GETTING THE DEAL THROUGH

Dispute Resolution

in 50 jurisdictions worldwide

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Contributing editor: Simon Bushell

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Czech Republic

Jan Tomaier and František Honsa

Brzobohatý Brož & Honsa, v.o.s.

Litigation

1 Court system

What is the structure of the civil court system?

The Czech judicial system is a unified system of general courts consisting of four organisational elements:

- district courts;
- regional courts;
- high courts; and
- the Supreme Court and Supreme Administration Court.

In addition, the Constitutional Court is competent to hear cases involving issues protected by constitutional law.

In civil proceedings, courts consider and decide any and all private law matters, namely matters arising from civil, labour, family, entrepreneurial and commercial relationships and other legal matters specifically provided for by substantive law.

District courts

There are 75 district courts, 10 courts for the individual bouroughs of Prague and a municipal court in Brno on this level. These courts generally serve as the first instance courts in civil proceedings.

Regional courts

The next level of the court hierarchy consists of seven regional courts and a municipal court in Prague. These courts act as the appellate courts in cases where the district court served as a first instance court. In the cases specifically set out in the Civil Procedure Code, the regional courts act as the first instance courts (in the area of protection of personhood, copyrights, a broad area of disputes arising from the legal relationships of entrepreneurs, cases concerning the Commercial Register, claims arising from commercial obligations in which the pecuniary performance exceeds 100,000 korunas (approximately €3,980), etc).

High courts

The next level consists of two high courts with their seats in Prague and Olomouc. In principle, these courts act as the appellate courts over decisions issued in the first instance by the regional courts.

The Supreme Court

The highest position in the hierarchy of general civil courts is the Supreme Court of the Czech Republic, with its seat in Brno. Its main task is to decide on extraordinary appellate measures against the final decisions of appellate courts. Additionally, the Supreme Court has the role of unifying the case law of lower courts. The Supreme Administrative Court plays a similar role in public (administrative) affairs.

Currently, over 3,000 professional judges are employed in the Czech court system.

2 Judges and juries

What is the role of the judge and (where applicable) the jury in civil proceedings?

Czech civil litigation is principally adversarial and the judge has, generally, rather a passive role of as an 'impartial third party' who resolves the conflict between the parties on the basis of the evidence proposed by the parties and does not go beyond the scope of facts defined by the parties. On the other hand, the judge may examine evidence other than that proposed by the parties if a need for such evidence emanates from the proceedings. The judge may also examine the witnesses and usually does.

In civil matters other than disputes, the position of the judge is much stronger and judge's role is more inquisitorial.

First instance proceedings are generally held before a single judge in both district and regional courts. Appeals are heard before a panel consisting of two judges and one presiding judge.

In Czech civil litigation, no jury is involved in the proceedings. The only lay element in the civil litigation relates to labour disputes in which the cases are heard by a single judge accompanied by two laypersons from the public.

3 Limitation issues

What are the time limits for bringing civil claims?

Under Czech civil law, statutes of limitation are considered a substantive law issue and not a procedural law issue. As a general rule, claims are not enforceable once they become statute-barred, provided, however, that the other party raises an objection to the expiration of a relevant limitation period before the court. After the expiration of a limitation period, the right does not cease to exist but it becomes unenforceable in civil court proceedings.

The general limitation period of civil claims is three years. However, there are a number of exceptions to this general rule. For example, there is a one-year limitation period for rights arising from transportation agreements, a two-year limitation period for rights to compensation of damage and unjust enrichment, ten years in the case of (i) easements, (ii) rights awarded by the final decision of a court or other authority, (iii) acknowledged rights, or (iv) wilfully caused damage or wilfully gained unjust enrichment. In cases of claims arising from commercial relations, the limitation period is four years.

A statute of limitations generally commences when a right could have been first exercised. As a general rule, the limitation period is of an objective nature and it commences on the day when a certain matter of fact happened. Czech law also recognises subjective limitation periods concerning rights to compensation of damage and unjust enrichment, which are shorter and commence on the day on which the entitled person becomes aware of a certain matter of fact.

