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Selected Case Law of Czech Courts Related to Arbitration

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I. Essence of Arbitration and Arbitrability

8.01. Connected, *inter alia*, to the provisions of Section 1 of Act of the Czech Republic No. 216/1994 Coll., on Arbitration and the Enforcement of Arbitral Awards

ArbAct: Section 1 [**Scope of Act; Independence and Impartiality**][1]
Current Version of Section 1 of ArbAct: **This Act sets forth rules regulating:** **(a) the resolution of disputes by independent and impartial arbitrators,** **(b) the resolution of disputes arising from the administration of an association by an arbitration commission of the association in line with the provisions of the Civil Code,[7] and** **(c) the enforcement of arbitral awards.** **Footnotes Forming Part of Normative Text:** 7) Section 265 of the Civil Code.[2]

[1] The titles of the individual Parts and Sections provided in square brackets are not part of the normative text and have been supplemented by the author for better transparency of the contents.

Section 1 of ArbAct in Effect as of 01 April 2012:

This Act sets forth rules regulating the resolution of property disputes by independent and impartial arbitrators and the enforcement of arbitral awards.[3]

Section 1 of ArbAct Prior to Act No. 466/2011 Coll.:[4]

(1) This Act sets forth rules regulating the resolution of property disputes by independent and impartial arbitrators and the enforcement of arbitral awards.

(2) This Act does not apply to the resolution of disputes involving public non-profit institutional healthcare facilities established under special laws.

Legislative Developments Since 01 April 2012:

Section 1 of the ArbAct, as amended by Act No. 245/2006 Coll., Act No. 296/2007 Coll., Act No. 7/2009 Coll., Act No. 466/2011 Coll., Act No. 19/2012 Coll. and Act No. 91/2012 Coll., was newly reformulated by Act No. 303/2013 Coll., Amending Selected Legislation in Connection with the Adopted Recodification of Civil Law, as amended – see Part Seventeen, Article XX of the last mentioned Act which took effect on 01 January 2014.

[2] Section 265 of the Civil Code 2012 in effect since 01 January 2014 (cit.): If an arbitration committee is established, it shall resolve disputes falling within the association's self-governance to the extent determined by the *by-laws; unless the by-laws determine the competence of the arbitration committee, it shall resolve disputes between members and the association concerning the payment of membership fees and review decisions to expel a member from the association.* The provision is further elaborated on in Sections 266 to 268 of the same Act. Procedural rules are contained in Sections 40e to 40k of the ArbAct.

[3] The wording of Section 1 of the ArbAct was the subject of legislative interpretation, because the adoption of the ArbAct Amendment in the form of Act No. 19/2012 Coll., in effect since 01 April 2012, suffered from an obvious error. The current (full) text printed in this publication corresponds to the text published, for instance, in the ASPI system, as well as in the ÚZ (full texts) series no. 893, Ostrava: Sagit, 2012 and elsewhere. The author also believes that Section 1 of the ArbAct, valid and effective from 01 April 2012, thus only contained the former first subsection.

[4] Act No. 466/2011 Coll. of 06 December 2011 (promulgated and effective since 30 December 2011) repealed Subsection (2) in its entirety, leaving only the previous Subsection (1); the subsection is no longer identified with any number. However, the ArbAct Amendment 2012, in effect from 01 April 2012 (Act No. 12/2012), adopted on 20 December 2011, effective date: 01 April 2012, added the following words at the end of the former Subsection (2) (cit.): "… or if the proceedings before the financial arbiter have been commenced or if a decision on the merits has been rendered in such proceedings." As the author analyses below in greater detail, this amendment is a manifest legislative error obviously incapable of having the corresponding legislative effect and has thus not become part of valid legislation.

8.02. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 2487/2010 of 16 August 2012:[5] [**nature of arbitration; essence of arbitration; contractual theory; jurisdictional theory; difference from civil litigation; conditional exclusion of court jurisdiction; *lis pendens*; *res judicata*; autonomy; level and scope of protection afforded to the parties in arbitration by courts; finding law in arbitration**]: The fundamental difference from civil procedure in court (i.e. litigation) lies in the delimitation of the managing and decision-making authority – a court in civil litigation, an arbitrator or a permanent arbitral institution in arbitration. The arbitrator's[6] power to hear and resolve a dispute is based on the joint will of the parties to the dispute expressed in their arbitration agreement. This procedural agreement of the parties excludes the jurisdiction of courts (only conditionally, in view of Section 106(1) of the Code of Civil Procedure),[7] and establishes the jurisdiction of (an) arbitrator(s). Based on the voluntary acts of the parties, the **arbitrator thus replaces the court** where the latter should otherwise hear and resolve the case. However, the rights of the parties to direct the dispute resolution procedure are even more far-reaching; the parties to the dispute are, for instance, allowed to select the arbitrators, and to determine the applicable procedural rules, the seat of arbitration, the type of proceedings (oral or written), and even the criteria that should be applied to the merits (Section 25(3) of the ArbAct).[8/9]

[5] Preceding decisions in the case: (i) Resolution of the District Court for Pilsen-City [Czech Republic], Case No. 73 Nc 1420/2009 of 05 November 2009; and (ii) Resolution of the Regional Court in Pilsen [Czech Republic], Case No. 12 Co 12/2010-165 of 10 February 2010.

[6] The shorthand used by the Supreme Court in the reasoning for the decision should be interpreted as including an arbitrator [*ad hoc*], as well as a permanent arbitral institution.

[7] Code of Civil Procedure [Czech Republic] (approximate translation, cit.): Section 106 – *(1) As soon as the court discovers, on the respondent's objection lodged together with or before the first act of the respondent on the merits, that the agreement of the parties requires that the case be submitted to arbitrators or to an arbitral committee of an association, the court must desist from further examination of the case and discontinue the proceedings; the court, however, hears the case if the parties declare that they waive the agreement or that they do not insist on having the case heard by the arbitral committee of the association. The court also hears the case if the court determines that the matter is not arbitrable under the laws of the Czech Republic, or that the arbitration agreement is invalid or non-existent, or that examining the agreement in arbitration exceeds the scope of jurisdiction vested in the arbitrators by the agreement, or that the arbitral tribunal refused to hear the case. (2) If the court proceedings under Subsection (1) were discontinued and the same case was submitted to arbitrators or to the arbitral committee of the association, the original motion to commence the proceedings retains its legal effects, provided that the motion to commence the proceedings before the arbitrators or the arbitral committee of the association is lodged no later than within 30 days of receipt of the court's resolution discontinuing the proceedings. (3) If the arbitral proceedings were opened before the court proceedings, the court stays the proceedings on the non-existence, invalidity or expiration/termination of the agreement until the arbitrator(s) decide on their jurisdiction over the case or on the merits.*

[8] The Supreme Court of the Czech Republic has held that the nature of arbitration in terms of *contractual theory* v. *jurisdictional theory* is also a significant question of law. In this regard, the Supreme Court has invoked the landmark judgment of the Constitutional Court, Case No. I. ÚS 3227/07 of 08 March 2011.

