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STABILIZATION CLAUSES IN ENERGY SECTOR

This article deals with the importance of the stabilization clauses in the energy industry. Characterized by the important capital investments and usually relatively long period of return of investment, the energy sector requires involvement of wide range of investment protection mechanisms. One of these mechanisms is the introduction of the stabilization clauses in the agreements regarding energy projects entered between the host state and the investors. The purpose of the stabilization clauses is to ensure that the investors will not suffer negative consequences if the legal framework which was in place at the moment of making the investment changes afterwards. This article analyses the notion of the stabilization clauses, explains some of the main reasons of importance of the stabilization clauses in energy sector and comments on some landmark arbitral awards which dealt with the stabilization clauses.

Key words: *Investment Protection. – Stabilization Clause. – Energy.*

1. INTRODUCTION

The stabilization clause represents an important tool for protection of investments. Over the years, they have become a rather standard part of any agreements entered between the host state and the investor. They are however, more often found in the agreements which imply large initial investments, typical in the energy industry – such as the agreements related to mining, gas, electricity, etc.¹ The agreements entered between the host state and the investors in the energy sector are characteristic for several reasons. The first one is that they are en-

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1 Maja Stanivuković, “Stabilizaciona klauzula i klauzula o zaštiti stečenih prava”, *Liber amicorum Gašo Knežević*, Univerzitet u Beogradu, Udruženje za arbitražno pravo, Beograd 2016, 555.

tered into by the host state (or the entity representing the host state) with the aim of administering and managing the state's resources in the public interest.¹ The second reason is their duration – these agreements are almost always long-term (20–30 years on average for petroleum for example)². For instance, the stabilization clause is included in the Model Host Government Agreement for Cross-Border Pipelines.³ With the aim of pointing out the importance of the stabilization clause in the energy sector, this article will firstly deal with the notion of the stabilization clauses; secondly, it will provide an overview of the main reasons explaining the importance of the latter in the energy sector; and finally, it will provide an insight to the interpretation of the stabilization clauses in arbitration practice.

2. THE NOTION OF A STABILIZATION CLAUSE

The research project conducted for the International Finance Corporation and the United Nations Special Representative of the Secretary-General on Business and Human Rights: “Stabilization Clauses and Human Rights” (Study) defines the stabilization clauses as “Clauses in private contracts between investors and host states that address changes in law in the host state during the life the project”.⁴

1 Piero Bernardini, “Stabilization and adaptation in oil and gas investments”, *Journal of World Energy Law & Business* 2008, 98.

2 *Ibid.*

3 See Art. 37 of Model Host Government Agreement for Cross-Border Pipelines, <https://www.energycharter.org/fileadmin/DocumentsMedia/Legal/ma2-en.pdf>, last visited 30 October 2020.

4 John C. Ruggie, *Stabilization Clauses and Human Rights*, IFC and the United Nations Special Representative of the Secretary-General on Business and Human Rights 2009, 4, <https://www.ifc.org/wps/wcm/connect/0883d81a-e00a-4551-b2b9-46641e5a9bba/Stabilization%2BPaper.pdf?MOD=AJPERES&CACHEID=ROOTWORKSPACE-0883d81a-e00a-4551-b2b9-46641e5a9bba-jqew-w2e>, last visited 30 October 2020; Katja Gehne, Romulo Brillo, “Stabilization Clauses in International Investment Law: Beyond Balancing and Fair and Equitable Treatment”, *Beiträge zum Transnationalen Wirtschaftsrecht*, Heft 143/2017, 7. See also Aleksandar Lj. Ćirić, Predrag Cvetković, “Stabilizaciona klauzula u državnim investicionim sporazumima kao instrument zaštite stranih investitora”, *Pravo i privreda* 42/2005, 717.

