INTERNATIONAL MULTIDISCIPLINARY JOURNAL FOR RESEARCH & DEVELOPMENT
SJIF 2019: 5.222 2020: 5.552 2021: 5.637 2022:5.479 2023:6.563 2024: 7,805
eISSN :2394-6334 https://www.ijmrd.in/index.php/imjrd Volume 12, issue 06 (2025)

PARTY AUTONOMY AND JURISDICTION IN INVESTMENT DISPUTES: A COMPARATIVE STUDY OF THE EUROPEAN UNION AND THE REPUBLIC OF UZBEKISTAN

Madina Eseniyazova
PhD researcher at Tashkent State University of Law
Lawyer at "Custodio" Law firm
eseniyazova01@gmail.com

Abstract: This article explores the scope and limitations of party autonomy in investment disputes through the lens of private international law (PIL). It offers a comparative analysis of the European Union and the Republic of Uzbekistan, examining how each jurisdiction conceptualizes international jurisdiction in investor–State arbitration. While the EU has increasingly restricted arbitral autonomy through the Achmea and Komstroy rulings, Uzbekistan maintains a more liberal and investor-friendly approach. The article evaluates the legal, institutional, and policy implications of these divergent models, proposing a balanced framework that reconciles investor expectations with national legal sovereignty under PIL principles.

Keywords: Party Autonomy, investment arbitration, private international law, jurisdiction, European Union, Uzbekistan, Achmea, Enforcement of Awards, Forum selection.

The evolution of transnational investment law has placed increasing pressure on traditional jurisdictional concepts rooted in private international law (PIL). At the heart of this tension lies the principle of party autonomy, which under PIL allows parties to select the competent forum for resolving disputes. While this principle is a cornerstone of commercial arbitration, its application in the context of investment disputes governed by a network of bilateral and multilateral treaties is far from straightforward.

In the European Union, recent jurisprudence has significantly curtailed party autonomy in investment arbitration, particularly through the landmark Achmea and Komstroy decisions, which declared intra-EU investor–State arbitration incompatible with EU law. By contrast, the Republic of Uzbekistan continues to expand and rely on broad jurisdictional clauses in its BITs, offering foreign investors flexible pathways to arbitration. However, this openness is tempered by a lack of clear domestic PIL doctrine and inconsistent judicial practices.

This article undertakes a comparative analysis of the treatment of party autonomy in investment disputes in the EU and Uzbekistan. It examines how international jurisdiction is conceptualized and constrained within each legal system and what implications this holds for legal certainty, investor confidence, and systemic coherence.

1. Theoretical Background: Investment Arbitration in the PIL Framework

Investment arbitration operates at the intersection of public and private law. While investment treaties (such as BITs or multilateral agreements like the Energy Charter Treaty) are instruments of public international law, they create rights that are invoked by private actors—investors—against sovereign states. The procedural vehicle for enforcing these rights often resembles private arbitration.

Private international law becomes relevant in several ways: first, through determining the applicable procedural law (lex arbitri), second, in recognizing and enforcing foreign arbitral awards, and third, in defining the scope of party autonomy in jurisdictional matters.

In theory, party autonomy enables parties to choose between domestic courts and arbitration, designate arbitral institutions or ad hoc mechanisms, and select seats of arbitration. However, in practice, this autonomy is subject to mandatory rules, public policy exceptions (order public), and, increasingly, political considerations.

2. Party Autonomy and Jurisdiction in the EU: Post-Achmea Constraints

The EU's legal system presents a unique supranational dimension that heavily influences jurisdictional doctrine. The Court of Justice of the European Union (CJEU) in Slovak Republic v. Achmea BV (Case C-284/16) held that arbitration clauses in intra-EU BITs are incompatible with the autonomy of EU law. This position was reinforced in Komstroy v. Moldova (Case C-741/19), where the CJEU extended the prohibition to intra-EU disputes under the Energy Charter Treaty.

The rationale behind these decisions lies in the EU's insistence on the exclusive jurisdiction of its judicial system to interpret and apply EU law. Investment arbitration, viewed as an external mechanism, is seen as a threat to this legal autonomy. As a result, party autonomy is significantly restricted: even if two parties wish to arbitrate under a treaty, the EU legal framework may override their consent.