Generally, the limitation period cannot be waived, suspended or modified by an agreement of the parties. Although, regarding the claims under the Commercial Code, the party against which a right is becoming statute-barred may extend the length of the limitation period by means of a written statement issued to the other party, and may do this repeatedly. In such case, the total length of the limitation period may not exceed 10 years from the date when it first commenced. This statement can be made even before the limitation period commences. Moreover, in commercial relationships, the written acknowledgment of debt causes the beginning of a new four-year limitation period.

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

There are no steps that a party must take before issuing civil proceedings. In particular, there is no pre-trial discovery under Czech law. Special pre-action proceedings regarding an interim injunction or securing of evidence, if such evidence threatens to be lost, are available if such measures are needed for the protection of the claimant's rights. A claimant may also consider proposing that the court attempt to mediate the dispute. A mediated settlement will be enforceable as a binding decision if such settlement is reached.

5 Starting proceedings

How are civil proceedings commenced?

The commencement of civil proceedings depends on the nature of the proceedings. Civil disputes are commenced on the basis of a motion filed by a party and civil matters other than disputes can be commenced either upon a motion or ex officio.

The motion must contain the following essentials:

- the identification of the parties;
- description of the decisive facts;
- specification of the evidence; and
- specification of claimant's relief sought.

The court will commence the proceedings only after the claimant's payment of the court fees has been received.

6 Timetable

What is the typical procedure and timetable for a civil claim?

Generally, there is no time limit for the length of civil proceedings. Once the proceedings have been initiated, the court shall act, even without subsequent motions, to consider and adjudicate the case as expeditiously as possible and shall strive for an amicable settlement of the dispute.

After the claim has been filed, the court first examines the fulfilment of all of the procedural conditions (jurisdiction, whether the petition is formally correct, certain and intelligible, etc).

As a general rule, the chairman of the panel will order a hearing of the case. He or she will prepare a hearing such that the case may be decided usually in only one hearing. For that purpose, the chairman of the panel will call the defendant to make a written defence. The court may impose upon the defendant a duty to make a written defence in certain cases and specify a time limit for the submission of such statement, which cannot be shorter than 30 days. If no defence is filed, a presumption of acknowledgment of the claim takes place.

Statements of facts and evidence must always be presented in the course of the proceedings before the court of first instance. The appellate court, with certain exceptions, cannot take newly presented facts or evidence into account. In certain cases, the participants may specify the decisive facts and identify evidence to prove said facts no later than the end of the first hearing that takes place in such cases.

Czech law generally distinguishes between statutory procedural time limits (eg, the time limit for the filing of appeals, which is generally fifteen days from the delivery of the respective court's decision) and a judge's procedural time limits, which are determined by the court itself for the fulfilment of certain acts.

7 Case management

Can the parties control the procedure and the timetable?

The procedure is primarily managed by the judges. They commence, rule and terminate the hearing; they allow participants to speak and may also ask the speaker to fall silent. It is the judge that examines evidence and declares the decision. The judge also takes care that the hearing proceeds in a dignified and undisturbed way and that the case is being heard completely, equitably and without delay.

The timetable for proceedings is generally determined by the court. However, the parties may file motions for the commencement of proceedings, change their motions or withdraw them. If the nature of the case permits, the parties may terminate the proceedings by settlement. The parties thus often have considerable influence on the course of the proceedings in practice. Moreover, any party may request that the president of the respective court (as administrative body) take appropriate measures to speed up the procedure if there are delays in the proceeding and also, if such measure fails, to determine a time limit for the taking of the procedural step that is being delayed.

8 Evidence

What is the extent of pre-trial exchange of evidence? Is there a duty to preserve documents and other evidence pending trial? Are any documents privileged? Would advice from an in-house lawyer also be privileged? How is evidence presented at trial? Do witnesses and experts give oral evidence?

No discovery or other pre-trial exchange of documents or other forms of evidence exist in Czech litigation. Upon the request of a party, the judge may agree to conserve evidence before the commencement of the proceedings if there is a danger that the evidence will later not be presentable at all or that it will be impossible to present without great difficulty.

As a general rule, each party carries the burden of submitting and proving those facts upon which its claim or defence is based. The evidence is always examined by the court. In limited cases, the court may also examine evidence other than that proposed by the parties if it is necessary to examine such evidence in order to find out the facts during the proceedings.