The Study identifies three types of stabilization clauses, depending on the manner in which they protect the investor: (i) the freezing clauses; (ii) the economic equilibrium clauses; and (iii) hybrid clauses.⁵

The freezing clauses freeze the law of the state that was in force at a certain defined moment (for example of the moment of entering into the agreement) with respect to the investment project.⁶ Their purpose is to make the new laws which will be enacted after such defined moment.⁷ They are considered to be a classical approach towards achieving the contract stability for the investors⁸ and are now used considerably less often.⁹

The economic equilibrium clauses¹⁰ do not prevent new laws to be applicable to the investment project. Instead, these clauses stipulate that, in case of changes of the law, the investor will receive the compensations of costs incurred due to compliance with such laws.¹¹

5 J. C. Ruggie, *op. cit.*, 5.

6 <https://www.nortonrosefulbright.com/en/knowledge/publications/3ba2a960/contractual-protections-available-to-international-investors>, last visited 1 November 2020; Marko Jovanović, "Osvrt na stabilizacionu klauzulu u Zakonu o javno-privatnim partnerstvima i koncesijama", *Pravo i privreda* 49/2012, 662; V. C. Igbokwe, "Developing Countries and the Law Applicable to International Arbitration of Oil Investment Disputes Has the Last Word been Said?", *Journal of International Arbitration* 14/1997, 110.

7 *Ibid.*

For another definition of freezing clauses see Amoco International Finance Corporation v. The Government of the Islamic Republic of Iran, National Iranian Oil Company, National Petrochemical Company and Kharg Chemical Company Limited IUSCT Case No. 56, partial award No. 310–56–3.

8 K. Gehne, R. Brillo, *op. cit.*, 7.

There are also different types of freezing clauses: (i) full freezing clauses and (ii) limited freezing clauses. See M. Stanivuković *op. cit.* for further explanation.

9 Mario Mansour, Carole Nakhle, *Fiscal Stabilization in Oil and Gas Contracts: Evidence and Implications*, Oxford Institute for Energy Studies 2016, 15.

10 The economic equilibrium clauses are also known as economic stabilization clauses or economic balancing provisions. See https://www.energycharter.org/fileadmin/DocumentsMedia/Events/CCNG_2015_Michael_Polkinghorne.pdf, last visited 1 November 2020.

11 There are also different types of freezing clauses: (i) full economic equilibrium clauses and (ii) limited economic equilibrium clauses. See also M. Stanivuković, *op. cit.*

Accordingly, the purpose of these clauses is to ensure that the economic equilibrium of the investment project is maintained¹² even after the changes in law. The aforementioned clauses also usually include negotiation provisions, sometimes with recourse to an arbitration to determine the adaptation when these negotiations fail.¹³

The hybrid clauses impose the obligation of the state to bring the investor *to the same position* it had before the changes of law.¹⁴ They are called hybrid as they encompass certain elements of freezing clauses and economic equilibrium clauses. Hybrid clauses basically leave it to the parties to determine in the agreement the economic equilibrium i.e. whether bringing the investor to the same position it had before the changes of law, will occur through the exemption from regulatory change or through other forms, such as a contract adaptation or compensation.¹⁵

Substance wise, the stabilization clauses will usually contain answers to the following questions: (i) what change triggers the stabilization clause? (ii) why is the change in law problematic? and (iii) how do parties communicate that the change of law has occurred as well its importance for the original deal and in connection to that what steps should the parties take?¹⁶ The first question deals with the documents which, once changed, trigger the mechanism envisaged by the stabilization clause. In this respect, the stabilization clauses may include various types of legal instruments and sometimes include also “interpretation” of the law¹⁷. The second question deals with the effect of the change of law needed for triggering the mechanism envisaged by the stabilization clause. In other words, it defines that the change of law must have the effects that undermine the economic bargain between the investor and the state in the contract¹⁸. The third question deals with the steps that the parties must undertake when they consider that the conditions for triggering of the mechanism envisaged by the sta-

12 J. C. Ruggie, *op. cit.*, 6.

13 K. Gehne, R. Brillo, *op. cit.*, 8.

14 J. C. Ruggie, *op. cit.*, 6.

15 K. Gehne, R. Brillo, *op. cit.*, 7.

16 Peter D. Cameron, “Stabilization and the impact of changing patterns of energy investment”, *Journal of World Energy Law and Business* 2017, 394.