[9] Act on Arbitration and the Enforcement of Arbitral Awards – Act of the Czech Republic No. 216/1994 Coll. (approximate translation, cit.) – Section 25 [Making Arbitral Award and Reasoning]:
Current version: *(1) The arbitral award must be adopted by the majority of the arbitrators, must be made*

(2) Arbitration **excludes parallel civil** [court] **proceedings** concerning the same issue. Arbitral awards have the same effects as final court decisions (Section 28(2) of the ArbAct),[10] which means that arbitral awards constitute *res judicata*, barring the parties from litigating the same claim again in courts. **(3)** In compliance with the principle of autonomy of will, the law honours the freely expressed will of the parties who wish to have their dispute heard and resolved by an arbitrator; courts are therefore not allowed to intervene in arbitration, except in strictly defined situations specified in the ArbAct. On the other hand, this does not mean that the purpose of arbitration is to eliminate or reduce the degree of protection that would otherwise be afforded to the parties in civil litigation; arbitration, just like litigation, aims at the peaceful resolution of the dispute between the parties. It is just that the parties have a special reason (for instance, expeditiousness or the confidentiality of the information discussed in the proceedings) to believe that arbitration is a more suitable solution. From this perspective, the submission of a dispute to arbitration means the transfer of legal protection to a different decision-making and law-finding authority,[11] rather than the waiver thereof; indeed, any other conclusion would render it conceptually unacceptable to consider arbitration as a dispute resolution method representing an alternative to litigation.

in writing, and must be signed by at least the majority of the arbitrators. The operative part of the arbitral award must be clear and unambiguous. (2) The arbitral award must contain reasons, unless the parties have agreed to dispense with reasons; this also applies to any arbitral award rendered pursuant to Section 24(2). (3) When making the award, the arbitrators apply the substantive law applicable to the dispute; they may, however, resolve the dispute according to the rules of equity, but only if the parties have explicitly authorized them to do so.

The Act in effect as of 01 April 2012: *(1) The arbitral award must be adopted by the majority of the arbitrators, must be made in writing, and must be signed by at least the majority of the arbitrators. The operative part of the arbitral award must be clear and unambiguous. (2) The arbitral award must contain reasons, unless the parties have agreed to dispense with reasons; this also applies to any arbitral award rendered pursuant to Section 24(2). An arbitral award rendered in a dispute arising from a consumer contract must always contain reasons and instructions regarding the right to file a motion with the court to annul the award. (3) When making the award, the arbitrators apply the substantive law applicable to the dispute; they may, however, resolve the dispute according to the rules of equity, but only if the parties have explicitly authorized them to do so. In disputes arising from consumer contracts, the arbitrators shall always abide by consumer protection laws and regulations.*

Legislative developments since 01 April 2012: Section 25 of the ArbAct as amended by Act No. 245/2006 Coll., Act No. 296/2007 Coll., Act No. 7/2009 Coll., Act No. 466/2011 Coll., Act No. 19/2012 Coll. and Act No. 91/2012 Coll., was newly reformulated by Act No. 258/2016 Coll., Amending Selected Legislation in Connection with the Consumer Credit Act, which took effect on 01 December 2016. The law has reverted to the version that was in effect before 01 April 2012.

[10] A selection of current case-law concerning the nature and effects of an arbitral award is annotated below.

Section 28 of the ArbAct is quoted below in Part IV of this Czech case-law overview.

[11] An arbitrator (permanent arbitral institution) is also designated as "another authority" by judgment of the Constitutional Court of the Czech Republic, Case No. I. ÚS 3227/07 of 08 March 2011.

8.03. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 1156/2013 of 26 November 2013:[12] [**duties of arbitrators and nature of their activities; supervisory duties of the courts; review of procedural errors; provision of legal protection; advantages of arbitration; practical usability of arbitration; purpose of the proceedings for annulment of arbitral award; discontinuation of enforcement proceedings; statutory representative; lack of procedural capacity; lack of substantive-law capacity**] Arbitrators are not law-finding authorities in arbitration; arbitrators create the obligations binding on the parties in their relationship on behalf of the parties, and their power is not delegated by the sovereign power of the state, but derived from the private inherent power of the parties to determine their future.

8.04. Judgment of the Supreme Court of the Czech Republic, Case No. 25 Cdo 2790/2013 of 21 October 2014:[13] [**purpose of arbitration; exclusion of judicial review; application of the law; arbitrator bound by valid and applicable law; arbitrator obliged to apply valid and applicable law; scope of the supervisory powers of the court; protection of the advantages of arbitration and their practical usability; exhaustive list of grounds for annulment of an arbitral award; liability of arbitrator; annulment of an arbitral award; general liability requirements**] **(1)**[14] **(a)** Considering the nature of arbitration, the purpose of which inheres in the fact that the hearing and resolution of a particular type of dispute is transferred from courts to arbitrators, and with respect to the grounds for which an arbitral award can be annulled, one may conclude that the legislator intended to exclude the judicial review of the material correctness of the arbitral award, i.e. the accuracy of the findings of fact and legal assessment of the case. **(1) (b)** If the court in proceedings for the annulment of an arbitral award were to review the award on the merits, the legal rules regulating arbitral awards would become pointless. **(2)** Arbitrators are directly bound by, and obliged to apply, valid and applicable law.[15] However, this does not mean that courts may arbitrarily intervene in arbitration. The scope of the courts'

[12] Preceding decisions in the case: (i) Resolution of the District Court in Prostějov [Czech Republic], Case No. 15 Nc 6257/2006-53 of 22 November 2011; and (ii) Resolution of the Regional Court in Brno [Czech Republic], Case No. 12 Co 152/2012-65 of 24 October 2012.

[13] Preceding decisions in the case: (i) Judgment of the District Court for Prague 3 [Czech Republic], Case No. 19 C 6/2010-110 of 08 June 2012; and (ii) Judgment of the Municipal Court in Prague [Czech Republic], Case No. 68 Co 513/2012-175 of 25 February 2013.

[14] To this extent, the Supreme Court of the Czech Republic has adopted the conclusions of the Supreme Court articulated in its decision in Case No. 33 Cdo 2675/2007 of 30 October 2009.

[15] The Supreme Court of the Czech Republic has also based this opinion on the conclusions articulated in judgment of the Constitutional Court of the Czech Republic in Case No. I. ÚS 3227/07 of 8 March 2011.

supervision must be carefully balanced in order to make sure that, on one hand, the rule stipulating that arbitration should guarantee legal protection is not eliminated, but on the other, that the advantages of arbitration and its practical usability (expeditiousness, economy) are not entirely wiped out. The list of grounds for the annulment of an arbitral award is exhaustive and does not include a conflict with substantive law or with public policy. The Constitutional Court has held that permitting the review of arbitral awards by a court for being contrary to substantive law is questionable both from the perspective of interpreting the grounds for the annulment of arbitral awards and from the perspective of the concept.

8.05. Judgment of the Supreme Court of the Czech Republic, Case No. 29 ICdo 11/2014 of 28 January 2016:[16] [**marital property (joint property of spouses); settlement of marital property; arbitrability**]: **(1)** Unless the dispute over the settlement of marital property is a dispute arising in connection with enforcement proceedings or an incidental dispute, it can be heard and resolved in arbitration. **(2)** The liquidator, who has acquired the right to dispose of the debtor's estate upon the declaration of bankruptcy of the debtor, and the debtor are both bound (within the limits of Section 159a(4) of the Code of Civil Procedure)[17] by a final judgment in which the court settled the marital property of the debtor (in insolvency) and his or her spouse before the insolvency proceedings were opened. **(3)** The same applies to an arbitral award in which the arbitrator settled the marital property of the debtor (in insolvency) and his or her spouse before the insolvency proceedings were opened and which has the effects of a final court ruling.[18]

8.06. Resolution of the SC, Case No. 20 Cdo 3324/2017 of 21 March 2018:[19] [**autonomy; contractual autonomy; standard form contract; *bonos mores*; independence and impartiality;**

[16] The annotation is adopted from: Petr Vojtek, *Výběr rozhodnutí v oblasti civilněprávní*, 23(7-8) SOUDNÍ ROZHLEDY 249 (2017).

