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Vienna Convention on the Law of Treaties as the Source of Bilateral Investment Treaty Provisions Interpretation in Investor-State Arbitration

Bilateral international investment agreements are the main driving force of international investment law. Depending on the complexity of investment relations, the dispute often arises between the foreign investor and the host state. In this case the most effective dispute resolution mechanism is an international arbitration. The challenge of the dispute is the vague provisions of the investment treaty, based on which the dispute should be resolved. For the interpretation of vague provisions is necessary to have proper guidelines, which are provided by the Vienna Convention on the Law of Treaties. The Vienna Convention proposes consistent approaches to the interpretation of the provision, which finds significant application in Investor-State Arbitration.

Key Words: *Vienna Convention on Law of Treaties, Bilateral Investment Treaties, Interpretation of the Provision, Investor-State Arbitration.*

1. Introduction

The application of the international law principles in investment arbitration, which is currently unanimously supported, has long been the subject of discussion.[1] The arbitration provided by the investment agreement is directly related to international investment law. It is an indisputable circumstance that today international investment law includes not only a private contractual relationship between a foreign investor and the host country, but it is also based on the basic principles of international contract law. Herewith, international investment law is partially based on international customary law and general principles of law.[2]

International investment treaties should ensure the protection of investors' rights maximally.[3] The investment agreement to regulate the relationship between the host country and the foreign investor contains broad standards of treatment for the foreign investor. The host country is required to treat a foreign investor according to these standards. These standards form the basis for the protection of modern international investment.[4] The investment treaties regulate the principles such as: expropriation, Fair and Equitable Treatment[5], National

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1 *Zarra G.,* Parallel Proceedings in Investment Arbitration, G. Giappichelli Torino, Eleven International Publishing, Torino, 2017, 109.

2 *De Brabandere E.,* Investment Treaty Arbitration as Public International Law, Procedural Aspects and Implications, Cambridge University Press, 2014, 17.

3 *Basener N.,* Investment Protection in the European Union (Considering EU law in Investment Arbitrations Arising from Intra-EU and Extra-EU Bilateral Investment Agreemenst), Nomos, Baden-Baden, 2017, 54.

4 *Schreuer Ch*., Introduction: Interrelationship of Standards, in: *Reinisch A. (ed.),* Standards of Investment Protection, Oxford University Press, Oxford, 2008, 10.

5 Fair and Equitable Treatment is the absolute standard. In international investment law, the term "fair" means: How correctly the host state distributes the state profits and expenses on the basis of the applicable law, how the investor is compensated in exchange for the issuance or concession of asset, how properly the state guarantees the rights of the investor at any stage of the investment realization. The term "equal" includes the maintenance of a rational balance between the public interests of the foreign investor and the host State. Source: *Tsertsvadze G*., Introduction in International Investment Law, Tbilisi, 2013, 102 (in Georgian).

Treatment[6], Good Faith and Most Favored Nation Clause.[7] [8]

However, the mentioned standards are mostly vague and ambiguous. The most international treaties do not include the interpretation of the principles and in case of dispute those principles should be interpreted by arbitration tribunal.[9] The arbitration clause on dispute resolution between the investor and the state through investment arbitration, considered by the bilateral investment treaty, creates a legitimate expectation for the investor that in case of the rights violation, the infringed interests will be protected through proper interpretation of the vague principles.[10]

The Vienna Convention on Law of Treaties[11] plays an important role in the interpretation of investment treaties. Articles 31, 32 and 33 of the Vienna Convention are referred for the interpretation of treaty provisions. Article 31 regulates general rules of treaty interpretation. Article 32 defines supplementary means of interpretation in case of provisions vagueness and ambiguity. And article 33 regulates the provisions, which are authenticated in two or more languages.[12]

The Vienna Convention is of great importance to Georgia (Georgia acceded to the Vienna Convention in 1995 and entered into force on July 8 of the same year) as an attractive country for investment, by which many bilateral investment treates have been concluded. All bilateral investment treaties concluded by Georgia define arbitration as a despite resolution mechanism through which the provisions shall be interpreted. The latter plays a pivotal role in shaping the investment legal environment.

The first chapter of this article discusses the importance of the Vienna Convention for Georgia. Subsequent chapters – second, third and fourth – provide an overview of the regulatory provisions for the interpretation of the provision set out in the Vienna Convention and the possibilities for their application, based on investment arbitration cases. Lastly will be summarized the practical characteristics of the application of the Vienna Convention and its impact on arbitration investment arbitration.

