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Czech Republic

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A. Legislation and rules

A.1 Legislation

International arbitration in the Czech Republic continues to be governed by the Act No. 216/1994 Coll., on Arbitration Proceedings and Enforcement of Arbitration Awards, as amended (the “Arbitration Act”). The Arbitration Act has not been amended since 2017.

A.2 Institutions, rules and infrastructure

The most-used arbitration institution in the Czech Republic is the Arbitration Court of the Czech Economic Chamber and the Czech Agrarian Chamber (the “Arbitration Court”). In 2018 the Arbitration Court increased prices for domestic disputes. The prices, which are determined based on the value of the disputes, increased for all price categories.

The first category covers disputes with the value up to approximately USD 2.2 million, the price for this category increased from 4 % to 5 % of the value of the dispute and the minimum price increased from circa USD 440 to USD 485. In the category covering disputes of the value up to approximately USD 11 million, the fee has increased to USD 110,000 together with 1% of the value of the dispute which exceeds the first category. In the third category covering disputes of the value up to USD 40 million, the fee has increased to

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approximately USD 200,000, together with 0.5 % of the value of the dispute exceeding the second category. In the last category which covers disputes over USD 40 million, the fee has increased to USD 360,000 together with 0.25 % of the value of the dispute exceeding USD 40 million. The price increase has come into effect on 1 July 2018. All the figures above are approximations.

In 2018 the Czech Republic has also witnessed the launch of a new initiative that might have an impact not only on the arbitration community in the Czech Republic but also on the arbitration community in general - the introduction of the Rules on the Efficient Conduct of Proceedings in International Arbitration (“Prague Rules”). According to the Prague Rules Working Group, the aim of the Prague Rules is to increase the efficiency of arbitral proceedings while encouraging tribunals to take a more active role in managing the proceedings. In this respect, the Prague Rules aspire to be a civil law inspired alternative to the established IBA Rules on the Taking of Evidence in International Arbitration (“IBA Rules”). Based on the Note from the Working group³ the main reason for the creation of the Prague Rules is the high costs of the proceedings resulting from the fact that the IBA Rules are mostly based on common law elements. The inquisitorial model of procedure adopted by the Prague Rules aims to contribute to increasing efficiency in international arbitration by cutting costs and the duration of the arbitrations.

B. Cases

B.1 Invalidity of arbitration clauses in consumer contracts must be considered on a case by case basis

In a ruling in January 2018,⁴ the Supreme Court significantly deviated from the established case law relating to the protection of consumers. Contrary to the earlier restrictive case law on the validity of the

³ Note from the Working group published together with the Draft of the Prague Rules on 1 September 2018.

⁴ Decision of the Supreme Court file No. 20 Cdo 4022/2017 dated 23 January 2018.



arbitration clauses,⁵ the Supreme Court ruled that the reasons for invalidity of arbitration clauses in consumers contracts cannot be generalized. As the result, the question of whether an arbitration clause should be deemed invalid due to a violation of good morals must be assessed on a case-by-case basis.

Another issue addressed in this decision was the issue of arbitrator impartiality. The appellant argued that the fact that the counterparty included in its standardized arbitration clauses a list of the persons that could be appointed as an arbitrator in a potential dispute arising out of the respective contractual relationship with the consumer caused the respective candidates economically dependent on the counterparty. Thus according to the appellant, the specified arbitrator candidates cannot possibly be impartial, whereas impartiality is one of the most fundamental requirements for an arbitrator.

Nevertheless, the Supreme Court ruled that the economic dependence of an arbitrator on one of the parties must be immediate and direct to cause the arbitration agreement or the arbitration clause to be void. In this case, the Supreme Court concluded that an arbitrator candidate cannot be considered to be partial simply because they are entitled to receive remuneration for acting as an arbitrator as the result of being on the list of possible arbitrator candidates included in the standardized arbitration clause.

B.2 Enforcement of foreign arbitration awards

In its most recent case law, the Supreme Court has started rejecting enforcement of foreign arbitration awards by court-appointed bailiffs provided that the foreign awards have not first gone through a formalized recognition proceedings before a national court.

⁵ For example the decision of the Supreme Court file No. 30 Cdo 2401/2014 dated 16 July 2014, decision of the Supreme Court file No. 26 Cdo 3631/2015 dated 1 March 2016, decision of the Constitutional Court file No. I. ÚS 199/11 dated 26 January 2012 or the decision of the Constitutional Court file III. ÚS 4084/12 dated 11 December 2014.