Under Czech law, any means by which the facts can be ascertained may serve as evidence. The Czech Civil Procedure Code

expressly mentions the following:
- examination of witnesses;
- expert witnesses;
- reports and statements of authorities, individuals or legal entities;
- notarial or executorial records and other documents;
- inspection by the court; and
- examination of the participants.

As a matter of principle, the evidence given by witnesses, experts and parties is given orally. Witnesses and parties may only testify orally. In the case of experts, a written opinion is also usually required.

The witness is first asked by the judge to coherently explain what he or she knows of the subject of the examination. Subsequently, the judge will ask the witness questions necessary to complete or clarify his or her testimony. After that, the participants and experts are allowed to question a witness with the consent of the judge. The witness must tell the truth and conceal nothing. However, they may refuse to testify if such testimony could result in a danger of the criminal prosecution of the witness themselves or persons close to them who are specified by law.

The experts are appointed by the court if the decision depends on a consideration of facts requiring professional knowledge. The court shall hear the expert and may also order that the expert make the report in writing.

A proof submitted in the form of a document is carried out in such manner that the judge reads its contents or informs the participants thereof in a hearing. The person possessing a document necessary to the evidence may be ordered by the court to produce it. Also, upon the request of the court, all persons must inform the court gratuitously of facts that are important to the proceedings and the court's decision.

A party's testimony is ordered by the court, with certain exceptions, only if a given fact cannot be proven otherwise and if the testifying party agrees with the testimony.

The Czech Civil Procedure Law protects the duty of confidentiality of certain persons and ensures the protection of the confidentiality of secret information stipulated by a special act. Namely, attorneys-at-law are under a strict duty to maintain confidentiality as regards their professional relationships with their clients. Attorneys-at-law are, therefore, required by law to invoke professional privilege, unless the client releases him or her.

9 Interim remedies

What interim remedies are available?

The court may issue an interim injunction either before or during the proceedings if it is necessary to provisionally regulate the relationships of the parties, or if there is a danger that the enforcement of a judicial decision could be jeopardised.

A party may seek the court to order the other party to:
- deposit a sum of money or an item into the custody of the court;
- not dispose of certain things or rights; and
- do something, omit something or suffer something.

An interim measure may impose a duty upon somebody other than the participant only if such duty is fair to be demanded of them.

In general, interim remedies are not available in support of foreign proceedings unless such measures are allowed under Council Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I).

10 Remedies

What substantive remedies are available?

Four principal types of action can be distinguished:
- claim for performance (monetary or non-monetary). This type of action is used for claiming specific performance, including all kinds of monetary claims. With regard to all monetary claims, interest is payable at a rate fixed by statute. Damages under Czech law are compensatory. No punitive damages are granted, although in defamation, copyright and other specifically enumerated cases, a satisfaction in monies may be granted;
- claim for a declaratory judgment. This type of action is aimed at the declaration of the existence or non-existence of a legal relationship or a right between the parties;
- claim for a constitutive decision on personal status and
- claim for the creation, alteration or cancellation of a legal relationship.

As a general rule, the court may not exceed the petitions of the participants or adjudge something other or more than what was demanded by them.

11 Enforcement

What means of enforcement are available?

Enforcement takes place in the case that a final and conclusive judgment or arbitral award is not fulfilled voluntarily. There are two types of enforcement available: enforcement provided by the court, or enforcement ordered by the court but conducted by the private executor appointed by the court. In practice, most enforcements are conducted by the private executors. Monetary judgments may be enforced by various methods of property seizures (sale of moveable property or immoveable property in auction, assignment of receivables), seizure of bank accounts, wage deductions, establishment of a judicial mortgage on real property or the sale of an enterprise). Non-monetary judgments may be enforced by means of third-party performance, direct force (removal of persons or items) or indirectly by imposing fines.

If a procedural order is disobeyed, the court may impose a fine or the assistance of the police may be requested by the court (eg, for securing the appearance of a witness at a hearing).

12 Public access to court records

Are court hearings held in public? Are court documents available to the public?

