

## **Case law influence on Czech national and international arbitration Proceedings**

### **Abstract**

Arbitration proceedings represent, besides civil judicial procedures, one of the methods for solution of material disputes in private-law relations. Arbitration proceedings have been used for quite a long time. In our territory they were used already under the rule of Charles IV. For example, Jakub Krčín and Štěpánek Netolický, who were well-known artificial lake engineers, belonged among highly appreciated arbitrators.

Significant development of arbitration proceedings was registered after 1949, when the Steady Arbitration Court was established at the Czechoslovak Chamber of Commerce in May 1949 and exists up to now under the name “Arbitration Court attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic”.

Legal regulation of arbitration proceedings was undergoing various changes. A principal change occurred in 1964, when the Act no. 98/1963 Coll., on arbitration proceedings in international trade and on enforcement of arbitration awards entered into force, admitting arbitration proceedings only in international trade relations and only for legal entities, at that time foreign trade enterprises.

Another principal change then occurred as at 1 January 2015, the effective date of the Act no. 216/2014 Coll., on arbitration proceedings and enforcement of arbitration awards, which brought essential liberalisation of arbitration proceedings, admitting them also in relations between natural persons and in purely national relations. This means that arbitration proceedings have found a wide range of applications.

Some entities from the sector of non-bank providers of loans aimed at private persons started to misuse arbitration proceedings to their own benefits, it was possible to see various excesses leading to cancellation of arbitration awards by general courts of law on the one hand, and to exclusion of consumer disputes from arbitration proceedings as such (since 1 December 2016) on the other hand. The current reputation of arbitration

proceedings is not good and the number of disputes decided tends to decrease.

The Dissertation is focused on issues of case law of the Constitutional Court, Supreme Court and Arbitration Court and its influence on arbitration proceedings, both domestic and foreign. The aim of the Dissertation is assessment of the case law influence on modifications in legislation regulating arbitration proceedings as well as on the practice of actual arbitration proceedings, and creation of a theoretical study for further research of these issues for legislative studies which could be used for a possible amendment to national legal regulations relating to arbitration proceedings.

The Dissertation has been drawn up with the use of scientific methods of investigation, namely analysis, synthesis, deduction and comparative method.

The author has set out four hypotheses – First: Case law of the Constitutional Court of the Czech Republic and of the Supreme Court of the Czech Republic finalises the law system regulating arbitration proceedings and has positive influences on implementation of arbitration proceedings in the Czech Republic. Second: Legal regulation of arbitrability and of arbitration agreements in the Czech Republic corresponds to the world trends. Third: Decision making of consumer disputes in arbitration proceedings has led to a legislative ban on consumer arbitration proceedings as such. Fourth: Case law of the Arbitration Court and its powers are in accordance with the legal framework determined by the Arbitration Proceedings Act.

With regard to the extent of the Dissertation, attention was paid to selected issues of arbitration proceedings: assessment of the state of arbitration proceedings in the Czech Republic, relationship between judicial and arbitration proceedings, relationship between insolvency and arbitration proceedings, legal nature of arbitration proceedings, arbitrability and powers of arbitrators, arbitration agreement, arbitrator's person and review of arbitrators' decisions.

While dealing with all the selected issues, the author uses many case law examples which have been shaping the existing legal regulations concerning arbitration proceedings in various ways, which holds for practice of arbitration proceedings as well. Some case law resolutions, however, generated discordant responses of the professional public, for example the decision about contractual nature of arbitration proceedings, instructional obligations of arbitrators or material review of arbitration awards in arbitration proceedings.

As far as confirmation or non-confirmation of the hypotheses set out is concerned, in the course of elaboration of the Dissertation the author has arrived at a conclusion that the third and fourth hypotheses have been confirmed, while the first hypothesis and the second hypothesis have been confirmed partially.

*De lege ferenda* the author recommends that foreigners should be enabled to decide intranational disputes as arbitrators, and that in exceptional cases arbitrators should be enabled to order interim measures.

The author believes that arbitration proceedings in the Czech Republic itself must acquire appropriate confidence, especially through transparent acting of arbitrators in the course of the entire arbitration proceedings, because confidence on the part of governmental bodies and politicians is not at a sufficient level.

**Keywords:** arbitrability, case law, arbitrator, arbitration proceedings, judicial proceedings

