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SELECTED CHALLENGES AND PARTICULARITIES OF ARBITRATION IN CZECHIA

Summary

Arbitration in Czechia has historical roots tracing back to the First Czechoslovak Republic. However, the article explores mainly the recent evolution of Czech arbitration law, addressing topics such as interim measures and significant developments in the conduct of arbitral proceedings, including the unusual role of the country's Code of Civil Procedure or arbitrators' duty to instruct the parties, separability of arbitration agreement, competence-competence matters, disclosures and disqualification of arbitrators, or the enforcement of arbitral awards. The authors argue that despite Czechia not being formally a fully UNCITRAL Model Law compliant jurisdiction, the country nowadays offers a globally competitive environment for arbitration, driven by recent pro-arbitration case law and experienced professionals, making it a viable seat of arbitration on the international stage.

Keywords: arbitral proceedings, disclosure, enforcement, interim measures, separability.

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ODREĐENI IZAZOVI I SPECIFIČNOSTI ARBITRAŽE U ČEŠKOJ

Sažetak

Arbitraža u Češkoj ima istorijske korene koji sežu do Prve Čehoslovačke Republike. Međutim, autor analizira nedavnu evoluciju češkog arbitražnog zakona, i obrađuje teme kao što su privremene mere i značajni pomaci u vođenju arbitražnog postupka, uključujući neobičnu ulogu Zakona o parničnom postupku u zemlji ili dužnosti arbitara da uputi stranke, kao i razdvojivost sporazuma o arbitraži, pitanje 'nadležnost-nadležnost', otkrivanja identiteta i diskvalifikacije arbitara, te pitanje izvršenja arbitražnih odluka. Autori tvrde da, uprkos tome što nacionalno zakonodavstvo Češke nije formalno u potpunosti usaglašeno sa UNCITRAL model zakonom, zemlja danas nudi konkurentno okruženje za arbitražu, imajući u vidu skoriju pro-arbitražnu praksu i iskusne profesionalce, što je čini podobnim sedištem arbitraže na međunarodnoj sceni.

Ključne reči: arbitražni postupak, otkrivanje identiteta arbitara, izvršenje, privremene mere, razdvojivost.

1. Introduction

Arbitration has a long-standing tradition in Czechia. It has evolved since the First Czechoslovak Republic, rooted in the Austrian legal system.[1] Commercial arbitration was well established at the time. The state had become a party to instruments such as the *Protocol on Arbitration Clauses* (Geneva Protocol on Arbitration Clauses, 1923, No. 191/1931 Coll., effective since 7 November 1931) or the *Convention on the Execution of Foreign Arbitral Awards* (Geneva Convention on the Execution of Foreign Arbitral Awards, 1927, No. 192/1931 Coll., as amended, effective since 18 December 1931).

The country's institutional framework for arbitration dates back to the late 1940s. Despite the communist Czechoslovak coup d'état, the permanent Arbitration Court was founded in 1949, and it operated attached to the Czechoslovak Chamber of Commerce. During the communist period, it decided in foreign

[1] The crown lands of Bohemia, Moravia, and Silesia were a long-lasting part of the Austrian Empire, later the Austrian-Hungarian Realm.

trade disputes between the state trading organisations of the member states of the Council for Mutual Economic Assistance (COMECON).[2] This arbitral institution operates to this date and is currently attached to the Czech Chamber of Commerce and the Agricultural Chamber of the Czech Republic (the "Arbitration Court").[3]

The Arbitration Court handles steadily around 500 new cases every year, both domestic and international. Furthermore, it is one of the world's leading institutions deciding in domain name disputes.[4] In conjunction with other arbitral proceedings, such a case flow ensures a rather vivid evolution of the Czech arbitration practice and case law. In this regard, we have witnessed a stable popularity of arbitration in our country.

Notwithstanding, Czechia is hardly one of the world's leading seats (places) of arbitration (despite the above popularity of the Arbitration Court, although mainly for Czech parties). To illustrate this, in 2023, the International Court of Arbitration of the International Chamber of Commerce (the "ICC Court") had 890 newly registered cases (ICC Dispute Resolution Service, 2023). Out of these, 20 parties had Czech nationality, and Czech law applied in 5 cases, but only 1 arbitration was seated in Czechia (ICC Dispute Resolution Service, 2023, pp. 6, 12, 27). Moreover, the figures from the previous years and/or relating to other established foreign arbitral institutions do not differ fundamentally.

