



## LIS PENDENS BEFORE NATIONAL AND ARBITRATION COURTS

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Lis pendens is one way of dealing with the problem of parallel proceedings which are held before national courts or arbitration courts. The lis pendens principle states that the jurisdiction is kept by the institution which is the first seized of the proceeding involving the same cause of action between the same parties. But, in international civil procedure this rule is not so absolute. It is because of specific relationship between state courts and arbitration. On one side, the arbitration tribunals have the authority to decide on their competence but, on the other side, the state courts have the authority to exercise a control over the validity of arbitration agreement. It is possible that both (state courts and arbitrators) could be competent to hear and decide the dispute. The aim of this article is to analyze the problem of lis pendens between arbitration and state courts.

**Keywords:** Lis pendens, State courts, Arbitration courts.

### Introduction

In international proceedings (even in national proceedings) it can happen that the same case is solved before two (or more) institutions. This situation is undesirable because the results of these proceedings of the completely same case could be totally different. In this context, the question which of these decisions is the right one would be raised, which one prevailed and which one should be fulfilled or enforced. One way to resolve the problem of parallel proceedings is the principle of lis pendens. This principle provides the rule that the jurisdiction over the case is kept by the institution which is first seized. According to that, if the same case would be initiated before institution different from the first one then this second institution should stay its proceedings until such time as the jurisdiction of the first seized institution is established.

Problem of parallel proceedings can arise between courts of one country, between courts of different countries, between arbitrators or arbitral tribunals or between courts and arbitrators. This article is focused on the question of lis pendens between state courts and arbitration in international commercial proceedings.

It is necessary to distinguish between lis pendens and the question of the competence-competence principle and jurisdictional conflicts. According to the principle competence-competence the arbitrators have the authority to decide on their jurisdiction. Lis pendens is based on the existence of more than one forum competent to hear and decide certain dispute. If the parties concluded arbitral agreement then the arbitrators should be competent. But, it is possible that this agreement is not valid and then the state court would be competent to solve the case. As already said, the arbitrators have the power to decide on their own jurisdiction. But, courts have the authority to examine the arbitral agreement, too. Thus, in

situations that the same case is initiated before state and arbitration courts, the question which one should examine jurisdiction raised.

The principle of *lis pendens* does not solve the conflict of jurisdictions but, it could be useful to determine which institution decides on the competence.

### **Lis Pendens**

First, it will be briefly described what *lis pendens* is. There is no uniform definition in international or national instruments. But, we can say that it is one of the principles of civil procedural law. As already mentioned, the aim of this principle is to prevent parallel proceedings in the same case (which mean the same subject matter between the same parties).<sup>1</sup> *Lis pendens* (and *res iudicata*) is the expression of the principle *ne bis in idem*.<sup>2</sup>

Further condition for the application of this principle is the duration of the proceedings (the first proceeding has to be initiated, but not terminated) – first-in-time rule. *Lis pendens* is based on the time aspect. It is objective, simple, predictable rule, establishing legal certainty. The time aspect of the initiation of the proceeding prevails although there could be some other criteria that would determinate a more appropriate forum. The principle of *lis pendens* sets that the proceeding which is initiated later should be stayed until the jurisdiction of the first seized institution is established. The first-in-time rule has the effect especially before European civil courts.<sup>3</sup>

The disadvantage of *lis pendens* is that it partially supports *forum shopping*. The party which brings the action as the first one may choose the forum which is better for that party. The *lis pendens* rule prevents the other party to act differently.<sup>4</sup>

The principle of *lis pendens* sets quite strict rule. There is not too much space for the discretion.<sup>5</sup> In common law another approach is accepted for solving parallel proceedings. It is the doctrine of *forum non conveniense*. The courts have the power to consider which forum is more appropriate for the particular case.<sup>6</sup> The similar rule contains the UNIDROIT Principles of Transnational Civil Procedure<sup>7</sup> which stays that the jurisdiction may be declined if the court is manifestly inappropriate. The court is not bound to decline jurisdiction when the dispute is previously pending in another competent court if it seems that the dispute will not be resolved fairly or effectively.