17 *Ibid.*

18 *Ibid.*, 395.

bilization clause are met. In practice, it is usually envisaged that the parties should take certain initial step to discuss prior to taking any formal action.¹⁹

3. THE IMPORTANCE OF THE STABILIZATION CLAUSES IN ENERGY AGREEMENTS

In general, the stabilization clauses serve as a risk management tool for investors.²⁰ However, why are they that important in the energy industry and why they represent an indispensable element of energy related agreements agreed between the host state and the investors?

Firstly, the willingness of the host state to agree on the stabilization clause is attractive to the investors in energy sector.²¹ In other words, from the point of view a host state, the introduction of the stabilization clause in the agreements with the investors is a tool for attracting investments.²² What brought the investors to consider the stabilization clauses attractive is the long term character of international investments in the energy sector (such as petroleum) and the history of unilateral actions taken by the host governments.²³ For instance, some host states offer stabilization clauses to attract investors who are hoping to discover hydrocarbons or mineral deposits in that host state.²⁴ Taking this into account, the stabilization clauses play an important role in the attraction of the investments and as such – are a constituent part of the energy related agreements.

19 *Ibid.*

20 K. Gehne, R. Brillo, *op. cit.*, 9.

21 There are certain opinions that the practical value of the stabilization clauses to oil and gas companies is questionable. See M. Mansour, C. Nakhle, *op. cit.* fn. 11, 18 *et seq.*

22 Alisher Umirdinov, “The End of Hibernation of Stabilization Clause in Investment Arbitration: Reassessing Its Contribution to Sustainable Development”, *Denver Journal of International Law & Policy* 43/2015, 456.

23 P. D. Cameron, *Stabilisation in Investment Contracts and Changes of Rules in Host Countries: Tools for Oil & Gas Investors*, Association of International Petroleum Negotiators (AIPN) 2006, 19.

24 Henry G. Burnett, Louis-Alexis Bret, *Arbitration of International Mining Disputes: Law and Practice*, Oxford University Press 2017, 260.

Secondly, the stabilization clauses emerge as important tools for protection of capital intensive investments in infrastructure projects which take time to become operative – which is typical in energy industry²⁵. In particular, when deciding whether or not to make an investment in the energy sector (for example, to start development of a wind or solar park, to construct a gas pipeline or to commence geological explorations), the investors take into account, among other things, the legal framework which is in force at that moment.²⁶ This offers them an insight, besides other relevant things, to the timeline needed for their project to become operative,²⁷ the permits needed to be obtained and the costs which will they incur imposed by the host state (such as taxes, administrative fees, royalties, etc.). Accordingly, the endeavor of the host state to keep the investor intact from the changes in law assumed through the stabilization clause represents an important investment protection tool in energy sector. The reason for this is that stabilization clauses offers security to the investors implying that during the time of the capital project development, the changes in law would not affect their investment.

Thirdly, stabilization clauses are an important mechanism of the protection of the investments in the highly regulated industries – such as energy industry. This industry is usually very regulated, reason being the importance of the energy industry for the state in conjunction with the complexity of the energy projects, making the states regulate energy industry carefully. Similar to the reason stated above, it is important that the investors are able to assess all the regulatory requirements that they will need to comply with in the host state when making the investment (i.e. permits needed to be obtained, employment

25 Audley W. Sheppard, Antony Crockett, “Chapter 14: Are Stabilization Clauses a Threat to Sustainable Development?”, *Sustainable Development in World Investment Law* (eds. M. Cordonier Segger, M. W. Gehring *et al.*), Global Trade Law Series 30, Kluwer Law International 2011, 336.