[17] Code of Civil Procedure [Czech Republic] (approximate translation, cit.): Section 159a – *(1) Unless the Act stipulates otherwise, the operative part of a final judgment is binding solely on the parties to the proceedings. (2) The operative part of a final judgment delivered in matters listed in Section 83(2) is binding on the parties to the proceedings, as well as other persons or entities with a claim against the respondent as concerns identical claims from an identical conduct or status. Special laws set forth the cases in and the extent to which the operative part of a final judgment is binding on persons or entities other than the parties to the proceedings. (3) To the extent that the operative part of a final judgment is binding on the parties to the proceedings and, if applicable, other persons or entities, it is also binding on all authorities. (4) As soon as the case has been resolved with final force and effect, it cannot be reopened to the extent to which the operative part of the judgment is binding on the parties and any other persons or entities, as applicable.*

[18] See Section 28(2) of the ArbAct.

[19] Preceding decisions in the case: (i) Resolution of the District Court in Karviná – Havířov Office [Czech Republic], Case No. 127 EXE 1563/2016-28 of 10 November 2016; and (ii) Resolution of the Regional Court in Ostrava [Czech Republic], Case No. 9 Co 9/2017-44 of 27 February 2017.

economic dependence of the arbitrator; enforcement proceedings; prohibition of a review on the merits in enforcement proceedings] **(1)** Arbitration is based on the principle of contractual freedom, meaning that the parties are entirely free to decide whether they enter into an arbitration agreement and thereby exclude the courts' jurisdiction over their property dispute. **(2)** Arbitration agreements as **"standard form agreements" are not unusual or irregular, but rather used in practice when the parties wish to submit their dispute to arbitration**; such procedure is also not subject to any explicit statutory restrictions, whether in the context of B2C contracts or otherwise, as long as a higher degree of protection afforded to the weaker party is guaranteed; such procedure may even (generally) be found more favourable, because one may expect that consumer protection rules (such as Section 3(3) to (5);[20] Section 4(3),[21] or Section 8 of the ArbAct)[22] will not be ignored by the professional, as opposed to arbitration agreements negotiated "word for word" *ad hoc*.[23] **(3)** The execution itself of the arbitration agreement on a pre-printed standard form that contains the names of the individual "*ad hoc*" arbitrators does not render the arbitration agreement invalid for being *contra bonos mores*. The invalidity of such an agreement would require the

[20] Subsections (3) to (5) of Section 3 of the ArbAct applied until 01 December 2016 (for a quotation, see below in Part III of the case-law selection). However, that provision continues to apply to arbitration agreements entered into before 01 December 2016.

[21] Section 4(3) was repealed as of 01 January 2014. The wording invoked by the annotated decision (approximate translation, cit.): *(3) In order to meet the requirement of no criminal record under subsections (1) and (2), the person must have no previous final conviction for a criminal offence, unless the person's criminal record is expunged and the person is deemed never to have been convicted.*

[22] Act on Arbitration and the Enforcement of Arbitral Awards – Act of the Czech Republic No. 216/1994 Coll. (approximate translation, cit.) – Section 8 [Lack of Bias]:
Current version: *(1) The arbitrator is disqualified from hearing and resolving the case if his or her connection to the case, the parties, or their representatives gives rise to doubts about his or her lack of bias. (2) The candidate who is to be selected or appointed arbitrator or who was selected or appointed arbitrator must notify the parties or the court without delay of any and all circumstances that could give rise to legitimate doubts regarding the candidate's lack of bias and which would disqualify the candidate as arbitrator.*
The Act in effect as of 01 April 2012: *(1) The arbitrator is disqualified from hearing and resolving the case if his or her connection to the case, the parties, or their representatives gives rise to doubts about his or her lack of bias. (2) The candidate who is to be selected or appointed arbitrator or who was selected or appointed arbitrator must notify the parties or the court without delay of any and all circumstances that could give rise to legitimate doubts regarding the candidate's lack of bias and which would disqualify the candidate as arbitrator. (3) When resolving disputes from consumer contracts, the arbitrator is obliged to inform the parties before the hearing whether he or she has made or participated in the making of an arbitral award in the past 3 years or whether he or she has been an arbitrator in pending arbitration over a dispute to which any of the parties is or was a party. The time limit under the preceding sentence shall be calculated from the day when the arbitration covered by the reporting obligation terminated to the day of commencement of the arbitration in which the arbitrator is bound by the reporting obligation.*
Legislative Developments Since 01 April 2012: Section 8 of the ArbAct as amended by Act No. 245/2006 Coll., Act No. 296/2007 Coll., Act No. 7/2009 Coll., Act No. 466/2011 Coll., was newly reformulated by Act No. 19/2012 Coll., in effect since 01 April 2012. Further amendments were implemented as of 01 January 2014 and as of 01 December 2016.

[23] The Supreme Court of the Czech Republic has invoked its previous case-law, specifically Resolution Case No. 20 Cdo 4022/2014 of 23 January 2018.

existence of other important circumstances[24] that would suggest or indicate that the negotiation of the arbitration agreement with the consumer and the contents itself of the arbitration agreement are *contra bonos mores,* and consequently, the arbitration agreement can be found invalid.[25] **(4)** The principle of independent and impartial decisions guiding adjudication performed by judges also applies to decision-making performed by arbitrators. An arbitrator can be disqualified from hearing the case and delivering the arbitral award only if it is **obvious** that **the nature or intensity** of his or her connection to the case, the parties or their representatives **is such that the arbitrator will be unable to make independent and impartial decisions despite the statutory obligations.** This typically occurs **if the arbitrator simultaneously supports a party or a witness or, as applicable, if the arbitration or the outcome thereof could affect the arbitrator's rights**; this also applies if the arbitrator is related to the parties or has a **friendly or manifestly hostile relationship toward the parties, or a relationship of economic dependence.**[26] **(5) Economic dependence** is interpreted as an **immediate or direct economic relationship, such as the arbitrator being simultaneously an employee of one of the parties to the arbitration agreement, the party's business partner, or a colleague in an employment or similar relationship; the simple fact that the arbitrator becomes entitled to a fee with respect to each case disposed of by the arbitrator does not constitute economic dependence**. Otherwise, an identical objection could also be raised against permanent arbitral institutions, which, as a matter of fact, can also be repeatedly nominated by the parties to a dispute in their arbitration clauses.[27] **(6)** Deficiencies, if any, of the law-finding process [in arbitration] do not transfer to enforcement proceedings, and the **correctness on the merits of the decision submitted for enforcement cannot be challenged in the enforcement proceedings** in any manner whatsoever (including by means of an objection challenging any alleged deficiencies of the law-finding process). **(7)** The review of the validity of a credit facility agreement from the perspective of its (non)compliance with *bonos mores*, in line with judgments of

[24] The Supreme Court of the Czech Republic has invoked its previous case-law, specifically Resolution of the Supreme Court of the Czech Republic Case No. 30 Cdo 2401/2014 of 16 July 2014.