The reasons why parallel proceedings are unwanted are: it is possible that the two incompatible decisions are the result of these proceedings, courts are unnecessarily burdened and it is disadvantageous

<sup>1</sup> *Final Report on Lis pendens and Arbitration* [online]. International Law Association. Toronto Conference (2006). International Commercial Arbitration, p. 2 [cit. 2016-03-15].

<sup>2</sup> BRENGESJÖ, Emil. *Lis Alibi Pendens in International Arbitration. Reflections on the Swedish Position in the Context of International Trends and Approaches* [online]. Stockholm University, Faculty of Law, 2013, pp. 12, 15 [cit. 2016-03-6].

<sup>3</sup> *Final Report on Lis pendens and Arbitration* [online]. International Law Association. Toronto Conference (2006). International Commercial Arbitration, p. 7 [cit. 2016-03-15].

<sup>4</sup> PAILLI, Giacomo. *Lis Alibi Pendens within Europe: Is There a Way Out of the „First in Time” Rule? (April 1, 2013)* [online]. Social Science Research Network, p. 3 [cit. 2016-03-6]. WALKER, Janet. Parallel Proceedings – Converging Views: The Westec Appeal (October 18, 2000). In *Canadian Yearbook of International Law*, 2000 [online]. Social Science Research Network, pp. 167 – 168 [cit. 2016-03-6].

<sup>5</sup> MAGNUS, Ulrich; MANKOWSKI, Peter. *Brussels I Regulation*. München: Sellier. European Law Publishers, 2012, pp. 567 – 568.

<sup>6</sup> BRAND A. Ronald. Challenges to Forum Non Convenience. *New York University Journal of International Law and Politics (JILP)* [online]. University of Pittsburgh School of Law, Vol. 45, 2013, pp. 1009 – 1010 [cit. 2016-03-18]. VICUNA, Francisco Orrego. *Lis Pendens Arbitralis* [online]. International Council for Commercial Arbitration, p. 7 [cit. 2016-03-7].

<sup>7</sup> Article 2.5 ad 2.6 of the UNIDROIT Principles of Transnational Civil Procedure [online]. *International Institute for the Unification of Private Law* [cit. 2016-03-18] (“ALI”).

also for the parties because it is more expensive and more time consuming. The new action in the same case is waste of time and money.<sup>8</sup>

The obstacle of *lis pendens* is regulated under national laws. Section 83 of the Czech code of civil procedure<sup>9</sup> states that the initiation of the proceeding prevents other proceeding before a court was carried out in the same case.<sup>10</sup> Possible dispute about the question which court is authorized to decide the case is decided by superior court. If the proceeding is terminated by one of the state courts, the proceeding before the second court still subjects to the same legal system (same procedural law). This is different in international proceedings.

At the international level there is a problem that there is not the central authority that would solve the competence dispute. In the international environment, the problems associated with *lis pendens* is therefore more difficult to solve. Even just between the courts of different countries that may apply their own laws and own procedural rules.

*Lis pendens* is even more complicated at the international level between courts and arbitrators. The arbitrators often apply national rules of law (they are not bound to apply conflict-of-law rules to determine national applicable law). There is less uniformity. Thus, the cooperation is more complicated.<sup>11</sup> Moreover, there is not a uniform regulation of *lis pendens* by multilateral contract neither among the state courts (with the exception of EU regulations). Still less, there is not a uniform regulation of *lis pendens* among the courts and arbitration.

## Regulation of *Lis Pendens* in Private International Law

### Regulation between the Courts

However this contribution deals with *lis pendens* between courts and arbitrators it is worth briefly mention the regulation of *lis pendens* between state courts of different countries.

Section 8(1) of the Private International Law Act<sup>12</sup> provides that the Czech courts shall act in proceedings under the Czech procedural provisions. This means the Czech code of civil procedure will apply by the Czech courts including the Section 83. But, in proceedings with an international element solved by the Czech courts a little bit different regulation could be applied according to Section 8(2) of PILA: “*Proceedings initiated in another state shall not prevent from initiating proceedings on the same cause of action between the same parties before a Czech court. If the initiation of proceedings before the Czech court occurred later than the one in another state, the Czech court may, in justified cases, stay the proceedings should it be assumed that a foreign body’s decision is to be recognized in the Czech Republic.*”<sup>13</sup> Opposite to the domestic regulation, the Czech courts are not strictly instructed to terminate proceedings if they initiated proceedings later than a foreign court. They have the possibility to terminate the proceedings. The important factor for that is the presumption that it will be possible to recognize and execute the foreign decision in the Czech Republic.<sup>14</sup> If it is evident that the foreign judgment could not be recognized than it would be pointless to terminate proceedings before the Czech court.

