

EL ARBITRAJE EN LA REPÚBLICA CHECA

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1. *What is the legal source of the rules regulating arbitration in your country?*

It is a statute “On arbitration and execution of arbitration judgements” (216/1994Coll.) and of course also many international treaties.

2. *In your country, does mandatory arbitration, besides voluntary arbitration, exist (i. e. mandatorily imposed by heteronomous rules)?*

Czech statute generally does not prescribe an arbitration in any case. The only mandatory exception is arbitration of collective dispute at works, where a strike is prohibited.

In case of negative answer:

2.1. *What prevents the introduction of mandatory arbitration?*

Nothing but the statute.

In case of affirmative answer:

2.2. *Are there rules providing for mandatory arbitration for the settlement of controversies which could not otherwise be subject to arbitration on the basis of the parties’ will?*

3. *How are arbitrators appointed?*

In particular:

3.1. *With reference to voluntary arbitration, is there arbitration in which the parties' will is subject to limitations as to appointment of arbitrators?*

Arbitrator can be any person who is fully capable to legal acts. If it is Czech citizen, he has to be adult, foreign citizen's capability according to the law of his state.

3.2. *With reference to mandatory arbitration, has the parties' will any influence on the appointment of arbitrators?*

Yes, they can together appoint whoever they want, or if there is no agreement, each party can propose an arbitrator to the Ministry of labor and social affairs. If they do not propose any name, Ministry can appoint arbitrator from its list.

3.3. *How is arbitrators' impartiality guaranteed?*

Impartial arbitrator is excluded. If there are any reasonable doubts that arbitrator is not impartial he has to resign. If there is no other will of the parties, the resigning arbitrator is replaced by the person chosen by the court.

3.4. *Is arbitration with more than two parties regulated by a specific set of rules?*

Czech legal system has no such rules.

3.5. *Are there specific rules on the contractual relation between the parties and the arbitrators?*

No, there are not any.

4. *How is the relation between arbitrators and judge regulated?*

4.1. *Is there a form of arbitration within the context of a trial whose carrying out is imposed on the parties by the judge they addressed to?*

No.

4.2. *Are the rules regarding competence and lawsuit pendency applied?*

In particular, referring to both voluntary arbitration (in its different forms) and, possibly, to mandatory arbitration.

4.3. *How is the arbitration plea deemed? A jurisdiction plea or merits of the case plea?*

A jurisdiction plea.

4.4. *Can traslatio iudicii (i.e. the shifting) between arbitrators and ordinary judge (and vice versa) be applied?*

Yes, if there is jurisdiction plea court can not decide, only if there is parties will not to respect previous agreement on arbitration.

4.5. *Does lawsuit pendency before the State judge (lis apud iudicem pendens) prevent arbitrators from deciding on the controversy?*

No.

4.6. *Does lawsuit pendency before arbitrators (lis apud arbitros pendens) prevent the State judge from deciding on the controversy?*

4.7. *Is the suspension of an arbitral proceedings taken into consideration while waiting for a decision of a preliminary question by the State judge?*

No.

4.8. *Is the suspension of a proceedings pending before the State judge taken into consideration while waiting for a decision of a preliminary question by arbitrators?*

No.

5. *Which are the forms of an arbitration proceedings?*

In particular:

5.1. *Is there a voluntary arbitration in which the parties' will is limited as to the proceedings regulation?*

No, parties can settle their own procedural rules.

5.2. *With reference to mandatory arbitration, has the parties' will any influence on the proceedings regulation?*

Yes, parties can settle their own procedural rules.

5.3. *Which are the arbitrators' powers regarding the collection of evidence?*

They can only collect evidences that are voluntarily given either by parties or others. They can ask state court to realize procedural steps, which arbitrators are unable to realize generally.

5.4. *Is judicial assistance to arbitrators taken into consideration for purposes of evidence collection?*

Arbitrators can ask state court for evidences which they are not able to collect by themselves.

5.5. *Is it possible for third parties (a) to be joined as parties in arbitral proceedings (b) intervene in arbitral proceedings?*

It is not forbidden.

5.6. *Can more than one connected arbitration proceedings be unified?*

Yes, it is possible.

6. *Which is the possible content of arbitrators' measures?*

6.1. *Can arbitrators render declaratory awards (i. e. awards which clarify a legal relationship which is uncertain) and constitutive awards (i. e. awards which create, modify or extinguish a legal relationship; e. g. the agreement is terminated for default)?*

They can render both.

6.2. *Can arbitrators deliver summary measures?*

No, it is an exclusive power of state courts.

6.3. *Can arbitrators grant precautionary measures?*

No, it is an exclusive power of state courts.

7. *With reference to voluntary arbitration.*

7.1. *Upon which criteria is determined the area of controversies which can be submitted to arbitration?*

It has to be a property dispute. Some kind of controversies are excluded (execution, bankruptcy).

7.2. *Is arbitration admitted for controversies whose object consists of rights which cannot be disposed of by the parties?*

No.

7.3. *Does the area of controversies which can be submitted to arbitration coincide with the area of disposable rights and/or with the area of controversies which can be transacted?*

Yes.

7.4. *Can the mandatory nature of rules to be applied be a limit to the possibility to submit the controversy to arbitration?*

No.

7.5. *Do controversies which can be submitted to arbitration coincide with controversies which may be subject to arbitration clause?*

Yes.

7.6. *Which are the subjective limits of validity of arbitration and arbitration clause?*

Unlimited, any person can be a subject of arbitration agreement.

7.7. *Is an autonomous action admitted in order to verify the validity of the arbitration agreement?*

Yes, general “action on designation” (whether the legal relationship exists or not).