Why so? We find this global lack of choice of Czechia as a seat of arbitration as unfounded. Despite some historical challenges and particularities of arbitration in our country, it provides a competitive framework for arbitral proceedings, a recent revival of pro-arbitration case law, and experienced professionals.

In this paper, we have focused firstly on a basic overview of Czech arbitration (Part 2) followed by some selected issues, especially those that have recently seen notable developments (Szabó, 2023, p. 352). Namely, we have covered interim measures in (support of) arbitration (Part 3), the conduct of arbitral proceedings (Part 4), separability of arbitration agreement and the competence-competence principle (Part 5), disclosures along with disqualifications of arbitrators (Part 6), and last but not least enforcement of arbitral awards (Part 7). Our concluding remarks occupy their usual place.

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2 Economic organisation under the leadership of the Soviet Union.

3 Available at: https://en.soud.cz/arbitration-court, 11. 11. 2024.

4 The Arbitration Court is the only institution authorised to arbitrate ".eu" domain disputes; moreover, it was the fourth institution in the world (the second in Europe) authorised to arbitrate generic domain names disputes (".com", ".org", ".net", etc.).

2. Basic Overview of Arbitration in Czechia

In Czechia, arbitration generally enjoys a status equivalent to court proceedings as a means of settlement of disputes. Despite some past controversies related to consumer cases (see below) or investor-state matters (which are outside the scope of this paper),[5] arbitration has more or less been recognised by business professionals as a time- and cost-effective, procedurally flexible, and private (closed to the public) alternative to court litigation.

2.1. Domestic Legal Framework

The current arbitration law was adopted in 1994 as the *Act on Arbitration and Enforcement of Arbitral Awards* (The Arbitration Act, No. 216/1994 Coll., as amended, effective since 1 January 1995).

Issues of conflict-of-laws rules and enforcement related to international arbitration are addressed by the Act on Private International Law (No. 91/2012 Coll., as amended).

At the time of its adoption, the Arbitration Act especially broadened the scope of its permissible application (the so-called "objective arbitrability") to include the resolution of all proprietary disputes except those arising in connection with the enforcement of judgments and principally those arising from the bankruptcy proceedings (Section 2, paragraph, Arbitration Act). Another major modification was to enable referring domestic disputes to arbitration (in addition to the already permitted arbitrating international disputes).

These legal framework changes combined with a rather pro-arbitration approach by Czech courts had led, in or around the late 1990s and the 2000s, to a wide expansion of arbitration from solely business matters to consumer-related ones. Unsurprisingly, various controversies connected with the said expansion of arbitration arose. It resulted in the shift to an anti-arbitration approach by Czech courts, and was followed by the express exclusion of all consumer-related disputes from objective arbitrability in late 2016 (Act No. 258/2016 Coll., as amended, effective since 1 December 2016).[6] Since then, we have seen a gradual revival of the initial pro-arbitration approach by Czech courts.

Going back to the Arbitration Act, it is commonly said that it is not based on the UNCITRAL Model Law on International Commercial Arbitration of 1985, as amended in 2006 (the "Model Law"). Indeed, the Arbitration Act is not an express (let alone full) transposition of the Model Law. Nevertheless, the majority of the latter's provisions and its fundamental principles are reflected in the Arbitration Act.

[5] Czechia as a host state is one of the world's most sued countries in investor treaty arbitrations.

[6] Amending, *inter alia*, the Arbitration Act accordingly.

The main differences involve, for example, some rules pertaining to arbitrators (e.g., unlike the Model Law, the Arbitration Act always requires an odd number of arbitrators) (Art. 10, para. 1, Model Law; Section 7, para. 1, Arbitration Act), the absence of the arbitral tribunal's power to order interim measures, or some particularities in terms of the conduct of arbitral proceedings (see below).

2.2. International Legal Framework

Czechia is bound by the main international arbitration-related instruments. First and foremost, by the well-known *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 1957; the New York Convention, Decree No. 74/1959 Coll., effective since 10 October 1959).[7] The country requires complying with the principle of reciprocity for its application.

