

ABSTRACT

Proving the existence of a qualified investor and an investment undoubtedly belongs to the basic and core issues in the law of investment protection. These thesis focuses on examining of the very issues pursuant to the bilateral investment treaties and ICSID Convention. Due to the fact that ascertaining the existence of an investor and its investment depends not only how these terms are being defined in the relevant BIT, but also on interpretation of them in the ICSID Convention, published decisions of ICSID tribunals become the main source of information, how arbitral tribunals deal with the issue.

Decisions of arbitral tribunal reveal that there is no single attitude in defining of an investment. Several approaches can be seen: (i) the investment shall pass the critetia of an investment pursuant to the relevant BIT and the criteria of an investment of ICSID Convention which have been elaborated by the case-law (Salini test and its modifications), (ii) the investment shall fulfil criteria of an investment of ICSID Convention which have been elaborated by the case-law, while the criteria provided in the relevant BIT are not so important, (iii) the only relevant definition of an invesment is provided in the relevant BIT, as there is no explicit definition of an investment in the ICSID Convention, (iv) the investment shall fulfill the criteria of an investment pursuant to the relevant BIT, but at the same time shall be within the framework of a notion of investment pursuant to the ICSID Convention, whether the latter is interpreted very broadly.

When defining an investor many questions arise. When claimants are natural persons arbitral tribunals often deal with an issue of nationality or double nationality or permanent residence. When claimants are entities the range of potential issues can be even wider: from the nature of the claimant up to issues of possibility to file a claim by someone who is on the top of the corporate structure of group of companies and who owns the local company indirectly (the so called ultimate beneficiary).

The law of protection of investment with international element pursuant to the treaties on encouragement and protection of investment is very dynamic. Due to the absence of the rule of precedens it is largely fragmented with regard to the methods of defining of an investor and its investment. This entails that all conclusions of arbitral tribunals can be overcome in future proceedings with regard to other or the same matter.