2. The Importance of the Vienna Convention for Georgia in Terms of the Bilateral Investment Treaty Provisions Interpreration

Georgia is one of the leading countries in the world in terms of foreign investment attractiveness. The investment climate in Georgia is favorable, because the existing mechanisms are focused on investor support.[13]

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6 The principle of National Treatment is a comparative standard. This requires treating a foreign investor like a local investor. Source*: Galea I., Biris B.*, National Treatment in International Trade and Investment Law, Acta Juridica Hungarica, №2, Academia Kiado, Budapest, 2014, 179.

7 A State shall not apply less favorable terms to an investor and to an investment of an investment agreement state party than it does to its own investors and to third-country investors. Source: *Ziegler A., Asif Q.*, International Economic Law, Third Edition, Thomson Reuters, London, 2011, 507.

8 *Trujillo E.*, Balancing Sustainability, the Right to Regulate, and the Need for Investor Protection: Lessons from Trade Regime, Boston College Law Review, Vol. 59, Issue 8, Boston College Law School, Boston, 2739.

9 *Salacuse J.,* The Law of Investment Treaties, Oxford University Press, New York, 2010, 139.

10 *Marsahal M.,* Investor-State Dispute Settlement Reconceptionalized: Regulation of Disputes, Standards and Mediation, Pepperdine Dispute Resolution Law Journal, Vol. 17, №1, Pepperdine University, Malibu, 2017, 244.

11 Vienna Convention of the Law of Treaties, 23/05/1969.

12 *Salacuse, J.,* The Law of Investment Treaties, Oxford University Press, New York, 2010, 139.

13 Doing Business 2019, A World Bank Group Flagship Report, 16th Edition, The World Bank, Washington DC, 2019, 5.

36 Bilateral Investment Treateies are signed by Georgia. Among them 32 treaties have entered into force, 3 have signed, but not entered into force (United Arab Emirates, Turkey, Egypt), and the treaty with Italy has been terminated. It is noteworthy that all bilateral investment treaties concluded by Georgia provide for International Center for Settlement of Investment Disputes (ICSID) as a dispute resolution mechanism. This means that if the foreign investor is a citizen of the country with which Georgia has concluded a bilateral investment treaty, then in the event of a dispute, the foreign investor should apply to ICSID.

Herewith, the importance of the Vienna Convention is enhanced by the fact that Georgia is one of the leading countries in the world in terms of attractiveness of foreign investment.[14] Therefore, considering that there is a large inflow of investment in Georgia, there is also a possibility that if investors consider that their rights have been violated, they will apply to international arbitration for dispute resolution. If bilateral investment treaty considers arbitration as a dispute resolution mechanism, then in the event of a dispute between the foreign investor and the beneficiary state, a bilateral investment treaty concluded between the beneficiary state and the foreign investor state applies to the dispute.

In addition, there is a high chance of applying the Vienna Convention in investment arbitration disputes involving Georgia, as the provisions of the bilateral investment treaties concluded by Georgia are often vague or widely regulated. (For example, the wording of indirect expropriation is widely regulated, which is risky, because any state regulation may be qualified as indirect expropriation, even if it includes the public interest).[15]

Therefore, the Vienna Convention is an important legal document for Georgia, considering that in resolving disputes between the host country and a foreign investor in investment arbitration, arbitration is predominantly governed by a bilateral investment treaty concluded between the host state and the investor's state.

3. Interpretation of the Investment Treaty Provision According to the Article 31 of Vienna Convention on the Law of Treaties

The arbitration tribunals begin their interpretation of the investment treaty provisions under Article 31 of the Vienna Convention. The Convention defines a general rule of interpretation that the treaties shall be interpreted in good faith. E.i., in accordance with the ordinary meaning based on the context, purpose and object of the treaty.[16] The first paragraph of this article sets out the basic rules for interpreting the term. Namely, ''A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose''. The mentioned provision includes four basic elements: 1. the text of the treaty; 2. the ordinary meaning of the term; 3. the meaning of the treaty terms; 4. The treaty object and purpose.[17]

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[14] Doing Business 2019, A World Bank Group Flagship Report, 16th Edition, The World Bank, Washington DC, 2019, 5.