In addition, Czechia has likewise remained a party to the *European Convention on International Commercial Arbitration* (Geneva Convention, 1961, Decree No. 176/1964 Coll., effective since 11 February 1964).[8] In 1992, the country also became a party to the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States* (Washington Convention, 1965, Notification No. 420/1992 Coll., effective since 8 April 1992)[9] and, in 1998, it acceded to the *Energy Charter Treaty* (The Hague, 1991, Notification No. 18/2023 Coll. replacing previous Notification No. 372/1999 Coll., effective since 16 April 1998).

2.3. Domestic and International Arbitration

The Arbitration Act does not distinguish between domestic arbitration and arbitration with an international element. Therefore, the same rules and principles apply to both domestic and international cases.

In practice, many Czech-related disputes are arbitrated in foreign arbitral seats and under foreign arbitration rules, especially those of the ICC Court, DIS,[10] LCIA,[11] SCC,[12] or VIAC[13] (the first and the last one being likely the most noteworthy). This

[7] Czechoslovakia acceded to the New York Convention in 1959, and Czechia adopted it by way of succession on 30 September 1993.

[8] Czechoslovakia acceded in 1964.

[9] Kown as the ICSID Convention.

[10] The German Arbitration Institute.

[11] The London Court of International Arbitration.

[12] The Arbitration Institute of the Stockholm Chamber of Commerce.

[13] The Vienna International Arbitral Centre is the permanent international arbitration institution of the Austrian Federal Economic Chamber.

has been encouraged by the Supreme Court's case law, which expressly permitted submitting a wholly domestic matter to a foreign-seated arbitration and/or before foreign arbitral institution under its arbitration rules (Supreme Court of the Czech Republic, Decision of 30 September 2013, case No. 23 Cdo 1034/2012 (R 24/2014 civ.)).

2.4. Institutional and Ad Hoc Arbitration

The Arbitration Act has a quite unusual understanding of institutional arbitration. Strictly speaking, proceedings are held either before the so-called "permanent" arbitration court, which has to be established by an Act of the Czech Parliament (Section 13, para. 1, Arbitration Act) or *ad hoc*.

The aforementioned Arbitration Court is the only permanent arbitral institution with general jurisdiction under Czech law. Therefore, in case of selection of a foreign arbitral institution, the parties are *stricto sensu* choosing *ad hoc* proceedings from the perspective of Czech arbitration law.

The above distinction creates very practical concerns when selecting foreign arbitral institutions: whether the arbitration rules agreed upon by the parties could simply be referred to (in case of choosing a permanent arbitration court) or should be attached to the arbitration agreement (in case of *ad hoc* arbitrations) (see: Olík & Karešová Kucharčuk, 2024; Arbitration Act, Section 13, para. 3 in conjunction with para. 2, and Section 19, para. 4)

In practice, the Supreme Court's case law overcomes this formalistic requirement (it historically aimed at protecting consumers against questionable "private" arbitral institutions; see above) when it comes to the established foreign arbitral institutions (Supreme Court of the Czech Republic, decision of 24 October 2013, case No. 23 Cdo 1166/2013; decision of 29 October 2020, case No. 23 Cdo 1258/2020; decision of 30 November 2020, case No. 23 Cdo 2093/2020, regarding arbitrations under the ICC Court' Arbitration Rules).

The Arbitration Court (given its general jurisdiction) will likely be the common choice for a Czech-seated arbitration, especially regarding domestic disputes. For the sake of completeness, the country has another two permanent arbitration courts – one attached to the Czech Commodity Exchange Kladno,[14] and the second one attached to the Prague Stock Exchange.[15] Nevertheless, these institutions have limited jurisdiction[16] and, in fact, a negligible number of newly registered cases (if any).

[14] The International Arbitration Court in Prague of the Czech Commodity Exchange Kladno (PRIAC).

[15] The Prague Stock Exchange Arbitration Court (PSEAC).

[16] Jurisdiction of these two permanent arbitration courts is limited to disputes arising from the commodity market and the stock exchange, respectively.

3. Interim Measures in (Support of) Arbitration

As outlined above, the power of arbitrators to order interim measures is among the main differences when comparing the Arbitration Act with the Model Law.