[25] The Supreme Court of the Czech Republic has invoked its previous case-law, specifically Resolution of the Supreme Court of the Czech Republic Case No. 20 Cdo 4022/2014 of 23 January 2018.

[26] The Supreme Court of the Czech Republic has invoked its previous case-law, specifically Judgment of the Supreme Court of the Czech Republic Case No. 23 Cdo 3150/2012 of 30 September 2014.

[27] The Supreme Court of the Czech Republic has invoked its previous case-law, specifically Judgment of the Supreme Court of the Czech Republic Case No. 23 Cdo 3150/2012 of 30 September 2014.

the Constitutional Court, does not constitute a review on the merits of the enforcement order.[28/29] Nevertheless, the ultimate finding of the (in)validity of the credit facility agreement in terms of the quoted judgments of the Constitutional Court (which in turn determines the validity or invalidity of the arbitration agreement and the jurisdiction of the arbitrator or lack thereof) requires an examination of the **particular circumstances attending the entering into of the credit facility agreement**, including a consideration of the criteria set by the case-law of the Supreme Court in relation to contractual penalties, interest, security interest securing the payment of the claim, etc.[30]

II. Arbitrability

8.07. Connected, *inter alia*, to the provisions of Section 2 of Act of the Czech Republic No. 216/1994 Coll., on Arbitration and the Enforcement of Arbitral Awards

[28] The Supreme Court of the Czech Republic has invoked the case-law of the Constitutional Court of the Czech Republic, specifically the judgment of the Constitutional Court of the Czech Republic in Case No. I. ÚS 199/11 of 26 January 2012, and the judgment of the Constitutional Court of the Czech Republic in Case No. III. ÚS 4084/12 of 11 December 2014.

[29] See also judgment ÚS 3962/18 of 06 April 2021.

[30] The Supreme Court of the Czech Republic has invoked its previous case-law, specifically the resolution of the Supreme Court of the Czech Republic in Case No. 20 Cdo 1387/2016 of 28 February 2017, as well as the resolution of the Supreme Court of the Czech Republic in Case No. 20 Cdo 4022/2017 of 23 January 2018.

ArbAct: Section 2 [Arbitrability][31]

Current Version of Section 2 of ArbAct:

(1) The parties are free to agree that their property disputes, with the exception of disputes arising from contracts entered into between a consumer and a professional, disputes arising from the enforcement of decisions and incidental disputes, which would otherwise fall within the jurisdiction of the courts, or which are subject to arbitration under special laws, shall be decided by one or more arbitrators or by a permanent arbitral institution (arbitration agreement).

(2) The arbitration agreement will be valid if the law allows the parties to resolve the subject matter of their dispute by settlement.[1)]

(3) The arbitration agreement may apply to:

- **(a) an individual dispute that has already arisen (post-dispute arbitration agreement), or**
- **(b) all disputes that would arise in the future under a defined legal relationship or under a defined category of legal relationships (arbitration clause).**

(4) Unless the arbitration agreement stipulates otherwise, it governs both the rights directly arising from the legal relationships and the issue of the legal validity of these legal relationships, as well as any rights associated with the aforementioned rights.

(5) The arbitration agreement is also binding on the legal successors to the parties, unless explicitly excluded by the parties in their agreement.

Footnotes Forming Part of Normative Text:

1) Section 99 of the Code of Civil Procedure.[32]

Section 2 of ArbAct in Effect as of 01 April 2012:

(1) The parties are free to agree that their property disputes, except disputes arising from the enforcement of decisions and except incidental disputes, which would otherwise fall within the jurisdiction of the courts, or which are subject to arbitration under special laws, shall be decided by one or more arbitrators or by a permanent arbitral institution (arbitration agreement).

No amendments in Subsections (2) through (5).

Legislative Developments Since 01 April 2012:

Section 2 of the ArbAct has only been amended once since the effective date of the ArbAct Amendment implemented by Act No. 19/2012 Coll. (01 April 2012), specifically with respect to the first subsection; the amendment was implemented by Act No. 258/2016 Coll., Amending Selected Legislation in Connection with the Adoption of the Consumer Credit Act – see Part Seven, Article VIII of the said Act, which took effect on 01 December 2016. The said Act prohibited arbitration agreements in disputes from B2C relationships and, apparently with a view to enhancing this imperative, also incorporated the explicit exclusion of objective arbitrability of B2C disputes in Section 2(1) of the ArbAct. Such (B2C) disputes are, nevertheless, still arbitrable if the parties entered into their arbitration agreement prior to 01 December 2016. The number of such disputes is, however, dwindling.

8.08. Judgment of the Supreme Court of the Czech Republic, Case No. 29 Cdo 3613/2009 of 30 November 2011:[33] [arbitrability; bill of exchange/promissory note; endorsement of a bill of

[31] The titles of the individual Parts and Sections provided in square brackets are not part of the statutory text and have been supplemented by the author for better transparency of the contents.

[32] Code of Civil Procedure [Czech Republic] (approximate translation, cit.): Section 99 – (1*) If the nature of the case allows such procedure, the parties to the proceedings can terminate the proceedings by a judicial settlement. The court endeavours to persuade the parties to settle; to this end, the presiding judge primarily discusses the case with the parties, draws their attention to the applicable law and the opinions of the Supreme Court, as well as the decisions published in the Sbírka soudních rozhodnutí a stanovisek* [*Court Reports*] *that relate to the case, and, depending on the circumstances of the case, recommends the possibilities for the amicable resolution of the dispute to the parties. If appropriate, in view of the nature of the case, the presiding judge also draws the parties' attention to the possibility of mediation under the Mediation Act, or social consultancy under the Social Services Act. (2) The court shall decide whether it approves the settlement; the court shall not do so if the settlement is contrary to the law. In such case, the court shall continue the proceedings after the resolution becomes final. (3) An approved settlement has the same effects as a final judgment. However, the court may issue a judgment setting aside the resolution on the approval of the settlement if the settlement is invalid under substantive law. The motion can be lodged within three years of the day when the resolution on the approval of the settlement becomes final.*

[33] Preceding decisions in the case: (i) Judgment of the Municipal Court in Prague [Czech Republic], Case No. 47 Cm 61/2007-28 of 30 March 2007, and (ii) Judgment of the High Court in Prague [Czech Republic], Case No. 9 Cmo 495/2008-242 of 04 March 2009.

exchange/promissory note; legal succession] **(1)** A dispute over the payment of a bill of exchange/promissory note can also be the subject of an arbitration agreement. Claims from bills of exchange/promissory notes are property claims. The second requirement under Section 2(2) of the ArbAct, i.e. that the parties are free to resolve the subject matter of their dispute by settlement, is fulfilled as well.[34] **(2)** As concerns the issue of whether or not the arbitration clause negotiated by the parties to the present proceedings also covers claims from a bill of exchange/promissory note, the court has held – from the perspective of the facts of the case, under circumstances comparable to the present case (the said case also concerned a dispute over the payment of a bill of exchange/promissory note securing another claim where the arbitration clause was incorporated – together with an agreement that the bill of exchange/promissory note shall secure the payment of the claim – in the contract from which the claim secured by the bill of exchange/promissory note was to arise), with reference to the interpretation rules incorporated in Section 35(2) of the Civil Code 1964[35] and Section 266 of the Commercial Code[36] and the principle governing the interpretation of juridical acts,[37] that if the agreement on having the claim secured by the bill of exchange/promissory note, as well as the arbitration clause,

[34] Invoking the judgment of the Supreme Court of the Czech Republic in Case No. 29 Cdo 1130/2011 of 31 May 2011, which is annotated separately.

