

UDC 341.9

Features of legal regulation and protection of competition in the sphere of foreign economic activity

Bakhtiyor O. Samadov

PhD in Law, Docent,
Head of the Department of entrepreneurial and international law,
Tajik State University of Law, Business and Politics,
735700, 1, 17th microdistrict, Khujand, Republic of Tajikistan;
e-mail: samadov.bb@hotmail.com

Kiyomuddin Sh. Nasrutdinzoda

Postgraduate,
Department of entrepreneurial and international law,
Tajik State University of Law, Business and Politics,
735700, 1, 17th microdistrict, Khujand, Republic of Tajikistan;
e-mail: Kiyomuddin_Nasrutdinzoda@mail.ru

Abstract

The article aims to consider some legal issues related to foreign economic activity, in particular to reveal the features of regulation of foreign economic activity and the protection of competition in the sphere of foreign trade activity. Some features of the legal regulation and protection of competition under the current legislation of the Republic of Tajikistan, member states of the Commonwealth of Independent States and the Shanghai Cooperation Organization are studied from the comparative legal aspect. The authors use the results of the comparative legal analysis of the norms of antimonopoly law, protection of competition to draw conclusions and make proposals for improving the legislation of the Republic of Tajikistan. In order to protect competition, it would be advisable to develop new specific ways to protect the rights of entrepreneurs, participants in foreign economic activity and to determine public bodies that will be responsible for protecting competition in the market. The current state of market relations in the Republic of Tajikistan requires systematic improvement of the law on protection of competition. As competition is considered to be a complicated and many-sided phenomenon, protection of competition in the market is viewed as a basic legal tool for preventing violations of antimonopoly law.

For citation

Samadov B.O., Nasrutdinzoda K.Sh. (2018) Features of legal regulation and protection of competition in the sphere of foreign economic activity. *Voprosy rossiiskogo i mezhdunarodnogo prava* [Matters of Russian and International Law], 8 (12A), pp. 74-79.

Keywords

Law, foreign economic activity, competition, antimonopoly law, constitution, entrepreneurship, international law, contract, state control.

Introduction

The creation of a competitive environment in the relations between business entities is considered to be one of the necessary and important aspects of foreign economic activity under market conditions. The essence of competition is usually defined as a struggle for more favourable conditions, for the best results of entrepreneurial activity, i. e. production and circulation of goods, works and services in the market.

Special attention is paid to antimonopoly regulations and the protection of competition in the sphere of entrepreneurial and legal relations in many countries, such as the Republic of Tajikistan, member states of the Commonwealth of Independent States, the Shanghai Cooperation Organization, etc.

Legal regulation and protection of competition in the sphere of foreign economic activity

In many countries with a market economy there is antimonopoly regulation of entrepreneurial activity, in particular foreign economic activity. The bases of antimonopoly are laid down in the norms of a constitution as a guarantee for the freedom of entrepreneurial activity and legal protection of all forms of ownership, including private one, i. e. competitiveness.

In economically developed countries, including the Russian Federation, the Republic of Belarus, Kazakhstan, etc, in the Republic of Tajikistan, competition between economic entities in the relevant commodity market is regulated by legal acts and laws. The bases of legal regulation of competition are provided in constitutional norms. According to Article 12 of the Constitution of the Republic of Tajikistan "The state shall guarantee freedom of economic activity, entrepreneurship, equality of rights, and the protection of all forms of ownership including private ownership".

The comparative analysis of legal norms allows us to conclude that the Constitution of the Russian Federation contains more progressive norms in this area: "In the Russian Federation guarantees shall be provided for the integrity of economic space, a free flow of goods, services and financial resources, support for competition, and the freedom of economic activity" (Item 1 of Article 8) and "The economic activity aimed at monopolisation and unfair competition shall not be allowed" (Item 2 of Article 34).

It should be noted that under market conditions, the antimonopoly policy of the state and at the same time the protection of competition are natural products of a free society, i. e. a society where everyone can express themselves in any activity, business in particular.

In legal literature it is noted that competition, along with private property and free entrepreneurial activity, is one of the main forces of economic development and scientific technological progress, including the way of redistribution and saving of economic resources.

Competition has a significant impact on the decision-making of entrepreneurs in the process of running their businesses, especially in the field of trade. Protection, which is free from the dictates of monopoly competition, is part of antimonopoly regulation [Bezbakh, Puchinskii, 2004, 491].

Effective functioning of entrepreneurship and a market economy as a whole is known to depend on the development and improvement of competition and monopoly legislation, which is provided in the presence of state control over monopolies. In this area, special attention should be paid to legal protection, protective measures aimed at ensuring competition between business entities. We agree

with the opinion of B.I. Puginskii, according to which it is necessary to protect competition by adopting and enforcing special laws [Puginskii, 2013, 128].

Thus, the legislation of the Republic of Tajikistan in the field of antimonopoly regulation and development of competition in foreign economic activity, as well as protection of market competition has a number of features. It is interesting to compare a number of provisions of the legislation of Tajikistan and Russia in the field of legal support and protection of competition. Fixed rules for protecting competition in the current legislation are viewed as one of the main aspects of legal regulation in the sphere of foreign economic activity.

