UDC 341
DOI https://doi.org/10.32782/2524-0374/2023-7/111

# DEVELOPMENT OF "MANIFEST LACK OF LEGAL MERIT" RULE IN ICSID

# РОЗВИТОК ПРАВИЛА МЦУІС ПРО «ЯВНУ ВІДСУТНІСТЬ ЮРИДИЧНОГО ОБГРУНТУВАННЯ»

**Grabchak G.V., Graduate Student of International Law Department**
*Yaroslav Mudriy National Law University*

"Manifest lack of legal merit" rule is a relatively new phenomenon in investment arbitration. This rule makes possible (usually for the respondent-State) to effectively object against ungrounded claims of the claimant. The feature of the rule is that it has a broad application, as to the substance of the dispute, as to the jurisdiction or competence of the arbitral tribunal. "Manifest lack of legal merit" rule refers to procedural protection tools in the early stages of dispute resolution. If it is used properly, this rule can significantly reduce the time and resources (both human and financial) on dispute resolution.

What concerns International centre for settlement of investment dispute (ICSID), the Secretariat has created the rule in 2006. ICSID was the first arbitration institution, which proposed such variant of the procedural protection. Excluding ICSID, the first alternatives came to light only on 2016 in Singapore arbitration institute.

Despite the paucity of ICSID decisions in public on the matter, we can confidently say that ICSID Rule 41(5) was well-balanced. ICSID started the amendment process of ICSID Rules in 2016. This process was finished in 2022 by new Rules redactions. From our perspective, the amendments have not made the ICSID Rule 41(5) worse. The fresh ICSID Rule 41 includes the codification of the arbitral tribunal practice provided from 2010 until today. However, as will be argued in this article, such amendments were absolutely unnecessary because the arbitral tribunals applied the Rule correctly respecting all standards of judicial process. This article proposes to analyze the published practice of "Lack of legal merit" Rule application by the arbitral tribunals and to discuss the new Lack of legal merit" ICSID Rule in redaction of 2022.

**Key words:** ICSID, lack of legal merit, ICSID Arbitration Rules, ICSID amendments process, investment arbitration, arbitral tribunal.

Правило про «явну відсутність юридичного обґрунтування» є відносно новим явищем в галузі інвестиційного арбітражу. Це правило дозволяє (зазвичай державі-відповідачу) ефективно заперечувати проти безпідставних претензій позивача. Особливістю правила є те, що воно має широке застосування, як щодо суті спору, так і щодо юрисдикції або компетенції арбітражного трибуналу. Правило щодо «явної відсутності юридичного обґрунтування» є одним з інструментів процесуального захисту на ранніх стадіях вирішення спорів. Якщо воно використовується належним чином, це правило може значно скоротити час і ресурси (як людські, так і фінансові), що витрачаються на вирішення спорів.

Що стосується Міжнародного центру з врегулювання інвестиційних спорів, (МЦВІС), Секретаріат створив правило у 2006 році. МЦВІС був першою арбітражною установою, яка запропонувала такий варіант процесуального захисту. За винятком МЦВІС, перші альтернативи цьому правилу з'явилися тільки на 2016 в арбітражному інституті Сінгапуру.

Незважаючи на мізерність опублікованих рішень МЦВІС з цього приводу, ми можемо впевнено стверджувати, що правило МЦВІС 41 (5) було добре збалансованим. МЦВІС розпочав процес внесення змін до правил МЦВІС у 2016 році. Цей процес був завершений у 2022 році новими змінами Правил. На нашу думку, поправки не зробили Правило МЦВІС гірше. Нове Правило МЦВІС 41 включає в себе кодифікацію практики застосування Правила арбітражними трибуналами з 2010 року і по сьогодні. Однак, як буде доведено у цій статті, такі поправки були абсолютно не обов'язковими тому що арбітражні трибунали застосовували Правило належним чином та з дотриманням всіх стандартів судового процесу. Ця стаття пропонує проаналізувати опубліковану практику щодо «явної відсутності юридичного обґрунтування», застосування правила арбітражними трибуналами і обговорити нову відсутність юридичних заслуг «МЦВІС Правило в редакції 2022 року.