[35] The Civil Code 1964 was replaced by the Civil Code 2012 with effect from 01 January 2014. Civil Code 1964 [Czech Republic] (approximate translation, cit.): Section 35 - *(1) An expression of will can be implemented by act or omission; it can be express or performed in any other manner that gives rise to no doubts about the party's intention. (2) Juridical acts expressed in words must be construed not only according to their linguistic expression, but primarily also according to the will of the party who performed the juridical act, unless the will conflicts with the linguistic expression. (3) Juridical acts expressed in any manner other than words shall be construed in compliance with the usual meaning of the method of their expression. To this end, regard shall be had to the will of the person or entity who performed the juridical act, and the good faith of the intended recipient of the juridical act shall be protected.*

[36] The Commercial Code was replaced by the Civil Code 2012 and by the Business Corporations Act 2012 with effect from 01 January 2014. Commercial Code 1991 [Czech Republic] (approximate translation, cit.): Section 266 - *(1) An expression of will shall be construed according to the intention of the acting party if the intention was known or must have been known to the intended recipient of the expression of will. (2) If the expression of will cannot be construed pursuant to Subsection (1), the expression of will shall be construed in compliance with the meaning that would be normally attributed to the expression of will by a person in the position of the intended recipient of the expression of will. Terms used in commercial transactions shall be construed in compliance with the meaning that is normally attributed to them in such transactions. (3) The interpretation of will pursuant to Subsections (1) and (2) shall have due regard to all circumstances relating to the expression of will, including contract negotiations and the practice established between the parties, as well as the parties' subsequent behaviour, if allowed by the nature of the case. (4) If in doubt, an expression of will that contains a term allowing for varying interpretations must be construed to the disadvantage of the party who was the first to use the term in the negotiations. (5) If the decisive criterion under this Part of the Act is the contracting party's registered office, place of business, place of enterprise or premises, or place of residence, the decisive place is the place specified in the contract until a change thereof is notified to the other party.*

[37] Here invoking the decision of the Supreme Court of the Czech Republic published under No. 35/2001 of Sbírka soudních rozhodnutí a stanovisek [Court Reports], and in the judgment of the Constitutional Court of the Czech Republic in Case No. I. ÚS 625/03 of 14 April 2005.

are both part of the same juridical act (contract), no reasonable doubt arises as to the fact that the words "… the jurisdiction to resolve any and all disputes over claims that directly or otherwise arose from (…) or in connection with this contract…" also cover the dispute over the payment of the bill of exchange/promissory note that secured the payment of the claim arising from the contract. **(3)** The entity to which the bill of exchange/promissory note was endorsed after a protest was made for default on payment or after the time limit for protest expired,[38] is bound by the existing arbitration agreement pursuant to Section 2(5) of the ArbAct as the legal successor to the original creditor.[39]

8.09. **Resolution of the Supreme Court of the Czech Republic, Case No. 32 Cdo 3163/2011 of 9 February 2012:**[40] [**associated legal relationships; preliminary issue; jurisdiction of arbitrators v. jurisdiction of courts**] **(1)** The fact that an assessment of a legal relationship established by a contract that contains an arbitration clause is a preliminary issue vis-à-vis an assessment of a legal relationship established by another juridical act or event does not create any legal connection between the two legal relationships in terms of Section 2(4) of the ArbAct.[41] **(2)** The court is not stripped of the jurisdiction to hear the dispute over restitution (release of a particular asset) in consequence of the fact that the assessment of whether or not the claimant effectively rescinded the purchase contract following the respondent's default on the payment of the purchase price depends on whether or not the claimant's claim arising from the right to receive the purchase price was offset against the respondent's mutual claim from a legal relationship that was established by a contract containing an arbitration clause, hence primarily whether or not the respondent had any mutual claim from such a legal relationship at all (whether the claim existed).

[38] Here concerning the effects of an endorsement implemented only after a protest was made for default on payment or after the time limit for protest expired, cf. Article I Section 20(1) of Act No. 191/1950 Coll. and the case-law of the Supreme Court of the Czech Republic, such as judgment of the Supreme Court of the Czech Republic, Case No. 29 Odo 1636/2005 of 25 April 2007, published in: (151) SOUDNÍ JUDIKATURA (2007).

[39] Cf. also Pavel Horák, *Objektivní arbitrabilita – možnosti rozhodčího* řízení [title in translation – *Objective Arbitrability – Possibilities of Arbitration*], 9 BULLETIN ADVOKACIE 23 (2018).

[40] The *ratio decidendi* has been adopted from: Výběr rozhodnutí, *Rozhodčí smlouva, pravomoc soudu a práva související* s *těmi, kterých se smlouva týká* [title in translation – *Arbitration Agreement, Court Jurisdiction and Rights Associated with Those Covered by the Agreement*], 18(6) SOUDNÍ ROZHLEDY 211-212 (2012). An annotation of the decision is provided in the same place.

[41] This provision is quoted above in the introduction to Part II of this case-law selection.

8.10. Resolution of the Supreme Court of the Czech Republic, Case No. 22 Cdo 1643/2012 of 23 July 2012:[42] [**property dispute; limits of the right to enter into an arbitration clause; possibility of entering into and approving a settlement in court; dispute over restitution (release of an asset); lease agreement; dispute relating to a lease agreement; determination of the number of arbitrators; determination of the manner in which the arbitrators are to be appointed; anticipated component of the arbitration agreement; (in) dispensable component of an arbitration agreement; legal succession**] **(1)** Property disputes are all disputes the subject matter of which is directly reflected in the assets possessed by the parties, and which concern subjective rights of which the parties may dispose.[43] **(2)** The statutory limits to the parties' right to negotiate a valid arbitration clause are based on the same circumstances that limit the right to enter into and approve a settlement in court.[44] **(3)** No arbitration agreement can be validly entered into in matters the nature of which does not allow a settlement.[45] **(4)** A dispute over restitution related to a legal relationship between the parties established by a lease agreement is a dispute in terms of Section 2(4) of the ArbAct. If the "main" contract contains an arbitration clause, the arbitration will cover the dispute from the contract, as well as any related dispute, including a dispute over the release of assets that are being unlawfully withheld on the basis of the (allegedly invalid, as argued by the claimant) contract. **(5)** If the arbitration clause is incorporated in a lease agreement, the former is also binding on the new owner (acquirer) of the real estate as the landlord.[46] **(6)** The determination of the number of arbitrators and their identity, or the determination of the method whereby the number and the identity of the arbitrators shall be determined,

[42] Preceding decisions in the case: (i) Decision of the District Court Pilsen – South [Czech Republic], Case No. 9 C 385/2011, and (ii) Resolution of the Regional Court in Pilsen [Czech Republic], Case No. 15 Co 101/2012-106 of 21 February 2012. The Supreme Court dismissed the cassation appeal. This decision was also invoked by Pavel Horák, *Objektivní arbitrabilita – možnosti rozhodčího* řízení [title in translation – *Objective Arbitrability – Possibilities of Arbitration*], 9 BULLETIN ADVOKACIE 23 (2018); see also the author's reference to the same case-law (see Footnote 14).

[43] In this regard, the SC also invoked LJUBOMÍR DRÁPAL, JAROSLAV BUREŠ ET AL., OBČANSKÝ SOUDNÍ ŘÁD I. §1 AŽ 200za. KOMENTÁŘ [title in translation – CODE CIVIL OF CIVIL PROCEDURE I. SECTION 1 TO 200ZA. A COMMENTARY], Prague: C. H. Beck (2009), et. 706.

