The term „investor“ in international investment agreements

The aim of this thesis is to explain, compare and evaluate the meaning of investor as one of the key terms used in the area of international investment protection. From a systematic point of view, international investment activities are governed by international economic law, which is a sub-discipline of public international law.

Foreign investment as a transfer of assets from one country to another in order to generate wealth is a kind of activity known and done since the era of colonialism or even before. The subjects carrying out these operations are called investors.

However the framework of international investment protection as we know it today started out when the so called bilateral investment treaties (BITs) became commonly used to protect and promote international investing. These treaties entered into by states as sovereign members of the international community stipulated conditions to protect each other’s investors in order to stimulate the flow of free capital over the borders.

As mentioned before the term investor inter alia is a fundamental part of each international investment agreement. It specifies the range of subjects that are protected under such treaty and thus entitled to pursue their claims on international level in case of their investment being damaged by the host state’s conduct.

There are lots of options and combinations when it comes to defining the investor ranging from restrictive to quite broad approaches. It all depends on the state’s will to attract foreign investors and their assets. Usually the foreign investor is a legal person but natural persons are covered too. Distinctive nationality is an essential quality of investor because of the international character of protected investments. Citizenship is usually decisive for natural persons in this respect. Legal persons’ nationality can be determined on the basis of seat, incorporation or control.

Recently there have been a growing number of cases of legal improprieties by investors to gain access to international arbitration. These abusive practices include forum shopping, sham investor entities etc. For this reason states have begun to adopt restrictive measures in order to restore balance between preserving the right of investors to be protected and the right to regulate in the public interest.