**Ключові слова:** МЦВІС, явна відсутність юридичного обґрунтування, арбітражні правила МЦВІС, процес внесення правок в правила МЦВІС, інвестиційний арбітраж, арбітражний трибунал.

**Problem Statement.** Conceptually "manifest lack of legal merit" is called to support the respondent to protect his rights from the fraudulent claims of the claimant in effective and time saving manner. Despite the fact that ICSID Rule 41(5) worked well, it was amended in 2022. As it will be indicated in this article, the amendments have not fundamentally changed the established approaches to "manifest lack of legal merit" Rule. However, these changes are no more than the process of closing the eyes to an independent observer of ICSID Rules amendment process. This article will demonstrate the absence of necessity to change the "manifest lack of legal merit" ICSID Rule.

**Analysis of recent studies and publications.** Procedural regulation of ICSID Rules generally and "manifest lack of legal merit" Rule particularly remains as yet unexplored in the Ukrainian science of international law. *Amici Curiae* was studied by Douglas Z., Goldsmith A., Michele Potestà M., Sobat M., Brabandere D., Antonietti, A., Diop, A. and many other. However, no one of the above-mentioned scholars examined the necessity to amend the ICSID Rule 41(5), as well as analyzed the ICSID Rule 41(5) amendment.

**Purpose and objectives of the studies.** The purpose of the article is to identify key issues of "manifest lack of legal merit" ICSID Rule. The objectives are as follows: analysis and synthesis of current legal approaches of arbitral tribunals to the "manifest lack of legal merit", interpretation by tribunals ICSID Rule 41(5) and comparison of ICSID Rule 41(5) 2006 and ICSID Rule 41 2022.

**Statement of a parent material.** Adoption of Rule 41(5) of International Centre for Settlement of Investment Disputes (hereinafter – ICSID) Arbitration Rules in 2006 was bold and progressive step [1, p. 680–682]. This Rule remaining a unique feature during next 10 years in investment and commercial arbitration. The same provisions later were included in Arbitration Rules (entered into force from 1st of August, 2016) [2, Rule 29] as well as Investment Arbitration Rules of the Singapore International Arbitration Centre (entered into force from 1st of January, 2017) [3, Rule 26]. Other arbitration institutes (as Arbitration Institute of the Stockholm Chamber of Commerce and Hong Kong International Arbitration Centre) have authorized the arbitral tribunal to decide this issue.

According to ICSID Rule 41(5) [3] [u]*nless the parties have agreed to another expedited procedure for making preliminary objections, a party may, no later than 30 days after the constitution of the Tribunal, and in any event before the first session of the Tribunal, file an objection that a claim is manifestly without legal merit. The party shall specify as precisely as possible the basis for the objection. The Tribunal, after giving the parties the opportunity to present their observations on the objection, shall, at its first session or promptly*

*thereafter, notify the parties of its decision on the objection. The decision of the Tribunal shall be without prejudice to the right of a party to file an objection pursuant to paragraph (1) or to object, in the course of the proceeding, that a claim lacks legal merit*.

As opposed to other Arbitration Rules, which provide for general power of arbitral tribunal to conduct the proceedings so as to avoid unnecessary delay and expense and to provide a fair and efficient process for resolving the parties' dispute [*see* 5, Rule 17(1)], ICSID Arbitration Rule 41(5) clearly provides the authority of the arbitral tribunal to expedited denial of claims.

Some international arbitration experts continued to take the position that such powers derive from general provisions [1, p. 681–682; 6, p. 164–165] (for instance from UNCITRAL Arbitration Rules 2013 [5]). However, practically arbitral tribunals took different approaches regarding this issue [7, p. 934–935]. In view of Mrs. Jack J. and Coe Jr. it would be logic to assume, that arbitral tribunals will delay the termination of disputes in absence of direct authority. Such concerns ground on fear of restricting the Claimant`s right to be heard [7, p. 939]. We also agree with such considerations.

