

Abstract (English)

Often evoked by investors before arbitral tribunals and at the same time causing controversy and uncertainty with regard to its contents. Fair and equitable treatment standard of protection (FET) suffers from its vague formulation in bilateral investment treaties but simultaneously this characteristic enables it to fulfil the function of filling gaps left by other standards of protection. This results in a fact that uniform understanding of the standard seems impossible to achieve.

Inherent dispute on whether FET amounts only to minimum standard of treatment under customary international law or is rather an autonomous standard is also embodied in various wordings of FET clauses present in the treaties. Unless specific link to minimum standard is made, almost all methods of legal interpretation prove that FET is an autonomous concept. Enumeration of sub-elements of FET in clauses will also not achieve certainty mainly because of disputes on contents of some of these sub-elements.

Effort to shed more light on the contents of the standard is achieved by evaluation of values of rule of law as well as requirements of morality and legality (necessary for functioning of every legal system) presented by legal philosopher Lon Fuller. A set of universally accepted principles is extracted from these theories: reasonableness, consistency, foreseeability, transparency and concept of procedural equality. Although they are not concerned directly with contents of host state's regulatory measure, it is claimed that complying with these principles by host states (influencing "just" form of the law) will influence just content of legal norms.

Use of these principles in the decision making process is afterwards used on a pending case featuring alleged violation of FET concerning sovereign debt restructuring in Argentina in the new millennium.