

The Supremacy of International Agreements on the Legislation in Force

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Abstract

The main object of the new legal framework must be the creation of conditions for attracting investment in the chain of economy which will provide long-term positive effects in the economy. It is unclear what legal basis has the longest impact on attracting foreign investments through direct legal and sub legal acts or international agreements which are signed between the investor and the state where the investment is made. Many authors have studied the legislation for investment or only the international agreements, but never their relationship. Comparative methods have been used in relation to the international agreements signed between the Government of Republic of Kosovo and other states who are interested to invest in Kosovo. This material will analyze the issue of International Agreement and legislation into force in relation to investments. Nowadays all developed countries are interested to have many direct foreign investments. But these investments are to be absorbed in the best way need a clarification of the legal bases and International Agreement that this state signs and offers to the investors with these Agreement.

Keywords: International Agreement, direct foreign investments, legal acts and sub legal acts.

Introduction

Foreign direct investments have their beginnings in the 19th century, especially from the developed countries, where majority of these states through IHD started significantly to improve their economy.

Investment as the engine of economic development can play key role making sure that economic growth to be sustainable. Term investment derives from Latin language investment, which means advance – place (capital).¹ From numerous authors there are various theories in relation to the definition of investment. Based in the Law No. 04/L-220 For Foreign Investments² Foreign investments are limited: as every asset in property or differently legally held by a foreign person in the Republic of Kosovo with the purpose of performing legal commercial activities including but not limited. Moveable or immovable property including the right on the property in question, as well free will, technical processes and knowledge. While, as regards to the Law No. 05/L-079 for Strategic Investments,³ investment means any direct investment and

¹ Bektashi, M. (2000). Application of the quantitative methods in the perception of investment interaction and economic structure new economy of Kosovo, dissertation Thesis, Pristina, p. 9.

² Law No. 04/L-220 For Foreign Investments (Official Gazette of Republic of Kosovo, No.1/19 January 2014, Pristina).

³ Law No. 05/L-079 for Strategic Investments (Official Gazette of Republic of Kosovo, No. 6/08, Feb-

capital in the Republic of Kosovo, which can be private investment, public investment or public-private investment.

According to Kotler, P. & Kartajaya, H. & Yound, D.(2004) must be followed leading principles of investment decision-making as are: ⁴

- Major benefits, in the form of profits or flow of money, are less preferable;
- Short-term benefits are preferable in contrast to long-term benefits;
- Safe investments are preferable against those dangerous ones.

Nowadays in the academic world discussed what legal basis has a bigger influence in attracting investor, legal acts and sub legal acts and never discussed in relation to the power of the International investments which are signed between the investor and the state where the investment is made. Also, it is not enough to publish legal and sub-legal acts alone to boost investment because investors want to know for legal security of that country. Purpose of that work is the achievement of results regarding the legal basis since the International Agreements are those who bring more investments and the recommendations will be useful for the academic world, students, and journalists and to everyone who wants to invest in Kosovo. This material will analyze International Agreements between the Government of Republic of Kosovo and other governments of other countries who are interested to invest in Kosovo. Using the comparative method between the laws and International Agreements I have achieved the evaluation of the regulatory environment in Kosovo. In the Agreement identified also and barriers which are qualified important from the investor band with the identification of these barriers an adequate agreement is made an Agreement for each party.

Interconnection of legal acts with International Agreements

Nowadays all developed countries are interested to have as much direct foreign investments, but it is a necessary a better clarification of the legal bases. An investment regulatory framework which is transparent and predictable helps businesses to evaluate potential possibilities for investments in a more informed manner shortening the time that needed for investment to be more productive. It was not practical for the law to specify everything but needed full legal clarification to regulate the protection and promotion of direct foreign investments. The legal system is an agreement which regulates general issues for a certain topic, but no sub legal act is applied retroactively in the detriment of foreign investor.

Based in the Law No. 04/L-220 for Foreign Investments⁵ says that Republic of Kosovo ensure foreign investors and their investments fully and continually in accordance with the legislation into force, while based in the article 19 of this law in relation to the International Agreements and other laws in this paragraph mentioned that in case of conflict between any provision of this law and other provision of any applicable law in the Republic of Kosovo, provisions of this law will prevail, with a condition ruary 2017).

⁴ Kotler, P. &Kartajaya, H. &Yound, D. (2004). Attracting Investors: "A Marketing Approach to Finding Funds for Your Business", page 14.

⁵ Law No. 04/L-220 for Foreign Investments (Official Gazette of Republic of Kosovo, No. 1/09 January 2014, Pristina) in the article 3, paragraph 2.

such a law contains clear and expressive purpose to avoid application of provision of this law.

Laws and other legal acts must be in accordance with the Constitution of Republic of Kosovo, as a highest act of Republic of Kosovo. In the article 19 is mentioned that International Agreement ratified by the Republic of Kosovo, become part of the Internal legal system after being published in the Official Gazette of Republic of Kosovo. International Agreements ratified and obliged judicial norms of International law have precedence over laws of Republic of Kosovo.