In this regard, the Model Law stipulates in its Article 17, paragraph 1: "Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, grant interim measures." This rule was also included in the original Model Law, 1985, as follows: "Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the tribunal may consider necessary in respect of the subject-matter of the dispute. […]." (UNCITRAL Model Law on International Arbitration, Art. 17, para. 1).

On the other hand, Section 22 of the Arbitration Act provides: "If it appears during the arbitral proceedings or also before its commencement, that the enforcement of an arbitral award could be jeopardised, the court may, on the application of any party, order an interim measure."

It obviously follows from the quoted provisions that arbitrators are principally empowered to grant interim measures under the Model Law, but the parties can agree on the exclusion or limitation of such power. On the other hand, regardless of any will of the parties, only courts can grant interim measures in (support of) arbitration under Czech law. In other words, the Arbitration Act does not empower arbitrators to grant interim measures under any circumstances.

It similarly applies to preserving evidence. The Model Law gives such power to the arbitral tribunal, whereas the Arbitration Act keeps it with the court, which may be approached by the arbitrators for assistance in taking evidence (Art. 17, para. 2(d), Model Law compared with Section 20, para. 2, Arbitration Act).[17]

It is likewise worth mentioning that the grounds for seeking an interim measure under the Arbitration Act are narrowed on the risks of unenforceability of an arbitral award, while the grounds for an interim measure under the Code of Civil Procedure (Act No. 99/1963 Coll., as amended, effective since 1 April 1964) cover the risks of unenforceability of the decision, as well as the "if the parties' circumstances should be provisionally adjusted" situations (Code of Civil Procedure, Section 74, para. 1, and Section 102, para. 1).

In any case, the proceedings before Czech courts regarding an application to grant interim measure are swift – as a matter of law, a decision must be rendered within 7 days of the filing of the application (Section 75c, para. 2, Code of Civil Procedure), cost-effective,[18] *ex parte* in the first instance, and appealable.

[17] However, the latter provision echoes Article 27 of the Model Law.

[18] Currently, the respective filing fee is CZK 1,000 (i.e., approx. EUR 40), and the applicant shall also pay a refundable deposit of CZK 50,000 (approx. EUR 2,000) in business-to-business

4. Conduct of Arbitral Proceedings

The Arbitration Act does not provide as much detail as the Model Law when it comes to the conduct of arbitration. Nevertheless, there are two issues that deserve our attention – firstly, the role of the Code of Civil Procedure therein, and secondly, the arbitrators' duty to instruct the parties.

4.1. Role of the Code of Civil Procedure

Possibly the most controversial and certainly unfortunate particularity of Czech arbitration law is its interplay with the Code of Civil Procedure, influencing the conduct of arbitral proceedings.

Article 19, paragraph 1 of the Model Law provides: "*Subject to the provisions of this Law, the parties are free to agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings*." Its paragraph 2 adds: "*Failing such agreement, the arbitral tribunal may, subject to the provisions of this Law, conduct the arbitration in such manner as it considers appropriate*." These provisions have been principally reflected in the Arbitration Act (Article 19, paras. 1 and 2, Arbitration Act).

However, Section 30 of the Arbitration Act reads: "*Unless otherwise provided by law, the provisions of the Code of Civil Procedure shall apply* ['přiměřeně'] *to the proceedings before arbitrators*."

The Code of Civil Procedure's provisions should apply "*přiměřeně*" (in Czech) – in the given context it could mean (i) "*reasonably*" as in using good judgment, (ii) "*appropriately*" as in being suitable for arbitration, or (iii) "*moderately*" as in limited in scope. Yet, some arbitrators and courts interpret this term as "*mutatis mutandis*" (almost as its subsidiary use) and unduly apply the rules of the Code of Civil Procedure in arbitration to a greater extent.

The practice of extending the application of the Code of Civil Procedure to arbitration was mainly driven by a wish to protect weaker parties in rather frequent and often unfair consumer arbitrations (see above). However, since the prohibition thereof, we have seen a gradual revival of the initially pro-arbitration approach by Czech courts, including narrowing the application of the Code of Civil Procedure to reasonable, appropriate, and moderate levels.

