

GLOBAL ARBITRATION REVIEW

THE INTERNATIONAL JOURNAL OF PUBLIC AND PRIVATE ARBITRATION

A GLOBAL ARBITRATION REVIEW SPECIAL REPORT

The European & Middle Eastern Arbitration Review

2008

Published by GLOBAL ARBITRATION REVIEW
in association with

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THE QUEEN'S AWARDS
FOR ENTERPRISE
2006

Czech Republic

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The Czech Republic is a country with 'civil law' principles. This means that a very strong emphasis is given to dispute resolution in courts but arbitration is also important. In the last 15 years there has been substantial advancement in arbitration, thanks to the development of the business environment and political stability in the Czech Republic. Another significant influence has been foreign investments in Czech businesses, following industry privatisation in the 1990s. The result is a large number of arbitration cases linked to the Czech Republic, arbitrated here and in other Western countries.

Regulatory framework

Act No. 216/1994 on Arbitration Proceedings and Enforcement of Arbitral Awards set up a new framework for standard arbitration in the Czech Republic. The parties can arbitrate any property dispute (ie, not only commercial but also non-commercial disputes) provided they have entered into the arbitration agreement.

The arbitration agreement has to be in writing and can be either a separate document or incorporated into the commercial agreement to which the arbitration is linked.

Czech arbitration law is not very complicated and is based on standard arbitration principles known under UNCITRAL or ICC rules. It is therefore not a great risk to arbitrate in the Czech Republic.

Enforcement of the arbitration award

The Czech Republic is a member state of the New York Convention on recognition and enforcement of arbitration awards. The Czech Arbitration Act also deals with points to be followed concerning the arbitration award.

The arbitration award is binding and enforceable by the local courts.

Foreign arbitration awards are enforceable under standard conditions as Czech awards, ie, they are directly enforceable unless they are against the public order of the Czech Republic.

Annulment of the arbitration award under Czech law

The Czech Civil Code grants the right to annul/cancel the arbitration award if:

- the award was issued in a case where no valid arbitration agreement was possible;
- the arbitration agreement was invalid or was cancelled or was not applicable to the case;
- the arbitrator was unable or had no right to arbitrate;
- the award was not decided by the majority of the panel;
- one of the parties was not granted the right to arbitrate the case properly;
- the award gives a party an obligation not requested by the claimant or to perform activities not allowed or not possible under local law; or
- there are circumstances in which a civil proceeding can be reopened, ie:
 - there are new facts that could not have been used in the previous hearings; or

- it is possible to provide evidence not presented in the previous hearings, provided it may provide a more favourable decision for the complaining party in the hearing.

In recent years numerous cases have been brought before Czech courts where there are doubts about the impartiality of the arbitrator or it is argued that there was no possibility of arbitrating the case properly. In general the courts dismiss these cases, with only minor exceptions. It is safe to conclude, therefore, that arbitration awards are standard and will secure the legitimate interests of the disputing parties.

Interim measures

Permanent arbitration courts and ad hoc arbitration panels are very reluctant to issue interim measures in the Czech Republic. It is therefore advisable to file an arbitration suit with the arbitration court and/or a panel and, at the same time, apply for the interim measure (preliminary injunction) at the civil court.

In practice, if it is proven that there is a strong reason for assurance of an interim measure, the Czech courts are willing to issue such a decision. Standard preliminary injunctions prohibiting the parties from selling assets, or instructing the parties to stop the harming activities for an interim period, are issued within seven days of an application to the civil court.

Application of Civil Procedure Code in arbitration

The Czech Arbitration Act clearly states that the Civil Procedure Code is applicable to an arbitration but does not resolve any of the important issues to be reviewed and decided in the arbitration. Opinions differ as to the extent of the Code's applicability. It depends on the precedents of different permanent arbitration courts but most consider that the rules of the arbitration court prevail before any procedural acts in relevant jurisdictions. Thus the Civil Procedure Code is considered applicable only in very specific cases where no solutions under the appropriate rules can be found.

Alternative dispute resolution (ADR)

The Czech Republic is not a very mature country with regard to dispute resolution methods. Respect for the courts remains underdeveloped, and as a result arbitration and arbitration awards have yet to acquire the necessary respect from the business community. Many entrepreneurs are still not even familiar with arbitration or with ADR. Besides specific civil and criminal proceedings linked to ADR on damage litigation, no rules on business ADR exist.

In this writer's experience, ADR in the Czech Republic has been based on specific agreements linked to specific disputes, and performed on the basis of ad hoc agreement between the parties and arbitrators in such disputes.

