

International investment arbitration in selected EU Member States

Abstract

This dissertation describes and analyzes the state of international investment arbitrations against selected EU Member States: the Slovak Republic, the Czech Republic, Poland, Hungary and Romania. The goal is to gain an overview of the current status of ongoing and completed arbitrations, the background of the dispute and its causes, BIT breach sued/found, compensations sued/awarded and the outcome of the dispute (including annulment proceedings and possibly proceedings before the CJ EU), as well as using the lessons learned in further practice, either in BIT negotiation or in arbitrations. The first chapter briefly explains what international arbitration is and briefly defines selected arbitration rules. Next, the chapter explains what international investment agreements are, what their purpose is and what their usual content is. Subsequently, the content of modern investment agreements is briefly described. The chapter further briefly recalls the accession process of the Slovak Republic to the EU, analyzes the principle of priority of EU law not only over national but also international law, defines the line of argumentation of the so-called intra EU BIT objections of the Slovak Republic in investment arbitrations, a brief analysis of the judgment of the CJ EU Achmea against the Slovak Republic and its consequences, including the termination of the so-called intra EU BITs. At the end is described the position of the Slovak Republic in the Opinion 1/17 proceedings (for the sake of differentiation) and also information on the ongoing work on the future regime of cross-border investments in the EU. This chapter also briefly mentions the Komstroy judgment and the completion of the ECT modernization process. In the second (main) chapter, each investment arbitration is chronologically briefly described and analyzed, according to publicly available information, successively against the Slovak Republic, the Czech Republic, Poland, Hungary and Romania. In terms of content, this is the broadest chapter, which, for all publicly known arbitrations, provides a brief overview of the background of the dispute, the relevant investment agreement and the defendant/awarded provisions, the defendant/awarded compensation, the result of the dispute and any further review of the arbitral award in the ICSID annulment/review by the court. /in proceedings before the SD EU. In the case of a more significant dispute, the arbitration is analyzed more deeply. In the third - evaluation chapter, individual arbitrations are divided into categories according to the cause/background of the dispute: (i) arbitrations from changes in legislation, (ii) arbitrations related to EU accession, (iii) arbitrations with a privatization background and (iv) the broadest category - arbitrations from individual decisions/actions – disputes from court proceedings (mainly

bankruptcies, freezing of assets, criminal prosecution), decisions of administrative authorities (revocation of license, non-issuance of license) and contractual claims (termination of contract, failure to conclude contract) are included here. Finally, the practical experience of the Member States in arbitrations is briefly described, namely the draft of model BITs, the negotiation of BITs and the prevention and management of disputes.

Keywords: international investment arbitration, international investment agreement, ISDS, BIT, right to regulate, intra-EU objection, *Achmea v. the Slovak Republic*,