International commercial arbitration

Abstract

The aim of this paper was to analyse the concepts of "arbitrability" and "kompetenz-kompetenz" as institutes of arbitration. For a better and deeper understanding of the essence of these concepts, both foreign and domestic regulations were deliberately compared. Although in many respects these concepts are interpreted in a similar manner across a wide range of jurisdictions, differences can be found, the source of which will have to be discovered in the first instance within traditions, legal culture, and sometimes religion or political regime. It is not in the power of even such greats as Born or Fouchard to present the entire issue to the reader in full, simply because of the fact that these terms are used almost universally and in many ways will be variable in place and time.

In the first part, I dealt with the concept of international commercial arbitration itself, to which was linked a passage on sources of law. The purpose was to brief the reader on the most important sources at the international level, which are key guides for the regulation of arbitrability and the doctrine of competence-competence. I still find important the fact that many countries have claimed an exception that creates the possibility for them for an incomplete application of the conventions in question. It is therefore an imaginary exclamation point for the next stage of exploration of legal orders, where we may encounter differences in practice that we would not expect.

The middle and crucial part of the thesis was devoted to the very core of this work, namely the concepts of Arbitrability and Kompetenz-Kompetenz. In a very simplistic way, one could interpret these notions as variable in time and place based on the traditions of a given legal culture, and this would certainly be true. The need to develop these notions to help compare legal regulations in Europe (Swiss Confederation, Federal Republic of Germany, Czech Republic, French Republic) but also abroad (People's Republic of China, United States of America) is based on the undeniable influence of the globalization of trade and the increasing number of legal transactions in the context of B2B (business to business) and B2C (business to customer) relationships around the world. The section on the arbitrability of corporate disputes already specialises in a particular sector, which I believe, following the example of the Swiss Confederation's regulation, will be expanded in the subjects that can be arbitrated. In my view, however, he thinks that status issues under corporate law will continue to be decided exclusively by the courts, as has been the case to date.

In analyzing the Kompetenz-Kompetenz doctrine, I have included the text in this thesis for the sake of a more detailed understanding of this institution. It is not for nothing that I have studied this institute overwhelmingly from foreign sources, which deal with this discipline far more than Czech sources. The doctrine is closely linked to the concept of arbitrability, which is usually decided by an arbitral body. However, it should be borne in mind that questions concerning, for example, the quality of the legal action itself will no longer be arbitrable.

In the final stage of the work I offer the reader a very brief analysis of the other institutes of the arbitration procedure, i.e. the arbitration agreement and the arbitral award. I have written both of these institutes only as briefly as possible, as they certainly deserve to be the very subjects of their own papers.

Keywords: international commercial arbitration, arbitrability, Kompetenz-Kompetenz.