As a principle, court hearings in the Czech Republic are open to the public. Under certain circumstances, the public may be excluded from a hearing. Thus, the court may exclude the public if a public hearing of the case jeopardises the secrecy of secret information protected by a special act, a commercial secret, an important interest of the participants or morals. Even if the public has not been excluded, the court may deny the access of minors or individuals where there is a danger that they will disturb the dignified course of the meeting.

The court file, which is comprised of all of the briefs, documentary evidence and documents produced by the court during the proceedings, may be inspected by the parties to the respective proceedings and their legal representatives. Also, copies of the

documents contained in the court file may be made. Third parties may access court records only if they are able to show a legitimate legal interest or other serious reason to do so and if such inspection does not conflict with the legitimate interests of the parties and with the protection of secret and confidential facts.

Information on the status of the proceedings, such as the date of the next hearing, issuance of a decision or the state of the proceedings, may be also found on the website of the central court database: http://infosoud.justice.cz/InfoSoud/public/search.jsp.

13 Inter partes costs

Does the court have power to order costs?

Civil proceedings do not start before the court fee is paid. Court and lawyers' fees are regulated by statute. These fees depend on the value of the claim in dispute. Under Czech law, each party shall pay its fees and expenses incurred in the course of the proceedings, as well as the costs of its representative. In its final decision, the court will determine the allocation of costs. A party who had full success in the case shall be reimbursed the costs by the losing party. If a party is successful only in part, the court shall proportionately divide the reimbursement of the costs. The court may also decide that no party is entitled to any reimbursement of costs. Lawyers' fees are reimbursable only in the amount set forth in special statutes. There are discussions whether full lawyers' fees may be claimed as damages in certain cases.

A claimant is not required to provide any security for the defendant's costs. However, the court may ask a party to deposit an advance payment on the costs based on proof proposed by a party or ordered by the court if the proof concerns the facts specified by the party or that are in their interest. In the case of interim measures, a security for potential damages caused by such measure is required of the claimant.

14 Fee arrangements

Are 'no win, no fee' agreements or other types of contingency or conditional fee arrangements available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a defendant share its risk with a third party?

An attorney-at-law is entitled to receive remuneration for his or her legal aid. The fee may be stipulated as a tariff fee specified in the ordinance on attorney-at-laws' tariffs or the attorney-at-law may agree with the client on a contractual remuneration.

In the case of contractual remuneration, the final amount may be stipulated:

- on a hourly basis or flat-rate basis;
- as a directly stipulated amount;
- as a contingency fee; or
- as a conditional fee.

The Ethical Code of the Czech Bar Association stipulates that contractual remuneration must always be adequate, which means there must not be an apparent disparity between the fee and the value and complexity of the suit. A contingency fee and conditional fee agreements can generally be agreed whenever provided that the amount of the fee is adequate. A contingency or conditional fee shall usually be found inadequate when stipulated above 25 per cent.

It is generally possible to bring proceedings using third-party funding and share the proceeds of the claim if such relationship is governed by a separate contractual relationship. Czech Procedural Law does not regulate a defendant's possibility to share its risk with a third party, however, a separate contractual relationship may be also set up.

15 Class action

May litigants with similar claims bring a class action or other form of collective redress? In what circumstances is this permitted?

Czech Civil Procedure Law allows class action only in enumerated cases. At present it is possible to file a class action in matters related to:

- unfair competition;
- consumer protection; and
- transformation of corporate bodies.

Once such petition is filed at the court, no other third person is allowed to initiate other proceedings regarding the same claim against the same defendant based on the same subject matter. However, such third person may join the current proceedings as an enjoined party. The final judgment issued by the court in the matter is effective also for such third person, independent of whether he or she joined the proceedings or not.

In the same matters as stipulated for class actions, the legal entities established to protect the interests of competitors or consumers may initiate court proceedings.

16 Appeal

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

An appeal is the only ordinary legal remedy against a judgment or resolution issued by a court of first instance. Any party can appeal against a judgment or resolution of a first instance court that is not yet in legal force. Appeals against only the reasons of the court decision are not admissible.

The appeal must be filed within 15 days after the delivery of a written execution of the contested court decision. If an appellant files an admissible appeal on a timely basis, the legal force of the contested decision is suspended.

