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DELOCALIZATION IN INTERNATIONAL COMMERCIAL ARBITRATION

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Abstract. *This paper analyzes the delocalization of international commercial arbitration, as a phenomenon which is gaining in popularity in arbitration theory, but in practical terms is still subject to hostility all over the world. The author identifies the basic elements of delocalization – detachment from national procedural and substantive law of the place of arbitration, or any other national law, and underlines the principle of party autonomy as the guiding idea pertaining to the process of delocalization. He further examines the problems related to the enforcement and powers of state courts to set aside arbitration awards deriving from delocalized arbitrations, as well as the application of mandatory provisions of lex fori and New York Convention with respect to such awards. The author concludes that the only legitimate limitation to delocalization may be the public policy concerns, and that nothing should be in the way of parties' choice to wave some legal protection mechanisms of the legal system of the place of arbitration.*

Key words: *Arbitration, delocalization, party autonomy, public policy, enforcement.*

1. GENERAL REMARKS

By becoming more independent of national legal systems, arbitration is acquiring some new qualities – it is getting delocalized, meaning that it is floating on the surface of legal systems of different countries, not attaching itself to any, and serving primarily the interests of international trade.[1]

Although the notion of "delocalization" is gaining on popularity in arbitration doctrine, truly delocalized arbitration can still be considered a very far fetched ideal.[2] In practi-

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[1] For detailed analysis of the so called "Autonomist Theory", which is a doctrinal support to delocalization, See Knežević, G. – Međunarodna trgovačka arbitraža, Belgrade, 1999, pp. 62-64.

[2] Park, W. – The Lex Loci Arbitri and International Commercial Arbitration, 32 Int"l & Comp. L.Q. 21 (1983); Mustill, M. – The New Lex Mercantoria: The First Twenty Five Years, 4 Arb. Int"l (1988), p. 86; Mustill, M. & Boyd, S. – The Law and Practice of Commercial Arbitration in England, (1989), pp. 66-68.

cal terms, the hostility to this concept, at least to a certain point, is an omnipresent phenomenon – common to most of the legal systems.[3]

The concept of "delocalized arbitration" has not been precisely articulated.[4] This is partly because it is a pretty recent trend in international arbitration law.[5] With some caution, delocalized arbitration may be defined as "… a species of international arbitration not derived or based on a municipal legal order".[6] The main characteristics of delocalized arbitration are:

1. It is detached from the procedural rules of the place of arbitration,
2. It is detached from the procedural rules of any specific national law,
3. It is detached from the substantive law of the place of arbitration,
4. It is detached from the national substantive law of any specific jurisdiction.

The detachment relies on written contractual terms, agreed arbitral rules, general principles of commercial obligations applicable to transactions, and applicable procedural and substantive approaches common to legal systems to which the transaction is connected.[7] The delocalized arbitration therefore may be seen as a form of arbitration independent any national legal order.

Fundamental feature of delocalized arbitration is that it is based on parties' agreement – otherwise the award could not be eligible for enforcement.[8] Second characteristic of delocalized arbitration is that the procedure must not violate the fundamental norms of international arbitral procedure, acknowledged in every country where arbitration is practiced. These norms include the notion of natural justice (or due process) and "other minimum norms of transnational currency… reflected in major international conventions".[9] In case

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[3] See Mann, F. – England Rejects "Delocalized" Contracts and Arbitration, 33 Int'l & Comp. L.Q. (1983), p. 193; Collins, L. – The Law Governing the Agreement and Procedure in International Arbitration in England, Contemporary Problems in International Arbitration (1986), pp. 126-138; Rubino-Sammartano, M. – International Arbitration Law (1990), p. 24; Merkin, R. – Arbitration Law (1997), p. 68.

[4] Redfern, A. & Hunter, M. – The Law and Practice of International Commercial Arbitration (1991), pp. 81-90; Rubino-Sammartano, M. – International Arbitration Law (1990), pp. 24-25; Reismann, W. & Ors, International Commercial Arbitration - Cases, Materials and Notes on the Resolution of International Business Disputes (1997), p. 1089; Gaillard, E. - Transnational law: A Legal System or a Method of Decision Making?, The Practice of Transnational Law, (2001), p. 53.

