

Dispute resolution in the Czech Republic - Commercial disputes overview

I. Introduction

Commercial disputes in the Czech Republic that parties are not able to settle amicably or through mediation can typically be resolved in court in litigation or arbitration.

The majority of local disputes are dealt with by regular courts of law. In general, the Czech court system distinguishes between four areas of law - (i) civil (which includes commercial and business litigation); (ii) criminal; (iii) administrative; and (iv) constitutional.

The hierarchy of Czech courts consists of four instances of courts of law - (i) district courts; (ii) regional/municipal courts; (iii) superior courts; and (iv) the supreme court or - depending on the type of the matter - supreme administrative court, and the independently existing Constitutional Court, which serves as the supreme body solely for the protection of constitutional principles of the Czech Republic.

Arbitration as an alternative forum for resolution of commercial disputes is becoming increasingly popular and the number of domestic commercial disputes has risen significantly in the course of past several years (number of submitted claims to the Arbitration Court increased to 450 in 2003 in comparison with 282 in 2002 and 216 in 2001).

Commercial international disputes arising out of international contracts (ie, for purposes of this overview, disputes based on contracts between a local - Czech - and a foreign national) are also frequently resolved by arbitration, in Prague or elsewhere, depending on the choice of the pertinent parties.

II. Commercial Court litigation

General

Commercial litigation in the country has developed quite rapidly over the past several years and, as part of that development, continues to lean towards an adversarial process from the inquisitorial conduct of trial (on which the Code of Civil Procedure was originally based), with significant emphasis put on documentary evidence.

Czech litigation is generally perceived as slow and protracted. The delays in the proceedings are often result of a significant backlog of cases pending at the pertinent court. However, as a result of significant recent efforts, the duration of the proceedings is being reduced in order to provide for more effective and expeditious decision-making and resolution process.

As a rule, commercial disputes are heard in the first instance by regional/municipal courts (as opposed to district courts, which are the lowest courts in the hierarchy normally designated to hear all cases in the first instance). As such, the regional courts (which otherwise also serve as the appellate instance for decisions of district courts) logically offer a more sophisticated and business-oriented approach and, in most cases, are capable of dealing with complex commercial issues arising in the course of the proceedings.

Because the law of the Czech Republic is based on the continental system of written law, the Czech courts are not bound by precedents. Therefore, previous decisions of courts are not recognised as sources of law in the Czech Republic, with the exception of decisions of the

Constitutional Court, which are binding for all persons and institutions in the country, including other courts.

Civil proceedings

Commercial litigation proceedings are governed by the Code of Civil Procedure, Act No. 99/1963 Coll., as amended (the 'Code').

The provisions of the Code govern all stages of the proceedings including the preliminary proceedings, first instance proceedings, appellate proceedings, proceedings involving judicial review of decisions issued by administrative bodies of the Czech Republic and enforcement proceedings.

In the preliminary proceedings, the court can assist the parties in settling their dispute and confirm the settlement by a issuing a decision in that respect, order pre-trial preliminary injunctions and conservatory measures and orders to secure or cease evidence if a concern exists as to its availability at a later stage of the proceedings.

The first instance proceedings are, in commercial cases, initiated by an action filed by the claimant with the pertinent first instance court having jurisdiction (subject matter and territorial) over the matter. The action must, at minimum, contain: (i) the names and addresses and other identification data of the parties (including their legal representatives, where applicable); (ii) statement of the relevant factual basis for the claim; (iii) identification of evidence on which the claimant intends to rely; and (iv) statement of relief sought by the claimant. The court fee must be paid by the claimant in order for the court to initiate the proceedings. As a rule, the claimant carries the burden of proof and, accordingly, must provide evidence supporting its case. The Czech courts must only issue their decisions based on sufficiently established facts and, therefore, the courts may also order certain types of evidence to be produced or obtained from the defendants or even without the assistance of the parties (such as, for example, expert opinions). It is solely down to the discretion of the court to interpret the law and evaluate the evidence submitted to or obtained by it. The first instance proceedings result in the decision of the court on the merits of the case, including the ruling on the relief sought and allocation of fees and costs of the proceedings (including eventual reimbursement of those fees and costs to the successful party in the proceedings by the other party). The decision must contain reasoning explaining the grounds for the decision and the relief granted (or denied, as the case may be). If the decision is not appealed as described below, it becomes effective and enforceable.

