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Czech Republic

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A. Legislation and rules

Both international and domestic arbitration seated in the Czech Republic are governed by Act No. 216/1994 Coll., on Arbitration Proceedings and Enforcement of Arbitration Awards, as amended (the "Arbitration Act"). The Arbitration Act is based on the UNCITRAL Model Law and entered into force in 1995. Pursuant to Section 30 of the Arbitration Act, the Czech Rules of Civil Procedure (Act No. 99/1963 Coll., as amended) are to be used as a subsidiary law.

On 1 April 2012, a significant amendment of the Arbitration Act entered into force. Apart from stipulating special conditions for arbitrations arising from consumer contracts,[3] the amendment introduced certain additional changes that are applicable to all arbitrations seated in the Czech Republic, including international ones. It introduced an additional requirement for arbitrators; they should have legal capacity, be over 18 years old and have a clean criminal record.

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[3] In particular, the amendment provided that disputes arising from consumer contracts can only be decided by specialized arbitrators who are qualified lawyers and are registered in a list maintained by the Ministry of Justice; entering into a consumer contract cannot be made conditional on entering into an arbitration agreement; the consumer should be advised of the consequences before entering into an arbitration agreement; rules on consumer protection cannot be waived in an arbitration. New grounds were also introduced in the Arbitration Act for setting aside a domestic award due to noncompliance with the abovementioned regulations.

On 1 January 2014, the Arbitration Act was amended to expand its scope to regulate proceedings before arbitration commissions of industry associations. Arbitration commissions are bodies that settle disputes that arise internally within an industry association. Several Czech industry associations, particularly in the domain of sports, such as the Czech Olympic Committee, have established such arbitration bodies. These arbitration bodies have heard a number of cases since the amendment was passed.

As of 1 December 2016, disputes arising out of consumer contracts are no longer arbitrable in the Czech Republic. The provisions of the Arbitration Act, including the special conditions relating to arbitrations arising from consumer contracts that were introduced in 2012, were therefore cancelled, but can still be used for arbitration proceedings commenced before its effective date. Also, the validity of arbitration agreements will be assessed pursuant to legislation effective on the date of conclusion of a particular arbitration agreement.

B. Cases

B.1 Parties' equality in arbitration proceedings

As early as 2007, the Supreme Court[4] dealt with the relationship between the Arbitration Act and the Czech Rules of Civil Procedure. It interpreted Section 30 of the Arbitration Act, stating that the Czech Rules of Civil Procedure apply in the absence of specific rules of arbitration proceedings. The Supreme Court indicated that arbitration proceedings are not directly subjected to the Czech Rules of Civil Procedure and its provisions should not be used automatically. However, it pointed out that the principles of the Czech Rules of Civil Procedure must be observed in arbitration proceedings governed by the Arbitration Act as well. According to the Supreme Court, one of the main principles of the Czech Rules of Civil Procedure is the

[4] Decision of the Supreme Court of the Czech Republic File No. 32 Odo 1528/2005, dated 25 April 2007.

principle of equality of the parties. This principle is also included in the Arbitration Act,[5] which, however, does not define it as precisely as the Czech Rules of Civil Procedure. One of the safeguards of the equality of parties is Section 118a of the Czech Rules of Civil Procedure, which provides that in case of insufficient evidence caused by a difference of opinion on questions of law between the judge and the party to the dispute, the judge should communicate to the parties a possible legal evaluation of the case and so provide them with an opportunity to present relevant evidence. The above duty of disclosure guarantees that a decision of a court is foreseeable and parties are informed about the possible outcome of the dispute and can provide necessary evidence. The Supreme Court found that such duty applies similarly in arbitration proceedings, where predictability of the arbitrator's legal opinion must be guaranteed so that parties have equal opportunity to present their dispute before the arbitration tribunal.

B.2 Parties' opportunity to present their case

There have been various court decisions on how to interpret the expression "opportunity to present its case" contained in Section 19(2) of the Arbitration Act, which reflects Article 18 of the UNCITRAL Model Law.

The Decision of the Supreme Court of the Czech Republic File No. 32 Cdo 3299/2009, dated 28 April 2011, describes how the proceedings should be conducted in order to provide the parties with sufficient opportunity to present their case. The Supreme Court held that there should be an oral hearing, which must be recorded in a protocol signed by the parties. The parties should be asked at the hearing by the arbitrators whether they propose to introduce any new evidence. If the proceedings are conducted in line with these requirements, the parties will then be viewed as having had an opportunity to present their case in accordance with Section 19(2) of the Arbitration Act. As a result of this decision, the protocol of the hearing should be drafted carefully, since it can serve as an important piece of evidence on whether the

[5] Section 19(2) of the Arbitration Act.

parties were provided with a sufficient opportunity to present their case.