This legal mechanism was first mentioned in ICSID Secretariat Discussion Paper, dated 22 October, 2004 [8]. According to the paper the Secretariat proposed to make a "special procedure", which would grant authority to arbitral tribunal to decline claims in full or in part in a simplified manner and without any prejudice to other objections in future [8, p. 10]. Such necessity was caused by demand for improved ICSID dispute resolution efficiency and systematic complaints by ICSID Member States regarding very limited powers of ICSID Secretariat to decline claims because it manifestly outside the jurisdiction of ICSID (Article 36(3) of Washington Convention) [8, pp. 6, 9, 10]. Member States argued that this level of authority is insufficient to exclude manifestly unreasonable claims.

If one examines the procedure of verifying claims under Article 36(3) of Washington Convention, it`s clearly seen that the verification included only cases of lack of jurisdiction, but not the lack of merits. As mentioned the former deputy of ICSID Secretary General and the main developer of ICSID Rules 2006 Antonio Parra, the Secretariat is not authorized to proactively prevent the initiation of consideration of claims that are clearly lack legal merits. Moreover, according to Washington Convention Article 36(3) the Secretariat verifies claims solely on the basis of information provided by the claimant [8, p. 6, 9, 10]. It is naive to assume that the Claimant will provide information which puts into question his claims.

As a result of consultations, the first redaction of ICSID Rule 41(5) was dropped by the Secretariat in 2005 [9, p. 7]. The main differences between the first and adopted redactions were (i) including of the word "legal" in the phrase "lack of legal merit"; (ii) including of parties right to agree to another expedited proceeding for preliminary objections and (iii) including of obligation to file objections till the first session of arbitral tribunal.

Despite the fact that Rule 41(5) was adopted in 2006, the first "manifest lack of legal merit" applications were decided only in 2010. During 10 days two arbitral tribunals in cases *Global Trading Resource Corp and anor v. Ukraine* [10] and *RSM Production Corp v. Grenada* [11] granted the applications.

The arbitral tribunal in the case *Global Trading Resource Corp and anor v. Ukraine* has granted the application because *the sale and purchase contracts entered into by the Claimants are pure commercial transactions that cannot on any interpretation be considered to constitute 'investments' within the meaning of Article 25 of the ICSID Convention* [10, p. 57]. The arbitral tribunal in the case *RSM Production Corp v. Grenada* has granted the application because *the present case is no more than an attempt to re-litigate and overturn the findings of another ICSID tribunal* [11, p. 7, 3, 6].

As of today, there were 46 lack of legal merit applications decided [12]. Not all awards are in public domain, however from the awards which are applicable, it seems like this Rule is sufficiently consistently applied and interpreted.

What concerns the scope of objections, available precedents demonstrate that objections can be not only on the merits, but also jurisdictional. For instance, according to the decision in *Brandes Investment Partners, LP v. Bolivarian Republic of Venezuela* case*: "Rule 41(5) does not mention "jurisdiction." The terms employed are "legal merit." This wording, by itself, does not provide a reason why the question whether or not a tribunal has jurisdiction and is competent to hear and decide a claim could not be included in the very general notion that the claim filed is "without legal merit."…There exist no objective reasons why the intent not to burden the parties with a possibly long and costly proceeding when dealing with such unmeritorious claims should be limited to an evaluation of the merits of the case and should not also englobe an examination of the jurisdictional basis on which the tribunal's powers to decide the case rest… The Arbitral Tribunal therefore interprets Rule 41(5) in the sense that the term "legal merit" covers all objections to the effect that the proceedings should be discontinued at an early stage because, for whatever reason, the claim can manifestly not be granted by the Tribunal'* [13, p. 50, 52, 55]. The same position was taken by the next arbitral tribunals[1].