[5] See generally Paulsson, J. – Arbitration Unbound: Award Detached From the Law of the Country of Origin, 30 Int'l & Comp. L.Q. (1981), p. 358; Paulsson, J. – Delocalization of International Commercial Arbitration, 32 Int'l & Comp. L.Q. (1983), p. 53; Lando, O. - The Lex Mecatoria in International Commercial Arbitration, 34 Int'l & Comp. L.Q, (1985), p. 747; Lando, O. – The Law Applicable to The Merits of the Dispute, 2 Arb. Int. (1986), p. 104; Bamodu, G. – Exploring the Interrelationships of Transnational Commercial Law, "The Lex Mercantoria" and International Commercial Arbitration, 10 RADIC (1998). p. 31.

[6] Olatawura, O. – Delocalized Arbitration under the English Arbitration Act 1996: an evolution or a revolution, 30 Syracuse J. Int'l L & Com, (2003), p. 49.

[7] On written contractual terms, see Boyd, S. – "Arbitrator not to he Bound by Law" Clauses, 6 Arb. Int'l (1990), p. 122; Lord Diplock, in Amin Rasheed Shipping Corp. v. Kuwait Insurance Co., (1983) 3 W.L.R., stated "… contracts are incapable of existing in a legal vacuum. They are mere pieces of paper devoid of any legal effect unless they were made reference to some system of private law…" On the existence and application of the general principles, see Dalhusien, J. – Dalhusien on International Commercial, Financial and Trade Law (2000). Of particular importance is the UNIDROIT Principles of International Commercial Contracts, 34 I.L.M. (1994), which is increasingly frequently used by parties, courts, and arbitrators in all transactions. See Bonell, M. – The UNIDROIT Principles in Practice – The Experience of the First Two years, 2 Unif. L. Rev. 34 (1997).

[8] Beaufort Developments (NI) Ltd. v. Gilbert-Ash N.I. Ltd., (1998) 2 W.L.R. 860 (Eng.).

9 Paulsson, J. – Delocalization of Arbitration, 32 Int'l & Comp. L.Q. (1983), p. 57.

the procedure does not follow these standards, the award would not be recognized by the law of the place of arbitration or the place of enforcement. Likewise, absent the express and clear authority, the delocalized arbitration does not give arbitrator the right to act as *amiable compositeur*.[10] Finally, delocalized arbitration allows the application of law of a forum or other state – it does not mean non-application of law, but the question of rules to be applied is completely based on party autonomy. With respect to these rules, it may be concluded that delocalization does not put in question the sovereignty of a state where arbitration takes place. A delocalized arbitration will take place in a sovereign territory, and it does not override sovereignty. Although the state can not always exercise its powers over delocalized arbitration, the fact that the arbitration took place in one country can not be legally denied.[11]

However, the hostility towards delocalized arbitration is still strong and is based on the premise that arbitration must always have a "seat" and be rooted in national law of its place. An English scholar – *Mann* wrote: "Every arbitration is a national arbitration, that is to say, subject to a system of national law. Every arbitration is necessarily subject to the law of a given State. No private person has the right or power to act on any other level other than that of a municipal law. Every right or power a private person enjoys is inexorably conferred by or derived from a system of municipal law which may conveniently be called the *lex arbitri*. It can however be submitted with confidence that an arbitration to have its seat in England is always and necessarily governed by English rules of procedure, including the Arbitration Act 1950."[12] Similarly, *Stewart Boyd* pointed out the "coercive, auxiliary and corrective" remedial limitations in attempts to resolve disputes by way of delocalized arbitration.[13]

However, with time, some scholars, as well as the practitioners, set the foundations for the theory and practice of delocalized arbitration, manifested in the concept of non-commanding role for the state. The function of the state courts was seen only as supportive (as opposed from controlling) of the arbitration process.[14]

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[10] See UNCITRAL Arbitration Rules, art. 28(3); UNCITRAL Model Law on International Commercial Arbitration, art. 28(3); International Chamber of Commerce: Rules of Arbitration, art. 17(3); English Arbitration Act, Chapter 46 (1996); and London Court of International Arbitration Rules, available at http://www.lcia-arbitration.com/lcia.

[11] Limitations of sovereignty are not uncommon within the national and international legal systems. International conventions that pose such limitations are for example: New York Convention on the Enforcement and Recognition of Foreign Arbitral Awards, and ICSID agreement (1965).

[12] Mann, F. – The UNCITRAL Model Law - Lex Facit Arbitrum, 2 Arb. Int'l, (1986), pp. 244-251.

