TALLINN UNIVERSITY OF TECHNOLOGY
School of Business and Governance
Department of Law

Julia Tikka

USING ARBITRATION IN EU COURT JURISPRUDENCE IN THE LIGHT OF CASE LAW C-284/16

Bachelors's thesis

Program HAJB61, Law, Specialisation European Union and International Law

Supervisor: Agnes Kasper, PhD

Tallinn 2019

I declare that I have compiled the paper independently
and all works, important standpoints and data by other authors
have been properly referenced and the same paper
has not been previously been presented for grading.
The document length is 7864 words from the introduction to the end of conclusion.

Julia Tikka ....

(signature, date)

Student code: 166296HAJB
Student e-mail address: jutikk@taltech.ee

Supervisor: Agnes Kasper, PhD:
The paper conforms to requirements in force

....

(signature, date)

Chairman of the Defence Committee:

Permitted to the defence

....

(name, signature, date)

TABLE OF CONTENTS

ABSTRACT 4
LIST OF ABBREVIATIONS 5
INTRODUCTION 6
1. ARBITRATION IN GENERAL 8
1.1 Arbitration compared to court jurisprudence 9
1.2 Arbitral Tribunals 9
1.3 Permanent court of arbitration 10
1.4 Arbitral Award 10
2. INVESTMENT TREATIES 13
2.1 Regulation 14
2.2 Breach of Investment Treaties 16
3. CASE C-284/16 18
3.1 Legal aspects of the case C-284/16 19
3.2 Outcome of the case C-284/16 20
3.3 Freedom of establishment 21
3.4 Freedom of establishment in case C-284/16 23
4. STATES AFFECTED BY CASE C-284/18 24
4.1 Sweden 25
4.1.1 Spain 26
4.1.2 United Kingdom 27
4.1.3 Hungary 27
5. CONCLUSION 28
LIST OF REFERENCES 30

ABSTRACT

The aim of this bachelor's thesis is to access the legal impact of the case C-284/16 on the validity of agreements to arbitrate the freedom of establishment. The hypothesis is that the effect of case law C-284/16 is limited to the field of investment treaties. The research questions are whether EU law and in particular Achmea case (CJEU 284/16) impose a general prohibition on arbitration tribunals to apply and interpret EU law autonomously. Furthermore, how the Achmea case impacts the freedom of establishment in the EU. The author will be addressing arbitration in general and explaining what are arbitral tribunals and how the arbitration process goes. Arbitration and court litigation will be compared with the goal of underlining the benefits of arbitration. The author's main focus is on the case law C-284/16 and the legal aspects of the case. Freedom of establishment is an essential part of this thesis project. The author addresses investment treaties in the EU which are important regarding the case C-284/16. The goal of comparing previous case laws to the Achmea case is to point out whether the Achmea case can have general effect.

The methods that are used are doctrinal research method, legal analysis and interpretation, literature review and case study.

Keywords: Freedom of establishment, Arbitration, Investment Treaties

LIST OF ABBREVIATIONS

BIT	Bilateral Investment Treaty
CJEU	Court of Justice
ECJ	European Court of Justice
ECHR	European Convention of Human Rights
FDI	Foreign Direct Investment
ICSID	The International Centre for Settlement of Investment Disputes
IIA	International Investment Agreement
ITA	Investment Treaty Arbitration
PCA	Permanent Court of Arbitration
TFEU	Treaty on the Functioning of the European Union

INTRODUCTION

Arbitration is becoming more popular day by day. The need for a dispute resolution method that is usually faster, cost friendly and is in favor of companies around the world is huge. Arbitration is not only an efficient way to settle a dispute but it can also be more suitable for many companies now and in the future.

Arbitration as a thesis topic is not unfamiliar but combining arbitration and investment treaties brings a new and unique side to the research. The author wants to solve whether one case law can have general effect on other EU treaties Therefore, the research problem is whether the effect of the case law C-284/16 is limited to the field of investment treaties. The research questions that the author will be addressing are whether EU law and in particular the Achmea case (CJEU 284/16) impose a general prohibition on arbitration tribunals to apply and interpret EU law autonomously. Additionally, how the Achmea case impacts the freedom of establishment in the EU. The main aim of this bachelor's thesis is to access the legal impact of the Case-284/16 on the validity of agreements to arbitrate the freedom of establishment.[1] The hypothesis is: The effect of the case law C-284/16 is limited to the field of investment treaties. The methods that are used in this thesis project are doctrinal research method, legal analysis and interpretation, literature review and case study. These particular methods were chosen in order to receive a broad view of the subject. Literature review from different academic books, articles, and commentaries was essential in order to research the problem from several different angles. This thesis project takes into account several previous case studies from several states that have been affected by the Achmea case.

The first chapter introduces arbitration in general explaining what arbitration actually stands for. Closer attention will be given to the differences between arbitration and court jurisprudence and why arbitration is beneficial for companies as a dispute resolution method. Additionally, what are the benefits of arbitration compared to court litigation? Arbitral tribunals and arbitral awards are examined closely since they are an essential part of the arbitration process. [2]An important part is the role of the arbitrators and how they examine each case. The first chapter will finish with an explanation of the benefits of arbitration for companies and why it is so significant.

[1] Federal Court of Justice, Germany C-284/16

[2] Bishop, D., Crawford,J., Reisman, W.M.(2005). *Foreign Investment Disputes: Cases, Materials and Commentary.* The Haque, The Netherlands: Kluwer Law International. p 4

The author introduces investment treaties and investment arbitration in the second chapter explaining the developmental aspects of investment arbitration and how this branch of law has developed to what it is today. Additionally, how investment treaties are regulated and what is the role of the ICSID. [3]The importance of foreign direct investment is significant and it shall be protected in order for foreign direct investments to continue in the future. [4]At times there might happen a breach of an investment treaty which has its own regulations regarding how these cases shall be solved. [5]

In chapter three the author introduces the well-known Achmea case beginning from the facts of the cases and continuing by explaining the legal aspects of the case. [6]The legal aspects consist of the arguments that were presented and also the judgment that was given.[7] The judgment has gathered a lot of attention in the EU states but also in other countries. [8]An essential part of this thesis is the freedom of establishment which is one of the four freedoms in the EU. Freedom of establishment is one of the most essential parts of the Achmea case. [9]

Chapter four brings out the comparison factor of this thesis and more closely the states that have been affected by the Achmea case. Whether one case law can have general effect or not. Special attention is given to the Vattenfall case is a well-known case in Sweden. [10]

---

[3] Grisel. F.(2014) *Precedent in Investment Arbitration: The Case of Compound Interest*. Peking University Transnational Law Review, Volume 2, Issue 1, pages 217-227

[4] *ibid*

[5] *ibid*

[6] C-284/16(2018) , supra nota 1, p 1

[7] *ibid*

[8] *ibid*

[9] *ibid*

[10] ISDS Platform. Case study: Vattenfall v Germany
Accessible: https://isds.bilaterals.org/?case-study-vattenfall-v-germany-i, 29 April 2019