Appeal, as a general procedural remedy, is available against any decision of the court made in the first instance proceedings (with the exception of certain procedural decisions made by the court in the course thereof). Generally, the appeal must be filed within 15 days following the receipt of the decision by the appealing party. The appeal shall cause a suspension of the legal effect of the decision issued by the court of first instance until the appellate decision is issued. The appellate court is not bound by factual findings made by the court of first instance and may either: (i) reject the appeal; (ii) confirm the decision of the first instance; (iii) change the decision of the first instance; or (iv) invalidate the decision of the first instance and return the matter to the court of first instance (unless another manner of disposal with the matter is suitable). In certain cases and under strict criteria prescribed by the Code, an extraordinary appeal may be available against a decision of the appellate court, or an action to reopen the

proceedings can be filed. These extraordinary remedies, however, do not have suspension effect with regard to the legal effect and enforceability of the appellate decision.

Judicial review is available for the decisions issued by administrative bodies of the Czech Republic in administrative proceedings which affect the rights of the claimant (by creating, changing, canceling or rejecting such rights). The review is commenced by an action which must be filed within two months following the receipt of the pertinent administrative decision by the claimant and, following the review, the court may either reject the action, deny the review or issue a judgment overruling the administrative decision.

Enforcement of an effective decision issued by the court can only take place by one of the means prescribed by the Code, including attachment of salary, attachment and sale of movable or immovable property and assignment of receivables.

Court fees in the Czech Republic are generally minimal. With respect to the attorney fees, however, the Czech courts are unlikely to recognise and award fees based on calculations other than the official decree of Ministry of Justice. The decree prescribed a firm method of calculation or a fixed amount of attorney fees for each stage of the civil proceedings. As a result, the successful party is unlikely to recover the complete costs it has incurred in the respective litigation.

Enforceability of foreign judgments in the Czech Republic. Judgments made in some countries other than the Czech Republic may, subject to satisfaction of certain criteria, be enforced by Czech courts in the Czech Republic. The basis for such enforcement may either be a bilateral treaty or a multinational convention. For example, judgments delivered in France, Italy, Slovakia and, in limited cases, certain other countries will generally be enforceable in the Czech Republic. However, there is no specific basis for judgments issued in the USA, Canada or Great Britain to be enforced in the Czech Republic and a party seeking to enforce such judgments in the Czech Republic would have to rely on reciprocity and its recognition as the sole ground for such enforcement.

Nevertheless, in some cases judicial assistance can be obtained through Czech courts - for example, a treaty with Great Britain provides for mutual court-procedure assistance in some areas.

The above described situation will of course change following the date of accession of the Czech Republic to the European Union (expected to occur on 1 May 2004), as a result of the direct applicability of Council Regulation (EC) No 44/2001 and corresponding requirements of EU-wide recognition and enforcement of judicial decisions.

III. Arbitration

General

The Czech Republic has not adopted the UNCITRAL Model Law on International Arbitration of 1985 and, instead, has enacted its own Act No. 216/1994, Coll. on Arbitration Proceedings and Enforcement of Arbitral Awards (the 'Arbitration Act'), which governs the arbitration proceedings conducted in the Czech Republic. Nevertheless, with certain exceptions, the Arbitration Act provides for procedural rules similar to legislation in countries with developed arbitration practice and meets the standards set by the relevant international treaties. The

Arbitration Act applies to both institutional, as well as ad hoc arbitration.

In addition, by operation of an explicit reference contained in the Arbitration Act, the provisions of the Code are also applicable mutatis mutandis to the arbitration proceedings.

Finally, arbitration proceedings are, of course, governed by the arbitration rules of the chosen arbitration institution or by the rules agreed by the parties (which the parties are allowed to do).