26 *Stabilisation Clauses in International Petroleum Contracts: Illusion or Safe-guard?*, Deloitte 2016, 3.

27 For example, in Serbia, mining regulations provide that the right to undertake the geological explorations can be granted for three years, and then extended twice – for another three years (first extension) and another two years afterwards (second extension). See Art. 38 of the Law on Mining and Geological Explorations, *Official Gazette of the Republic of Serbia*, No. 01/2015 and 95/2018 – other law.

of the adequate personnel, fulfillment of technical, environmental and other regulatory requirements). The stabilization clause permits them to plan the development of their projects ahead and to anticipate any process needed to ensure the regulatory compliance in the host state.

Finally, it is not uncommon that the host states, in the aim of promoting investment in the energy sector – particularly in renewable energy resources, offer support to the investors in the form of subsidies or tariffs.²⁸ These tariffs are normally granted by the host state to the investor for a longer period of time through entering into the power purchase agreement (PPA).²⁹ The tariffs granted by the host states through the PPA represent the secured cash flow for the energy project.³⁰ This makes it easier for the investors to obtain loans given that the lenders have a guarantee that the projects will have sufficient cash flow and that according to that, the investors should be able to repay the loans (i.e. the lenders consider that the projects are bankable).³¹ Accordingly, the lenders are given the incentive to ensure that the cash flows of the

28 In the renewable energy sector, the common monetary benefits offered to the investors are feed-in tariffs and contracts for difference. In Serbia, the support framework which was in force until the end of 2019 envisaged feed-in tariffs. The new support framework is expected for 2021 – but there is still no indication whether it will envisage feed-in tariffs or contract for difference. For more information about the support framework in force until the end of 2019, see Energy Law, *Official Gazette of the Republic of Serbia*, No. 145/2014 and 95/2018 – other law and the Decree on Incentive Measures for Production of Electric Energy from Renewable Energy Sources and Highly Efficient Cogeneration, *Official Gazette of the Republic of Serbia*, No. 6/2016, 60/2017 and 91/2018.

29 In Serbia, the feed-in tariffs were granted to the investors for a period of 12 years. See Art. 3 of the Decree on Incentive Measures for Production of Electric Energy from Renewable Energy Sources and Highly Efficient Cogeneration.

30 The benefits from the inclusion of the stabilization clauses in the agreements are not typical solely for the renewable energy sources –petroleum exploitation ventures funded by project finance are also enhanced by the stabilization clauses; See Audley W. Sheppard *op. cit.*

31 World Bank Group listed the change of law provision, i.e. the stabilization clause, as one of the 10 features of the power purchase agreement agreed between the state and the investor in the renewable energy project that makes the agreement bankable. See *Important Features of Bankable Power Purchase Agreements*, 2019, <https://ppp.worldbank.org/public-private-partnership/library/important-features-bankable-power-purchase-agreements-renewable-energy-power-projects>, last visited on 2 November 2020.

project required for debt service are protected against changes in law.³² Consequently, the stabilization clauses in the agreements reached between the host state which granted the tariffs and the investors receiving the tariffs assure the lenders and enable the investors to obtain the loans for development of their projects. The stabilization clauses are present in various model PPAs. For instance, the model PPA in Serbia envisages the stabilization clause in Art. 32.³³ Likewise, the PPA model prepared by the World Bank and the Public-Private Infrastructure Advisory Facility also addresses the changes in law in the Schedule 8.³⁴

Having in mind previously mentioned, it could be concluded that the stabilization clauses are, on the one hand, important for the investors as they provide them comfort that the regulatory changes will not negatively alter their projects, but on the other, they are also significant to the host states, as they represent a mean of attraction of the investment in the energy industry.

4. STABILIZATION CLAUSES IN PRACTICE: HOW THE ARBITRATION TRIBUNALS INTERPET THEM?

In general, the legality and binding nature of the stabilization clauses³⁵ were upheld in arbitration practice.³⁶

32 See <https://ppp.worldbank.org/public-private-partnership/sector/energy/energy-power-agreements/power-purchase-agreements>, last visited on 2 November 2020.

