

# **Resumé**

## **Arbitration Proceedings in the Czech Republic**

Arbitration proceedings represent an out-of-court method of settlement of property disputes. It allows the parties that their dispute can be heard and decided before arbitrators or a permanent arbitration court. The basic characteristic features of the arbitration proceedings consist in particular in their promptness, certain informality and in the fact that the dispute is heard and decided in a single instance. The result of the arbitration proceedings consists usually in rendering an arbitral award having the effect of a final and conclusive judicial decision granted by the law. The basic legal regulation of the arbitration proceedings in the Czech Republic is provided by Act No. 216/1994 Coll., on Arbitration and Enforcement of Arbitral awards (“Arbitration Act”).

Only property-related disputes may be heard and decided in the arbitration proceedings, namely provided that such a dispute would otherwise fall within the jurisdiction of the courts of general jurisdiction and that the parties could resolve the subject-matter of such a dispute by conciliation. From the subject-matter of the arbitration proceedings, the Arbitration Act expressly excludes disputes resulting from bankruptcy or composition proceedings, disputes over enforcement of decisions and disputes of public non-profit in-patient health establishments established pursuant to Act No. 245/2006 Coll., on public on-profit in-patient health establishments.

Another essential prerequisite for holding the arbitration proceedings lies in the existence of validly concluded written arbitration agreement. By the arbitration agreement, the parties demonstrate their will not to settle their dispute in the proceedings before the courts of general jurisdiction but to hear and decide the same in the arbitration proceedings. The arbitration agreement can relate to possible disputes that may arise in the future from a certain legal relationship or from a defined scope of legal relationships (arbitration clause) or from already existing specific dispute (agreement on arbitrator). Arbitration agreement has to be concluded in writing, otherwise it is invalid. Upon conclusion of arbitration agreement, the jurisdiction of courts of general jurisdiction with respect to the dispute to which such agreement relates

is excluded. Should either party file an action with the general court the subject-matter of which would consist in a dispute to which the arbitration agreement relates, the other party will be entitled to lodge a plea of incompetence of such court due to existence of the concluded arbitration agreement. In such a case the court will not hear the case and will discontinue the proceedings.

Disputes in the arbitration proceedings are heard and decided by arbitrators as the legal persons under private law. According to the Arbitration Act, any individual being of age and having full legal capacity may become an arbitrator. The office of an arbitrator is incompatible with the office of a judge of a Czech general court, Constitutional Court judges and prosecuting attorneys. Only an impartial and unbiased person may be the arbitrator in a specific dispute. The law regulates the conditions for disqualification of an arbitrator from hearing the dispute.

The arbitration proceedings may take place before one or several arbitrators or before permanent arbitration court. The Arbitration Act provides that permanent arbitration courts may be established only on the basis of law. In their Statutes and Rules, the permanent arbitration court regulate detailed procedural rules of the arbitration proceedings, methods of appointment of arbitrators, rules concerning the costs of proceedings, etc. The advantage lies in the existence of administrative background of the permanent arbitration court providing for organizational tasks.

The arbitration proceedings are commenced upon an action. The arbitrators themselves are entitled to decide on the matter of jurisdiction. The objection of incompetence of the arbitrators may be raised by either party not later than upon the initial act on the merits. The subsequent course of the proceedings is determined in particular by an agreement between the parties or by the rules of the permanent courts of arbitration. In the absence of the foregoing, the arbitrators will proceed as they deem appropriate. Primarily, they always seek to reconcile the parties. In their decision-making, the arbitrators follow the substantive law by which the dispute is governed. Should the parties authorize so, the arbitrators may decide according to the principles of equity.

The arbitration proceedings are terminated upon rendition of an arbitral award or resolution on termination of the proceedings. The arbitration award must be drawn up in writing, must include reasoning and must be signed by at least majority of arbitrators.

The parties may agree that the arbitration award will be reviewed by different arbitrators. In such a case, a motion for review must be filed within the time limit agreed between the parties or else within the time limit of 30 days of the delivery of the arbitration award to the party having filed the motion. The arbitral award becomes effective and enforceable upon the delivery of the arbitration award. Where the parties agreed the review of the arbitration award option, the arbitral award becomes effective and enforceable upon the delivery of the decision in the review proceedings or upon the expiry of the time limit for filing the motion for review.

The Arbitration Proceedings Act stipulates reasons for which the arbitral award may be cancelled upon the motion of either party. Only Czech general courts are authorized to overturn an arbitral award. The court in particular examines whether the basic prerequisites in the particular case for exclusion of the jurisdiction of the general courts and for establishing of the competence of the arbitrators or permanent court of arbitration have been complied with.

A final and conclusive arbitral award has been granted the effect of a final and conclusive judgment of a court. Should the duties imposed in the statement of the arbitral award be not satisfied voluntarily, a judicial execution of the arbitral award may be ordered under the provision of Act No. 99/1963 Coll., the Code of Civil Procedure, or execution by the medium of the court executors pursuant to Act No. 120/2001 Coll., on court executors and on distraintment (Code of Execution). The enforcement of foreign arbitration awards is secured in particular by international treaties, in particular by the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards.

One of the permanent courts of arbitration operating in the territory of the Czech Republic is the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic established in 1949 (“Arbitration Court”). Currently, the Arbitration Court decides both domestic and international disputes. In 2005, the EURid association entrusted the Arbitration Court with preparation of the ADR (alternative dispute resolution) for disputes with respect to .eu domain names. The Arbitration Court provides the option of special method of conducting of the arbitration proceedings – online arbitration proceedings. In this case, all contacts between the parties and the court or the arbitrator, as the case may be, are

made solely in the electronic form.

The interest in resolution of disputes in the arbitration proceedings has been continuously growing worldwide. The reason consists in the basic characteristic features of the arbitration proceedings such as promptness, informality and usually also lower costs. Even in spite of these advantages, it is necessary to realize that the fundamental protection of the rights and obligations resulting from legal relationships is ensured primarily by means of the judiciary.