Notwithstanding the above, the Supreme Court[6] admitted that the arbitration agreement may provide for the resolution of the dispute without a hearing and, in case no hearing is held in such circumstances, the parties will still be deemed to have had a sufficient opportunity to present their case.

Pursuant to Supreme Court Decision File No. 23 Cdo 3744/2009[7], it is usually necessary to provide a party with an opportunity to comment, in writing, on the arguments of the other party; that is, the claimant should have an opportunity to file a reply to the respondent's answer and then the respondent should have an opportunity to file a rejoinder. The time limits for filing the submissions must be sufficient in light of all circumstances of the dispute. All evidence submitted or proposed should be taken into consideration unless it is *prima facie* clear that it is irrelevant and, if it is not taken into consideration for this reason, arbitrators must sufficiently explain the reason why it is irrelevant. Also, parties should have an opportunity to file a final brief summarizing their arguments following the evidentiary phase.

The Supreme Court[8] also dealt with the issue of jurisdiction of the arbitration tribunal to deal with a set-off objection. It held that the principle of equality of parties requires that each party should have an opportunity to present its case in circumstances that do not place it at a substantial disadvantage *vis-à-vis* the opposing party. Thus, both parties should have the opportunity to render the facts, submit claims, propose evidence necessary to support questionable claims and raise counterclaims. At the same time, the parties are entitled to a substantive review of their claims. Therefore, the Supreme Court

[6] Decision of the Supreme Court of the Czech Republic File No. 23 Cdo 1873/2010 dated 26 September 2011.
[7] Decision of the Supreme Court of the Czech Republic File No. 23 Cdo 3744/2009 dated 28 April 2011.
[8] Decision of the Supreme Court of the Czech Republic File No. 23 Cdo 3285/2012 dated 25 June 2013.

concluded that the arbitrator is obliged to review counterclaims on the merits, as these may have an impact on the final verdict. In the particular case, the counterclaims could have led to offsetting and dismissal of the applicant's claims. It follows that the arbitrator cannot withhold the review of the counterclaims on the merits even if the arbitration agreement does not extend to them. Otherwise, the arbitrator would deny the party the opportunity to defend (hear) its case.

Finally, the Constitutional Court of the Czech Republic[9] dealt with a procedural decision of the Arbitration Court of the Czech Economic Chamber and the Czech Agrarian Chamber (the "Arbitration Court") issued in arbitration proceedings, in which it declared lack of jurisdiction to decide on the validity of a contract for the transfer of shares or on the validity of withdrawal from such contract respectively, stayed the arbitration proceedings and ordered the petitioners to bear CZK 1,000,000 (approximately USD 40,000) of the costs of arbitration. In proceedings to set the order of the Arbitration Court aside, the Czech courts declined to cancel the order and concluded that procedural decisions are not reviewable.[10] The Czech Constitutional Court ruled that any outcome of arbitration proceedings cannot lead to exclusion or reduction of the protection guaranteed by the civil procedure. The procedural order in question had a substantive impact on property rights of petitioners.[11] Both in court proceedings and arbitration proceedings, the parties must have equal rights and should have a full opportunity to present their case. The Constitutional Court noted that the interpretation applied by the courts in the proceedings to set the order aside leads to the unequal treatment of petitioners in comparison with those who obtained the decision of the

[9] Decision of the Constitutional Court of the Czech Republic file No. I. ÚS 1794/10 dated 16 July 2013.
[10] Pursuant to Section 31 of the Arbitration Act, only arbitration awards are reviewable.
[11] Act No. 23/1991 Coll., the Charter of Fundamental Rights and Freedoms, as amended, guarantees that possessions of each owner shall have the same legal protection and content.

arbitrators in the form of an arbitration award. Therefore, the courts should have interpreted the law in light of constitutional principles and decide that limited review is permissible *per analogiam* in case of those procedural decisions that materially interfere with property rights of the parties. The ruling of the Constitutional Court indicates that there are fair trial limits to arbitration. These limits enable an exceptional court review of a procedural decision, which would terminate arbitration proceedings under normal circumstances.

B.3 New grounds for setting aside an award can be raised after the three-month period for submitting an action to set aside the award.