[13] Boyd, S. – The Role of National Law and the National Courts in England: Contemporary Problems in International Arbitration, p. 149 (Lew, J. ed., 1986).

[14] See Channel Tunnel Group Ltd. v. Balfour Beatty Construction Ltd. (1993) ALL ER 664; Deutsche Schachtbau und Tiefbohr Gessellschaft MBH v Shell International Petroleum Co. Ltd., (1990) 1 AC 295 (CA); Eagle Star Insurance Co. v. Yuval Insurance (1978) 1 Lloyds Rep. 357. See also Hafez, K. – The General Principles of Law Applicable to International Disputes, JCI Arb., (1998), pp. 12-13.

2. PARTY AUTONOMY AND DELOCALIZED ARBITRATION

2.1. Party Autonomy and Place of Arbitration

The concept of delocalized arbitration is a part of the much wider principle of party autonomy. By virtue of this principle, parties are free to designate any seat of arbitration or not designate it at all. In any case, the state court has a mandate to exercise its powers in order to support the arbitral process. For example, according to the English Arbitration Act,[15] "where the seat is outside England… or no seat has been designated or determined, the court has the same power to stay legal proceedings and to enforce arbitral awards as it has where England is the seat of arbitration."[16] The following section of the Act further grants court with the power to exercise powers in relation to securing attendance of witnesses in such situations and to support arbitral proceedings in other ways.

2.2. Party Autonomy and Use of Procedural Law

The effect of the exclusion of national procedural law of the place of arbitration by parties' will boils down to the limited access to court (i.e. justice). The national courts' obligation to grant legal protection, although restricted, is not excluded.[17] Hence, where parties choose to have a delocalized arbitration, they are incorporating, as contract terms, the relevant statutory provisions that national law provides for international arbitration. By contract and by statute, the court in general has limited grounds to intervene in parties' mechanism of dispute resolution. To the extent that the court can intervene, it will limit the interference in the proceedings to enforcing only the minimum standards of legal protection, while respecting party autonomy to the maximal extent.

2.3. Party Autonomy in Choosing Substantive Law

In terms of delocalization, the most important provision of most national arbitration regulations regarding the application of substantive law is one that provides that in rendering the award, arbitral tribunal shall decide the dispute in accordance with the law chosen by the parties."[18] The effect of this provision is broad. It imposes a duty on arbitral tribunal referring to the law to be applied, which can be both national and non-national.[19] The latter embraces delocalized arbitration.[20] Where parties agree on certain (delocalized)

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[15] Arbitration Act 1996, Section 2(2).
[16] Id, Section 2(2).
[17] Dubai Islamic Bank, 1 Lloyds Rep. 65, 75 (Judge Aiken refused to grant an application for an extension of time within which to appeal on the basis that English was not the juridical seat of arbitration).
[18] See D.S.T. v. SIT, where it was recognized that principles of transnational application constitute applicable law. See Goode, R. – International Restatement of Contract and English Contract Law in Contemporary Issues in Commercial Law (Lominicka, Z. & Morse, C. eds., 1997) ("… and there now seems no obstacle to English courts recognizing the parties selection of the (UNIDROIT) principles of law or alternatively international commercial usage"). See also Binder, P. – International Commercial Arbitration in UNCITRAL Model Law Jurisdictions (2000), p. 173.
[19] Sometimes the parties do not make any choice with regards to the application of any substantive law. In that case the issue of "agreement without law" arises, to which there are different approaches in theory – see Trajković, M. – Međunarodno arbitražno pravo, Beograd, 2000, pp. 422-424.
[20] Deutsche Schachtbau-und Tiefbohr-Gesellschaft M.B.H. Respondents v. Shell International Petroleum Co. Ltd., (1990) 1 A.C. 295, 315-16 (1990). See also Binder, P. – op. cit, p. 173.

substantive law to be applied, the failure of arbitral tribunal to render an award based on such delocalized law is sanctioned as serious irregularity.

2.4. Party Autonomy, Public Policy and Lex Arbitri

The role and powers of the courts over delocalized arbitration may be problematic. If the enforceability of an arbitration agreement is the issue, the state court may be denied jurisdiction on the basis that it has no authority to hear the dispute.[21]

Such position may not be interpreted as to give the state court the power to assume jurisdiction over a dispute and, consequently, set aside an arbitration clause that provides for delocalized arbitration. While in fact the court still has certain jurisdictional powers over parties on the basis of location, the dispute cannot be taken to the national court simply because the arbitration takes place in certain country. The role of the court in such situations will always be limited by statutory provisions pertaining to arbitrations of international nature.