An appeal may be grounded only on the reasons cited in the Civil Procedure Code, which covers all material and potential procedural failures of the court of first instance, such as:

- failure to meet procedural conditions;
- lack of jurisdiction;
- other defects that could have caused an incorrect decision on the merits of the case;
- incomplete ascertainment of the factual state of the case;
- incorrect factual ascertainments;
- incorrect legal consideration of the case; and
- certain other circumstances.

For further appeals, parties may seek extraordinary appellate measures to contest a decision that has already entered into legal force. The Czech Civil Procedure Law distinguishes the extraordinary appeal, nullity plea and retrial plea. Also, in the case of extraordinary appellate measures, the law sets out requirements regarding the time limits and the grounds of admissibility and which fulfilment is obligatory. If constitutional rights are infringed, a participant may file a constitutional complaint to the Constitutional Court.

17 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

Under Council Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I), which applies to judgments of the courts of member states of the European Union, a foreign judgment will be recognised in other member states without any special procedure being required. On the basis of Brussels I, a judgment given in a member state and enforceable in that state shall be enforced in another member state when, on the application of any interested party, it has been declared enforceable there.

Reciprocity with countries outside the European Union is also ensured by a number of multilateral and bilateral treaties on legal aid and on the recognition and enforcement of judgments.

The Act on International Private Law and Procedure further provides for the recognition and enforcement of foreign judgments in the case that no international treaty which the Czech Republic is a party to is applicable. The foreign judgment shall not be recognised if reciprocity is not ensured. This rule, however, does not apply to judgments against foreign nationals or foreign legal entities.

18 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

In order to obtain oral or documentary evidence, foreign courts may file a request for legal assistance. In relation to other EU member states, international legal assistance is provided on the grounds of:

- Council Regulation (EC) No. 1348/2000 on the service of judicial and extrajudicial documents in civil or commercial matters in member states; and
- Council Regulation (EC) No. 1206/2001 on cooperation between the courts of member states in the taking of evidence in civil or commercial matters.

The Czech Republic is also a contractual party to the Hague Convention on Civil Procedure of 1954 and to numerous bilateral treaties on judicial assistance.

According to the Czech International Private Law, the Czech courts shall provide foreign authorities of justice with legal assistance upon their request and upon the condition of reciprocity. The legal assistance may be rejected if the requested measure violates the Czech public order. The courts shall communicate with foreign authorities of justice through the mediation of the Ministry of Justice, unless it is stipulated otherwise.

Arbitration

19 UNCITRAL Model Law

Is the arbitration law based on the UNCITRAL Model Law?

Arbitration in the Czech Republic is governed by Act No. 216/1994, on arbitration proceedings and on the enforcement of arbitral awards (the Arbitration Act), which is not based on the UNCITRAL Model Law.

20 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

An arbitration agreement may be concluded by the parties only regarding property disputes between them. There is an exception concerning disputes connected with the enforcement of a decision and those disputes provoked by bankruptcy and composition in cases in which an arbitration agreement could not be concluded. Further, an arbitration agreement cannot be validly concluded if the dispute between the parties cannot be resolved by a judicial settlement under the Civil Procedure Code.

Arbitration agreements must be concluded in writing. The agreement is also considered as being concluded in writing if it has been concluded by telegraph, fax or electronic means that enable the recording of their content and the determination of the persons who concluded the arbitration agreement. Arbitration agreements are binding on the legal successors if such effects are not excluded in the agreement.

Arbitration agreements shall also be found to be valid when included as a part of the terms governing the basic agreement, if a written offer to conclude the agreement including the arbitration clause was accepted by the other party in a manner that its consent to the content of the arbitration agreement obviously follows.

21 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

Arbitration agreements should usually determine the number and the names of the arbitrators or at least stipulate the way the number and persons of the arbitrators are to be determined. The number of the arbitrators must be an odd number. In the event that the arbitration agreement does not determine so, each party shall appoint one arbitrator and these arbitrators shall elect the presiding arbitrator. If a party entitled to appoint an arbitrator fails to do so within 30 days from the delivery of the other party's request to do so, or if the appointed arbitrators are not able to agree on the presiding arbitrator within the same time period, the arbitrator or presiding arbitrator shall be appointed by the court unless the parties have agreed otherwise. Such application to the court may be filed by any party or by any of the appointed arbitrators.