<sup>8</sup> CALAMITA, N. Jansen. Rethinking Comity: Towards a Coherent Treatment of International Parallel Proceedings. *Journal of International Law* [online]. Vol. 27, Issue 3, 2006, p. 610 – 611 [cit. 2016-03-7]. SCHÜTZ, Rolf A. *Ausgewählte Probleme des internationalen Zivilprozessrechts*. Berlin: De Gruyter Recht, 2006. p. 138.

<sup>9</sup> CZECH REPUBLIC. Act No. 99/1963 Coll., code of civil procedure.

<sup>10</sup> Decision of the Supreme Court of the Czech Republic of 28 January 2010, No. 22 Cdo 1974/2008 [online]. In *Nejvyšší soud* [cit. 2016-07-20].

<sup>11</sup> VICUNA, Francisco Orrego. *Lis Pendens Arbitralis* [online]. International Council for Commercial Arbitration, p. 7 [cit. 2016-03-7].

<sup>12</sup> CZECH REPUBLIC. Act No. 91/2012 Coll., on private international law (“PILA”).

<sup>13</sup> The text of PILA was translated by Petr Břıza and Ondřej Trubač.

<sup>14</sup> BELLOŇOVÁ, Pavla. § 8 Základní ustanovení. In PAUKNEROVÁ, Monika; ROZEHNALOVÁ, Naděžda; ZAVADILOVÁ, Marta a kol. (eds.). *Zákon o mezinárodním právu soukromém. Komentář*. Praha: Wolters Kluwer ČR, 2013. p. 73 – 75. BŘIČÁČEK, Tomáš. § 8 Základní ustanovení. In BŘIČÁČEK, Petr; BŘIČÁČEK, Tomáš;

Relationships between the courts, on the level of European Union, are regulated by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“Brussels Ibis Regulation”). This regulation contains, among others, the regulation of *lis pendens* and related actions.<sup>15</sup> The regulation in Brussels Ibis Regulation is quite detailed. But, the description of this regulation is not the aim of this article because the arbitration is excluded from its scope.

There are also bilateral agreements which regulate *lis pendens* between courts of contracting states.

However, all these adjustments are limited to the regulation of *lis pendens* just between courts. They do not deal with the possibility of arbitration proceedings parallel to the court proceedings. Analogous, the regulations governing the arbitration do not deal concurrence with court proceedings.

### **Regulation between Arbitrators and Courts**

We could say that the article 14 of the Act on arbitration and enforcement of arbitral awards<sup>16</sup> partially adjusts the relationship between arbitration and court proceedings. It sets that the arbitration is initiated the date on which the legal action is received and it has the same legal effect as the legal action before the court. From this we can deduce that in Czech domestic proceedings the state court should stay its proceedings if arbitrator is first seized. But, it does not solve the procedure if state court is first seized and arbitration is initiated later.

In the Czech national law, also for arbitral proceedings it is possible to apply the Czech code of civil procedure. The relationship between court and arbitral proceedings regulates the Section 106 of this code. If the state court finds out, at the request of one of the parties, that the dispute should be dealt by arbitrators (according to contract concluded by parties), then the court is bound to terminate the proceeding. It only can continue the proceedings if the parties express their will not to insist on the contract. The court also can continue the proceeding if it finds out that the arbitration agreement is null or void or that the arbitrators refused to deal with the dispute. But, if the arbitrator was the first seized, the court suspends its proceedings until the decision on the competence (in the arbitration proceedings).<sup>17</sup> According to this, in the Czech national law the first seized institution is authorized to examine its competence (which means to examine the arbitral clause). The principle of *lis pendens* is maintained in this regard. On the contrary in international disputes between courts, the Czech courts are not so strictly bound to stay the proceedings unless it is supposed that the foreign decision could not be recognized in the Czech Republic.

