

Arbitration proceedings as a means of dispute resolution in international law with regard to the recognition and enforcement of foreign arbitral awards

Resumé

Arbitration as a method of settlement of disputes settlement has enjoyed growing popularity in recent several years. Arbitration stands between other alternative means of dispute settlement and the common court trial as a alternative dispute resolution.

Although negotiation, good offices, mediation, conciliation, inquiry, mini-trial, medarb or meadaloa are often used forms of the dispute settlement their awards cannot be enforced by the state authority. Those means are popular mainly in the business field where the parties are interested in the cooperation and where they aim to clear up some misunderstanding or technical problems rather than solve major disputes between them.

While the dispute should be solved by the binding way the parties would choose the arbitration as a legally framed procedure. Arbitral awards are then able to be enforced and the parties also have more exact boundaries for the whole procedure.

However, there is no unified definition of the arbitration, it could be described as a legal technique where the parties bring claim before one or more neutral persons (arbiters or arbitral tribunal) by whose award the parties agree to be bound. Moreover, it is form of dispute resolution which permits parties broad flexibility in scheming arbitral procedure.

Between the main important features of arbitration we could find lower level of formality in contrast with court trial, consent of the parties to settle their dispute in arbitration, equality of parties, time consuming efficiency and privacy of the parties as the arbitration procedure is not open to a public.

It is not unusual, even more in international business, that parties acquire arbitral award in a one state and then are willing to apply its effects in another state. Therefore many countries signed international treaties solving mutual recognition and enforcement of arbitral awards.

The Czech Republic is part of 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards and the 1961 The European Convention. Those treaties allow to use simultaneously any other treaty which would be the most profitable for the party. The Czech Republic has signed many bilateral treaties mainly with the European countries.

To be able to enforce its arbitral awards in foreign country it must be firstly recognized by the national law. The New York treaty requires for the dispute to be arbitrable. Arbitrability will be compared with the national law where party is willing to enforce arbitral award.

The Czech Arbitration act (governed by Act No. 216/1994 Coll.) provides three main cumulative conditions. Firstly, it must be property dispute, secondly it must be able to be resolved by the civil courts and finally there must be possibility to conclude on settlement. On the other hand, there are several types of disputes which are not arbitrable in any case. Partial disputes in frame of insolvency proceedings would be such situation.

The arbitral award is the final determination on the merits by an arbiter or arbitration tribunal. For the purpose of recognition and enforcement of the arbitral award we must differ between national and foreign arbitral award. According to the Czech Arbitration act arbitral award is national if it was issued in the Czech Republic.

There are no special requirements for recognition of national arbitral awards in Czech law. Civil court just takes it in relevance before it could be enforced. The New York treaty brought reciprocity rule. Where the state recognizes foreign arbitral awards there also its arbitral awards will be recognized by such foreign state. According to the New York treaty, every arbitral award should be recognized once it meets conditions determined by the treaty.

Where foreign arbitral award has not met the conditions of the law it could be refused to enforce it. However, Czech civil court is not endowed with the authority to revoke a foreign arbitral award. The court could only disable its effect and refuse it. As a consequence such arbitral award could not be enforced. Revocation in one state has nevertheless no impact to enforceability in another state.

Only national arbitral award could be revoked. This institution is not equal to the appeal proceedings. Arbitration has only one instance unless parties agreed to reassume the arbitral

award by the other arbiters. Therefore, there are legal reasons to revoke an award. They are defective arbitrability or arbitration agreement, lack of arbiter capacity, defective arbitral proceedings or violation of consumer's rights.

The most recent development of arbitration law aims to protect consumer as a party of the arbitration procedure. Although the European law is consistent in this field there were still blanks in national legal systems. The last amendments of the Czech arbitration law filled those blanks.

We can conclude that arbitration has strong position between means of dispute settlement. With its high efficiency, relatively stable legal frame and uniformity it is very powerful legal tool for dispute settlement in business as well as for the private issues.