A number of laws were adopted in the field of antimonopoly regulation and protection of competition during the period of formation and development of market relations in the Republic of Tajikistan. Laws related to the development of entrepreneurial, foreign economic activity and the creation of a free and efficient market for goods are of particular importance in legal regulation. The first Law of the Republic of Tajikistan "On competition and restriction of monopolistic activity in commodity markets" was adopted on November 29, 2000 and lost its force after the adoption of the Law of the Republic of Tajikistan No. 198 of July 28, 2006. "On competition and restriction of monopolistic activity in commodity markets".

It should be noted that the Law of the Republic of Tajikistan "On the protection of competition" was adopted in 2017. In comparison with the previous laws, the new law defines the organisational legal framework for the protection of competition, regulates relations to create and ensure favourable conditions for the development of competition, efficient operation of commodity markets, a single economic space and free economic activity. From the position of the legislator, the main goal of protecting competition is to limit the monopolistic purpose of activity and create favourable conditions for business entities in the market. The legislation establishes the legal framework for protecting competition in the market, but the practice of applying the relevant rules leaves much to be desired.

Private legal interests and public legal interests in the process of regulation and protection of competition in the field of foreign economic activity, entrepreneurship as a whole should not contradict each other, but should interact and improve. V.S. Belykh points out that the phenomenon of competition is manifested in the combination of private interests of participants in entrepreneurial activity and public interests of a state [Belykh, 2005, 284].

At the same time, we noted that the legal problems of protecting competition at the current stage of the development of market relations are little perceived by the society as a whole. It is known that it is possible to achieve desirable, positive results only by eliminating disorderly actions of businessmen and performing actions by some officials of state bodies regulating business activity with a view to developing the economy of the country [Samadov, 2017, 87].

Conclusion

The comparative legal analysis of the Law of the Republic of Tajikistan of May 30, 2017 "On the protection of competition" and the previous law of 2006 "On competition and restriction of monopolistic activity in commodity markets" allows us to conclude that the legislator has not paid sufficient attention to civil liability in this sphere and there is a need for taking legal measures aimed at protecting competition, in particular preventive ones, in order to prevent violations of antimonopoly laws. In addition to this, the legislator has not developed a mechanism for prevention, has not taken specific preventive measures, has not devised forms and methods of protecting entrepreneurs' rights

and legitimate interests and holding liable those who violate the requirements of the current antimonopoly legislation.

In order to protect competition, it would be advisable to develop new specific ways to protect the rights of entrepreneurs, participants in foreign economic activity and to determine public bodies that will be responsible for protecting competition in the market.

The current state of market relations in the Republic of Tajikistan requires systematic improvement of the law on protection of competition. As competition is considered to be a complicated and many-sided phenomenon, protection of competition in the market is viewed as a basic legal tool for preventing violations of antimonopoly law.

References

1. Belykh V.S. (2005) *Pravovoe regulirovanie predprinimatel'skoi deyatel'nosti v Rossii* [Legal regulation of entrepreneurial activity in Russia]. Moscow: Prospekt Publ.
2. Bezbakh V.V., Puchinskii V.K. (eds.) (2004) *Grazhdanskoe i trgovoe pravo zarubezhnykh stran* [Civil and trade law in foreign countries]. Moscow: MTsFER Publ.
3. *Constitution of the Russian Federation: adopted by popular vote on December 12, 1993*. Available at: <http://www.constitution.ru/en/10003000-01.htm> [Accessed 15/11/18].
4. *Constitution of the Republic of Tajikistan: adopted on November 6, 1994*. Available at: <http://www.president.tj/en/taxonomy/term/5/28> [Accessed 15/11/18].
5. *O konkurentsii i ogranichenii monopolisticheskoi deyatel'nosti na tovarnykh rynkakh: zakon Respubliki Tadjikistan ot 28.07.2006 № 198* [On competition and restriction of monopolistic activity in commodity markets: Law of the Republic of Tajikistan No. 198 of July 28, 2006]. Available at: http://online.zakon.kz/Document/?doc_id=30536394#pos=0;200 [Accessed 15/11/18].
6. *O konkurentsii i ogranichenii monopolisticheskoi deyatel'nosti na tovarnykh rynkakh: zakon Respubliki Tadjikistan ot 29.11.2000 № 11* [On competition and restriction of monopolistic activity in commodity markets: Law of the Republic of Tajikistan No. 11 of November 29, 2000]. Available at: http://www.adlia.tj/show_doc.fwx?rgn=1416 [Accessed 15/11/18].
7. *O zashchite konkurentsii: feder. zakon Ros. Federatsii ot 26.07.2006 № 135-FZ: prinyat Gos. Dumoi Feder. Sobr. Ros. Federatsii 08.07.2006: odobr. Sovetom Federatsii Feder. Sobr. Ros. Federatsii 14.07.2006* [On the protection of competition: Federal Law of the Russian Federation No. 135-FZ of July 26, 2006]. Available at: http://www.consultant.ru/document/cons_doc_LAW_61763/ [Accessed 15/11/18].
8. *O zashchite konkurentsii: zakon Respubliki Tadjikistan ot 30.05.2017 № 1417* [On the protection of competition: Law of the Republic of Tajikistan No. 1417 of May 30, 2017]. Available at: http://online.zakon.kz/Document/?doc_id=32810078#pos=0;200 [Accessed 15/11/18].
9. Puginskii B.I. (2013) *Kommercheskoe pravo Rossii* [Commercial law in Russia]. Moscow: Zertsalo-M Publ.
10. Samadov B.O. (2017) *Osobennosti pravovogo regulirovaniya i zashchity konkurentsii v sfere predprinimatel'skoi deyatel'nosti* [Features of legal regulation and protection of competition in the sphere of entrepreneurial activity]. *Biznes, menedzhment i pravo* [Business, management and law], 3-4, pp. 86-88.