What was even more interesting, in the above mentioned *RSM Production Corp v. Grenada* case [11] the claims were denied because of fair and procedural obstacles. Thus, we can conclude, that Rule 41(5) has the broad scope. As Dr. Eric De Brabandere mentioned, although the objective of Rule 41 (5) is not explicitly aimed at targeting claims that constitute an 'abuse of process', it is likely that the rule will prevent, or at least offer an adequate procedure to assess the submission of such claims, since it provides arbitral tribunals operating under ICSID Convention with a procedure to assess the claims, *inter alia* on these grounds in an early stage in the proceedings [14, p. 44].

It will also be interesting to mention, that in the number of cases[2] the arbitral tribunals considered objections which were grounded on the *Achmea* decision of Court of Justice of EU.

The procedure of Rule 41(5) is significantly accelerated. The Respondent has only 30 days after the arbitral tribunal constitution for objections filing, and in any case till the first session of the tribunal. If we compare ICSID Arbitration Rules 2006 with commercial and investment Arbitration Rules of the Singapore International Arbitration Centre, the latter do not provide terms for objections filing.

30 days term was calculated to meet the standard 60-day period after the establishment of the arbitral tribunal for the first session as required by ICSID Arbitration Rule 13(1), after that the arbitral tribunal is obliged to immediately decide it [15, p. 441].

The arbitral tribunal in the case *Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan* decided that both time

[1] *See Global Trading v. Ukraine*, ICSID Case No. ARB/09/11 (Award), p. 30; *PNG Sustainable Development Program Ltd v. Papua New Guinea*, ICSID Case No. ARB/13/33 (Decision on the Respondent's Objections under Rule 41(5) of the ICSID Arbitration Rules, 28 October 2015), p. 91; *Emmis International Holdings BV and ors v. Hungary*, ICSID Case No. ARB/12/2 (Decision on Respondent's Objection under ICSID Arbitration Rule 41(5), 11 March 2013), p. 64–72*; Eskosol S.p.A. in liquidazione v. Italian Republic*, ICSID Case No. ARB/15/50 (Decision on Respondent's Application under Rule 41(5), 20 March, 2017) (Eskosol), p. 35

[2] *See Alverley Investments Limited and Germen Properties Ltd v. Romania*, ICSID Case No. ARB/18/30 (Decision on the Respondent's Preliminary Objections pursuant to ICSID Arbitration Rule 41(5), 1 August 2019), where Romania's Rule 41(5) objection based on the intra-EU nature of the dispute failed (although the tribunal subsequently decided to bifurcate the proceedings with jurisdictional issues to be dealt with separately and heard Romania's intra-EU objection as part of the next phase); *Strabag SE, Erste Nordsee-Offshore Holding GmbH and Zweite Nordsee-Offshore Holding GmbH v. Germany*, ICSID Case No. ARB/19/29 (Decision on the Respondent's Preliminary Objections pursuant to ICSID Arbitration Rule 41(5), 24 July 2020), where Germany's Rule 41(5) objection based on the Achmea decision was also dismissed.

requirements of Rule 41 (5) are cumulative, meaning that objections must be lodged within 30 days of the establishment of the Tribunal and before the start of the first session at the same time [16].

The word "promptly" is commonly understood as a term, which is calculated in days or weeks, but not months. But in practice arbitral tribunals considered the objections during weeks, and sometimes even months. For instance, arbitral tribunals in cases *Trans-Global* [16], *Brandes and PNG Sustainable Development Program Ltd v. Papua New Guinea* [17, p. 99] considered the objections during three weeks after the hearings, in the case *Lion Mexico Consolidated L.P. v. United Mexican States* [18] the same procedure took three months and in case *Global Trading* [10] – five months.

In practice, parties are allowed to conduct one or two rounds of exchange of written positions followed by a round of oral hearing before the arbitral tribunal makes a decision[3], with the exception of some cases[4].

The last sentence of ICSID Arbitration Rule 41 (5) clearly states that the decision of the arbitral tribunal shall be without prejudice to the right of a party to file an objection to jurisdiction in accordance with the ordinary procedure established by ICSID Arbitration Rule 41(1). Thus, ICSID Arbitration Rule 41(5) is a part of a harmonious continuity of jurisdictional consideration of claims, with an increasing standard of handling them at every stage, from the powers of the Secretary-General to verify them under Article 36 (3) of the ICSID Convention to the arbitral tribunal's handling of objections in accordance with the procedure laid down in ICSID Arbitration Rule 41 (1) [19, p. 318; *see also* 13, p. 53].

