

# **The Function of an Arbitrator in International Arbitration**

**(abstract)**

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With increasing importance of the international arbitration as a resolution mechanism for disputes arising from international commerce, the role of international arbitrators becomes also more important. The trials to find uniform theoretic explanation of all issues related to the function of arbitrator are however unsuccessful, due to theoretical differences between different legal cultures.

The author of this thesis tries to analyze these different approaches and focus more on the function of arbitrator in international arbitration, where on one side there is a clash between the above mentioned different approaches, but on the other hand the established system facilitates mutual recognition of arbitral awards from a state with different legal regulation of arbitration.

The author focuses primarily on the explanation of the term international arbitration as mechanism of dispute resolution. Secondly, the author analyzed requirements, the mostly often imposed on potential arbitrators by state law, by arbitral institutions and by parties and also different mechanisms of establishing the function of arbitrators. After this analysis the author elaborates on the relationship, established between the parties and the arbitrator in the moment, when the arbitrator enters into the function. Despite of different theoretical approaches explaining the source of the arbitrator's power to decide the dispute in a binding manner, the case law as well as the majority of commentators acknowledges the existence of a contract between the parties and the arbitrator.

This contract however does not contain only the obligation of the arbitrator to decide the dispute, it contains also other obligations whose existence is derived from the state law, established by case law or suggested by a theory. One of the most important obligations, connected to the role of international arbitrator is the obligation to ensure, that the enforcement of the final award will not be jeopardized by a procedural mistake including the lack of the arbitrator's capacity to execute its function. The failure to ensure enforceability of the issued award may lead in some situation to the liability of the arbitrator for this failure. The analysis thereof forms the last part of the author's thesis.