[44] In this regard, the Supreme Court of the Czech Republic invoked: (i) Resolution of the Supreme Court of the Czech Republic, Case No. 32 Odo 181/2006 of 06 June 2007, and (ii) Resolution of the Supreme Court of the Czech Republic, Case No. 26 Odo 353/2006 of 12 July 2007.

[45] In this regard, the Supreme Court of the Czech Republic also invoked the resolution of the Supreme Court of the Czech Republic in Case No. 20 Cdo 2312/2000 of 25 October 2000, and an annotation of the decision in: Rozhodnutí soudů z oblasti občanského, obchodního a pracovního práva, 1 SOUDNÍ JUDIKATURA 35 (2001). The case concerned a dispute over eviction from and vacation of a real estate property; the court has held that such a dispute is arbitrable.

[46] The decision of the Supreme Court of the Czech Republic also invokes Section 680(2) of the Civil Code.

is an anticipated, but not an indispensable, component of the arbitration agreement. If the arbitration agreement lacks the said component, Section 7(2) of the ArbAct[47] in conjunction with Section 9 of the ArbAct[48] provide for the mechanism of an *ex post* selection of an arbitrator. Clearly, this principle must apply not only if the arbitration agreement contains no provision on the method of appointing the arbitrators, but also if such a provision in the arbitration agreement cannot be deemed valid.

8.11. Resolution of the Supreme Court of the Czech Republic, Case No. 32 Cdo 4061/2010 of 25 September 2012:[49] [**arbitrability; eviction from a real estate property (vacating a real estate property); property dispute; invalidity of the main contract; invalidity of the arbitration clause; cause of invalidity; separability / separation of the main contract from the arbitration agreement; permanent arbitral institution; agreement on the jurisdiction of a permanent arbitral institution as an acceptance of the Rules thereof**] **(1)** Unless the cause of invalidity applies to the arbitration clause covering the disputes arising from that contract, the invalidity of the contract shall not affect the validity of the arbitration clause.[50] **(2)** An objection of invalidity of the arbitration agreement for its alleged ambiguity is manifestly groundless if the parties have agreed that any existing dispute shall be submitted to a permanent arbitral institution. Unless the parties agreed otherwise in their arbitration clause, they are deemed to have submitted to the Rules specified in Section 13(2) of the ArbAct that were valid and applicable at the commencement of the arbitral proceedings before the permanent arbitral institution. **(3)** If the parties have agreed that their disputes shall

[47] Act on Arbitration and the Enforcement of Arbitral Awards – Act of the Czech Republic No. 216/1994 Coll. (approximate translation, cit.) – Section 7 [Selection of Arbitrators]: *(1) The arbitration agreement should, as a rule, determine the number of arbitrators and their identity, or stipulate the method whereby the number and the identity of the arbitrators shall be determined. The arbitrator may also be selected by a person agreed upon by the parties or following a method of appointment specified in the rules on arbitration pursuant to Section 19(4). The final number of arbitrators must always be odd. (2) If the arbitration agreement lacks the determination pursuant to Subsection (1), each party shall appoint one arbitrator and these arbitrators shall elect the chairman of the panel.*

[48] Act on Arbitration and the Enforcement of Arbitral Awards – Act of the Czech Republic No. 216/1994 Coll. (approximate translation, cit.) – Section 9 [Appointment of Arbitrator by Court]: *(1) If the party who is obliged to appoint an arbitrator fails to do so within 30 days of the other party's request or if the appointed arbitrators cannot agree on the chairman of the panel within the same time period, the arbitrator or the chairman of the panel shall be appointed by the court, unless the parties have agreed otherwise. The motion can be lodged with the court by any of the parties or any of the already appointed arbitrators. (2) Unless the parties have agreed otherwise, the court shall appoint a new arbitrator at the request submitted by any of the parties or arbitrators if the appointed arbitrator resigns from office or is incapable of acting as arbitrator.*

[49] Preceding decisions in the case: (i) Resolution of the District Court for Prague-East [Czech Republic], Case No. 3 C 414/2009-31, and (ii) Resolution of the Regional Court in Prague [Czech Republic], Case No. 32 Co 106/2010-61 of 26 May 2010.

[50] Subsequent case-law following this decision of the Supreme Court of the Czech Republic: e.g. Resolution of the Supreme Court of the Czech Republic, Case No. 25 Cdo 4840/2014 of 9 March 2016.

be submitted to arbitration, a decision on the dispute is also the result of dispute resolution. **(3)** A dispute over the obligation to accept an eviction and vacate the real estate is a property dispute in terms of Section 2(1) of the ArbAct.[51] Use of the real estate by the respondent and payment of rent undoubtedly affect the assets of the landlord and of the tenant, just like the eviction from and vacation of the real estate property and the associated expiration of the obligation to pay rent.

8.12. Judgment of the Supreme Court of the Czech Republic, Case No. 23 Cdo 2628/2010 of 22 January 2013: [**arbitrability; separability / separation; expiration of the main contract; invalidity of the main contract; invalidity of the arbitration agreement; failure to raise an objection during the arbitral proceedings that the arbitration agreement expired; proceedings for annulment of an arbitral award; validity of the arbitration clause cannot be reviewed if the objection was not raised during the arbitral proceedings**] **(1)** The objection that the main contract expired cannot be automatically extended to the expiration of the arbitration agreement. The arbitration agreement is an autonomous provision in the contract. The expiration of the main contract does not automatically cancel the arbitration agreement.[52] **(2)** Unless the objection was raised during the arbitral proceedings that the arbitration clause expired, the court cannot, in the proceedings for the annulment of the arbitral award, with reference to Section 33 of the ArbAct,[53] address the issue of whether or not the arbitration agreement expired.[54]

8.13. Resolution of the Supreme Court of the Czech Republic, Case No. 22 Cdo 1337/2011 of 11 September 2013: [**jurisdiction**

[51] See also the resolution of the Supreme Court of the Czech Republic in Case No. 20 Cdo 2312/2000 of 25 October 2000.

[52] Subsequently see also, *inter alia*, the resolution of the Supreme Court of the Czech Republic in Case No. 25 Cdo 4840/2014 of 9 March 2016.

[53] Act on Arbitration and the Enforcement of Arbitral Awards – Act of the Czech Republic No. 216/1994 Coll. (approximate translation, cit.) – Section 33 [Dismissal of Motion to Annul Arbitral Award]:
Current version: *The court shall dismiss a motion to annul an arbitral award that is based on the grounds specified in Section 31(b) or (c) if the party requesting the annulment failed to raise the corresponding objection in the arbitral proceedings before the party's first act on the merits of the case, despite having an opportunity to do so.*
The Act in effect as of 1 April 2012: *The court shall dismiss a motion to annul an arbitral award that is based on the grounds specified in Section 31(b) or (c) if the party requesting the annulment failed to raise the corresponding objection in the arbitral proceedings before the party's first act on the merits of the case, despite having an opportunity to do so. This does not apply to disputes arising from consumer contracts.*

[54] In this regard, however, the arbitration clause was ultimately reviewed in the proceedings for the annulment of the arbitral award, but only because the relationship was established by a contract between a professional and a consumer; in such a case, the court was obliged to review the issue on its own motion in order to ensure such interpretation of the law that complies with EU law (consumer protection). No arbitration agreements in B2C relationships are allowed after 1 December 2016; consequently, the issue is of marginal importance and the annotation here focuses solely on the general conclusion of the Supreme Court articulated by the court with respect to relationships other than B2C relationships.

of courts; restitution (release of an asset); protection of ownership]: **There has never been any doubt that protection of ownership under the Civil Code is covered by the jurisdiction of courts.**[55] [***Note***:] The case had no connection to arbitration. The subject matter of the proceedings was a claim for restitution. The decision confirms the broad jurisdiction of courts; hence, there are principally no doubts that arbitral tribunals could make decisions regarding an obligation of restitution if an arbitration agreement existed.