7.8. *Is arbitration on issues non-exhausting the object of a jurisdictional proceedings admitted? (e. g. where arbitrators are demanded to quantify the damages resulting from a certain event, without prejudice to the issue relating to the right for compensation of these damages).*

It is not forbidden by the statute.

8. *Are there different types of voluntary arbitration?*

In particular:

8.1. *Is it possible to distinguish among the different types of arbitration in relation to the nature of the proceedings and/or to the relations between*

arbitration proceedings and state jurisdictional proceedings and/or to the effects acknowledged to the award and/or to its appeal regulation?

There is no distinction.

8.2. *Is there a contrast between jurisdictional arbitration and contractual arbitration?*

No.

In case of affirmative answer:

8.3. *Does the difference between the two types of arbitration concerns only the award effects or even its structure and/or nature?*

8.4. *Is the principle of the arbitration clause autonomy valid in relation to both types of arbitration (i. e. the principle according to which the contract nullity does not necessarily affect the arbitration clause contained there in)?*

8.5. *Is equity arbitration admitted (ex aequo et bono)?*

Yes, but both parties have to give a prior assent.

9. *Does voluntary arbitration includes also settlement and assessment agreement (i. e. an agreement aimed at settling a controversy) whenever their content is determined by a third party?*

It is not regulated.

9.1. *Does voluntary arbitration includes also the joint mandate to settle and the joint mandate to stipulate an assessment agreement?*

It is not regulated.

10. *How is contractual expert report (or arbitral expert report) construed?*

10.1 *Which is its regulation?*

It is not regulated.

11. *Which is the relation between arbitration and conciliation?*

In particular:

11.1. *Is attempt at reconciliation a necessary step in order to have access to arbitration proceedings?*

No. Conciliation as a method of the ADR is not regulated in the statutes.

11.2. *Is attempt at reconciliation used as a necessary step of arbitration proceedings and as a condition in order to proceed with the latter?*

No.

11.3. *Is attempt at reconciliation used as an optional method in order to define a controversy regulated by arbitration proceedings?*

No.

12. *In your country, are there systems of “informal justice” aimed at favouring conciliation-mediation between the parties (Mini-Trial, Summary-Jury trial, Moderated-Settlement, etcetera)?*

No.

In particular:

12.1. *Are they forms of alternative justice administered by private or public institutions?*

Arbitrators are private persons, the arbitration courts are not state authorities. But the arbitration courts must be established by the statute.

12.2. *Is there a legislative discipline of these forms of alternative justice?*

No.

12.3. *Which is the relation between these forms of alternative justice and the state jurisdiction?*

Mediation of collective disputes has no relation to state jurisdiction.

12.4. *Which is the relation between these forms of alternative justice and arbitration?*

Mediation of collective disputes is prior to arbitration. Attempt of mediation takes place in all collective disputes (collective labour law) before the following arbitration which is generally optional.

13. *Is arbitration award validity described by utilising expressions such as “decision validity”, “judgement validity” or similar ones?*

Yes.

14. *In your jurisdiction, are there rules containing the following expressions: “decision validity”, “judgement validity” or similar expressions used to describe the validity of contractual deeds (e. g. settlement or assessment agreement)? Which are these rules?*

No.

15. *Independently of the expressions utilised, do award effects and judgement effects issued by the State judge actually coincide?*

Yes.

In particular:

15.1. *Which are the objective and subjective limits of the arbitration award validity?*

Arbitration award could be set out only in property case (see 7.1). There are no subjective limits.

15.2. *The consequent effects of the award, both for the parties and third parties, are the same effects of a judgement issued by a judge?*

Yes.

15.3. *Does the award not appealed within the terms has the same resistance of a final judgement?*

Yes.

15.4. *In the affirmative, even though it is rendered when lacking an arbitration agreement, or for a controversy which cannot be submitted to arbitration? Even though its measures are contrary to public order?*

No. In these circumstances, the arbitration award could be canceled.

16. *Which are the effects on arbitration proceedings of the constitutional legitimacy issue of the rule that arbitrators are due to apply in the controversy decision?*

Arbitrators and their proceeding rules have to follow the constitution, especially right to the fair trial.

17. *Is a second instance arbitration admitted?*

No. The award can be cancelled by the court, if there is serious trial mistake.

18. *How can an arbitration award be appealed?*

There is no possibility of appeal. But the award can be reviewed by other arbitrators. This proceedings is a part of arbitration proceedings, if it is agreed by both parties.

19. *Are the above forms of appeal subject to a previous granting of executive validity to the award or, however, subject to the approval of the award by the State judge?*

See 18.

20. *Is there a specific regulation for arbitration, whose object is transnational private controversies?*

Generally no. Only if international treaty says so.

21. *How is regulated the granting of executive validity to arbitration award?*

Arbitrator has to grant the validity after delivery of award to both parties, if it is no more subject of review by other arbitrators (see 18).

22. *Is there a specific regulation aimed at granting executive validity to foreign awards?*

No.

23. *Which is the regulation taken into consideration in order to acknowledge and carry out foreign awards?*

Foreing awards can be acknowledged and carry out, if it is ensured reciprocity. But foreing awards also have to follow public order, must be executable by foreing law and mustnt' contain a wrong which causes an unexecutability of Czech arbitration awards.

24. *Which is the principle applied in order to distinguish between national awards and foreign awards?*

It depends on place, where the award is issued.

25. *How can the same litigation between the same parties pending before a foreign judge affect an internal arbitration proceedings?*

Litigation before a foreign judge has no effect.

26. *How can a pending foreign arbitration between the same parties, whose object is the same litigation, affect an internal arbitration proceedings?*

It can not affect.