In *Minmetals v. Ferco Steel* case,[22] a judge refused an application to set aside the award alleged to be contrary to English public policy. The court stated:

"In international commerce, a party who contracts into an agreement to arbitrate in a foreign jurisdiction is bound not only by the local arbitration procedure but also by the supervisory jurisdiction of the court of the seat of the arbitration. If the award is defective or the arbitration is defectively conducted the party who complains of the defect must in the first instance pursue such remedies as exist under that supervisory jurisdiction. That is because by his agreement to the place in question as the seat of the arbitration he has agreed not only to refer to all disputes to arbitration but that the conduct of the arbitration should be subject to that particular supervisory jurisdiction. Adherence to that part of the agreement must in my judgment, be a cardinal policy consideration by an English court considering the enforcement of a foreign award."

This case underlines the significance of party autonomy and establishes the limitations to the controlling role of the arbitration law and court of the place of arbitration.

Since supervisory function of state courts does not include absolute, automatic control, where the law, by strictly respecting and defending party agreement, recognizes delocalized arbitration, it would be wrong to pose practical barriers to its practice.

3. ENFORCEMENT ISSUES

The most important issue that delocalization raises is whether an award rendered within or outside a certain country in a "delocalized arbitration" can be enforced.[23]

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[21] In such a case, an English judge stated "It is true that the existence of… an arbitration clause does not result in the court having no jurisdiction to hear the action. No clause in a contract can oust the jurisdiction of the court; such clauses are against public policy" – see Halifax Financial Services Ltd. v. Intuitive Systems Ltd., (1999) 1 ALL ER (Comm) 303 (Q.B. 1999).

[22] Minmetals, 1 ALL ER (Comm) 315.

[23] The arbitration regulations permit the courts to recognize or to refuse recognition of arbitral awards on the grounds of public policy. In practical terms this is the only ground on which a delocalized award can be refused recognition.

The issue of the status of delocalized arbitration is vital to deciding whether arbitration is a national ("domestic" or "international") arbitration or a foreign ("delocalized" or "external") arbitration.[24] A negative answer denying that arbitration falls under any national *lex arbitri* could be given if the parties don't expressly provide for the seat of arbitration in a certain country. The national arbitration legislations in most countries recognize the possibility of arbitration proceedings not having their seat in that country. The national courts in that situation would be functioning in peculiar circumstances in which their role and the application of the national law, is specifically limited to the public policy concerns.[25] Along these lines, most national arbitrational legislations, as well as the judicature, accept and recognize a "convenience function" of the place of arbitration and the limitation of the relevance and application of national laws.[26] Of equal importance is the fact that arbitration regulations recognize that parties to arbitration may agree to rely on non-legal or non-national considerations with respect to the merits of their case.[27] If parties opt for that, the arbitral tribunal is obliged to follow their will.

Delocalized arbitration can be considered foreign in the sense of not being domestic or international arbitration subject to any national legislation.[28] It is attached to international arbitration practice only on the basis of party autonomy, which allows parties to avoid the application of the law of any country.

4. POWER TO SET ASIDE AN AWARD

There are several arguments in favor of limiting national courts' powers to set aside an award derived from the delocalized arbitration. The first one, which is supported broadly by national laws, is based on the concept of party autonomy. Parties' agreement to delocalized arbitration expressly prevents the parties from seeking such intervention from the state courts. An award resulting from delocalized arbitration conducted in any country will be fully respected by its national courts. The same applies if the award is rendered in a foreign jurisdiction.[29] The court's powers to set aside an award are strictly limited by statutory provisions, and the principle of arbitral finality, alongside the doctrine of *res judicata*, prevents the risk of intervention of national courts.[30] No arbitration regulations

[24] See Rubino-Summartano, M. – Nationality of Awards and Applicable Substantive and Procedural Law, 48 J.C.I. Arb. (1982), p. 47 (providing an in depth insight into the nature of these never seriously studied issues); Rubino-Summartano, M. – International Arbitration Law (1990), pp. 15-24. See generally Saville, M. – An Answer to Some of the Criticisms of the Arbitration Act J996, A.D.R.L.J. (1997), p. 155; and Mustill, M. & Boyd, S. – The Law and Practice of Commercial Arbitration (1989), pp. 38-39.

