and Ross S.A. (1980)

4. CONCLUSION

There's no extremely strong correlation between economic and legal sense arbitrage. However, there is a clear relationship between economic arbitrage international economic laws. International Economic Law arbitration disputes between state-of-state institutions and individuals, took the state as a mechanism to solve disputes. We determine that there is a link between legal and economic arbitrage in that sense.

Such relationships are often arises when a discrepancy or disagreement between the state and investors. Of course, the link between economic globalization and international economic arbitration under the law must say that it has become more apparent.

There are some difficulties in the use of arbitration in international economic law. Search a challenge in the World Trade Organization to improve the arbitration utilizations are experienced in international trade discussions. Protamine use appears is that globalization walking through market mechanisms, grind the national judiciary through international

arbitration, to reduce the state apparatus, collapse and this device ERD aims to place a position (Güler, 1994, pp.43). Countries with weak because of the circumstances mentioned sanctions are more effective. However, the country is strong is that power to influence the rate decreased. When you look in this context, that national judicial bypass of the drug to be used against the arbitration, national consciousness, power, and the organization will pass it is certain.

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