The recent Supreme Court's case law aptly concluded: "*In its decision-making practice, the Supreme Court has already addressed the question of the relationship between the rules of the Code of Civil Procedure and the Arbitration Act, namely in its judgment of 25 April 2007, Case No. 32 Odo 1528/2005 (to which the appellant also referred), in which it concluded, concerning Section 30 of the Arbitration Act, that the*

disputes to cover a compensation for eventual damage.

use of the term ['přiměřeně'] *implies that arbitral procedures are not directly subject to the Code of Civil Procedure and that its provisions cannot be applied mechanically in arbitration. The term* ['přiměřeně'] *means, first of all, taking into account the general principles underlying Czech arbitral proceedings, i.e., the application of the rules of the Code of Civil Procedure under the general framework of the principles of Czech arbitration.*" (Supreme Court of the Czech Republic, decision of 21 June 2022, case No. 23 Cdo 1307/2022).

In light of the foregoing, Section 30 of the Arbitration Act allows room for the application of the Code of Civil Procedure on the conduct of arbitral proceedings. Its provisions, however, cannot be applied automatically nor extensively without proper consideration of both the general framework and the principles of arbitration.

4.2. Arbitrators' Duty to Instruct Parties

Another debatable particularity of Czech arbitration law is closely linked to the role of the Code of Civil Procedure in Czech-seated arbitral proceedings (see above).

Pursuant to Section 118a of the Code of Civil Procedure, judges have a specific procedural duty to instruct (i.e., inform) the parties on their insufficiently presented or unsubstantiated positions, or legal grounds of the claim assessed in a different way by the judge than pleaded by the party(-ies). In 2011, the Constitutional Court rendered a landmark decision whereby extended this duty to instruct also on arbitrators.

The Constitutional Court ruled as follows: "*The arbitrator cannot be merely a passive actor but must ensure that his decision is not surprising by the way he conducts the proceedings. In order to achieve this objective, the court's duty to instruct is applied in civil proceedings; there is no reason why the arbitrator, who acts as the decision-maker in arbitral proceedings instead of the court, should not have a duty to instruct. Act No. 216/1994 Coll., on Arbitration and Enforcement of Arbitral Awards, as amended, does not provide for the arbitrator's duty to instruct, and it is therefore appropriate to apply the Code of Civil Procedure (under Article 30 of the Act on Arbitration and Enforcement of Arbitral Awards).*" (Constitutional Court of the Czech Republic, decision of 8 March 2011, case No. I.US 3227/07 (37/2011 USn.)).

Since then, both the arbitrators and Czech courts have been trying to find a balance in applying the duty to instruct and the equality of arms.[19]

Recently, the Constitutional Court has reduced the impact of the foregoing case law stressing that "*a failure to provide an instruction under Section 118a of the*

[19] For practical implications of the arbitrators' duty to inform see, for example, a proactive role of the arbitral tribunal under Articles 2.2.b, 2.3, and 2.4 of the so-called Prague Rules, 2018.

Code of Civil Procedure, where both parties had an opportunity to be heard, were mutually informed of each other's positions and were able to respond adequately" should not be principally problematic in arbitration (Constitutional Court of the Czech Republic, decision of 23 February 2021, case No. I.ÚS 2296/20).

5. Separability of Arbitration Agreement and Competence-Competence Principle

It has long been established under the Czech law that, in line with international practice, the arbitration agreement is separable from the contract in which it is contained (Supreme Court of the Czech Republic, decision of 19 December 2007, case No. 29 Odo 1222/2005).[20] However, the case law has been divided on the issue of whether a partial defect of the arbitration agreement automatically makes the whole arbitration agreement invalid or whether it is possible to apply the partial invalidity theory upholding the part of the agreement not tainted by the defect.

This has been resolved by the recent Supreme Court's Grand Chamber decision (Supreme Court of the Czech Republic, decision of 12 February 2020, case No. 31 Cdo 3534/2019), where the Supreme Court opted for the latter and more favourable approach for the arbitration practice. Thus, the Court held that: "*[i]f the ground of invalidity concerns only a part of the arbitration clause that can be separated from the rest of the arbitration clause, only the (invalidated) part of the arbitration clause is invalid*." (Supreme Court of the Czech Republic, decision of 12 February 2020, case No. 31 Cdo 3534/2019, para. 38). In the given case, there was a primary nomination procedure and a subsidiary nomination procedure for the appointment of the arbitrators agreed in the arbitration agreement. While the primary procedure (agreement on three arbitrators, from which the claimant could choose) was valid, the subsidiary procedure (applicable in a situation where none of three arbitrators was available) was invalid, as it gave one party an unlimited and unilateral choice from all the lawyers registered with the Czech Bar Association.