There is a very specific ADR process linked to EU domain names, which is discussed later in this article.

Permanent arbitration courts

There are different permanent arbitration courts in the Czech Republic. The most reputable is the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic. Others include the Prague Stock Exchange Arbitration Court and the Arbitration Court attached to the Commodity Stock Exchange in Kladno.

The Arbitration Court attached to the Economic Chamber and the Agricultural Chamber is the most important arbitration court in the Czech Republic. Hundreds of cases are arbitrated in this court, and most arbitration agreements and disputes are referred to this court. Hearings at this court follow two sets of rules, for international and domestic disputes respectively. The most important difference is the fees incurred. Domestic disputes have a very simple tariff of costs. The arbitration fee is 3 per cent of the value of the dispute, from a minimum of 7,000 Czech koruna (approximately €250) to a maximum of 1 million Czech koruna (€35,700). Thus domestic proceedings, even over a very substantial sum of money, can be arbitrated at a reasonable cost.

In other respects, the two sets of rules are very straightforward and do not differ substantially. There are provisions that may be of interest of the parties: the possibility of arbitrating in different foreign languages; so-called simplification procedures, where decisions are made on the basis of written documents only or without giving a reason for the arbitration awards; even accelerated proceedings can be applied for, provided extra fees are paid to the Arbitration Court.

There are also 'online rules' for simplified disputes based on the internet online platform at the court. For more details please visit www.arbcourt.cz.

'eu' domain name dispute resolution

The Arbitration Court attached to the Economic Chamber and Agricultural Chamber of the Czech Republic is the dispute resolution centre for '.eu' domain name disputes.

The European Registry of Internet Domain Names (EURid) offers an alternative procedure for solving disputes about '.eu' domain names. This ADR proceeding is facilitated by the Czech Arbitration Court, which administers it in line with the Public Policy Rules for '.eu' of the European Commission (EC Regulation No. 874/2004).

It must be emphasised that the brand new '.eu' dispute resolution proceeding is not an arbitration proceeding but rather a so-called alternative dispute resolution. That is, the decision is not issued in the form of an arbitration award but on the basis of an agreement of the parties to submit the decision to the court and to respect its decision.

Any person or entity may initiate ADR proceedings by submitting a complaint in accordance with the procedural rules. A complaint may be filed (i) against the holder of the disputed domain name; or (ii) against the registry. The registry means the entity entrusted by the European Commission with the organisation, administration and management of the '.eu' domain designated in accordance with the procedure established in article 3 of EC Regulation No. 733/2002.

The remedies available against the respondent in (i) above shall be limited to either revocation of the disputed domain name(s) or, if the complainant satisfies the general eligibility criteria for registration set out in the aforementioned EC Regulation, the transfer of the disputed domain name(s) to the complainant.

The main remedy available pursuant to the ADR rules in (ii) above shall be the annulment of the disputed decision taken by the registry. The panel may also decide, however, that the domain name in question shall be transferred, revoked or attributed.

An internet online platform has been created to speed up '.eu' ADR proceedings. The platform is intended to be speedy, efficient and therefore not costly. It is not expected that any paper documents will be necessary. It is also anticipated that any oral hearing shall be called to discuss the case. It is, however, always possible to call such hearing if it is necessary for a proper decision on the case.

The ADR Panel shall consist of one or three members, based on the decision of the parties. The language of the proceedings shall be one of the official EU languages. It is therefore very easy to choose any language convenient to the parties.

Very important also is the question of the costs. The basic fee for a dispute resolution, for one or two domain names by a single panellist, is in total €1,990; with three panellists €3,990. The fees go upwards based on the number of domain names disputed.

To conclude, the Czech Republic is a standard jurisdiction of arbitration where anyone can arbitrate safely, properly and with cost-effectiveness.

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Founded in 1994, Glatzová & Co has quickly established itself as a leading commercial law firm in the Czech Republic. The firm specialises in M&A, utilities, telecommunications/IT, privatisation, real estate, capital markets, banking and finance. In addition, it offers a full selection of commercial services.

Glatzová & Co has gained an outstanding reputation in complex cross-border transactions. It has acted as counsel for major international companies, as well as for the Czech state, in many of the leading transactions in the country, including large transactions involving the state banks, major insurance companies, both public and private power generation and distribution companies, the dominant pharmaceutical company in the region, state and private telecommunications companies and IT and internet firms.

The combination of solid expertise in Czech law and thorough understanding of Western commercial practices and expectations makes Glatzová & Co a leader in the provision of legal services for major international companies and an essential partner for Western law firms.

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