[25] See Rutherford, M. & Sims, J. – The Arbitration Act 1996, (1996), p. 47.

[26] See Paulsson, J. – Arbitration Unbound in Belgium, 2 Arb. Int'l., p. 68. See also Redfern, A. & Hunter, M. – The Law and Practice of Inter national Commercial Arbitration (1991), p. 87. See also James Miller & Partners Ltd. v. Unitworth Street Estates (Manchester) Ltd., (1970) A.C. 583 (H.L. 1970); and Compagnie d'Armement Maritime S.A. v. Com-pagnie Tunisienne de Navigation S.A., (1971) A.C. 572 (H.L. 1970).

[27] Olatawura, O. – Delocalized Arbitration Under the English Arbitration Act 1996: an evolution or a ewvolution, 30 Syracuse J. Int'l L & Com, (2003), p. 62.

[28] Goode, R. – The Adaptation of English Law to International Commercial Arbitration, Arb. Int'l, (1992), pp. 14-15.

[29] Walkinshaw v. Diniz (2000) 2 All E.R. (Comm) 237 (Q.B. 1999); Minmetals Germany GMBH v. Fercor Steel Ltd., (1999) 1 All E.R. (Comm) 315 (Q.B. 1999).

[30] See Minmetals Germany GMBH (1999) 1 All E.R. (Comm) 315.

grant national courts the power to set aside awards simply because they come from a delocalized arbitration. Likewise, complaints referring to the application of relevant law and its interpretation are usually not subject to the jurisdiction of national courts. With regards to jurisdictional powers to set aside an award due to application of national law, the court may have controlling jurisdiction when the parties have expressly made national law of that country the applicable law and a dispute arises as to the interpretation of the issue under that national law.

The other possibility to have a delocalized award set aside exists where the arbitration process or award is allegedly contrary to fundamental international or national public policy of the place of arbitration. The notion of public policy is extremely narrowly defined in most national arbitration laws, which means that the list of public policy violations is without exceptions very short, and certainly, does not include delocalization of arbitration.[31]

5. MANDATORY PROVISIONS OF LEX FORI

Emphasizing the importance of mandatory rules of the place of arbitration, *Hunter* pointed out the significance thereof in the following way: "No arbitration award shall be valid unless it is sung in unison by all members of the Tribunal standing on top of the highest mountain in the country. Any award will be unenforceable in most if not all jurisdictions unless it is so delivered."[32] Nowdays, the trends in arbitration legislature show that the national mandatory arbitration rules have to conform to international expectations. Article III of the *New York Convention 1958*[33] provides that each state shall recognize awards as binding and enforce them in accordance with its procedural rules. It also provides that procedural steps towards enforcement must not be based on substantially more onerous conditions than those applying to national arbitral awards.

The mandatory provisions of arbitration laws generally have no impact on international arbitration as to disfavor delocalized arbitration proceedings and awards.[34] Mandatory rules are applicable as long as they do not collide with arbitration principles. Where it is possible and necessary to ignore or override them, the delocalized arbitration will still be valid.[35]

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[31] Deutsche Schachtbau und Tiefbohr Gessellschaft M.B.H. v. Shell Int'l Petroleum Co. Ltd. (1990) 1 A.C. 295. See also Minmetals v. Ferco Steel (1999) 1 All E.R. (Comm.) 315, 330(a) – 331(b).

[32] Hunter, J. – Achievement of the Intention of the Parries: Arbitration Agreements and the First Procedural Steps in International Arbitration, 47 JCI Arb. (1982), pp. 214-215.

[33] Art. III of the Convention on the Enforcement and Recognition of Foreign Arbitral Awards, (1958), (the New York Convention).

[34] According to Park, "An inevitable conflict results from the mixture of private consent and public power in arbitration. Aspirations toward delocalized dispute resolution collide with the national norms that must be invoked if an arbitration clause is to be more than a piece of paper." See Park, W. – The Lex Loci Arbitri and International Commercial Arbitration, 32 Int'l & Comp. L.Q., p. 55.

[35] See generally, Derains, Y. – Public Policy and the Law Applicable to the Dispute in International Arbitration, in Sanders, P. – Comparative Arbitration Practice and Public Policy in Arbitration (Sanders, P. ed. 1986), p. 256; Blessing, M. – Mandatory Rules of Law versus Party Autonomy in International Arbitration, 14 J. Int'l Arb. (1997), p. 23.