The competence-competence principle is also enshrined in Czech law in a form favourable for arbitration practice. Under Section 15 of the Arbitration Act, arbitrators rule on their own jurisdiction, which is compliant with Article 16 of the Model Law. If the respondent objects to the arbitral tribunal's jurisdiction in a court after an arbitration has been initiated, the court will stay its proceedings until the arbitral tribunal decides on its jurisdiction. If, however, an objection to the arbitral tribunal's jurisdiction is filed with a court before the commencement of the arbitration, the court will decide if there is a valid arbitral agreement (Section 106,

[20] This reflects Article 16, paragraph 1 of the Model Law.

Code of Civil Procedure). The parties must raise any objection they may have to the arbitral tribunal's jurisdiction in their first action in the proceedings; otherwise, the objection is considered waived.[21]

6. Disclosures and Disqualifications of Arbitrators

The issue is governed by sections 8, 11 and 12 of the Arbitration Act. Section 8 para. 1 lays down the basic requirement of impartiality of the arbitrator, similar to those contained in arbitration laws around the world.[22] Paragraph 2 goes on to stipulate the duty of disclosure of the arbitrator.[23] An arbitrator already nominated or appointed shall be disqualified from hearing the case if the circumstances doubting his or her impartiality, referred to in Section 8, should subsequently come to light (Section 11, Arbitration Act). An arbitrator who does not meet the impartiality standards shall resign, and if he or she does not resign voluntarily, the parties may agree on a procedure for his or her removal, or either party may apply to the court for a ruling on the disqualification (Section 12, Arbitration Act).[24] Arbitration rules of arbitration institutions may lay down more detailed rules on the procedure of removal. Under Section 31, Item c) of the Arbitration Act, an arbitral award may be challenged on the ground that an arbitrator was not entitled to decide in the case based on the arbitration clause or otherwise did not have the capacity to act as arbitrator, but an application for challenge shall be rejected if the argument could have been raised during the arbitral proceedings but the party failed to do so (Section 33, Arbitration Act).

In recent years, the Supreme Court has had several opportunities to rule on these basic rules and provide more details on their practical application (Supreme Court of the Czech Republic, decision of 18 November 2020, case No. 23 Cdo 1337/2019; decision of 18 November 2020, case No. 23 Cdo 3972/2019; decision No.

[21] This solution is also compliant with Article 16, paragraph 2 of the Model Law, under which "[a] plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence."

[22] The provision reads as follows: "An arbitrator shall be disqualified from hearing and deciding a case if, having regard to his or her relationship to the case, the parties or their representatives, there is reason to doubt his or her impartiality."

[23] The provision reads as follows: "Whoever is to be or has been nominated or appointed arbitrator shall, without any delay, notify the parties or the court of any circumstances that might raise a reasonable doubt as to his or her impartiality and would disqualify him or her as an arbitrator."

[24] The parties may agree on a procedure replacing the court ordered removal, but such procedure always has to fully respect the equality of arms principle – the Supreme Court of the Czech Republic, decision of 16 December 2020, case No. 23 Cdo 4006/2019.

23 Cdo 4006/2019 (supra)). The Supreme Court has fully embraced this opportunity and, more importantly, it has done it mostly in a way that is in line with modern standards of international arbitration practice. First of all, the Supreme Court has provided more guidance on the exact content of the requirement of impartiality under Section 8 of the Arbitration Act. The Supreme Court has noted that an arbitrator has to be impartial and independent. Independence can be understood to mean objective absence of personal, professional or economic ties of the arbitrator to the parties to the dispute. Consequently, impartiality usually represents the absence of subjective favouritism of one of the parties to the dispute. Bias is an expression and manifestation of a lack of impartiality that has reached a certain degree and intensity, can be objectively examined, and is a procedural instrument [and reason] for disqualifying not only the judge but also the arbitrator (Supreme Court's decision No. 23 Cdo 1337/2019 (supra), para. 19). Typical examples of an arbitrator who is not independent or impartial include situations where the arbitrator is also a party to the proceedings or a witness, or where he or she may be prejudiced in his or her rights by the proceedings or the outcome; the same applies if he or she has a familial, friendly or manifestly hostile relationship with the parties to the proceedings, or a relationship of economic dependence (Supreme Court's decision No. 23 Cdo 1337/2019 (supra), para. 79).