Therefore, an interested investor to invest in Kosovo in the first step will be confused in relation to the investments in this state. Since initially to make investments in Kosovo this issue should be provided with the International Agreement entered between two states (governments), or the law for investment has its purpose of protection, promotion and encourage of foreign investments in the Republic of Kosovo, in accordance with the standards and international practices.

Legal system for direct foreign investments regulates:

- Definition of investment and its general treatment;
- Principles which govern the relationship between the state and investment;
- Nondiscrimination;
- Warranty to avoid expropriation which in some particular cases of expropriation to ensure immediate compensation;
- Solving the disputed, where investors rightly to ask solving the dispute through the through local arbitration and foreign as well;
- Summary of main rules for investors.

Despite the fact that Kosovo has drafted the law for foreign direct investments, where it is made sure the legal protection for the investor. Investors are interested to have as well the international Agreement for protection of their rights and insurance of their investments where all of these can be regulate with International Agreement It is an actual topic that the lack of implementation of existing laws, respectively misinterpreting of laws, remains one of the indicators that cause problems to businesses in their businesses. For this is to be said that International Agreement plays an important role in this aspect.

It is said that without direct engagement of government, respectively of the high level of government there is no attraction to the direct foreign investment.⁶

Memorandum of understanding is an agreement generally non obligatory for services towards the potential investor in which the mutual pledges of the parties are foreseen in preparation, drafting and application of investments. In accordance with the Law No. 04/L-052, for the International Agreements⁷ is mentioned that an International Agreement, respectively treaty signed between the Republic of Kosovo and other foreign governments or international organizations, is regulated with the international law regardless the designation and involvement in one in one, two or more interconnected instruments. An Agreement of Republic of Kosovo can define

⁶ (Dedaj, B. (2015). Foreign direct investments as instrument of economic development in Kosovo, "GrafikaRezniqui" Pristina.p.232).

⁷ Law No. 04/L-052, for the International Agreements (Official Gazette of Republic of Kosovo, No. 28/16 December 2011).

also particular rules for application of the International Agreements.

International Agreements regulates:

- Each party must create favorable conditions for investments;
- Equal treatment of all investors in its territory;
- Respecting internationally accepted standards and rules for the investment;
- Encourage investment of each contracting party by the investors of other contracting party;
- Fulfillment with understanding of all obligations towards the foreign investor;
- Solving of disputed between investor and host party;
- Each contracting party will guarantee that all payments in relation to the investment in its territory, by the investors of other contracting party can be transferred within and outside of its territory without restrictions or delays in a convertible currency;
- Procedures for solving the disputes;
- Finalization and execution of the arbitral decision;
- International Agreements for investments signed for the period 10-15 years.

Recently, agreements are not referred to the free circulation of goods or services, but have much more extensive content. Those always and more are referring also and issued as investment conditions and criteria's, competition, property rights, free movement of the employees, even and various issues which are having to do with political problems, with the requests of democratization of the aimed place of the respecting of human rights. So, these agreements, containing all elements which guarantee a favorable circumstance created for foreign investors, to complete IHD.⁸ Foreign investments need for freedom in the economic relations, this need is especially important in the contractual relations. Investors usually want freedom to place themselves borders of transactions through the negotiations and agreements, rather than the conditions imposed by the state that are non-convenient to them. They also want warranty that with agreement must be implemented as written, and not to be announced null, or in case of disagreement to be modified by the court.⁹

Since the investments affect the creation of jobs, then this takes a particular place in the International Agreement. In contrast to the Law for Investment, in the Agreement is mentioned Labor Legislation, where international labor standards are guaranteed. Since Kosovo still is not a member in the International Labor Organization, with its legislation into force guarantee that will respect basic labour principles.

Also except the Labour Legislation with International Agreements also regulated and environmental legislation, how it effects in the place where invested. Where each party must try to guarantee that its legislation takes measure for levels international accepted of protection of environment and will try to carry on improving its legislation.

Free Trade Agreement and Investment

Stabilization and Association Agreement between Republic of Kosovo, European Union and European Community of the atomic energy is signed in October of 2015 and entered into force from 01April 2016. In this Agreement in the article 98 is regulated

⁸ Dedaj, B. (2015). Foreign direct investments as instrument of economic development in Kosovo, *GrafikaRezniqi*'' Pristina, p. 224 -225).