33 Art. 32 of the PPA Decree, *Official Gazette of the Republic of Serbia*, No. 56/2016, 61/2017 and 106/2020.

34 See https://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/ppp_testdumb/documents/energy%20ppa%201_0.pdf, last visited on 2 November 2020.

35 Needless to say, all constitutional and legislative requirements for assumption of the obligation envisaged under the stabilization clause need to be respected. In this regard, see Wolfgang Peter, *Arbitration and Renegotiation of International Investment Agreements*, Kluwer Law International 1995, 221 *et seq.*

36 Lorenzo Cotula, *Regulatory Takings, Stabilization Clauses and Sustainable Development*, OECD Global Forum on International Investment 2008, 7. Please note that certain opinions claim that the stabilization clauses can be deemed invalid in the light of the principle of the permanent sovereignty over natural resources. In this respect, see General Assembly resolution 1803 (XVII) of 14 December 1962, "Permanent sovereignty over natural resources", <https://www.>

A number of cases that appeared earlier, such as *Texaco v. Libya*,³⁷ *Kuwait v. Aminoil*³⁸ and *AGIP v. Congo*³⁹ involving expropriations, led the arbitration tribunals to confirm the legality and binding nature of stabilization clauses related to the commitment not to nationalize.⁴⁰ Although these cases dealt with the expropriation rather than changes in law as such, they announced widely accepted stance on the validity of the stabilization clauses that is present today.

More recent cases dealt specifically with the stabilization clauses. An example is *Parkerings v. Lithuania*,⁴¹ where the arbitral tribunal clearly confirmed the validity of the stabilization clause by stating the following:

“It is each State’s undeniable right and privilege to exercise its sovereign legislative power. A State has the right to enact, modify or cancel a law at its own discretion. Save for the existence of an agreement, in the form of a stabilization clause or otherwise, there is nothing objectionable about the amendment brought to the regulatory framework existing at the time an investor made its investment.”⁴²

Furthermore, in the case *Duke Energy v. Peru*,⁴³ the arbitral tribunal found that a change in the interpretation of the tax laws by the state was a breach of a tax stabilization obligation because the circumstances demonstrated that the new interpretation was “pa-

ohchr.org/EN/ProfessionalInterest/pages/NaturalResources.aspx, last visited 3 November 2020 and W. Peter, *op. cit.*, 222.

37 *Texaco Overseas Petroleum Company v. The Government of the Libyan Arab Republic*, YCA 1979, ad hoc award as of 19 January 1977, https://www.trans-lex.org/261700/_/texaco-overseas-petroleum-company-v-the-government-of-the-libyan-arab-republic-yca-1979-at-177-et-seq-/, last visited 3 November 2020.

38 *Kuwait v. The American Independent Oil Company (AMINOIL)*, 21 ILM 976, ad hoc award as of 24 March 1982, https://www.trans-lex.org/261900/_/ad-hoc-award-kuwait-v-the-american-independent-oil-company-21-ilm-976/, last visited on 3 November 2020.

39 *AGIP S.P.A. v. People’s Republic of the Congo* (ICSID Case No. ARB/77/1).

40 L. Cotula, *op. cit.*, 7.

41 *Parkerings-Compagniet AS v. Republic of Lithuania* (ICSID Case No. ARB/05/8).

42 *Ibid.*, para. 332.