1. ARBITRATION IN GENERAL

Disputes arise when two or more parties have a disagreement of issues. Therefore, arbitration provides businesses and entities with the possibility to choose a time effective and less costly way of solving their disputes without the need to wait for court litigation. [11]Arbitration has grown to become important over the years and arbitration has a significant role in the fields of international trade, commerce, and investment. [12] Businesses have many arbitration specialists and states have changed laws in order to give arbitration a much greater role.[13] Businesses that have a dispute have decided to let an arbitrator solve the dispute and therefore the role of an arbitrator is to help the parties solve the dispute and the arbitral tribunal gives its final award. [14]As in court litigation, the decision made by an arbitrator is binding. [15]

Arbitration can be used between parties on many occasions. The possibility to settle disputes by arbitration is an important factor. There are several reasons why arbitration is used all over the world but the two significant reasons are neutrality and enforcement.[16] Neutrality provides the parties with the possibility to choose the place where they want the dispute to be solved. [17]Additionally, they are given the chance to choose a neutral tribunal. [18]Enforcement is one of the other reasons due to the fact that when the arbitration process is over the final award that is given is enforceable.[19] At the end of the arbitration process, an arbitral award is given and the decision will be final. [20]This means that there won't be a need for a process of appeals.[21] Additionally, based on the New York Convention the award given in the arbitration process is enforceable internationally and nationally [22]

---

[11] Blackaby,N., Partasides,C., Redfern, A., Hunter, M. (2009). *Redfern and Hunter on International Arbitration*. Fifth Edition. Oxford, New York: Oxford University Press. p 1-2
[12] *ibid*
[13] *ibid*
[14] *ibid*
[15] *Ibid*
[16] *Ibid*
[17] *ibid*
[18] *ibid*
[19] *ibid*
[20] *ibid*
[21] *ibid*
[22] *ibid*

1.1 Arbitration compared to court jurisprudence

There are several reasons why parties tend to choose arbitration over court litigation. As was mentioned before court litigation gives the parties the right for an appeal which can be expensive and time taking.[23] Additionally, the arbitration process is more flexible which means that the specific requirements of the parties are taken into consideration. [24]This is not the case in court litigation since there are fixed rules by which the process is enacted and the final award given.[25] Additionally, there might be a situation that the parties of a dispute come from different countries. Therefore, in these cases, the national court system of the other party will be unknown to the opposing party. [26]The opposing party may feel insecurity in case they have to solve a dispute in a foreign country with foreign law and foreign lawyers. Additionally, arbitration provides parties with the possibility to solve the dispute in a neutral form and not in the national court of the opposing party. [27]

Arbitration differs from court litigation in the way that there are not as many formal rules related to taking of evidence and also no respect to the burden of proof. [28]The burden of proof is at times taken into consideration but it can be overwritten. [29] Therefore, the burden of proof requires special consideration. [30]

1.2 Arbitral Tribunals

The role of the arbitral tribunal is to solve a dispute by coming up with an outcome in the form of a written final award. The role of the tribunal can be compared to that of a court proceeding since the decisions given by the tribunal are binding. [31]The tribunal has the obligation to make the decision and act fairly meaning that the tribunal must be impartial and independent. [32] The arbitral tribunal can consist of three or more arbitrators which can sometimes cause difficulties when deciding upon the outcome of the arbitration process. There can be disagreements between the

[23] *ibid*
[24] *ibid*
[25] *ibid*
[26] *ibid*
[27] *ibid*
[28] Bishop, D., Crawford,J., Reisman, W.M.(2005). *Foreign Investment Disputes: Cases, Materials and Commentary.* The Haque, The Netherlands: Kluwer Law International. p 4
[29] *ibid*
[30] Blavi.F, Vial.G. *The Burden of Proof in International Commercial Arbitration: Are we Allowed to Adjust the Scales?* Hastings International and Comparative Law Review, Volume 39, Issue 1, pages 41-80
[31] Blackaby,N., Partasides,C., Redfern, A., Hunter, M. (2009) *supra nota* 11, p 50
[32] English Arbitration Act 1996, s 33(1)(a)

arbitrators of the arbitral tribunal and this may cause difficulties. In these cases, it is the role of the presiding arbitrator to decide how to proceed ahead. [33]

1.3 Permanent court of arbitration

The Permanent Court of Arbitration(PCA) is the oldest arbitral institution in the world that has been founded by states.[34] The Haque Conventions of 1899 and 1907 has had a great significance in determining the arbitration procedure. [35]The parties of the arbitration proceedings have the right to decide together how the procedure will go in the case when it is not governed by institutional rules. [36]Therefore, the parties of the dispute have the privilege to decide how the procedure is enacted and therefore they have a lot of control in the process which can be seen as an asset for the parties. [37]Additionally, the procedural arrangements determine where and how the procedure foregoes.[38] These arrangements shall be detailed to the extent that there shall be covered time-limits and how evidence shall be taken into consideration. Additionally, the language that shall be used in the procedure, how the decision shall be made and also whether the decision will be public. [39]

1.4 Arbitral Award

The arbitral award is the outcome of the arbitration procedure.[40] The award is a binding decision and therefore the parties agree to obey the outcome of the procedure and to respect the award that is given. [41]Additionally, the party that receives the arbitral award in the arbitration procedure may need to enforce the award against the opposing party. [42] Even though the award given is binding the parties have the right to take further action for example by revising or even nullifying the decision. Whether these further actions can be taken depends on what was agreed upon when signing the arbitration agreement. The parties have the right to appeal but using that right can be

---

[33] Blackaby.N, Romano.C, Shany.Y, Sands.P.(2009) *supra nota* 11, p 27-28
[34] Boltenko.O. (2013) The Permanent Court of Arbitration: Procedural Rules and the importance of Early Procedural Agreement. Asian Dispute Review.
[35] Craig, P. (2013). *EU Law*. Sixth Edition. Oxford, United Kingdom: Oxford University Press p 95
[36] *ibid*
[37] *ibid*
[38] *ibid*
[39] *ibid*
[40] Blackaby,N., Partasides,C., Redfern, A., Hunter, M. (2009) *supra nota* 11, p 28-29
[41] *ibid*
[42] *ibid*

seen as being rare. The party that decided to appeal shall keep in mind that in case the appeal request is provided and it was based on certain specific excuses then the excuses shall remain the same and new excuses shall not be accepted.[43]Nevertheless, the right of the parties to receive clarification on the award is permissible. Therefore, the clarification is often allowed.[44]

[43] *Ibid.*
[44] Merrills,J.G. (1998). *International Dispute Settlement.* Third Edition. Cambridge: Cambridge University Press. p 105

1.5 Importance of arbitration as a dispute resolution method

There are several reasons why arbitration can be seen as an important dispute resolution method.[45] The cost of arbitration is something that speaks to companies personnel on a high level. [46]The fact why arbitration can be noted cost-friendly is because the use of arbitration is not targeted financially on taxpayers but rather on the service users. [47]
Another important factor that makes arbitration so unique is the fact that parties have the right to choose their arbitrators.[48] Additionally, there is not a need for a large number of experts and support staff as is the case in court jurisprudence. [49]Furthermore, there is not needed a complicated judicial system because the arbitration process is more simple.[50] Lastly, the expenses of the arbitrators are not paid by the public.[51] Especially the fact that the training of an arbitrator are not paid for by the public but rather the arbitrator himself or some sort of sponsoring system. [52]
The importance of arbitration to the public is significant. Arbitration takes away the pressure and sometimes even the fear of having to go to court to solve a dispute. [53]Therefore, the public can see arbitration as a relief. [54]