There is multilateral international convention<sup>18</sup> regulating the relationship between courts and arbitrators. But, this convention sets just rules for recognition and enforcement of foreign arbitral awards. This means that it does not deal with *lis pendens* which comes into consideration only during the proceedings. However, from the provisions of the New York Convention follows that the courts are competent to adjudicate the validity of the arbitral clause or of the arbitration agreement.<sup>19</sup>

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FIŠEROVÁ, Zuzana a kol. (eds.). *Zákon o mezinárodním právu soukromém. Komentář*. Praha: C. H. Beck, 2014. p. 68 – 70.

<sup>15</sup> Article 29 – 34 of the Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. In *EUR-Lex* [cit. 2016-03-05].

<sup>16</sup> CZECH REPUBLIC. Act No. 216/1994 Coll., on arbitration and enforcement of arbitral awards.

<sup>17</sup> Section 106(1) and 106(3) of the Czech code of civil procedure.

<sup>18</sup> United Nations Convention of 1958 on the Recognition and Enforcement of foreign arbitral awards [online]. *United Nations Conference on International Commercial Arbitration* [cit. 2016-03-06] (“New York Convention”).

<sup>19</sup> Article 5(1)(c) of the New York Convention.

### Parallel proceedings between courts and arbitrators

There are situations when the proceeding is initiated by court of one country and after that arbitrator of another country initiates the proceeding involving the same cause of action between the same parties. Or conversely, the arbitrator is first seized and the action before the court is brought later. In the relationship of courts and arbitrators the arbitration agreement is important (it constitutes the jurisdiction of arbitrators if it is valid)<sup>20</sup>. If the parties have concluded the arbitration clause than the state court should (at the request of one of the parties) refer the parties to arbitration.<sup>21</sup> But, the court may continue the proceedings if it finds that the arbitral clause is null or void. According to that the court should stay the proceedings even though the court is first seized if there is the valid arbitral agreement concluded by the parties and one of the participants invokes that agreement. This rule reflects the autonomy of the parties (it is upon the parties will whether they submit their dispute to the arbitration). On the other side, the courts have the competence to examine the validity of the arbitral clause in two situations:

- The court is first seized and one of the parties invokes the arbitral agreement concluded between them. In such a case the court should refer to the arbitration unless it finds that the arbitration clause is null and void. This means that the court should examine the arbitral agreement if it initiated the proceeding as the first one.
- During the process of recognition and enforcement of the arbitral award. The party applying for recognition and enforcement has to supply the arbitration agreement (and the original award) to the court.<sup>22</sup> The court is competent to refuse the recognition and enforcement of the award if the party proves that the award deals with a dispute for which the arbitral agreement has not been concluded or it is null and void.<sup>23</sup>

Besides the arbitration clause, it is also important if the foreign arbitral award will be entitled to recognition.<sup>24</sup> It would be pointless to terminate court proceedings and than not recognize the foreign award. And according to that the decision which could be recognized constitutes a bar of *lis pendens* which should be respected. But, another problem is that it is necessary to consider the possibility of the recognition of the decision which does not exist (it is still in proceedings). Thus, the prediction of possible recognition is uncertain.<sup>25</sup> We can conclude that there should be some degree of certainty that the foreign arbitral award will be recognized. But, if the court has serious doubts that the foreign decision is capable of recognition then it should continue proceedings.

However, the arbitrator himself is competent to decide the question of jurisdiction.<sup>26</sup> Because of this the question which one is competent to examine the jurisdiction (judge or arbitrator) arise. At the international level there is not unified rule.

And even more complicated cases can arise in situations when more than two parties are participated or there more concluded contracts between them. For example:<sup>27</sup>

<sup>20</sup> *Final Report on Lis pendens and Arbitration* [online]. International Law Association. Toronto Conference (2006). International Commercial Arbitration, p. 16 [cit. 2016-03-15].

<sup>21</sup> Article 2(3) of the New York Convention. The similar procedure is provided by section 106(1) of the Czech code of civil procedure in relation to domestic proceedings. According to that the court has to refer the parties to the arbitration if the respondent has applied the objection not later than during his first action on the merits.

<sup>22</sup> Article 4(1) and 2(2) of the New York Convention.

<sup>23</sup> Article 5(1)(c) of the New York Convention.