⁹ Organization for Security and Co- operation in Europe (2006), *Best Practices Guidebook for the positive business climate and investment*, p.72).

the promotion and protection of investments and creation of a favorable investment climate. Purposes of this Agreement are improvement of the legal framework to encourage and protect investments.¹⁰

SAA sets the framework of relationships with member states and institutions of EU for the life of the Stabilization and Association Process until full membership in EU. Therefore, Kosovo as a state that aims a membership in EU must during the process to the membership to approve all *acquis* and make that as a part of its visible legislation. On December 19, 2006 in Bucharest under the chairmanship of Rumania, the Central European Free Trade Agreement was substantially amended and its membership enlarged to create CEFTA 2006 a modern and ambitious free trade agreement with six new Parties from South Eastern Europe. The speed with which they ratified the agreement illustrated the Parties belief in the importance of CEFTA for stimulating economic development and the EU accession agenda in the region. The Free Trade Agreement with Central Europe (CEFTA) includes seven non-EU countries: Albania, Bosnia and Herzegovina, Kosovo, Macedonia, Moldova, Montenegro and Serbia.

Compact of Investments of OECD for Southeast Europe launched in 2000, supports the governments of the region to improve investment climate. Compact unites representatives of the governments of Southeast Europe, to exchange the best practices and use the tools and instruments of OECD in the way that appropriates needs and economies of Southeast Europe and helps them to approach closer to accepted international standards. Kosovo has signed ten International Agreements, in relation to promotion of investments. Agreement with Austria signed in January 2010; Agreement with the Commercial Union of Belgium / Luxemburg for mutual support and protection of investments signed in March 2010; Agreement between the federal Council of Switzerland signed on 27 October 2011; Agreement on Promotion and mutual protection of investments with republic of Turkey signed in 2012; Agreement with the Republic of Macedonia signed on 13th February 2015; Agreement with the Republic of Albania and Government of the United Arab Emirates in 2016; And finally, Agreement signed between the Government of Republic of Kosovo and Government of Canada. First Agreement is signed with United States of America on 30.06.2009. It is a short Agreement, accurate and concise. With this Agreement Kosovo earned 160 million euros investments and investments are growing year by year. To increase investment interest from this state, merits belongs to the Agreement which is clear. Other important Agreement is with Turkey signed in 2012. This Agreement included all rights and duties of each party, and with this Agreement Turkey is one of the countries with a biggest presence of direct investments in Kosovo. 372 million euros, calculates investments of Turkey in Kosovo. Turkish investments are orientated in the

¹⁰Stabilization and Association Agreement, p. 73. The Republic of Kosovo and the European Union signed the Stabilization and Association Agreement on 27 October 2015 in Strasbourg. It was subsequently adopted by the Government of the Republic of Kosovo on 30 October 2015, through Decision no. 01/55 on approving the Draft-law on ratification of the stabilization and association agreement between the Republic of Kosovo, of the one part, and the European Union and the European Atomic Energy Community, of the other part, and it was ratified on the Assembly of the Republic of Kosovo on 2 November 2015, with approval of the Law no. 05/L-069 on ratification of the stabilization and association agreement between the Republic of Kosovo, of the one part, and the European Union and the European Atomic Energy Community, of the other part.

banking system, health, energy, production and market. First place for investment in Kosovo goes to Switzerland. Although quite late the government of Republic of Kosovo and Federal Council of Switzerland signed the International Agreement and this state achieved to break all barriers to be with big investments. "In last 5 years Switzerland is the biggest investor in Kosovo by passing Turkey, who dominated for few years, ion the average of 35.9 million euros per year. With ratification of the International Agreement are created favorable conditions for investments.

The role of International Agreements for promotion of investments was confirmed in the Israel case. The businessmen from Israel, Joshua Shlomiuk from the company OAPI, declared that with signing of International Agreement (establishment of cooperation between Kosovo and Israel of his state with Kosovo will feel safe to invest in construction of the project in agriculture 100 million dollars which would create from 800 to 1000 working places. These are the new results that with the signing the International Agreement is stimulated foreign investments. These international Agreements to investors guarantee protection.

Conclusions

International Agreements have the main role in promoting investment based on efforts for new legal framework in preparation of legal and sub-legal acts. Interested investor to invest in a state, regardless the legislation and respect for it did not feel safe without signing the International Agreement. Investor, the International Agreement sees as a state guarantee and in meantime better conditions for investment. Regardless the legislation into force for foreign direct investments, strategic investment and a numerous sub-legal acts which are added day by day, International Agreements are those who bring more investments. This is confirmed with the caw of agreements with United States of America, Turkey, and Switzerland, which brought millions of investments.

It is important to note that the initiation of the International Agreements initially initiates ministerial level talks with the Ambassadors of the countries that are interested to invest and after the concretization of the works comes to the agreement of the signing of the two state agreements that will serve in the field of defense than foreign investment.

It is important to emphasize that Government should be engaged more to sign new agreements with other countries who are interested to make investments. Cannot miss the requirements of many states to invest and not created the government cooperation.

Different states begin the cooperation with government officials with the request for investments and the government plays the main role for signing such International Agreements. This means that the priority that investors waiting is the signature of International Agreements. This work presents a special contribution in the legal and regulatory system and in particular in practice. Results of research will contribute in the enrichment of the literature for this field, creating a safe environment with clear regulations for investors.

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