[45] MacLean. R. (2000). Law and Business Review of the Americas: The Growing Importance of Arbitration in International Finance- *Law and Business Review of the Americas*, Volume 6, Number 1, pages 35-44
[46] *ibid*
[47] *ibid*
[48] *ibid*
[49] *ibid*
[50] *ibid*
[51] *ibid*
[52] *ibid*
[53] *ibid*
[54] *ibid*

2. INVESTMENT TREATIES

Investment treaties are agreements that are conducted between countries with the goal of encouraging private investment.[55] The most common type of investment treaties is bilateral investment treaties (BITs) which include only two countries. [56]The goal of BITs is to promote investment by protecting private companies. [57] Additionally, investment arbitration is based on international agreements and operating in accordance with the EU legal and judicial system. [58] International investment law and arbitration have gathered attention globally. [59]Therefore, international investment law can be seen as being one of the areas that have the fastest pace in growing. [60]Despite the intensity and pace human rights shall be respected in all actions between all Member States and companies. The power of international investment agreements is that states have the courage and belief to make a commitment to a foreign investor. [61]Since any contract that is made based on local or foreign law can change as the law changes then international investment agreements are the saving aspect in these situations.[62] The goal of the states to enter into a contract with a foreign state is to bind the other states with obligations based on international law and with the sight of internationalization a domestic state can grow with the needed cooperation with a foreign state. [63]The states that engage with foreign states have the idea of improving the welfare of the local state both by technology and expertise. [64]The basis for all of this cooperation between states is equal treatment without fraud, breach or misunderstandings.[65] These can be seen as being the cornerstones of international investment treaties.

There has been a discussion about what is the role of an arbitrator in international investment disputes.[66] Based on one perspective arbitrators can be seen as being the ones who want to give importance and attention to the systematizing process.[67] The idea of this is to find the universality and development of international law. On the other hand, some might see arbitrators as being

---

[55] Emery.C. (2011) *Documents without Borders*. Investment Treaties and Arbitration, Volume 39, Issue 3, pages 11-12
[56] *ibid*
[57] *ibid*
[58]Kokott.J, Sobotta.C. (2016) Investment Arbitration and EU law. Cambridge Yearbook of European Legal Studies p 3-19
[59] Lim, C.L, Ho, J., Paparinskis, M. (2018). *International Investment Law and Arbitration: Commentary, Awards and Material*. Cambridge, United Kingdom: Cambridge University Press. p 1
[60] Kjos, H.E. (2013). Applicable Law in Investor-State Arbitration: T*he Interplay between National and International Law*. Oxford, United Kingdom: Oxford University Press. p 45
[61] *ibid*
[62] *ibid*
[63] *ibid*
[64] *ibid*
[65] *ibid*
[66] *ibid*
[67] *ibid*

service providers who have the goal of not focusing on the questions of general principles but rather that they are seen as people with the knowledge to provide guidance. [68]

There have been arguments related to international investment law and whether it shall be approached from the public or private side of view. [69]The growing number of BITs can be seen in the way that the more there are BITs then the more they will achieve standardization. [70]Nevertheless, BITs cannot be seen as a competitive factor because if it is then the expanding of BITs and their intended use creates an issue. [71]

An important example of case law related to investment treaties is the case between South Pacific Properties(SPP) and the Egyptian General Organization for Tourism. [72]The case proceeded so that the Egyptian General Organization for Tourism called the project and after that, the SPP proceeded with bringing ICC arbitration against the government.[73] Nevertheless, the award was put aside due to the lack of jurisdiction of the ICC tribunal.[74] At that point, SPP has the idea of relying on Egyptian law which had arbitration clauses for disputes between foreign investors.[75] After that SPP turned to the International Centre for Settlement of Investment Disputes (ICSID) tribunal which accepted jurisdiction in this matter and the investor received some relief. [76]

This can be seen as being a landmark case because it enabled treaty-based arbitration. [77]This new wave of arbitration can be seen as a positive aspect for future investors. Investors can trust that there are new remedies invented that they can rely on in case disputes arise. [78]

2.1 Regulation

The (ICSID) is an institution that is dedicated to settling international investment disputes.[79] Many states have agreed to have ICSID as a forum for investor-State dispute settlements in most international investment treaties.[80] The ICSID provides settlements by conciliation, arbitration or

[68] *ibid*
[69] *ibid*
[70] *ibid*
[71] ibid
[72] The Role of the State in Investor-State Arbitration. (2015). /Eds. Shaheeza Lalani, Rodrigo Polanco Lazo. Brill Nijhoff. p 4-5
[73] *ibid*
[74] *ibid*
[75] *ibid*
[76] *ibid*
[77] *ibid*
[78] *ibid*
[79]Grisel. F.(2014) *Precedent in Investment Arbitration: The Case of Compound Interest*. Peking University Transnational Law Review, Volume 2, Issue 1, pages 217-227
[80] *ibid*

fact-finding. [81]The ICSID was created in 1966 but most of the cases were registered after the year 2000 so therefore the ICSID caseload has increased rapidly. [82] The ICSID process is unique in the way that it takes into account the special characteristics of international investment disputes and takes the parties interests into careful consideration.[83] Also, the ICSID proceedings can be seen as being specialized since they are limited to investment treaties. [84]
The goal of making international investment treaties is to receive attention from foreign direct investment (FDI).[85] International investment agreements (IIAS) has a total of 2300 BITS and other agreements that concern foreign investment. [86]There have been enacted ways of solving disputes that concern disputes between private parties and the host country in question. [87]The goal of these IIAs is to receive a settlement between the contracting parties. [88]The goal for the parties is to ensure that in case of a dispute they will have specified ways of receiving a solution.[89] Nevertheless, provisions concerning dispute settlement have been present since the 1960s but the actual use of the provisions has not been common. [90]Despite this, there is a growing number of these cases. [91] There has been concerns related to conflict of jurisdictions in these cases. In some cases, there might be a domestic forum clause in the contract which means that in case of dispute the dispute will be solved under a state's domestic dispute-settlement regime.[92] Nevertheless, this kind of clause shall not be in the way of a legitimate claim at the international level.[93] Another clause that shall be taken into consideration is the umbrella clause which means that it is an IIA obligation in the sense that there shall be respect shown towards all commitments and agreements that have been entered into.[94] The principle of non-discrimination which is also the basis for freedom of establishment has a significant role in the investment treaties regulations. [95]The main aim of this non-discrimination principle is that foreign states shall not have to be subject to any discrimination on any level. [96]

---

[81] *ibid*
[82] *ibid*
[83]International Centre for Settlement of Investment Disputes
Accessible: https://icsid.worldbank.org/en/Pages/about/default.aspx, 29 April 2019
[84]Delaume.G. *ICSID Arbitration Proceedings*. Law Journal Library. International Tax & Business Lawyer, Volume 4, Issue 2, pages 218-229
[85] United Nations New York and Geneva. (2005). *Investor-State Disputes Arising From Investment Treaties: A review*- UNCTAD Series on International Investment Policies For Development
Accessible: https://unctad.org/en/docs/iteiit20054_en.pdf, 18 March 2019
[86] *ibid*
[87] *ibid*
[88] *ibid*
[89] *ibid*
[90] *ibid*
[91] *ibid*
[92] *ibid*
[93] *ibid*
[94] *ibid*
[95] *ibid*
[96] *ibid*

