

## Selected Problematic Aspects of Arbitration Clause's Validity

### Abstract

This rigorous thesis is concerning the validity of arbitration clause. In the arbitration proceeding, no state authority which would guarantee an adequate legal professionalism in this area and concurrently observing all the components of the right to due process exists. Just the correctness of the proceeding based on the valid arbitration clause is the essential aspect of whole rigorous thesis. This thesis primarily describes the progress of the case law in specific areas of prerequisites for validity and re-examinability of the arbitration clause. The goal of rigorous thesis called "Selected Problematic Aspects of Arbitration Clause's Validity" is the evaluating of arbitration clause's invalidity reasons in relation to the progress of case law regarding these aspects. The question is: In what measure and in what way the deciding of the courts does influence the validity of arbitration clause? The hypothesis for answering this research question were determined as follows: a) Due to lack of explicit legal regulation enshrined in the law the necessities of arbitration clause causes application's problems, b) validity of the arbitration clause is dependent on judging by court, c) the validity of arbitration clause is dependent on a few varying factors (elements, components) stipulated by the case law which are to be followed by the parties when formulating the arbitration clause. The thesis structure is logically composed according to the thesis goal which should be reached. Therefore primarily the fundamental legal requirements for validity of the arbitration clause have been introduced as well as their concrete definition from the case law viewpoint. The specifying of the procedural instruments and the moments when and how validity of the arbitration clause may be re-examined which is followed by evaluating of the consequences caused by the arbitration clause's invalidity. The essential part of this thesis is evaluating the development of the consumers arbitration proceeding resulting to its complete elimination as well.

The analysis method critically evaluating legal norms concerning the arbitration proceeding by means of the case law legal opinions on the concrete issue has been used. Further, the inductive method enables the reasons of invalidity to be examined as well as to indicate its consequences for the arbitration proceeding by which the other used method is expressed, namely interpretation method. Finally, the comparison method helping to compare Czech legal norms with the foreign one has been used. In the light of mentioned, especially the legal norms of the states of EU seems to be crucial. Therefore, the thesis using thorough analysis

of the Czech high court's valid case law contributes to the explanation of the key requirements for negotiation of valid arbitration clause. The hypothesis of the rigorous thesis have been confirmed which means that the case law influences the validity of the arbitration clause in the fundamental measure. Therefore, when formulating arbitration clause it is necessary to know and follow it. Also, the thesis brings the comparison with the foreign legislation as well as many observations which may mean the positive import for the arbitration proceeding and its progress. In accordance with that the De Lege Ferenda suggestions have been made, especially regarding the growth and development of this out-of-court way of dispute resolution.

#### Key words

arbitrator

arbitration clause

validity