[15] *Vekua G.*, Political-Legal Analyse of Georgian Bilateral Investmnet Treaties, Tbilisi, 2016, 4 (In Georgian).

[16] *Kaufmann-Kohler G.,* Interpretation of Treaties: How do Arbitral Tribunals Interpret Dispute Settlement Provisions Embodied in Investment Treaties, in: *Mistelis L., Lew J. (eds.),* Pervasive Problems in International Arbitration, Kluwer Law International, Alphen aan den Rijn, 2006, 258.

[17] *Salacuse J.,* The Law of Investment Treaties, Oxford University Press, New York, 2010, 139.

The Vienna Convention clearly recognizes that the definition of the term shall be carried out in accordance with their ordinary meaning considering their content. The arbitrators draw up a list of ''ordinary meanings'' of its content in order to determine and opt out the most appropriate ordinary meaning. Therefore, it would be better if the wording of the provision will be more specific.[18]

According to Article 31 (1) of the Vienna Convention, it is clearly stated that a provision shall not be interpreted until its content has not been determined. E.i., the content of the provision has superior power over words and sentences because they have no independent meaning. Herewith, according to the Vienna Convention, the dispute shall be resolved in accordance with the terms of the treaty.[19]

In the case of *Siemens AG v. The Argentine Republic* [20] tribunal noted that the treaty should not be interpreted either liberally or strictly, as the wording of Article 31 (1) does not provide this. The tribunal shall be guided by the purpose of the treaty as it is stated in the treaty title and preamble in order to facilitate and protect investment.[21] The article 31 (2) of the Vienna Convention sets out what is comprised by the treaty text. According to the Article 31 (2), ''the context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes: (a) any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty''.[22] The important question is whether all the documents mentioned in the article have the equal status and authority. To consider this, it is necessary to determine what this provision directly expresses.[23] The article 31 (2) clearly states that words cannot be interpreted without considering the context. This includes not only the text of the treaty (including any preambles and annexes), but also all other agreements or documents that are conclude by all parties. The interpretation of the terms should not be limited only with the treaty body text. It's noteworthy, that the legal documents mentioned in Article 31 (2) are part of the context referred to the Article 31 (1), which as be considered as a whole.[24]

The article 31 (3) indicates that together with the context shall be taken into account any subsequent agreement between the parties, any subsequent practice and any relevant rules of international law. Since the context of a provision shall be determined before a special meaning shall be given to a term, the preconditions set out in Article 31 (1) shall be applied in this case as

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18 *Regan H. D.*, Sources of International Trade Law – Understanding What the Vienna Convention Says About Identifying and Using ''Sources for Teraty Interpretation'', in: *Besson S., D'Aspremont., Knuchel S. (eds.),* The Oxford Handbook on the Sources of International Law, Oxford University Press, Oxford, 2017, 1052.

19 *Rubino-Sammartano M.*, International Arbitration Law and Practice, Third Editionm, JurisNet, New York, 2014, 1581.

20 International Center for Settlement of Investment Disputes, dated 16 August 2007, Siemens A.G. v. The Argentine Republic, ICSID Case №ARB/02/8.

21 *Rubino-Sammartano M.,* International Arbitration Law and Practice, Third Edition, JurisNet, New York, 2014, 1581-1582.

22 *Regan H. D.,* Sources of International Trade Law – Understanding What the Vienna Convention Says About Identifying and Using ''Sources for Treaty Interpretation'', in: *Besson S., D'Aspremont., Knuchel S. (eds),* The Oxford Handbook on the Sources of International Law, Oxford University Press, Oxford, 2017, 1050.

23 Ibid, 1052.

24 Ibid, 1053.

well. This view is also reinforced by the International Law Commission (ILC). The commission noted that the beginning wording of Article 31 (3), "shall be taken into account, together with the context", is given in order to consider the elements stated in paragraph 3 in relation to paragraph 1.[25]

In particular, Article 31 (2) and ''a'' and ''b'' subparagraphs of the Article 31 (3) provide for three methods of authentic interpretation (they are used in conjunction with paragraph 1 to interpret the contract). The mechanisms set out in paragraphs 2 and 3 may be used if all parties of the treaty are involved in the process of interpreting the provision. In other cases, if one or more parties apply a practice on which other parties of the treaty are already agreed.[26]