Особенности правового регулирования и защиты конкуренции в сфере внешнеэкономической деятельности

Самадов Бахтиер Одилджанович

Кандидат юридических наук, доцент,
завкафедрой предпринимательского и международного права,
Таджикский государственный университет права, бизнеса и политики,
735700, Республика Таджикистан, Худжанд, 17 мкр-н, 1;
e-mail: samadov.bb@hotmail.com

Насрутдинзода Киёмуддин Шовали

Соискатель,
кафедра предпринимательского и международного права,
Таджикский государственный университет права, бизнеса и политики,
735700, Республика Таджикистан, Худжанд, 17 мкр-н, 1;
e-mail: Kiyomuddin_Nasrutdinzoda@mail.ru

Аннотация

В статье рассматриваются некоторые правовые вопросы и особенности регулирования внешнеэкономической деятельности и защиты конкуренции в сфере внешнеэкономической деятельности. В сравнительно-правовых аспектах рассмотрены некоторые особенности правового регулирования и защиты конкуренции в рамках действующего законодательства Республики Таджикистан, стран СНГ, ШОС. В результате сравнительно-правового анализа норм антимонопольного законодательства, защиты конкуренции авторами сделан ряд выводов о правовых нормах, регулирующих внешнеэкономическую деятельность и обеспечивающих защиту конкуренции в Республике Таджикистан. В целях усовершенствования законодательства в данной сфере, в частности для защиты конкуренции, предлагается установить в новом законе конкретные способы защиты прав предпринимателей, субъектов внешнеэкономической деятельности и, соответственно, определить государственные органы, осуществляющие защиту конкуренции субъектов предпринимательства на рынке.

Для цитирования в научных исследованиях

Самадов Б.О., Насрутдинзода К.Ш. Features of legal regulation and protection of competition in the sphere of foreign economic activity // Вопросы российского и международного права. 2018. Том 8. № 12А. С. 74-79.

Ключевые слова

Право, внешнеэкономическая деятельность, конкуренция, антимонопольное право, конституция, предпринимательство, международное право, договор, государственный контроль.

Библиография

1. Безбах В.В., Пучинский В.К. (ред.) Гражданское и торговое право зарубежных стран. М.: МЦФЭР, 2004. 896 с.
2. Белых В.С. Правовое регулирование предпринимательской деятельности в России. М.: Проспект, 2005. 432 с.
3. О защите конкуренции: закон Республики Таджикистан от 30.05.2017 № 1417. URL: http://online.zakon.kz/Document/?doc_id=32810078#pos=0;200
4. О защите конкуренции: федер. закон Рос. Федерации от 26.07.2006 № 135-ФЗ: принят Гос. Думой Федер. Собр. Рос. Федерации 08.07.2006: одобр. Советом Федерации Федер. Собр. Рос. Федерации 14.07.2006. URL: http://www.consultant.ru/document/cons_doc_LAW_61763/
5. О конкуренции и ограничении монополистической деятельности на товарных рынках: закон Республики Таджикистан от 28.07.2006 № 198. URL: http://online.zakon.kz/Document/?doc_id=30536394#pos=0;200
6. О конкуренции и ограничении монополистической деятельности на товарных рынках: закон Республики Таджикистан от 29.11.2000 № 11. URL: http://www.adlia.tj/show_doc.fwx?rgn=1416
7. Пугинский Б.И. Коммерческое право России. М.: Зерцало-М, 2013. 375 с.

-
8. Самадов Б.О. Особенности правового регулирования и защиты конкуренции в сфере предпринимательской деятельности // Бизнес, менеджмент и право. 2017. № 3-4. С. 86-88.
 9. Constitution of the Republic of Tajikistan: adopted on November 6, 1994. URL: <http://www.president.tj/en/taxonomy/term/5/28>
 10. Constitution of the Russian Federation: adopted by popular vote on December 12, 1993. URL: <http://www.constitution.ru/en/10003000-01.htm>