

Corso di dottorato in *Diritto dell'arbitrato interno ed internazionale*

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Abstract della tesi di dottorato in lingua inglese

“Il rapporto tra giudizio rescindente e giudizio rescissorio nell’impugnazione per nullità del lodo arbitrale”-“Relationship between rescinding judgement and rescissory judgement in the impugnation for nullity of the arbitral award”.

The dissertation faces the complicated question relating to the relationship between rescinding judgement and rescissory judgement in the impugnation for nullity of the arbitral award.

First of all, the attention is appointed on the general structure of impugnation for nullity and, in particular, on the nature of this remedy. Different theories have been proposed by doctrine and by judicial sentences. Someone have been declared that impugnation for nullity is a sort of appeal, similar to the remedy regulated in articles 339 and following of the code of civil procedure; someone, in the opposite direction, have been considered this remedy as completely different from appeal. In the dissertation, the impugnation for nullity is considered as a particular, *sui generis*, remedy, not totally similar to the appeal, but neither totally different. In fact, the judicial operator can apply to this remedy all the rules relating to impugnations in general and many of the rules specifically provided for the appeal.

In the second chapter of the dissertation there is an introductive meditation about the relationship between rescinding judgement and rescissory judgement of the impugnation for nullity of the award. It's used to underline positive aspects and defaults of this legal discipline.

This appreciation is also conducted by a comparison with foreign ordinations, in particular with German law and English experience. The first one shows a particular *favor arbitrati*, as the paragraph 1059 ZPO establishes that the rescissory judgement is made by arbitrators, “*in the absence of any indication to the contrary*”.

The second one, at last, provides three different ways of conclusion of rescinding judgement: the variation, the remission and the setting aside. “Setting aside” is similar to our annulment of the award and implies that a new judgement is done by arbitrators, as arbitration agreement maintains its effects, unless the public court has established that this bond has lost its effects.

The following chapter features many important questions relating to the rescissory phase of impugnation for nullity.

In particular, it's dealt the theme of the leaning of action, in consideration of the fact that the ordinary arbitral request, in the opinion here endorsed, continues to produce its effects. Moreover, interesting is the question relating the composition of arbitration tribunal, which must be composed of new and different arbitrators.

Also essential is the profile relating to the *thema decidendum* and the *thema probandum* of the rescissory judgement. The first one seems based on the object of the previous arbitral trial, in particular on the part of the award which has been object of impugnation and regarding to the reasons of cassation of the award. The second one allows the recovery of documentations and probations utilized during the arbitration and the use of new probations, without the strict limits contemplated by the article 345 of the code of civil procedure.

As concerns the rule of judgement, it's peremptory the use of the precepts of law, even if the suitors have been chosen equity in the arbitration agreement.

Furthermore, if the rescissory judgement expires without a final decision, the sentence of nullity saves its effects and the suitors must refer to different arbitrators or (in accordance) new judges to obtain a new decision.

In the fourth chapter it's faced the theme of the competence to adopt the decision in the rescissory judgement. The question is valued starting from article 830 of the code of civil procedure, which establishes different issues, according to the reason of nullity of the award. The work distinguishes legal rules and voluntary rules and faces the main disputed questions relating to the competence in the rescissory judgement. A paragraph is also dedicated to the competence relating to the international arbitration, whose rules are now in article 830 and not more in articles 832 and following of the code of civil procedure (abrogated by the recent reform of arbitration approved in 2006). In this case, the law prefers maintaining the competence of arbitrators, instead of that one of public judges.