

SOLUTION OF THE PROBLEM OF THE LEGAL STATUS OF THE “ASTANA” INTERNATIONAL FINANCIAL CENTER IN KAZAKHSTAN

Farkhad Karagussov, doctor of Law, professor at Caspian University (Almaty, Kazakhstan), associate member of the International Academy of Comparative Law (IACL)

In accordance with the Constitutional Law dated 7 December 2015 the “Astana” International Financial Center (AIFC) was established in Kazakhstan as a formation that has its own bodies, enjoys the right to prescribe specific behavior within its allocated territory, create its own legal norms, introduce and implement its own administrative procedures, as well as, by the activities of the AIFC Court, to resolve disputes and conflicts. and to make decisions on the merits. On the territory of the AIFC, Kazakh law practically does not apply. Jurisdiction of bodies and courts of Kazakhstan does not extend to the territory of the AIFC. The AIFC Court may, at its discretion, resolve disputes and conflicts taking into account any considerations that are not legal norms of either Kazakh law or law of any other recognized legal system.

Some Kazakh scholars expressed an opinion that, with the creation of the AIFC, Kazakhstan can be considered a hybrid or mixed jurisdiction. It seems, that such view lacks appropriate fundamental and scientific grounds. Under current circumstances the AIFC has not been (and should not be!) recognized as a separate or otherwise distinct jurisdiction by any State. Kazakhstan has also failed to appropriately recognize it as such. However, by creation of the AIFC, our State allowed the loss of its control over application of Kazakh law in resolving disputes and conflicts that arose on the territory of our Republic within the framework of our legal system, but by will of parties to particular disputes (conflicts) were transferred to the AIFC Court for final resolution. To the maximum extent possible, the AIFC can be considered as an exorbitant jurisdiction. Accordingly, all decisions rendered by the AIFC Court cannot (or should not) be recognized by foreign courts. In general, there is a high probability of various risks that are created by the functioning of the AIFC for Kazakhstan and for all participants of private-law relations. The AIFC’s activity leads to incidents that cannot be regulated and resolved in accordance with norms of Kazakhstani legislation. The AIFC’s legal status does not allow to properly apply mechanisms and tools existing in private international law for resolving conflicts of legal systems within particular legal relations involving a foreign element.

Adoption of a political and legal decision on liquidation of the AIFC, an assessment of the consequences of its functioning and, if negative consequences are revealed, development and implementation of an action plan to eliminate them now seems to be urgent.