43 *Duke Energy International Peru Investments No. 1 Ltd. v. Republic of Peru* (ICSID Case No. ARB/03/28).

tently unreasonable”.⁴⁴ The arbitral tribunal in *EnCana Corporation v. Ecuador*⁴⁵ had the same logic – it found that stabilization clauses apply both to cases of amendment to the tax regime and its interpretation⁴⁶. The reasoning of the arbitral tribunals in these cases is significant since it confirms that the new interpretation of the law can also fall under the scope of the changes of law and thus trigger the mechanism envisaged under the stabilization clause.⁴⁷

Furthermore, there are also a number of cases which deal with the interplay between the stabilization clauses in the agreements concluded between the host state and the investors on the one hand and the umbrella clauses contained in the bilateral investments treaties, on the other.⁴⁸ In this respect, in *CMS Gas Transmissions v. Argentina*,⁴⁹ the arbitral tribunal found that the breach of the stabilization clause in the agreement between the host state and the investor triggers the breach of the treaty.⁵⁰ Another case worth mentioning is *LG&E v. Argentina*⁵¹, where the tribunal also found that failure by Argentina to

44 A. W. Sheppard, A. Crockett, *op. cit.*, 347; Duke Energy International Peru Investments No. 1 Ltd. v. Republic of Peru (ICSID Case No. ARB/03/28), award as of 18 August 2008, para. 227 and 228.

See also Lauren Brazier, “The Arbitrability of Investor-State Taxation Disputes in International Commercial Arbitration”, *Journal of International Arbitration* 32/2015, 27.

45 *EnCana Corporation v. Republic of Ecuador*, LCIA Case No. UN3481, UNCITRAL.

46 P. D. Cameron, *op. cit.*, 397.

47 *Ibid.*

48 For more information about the umbrella clauses see Borzu Sabahi, Noah Rubins *et al.*, *Investor-State Arbitration*², Oxford University Press 2019, 486 – 510; M. Stanivuković, “Kišobran klauzula u bilateralnim investicionim sporazumima”, *Međunarodno privatno pravo i zaštita inostranih investitora*, Podgorica 2008.

49 *CMS Gas Transmission Company v. The Republic of Argentina* (ICSID Case No. ARB/01/8).

50 *CMS Gas Transmission Company v. The Republic of Argentina* (ICSID Case No. ARB/01/8), award as of 12 May 2005, para. 296 *et seq.* It should be noted that the part of this award concerning the umbrella clause was later annulled because the arbitral tribunal failed to explain in the award how it arrived to the conclusion that CMS, a minority shareholder of the licensee, could place a claim on the basis of the obligations assumed towards the licensee (and not CMS itself). See K. Gehne, R. Brillo, *op. cit.*, 21 *et seq.*

51 *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic*, (ICSID Case No. ARB/02/1).

comply with stabilization clause would give rise to liability under the umbrella clause.⁵²

A more thorough analysis of this interplay was provided by the tribunal in the case *El Paso v. Argentina*.⁵³ In particular, the tribunal recognized the difference between the obligations of the host state which arose from the host state's ordinary commercial arrangements, on the one hand, and the investment protections provided by the host state in the agreements entered into with the investors, on the other. It found that the umbrella clause applies only to the latter, i.e. that "Interpreted in this way, the umbrella clause (...) will not extend the Treaty protection to breaches of an ordinary commercial contract entered into by the State or a State-owned entity, but will cover additional investment protections contractually agreed by the State as a sovereign – such as a stabilization clause – inserted in an investment agreement."⁵⁴ This interpretation was however criticized for not being sufficiently far reaching.⁵⁵

Furthermore, in the case *Burlington v. Ecuador*⁵⁶, the tribunal also considered the relation between the stabilization clause and the umbrella clause in the bilateral investment treaty concluded between Ecuador and United States of America, but arrived to a slightly more "relaxed" conclusion than the arbitral tribunal in the case *El Paso v. Argentina*. After stating that the stabilization clause ("tax indemnification clause" as the arbitral tribunal refers to it) is valid, the arbitral tribunal held that Burlington "may rely upon the treaty's umbrella clause even if no exercise of Respondent's (Ecuador) sovereign power is involved."⁵⁷

52 K. Gehne, R. Brillo, *op. cit.*, 22. It is worth noting that the arbitral tribunal found in this case that there was no stabilization clause as there was no binding contractual agreement between LG&E and Argentina. See *LG&E Energy Corp., LG&E Capital Corp., and LG&E International, Inc. v. Argentine Republic* (ICSID Case No. ARB/02/1), decision on liability as of 3 October 2006, para. 98.