8.14. Resolution of the Supreme Court of the Czech Republic, Case No. 29 Cdo 2648/2013 of 19 March 2014:[56] [**dispute; non-contentious proceedings; determination of (ownership) title to a share; arbitrability; duty to recognize an arbitration clause under the New York Convention (1958); importance of the nature of the proceedings; nature of a claim/asset; settlement; right to settle; bilateral relationship of the parties**] **(1)** Proceedings for the determination of (ownership) title to a share in a limited liability company constitute proceedings concerning a "dispute" from a contract for the transfer of a shareholder's share, and such proceedings are "non-contentious". However, this fact itself does not mean that no settlement can be made in such proceedings and, consequently, an arbitration clause negotiated. **(2)** The assessment of whether or not a settlement can be made in the case is contingent on the nature of the asserted claim, not the general nature of the proceedings as such. **(3)** The nature of the proceedings, i.e. whether the proceedings are contentious or non-contentious, is not in itself decisive for the conclusion on the arbitrability of the case. **(4)** A settlement can also be made in proceedings for the determination of whether or not a legal relationship or a right exist, because the decisive factor for the statutory right to make a judicial settlement consists only in the conditions of permissibility thereof, as specifically applicable to the given case.[57] **(5)**[58] **(a)** The nature of the case generally allows a

[55] The *ratio decidendi* was, after a minor edit, adopted from: Tomáš Těmín, *Právní názor* účastníků*: Pravomoc soudu* [Title in translation – *Legal Opinion of the Parties: Court Jurisdiction*], (3) BULLETIN ADVOKACIE 46-48 (2014). The *ratio decidendi* was formulated by the editorial board of Bulletin advokacie.

[56] Preceding decisions in the case: (i) Resolution of the Municipal Court in Prague, Case No. 72 Cm 41/2012 of 7 August 2012, and (ii) Resolution of the High Court in Prague [Czech Republic], Case No. 7 Cmo 416/2012-124 of 29 April 2013. See also Pavel Horák, *Objektivní arbitrabilita – možnosti rozhodčího* řízení [title in translation – *Objective Arbitrability – Possibilities of Arbitration*], 9 BULLETIN ADVOKACIE 25-26 (2018), as well as 21(7-8) SOUDNÍ ROZHLEDY 280 (2017). See also: SJ 27/23015, C 13570.

[57] In this regard, the Supreme Court of the Czech Republic invoked the judgment of the Supreme Court of the Czech Republic in Case No. 30 Cdo 641/2005 of 04 January 2006.

[58] In this regard, the Supreme Court of the Czech Republic invoked (i) the decision of the Supreme Court of the Czech Republic in Case No. 30 Cdo 641/2005 of 04 January 2005, and (ii) the judgment of the Supreme Court of the Czech Republic in Case No. 29 Odo 1222/2005 of 19 December 2007, as well as, *inter*

settlement in those cases in which the parties are in a typical bilateral relationship, as long as the substantive law does not prevent them from regulating their legal relationship by dispositive acts [dispositive juridical acts]. **(5) (b)** The nature of the case excludes the possibility of a settlement primarily in those cases in which the proceedings can be opened on the court's own motion, or in which a person's personal status is adjudicated on, or in which the substantive law does not allow the resolution of the case by the agreement of the parties to the legal relationship. **(6)** A dispute from a contract for the transfer of a shareholder's share is fully eligible for settlement and, consequently, the negotiation of an arbitration clause. The subject matter of the proceedings in this case is a property claim that the parties are entirely free to dispose of under the applicable substantive law (the parties may regulate their mutual legal relationships by dispositive juridical acts, i.e. resolve the case by an agreement, among others), and the proceedings do not fall into the category of proceedings that could be opened on the court's own motion or proceedings in which a person's personal status is adjudicated on (the proceedings do not deal with matters concerning a business company's status). **(7)** The obligation to recognise an arbitration clause also arises from Article II of the New York Convention (1958). [***From the facts of the case***]: The case concerned proceedings for the determination of (ownership) title to shares in a limited liability company. The first-instance court discontinued the proceedings, because the main contract (contract for the transfer of a share) contained an arbitration clause appointing VIAC [AUT]. Conversely, the appellate court referred to Section 9(3)(g) of the Code of Civil Procedure[59] and held that the case was not arbitrable and that the proceedings were non-contentious; as such, the nature of the proceedings prevented the resolution of the case by a judicial settlement and, consequently, disallowed an arbitration agreement. The Supreme Court, however, set aside the appellate court's decision and the case was reverted to the appellate court for a new hearing.

8.15. Judgment of the Supreme Court of the Czech Republic, Case No. 23 Cdo 3958/2013 of 25 March 2014:[60] [**guarantee;**

alia, (iii) LJUBOMÍR DRÁPAL, JAROSLAV BUREŠ ET AL., OBČANSKÝ SOUDNÍ ŘÁD I. §1 AŽ 200za. KOMENTÁŘ [title in translation – CODE CIVIL OF CIVIL PROCEDURE I. SECTION 1 TO 200ZA. A COMMENTARY], Prague: C. H. Beck (2009), et. 643.

[59] At that time, it also fell within the scope of Section 200e of the Code of Civil Procedure (the law has been amended in the meantime).

[60] Preceding decisions in the case: (i) Judgment of the District Court in Třebíč [Czech Republic], Case No. 8 C 46/2012-44 of 05 February 2013, which set aside the arbitral award of 18 May 2012; and (ii) Judgment of the Regional Court in Brno, Jihlava Office [Czech Republic], Case No. 54 Co 348/2013-61 of 02 July 2013.

subjective scope of the arbitration clause; arbitration clause (non)binding on third parties; unjust enrichment; compensation for damage and losses; prohibition of a review on the merits; exclusively procedural scope of the review in proceedings for annulment of an arbitral award] **(1)** No provision of the ArbAct suggests that the arbitration clause would be binding on persons or entities outside the legal relationship in which the jurisdiction of an arbitrator or a permanent arbitral institution is established by the arbitration clause to render an arbitral award in the case. Where Section 2(4) of the ArbAct[61] refers to "rights associated with the aforementioned rights", it shall be interpreted as meaning the rights that were established between the parties to the arbitration clause in connection with the legal relationship for which the arbitration clause was agreed, i.e. compensation for damage or losses sustained as a result of a breach of contract, unjust enrichment, etc. However, the arbitration clause **does not apply** to legal relationships involving third parties that did not give their consent with arbitration.[62/63] **(2)** An arbitration clause entered into solely by the debtor and the creditor that is incorporated in a contract that also includes a guarantee statement does not automatically extend to the legal relationship between the creditor and the guarantor.