These developments have created legal uncertainty for investors and Member States alike. While arbitral tribunals may continue to accept jurisdiction, national courts in the EU are increasingly refusing to enforce awards rendered under intra-EU BITs. This raises profound questions about the future role of PIL in investment disputes within the EU.

3. The Uzbek Approach: Expansive Autonomy Amid Institutional Weakness

Uzbekistan offers a stark contrast. As a country undergoing legal and economic transformation, it maintains a network of over 50 BITs, most of which contain broad and investor-friendly dispute resolution clauses, including consent to ICSID and UNCITRAL arbitration. The state's legal framework does not currently restrict party autonomy in the same way as the EU does.

Moreover, Uzbekistan is not part of a supranational legal system that could limit arbitral jurisdiction. The Civil Procedure Code and Investment Law permit foreign investors to settle disputes through arbitration, both institutional and ad hoc. In practice, however, enforcement of arbitral awards remains inconsistent due to underdeveloped judicial capacity, limited understanding of PIL principles, and occasional political interference.

Uzbek courts tend to apply the New York Convention relatively favorably, but challenges persist in recognizing foreign arbitral awards where public policy or procedural irregularities are alleged. The lack of a coherent domestic doctrine on order public international makes judicial outcomes unpredictable.

While the Uzbek model appears more respectful of party autonomy, its effectiveness is undermined by the absence of a robust legal infrastructure to support investor confidence and ensure consistent enforcement of arbitral decisions.

4. Comparative Reflections and Future Prospects

The juxtaposition of the EU's restrictive and Uzbekistan's permissive approaches reveals a deeper divergence in how jurisdiction is conceptualized within investment disputes. The EU prioritizes systemic coherence and judicial control, often at the expense of investor flexibility. Uzbekistan, meanwhile, promotes openness and investor autonomy but lacks institutional maturity to guarantee legal certainty.

From a PIL perspective, neither model is entirely satisfactory. The EU's approach risks undermining core principles of party autonomy and predictability in cross-border dispute resolution. Uzbekistan's approach, while formally supportive of autonomy, struggles with practical implementation. A functional synthesis is needed—one that upholds the integrity of national legal systems while maintaining the flexibility and neutrality of arbitration.

As investment law evolves toward multilateral reform (e.g., discussions around a Multilateral Investment Court), the interaction with PIL must be reconsidered. Jurisdictional doctrines, enforcement mechanisms, and party autonomy should be aligned not only with treaty objectives but also with broader transnational legal principles.

Investment arbitration sits uneasily between the domains of public international law and private international law. The comparative analysis of the EU and Uzbekistan demonstrates that the treatment of party autonomy in investment disputes is deeply shaped by institutional frameworks, legal culture, and judicial philosophy.

For Uzbekistan, aligning its domestic legal regime with PIL principles and enhancing judicial capacity could improve the credibility and predictability of its dispute resolution system. For the EU, rethinking the rigidity of its jurisdictional doctrine may be necessary to accommodate legitimate expectations of foreign investors.

Ultimately, the future of party autonomy in investment disputes will depend on a delicate balance between legal certainty, investor protection, and the sovereignty of national legal orders an inherently private international law question.

References

1. Schill, Stephan W. *The Multilateralization of International Investment Law*. Cambridge University Press, 2009.
2. Dolzer, Rudolf and Schreuer, Christoph. *Principles of International Investment Law*, 2nd ed. Oxford University Press, 2012.
3. CJEU, *Slowakische Republik v. Achmea BV*, Case C-284/16, Judgment of 6 March 2018, ECLI:EU:C:2018:158.
4. CJEU, *Republic of Moldova v. Komstroy*, Case C-741/19, Judgment of 2 September 2021, ECLI:EU:C:2021:655.
5. United Nations. *Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention)*, 1958. Available at: https://uncitral.un.org/en/texts/arbitration/conventions/foreign_arbitral_awards
6. Republic of Uzbekistan. *Law on Investments and Investment Activities*, No. ZRU-598 of 25 December 2019. Available at: https://lex.uz/docs/4662953

Berman, George A. "The Globalization of Jurisdiction and the Limits of Territorial Sovereignty" *Texas International Law Journal* 54 (2019): 1–40.