What concerns the "test" of lack of legal merit, it should be noted, that the arbitral tribunals take almost uniform approaches to this. The word *"manifestly"* was consistently equated to words such as *"evident, obvious"* or *"clearly revealed to the eye"* etc [16, p. 83; 17, p. 88; 18, pp. 62–67; 20, p. 28]. Thus, the Respondent must declare the objection sufficiently clearly and obviously in accordance with ICSID Arbitration Rule 41(5) with relative ease and expeditiously. That is, it is necessary to demonstrate that the claims are unequivocally unfounded, which is obvious and easily proved by him.

In the case *Lotus Holding Anonim Sirketi v. Republic of Turkmenistan* the arbitral tribunal described the requirements of Rule 41(5) as requiring the presentation of a fundamental flaw in the formulated requirements which would inevitably lead to the rejection of the requirements, without dependence on the evidence provided [21, p. 158]. Such circumstances will not arise if the claimant makes convincing arguments, or when objections raise new, complex or debatable legal questions (because Rule 41 (5) can only be applied to apply genuinely undisputed rules of law to undisputed facts) [17, p. 88].

The above-mentioned approach does not find support very rarely. For instance, in the case *Trans-Global*, where it was obvious that the claims according to Article VIII of BIT between USA and Jordan were grounded on on the claimant's non-existent legal rights and the respondents's non-existent legal obligations. The tribunal has done this conclusion with "little difficulty of interpretation" [16, pp. 95, 118]; in the case *Global Trading* where none of the disputed agreements could be interpreted as "investments" for the purposes of the Washington Convention [10, p. 56]; in the case *Emmis International Holding, B.V., Emmis Radio Operating, B.V., Mem Magyar Media Kereskedelmi Es Szolgaltato KFT v. Hungary*, where the text of the treaties explicitly provides that the claimants are not subject to the consent of the receiving State of investment [22, p. 70]; in the case *Ansung Housing Co., LTD v. People`s Republic of China*, where there were comprehensive and unambiguous procedural documents submitted by the claimants, who confirmed that they first knew that they had suffered losses and damage more than three years before the dispute started (thereby violating the three-year statute of limitations under Article 9 (7) of the BIT between China and Korea) [23, pp. 107–108] and other.

Interesting in this context is the *PNGSDP* case, where the Respondent filed an objection both to the jurisdiction and to the merits of the claims. The arbitral tribunal, having conducted three rounds of exchange of written positions of the parties and one hearing, ruled that all the objections submitted by the Respondent give rise to new and complex questions of law, which also require analysis of relatively unusual facts [17, pp. 94–98]. A similar situation arose in the case *Lion Mexico* [18, pp. 79–81].

In the above-mentioned cases the arbitral tribunals were denied the lack of legal merit objections, based on the need for a more detailed study of all the circumstances of the case, which accordingly requires more time than proposed by ICSID Arbitration Rule 41(5).

As mentioned Mr. Markert, the meaning of the manifest lack of legal merits test should not be confused with the prima facie test used for preliminary objections to jurisdiction under ICSID Arbitration Rule 41(1), which is less stringent: *"prima facie test… Requires the Tribunal to undertake an exhaustive examination of the evidence in relation to matters relating to jurisdiction, but at the same time allows an assessment of not only the probable facts, but also the legal standards applicable to determine the violation of the BIT on the merits of the dispute. In contrast, previous objections under ICSID Arbitration Rule 41 (5) must be directed either to jurisdiction or to the merits of the case, and neither allow for additional research nor for the Tribunal to assess the legal standards on reasonable grounds. Instead, the Tribunal must be absolutely certain of the applicable legal standard in order to establish that the claims are manifestly unreasonable. If the Tribunal is in doubt, preliminary objections will be dismissed and the dispute will proceed"* [24, p. 148].