2.2 Breach of Investment Treaties

The actual process of terminating a BIT due to a breach of an investment treaty is not that common. Also, there seems not to be that much experience on terminating BITs then there is terminating other contracts. The terminating of BITs can be seen as being politically sensitive and also having significant economic consequences.[97] Nevertheless, there are certain remedies that an investor is entitled to in the case that there is a breach of investment treaties.[98] Some of the remedies that an investor is entitled to are damages, the annulment of the contract or specific performance. All of this depends on what kind of contract has been made and on the terms of that contract. [99] By that is decided whether they shall be heard by the state courts or by an arbitral tribunal.[100] In some situations, it might be so that administrative courts might have exclusive jurisdiction.[101] Nevertheless, in those cases when an investor has noted that there has happened a breach in a contract the specific state court has jurisdiction concerning it. [102]
Foreign investments are in high demand at the moment. Therefore, there have been over 3000 bilateral agreements entered into with the goal of encouraging specifically foreign investments. [103] In the situation where one of the commitments made by the contracting state is not respected then the investor belonging to the other state has the right to claim damages from the contracting party or state. [104]

There have been debates based on whether the current arbitration system that is being used is efficient enough and is in accordance with the specified rules. [105]Some states and the European Commission have come to the conclusion that disputes like this shall be decided by a permanent investment court and therefore there shall be specific judges appointed to disputes like this. [106]The

[97] Carska-Sheppard.A. (2009) *Issues Relevant to the Termination of Bilateral Investment Treaties.* Journal of International Arbitration Volume 26, Issue 6, pages 755-772
[98] Rubino-Sammartano. M. (2016) *Remedies available for breaches of foreign investment contracts and treaties*-Financier Worldwide Magazine
Accessible https://www.financierworldwide.com/remedies-available-for-breaches-of-foreign-investment-contracts-and-treaties#.XI-AIi17FZo, 18 March 2019
[99] *ibid*
[100] *ibid*
[101] *ibid*
[102] *ibid*
[103] *ibid*
[104] *ibid*
[105] *ibid*
[106] *ibid*

Commission had given their opinion on this factor and has the opinion that Member States put an end to intra EU bilateral treaties. This is due to the fact that it creates different rights of investors in different states and it shall be according to the law of the EU. [107] The most important factor in encouraging and securing foreign investment is to reassure the investor that there will not happen any major changes that could dramatically affect the investor's ability to continue to operate in a specific state.[108]

[107] *ibid*
[108] Bernardini.P. (2001) *Investment Protection under Bilateral Investment Treaties and Investment Contracts.* Foreign Investment Law Journal, Volume 17, Issue 1, pages 205-292

3. CASE C-284/16

The parties of the case C-284/16(Achmea) are a Dutch insurer Achmea B.V and the Slovakian Republic. The Bilateral Investment Treaty (BIT) was concluded in 1991 and it had entered into force on January 1st , 1992.[109] According to Article 3(1) of the BIT, the contracting parties made the decision to ensure equal and fair treatment towards the investments of investors. [110]They also gave a promise not to use any discriminatory methods or to do discriminatory actions. Both of the parties agreed to a free transfer without any delay of payments concerning profits and interests. [111]

The Slovakian Republic had the goal of reforming its health system and therefore they opened its market in 2004 in order for the other Member States to be able to offer private sickness insurance services.[112] After this, Achmea which is an undertaking in the Netherlands and is an insurance group decided to set up a subsidiary in Slovakia. [113]Its mission was to provide private sickness insurance services in Slovakia. Things changed in 2006 when Slovakia decided to make a reservation concerning the private sickness insurance market. [114]Therefore, Slovakia decided to make a prohibition on the distribution of profits that had been generated by private sickness insurance activities. The Achmea decided to bring arbitration proceedings against Slovakia in October 2008. [115]They chose to have the arbitration process done in Germany and therefore German law applied to the arbitration proceedings. [116]

The Slovakian Republic objected this based on the lack of jurisdiction on the arbitral tribunal. [117]They claimed that the recourse to an arbitral tribunal was incompatible with EU law. On 26th of October 2010, the arbitral tribunal dismissed the objection.[118] After this, the arbitral tribunal made the decision that Slovakia shall pay Achmea damages of 22.1 million euros. [119]The Slovakian Republic was not pleased about this and therefore they brought an action in order to set aside the arbitral award that had been decided. [120]The Higher Regional Court of Germany dismissed the

[109] C-284/16 (2018) , supra nota 1, p 1
[110] *ibid*
[111] *ibid*
[112] *ibid*
[113] *ibid*
[114] *ibid*
[115] *ibid*
[116] *ibid*
[117] *ibid*
[118] *ibid*
[119] *ibid*
[120] *ibid*

action based on that the Slovakian Republic appealed to the Federal Court of Justice. [121]The Slovakian Republic presented doubts regarding the compatibility of the arbitration clause that was presented in Article 8 of the BIT. [122]The case continued so that because of the fact that the Court had not yet ruled on those questions and those questions happened to have a great significance, the Court decided that they shall make the present reference to the Court in order to make a decision based on it. [123]

The Court argued that Article 344 TFEU is not applicable because it does not concern disputes that are between the Member States and individuals. The Court also doubted whether Article 267 TFEU does include an arbitration clause. Furthermore, the court argued that the interpretation of EU law can be seen as being ensured in this case. The court continued by arguing that the Court had previously ruled that agreement that provided the establishment outside of the framework of the EU of a special court is compatible with EU law if there is not an adverse effect on the autonomy of the EU legal order. [124]

3.1 Legal aspects of the case C-284/16

The Federal Court of Justice of Germany decided to present questions to the Court in order to receive a preliminary ruling. [125]The first question that was presented concerned whether the Article 344 TFEU precludes the application of a provision in an investment agreement where the investor in a contracting state may bring proceedings against the other contracting state before an arbitral tribunal. [126]The Federal Court of Justice continued by asking whether the answer to the first question is negative then is there a possibility that Article 267 TFEU precludes the application of such a provision. [127]Furthermore, if the answer to the first two questions is negative then whether Article 18 TFEU precludes the application of such a provision under the circumstances that were presented in the first question. [128]

[121] *ibid*
[122] *ibid*
[123] *ibid*
[124] *ibid*
[125] *ibid*
[126] *ibid*
[127] *ibid*
[128] *ibid*

3.2 Outcome of the case C-284/16

The CJEU decided that the arbitration clause in the BIT is not in accordance with EU law. Their opinion was that the arbitration clause removes disputes that involve the interpretation or application of the EU law based on judicial review. [129] The Court (Grand Chamber) decided that the Articles 267 TFEU and 344 TFEU shall be considered as precluding a provision in an agreement that has been concluded between the Member States. Therefore, the Court decided that an investor from a Member State may in the situation where there is a dispute concerning investments in the other Member State to bring proceedings against the other party before an arbitral tribunal whose jurisdiction that Member State has undertaken to accept.[130] The CJEU decision was significant based on several factors.[131] The significance was on the supremacy of EU law but also on the significant role of the EU institutions.[132] The investment treaty arbitration (ITA) had not had a good reputation within the EU or at least had not been warmly welcomed. [133]The reason for the lack of trust in the ITA had been based on previous case law. [134]Therefore, the judgment of Achmea was considered as something that shall be brought to notice. Despite the long awaited decision the decision itself was quite null in the sense that it did not say much. [135]The CJEU took into consideration the trust between EU member states but also the freedom that has been provided in the TFEU. [136]Therefore, the conclusion was that the BIT is not compatible with EU law. [137]