6. THE NEW YORK CONVENTION AND DELOCALIZED AWARD

The issue of enforceability of an award deriving from delocalized arbitration in member states is preconditioned by the finding that delocalized arbitration is covered by the New York Convention.[36] Since the New York Convention does not limit its field of application to awards governed by national laws, an award generally can be enforced in a state that has ratified the convention. Indeed, in *Deutsche Schachtbau* v. *S.I.T.,* the English court upheld the application of "the general principles of law governing contractual relationship" which the arbitrators applied. The court stated that the application was in line with the international nature of the subject matter of the contract. Rejecting any inconsistency with the New York Convention, it found nothing objectionable to English public policy in enforcing the award. [37]

Furthermore, concerning the applicability of the New York Convention on delocalized arbitration, it is notable that Art. 1(1) (a) applies on awards not considered domestic or subject to the laws of another state. The fact that the award is rendered in some country does not necessarily mean that it is a domestic award.[38] As the parties' intention is the decisive test, the application of foreign rules or non-national substantive laws to the subject matter of the dispute, makes an award international or foreign. [39]

7. CLOSING REMARKS

Two principles regarding delocalized arbitration may be underlined as guiding. The first is that any aspect of such arbitration may not be contrary to public policy, and the second is that bearing in mind parties' autonomy, by opting for delocalized arbitration, parties are willingly waving the full protection of the legal regime of the place of arbitration. The main reason for parties to international arbitration to submit their dispute to delocalized arbitration is their perception that it serves their interests better than *lex fori.*

The advantages of delocalized arbitration are: it guarantees neutrality of forum with respect to procedure and substance; it limits the role of national courts in the process; it overcomes limitations of the *lex fori*; it offers state agencies and governments the possibility to enter dispute resolution agreements without submitting themselves to the laws of a foreign state; it eliminates conflict of laws problems; it enables parties to create procedural rules, which best fit the specific features of the transaction and parties' interests.[40]

In practice, delocalized arbitration is a gaining on significance. To assume that all international arbitrations are based on certain national legal system means neglecting reality. To invalidate agreements and awards for the mere fact that they are "delocalized" is unjust.[41] In the world of globalization, delocalized arbitration seems like a very atractive solution.

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[36] See Redfern, A & Hunter, M. – The Law and Practice of International Commercial Arbitration (1991), p. 84; Van den Berg, A. – The New York Arbitration Convention of 1958, (1981), pp. 28-43.
[37] Deutsche Schachtbau undTiefbohr-Gessetlschaft M.B.H., I A.C. .
[38] See Pryles, M. – Foreign Awards and the New York Convention, 9 Arb. Int'l (1993), p. 259.
[39] Deutsche Schachtbau und Tiefbohr-Gessellschaft M.B.H., 1 A.C.
[40] See also, Paulsson, J. – op. cit, pp. 70-71.
[41] See Star Shipping AS v. China National Foreign Trade Corp., (The Star Texas), (1993) 2 Lloyds Rep. 445; and Parsons & Whittemore v. Societe Generale De L'Industrie Du Papier (RAKTA), 508 F. 2d 969 (2d. Cir. 1974).

DELOKALIZACIJA U MEĐUNARODNOJ TRGOVINSKOJ ARBITRAŽI

Dejan Janićijević

U ovom radu analizira se delokalizacija međunarodne trgovinske arbitraže, kao fenomen koji dobija na popularnosti u arbitražnopravnoj teoriji, ali koji je u praktičnom smislu i dalje predmet osporavanja širom sveta. Autor identifikuje osnovna obeležja delokalizacije – odvajanje od nacionalnog procesnog i materijalnog prava mesta arbitraže ili bilo koje druge države, i podvlači princip autonomije volje stranaka kao rukovodnu ideju procesa delokalizacije. Nadalje, on razmatra probleme vezane za izvršenje i sudsku kontrolu arbitražnih odluka donesenih u delokalizovanim arbitražama, kao i primenu prinudnih odredaba lex fori i Njujorške konvencije s obzirom na takav karakter odluka. Autor zaključuje da je jedino legitimno ograničenje delokalizacije može predstavljati potreba za poštovanjem javnog poretka i da ništa ne bi trebalo da stoji na putu izboru stranaka da se odreknu nekih mehanizama prane zaštite pravnog sistema mesta arbitraže.

Ključne reči: *arbitraža, delokalizacija, autonomija volje stranaka, javni poredak, izvršenje*