Over the past few decades, international arbitration has become the preferred means of settling commercial disputes. Its popularity is closely linked inter alia to the fact that commercial arbitration is fundamentally consensual in nature, as the disputing parties may tailor the process to suit the needs of their specific case. However, once a dispute has arisen it may be difficult to reach an agreement on the conduct of the arbitral proceedings. Hence arbitrators are, subject to party agreement, often granted extensive substantive case management powers to enable the effective and speedy conclusion of arbitral proceedings. An arbitrator’s main contractual duty consists of settling the dispute between the parties. Although arbitrators are not legally bound to ensure disputes are settled in accordance with the correct application of the substantive law, this should be pursued in order for arbitration to retain its popularity.

In order to render a reasoned award an arbitral tribunal may be required to conduct its own independent research on the contents of the applicable substantive law. Although it is universally agreed that the facts of a dispute are to be proven by the parties, the approaches in relation to the status of law differ between common law and civil law traditions. In common law systems, the parties are required to provide the legal arguments supporting the sought relief, but many civil law countries apply the jura novit curia principle under which the parties need only to prove the facts supporting their claim and identify the relief they seek.

The aim of this study is to examine the effect of the civil law principle jura novit curia by analogy in international commercial arbitration. The question is whether an arbitral tribunal may or must ascertain and apply the law sua sponte in order to reach a reasoned decision based on the correct application of the law. Moreover, this Master’s thesis examines the scope of the principle by assessing the duties of an international arbitral tribunal towards the disputing parties — i.e. the duty to render a valid arbitral award, the duty not to exceed its mandate, and the duty to ensure due process — with the aim of determining whether these duties restrain the possibilities of arbitrators to ascertain and apply the law on their own initiative.

The study has been conducted by analysing existing arbitration rules and legislations in addition to researching existing case law in order to establish how widely the jura novit curia principle is acknowledged as a part of due process by national courts. A comprehensive analysis requires examining the situation with a special focus on the position of national courts in the so-called major places of arbitration. Thus, in addition to examining the current situation under Finnish law, the position in England, France and Switzerland has also been assessed in further detail. The said jurisdictions have adopted different approaches in relation to the application of the jura novit curia principle and the minimum standards of due process enforced by their national courts, notwithstanding the general restrictive approach that courts seem to share in relation to setting aside arbitral awards.

The examination reveals that while there does not seem to exist any valid restrictions to the application of the jura novit curia principle in international commercial arbitration, defining the exact scope of the principle proves extremely difficult because national standards of due process vary considerably between the examined jurisdictions. Nevertheless, certain common features are detectable: The assessed case law indicates that focus seems to be given to determining whether the legal concept or principle relied upon sua sponte by the arbitral tribunal has been foreseeable or whether it has come as a surprise to the disputing parties. This is assessed on a case-by-case basis taking into account the specific circumstances of each case, including e.g. the fundamental nature of the independently applied legal concept or principle; whether the independently applied legal concept or principle was “manifestly inapplicable” to the specific circumstances of the dispute; the level of expertise of the parties’ counsel and expert witnesses heard in the course of the arbitral proceedings; and whether the applicable substantive law of the dispute has been expressly chosen by the parties themselves.

Avainsanat – Nyckelord – Keywords
jura novit curia – international commercial arbitration – substantive case management – ascertaining and applying the law – ne ultra petita – excess of power – principle of contradiction – due process – right to be heard – right to present one’s case

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