This kind of landmark case has raised attention throughout the world especially in the EU. One of the major outcomes of the Achmea case is that it may affect the effectiveness of BITs that have been concluded between the EU Member States.[138] The implications of the Achmea case are not clear but nevertheless, it might have serious consequences. The European Convention of Human

---

[129] Fouchard.C., Krestin.M. (2018) *The Judgment of the CJEU in Slovak Republic v. Achmea- A Loud Clap of Thunder on the Intra-EU BIT Sky!*-Kluwer Arbitration Blog
Accessible: http://arbitrationblog.kluwerarbitration.com/2018/03/07/the-judgment-of-the-cjeu-in-slovak-republic-v-achmea, 14 March 2019
[130] *ibid*
[131] Dragiev.D. (2019). *2018 In Review: The Achmea Decision and Its Reverberations in the World of Arbitration*- Kluwer Arbitration Blog
Accessible: http://arbitrationblog.kluwerarbitration.com/2019/01/16/2018-in-review-the-achmea-decision-and-its-reverberations-in-the-world-of-arbitration, 14 March 2019
[132] *ibid*
[133] *ibid*
[134] *ibid*
[135] *ibid*
[136] *ibid*
[137] *ibid*
[138] Taton.X, Croisant.G. (2018). *Intra-EU Investment Arbitration Post-Achmea: A look at the Additional Remedies Offered by the ECHR and EU Law* - Kluwer Arbitration Blog
Accessible: http://arbitrationblog.kluwerarbitration.com/2018/05/19/intra-eu-investment-arbitration-post-achmea-a-look-at-the-additional-remedies-offered-by-the-echr-and-eu-law/, 14 March 2019

Rights (ECHR) is an important convention between the EU Member States since all member states all members of the ECHR.[139] In many of the member states, the ECHR is applicable directly and therefore the ECHR rules the national laws. [140]The fact why the Achmea decisions are so significant is that in the case where an EU Member State objects to the state's rules and measures that have had an impact on the investments somewhere else in the EU might have to search for more routes to a remedy. [141]The other one of the routes is the ECHR.[142]

3.3 Freedom of establishment

Freedom of establishment is one of the four fundamental freedoms that belong to all Member States and citizens within the EU. [143]Freedom of establishment is an absolute right that shall be protected and respected by all Member States, citizens, and institutions.[144] This right is something that establishes the uniqueness of the EU.[145] Article 54 of the Treaty on the functioning of the European Union (TFEU) states that companies that have been established in another Member State shall be treated in the same way as people would be treated who reside to another member state. [146]

The principles that protect the freedom of establishment have been presented in the TFEU and through time these have been established through case law.[147] Additionally, secondary legislation has had a major impact on the development of the freedom of establishment. [148]Two of the main secondary legislation that have had a major impact have been adopted in 2005 and 2006. [149]The TFEU articles that stipulate the freedom of establishment are articles 49-54 TFEU. [150]These articles, in particular, have the requirement of deleting and preventing any restrictions in the field of freedom of establishment. [151]The goal with freedom of establishment is to provide citizens, companies, and institutions with the right to have a business in any EU member state without

[139] *ibid*
[140] *ibid*
[141] *ibid*
[142] *ibid*
[143] Craig, P. (2013). *EU Law*. Sixth Edition. Oxford, United Kingdom: Oxford University Press, p 794-795
[144] *ibid*
[145] *ibid*
[146] *ibid*
[147]*ibid*.
[148] *ibid*
[149] *ibid*
[150] *ibid*
[151] *ibid*

interference.[152] The TFEU articles 56-62 have the role of removing restrictions that may appear in the field of freedom of establishment. [153]

First and foremost, freedom of establishment, in a nutshell, gives other member states nationals the right to perform activities as self-employed persons. This can be seen as being a fundamental right. Additionally, citizens of one EU member state have the right to establish a company or business in another EU member state without any signs of discrimination or difficulties.[154] Lastly, citizens of one EU member state may freely set up agencies or subsidiaries in another member state. [155]This is an important aim within the EU that has developed and enhanced over the years. [156]

Article 49 TFEU has the goal of providing equal treatment for both nationals and non-nationals. [157]Based on case law Commission v Belgium the European Court of Justice (ECJ) had ruled that if there is not present direct or indirect discrimination then the rules which had a restriction on the right of freedom of establishment did not violate Article 49 TFEU. [158]
An important factor that shall be taken into consideration is that when can a company be seen as being established in a Member State.[159] First of all, it is important to note that a company established shall be established according to the law of the Member State. [160]Basically, this means that the company shall have its registered office in the other Member state and also the companies place of business shall be somewhere in the EU. [161] The fundamental principles of the EU which include the freedom of establishment are directly applicable in the member states before national courts. [162]Therefore, in a case where some Member State has not been able to fulfill its obligations, the European Commission has the power to demand a member state to amend its national legislation.[163] In the case that a member state refuses to act in accordance with the European Commission's demands, the European Commission has the right to bring the case to the CJEU.

---

[152] *ibid*
[153] *ibid*
[154] European Law Monitor: Freedom of establishment
Accessible: https://www.europeanlawmonitor.org/eu-policy-areas/eu-freedom-of-establishment.html, 7 March 2019
[155] *ibid*
[156] *ibid*
[157] Craig.P. (2013) *supra nota* 143, p 804
[158] *ibid*
[159] *ibid*
[160] *ibid*
[161] *ibid*
[162] Taton.X, Croisant.G. (2018). Intra-EU Investment Arbitration Post-Achmea:A look at the Additional Remedies Offered by the ECHR and EU Law - Kluwer Arbitration Blog
Accessible: http://arbitrationblog.kluwerarbitration.com/2018/05/19/intra-eu-investment-arbitration-post-achmea-a-look-at-the-additional-remedies-offered-by-the-echr-and-eu-law/, 14 March 2019
[163] *ibid*

[164]Additionally, a member state has the right to bring a case to the CJEU but that rarely happens. [165]

3.4 Freedom of establishment in case C-284/16

The main question in case C-264/18 is whether there was an infringement of the freedom of establishment. [166]An important thing to witness here is that the EU has the role of operating fairly and effectively between the EU member states. The EU treaties are the body of law that governs all of it. Member states courts have the freedom to turn to the European Court of Justice(ECJ) questions concerning the functioning of the EU.[167] The ECJ has the important role of providing EU member states courts with the possibility of making preliminary references.[168] In the case, there was a dispute between Achmea and Slovakia regarding the undertaking that are established in the EU to rely on the freedom of establishment and also free movement of capital. [169]The European Commission has the role of protecting these rights and also in cases of infringement to bring a case against those member states. [170]After the ruling by the Court of Justice(CJEU) the belief in the principle of loyalty under the European Union law has faded. The CJEU had decided that the investment treaty between the was incompatible with EU law. [171] All member states within the EU have the obligation of applying EU law at all times. The interpretation of the preliminary ruling procedure can be seen as being one of the cornerstones of the judicial system. [172]