Pursuant to Section 32(1) of the Arbitration Act, a party can file an action to set aside an arbitration award within three months of delivery of the award. However, it was not always clear whether the claimant is also required to assert all grounds for setting aside the award it is intending to rely on within this three-month period.

This uncertainty has been resolved by the Czech Supreme Court in May 2012.[12] The Supreme Court adjudicated that the party requesting that the award be set aside can raise additional grounds for setting aside the award at any time during the respective proceedings, subject to certain limitations included in the Czech Rules of Civil Procedure.

The Czech Rules of Civil Procedure generally prevent parties from raising new arguments after the first oral hearing is held. Consequently, the deadline for raising new grounds for setting an award aside is not three months from the service of the arbitration award, but effectively the first oral hearing in the court proceedings to set the award aside.

[12] Decision of the Supreme Court of the Czech Republic File No. 23 Cdo 3728/2011 dated 9 May 2012.

B.4 The notion of "foreign" arbitration awards under Czech law

In 2013, the Supreme Court[13] dealt with the arbitration award rendered pursuant to an arbitration agreement in the contract for a sale of an enterprise. According to this agreement, any and all disputes were to be decided pursuant to the ICC Rules by a tribunal of three arbitrators. The seat of arbitration was to be Vienna; the language of the arbitration Czech and the applicable substantive law was to be the laws of the Czech Republic. Since both parties were Czech, arbitrators and parties agreed to having the hearing in Prague. After the award was rendered, the losing party (the claimant in the arbitration) then initiated proceedings in the Municipal Court in Prague to set the award aside. The claimant argued that the Czech courts had jurisdiction to hear the case since two arbitration hearings took place in the Czech Republic, both parties were Czech, the language of the arbitration was Czech, Czech substantial law was applicable and the arbitration award was also issued in the Czech Republic. Both the Municipal Court in Prague and the High Court of Prague refused to accept this interpretation and did not annul the arbitration award. Subsequently, the case appeared before the Supreme Court, which noted that the parties agreed that the seat of arbitration was Vienna. Pursuant to Article 14 of the ICC Rules, it was, however, possible to agree that the actual proceedings could take place anywhere the parties and the tribunal deemed it to be convenient. Pursuant to the Terms of Reference concluded between the parties, Prague was agreed as the place where the hearings would take place and not to be the seat of arbitration. The Supreme Court stated that while such approach was consistent with Article 14 of the ICC Rules, it did not change the fact that the seat of arbitration was in Vienna. The sole fact that all hearings took place in the Czech Republic, therefore, did not grant Czech courts the jurisdiction to annul this award. Pursuant to Section 38 of the Arbitration Act, arbitration awards rendered in foreign countries are deemed to be foreign arbitration awards. The Supreme

[13] Decision of the Supreme Court of the Czech Republic File No. 23 Cdo 1034/2012 dated 26 September 2013.

Court thus concluded that the arbitration award was to be considered a foreign arbitration award and that Czech courts did not have jurisdiction to set it aside. The Supreme Court also made it clear that Czech parties can handle their disputes, governed by Czech law and in Czech language, in international arbitrations seated outside the Czech Republic, even with hearings conducted on the territory of the Czech Republic.

B.5 Arbitration award unenforceable due to invalidity of arbitration clause

In 2013, the Czech Supreme Court tackled the question of whether an award rendered by a legal entity, which is not a permanent arbitration court established by law, is valid.[14]

Until 2009, an arbitration clause pursuant to which a dispute is to be decided by an *ad hoc* arbitrator, the identity of the arbitrator being determined by reference to a list of arbitrators employed by a legal entity other than a permanent arbitration court, was repeatedly deemed valid. Further, any award handed down by such an entity would itself be valid and enforceable.[15]

However, from 2009 onward, a number of court decisions have called this into question. The Supreme Court decided in proceeding File No. 31 Cdo 958/2012 that such arbitration agreement is void and, therefore, any arbitrator appointed thereto lacks the power to issue an award, and that such an award is unenforceable. The case has had serious ramifications, particularly as the Supreme Court stated that any ongoing enforcement proceedings based on such an arbitration award must be discontinued, and that any court in charge of such proceedings should find that the arbitrator/tribunal lacked the requisite power to issue any award.

[14] Decision of the Supreme Court of the Czech Republic File No. 31 Cdo 958/2012 dated 10 July 2013.
[15] For reference see eg, decision of the Supreme Court of the Czech Republic File No. 32 Cdo 2282/2008 dated 31 July 2008.