In the case that the parties have agreed on the competence of a permanent court of arbitration and have not agreed otherwise in the arbitration agreement, they are considered to have submitted to the arbitration rules of the chosen court of arbitration. These arbitration rules may determine the way to appoint the arbitrators, their number and may stipulate that the choice of arbitrator is possible only from a list of arbitrators kept with the respective court of arbitration.

The appointed arbitrator may be challenged in case there are justifiable doubts as to their impartiality and the arbitrator does not resign voluntarily. The challenge procedure may be agreed between the parties or each of the parties may petition the court to remove the arbitrator from the proceedings.

22 Procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

The Arbitration Act respects the overriding principle of the autonomy of the parties to select the rules of arbitration. Also, the presiding arbitrator may decide the procedural issues if he or she is empowered thereto by the parties or by all other arbitrators. If such rules are missing, the arbitrators shall conduct the arbitration in such manner as they consider appropriate and shall proceed in a manner they consider suitable for finding out, without useless formalities, a factual basis for deciding on the case. The parties shall have equal opportunities for asserting their rights in the proceedings. The arbitrators are bound by mandatory provisions as to the commencement of an arbitration, the decision-making process regarding arbitrators' jurisdiction to hear the case and the formalities of the arbitration award and its issuance. The proceedings shall be oral and shall not be public, unless the parties agree otherwise. The arbitrators may examine witnesses, experts and parties only if they voluntarily appear and bear their testimony. Also, other evidence may be examined only if it has been granted to the arbitrators.

Unless the Arbitration Act stipulates otherwise, the provisions of the Czech Civil Procedure Code apply to the arbitration proceedings appropriately.

23 Court intervention

On what grounds can the court intervene during an arbitration?

The general courts may intervene in arbitration proceedings in various situations. The courts have the following powers, among others:

- to appoint the arbitrator or presiding arbitrator or, as the case may be, a new arbitrator;
- to decide on the challenge of the appointed arbitrator;
- to examine evidence and other procedural acts that the court is asked to undertake and that the arbitrators are unable to carry out themselves;
- to review the validity, existence and extent of the arbitration agreement under the respective provisions of the Civil Procedure Code;
- to exercise the custody of the arbitral awards;
- to set aside the arbitral award for statutory reasons; and
- to suspend enforceability of the arbitral award.

24 Interim relief

Do arbitrators have powers to grant interim or conservatory relief?

The arbitrators do not have powers to grant any form of interim or conservatory relief. Such relief may be issued and enforced by civil courts if it is revealed during the proceedings or even before its commencement that the enforcement of the arbitral award could be jeopardised, the court may order a preliminary measure upon the request of any of the parties.

25 Award

When and in what form must the award be delivered?

Czech law stipulates no time limit for the delivery of an arbitral award. It must be approved by the majority of arbitrators, made in writing and signed by at least the majority of arbitrators. The verdict of the arbitral award must be definite. Arbitral awards must contain the reasoning unless the parties have agreed that no reasoning is necessary.

The arbitral award shall be delivered to the parties in writing. After the delivery to the parties, there shall be a clause proving that the award has become final and conclusive affixed to it. An arbitral award that cannot be reviewed by other arbitrators or since the period for submission of a request for such revision has expired, shall acquire the same effects as the final and conclusive judgment of a court and shall be judicially enforceable as of the date of its delivery.

26 Appeal

On what grounds can an award be appealed to the court?

The Czech Arbitration Act sets forth that a delivered arbitral award is final and conclusive. However, the arbitration agreement may stipulate that the arbitral award may be reviewed by other arbitrators upon the request of any or both parties. Unless the arbitration agreement stipulates otherwise, the request for review shall be delivered to the other party within 30 days from the day of the delivery of the arbitral award to the requesting party. The revision of the arbitral award shall be a part of the arbitration proceedings and shall be regulated by provisions of the Arbitration Act.

An arbitral award may be set aside by the court upon the request of any of the parties if:

- no arbitration agreement could have been validly concluded in the matter in question;
- the arbitration agreement is null and void for other reasons;
- it was cancelled or does not apply to the matter in question;
- the arbitrator who took part in the case was not appointed to decide on the case on the basis of the arbitration agreement or otherwise or was not capable of becoming an arbitrator;
- the arbitral award was not approved by the majority of arbitrators;
- the party was not provided with the possibility to hear the case before the arbitrators;
- the arbitral award orders the party to execute a performance that was not requested by the entitled party or that is impossible or unlawful under the Czech law; or
- it is established that reasons for a retrial in the civil proceedings are given in the case (such as, for example, new evidence).