---

[164] *ibid*
[165] *ibid*
[166] *ibid*
[167] Ankersmit. L. (2018) *Achmea: The Beginning of the End for ISDS in and with Europe?*- Investment Treaty News
Accessible: https://www.iisd.org/itn/2018/04/24/achmea-the-beginning-of-the-end-for-isds-in-and-with-europe-laurens-ankersmit/, 8 March 2019
[168] *ibid*
[169] *ibid*
[170] *ibid*
[171] Eckes.C. (2018) *Don't lead with your chin! If Member States continue with the ratification of CETA, they violate European Union law*.-European Law Blog
Accessible: https://europeanlawblog.eu/2018/03/13/dont-lead-with-your-chin-if-member-states-continue-with-the-ratification-of-ceta-they-violate-european-union-law/, 8 March 2019
[172]Fouchard, C, Krestin, M. (2018) *The Judgment of the CJEU in Slovak Republic v. Achmea- A Loud Clap of Thunder on the Intra-EU BIT Sky!*-Kluwer Arbitration Blog
Accessible: http://arbitrationblog.kluwerarbitration.com/2018/03/07/the-judgment-of-the-cjeu-in-slovak-republic-v-achmea, 14 March2019

4. STATES AFFECTED BY CASE C-284/18

The possibility of the Achmea case having general effect is significant. The Achmea case has raised attention in many countries around the world and some case laws have been affected by the decision of the Achmea case. On the 6th of March, the CJEU gave the long-awaited decision on the Achmea case. [173]Already then it was predicted that the Achmea case will have significant effect on future arbitration proceedings. [174] The Achmea rulings apply to bilateral investment treaties that are between countries that are Member States of the EU.[175] Nevertheless, there is a possibility that the rulings of the Achmea case may effect agreements that are made between EU member states and third countries. [176]Here is where the aspect of the Achmea case having general effect comes into question. The EU has the goal of creating a multilateral investment court and therefore all of the EU states have the obligation to understand the effects of the decision in the Achmea case.[177] Some of the consequences of the Achmea case are that in the future some cases which are between EU member states and third countries might be brought before the EU courts. [178]This will mean that the EU courts might question whether agreements that have been concluded between EU member states and third countries are compatible with EU law.[179] Another consequence that might appear is that the Member States might be legally obliged to challenge the jurisdiction of an arbitration tribunal that has been established under provisions that do not follow the requirements outlined by Achmea. [180]Additionally, it might be so that EU courts will not be able to enforce international investment awards delivered by tribunals whose jurisdiction is in conflict with the EU law. [181]There are certain states that are home states of investors that have used ISDS in the past.[182] Therefore, they might have to appeal to ISDS against the Member States in the future.[183] This might happen in cases where a country has existing BITs with the EU Member States. [184]These countries might face the situation that they will not be able to enforce arbitration tribunal

---

[173] Cavedon.A, Weber.S. (2018) *Digging Deeper:Summary of the Hearing before the CJEU in the Achmea Case*. European Investment Law and Arbitration Review, Volume 3, Issue 1, pages 225-241
[174] *ibid*
[175] *ibid*
[176] *ibid*
[177] *ibid*
[178] *ibid*
[179] *ibid*
[180] *ibid*
[181] *ibid*
[182] *ibid*
[183] *ibid*
[184] *ibid*

decisions in the EU and this might lead to decreasing the value of protecting foreign investment. [185]

4.1 Sweden

Vattenfall which is a Swedish energy firm launched a 1.9 million dollar investor-state claim against Germany. [186]The main reason why Vattenfall launched the claim was that they argued that Hamburg's environmental rules had a violation of Germany's obligation to provide foreign investors with equal treatment.[187] The settlement required the Hamburg government to let go of the additional environmental requirements that they had. [188]
The Achmea case has had a significant effect on the Vattenfall case. The ECT rejected the applicability of Achmea on the Vattenfall case and also the legal implications of Achmea. [189]Nevertheless, the Achmea case proved a valuable point on how ICSID tribunals may deal with the potentially conflicting consequences in the future.[190] The Vattenfall case proved clearly that it is still possible for intra-EU investment arbitral tribunals that deal with objections against their jurisdiction to leave out Achmea if they wish to do so. [191]The tribunal in the Vattenfall case stated that Achmea can have effect only if EU law can be accounted for applicable to the determination of the tribunal's jurisdiction. [192]In the situation that a tribunal is designated to apply the EU in accordance with the state law then it will not be able to take into consideration the implication by Achmea on its jurisdictional competence. [193] The Vattenfall case tribunal was in the opinion that Article 26(6) ECT is the article by which the tribunal shall decide disputed issues in accordance with the ECT. [194]Additionally, the tribunal must decide upon applicable rules and principles of international law that apply only to the standards of protecting investments. [195]The tribunal's

---

[185] *ibid*
[186]ISDS Platform. Case study: Vattenfall v Germany
Accessible: https://isds.bilaterals.org/?case-study-vattenfall-v-germany-i, 29 April 2019
[187] *ibid*
[188] *ibid*
[189] Georgaki.K. (2018) The Decision on the Achmea Issue in Vattenfall v Germany or: How to Escape the Application on the CJEU's Decision in Achmea in Three Steps
Accessible: https://www.law.ox.ac.uk/business-law-blog/blog/2018/11/decision-achmea-issue-vattenfall-v-germany-or-how-escape-application, 9 May 2019
[190] *ibid*
[191] *ibid*
[192] *ibid*
[193] *ibid*
[194] CMS Law-Now: *In the Aftermath of Achmea-Does Vattenfall Ensure the Future for Intra-EU Investment Arbitration*
Accessible: https://www.cms-lawnow.com/ealerts/2018/09/in-the-aftermath-of-achmea-does-vattenfall-ensure-the-future-for-intra-eu-investment-arbitration, 9 May 2019
[195] *ibid*

opinion was that it shall not be applied to provisions regarding dispute settlements.[196] Also, the tribunal was in the opinion that the interpretation shall not begin from interpreting EU law but rather the Article 31(1) of the Vienna Convention.[197] Also, that when interpreting treaties it shall be done by excessing the ordinary meaning taking into consideration the treaty's object, aim, and purpose. [198]The tribunal stated that EU law shall not be used to rewrite the treaty that is being used because this could lead to misinterpretation in the ordinary meaning of the treaty.[199] Lastly, the tribunal was in the opinion that CJEU's considerations could cause a contradiction with the ECT's considerations. [200]

4.1.1 Spain

Another case that has taken into account the Achmea case is the Masdar Solar v Spain case.[201] In this case, the tribunal did not permit Spain to reopen the arbitration due to the Achmea. [202]The reason for this was simply made by addressing the Achmea case judgment as being silent on the subject of the ECT.[203]

The main facts of the case where that Spain had the policy of stimulating investment in the area of renewable energy where renewable energy generators could benefit from a premium set by the Spanish government which was above the wholesale market price.[204] Masdar argued that by many disputed measures that were presented between 2012 and 2014 Spain had not conducted the RD661/2001 regime but had used a much less favorable regime. [205]Masdar had made investments in three solar power plants and now claimed that its investments had been affected by the disputed measures. Masdar argued that Spain had breached the FET standard under ECT Article 10(1). [206]