Arbitration agreements, arbitrability, arbitration proceedings

In general, all property-related matters are arbitrable in the Czech Republic, as long as they involve matters that the parties would otherwise be allowed to settle amicably. Commercial disputes shall usually satisfy this basic criterion, with the exception of claims made as part of enforcement of judgments and disputes arising in the course of bankruptcy or insolvency proceedings.

Matters excluded from arbitration include issues of personal status, parental disputes, patrimonial disputes and other matters where a civil court may commence the proceedings of its own initiative.

Parties may agree to submit to arbitration all disputes arising between them from a particular contractual relationship or they can enter into an arbitration agreement only for a particular existing dispute on an ad hoc basis. In both instances, Czech law requires the arbitration agreement to be in writing. The parties are free to agree on the arbitration institution, the place and language of the arbitration, the number and the manner of appointment of the arbitrators, the law governing the proceedings and determine the set of rules to be applied to the proceedings between them, either by reference to existing rules or by drafting their own rules of procedure. Such arbitration clause, if contained in a written agreement, is separately enforceable.

Arbitrators are authorised to decide on their own jurisdiction

Arbitration proceedings adhere to principles of equal treatment of the parties and equal opportunity of each party to be heard, the proceedings are not public and are faster and less formal than proceedings before a court of law, although it is important to note that, under the Arbitration Act, the arbitrators do not have the power to issue preliminary injunctions or conservatory measures and a party seeking such measures is directed to a civil court of law to obtain such measure

Arbitration institutions

The only permanent arbitral forum in the Czech Republic that hears general commercial disputes is the Arbitration Court attached to the Economic Agricultural Chambers of the Czech Republic and Agricultural Chamber of the Czech Republic (the 'Arbitration Court'). The Arbitration Court conducts the proceedings in accordance with its own Rules of Arbitration, as well as other rules, as agreed by the parties in the pertinent arbitration agreement.

Arbitration awards

Arbitration awards must be made by the arbitrators in accordance with applicable substantive law, as agreed by the parties in the pertinent agreement or, in the absence of such agreement, as determined by the arbitrators in accordance with applicable law. Arbitrators are only allowed to

decide disputes ex aequo et bono subject to an express agreement of the parties granting such power to the arbitrators. Awards issued by the Arbitration Court are final with no appeal available and can only be challenged in court on the grounds of non-existence or invalidity of the arbitration agreement, non-arbitrability of the matter decided, lack of authority of arbitrators and certain other strictly listed grounds.

Arbitration awards issued in the Czech Republic are generally enforceable by courts in the Czech Republic and abroad, in accordance with relevant international conventions and treaties. In that regard, the Czech Republic is a party to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention of 1958) as well as the Geneva Convention of 1961 on International Commercial Arbitration. Subject to existing reciprocity between the states, arbitral awards made in other signatory states are generally enforceable in the Czech Republic, provided that they are capable of enforcement by a procedure prescribed by the Code, are enforceable under the laws of the country in which it was issued, may not be subject to challenge and setting aside and is not contrary to the public policy of the Czech Republic.

Arbitration costs

Although arbitration fees and administrative costs of the arbitration court are initially borne and paid by the claimant, ultimately, the party that loses the dispute pays those fees unless the parties agree otherwise.

Each party bears its own costs incurred in the arbitration unless a good cause is shown by a party for partial reimbursement thereof by the other party.

IV. General considerations

In consideration of the desire to obtain a practically worldwide enforceable decision in fast and effective proceedings, it is generally recommended to submit a dispute in international commercial matters in the Czech Republic to arbitration.

Arbitration will also be better suited if the dispute and the proceedings require the use of a foreign language (where the arbitration rules usually allow for native speakers to act as arbitrators) or, even more so where the dispute may require determination of issues of foreign law, where arbitration provides more flexibility in such matters.

Civil courts in the Czech Republic, on the other hand, will guarantee stricter adherence to procedural rules and compliance of the parties with formal requirements at all stages of the proceedings and will be more useful and effective if the nature of the dispute necessitates the implementation of preliminary injunctions or conservatory measures, as crucial means of achieving the ultimate result of the claim and relief sought.