Since 1993, the Czech Republic has been a party to, and therefore has been bound by, the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (“New York Convention”), which is the principal international instrument containing basic principles governing recognition and enforcement of foreign arbitral awards as well as the issue of referral by a court to arbitration. According to article III of the New York Convention, the foreign arbitral awards are entitled to a *prima facie* right to recognition and enforcement in the Contracting States.⁶ In other words, the national courts should not impose unduly onerous procedural obstacles when recognizing and enforcing the foreign arbitral awards that are covered by the New York Convention, and instead these should be treated more or less the same as the national ones.

Nevertheless, recently the Supreme Court has adopted a new line of argument that contradicts the principle set out in article III of the New York Convention. In its breakthrough decision,⁷ the Supreme Court concluded that a foreign arbitral award cannot be enforced in enforcement proceedings executed by a court-appointed bailiff without the award first going through the standard recognition proceedings. While procedurally enforcement through a bailiff is an alternative to the enforcement through a court, the former possesses a few clear advantages that are now almost unattainable for the beneficiary of the foreign arbitral award. Some of the advantages include the absence of a court fee or the more pro-active role of the bailiff when it comes to investigating the assets of the debtor to be affected by the enforcement proceedings.

⁶ “Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon, under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions or higher fees or charges on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.”

⁷ Decision of the Supreme Court file No. 20 Cdo 1165/2016 dated 3 November 2016.



The requirement to have the foreign arbitral awards recognized by a national court could also be viewed as a procedural obstacle forbidden by the New York Convention. Apart from the fact that the recognition proceedings could take several years, it could, in fact, enable the debtor to take steps that in turn may negatively affect or even frustrate the enforcement proceedings as such, e.g. hiding or transferring the assets to avoid the enforcement proceedings. However, according to the Supreme Court rationale, it should be sufficient that the national and foreign arbitral awards are treated in the same way as one of the two types of the enforcement proceedings regulated by the national law.

The main argument for the above conclusion was that, within the regime of the enforcement proceedings through a court, the foreign arbitral award is informally being recognized by the court issuing a formal decision on ordering its enforcement. However, this is not the case within the regime of the enforcement proceedings through a court-appointed bailiff which is initiated by a court authorization issued to a specific bailiff who shall subsequently enforce the respective award. According to the Supreme Court, such an authorization is not a reasoned court ruling and thus the award is not deemed to be recognized. In the light of this line of argument, a foreign arbitral award needs to be first formally recognized within a formalized court proceedings before submitting such an award to enforcement through a bailiff.

This reasoning has already been used by the Supreme Court in a more recent case⁸ in which the Supreme Court considered whether to enforce an arbitral award issued within the territory of the Slovak Republic. Although the Supreme Court once again concluded that a foreign arbitral award cannot be enforced through a bailiff, it also addressed the possible conflict between the New York Convention and a bilateral treaty concluded between the Czech Republic and the Slovak Republic, according to which the recognition is governed by

⁸ Decision of the Supreme Court file No. 20 Cdo 5882/2016 dated 16 August 2017.

the law of the country where the decision is to be enforced, i.e. by Czech law.

In this regard, the Supreme Court referred to its previous case law, according to which the New York Convention has a specific subject-matter and therefore, it is *lex specialis* towards any bilateral treaty. However, the most favorable treatment clause under article VII of the New York Convention allows for the application of rules on recognition and enforcement of bilateral treaties or national law that may be more liberal than the New York Convention. Nevertheless, the Supreme Court concluded that even in light of the bilateral treaty the foreign arbitral award could only be enforced within court enforcement proceedings as the bilateral treaty only refers to submitting the request for recognition and enforcement of the award to the competent court.

Finally, the Supreme Court once again declared that enforcement proceedings through a court and the enforcement proceedings through a bailiff are two possible alternatives, thus their conclusion cannot possibly contradict the principles set out in the New York Convention.

C. Diversity in arbitration

The Arbitration Court is the most-used arbitration institution in the Czech Republic and as such it has been always managed almost exclusively by men. Specifically, the managing authority of the Arbitration Court is the Arbitration Court Board which is led by a President.

Since elections held in 2016, the Arbitration Court has a first female president - prof. JUDr. Marie Karfíková, CSc. Apart from being the President of the Arbitration Court, Madam Karfíková performs many high positions in various institutions. Among others, she is the Head of the Department of Financial Law at the Faculty of Law at the Charles University, teacher, active attorney-at-law, author for various legal publications and a member of the judicial disciplinary senate.