In the subparagraph ''c'' of Article 31(3) is mentioned the wording ''any relevant rules of international law''. This implies that the treaty provisions shall be interpreted beyond international law.[27] The arbitration tribunal shall take into account any relevant rules of international law applicable in the relations between the parties together with the context of provision.[28]

The treaty provision shall comply with any relevant rule of international law that is consistent with the legal relationship between the parties. These rules do not require a close relationship with the treaty. It plays a supporting role in interpreting treaty provision.[29]

Article 31 (3) (c) may be applied to any dispute which is directly or indirectly related to investment and which requires an interpretation of provision. This allows arbitration tribunals to determine the statutory basis or scope of jurisdiction. This aims to clarify similar types or vague provisions given in the investment treaties such as ''Expropriation'' and ''Fair and Equitable Treatment''. Also, this article is applied in case of treaties conflict. In this case is considered a circumstance when the state obligations (which are the subject of investment dispute) are regulated by investment and non-investment treaties and their regulation contradicts each other.

In such a case, the arbitration tribunals shall resolve the statutory conflict. In order to achieve this, the tribunal shall establish a hierarchy between conflicting provisions of investment treaties and balance conflicting interests. Accordingly, the interrelationship of investment and non-investment treaties is possible in two cases: 1. Jurisdiction over investment treaties and human rights treaties is closely intertwined. E.i. When the same legal provision becomes the subject of interpretation within the framework of both treaty regimes in accordance with international law and general legal principles. In the event of such an interconnection, the non-investment treaty regime could be used as a means of interpretation and could play an explanatory and ancillary role in investment arbitration; 2. States are forced

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25 *Regan H. D.,* Sources of International Trade Law – Understanding What the Vienna Convention Says About Identifying and Using ''Sources for Treaty Interpretation'', in: *Besson S., D'Aspremont., Knuchel S. (eds),* The Oxford Handbook on the Sources of International Law, Oxford University Press, Oxford, 2017, 1052.

26 *Villiger E. M.,* The Rules on Interpretation: Misgivings, Misunderstandings, Miscarriage? The Crucible Intended by the International Law Commission, in: *Cannizzaro E. (eds.),* The Law of Treaties Beyond the Vienna Convention, Oxford University Press, New York, 2011, 110.

27 Ibid.

28 *Ghouri A.*, Interaction and Conflict of Treaties in Investment Arbitration, Walter Kluwers, Alphen aan den Rijn, 2015, 115.

29 *Villiger E.M.,* The Rules on Interpretation: Misgivings, Misunderstandings, Miscarriage, The Crucible Intended by the International Law Commission, in: *Cannizzaro E. (eds.),* The Law of Treaties Beyond the Vienna Convention, Oxford University Press, New York, 2011, 110.

to violate human and environmental rights in order to protect the health, safety and environmental rights of their citizens. In such cases, human rights and environmental treaties can play a controlling role in the interpretation of investment treaties and in the regulatory development of international investment law.[30]

Although Article 31 of the Vienna Convention sets out the mandatory provisions, it does not specify what power each element posesseses. All major approaches – textual, substantive, or teleological – shall not be applied hierarchically, but they shall be balanced in a whole interpretation process. Therefore, the applicable provisions of customary law in treaty interpretation do not lead to a chaotic interpretative process. Rather, it creates a flexible system through logical and closely related principles.[31]

4. Interpretation of the Investment Treaty Provision According to the Article 32 of Vienna Convention on the Law of Treaties

If vague and manifestly inconsistent interpretations are concluded through the above-mentioned primary methods, which require confirmation, then Article 32 of the Vienna Convention should be applied to the provision interpretation.[32] The latter sugegsts supplementary means of interpretation. Including, treary preparatory work when treaty terms are vague and unclear.[33] This serves to confirm the meaning of the interpretation resulting from Article 31 leaves meaning ambiguous or obscure; or leads to a result which is manifestly absurd or unreasonable.

E.i. Article 32 of the Vienna Convention provides for limited conditions for the application of supplementary means of interpretation. Although the preparatory work is an supplementary means of interpretation, its supporting role in the interpretation process should not be underestimated. They can be used to determine the exact definition of conflicting words.[34] During the review of the Vienna Convention by the International Law Commission, Judge Hersch Lauterpracht noted that a provision inrerpetation without determining the intention of the parties would have undesirable consequences. According to his consideration, the ordinary meaning of provision could be considered voidable regardless of the consideration of provision context, purpose, and subject matter. In the process of interpretation more attention can be paid to the materials of the preparatory work.[35]

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30 *Ghouri A.*, Interaction and Conflict of Treaties in Investment Arbitration, Walter Kluwers, Alphen aan den Rijn, 2015, 115-116.