What is important, the Supreme Court has held that when assessing an arbitrator's (lack of) impartiality (i.e., his or her potential bias) a court can take into account the *IBA Guidelines on Conflicts of Interest in International Arbitration* (the "Guidelines"),[25] which fully reflect the international standards in the field. The Supreme Court has clarified that these Guidelines are not binding *per se*, but that they might serve as a "source of inspiration" (Supreme Court's decision No. 23 Cdo 1337/2019 (supra), para. 22). The Court's explicit recognition of this important and widely accepted instrument has been welcomed by Czech arbitration practice (Hrodek & Marchand, 2021). However, when applying the impartiality standards, the Supreme Court seems to be more lenient than the Guidelines,[26] as it has held that the repeated nominations of the same arbitrator by one party does not mean a (presumption of) economic dependence without further proof (Supreme Court of the Czech Republic, decision of 23 January 2018, case No. 20 Cdo 4022/2017, confirmed in decision No. 23 Cdo 1337/2019 (supra), para. 21; or decision No. 23 Cdo 3972/2019 (supra), paras. 80-81).[27]

[25] The most recent is the 2024 version.

[26] According to Art. 3.1.3 of the Guidelines (Orange List), the disclosure is required already when the arbitrator has been appointed arbitrator by one of the parties, or an affiliate of one of the parties on two occasions over the past three years.

[27] On the other hand, the Constitutional Court of the Czech Republic admitted that repeated

The same standards of impartiality and independence pertaining to the arbitrators apply also to the so-called "appointing authority", i.e., the person appointing arbitrators (usually the presiding arbitrators) in the cases where the selection is done by the parties or a party has failed to make an appointment (nomination) (Supreme Court's decision No. 23 Cdo 3972/2019 (supra), paras. 75-79).

Regarding the duty of disclosure, the Supreme Court has held that the arbitrator is not obliged to disclose any slightest relationship with the parties or their representatives, but only those that reach a certain intensity and are capable of raising justified doubts about the arbitrator's impartiality or independence (Supreme Court's decision No. 23 Cdo 1337/2019 (supra), para. 24). The duty of disclosure in intended to inform the parties of the facts which, according to the arbitrator's own assessment, do not constitute grounds for his or her disqualification, but the arbitrator must also take into account that these circumstances need not be assessed in this way by the parties, who, on the contrary, may perceive them as a threat to an independent and impartial treatment. The notification obligation therefore does not concern facts that are objectionable from the arbitrator's point of view (these automatically lead to his or her disqualification), but facts that could be considered as such by a party (Supreme Court's decision No. 23 Cdo 1337/2019 (supra), para. 25). An arbitrator must not be satisfied that he or she does not subjectively feel biased, but must always consider whether, in the circumstances of the case known to him or her, legitimate doubts as to his or her impartiality are excluded (Supreme Court's decision No. 23 Cdo 1337/2019 (supra), para. 26). A breach of the duty of disclosure does not automatically lead to a disqualification (removal) of the arbitrator, it rather enables the party to raise this undisclosed information (which the party could not have been aware of prior to that) even later in the arbitration proceedings or even in the set-aside proceedings (Supreme Court's decision No. 23 Cdo 1337/2019 (supra), paras. 27-31).[28]

As suggested above, if an arbitrator who fails to meet the standards of impartiality hears the case, it is a ground for a successful challenge of the award in the set-aside proceedings under Section 31, Item c) of the Arbitration Act (Supreme Court's decision No. 23 Cdo 1337/2019 (supra), paras. 32–33; or decision No. 23 Cdo 4006/2019 (supra)).

nominations might be problematic and lead to an economic dependence, but this was in an extreme case of 13,000 (!) cases where the same person was nominated (Constitutional Court of the Czech Republic, decision of 16 August 2019, case No. II.ÚS 1851/19).

[28] The same applies also in case when the arbitrator's disclosure declaration has not been forwarded by the arbitration institution to the parties. (Supreme Court of the Czech Republic, decision of 30 August 2023, case No. 23 Cdo 2193/2022, para. 49).