<sup>24</sup> PALSSON, Lennart. *The Institute of Lis Pendens in International Civil Procedure*. Stockholm Institute for Scandinavian Law 1957-2009, p. 68 – 69, 85 – 86 [cit. 2016-03-17].

<sup>25</sup> PALSSON, Lennart. *The Institute of Lis Pendens in International Civil Procedure*. Stockholm Institute for Scandinavian Law 1957-2009, p. 87 – 89 [cit. 2016-03-17].

<sup>26</sup> Article 6(3) of the ICC Rules of Arbitration 2012 [online]. In *ICC International Chamber of Commerce* [cit. 2016-03-17] (“ICC Rules”). Section 106(3) of the Czech code of civil procedure. Article 16(1) of the UNCITRAL Model Law on International Commercial Arbitration 1985 with amendments as adopted in 2006 [online]. *United Nations Commission on International Trade Law* [cit. 2016-03-5] (“UNCITRAL Model Law”).

- The same parties trade with each other more times and they conclude more contracts relating to the same business. The problems may arise if one of these contracts contains the arbitration clause and the second contract contains the choice of forum clause. Thus, one contract refers to the arbitration and the second to the state court. If there is a dispute arising from both of these contracts it is not clear which institution should solve the case. To initiate two proceedings before the court and the arbitrator would not be economic. Although there are two contracts there is just one cause of action between the same parties. The principle of *lis pendens* could solve this situation – the first seized institution would decide which one is competent to decide the dispute.
- There are connected affairs and because of that the plaintiff takes the legal action against two respondents. But, one claim is submitted to arbitrator (because of the arbitral clause concluded between the parties) and the second claim is submitted to the national court (which has the jurisdiction). Again, with respect to the principle of economy only one proceeding should be initiated. The question is whether before the state court or the arbitrator. The author thinks that the principle of *lis pendens* is not suitable in these cases because the arbitration is based on the parties will. One of the respondents does not conclude the arbitration agreement. Thus, it would not be right to bring the action against him before the arbitrator.
- There are connected affairs and the plaintiff takes the legal action against two respondents in arbitral proceedings and these two respondents suing each other and their dispute is submitted to the court. Or conversely, two respondents are sued before the court and they have claims against each other which are submitted to the arbitration. Similar to the above I think that *lis pendens* is not very convenient solution and mutual claims of the defendants could be solved in separate proceedings.

Other possible solution for all these situations could provide the article 6(3) and article 6(4) of the ICC Rules. It states that in all these type of cases, the international court of arbitration shall decide whether and to what extent the arbitration shall proceed. This rule sets the procedure only before the ICC arbitration and it is relevant just for the arbitration court. It means that it is not bound for the state courts which do not have to recognize and enforce the arbitral award.

### **The Possible Solutions of the Parallel Proceedings**

Does the state court have the power to decide on the jurisdiction – to which proceedings is the dispute submitted (court or arbitration proceedings)? According to regulations the court has the competence to review the arbitration agreement. But, in situations when it is not clear to which institution (court or arbitrator) the dispute is submitted and which one should continue the proceeding it would not be good to decide unilaterally about the jurisdiction. The arbitration agreement concluded by the parties would be meaningless and the autonomy of the parties would be frustrating. It must be noted that none of the examined regulation contains provision that would attribute the court such power (competence).

There are opinions that the arbitrators should decide on their competence and even if the proceeding was initiated before the court too (and the court is first seized) the opinion of the arbitrators should prevail and the court should accord the precedence to the arbitrator.<sup>27</sup> But, in such a situation, the principle of *lis pendens* would be meaningless because the case would be submitted to arbitration regardless of the fact

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<sup>27</sup> CRIVELLARO, Antonio. Consolidation of Arbitral and Court Proceedings in Investment Disputes. *Dossier of the ICC Institute of World Business Law: Parallel State and Arbitral Procedures in International Arbitration* [online]. 2005, pp. 81 [cit. 2016-03-10].