31 *Vadi V.*, Cultural Heritage in International Investment Law and Arbitration, Cambridge University Press, Cambridge, 2014, 263-264.

32 *Kaufmann-Kohler G.,* Interpretation of Treaties: How do Arbitral Tribunals Interpret Dispute Settlement Provisions Embodied in Investment Treaties, in: *Mistelis L., Lew J. (eds.),* Pervasive Problems in International Arbitration, Kluwer Law International, Alphen aan den Rijn, 2006, 258.

33 *Venzke I.,* Sources in Interpretation Theories – The International Law-Making Process, in: *Besson S., D'Aspremont., Knuchel S. (eds.),* The Oxford Handbook on the Sources of International Law, Oxford University Press, Oxford, 2017, 412-413.

34 *Clasmier M.,* Arbitral Awards as Investments – Treaty Interpretation and the Dynamics of International Investment Law, Walter Kluwers, Alphen aan den Rijn, 2017, 16.

35 *Venzke I.,* Sources in Interpretation Theories – The International Law-Making Process, in: *Besson S., D'Aspremont., Knuchel S. (eds.),* The Oxford Handbook on the Sources of International Law, Oxford University Press, Oxford, 2017, 412-413.

The problem with using the method is to protect the hierarchy between Articles 31 and 32 of the Vienna Convention. The Article 31 of the Convention deals with the general method of interpretation and Article 32 with additional means. According to practice, the definition of a provision should start on the basis of a general rule. This implies a textual, substantive and teleological interpretation of the norm. According to practice, the interpretation of a provision should start on the basis of a general rule. This implies a textual, substantive and teleological interpretation of the provision

The application of supplementary means of interpretation, which includes treaty preparatory work, is allowed only in the presence of limited preconditions. The application of supplementary means is always permissible if the general rule of interpretation leaves its meaning ambiguous and obscure, or leads to a result which is manifestly absurd or unreasonable. However, this traditional approach has been criticized by many authors. In their view, the Vienna Convention does not strictly define the hierarchy between the general rule of interpretation and the supplementary means of interpretation. The subject of dispute is the case when the content of the peovision is clearly defined as a result of the general rule of interpretation, but the application of supplementary means leads to a different result. In this case has to be determined which approach is favorable. In the present case, proponents of the traditional approach prefer not to be use supplementary means by the arbitration, while opponents do the opposite.

The normative basis of the hierarchical approach is conditioned by two main issues. The first problem is related to the reliability of the application of preparatory work in order to determine the objectives of the treaty parties. The second issue is to determine the purpose of the treaty. Consequently, proponents of the traditional approach point out that the application of supplementary means raises doubts, while in the view of opponents, the preparatory works are a means of proof. However, there is an opinion that definition of intentions of the parties may not even be the purpose of treaty interpretation. For example, if the issue concerns human rights. Consequently, in this case the preparatory work does not play a significant role.[36]

Despite the existing approaches, it is noteworthy that in practice preparatory work can be used if they are available. For example, the history of ICSID Convention[37] creation is documented in detail, which is easily accessible. Consequently, the ICSID arbitration often applies to the preparatory work of ICSID Convention. However, it should be noted that in some cases the mentioned process cannot be used under international investment law,[38] because of objective circumstances. For example, in case *Aguas del Tunari, S.A. v. Republic of Bolivia*[39] arbitration tribunal defines that lack of materials complicates the interpretation process.[40] The negotiation process for concluding bilateral investmen treaty is either not documented in writing at all, or

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[36] *Noah T., Shereshevsky Y.*, Does Exposure to Preparatory Work Affect Treaty Interpretation? An Experimental Study on International Law Students and Experts, The European Journal of International Law, Vol. 28, №4, Oxford University Press, Oxford, 2018, 1288-1289.

[37] Convention on the Settlement of the Settlement of Disputes between States and Nationals of Other States (ICSID Convention), 14/10/1966.

[38] *Clasmier M.,* Arbitral Awards as Investments – Treaty Interpretation and the Dynamics of International Investment Law, Walter Kluwers, Alphen aan den Rijn, 2017, 16.