We strongly recommend that *ad hoc* arbitrators are not determined by reference to lists maintained by entities other than a permanent arbitration court established by law, as such an arbitration clause is likely to be found unenforceable by the Czech courts.

B.6 Commencement of the period for the appointment of the presiding arbitrator by the court

In proceedings File No. 23 Cdo 3870/2015, the Czech Supreme Court dealt with the issue of commencement of the thirty-day period for the appointment of the presiding arbitrator by party-appointed co-arbitrators pursuant to Section 9(1) of the Arbitration Act. Unlike the provisions contained in the rules of arbitration institutions (see for example Article 12(5) of 2012 ICC Rules of Arbitration[16] or Section 23(4) of 2012 Rules of the Arbitration Court[17]), the Arbitration Act does not explicitly determine the commencement of this period.[18]

The Supreme Court of the Czech Republic addressed the issue of commencement of the period for the appointment of the presiding arbitrator pragmatically, and determined that the decisive moment for

[16] "Where the dispute is to be referred to three arbitrators, the third arbitrator, who will act as president of the arbitration tribunal, shall be appointed by the Court, unless the parties have agreed upon another procedure for such appointment, in which case the nomination will be subject to confirmation pursuant to Article 13. Should such procedure not result in a nomination within 30 days from the confirmation or appointment of the co-arbitrators or any other time limit agreed by the parties or fixed by the Court, the third arbitrator shall be appointed by the Court."

[17] "The arbitrators appointed by the parties or by the chairman of the arbitration court select the presiding arbitrator from the list of arbitrators of the arbitration court. If the arbitrators do not select the presiding arbitrator within 14 days after the notice on their appointment (…) the presiding arbitrator will be appointed by the chairman of the arbitration court from the list of arbitrators of the arbitration court."

[18] The provision of the Arbitration Act merely states: "If the party, who is to appoint an arbitrator, does not do so within 30 days from receiving a notice from the other party, or if the appointed arbitrators are unable to reach an agreement on the presiding arbitrator within the same period, the arbitrator or the presiding arbitrator shall be appointed by a court, unless the parties agreed otherwise. The petition may be brought by any party or any of the already appointed arbitrators."

the commencement of the thirty-day period pursuant to Section 9(1) of the Czech Arbitration Act is the appointment of the second arbitrator.

C. Trends and observations

Arbitration has been an increasingly popular method of dispute resolution for Czech parties. This is true for both domestic and international disputes. For smaller domestic disputes, parties tend to use the Arbitration Court, which handles more than 3,000 disputes annually and has its own Procedural Rules, which are changed from time to time. For larger domestic and international disputes, parties tend to resolve disputes using the International Arbitration Court of ICC, VIAC[19] or LCIA, even if disputes are purely domestic. One reason for this is that the Czech Supreme Court is not very friendly to arbitration and requires arbitrators to meet Czech Rules of Civil Procedure for an arbitration award to survive court review, unlike courts in other countries, such as the Swiss Supreme Court or the Austrian Supreme Court. Czech parties therefore often prefer for their disputes to be resolved by international arbitration as a way of avoiding the risk of Czech courts applying, in substance, the Czech Rules of Civil Procedure to arbitration.

On 17 December 2013, the Czech Supreme Court issued a decision[20] that arbitration agreements concluded for settlement of disputes concerning domain names registered by CZ.NIC,[21] a top-level domain registrar, were invalid. As of 1 March 2015, disputes concerning .cz domain names are subject to an entirely new system governed by the new Rules of Alternative Dispute Resolution, which form a part of the Rules of Domain Names Registration under ccTLD.cz. The rules governing the ADR proceedings are only applicable and binding to domain name holders who registered their domain name or extended the validity of these names as of 1 March 2015. This new ADR system

[19] Vienna International Arbitral Centre.
[20] Decision of the Supreme Court of the Czech Republic File No. 23 Cdo 3895/2011 dated 17 December 2013.
[21] CZ.NIC is a Czech association that, *inter alia,* administers .cz domain names.

is, however, not deemed to comprise arbitration proceedings within the scope of the Arbitration Act; the decision of the ADR panel does not represent a writ of execution, whereas neither *lis pendens* nor *res iudicata* principles apply in this respect. In other words, a claimant may always bring the same claim before a competent court, irrespective of whether the matter has already been settled (or is in the process of being settled) within the ADR proceedings. From the practical point of view, the ADR proceedings utilize the online platform managed by the Arbitration Court in accordance with the Code for the Resolution of .cz Domain Disputes.