<sup>28</sup> CRIVELLARO, Antonio. Consolidation of Arbitral and Court Proceedings in Investment Disputes. *Dossier of the ICC Institute of World Business Law: Parallel State and Arbitral Procedures in International Arbitration* [online]. 2005, pp. 84 [cit. 2016-03-15]. BRENGESJÖ, Emil. *Lis Alibi Pendens in International Arbitration. Reflections on the Swedish Position in the Context of International Trends and Approaches* [online]. Stockholm University, Faculty of Law, 2013, p. 15 [cit. 2016-03-6]. Article 2.4 of the UNIDROIT Principles of Transnational Civil Procedure [online]. *International Institute for the Unification of Private Law* [cit. 2016-03-18] (“ALI”).

that the state court was first seized (and without the possibility of the court to examine the validity of arbitral clause). The fact is that the arbitral tribunals have the competence on its jurisdiction and the article 8(2) of the UNCITRAL Model Law states that arbitral proceeding may continue while the issue is pending before the court. Although the courts have the authority to review the arbitral clause it does not mean that the arbitral tribunal has to terminate its proceeding which is parallel to the court one. Moreover, the arbitrators are not deferred to courts of another country.<sup>29</sup> But, arbitrators should take into account that their award might not be recognized by foreign court if the arbitral agreement is null.

According to the prevailing opinions, the state courts have the power to consider the arbitration agreement (its validity, existence) and also arbitrators are competent to establish their jurisdiction.<sup>30</sup> This procedure respects the principle of *lis pendens*: the institution which is first seized has the authority to review the arbitral agreement and after that to continue the proceedings or to terminate proceedings and refer the parties to the second institution. According to the UNCITRAL Model Law the court should refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.<sup>31</sup>

The principle of *lis pendens* raises the need to solve the parallel proceedings between courts and arbitrators already in their process. As already said, this solution is simple and predictable but, it has also some disadvantages: it does not take into account that there could be more appropriate forum. The optimal solution would be the consent of all parties involved (claimants, respondents or third parties).

## Conclusion

The principle of *lis pendens* should prevent the parallel proceedings if there is more than one forum competent to decide the dispute. This principle emphasizes the proceedings which was initiated the first.

If the case of the same action between the same parties is brought before one institution and then is resubmitted to another one, the latter should terminate the proceedings. However, in international civil proceedings between state and arbitration courts it is not so absolute rule. The existing arbitral agreement has the significant importance because it reflects the intention of the parties to submit their dispute to the arbitration. There is the principle of competence-competence of the arbitrators but, courts have also competence (authority) to consider the arbitration agreement. And if the court finds out that the agreement is invalid it does not have to recognize and enforce the arbitral award.

The regulation of recognition and enforcement of foreign arbitral awards by the New York Convention illustrates that the arbitration has significant meaning in international commercial proceedings and that the arbitration is recognized by states. From this, we can deduce that the arbitration should be taken into account already during its proceedings (not just the final award) and the principle of *lis pendens* is able to provide that.

But, the opinions to the parallel proceedings between courts and arbitrators are not unified. And although these proceedings are becoming more frequent it is still impossible to set the right solution. According to the author's opinion the principle of *lis pendens* between courts and arbitrators should be interpreted that the institution which was first seized has the authority to examine the validity of the arbitral agreement (or we can say to examine its jurisdiction). This solution is respected by the Czech national law where the first seized institution is authorized to examine its competence. And similar procedure can be deduced from the New York Convention. The state courts should respect the party autonomy and comply with the jurisdiction of arbitrators, unless there is uncertainty that the arbitral award could be recognized.

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<sup>29</sup> BRENGESJÖ, Emil. *Lis Alibi Pendens in International Arbitration. Reflections on the Swedish Position in the Context of International Trends and Approaches* [online]. Stockholm University, Faculty of Law, 2013, p. 37 [cit. 2016-03-7].

<sup>30</sup> Section 106(1) of the Czech code of civil procedure. Article 5(1)(c) of the New York Convention.

<sup>31</sup> Article 8(1) of the UNCITRAL Model Law.

To conclude, according to the principle of *lis pendens* between state courts and arbitration, the first seized institution should have the power to examine arbitration agreement and to decide the conflict of jurisdictions. This is difficult at the international level because there is no uniform regulation and courts of one country are not strictly bound the decisions of arbitrators of another countries. The procedure may vary in individual cases.

The best solution would be a mutual agreement of all involved parties. But, it is difficult to reach agreement. Thus, *lis pendens* would provide simple and relatively fair solution and it would solve which institution is authorized to decide on the competence. Otherwise it might happen that both institutions decide on its jurisdiction.

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