

Annotation

In this thesis the author has analyzed the problematic of the assignability of the claim to initiate the investment arbitration proceeding according to the UNCITRAL Arbitration Rules. In the beginning of the work, the author has provided a hypothesis, that for the claim of the investor stemming from the breach of the Bilateral Investment Treaty (hereinafter "the BIT"), such claim must be in disposition of the investor, and therefore the claim itself must be of a private nature. To answer this question stemming from the hypothesis, we have analyzed the stipulations of the BITs, which have been concluded by the Czech Republic, coming to a conclusion that only relevant articles which deal with the assignment is the institute of subrogation. We have come to the conclusion that the institute of subrogation generally does not exclude generally other way of assignment executed among the civil subjects. Simultaneously we have also analyzed the possibility of the application of the MFN clause to the subrogation, whereas we have come to the conclusion, that the even if there is a possibility to find subrogation stipulations which does extend the possibility of subrogation also to civil subjects, the application of this clause is

limited because the subrogation is strongly connected to the home state of the investor, therefore the MFN clause applicability in relation to the subrogation is merely theoretical. In next chapter we have been dealing with the question of the nature of the claim- i.e. if the nature of the investment claim is merely private and therefore it is in the disposition of the investor or if its nature is public and therefore is in disposition of the state. Answer to this question out of the subrogation framework is crucial as if we would come to the conclusion that the nature of the claim is public, the disposition (and therefore the possibility to assign) by the investor will be excluded. We have analyzed two different theories dealing with the nature of the claim of the investor, whereas the first theory (the derivative theory) reflects the classical approach to the problematic of the investment disputes as a specific branch of the diplomatic protection, in which is decisive the position of the role of the sovereign entity (the State) to which the claim stemming from the breach of international (contractual) law pertains. Against this theory we have laid the theory of directly vested rights, which is based on the presumption that the claims stemming from the breach of the BIT are the claims which pertain directly to the investor, who, when executing the claim, is independent on its home state. We have confronted these two theories on the basis of the differences between the claims stemming from the investment protection law and the claims stemming from the diplomatic protection law, dealing specifically with functional control of the claim, dispute resolution mechanisms, continual nationality rules, forum selection clauses, applicable substantive and procedural laws, calculation of damages and possibility of the recognition and enforcement of the award. In relation to these fundamental aspects and differences between them according to the theories, we have come to conclusion that the investor is the subject, who does have the control over the claim and therefore we have inclined to the theory of directly vested rights, which is based on the presumption of the private nature of the claim, and therefore being in disposition of the investor. In the final section of this thesis we have analyzed the practical aspects of the assignment of the claim for the initiation of the investment arbitration proceedings, especially from the point of view of the assignee to be able to on the basis of the assigned claim effectively execute all rights transferred on the basis of the assignment against the host state, which has damaged the original investor. From this point of view, the issues of relations between subrogation and the assignment of the claim according to the private law, issues of the applicable law, extend of the assigned rights in relation separation of the investment and the claim stemming from it, and issues of the applicability of the rules of continual nationality and principle of good faith applicable in the international trade.