From all the above mentioned we can conclude, that the Secretariat perfectly coped with it`s task in 2004–2006. The Secretariat has found a great balance between the interests of the State (do not waste time and resources on unreasonable disputes) and the foreign investor (who wants to avoid delaying of the case consideration). ICSID Arbitration Rule 41(5) removed responsibility from the Secretary-General to the arbitral tribunal to judge lack of legal merits issue. Obviously, the procedure under Article 36(3) of the Washington Convention was clearly not enough.

What is particularly gratifying to note is that the arbitral tribunals have not evaluated facts and circumstances that were impossible to consider under a simplified procedure under ICSID Rule 41(5). Otherwise, such actions could result a duplication of various issues assessment that should be addressed at the next stages. Last but not the least, the wording of the Rule is brilliant, which is confirmed by all the interpretations of the Rule by the arbitral tribunals according to the text of this article.

As a result, the Secretariat created a legal mechanism which "cleanses" the disputes without proper justification.

Considering such a "procedural success" of the ICSID Secretariat in finding of great balance between parties' interests, the Amended ICSID Arbitration Rules 2022 [22]

[3] *See Trans-Global*; *Brandes*; *Global Trading*; *RSM Production*; *Rafat Ali Rizvi v. Indonesia*, ICSID Case No. ARB/11/13 (Award on Jurisdiction, 16 July 2013); *Pan American Energy LLC v. Plurinational State of Bolivia*, ICSID Case No. ARB/10/8 (Decision on the Respondent's Objection Pursuant to Rule 41(5) of the ICSID Arbitration Rules, 26 April 2013); *CEAC Holdings Limited v. Montenegro*, ICSID Case No. ARB/14/8 (Decision on the Respondent's Preliminary Objections Pursuant to ICSID Arbitration Rule 41(5), 27 January 2015); *Elsamex SA v. Honduras*, ICSID Case No. ARB/09/4 (Decision on Elsamex SA's Preliminary Objections, 7 January 2014) and other.

[4] *Emmis International; Accession Mezzanine Capital LP and anor v. Hungary*, ICSID Case No. ARB/12/3 (Decision on Respondent's Objection under Arbitration Rule 41(5), 16 January 2013); *Edenred SA v. Hungary*, ICSID Case No. ARB/13/21 (Decision on Preliminary Objections Pursuant to ICSID Arbitration Rule 41(5), 6 June 2014) and other.

present us the updated "manifest lack of legal merit" Rule – Rule 41.

If we compare the text of Rule in redaction of 2006 and 2022, we can see that the Rule has "evolved". Instead of one paragraph, now this Rule takes up an entire Rule. Now the proceedings are even clearer than previously. We have prompt terms as for objections submitting, as for the award drafting. Also, despite there were no problems in determining the scope of objections, now Rule 41(1) clearly defines that objections relate to the jurisdiction and the merits of the claims, as well as the competence of the arbitral tribunal. We rate this step as positive.

However, if we look at the ICSID Rules amendments process [26], which took place during 2017-2022, deeper, the question arises whether this amendments reform solves the problems posed to the Secretariat. In a nutshell, practically this amendment is neither worse not better for ICSID dispute resolution procedure. Obviously, the codification of the arbitral tribunals practice is on the face. We should mention that this example is one of the most effective amendment according to the text of updated ICSID Rules 2022. If we discover the relevant practice of arbitral tribunals (which we have tried to present briefly in the text of this article), there were no issues in application of the Rule. This rule worked efficiently without any modifications.

**Conclusions.** After more than 15 years of Rule 41 (5), it is safe to say that the initial fears that the Rule will be abused by the respondent States, which may delay consideration of the dispute and increase costs, referring without any reason to the "additional procedural level" – have not been justified.

The update of "manifest lack of legal merit" Rule is no more than dust in my eyes and makes things look better. We question deeply that such modifications will change the system of investment arbitration dispute resolution in ICSID.