7. Enforcement of Arbitral Awards

Denial of enforcement of an arbitral award is not commonplace in Czechia. That is mainly because the country is a signatory of most of the international treaties relating to arbitration, and thus applies pro-arbitration international practice. The Arbitration Act states that its provisions apply only if they do not contradict with an international treaty. Therefore, the New York Convention takes precedence over the Arbitration Act, and foreign arbitral awards issued in jurisdictions that are party to the New York Convention must be enforced in a similar manner as domestic arbitral awards (issued in Czechia). The Supreme Court has recently held that where both the European Convention on International Commercial Arbitration and the New York Convention are applicable, the New York Convention takes precedence (Supreme Court of the Czech Republic, decision of 16 May 2019, case No. 23 Cdo 3439/2018).[29] Provisions on recognition and enforcement of arbitral awards are also contained in a number of bilateral treaties on legal assistance concluded between the Czech Republic and many of the former socialist block countries.

However, between 2016–2021, there had been an issue with foreign arbitral awards enforcement, concerning the way in which it is possible to enforce a foreign arbitral award. In the Czech Republic, the creditors may choose between the court enforcement under the Code of Civil Procedure, or enforcement by private bailiffs pursuant to the Code of Enforcement Procedure (the "CEP"). In practice, the enforcement by private bailiffs is much more effective, and therefore predominantly preferred to the court enforcement. After the 2012 amendment to the CEP, the amended CEP Section 37, para. 2, Item b) stipulated that foreign decisions shall not be enforced by private bailiffs unless declared enforceable according to directly applicable EU law/international treaty or recognized in special court proceedings. In a quite surprising line of case law, the Supreme Court interpreted this provision in a way preventing private enforcement of foreign arbitration awards, including those governed by the New York Convention, except for those that had been recognized in special court proceedings (Supreme Court of the Czech Republic, decision of 3 November 2016, case No. 20 Cdo 1165/2016; decision of 16 August 2017, case No. 20 Cdo 5882/2016; decision of 12 June 2018, case No. 20 Cdo 1754/2018; decision of 11 August 2020, case No. 20 Cdo 2155/2020).[30] Given the wide criticism by both academia and the practitioners (Bříza, 2017, pp. 53-54; Rathouský & Skorkovská, 2017, pp. 100-101; Hoder, 2019, p. 62; Miklíková & Vacek, 2019; Pfeiffer, 2021 pp.

[29] The decision primarily dealt with the issue whether the arbitration agreement might be concluded in electronic form through email, to which the answer was affirmative, i.e., also in line with modern trends (see more details in Bříza, 2020, pp. 143-155).

[30] There is a detailed and critical account of these decisions (Pfeiffer, 2021, pp. 335-343).

335-343), and the fact that the Constitutional Court had refused to intervene (Constitutional Court of the Czech Republic, decision of 26 November 2019, case No. III. ÚS 170/18; decision of 30 November 2020, case No. II.ÚS 3141/20), the Czech legislature stepped in, and in 2021 amended the CEP (Act No. 286/2021 Coll., effective since 1 January 2022). Even though the legislature did not change the problematic requirement that foreign arbitral awards had to be recognized in court proceedings,[31] it enabled the award-creditors to file applications for recognition simultaneously with applications for enforcement by bailiffs (Section 35, para. 6, CEP), which was not possible under the previous legislation. This has in fact resolved all the practical problems, having enabled them to initiate the enforcement proceedings through private bailiffs with all the freezing effects on the debtor's property, while at the same time the court decides on the recognition of the award.[32]

8. Concluding Remarks

We believe there is no serious reason not to have a seat of arbitration in Prague or elsewhere in our country. As follows from this paper, Czechia has effectively dealt with some of the country's historical challenges and particularities of arbitration. In fact, the country nowadays provides a globally competitive framework for arbitral proceedings, which is supported by a revival of pro-arbitration case law and experienced professionals.

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[31] One might argue that this is in violation of the New York Convention (Pfeiffer, 2021. pp. 341-343; or Zabloudilová, 2022, pp. 282-283).

[32] The authors have practical experience with this new regime, and the proceedings are usually quite quick, taking only a few weeks, at least at the first instance.

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