The request for the setting aside of an arbitral award must be filed within three months from the delivery of the arbitral award. Such request shall not suspend the enforceability of the arbitral award. However, the court may, upon the request of the obligated party, suspend the enforceability of the arbitral award if an immediate enforcement of the arbitral award could result in a considerable infringement to this party.

27 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

Domestic awards

A final and conclusive award is enforceable in the same manner as a judicial decision issued by a civil court (see question 11).

Foreign awards

Enforcement of foreign awards is governed by international multilateral and bilateral treaties and respective provisions of the Arbitration Act.

The recognition and enforcement of foreign arbitral awards shall be granted particularly in accordance with the New York

Update and trends

The Czech court system is currently implementing electronic and internet access to courts and public registries (eJustice). eJustice will enable participants:

- to file actions and other motions electronically, whereby the e-registry immediately alerts the parties to the imperfections of the motion. Such motion must be signed with an electronic signature;
- to observe the course of the proceedings online; and
- to make excerpts from public registries such as the Companies Register and Penal Register online at Czechpoints (easily accessible to the public).

The Czech judiciary system is thus becoming more transparent, user-friendly and effective.

Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The provisions of other international treaties on the recognition and enforcement of arbitral awards, to which the Czech Republic is a party, shall remain unaffected.

The Arbitration Act shall apply only in the case that no international treaty binding for the Czech Republic regulates the respective issue. Under the provisions of this act, foreign arbitral awards shall be recognised and enforced in the same way as Czech arbitral awards upon the requirement of reciprocity. The requirement of reciprocity shall be considered guaranteed also if the foreign state generally declares foreign arbitral awards enforceable upon the requirement of reciprocity. The writ of enforcement of foreign arbitral award shall always contain its reasoning.

28 Costs

Can a successful party recover its costs?

The parties may agree their own method of cost recovery, otherwise the rules set forth in the Civil Procedure Code shall apply appropriately (see question 13). The rules of permanent courts of arbitration may contain provisions concerning the costs of proceedings and remuneration of arbitrators. These rules will apply in cases in which the parties have agreed on the competence of the specific court of arbitration and have not stipulated otherwise in the arbitration agreement.

Alternative dispute resolution

29 Obligatory ADR

Is there a requirement for the parties to litigation or arbitration to consider alternative dispute resolution before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process? What types of ADR processes are commonly used? Is a particular ADR process popular?

There is no requirement for the parties to litigation or arbitration to consider alternative dispute resolution unless agreed otherwise. Even if the court has the duty to attempt an amicable settlement between the litigating parties, the parties cannot be forced to participate in such process.

The following types of ADR process, among others, are commonly used:

- mediation;
- conciliation;
- renegotiation;
- expert intervention; and
- mini-trial (in commercial relationships).

Parties that wish to use any type of ADR procedure may enter into an innominate agreement in which they stipulate at least a minimum procedural framework of a chosen type of ADR procedure. The essential characteristic of ADR is its voluntariness (enabling the parties to withdraw from the ADR procedure in any case). The results of ADR are not enforceable unless the parties agree to conclude an agreement on the settlement in the form of a notarial deed and agree on its direct enforceability. Mediation and other ADR procedures are not institutionalised and, therefore, accepted rather cautiously.

Miscellaneous

30 Are there any specific features of the dispute resolution system not addressed in any of the previous questions?

The Czech Republic has a typical continental-law legal system where most disputes are resolved in civil proceedings, although the number of commercial arbitrations is rising. The Czech court system emanates from the tradition of German speaking countries and many similarities may be found in the systems of Germany, Austria and particularly Slovakia.

Brzobohatý Brož & Honsa

Jan Tomaier **jtomaier@bbh.cz**

Klimentská 1207/10
110 00 Prague 1
Czech Republic

Tel: +420 234 091 355
Fax: +420 234 091 366
www.bbh.cz