**REFERENCES**


1. Goldsmith A. Trans-Global Petroleum: "Rare Bird" or Significant Step in the Development of Early Merits-Based Claim-Vetting?. *ASA Bulletin*. 2008. Vol. 26. P. 667–687. URL: https://www.clearygottlieb.com/-/media/organizearchive/cgsh/files/publication-pdfs/trans-global-petroleum-rarebirdor-significantstep-in-the-development-of-early-merits-based-claim-vetting.pdf (last access 24 July, 2023).
2. Arbitration Rules of the Singapore International Arbitration Centre: 6th Edition, 1 August 2016. URL: https://siac.org.sg/wp-content/uploads/2022/06/SIAC-Rules-2016-English_28-Feb-2017.pdf (last access 24 July, 2023).
3. Investment Arbitration Rules of the Singapore International Arbitration Centre: 1st Edition, 1 January 2017. URL: https://siac.org.sg/wp-content/uploads/2022/06/SIAC-Investment-Rules-2017.pdf (last access 24 July, 2023).
4. Arbitration Rules International Centre for Settlement of Investment Disputes, 2006. URL: https://icsid.worldbank.org/sites/default/files/ICSID%20Convention%20English.pdf (last access 24 July, 2023).
5. UNCITRAL Arbitration Rules, 2013. URL: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/uncitral-arbitration-rules-2013e.pdf (last access 24 July, 2023).
6. Michele Potestà M., Sobat M. Frivolous claims in international adjudication: a study of ICSID Rule 41(5) and of procedures of other courts and tribunals to dismiss claims summarily *Journal of International Dispute Settlement*. 2012. Vol. 3, No 1. P. 137–168, doi: https://doi.org/10.1093/jnlids/idr021.
7. Jack J., Coe Jr. The State of Investor-State Arbitration-Some Reflections on Professor Brower 's Plea for Sensible Principles. *American University International Law* Review. 2005. Vol. 20, No 5. P. 929–956. URL: https://digitalcommons.wcl.american.edu/cgi/viewcontent.cgi?article=1149&context=auilr (last access 24 July, 2023).
8. 'Possible Improvements of the Framework for ICSID Arbitration. ICSID Secretariat, Discussion Paper. 2004. URL: https://icsid.worldbank.org/sites/default/files/Possible%20Improvements%20of%20the%20Framework%20of%20ICSID%20Arbitration_0.pdf (last access 24 July, 2023).
9. Suggested Changes to the ICSID Rules and Regulations. Background paper. ICSID Secretariat. 2005. URL: https://icsid.worldbank.org/sites/default/files/publications/Suggested%20Changes%20to%20the%20ICSID%20Rules%20and%20Regulations.pdf (last access 24 July, 2023).
10. ICSID Award. *Global Trading v. Ukraine*. ICSID Case No. ARB/09/11. 1 December, 2010. URL: https://jusmundi.com/en/document/decision/en-global-trading-resource-corp-and-globex-international-inc-v-ukraine-award-wednesday-1st-december-2010 (last access 24 July, 2023).
11. ICSID Award. *RSM and others v. Grenada*. ICSID Case No. ARB/10/6. 10 December, 2010. URL: https://jusmundi.com/fr/document/decision/en-rsm-production-corporation-and-others-v-grenada-award-friday-10th-december-2010 (last access 24 July, 2023).
12. Decisions on Manifest Lack of Legal Merit. ICSID web-site. URL: https://icsid.worldbank.org/cases/content/tables-of-decisions/manifest-lack-of-legal-merit (last access 24 July, 2023).
13. ICSID Award. *Brandes Investment Partners, LP v. Bolivarian Republic of Venezuela*. ICSID Case No. ARB/08/3. 10 December, 2010. URL: https://www.italaw.com/sites/default/files/case-documents/ita0099.pdf (last access 24 July, 2023).
14. Brabandere D. The ICSID Rule on Early Dismissal of Unmeritorious Investment Treaty Claims: Preserving the Integrity of ICSID Arbitration. *Manchester Journal of International Economic Law*. 2012. Vol. 9, No 1. P. 23–44. URL: https://deliverypdf.ssrn.com/delivery.php?ID=773124118097096114024025085096077065057081049043000029071006119069009067110099091085056017 03 9010001111005 113080090090101002015043087058092007071070900880040890940220710210480090771210880901081211190 770661131261171201181071250050070671021191081100951 25&EXT=pdf&INDEX=TRUE (last access 24 July, 2023).
15. Antonietti, A. The 2006 Amendments to the ICSID Rules and Regulations and the Additional Facility Rules. *ICSID Review – Foreign Investment Law Journal*. 2006. Vol. 21, No. 2. P. 427-448.
16. ICSID Decision on the respondent`s objection under Rule 41(5) of the ICSID Arbitration Rules. *Trans-Global Petroleum, Inc. v. Hashemite Kingdom of Jordan*. ICSID Case No. ARB/07/25. 12 May, 2008. URL: https://www.italaw.com/sites/default/files/case-documents/ita0872.pdf (last access 24 July, 2023).
17. The tribunal`s Decision on the respondent`s objection under Rule 41(5) of the ICSID Arbitration Rules. *PNG Sustainable Development Program Ltd. v. Independent State of Papua New Guinea*. ICSID Case No. ARB/13/33. 28 October, 2014. URL: https://www.italaw.com/sites/default/files/casedocuments/italaw4048.pdf. (last access 24 July, 2023).
18. Decision on the respondent`s objection under Rule 45(6) of the ICSID Arbitration (Additional Facility) Rules. *Lion Mexico Consolidated L.P. v. United Mexican States*. Case No. ARB(AF)/15/32. 12 December, 2016. URL: https://www.italaw.com/sites/default/files/case-documents/italaw4048.pdf (last access 24 July, 2023).
19. Diop, A. Objection under Rule 41(5) of the ICSID Arbitration Rules. *ICSID Review – Foreign Investment Law Journal*. 2010. Vol. 25, Issue 2. P. 312-336.
20. Award on the Respondent's Application under Rule 41(5) of the ICSID Arbitration Rules. *Almasryia for Operating & Maintaining Touristic Construction Co. L.L.C. v. State of Kuwait*. ICSID Case No. ARB/18/2. 1 November, 2019. URL: https://jusmundi.com/en/document/decision/en-almasryia-for-operating-maintaining-touristic-construction-co-l-l-c-v-state-of-kuwait-none-currently-available-wednesday-14th-february-2018 (last access 24 July, 2023).
21. Award. *Lotus Holding Anonim Sirketi v. Republic of Turkmenistan*. ICSID Case No. ARB/17/30. 6 April, 2020. URL: https://www.italaw.com/sites/default/files/case-documents/italaw11411.pdf ((last access 24 July, 2023).