---

[196] *ibid*
[197] *ibid*
[198] *ibid*
[199] *ibid*
[200] *ibid*
[201] Schwedt, K. (2018). *Intra-EU ECT Claims Post-Achmea: Vattenfall Decision Paves the Way.* Kluwer Arbitration Blog,
Accessible: http://arbitrationblog.kluwerarbitration.com/2018/12/13/intra-eu-ect-claims-post-achmea-vattenfall-decision-paves-the-way/ , 13 March 2018
[202] *ibid*
[203] *ibid*
[204] Investment Treaty News. *ICSID tribunal finds Spain in breach of the FET standard under the Energy Charter Treaty.*
Accessible: https://www.iisd.org/itn/2018/07/30/icsid-tribunal-finds-spain-in-breach-of-the-fet-standard-under-the-energy-charter-treaty-masdar-solar-wind-cooperatief-ua-v-kingdom-spain-icsid-trishna-menon/, 29 April 2019
[205] *ibid*
[206]*ibid*

4.1.2 United Kingdom

The United Kingdom can be seen as being bound by the Achmea decision and therefore the registering and enforcing an intra-EU BIT arbitration award in the UK would require a balancing act between the New York Conventions requirements and United Kingdom's international obligations under the ICSID Convention.[207] In the case where enforcement is sought under the New York Convention, there are only a few situations when enforcement of an award can be denied. [208]These denials include the invalidity of the arbitration agreement and the tribunal exceeding its authority. [209]Basically, any of these reasons could be the reason for refusing recognition or enforcement of an intra-EI BIT award based on the reasoning of the Achmea case.[210] If the award is an ICSID award then it is binding and final and cannot be appealed and it shall be enforced in the state of the defendant. [211]

4.1.3 Hungary

After the Achmea case decision, the Hungarian Prime Minister approved the commencement of negotiations on an agreement that concerned terminating Member States BITs.[212] In Central Europe, Hungary can be seen as one of the first Member States that adopted bilateral investment treaties with the goal of attracting foreign investment. [213]There had existed safeguards for foreign investment since the 1970s but BITs were seen as providing better guarantees for foreign investors.[214] After the Achmea judgment Hungary began to invoke the inapplicability of the arbitration clauses that were included in the intra-EU BITs. [215]

---

[207] Power,R. (2018) '*Brexit, the Energy Charter Treaty and Achmea: An Unexpected Ray of Light?*', Kluwer Arbitration Blog
Accessible: http://arbitrationblog.kluwerarbitration.com/2018/12/17/brexit-the-energy-charter-treaty-and-achmea-an-unexpected-ray-of-light/, 29 April 2019
[208] ibid
[209] ibid
[210] ibid
[211] ibid
[212] Korom,V, Sándor,L. (2019). *Hungary Givesthe Green Light for the Conclusion of a Termination Agreement for Intra-EU BITs*- Kluwer Arbitration Blog
http://arbitrationblog.kluwerarbitration.com/2019/01/14/hungary-gives-the-green-light-for-the-conclusion-of-a-termination-agreement-for-intra-eu-bits/, 29 April 2019
[213] *ibid*
[214] *ibid*
[215] *ibid*

5. CONCLUSION

The main aim of this bachelor's thesis was to access the legal impact of the Case-284/16 on the validity of agreements to arbitrate the freedom of establishment. The main aim was to be achieved by using effective research methods.

Responding to my research questions which were whether EU law an in particular Achmea case(CJEU284/16) imposes a general prohibition on arbitration tribunals to apply and interpret EU law autonomously. Furthermore, how the Achmea case impacts the freedom of establishment in the EU. The cases presented before prove that the hypothesis of this thesis is true. As was stated in the Vattenfall case the Achmea case goes beyond investment treaties and the Achmea case was looked into while deciding the Vattenfall case. Therefore, the Achmea case is not limited only to investment treaties but goes beyond that. Additionally, the Achmea case effected decisions that were made in Hungary, the United Kingdom and even Spain.

As the thesis proves, the Achmea case may not be limited only to EU member states but can also affect agreements that are concluded between EU member states and third countries. This is a significant factor regarding agreements made between parties in the future. This can easily affect the number of investment treaties that are conducted and the position that different companies are put in the future. Additionally, the challenges they may face. The first thing that might cause problems in the future is that cases that are between EU member states and third countries might have to be settled in EU member state courts. This will cause challenges to the EU countries since they will need to assess whether EU law shall be applied in these cases. Another issue that might appear in the future is the validity of arbitral tribunals that have been established under provisions that do not follow the requirements that have been outlined by Achmea. Therefore, this can easily affect the trust that has been given towards arbitral tribunals. Another challenge that EU courts might have to face is that they will not be able to enforce international investment awards that have been delivered by tribunals whose jurisdiction is in conflict with EU law.

The Vattenfall case proved that the interpretation of the Achmea case and the evaluation of the effects is not that simple and straightforward. The Vattenfall cases tribunal pointed out valid points regarding how the Achmea case shall be viewed and from what angle the case shall be assessed. It is certainly not enough to take into consideration the facts of the case and the Achmea cases tribunals opinion. Attention shall be drawn to the EU law which governs all states in the EU.

Additionally, one significant factor was that EU law shall not be used in order to bend the provisions of certain treaties with the risk of losing the original aim and meaning of the treaty.

Most certainly future developments and research in the field of international investment arbitration will be to a large extent. This is due to the fact that Achmea raised so much attention and tribunals from different states had a different opinion on the reasoning of the Achmea decision. Additionally, the number of BIT's will most probably rise in the future and this will provide room for more interpretation and analyzing cases in the field of international investment arbitration. Due to the ground-breaking decision of Achmea more attention might be given to court precedents in order to evaluate a certain investment arbitration case's decision. In the future, Achmea might be viewed more closely from third countries since it has already caught the attention of several states within the EU.

LIST OF REFERENCES

Science Books

1.Bishop, D., Crawford,J., Reisman, W.M. (2005). *Foreign Investment Disputes: Cases, Materials and Commentary.* The Haque, The Netherlands: Kluwer Law International.

2.Blackaby,N., Partasides,C., Redfern, A., Hunter, M. (2009). *Redfern and Hunter on International Arbitration*. Fifth Edition. Oxford, New York: Oxford University Press.

3.Craig, P. (2013). *EU Law*. Sixth Edition. Oxford, United Kingdom: Oxford University Press.

4.Human Rights in International Investment Law and Arbitration. (2009). /Eds. Dupuy,P., Francioni, F.,Petersmann, E. Oxford, United Kingdom: Oxford University Press

5.Kjos, H.E. (2013). Applicable Law in Investor-State Arbitration: T*he Interplay between National and International Law*. Oxford, United Kingdom: Oxford University Press.

6.Lim, C.L, Ho, J., Paparinskis, M. (2018). *International Investment Law and Arbitration: Commentary, Awards and Materials.* Cambridge, United Kingdom: Cambridge University Press.

7.Merrills,J.G. (1998). *International Dispute Settlement.* Third Edition. Cambridge: Cambridge University Press.