53 *El Paso Energy International Company v. The Argentine Republic* (ICSID Case No. ARB/03/15).

54 *El Paso Energy International Company v. The Argentine Republic* (ICSID Case No. ARB/03/15), para. 81.

55 See K. Gehne, R. Brillo, *op. cit.*, 23.

56 *Burlington Resources, Inc. v. Republic of Ecuador* (ICSID Case No. ARB/08/5).

57 *Burlington Resources, Inc. v. Republic of Ecuador* (ICSID Case No. ARB/08/5, para. 190. See also *Duke Energy v. Peru*, *op. cit.*

In accordance with previously stated, while the validity of the stabilization clauses seems to be undisputed, the resort to the umbrella clause can be questionable. What can be concluded from the reasoning of the arbitral tribunals in the mentioned cases is that the investor's possibility to resort to the umbrella clause is limited, among other reasons, by the determination of the distinction between the sovereign and commercial breach of obligations adopted by the tribunal when interpreting the application of the umbrella clause.⁵⁸

5. CONCLUSION

Stabilization clauses have, without a doubt, become one of the most important tools for the protection of investments in the energy industry. There are various stakeholders who benefit from the stabilization clauses and who incline towards their inclusion in the agreements concluded between the host states and the investor. These include the investors but also the lenders providing the loans necessary to finance the projects in the energy industry. While the adequate protection of interests of the investors is necessary for promotion of investments and is a precondition for creation of the favorable investment environment, it is also important that the host states maintain a sufficient level of sovereign power in the investment arrangements in order to be able to protect the public interest. This is particularly important in the energy industry, where the host state needs to carefully govern its resources so to meet national energy demand. Currently, the stabilization clauses in energy industry are widely accepted by the arbitral tribunals, thus confirming their significance in energy industry. However, the lack of unified approach in practice depends on the question whether the breach of the stabilization clause can fall under the scope of the umbrella clause contained in the bilateral investment treaties. We will yet have to see in practice how the arbitral tribunals will interpret the stabilization clauses in the future, especially when it comes to the renewable energy sources whose exploitation was widely supported by the states in the last decade, attracting many new stakeholders to invest in the renewable energy sources.

58 Rattapong Supapa, "Burlington Resources, Inc v Republic of Ecuador: Enforcing Economic Stability Guarantees through an Umbrella Mechanism: 'Caveat Upstream Petroleum Investor'?", *ICSID Review – Foreign Investment Law Journal* (eds. M. Kinnear and C. McLachlan), Oxford University Press 2017, 284.

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STABILIZACIONE KLAUZULE U ENERGETSKOM SEKTORU

Rezime

Ovaj članak se bavi značajem stabilizacionih klauzula u industriji energetike. Karakterističan po značajnim ulaganjima kapitala i često relativno dugim periodom povraćaja ulaganja, energetska sektor zahteva uključivanje širokog spektra mehanizama zaštite investicija. Jedan od ovih mehanizama je uvođenje stabilizacionih klauzula u ugovore u vezi sa projektima u oblasti energetike koji se zaključuju između države domaćina i investitora. Smisao stabilizacionih klauzula je da osiguraju da investitori neće snositi negativne posledice ako se pravni okvir koji je važio u trenutku kada su učinili investiciju naknadno promeni. Ovaj članak se dotiče pojma stabilizacionih klauzula, objašnjava neke od osnovnih razloga značaja stabilizacionih klauzula u industriji energetike i komentariše neke od najznačajnijih arbitražnih odluka koje su se ticale stabilizacionih klauzula.

Ključne reči: *Zaštita investicija. – Stabilizaciona klauzula. – Energetika.*

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