[39] International Center for Settlement of Investment Disputes, Aguas del Tunari, S.A. v. Republic of Bolivia dated 21 October 2005, ICSID Case №ARB/02/3.

[40] *Clasmier M*., Arbitral Awards as Investments – Treaty Interpretation and the Dynamics of International Investment Law, Walter Kluwers, Alphen aan den Rijn, 2017, 17.

only a small amount of material is available. Therefore, arbitration tribunals usually do not have the opportunity to rely on preparatory work while interpreting the provision.

The North American Free Trade Agreement (NAFTA)[41] has a different approach regarding discussing issue. For many years, documentation of the negotiation process was not publicly available. This dissatisfaction was caused by the unequal situation of the parties to the dispute as the respondent state had access to the materials and the plaintiff investor was deprived of this opportunity. In July 2004, the North American Free Trade Agreement Commission announced that a history of negotiating investment issues, which is regulated under Chapter 11 of the Agreement, was available.

Arbitration tribunal in the case of *Methanex v. The United States*[42] has focused on negotiating of NAFTA in the framework of Article 32 of the Vienna Convention. According to Article 32, this Article may have an additional ancillary function only in limited cases. The approach of the Vienna Convention is that the initial intention of the parties and its interpretation always take precedence over the search for a wide range of alleged intentions of the parties.[43] I.e. According to the tribunal, treaty preparatory work should not in all cases be an integral part of the interpretation process, as the application of this may lead to a more chaotic process of interpretation.

It seems that when arbitrators try to determine the intent of the signatory states of the treaty, the preparatory work may play an important role in better studying of the matter.[44] However, considering that the provision interpretation process needs to be as balanced as possible, based on practical and objective assessments, it should be noted that the hierarchical approach deserves more support. This is due to the fact that the scope of the arbitral tribunal's power is often the subject of consideration, and their application of the methods considered by Article 32 will further increase the risk of the provision broad interpretation and complicate the interpretation process. One of the main challenges in interpreting the provision by the tribunal is to maintain a balance – on the one hand, excessive interference in the discretion of the state and, on the other hand, fair protection of the interests of foreign investors. Also, due to nature of arbitration as it does not belong to any legal system, there is no precedent or universally accepted standards for the interpretation of the provision, which would not allow arbitration to widely interpret provisions. It would give rise to a consistency of decisions. Accordingly, the process of limited and consistent interpretation by the tribunal avoids the mentioned risk to the dispute parties.

5. Interpretation of the Investment Treaty Provision According to the Article 33 of Vienna Convention on the Law of Treaties

The article 33 of the Vienna Convention refers to the interpretation of treaties authenticated in two or more languages. According to the first paragraph of the Article 33 ''When a

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41 North American Free Trade Agreement, 01/01/1994.

42 Ad Hoc Arbitration Case Methanex Corporation v. United States of America, dated 3 August 2005.

43 *Dolzer R., Schreuer Ch.,* Principles of International Investment Law, Second Edition, Oxford University Press, Oxford, 2012, 31.

44 *Clasmier M.*, Arbitral Awards as Investments – Treaty Interpretation and the Dynamics of International Investment Law, Walter Kluwers, Alphen aan den Rijn, 2017, 17.

treaty has been authenticated in two or more languages, the text is equally authoritative in each language, unless the treaty provides or the parties agree that, in case of divergence, a particular text shall prevail''. The second paragraph of the Article 33 defines, that a version of the treaty in a language other than one of those in which the text was authenticated shall be considered an authentic text only if the treaty so provides or the parties so agree. In determining the authenticity of the treaty texts in several languages, a problem may arise when the terms do not have the same meaning in each authentic text. In this regard, paragraph 4 of the same article suggests an outcome. If a comparison of the authentic texts discloses a difference of meaning, which the application of articles 31 and 32 do not confirm, in this case shall be adopted the meaning which best reconciles the texts based on the treaty object and purpose.[45]