8. *The Role of the State in Investor-State Arbitration*. (2015). /Eds. Lalani,S, Polanco, R. Brill Nijhoff.

eMaterials

1.Ankersmit. L. (2018). *Achmea: The Beginning of the End for ISDS in and with Europe?*- Investment Treaty News
Accessible: https://www.iisd.org/itn/2018/04/24/achmea-the-beginning-of-the-end-for-isds-in-and-with-europe-laurens-ankersmit/, 8 March 2019

2. Client Earth. (2018). *Implications of Achmea: How the Achmea Judgement Impacts Investment Agreements with Non-EU Countries.*
Accessible: https://www.ciel.org/wp-content/uploads/2018/04/Implications-of-Achmea.pdf, 29 April 2019

3.CMS Law-Now. (2018). *In the Aftermath of Achmea-Does Vattenfall Ensure the Future for Intra-*EU Investment Arbitration
Accessible: https://www.cms-lawnow.com/ealerts/2018/09/in-the-aftermath-of-achmea-does-vattenfall-ensure-the-future-for-intra-eu-investment-arbitration, 9 May 2019

4.Dragiev, D. (2019). *2018 In Review: The Achmea Decision and Its Reverberations in the World of Arbitration*- Kluwer Arbitration Blog
Accessible: http://arbitrationblog.kluwerarbitration.com/2019/01/16/2018-in-review-the-achmea-decision-and-its-reverberations-in-the-world-of-arbitration, 14 March 2019

5.Eckes.C. (2018). *Don't lead with your chin! If Member States continue with the ratification of CETA, they violate European Union law*.-European Law Blog
Accessible: https://europeanlawblog.eu/2018/03/13/dont-lead-with-your-chin-if-member-states-continue-with-the-ratification-of-ceta-they-violate-european-union-law/, 8 March 2019

6.European Law Monitor: Freedom of establishment
Accessible: https://www.europeanlawmonitor.org/eu-policy-areas/eu-freedom-of-establishment.html, 7 March 2019

7.Fouchard, C, Krestin, M. (2018). *The Judgment of the CJEU in Slovak Republic v. Achmea- A Loud Clap of Thunder on the Intra-EU BIT Sky!*-Kluwer Arbitration Blog
Accessible: http://arbitrationblog.kluwerarbitration.com/2018/03/07/the-judgment-of-the-cjeu-in-slovak-republic-v-achmea, 14 March2019

8.Georgaki, K. (2018). The Decision on the Achmea Issue in Vattenfall v Germany or: How to Escape the Application on the CJEU's Decision in Achmea in Three Steps
Accessible: https://www.law.ox.ac.uk/business-law-blog/blog/2018/11/decision-achmea-issue-vattenfall-v-germany-or-how-escape-application, 9 May 2019

9. International Centre for Settlement of Investment Disputes
Accessible: https://icsid.worldbank.org/en/Pages/about/default.aspx, 29 April 2019

10.ISDS Platform. Case study: Vattenfall v Germany
Accessible: https://isds.bilaterals.org/?case-study-vattenfall-v-germany-i, 29 April 2019

11.Investment Treaty News. ICSID tribunal finds Spain in breach of the FET standard under the Energy Charter Treaty.
Accessible: https://www.iisd.org/itn/2018/07/30/icsid-tribunal-finds-spain-in-breach-of-the-fet-standard-under-the-energy-charter-treaty-masdar-solar-wind-cooperatief-ua-v-kingdom-spain-icsid-trishna-menon/, 29 April 2019

12. Schwedt,K. (2018). *Intra-EU ECT Claims Post-Achmea: Vattenfall Decision Paves the Way'*, Kluwer Arbitration Blog,
Accessible: http://arbitrationblog.kluwerarbitration.com/2018/12/13/intra-eu-ect-claims-post-achmea-vattenfall-decision-paves-the-way/ , 13 March 2018,

13.Power, R. (2018). *Brexit, the Energy Charter Treaty and Achmea: An Unexpected Ray of Light?*', Kluwer Arbitration Blog
Accessible: http://arbitrationblog.kluwerarbitration.com/2018/12/17/brexit-the-energy-charter-treaty-and-achmea-an-unexpected-ray-of-light/, 29 April 2019

14.Rubino-Sammartano, M. (2016). *Remedies available for breaches of foreign investment contracts and treaties*- Financier Worldwide Magazine
Accessible https://www.financierworldwide.com/remedies-available-for-breaches-of-foreign-investment-contracts-and-treaties#.XI-AIi17FZo, 18 March 2019

15.Taton, X, Croisant, G. (2018). Intra-EU Investment Arbitration Post-Achmea: A look at the Additional Remedies Offered by the ECHR and EU Law - Kluwer Arbitration Blog
Accessible: http://arbitrationblog.kluwerarbitration.com/2018/05/19/intra-eu-investment-arbitration-post-achmea-a-look-at-the-additional-remedies-offered-by-the-echr-and-eu-law/, 14 March 2019

16.United Nations New York and Geneva. (2005). *Investor-State Disputes Arising From Investment Treaties: A review*- UNCTAD Series on International Investment Policies For Development
Accessible: https://unctad.org/en/docs/iteiit20054_en.pdf, 18 March 2019

17. Korom, V, Sándor,L. (2019). *Hungary Gives the Green Light for the Conclusion of a Termination Agreement for Intra-EU BITs.* Kluwer Arbitration Blog
Accessible: http://arbitrationblog.kluwerarbitration.com/2019/01/14/hungary-gives-the-green-light-for-the-conclusion-of-a-termination-agreement-for-intra-eu-bits/, 29 April 2019

Journal Articles

1.Bernardini, P. (2001). *Investment Protection under Bilateral Investment Treaties and Investment Contracts.* Foreign Investment Law Journal, Volume 17, Issue 1, pages 205-292

2.Blavi, F, Vial, G. (2016).*The Burden of Proof in International Commercial Arbitration: Are we Allowed to Adjust the Scales?* Hastings International and Comparative Law Review, Volume 39, Issue 1, pages 41-80

3.Boltenko, O. (2013). T*he Permanent Court of Arbitration: Procedural Rules and the importance of Early Procedural Agreement.* Asian Dispute Review, Volume 15, Issue 2, pages 46-49

4.Carska-Sheppard, A. (2009). *Issues Relevant to the Termination of Bilateral Investment Treaties.* Journal of International Arbitration Volume 26, Issue 6, pages 755-772

5.Cavedon, A, Weber, S. (2018). *Digging Deeper:Summary of the Hearing before the CJEU in the Achmea Case*. European Investment Law and Arbitration Review, Volume 3, Issue 1, pages 225-241

6.Delaume, G. (2016). *ICSID Arbitration Proceedings*. Law Journal Library. International Tax & Business Lawyer, Volume 4, Issue 2, pages 218-229

7.Emery.C. (2011). *Documents without Borders*. Investment Treaties and Arbitration, Volume 39, Issue 3, pages 11-12

8.Grisel, F. (2014). *Precedent in Investment Arbitration: The Case of Compound Interest*. Peking University Transnational Law Review, Volume 2, Issue 1, pages 217-227

9.Kokott, J, Sobotta,C. (2016). *Investment Arbitration and EU law*. Cambridge Yearbook of European Legal Studies, Volume 18, pages 3-19

10.MacLean, R. (2000). *The Growing Importance of Arbitration in International Finance*- Law and Business Review of the Americas, Volume 6, Issue 1, pages 35-44

11.Mills, A. (2011). *Autonomies of Public and Private at the Foundations of International Investment Law and Arbitration.* Journal of International Economic Law, Volume 14, Issue 2, pages 40-45

12. Otean, Omar. (2011). *Effects of an Arbitral Award Appeal Case.* Business Law Review. Volume 32, Issue 11, pages 293-296

EU legal acts:

1.English Arbitration Act 1996, s 33(1)(a)

Court decisions:

Federal Court of Justice, Germany C-284/16