

Abstract

The main focus of this doctoral thesis is arbitration; the phenomenon of not only an out-of-court dispute resolution but also international commercial relations. Arbitration is a modern legal institute that is regarded as an equivalent alternative to court proceedings. Independence and impartiality of the arbitrator are very important and at the same time very problematic aspects of arbitration. These two principals accompany the arbitration since the beginning of the modern era of this institution and they are still perceived as essential criteria of the arbitration.

Independent and impartial decision-makers are an integral part of the right to a fair trial enshrined in Art. 36 subsection 1 of the Charter of Fundamental Rights and Freedoms and Art. 6 subsection 1 of the European Convention on Human Rights. Although such legislation refers to the court in terms of a state court, in the course of this thesis was demonstrated that these attributes are also applicable to arbitrators, even though they must be interpreted in arbitration proceedings with respect to the characteristics of arbitration. Due to the fact that resolving disputes in this way is the most common approach in international trade, the main focus of this thesis is to depict the issues of independence and impartiality in relation of the Czech regulation contained primarily in Act no. 216/1994 Coll., on Arbitration Proceedings and Enforcement of Arbitral Awards (as amended), to the German regulation, which is governed mainly in the 10th book of the German Civil Procedure (as amended).

This dissertation deals with the content and legal analysis of the concepts of independence and impartiality, the way these concepts are understood and interpreted in the legal systems of both countries, respectively, how they should be interpreted in the arbitration proceedings, and whether there are differences between the independence and impartiality of judges and the independence and impartiality of arbitrators. Not only the question was examined, whether the independence and impartiality have their own content, depending on whether it is an arbitrator or judge but also, what the meaning and practical implications of these concepts represent for arbitration.

This doctoral thesis points out, that precisely in the question of independence there is a fundamental difference between arbitration and court proceedings, mainly due to the fact that in court proceedings independence has a different meaning. In court proceedings independence means the independence of the judiciary to the legislative and executive power and thus imposes protection against external interferences. From the perspective of arbitration, independence is an objective criterion compared to impartiality and as such includes especially the relationship between arbitrator and the parties of the dispute or the subject matter of the proceedings. This

relationship can be easily detected by the parties either at the time of commencement of the arbitration, or even before that, based on the circumstances arbitrator has notified the parties about or that are known to the parties otherwise. Impartiality, or lack of impartiality, is then a subjective criterion, which typically shows up during the arbitration.

The issue of independence and impartiality is viewed chronologically from the constitution of the arbitral tribunal, over the course of the arbitration, until its termination, and even the phase after the termination of arbitral proceedings is not omitted. The key institutes guarantying a fair decision making are thoroughly analysed by the means of an independent and impartial arbitrator - disqualification and challenge of arbitrator. In connection with the disqualification and challenge of arbitrator this doctoral thesis deals with process application for reasons of bias, if circumstances exist which raise (justifiable) doubts as to his or her impartiality, then such person is disqualified from hearing and deciding on the case. Correspondingly when such reasons for bias can (must) be applied.

This doctoral thesis concludes that the concept of independence and impartiality is one of the central conditions for realization of fair justice, and thereby arbitration, but it is necessary that the independence and impartiality are interpreted in accordance with the characteristics of the arbitration proceedings and respecting the differences between the proceedings before the general courts and arbitrators. Czech and German legislation recognize arbitration as a peculiar way of resolving disputes; however the current regulation in matters of independence and impartiality is not free from obscurity and ambiguity, which gives *de lege ferenda* space for positive changes. The need for change primarily affects Czech law and thus the German ZPO appears to be the appropriate source of inspiration.