22. Decision on Respondent`s objection under ICSID Arbitration Rule 41(5). *Emmis International Holding, B.V., Emmis Radio Operating, B.V., Mem Magyar Media Kereskedelmi Es Szolgaltato KFT v. Hungary.* ICSID Case No. ARB/12/2. 11 March, 2013. URL: https://www.italaw.com/sites/default/files/case-documents/italaw1239_0.pdf (last access 24 July, 2023).

23. Award. *Ansung Housing Co., LTD v. People`s Republic of China.* ICSID case No. ARB/14/25. 9 March, 2017. URL: http://icsidfiles.worldbank.org/icsid/icsidblobs/OnlineAwards/C3885/DC10053_en.pdf (last access 24 July, 2023).

24. Markert L. Preliminary Objections Pursuant to ICSID Arbitration Rule 41(5) – Soon to Become the Preliminary Objection of Choice?. *Transnational Dispute Management*. 2012. No. 3.

25. Arbitration Rules International Centre for Settlement of Investment Disputes, 2022. URL: https://icsid.worldbank.org/procedures/arbitration/convention/overview/2022 (last access 24 July, 2023).

26. About the ICSID Rule Amendments. ICSID web-site. URL: https://icsid.worldbank.org/resources/rules-and-regulations/amendments/about (last access 24 July, 2023).