If the content of any of the provisions of authentic texts turns out to be different, then the process of interpretation complicates. A treaty is always perceived as a single agreement consisting of unified provisions, even if the treaty is concluded in several different languages. But, if a multilingual treaty has to be used and it is impossible to compare two authentic texts without a difference of opinion, then according to the Vienna Convention, harmonization of provisions shall take place. There are several methods of the mentioned issue. First of all, the arbitrator shall examine whether the difference in significance can be reversed by applying Articles 31 and 32 of the Vienna Convention. Second, if the first method proves ineffective, the arbitrator shall determine, whether it is provided by the treaty or if the parties agree, that in the event of a difference in the content of the provisions, a particular text shall prevail. If the second method is not suitable either, then the meaning that best combines the texts should be taken into account, considering the object and purpose of the contract.[46]

In one of the cases of the European Court of Justice (ECJ), it was established that the subject and purpose of the treaty are the key to determining the overall context of the concepts.[47] However, the Vienna Convention defines clearly, that the Article 33 (4) applies only when the context of the texts is completely divergent in different languages. E.i. when neither the context of the provision can be interpreted, nor the definition of the subject and purpose of the treaty allows for a correct interpretation. Therefore, paragraph 4 of the Article 33 causes a great deal of misunderstanding, as in the literature of international law, as well as in practice. According to the International Law Commission, it is most unacceptable to give preference to a treaty that imposes stricter restrictions. Such approach is applied by the International Court of Justice in case *The Mavrommatis Palestine Concessions*.[48] In the same case, the Court noted that preference should not be given to the text which more clearly expresses the provision context or the language in which the treaty was originally drafted if they do not reflect the real intentions of the parties.[49]

From the above-mentioned, it should be noted that the approach developed by the arbitration ribunals does not share the hierarchical approach provided by the Article 33 of the Vienna Convention. It seems that priority is given to the purpose and subject matter of the

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45 *Gardnier R.*, Treaty Interpretation, Second Edition, Oxford University Press, Oxford, 2015, 315.
46 *Linderfalk U.,* On The Interpretation of Treaties, Springer, Dordrecht, 357.
47 *Gardnier R.*, Treaty Interpretation, Second Edition, Oxford University Press, Oxford, 2015, 315.
48 International Court of Justice, d Greece v. Britain, dated 30 August 1924, №2.
49 *Jan Berends W.,* The Interpretation of Multilingual EU Legislation, University of Utrecht, 2010, 20.

treaty. Considering the fact that the purpose of treaty interpretation is to achieve an objective result, it is therefore not surprising that determining the purpose and subject matter of the treaty takes precedence over the agreement of the parties about the preference to any authentic text.

6. Conclusion

The clearest example of the protection of foreign investment is the existence of an international legal protection mechanism for a foreign investor. The majority of modern bilateral investment treaties provide the provision about the settlement of a dispute. According to this the foreign investor is entitled to present a claim to international arbitration tribunal against e host state in respect of the obligations undertaken by the investment treaty.[50] It can be mentioned that the international arbitration is the most convenient mechanism between the foreign investor and the state. But the problem arises when the provision of investment contract is vague and the arbitration tribunal becomes the interpreter of provision.

It is clear from the present work that the discussed provisions of the Vienna Convention can have a significant impact on the process of resolving a disputed investment relationship. The articles of the Vienna Convention are the guiding principles for arbitration tribunals in order to interpret ambiguous provisions. Most of the provisions are interpreted based on the mentioned Convention articles, if the dispute parties are the contracting states of the Convention.

The importance of the explanatory clauses of the Vienna Convention seems to play a key role in the definition of bilateral investment treaties, especially considering that it is rare to find an investment agreement where the principles of investment protection are fully and thoroughly regulated. Herewith, it is important that as the popularity of investment arbitration increases, so does the number of arbitration awards relating to the same protection standards and issues regulated by bilateral or multilateral investment treaties. This in itself will further increase the contribution and importance of the investment arbitration tribunal in interpreting the vague provisions of the investment agreement through the Vienna Convention. It is also noteworthy that one of the main priorities for the development of Georgia is the inflow of large amounts of foreign direct investment, which increases the chances of the number of arbitration disputes with the participation of Georgia and, consequently, the need to the application of the Vienna Convention.

In conclusion, it should be noted that the interpretative approaches given by the Vienna Convention provide an important basis for developing uniform and consistent approaches to the treaty interpretation in arbitration practice in order to avoid the subjective approaches of tribunals and radical methodologies in interpreting the provision.

[50] *De Brabandere E.,* Investment Treaty Arbitration as Public International Law, Procedural Aspects and Implications, Cambridge University Press, 2014, 25-26.

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