8.16. Judgment of the Supreme Court of the Czech Republic, Case No. 29 Cdo 3309/2015 of 27 October 2015:[64] [***res judicata*, jurisdiction**] An identical case concerning the same subject matter of the proceedings and the same parties that was already resolved by an arbitral award rendered by an arbitrator who lacked the jurisdiction to render such an arbitral award does not constitute *res judicata*.

8.17. Judgment of the Supreme Court of the Czech Republic, Case No. 29Icdo 11/2014 of 28 January 2016:[65] [**marital property (joint property of spouses); settlement of marital property; arbitrability; effects of an arbitral award; binding effects of**

[61] This provision is quoted above in the introduction to Part II of this case-law selection.

[62] The Supreme Court of the Czech Republic has invoked its previous case-law, specifically its judgment in Case No. 23 Cdo 2351/2007 of 31 March 2009, published under No. 2/2010 in Sbírka soudních rozhodnutí a stanovisek [Court Reports].

[63] The Supreme Court of the Czech Republic has invoked its previous case-law, specifically its judgment in Case No. 23 Cdo 111/2009 of 23 February 2011.

[64] The *ratio decidendi* has been adopted from: Výběr rozhodnutí, 22(11-12) SOUDNÍ ROZHLEDY 371 (2017).

[65] The annotation was adopted from: Petr Vojtek, *Výběr rozhodnutí v oblasti civilněprávní*, 23(7-8) SOUDNÍ ROZHLEDY 249 (2017). See also Pavel Horák, *Objektivní arbitrabilita – možnosti rozhodčího* řízení [title in translation – *Objective Arbitrability – Possibilities of Arbitration*], 9 BULLETIN ADVOKACIE 26 (2018), with reference to JAN DVOŘÁK, JIŘÍ SPÁČIL, SPOLEČNÉ JMĚNÍ MANŽELŮ V TEORII A JUDIKATUŘE [title in translation – MARITAL PROPERTY IN THEORY AND CASE-LAW], Prague: Wolters Kluwer (3rd ed. 2011), et. 20.

an arbitral award] **(1)** Unless the dispute over the settlement of marital property is a dispute arising in connection with enforcement proceedings or an incidental dispute, it can be heard and resolved in arbitration. **(2)** The liquidator, who has acquired the right to dispose of the debtor's estate upon the declaration of bankruptcy of the debtor, and the debtor are both bound (within the limits of Section 159a(4) of the Code of Civil Procedure)[66] by a final judgment in which the court settled the marital property of the debtor (in insolvency) and his or her spouse before the insolvency proceedings were opened. **(3) The same applies to an arbitral award in which the arbitrator settled the marital property** of the debtor (in insolvency) and his or her spouse before the insolvency proceedings were opened and which has the effects of a final court judgment.[67]

8.18. Resolution of the Supreme Court of the Czech Republic, Case No. 25 Cdo 4840/2014 of 9 March 2016:[68] [**arbitrability; compensation for damage and losses; lease agreement; separability / separation; expiration of the main contract; invalidity of the main contract; invalidity of the arbitration agreement; payment order; appeal; first act on the merits; challenging court jurisdiction; interpretation of the arbitration agreement; application of substantive law in the interpretation of the arbitration agreement**] **(1) (a)** The objection that the main contract expired cannot automatically be extended to the expiration of the arbitration agreement. The arbitration agreement is an autonomous provision in the contract. The expiration of the main contract does not automatically cancel the arbitration agreement.[69] **(1) (b)** Unless the cause of invalidity applies to the arbitration clause covering the disputes arising from that contract, the invalidity of the contract shall

[66] Code of Civil Procedure [Czech Republic] (approximate translation, cit.): Section 159a – *(1) Unless the Act stipulates otherwise, the operative part of a final judgment is binding solely on the parties to the proceedings. (2) The operative part of a final judgment delivered in matters listed in Section 83(2) is binding on the parties to the proceedings, as well as other persons or entities with a claim against the respondent for identical claims from an identical conduct or status. Special laws set forth the cases in and the extent to which the operative part of a final judgment is binding on persons or entities other than the parties to the proceedings. (3) To the extent that the operative part of a final judgment is binding on the parties to the proceedings and, if applicable, other persons or entities, it is also binding on all authorities. (4) As soon as the case has been resolved with final force and effect, it cannot be reopened to the extent to which the operative part of the judgment is binding on the parties and any other persons or entities, as applicable.*

[67] See Section 28(2) of the ArbAct.

[68] Preceding decisions in the case: (i) Judgment of the District Court for Prague 5 [Czech Republic], Case No. 18 C 82/2010-332 of 03 June 2013, and (ii) Resolution of the Municipal Court in Prague [Czech Republic], Case No. 14 Co 148/2014-408 of 13 May 2014. Also quoted in: Pavel Horák, *Objektivní arbitrabilita – možnosti rozhodčího* řízení [title in translation – *Objective Arbitrability – Possibilities of Arbitration*], 9 BULLETIN ADVOKACIE 27 (2018).

The judgment also comments on the effects and the binding force of an arbitral award.

[69] In this place, the Supreme Court of the Czech Republic also invoked the judgment of the Supreme Court of the Czech Republic in Case No. 23 Cdo 2628/2010 of 22 January 2013.

not affect the validity of the arbitration clause.[70] **(2)** An appeal against a payment order cannot be deemed the first act of the party on the merits. If an objection against the jurisdiction of courts due to the existence of an arbitration agreement is lodged in such a case as late as in the reply to the lawsuit following the annulment of the payment order, the objection is lodged in time. The reply to the lawsuit is the first act of the party on the merits.[71] **(3)** The contents of the arbitration clause must be interpreted in compliance with the rules contained in the Civil Code.[72] **(5)** The wording of the arbitration agreement (cit.) "[…] *any and all disputes and discrepancies arising from this Agreement or in connection with* […]", establishes the arbitral tribunal's jurisdiction to resolve disputes between the parties for compensation for damage or losses sustained not only as a direct result of a breach of the obligations from the contract, but also disputes between the parties for compensation for damage or losses sustained in connection with the parties' legal relationship established under the contract. Hence, the powers of the arbitral tribunal in the given case also extend to the resolution of a dispute over compensation for damage and losses sustained as a result of the fact that after the contractual relationship was terminated, the future landlord seized the assets that the future tenant had brought with the former's consent into the would-be leased premises. Indeed, it is clear that the parties willed any and all of their disputes that could arise in connection with the contractual relationship established by the contract on a future lease agreement to be submitted to arbitration without any limitation of the scope of the clause and without the exclusion of any cases. [***From the factual and legal findings***]: An objection was raised in the said case that, *inter alia*, the arbitration agreement expired due to the expiration of the main contract.

[70] In this place, the Supreme Court of the Czech Republic invoked (i) the judgment of the Supreme Court of the Czech Republic in Case No. 29 Odo 1222/2005 of 19 December 2017, and (ii) the resolution of the SC in Case No. 32 Cdo 4061/2010 of 25 September 2015.

[71] In this place, the Supreme Court of the Czech Republic invoked (i) the resolution of the Supreme Court of the Czech Republic in Case No. 32 Cdo 34/2010 of 30 August 2011, as well as (ii) the judgment of the SC in Case No. 33 Odo 1455/2006 of 15 December 2006.

[72] The said case referred to the Civil Code 1964 and, *per analogiam*, the Commercial Code (both the Civil Code 1964 and the Commercial Code were replaced by the Civil Code 2012 and the Business Corporations Act 2012 with effect from 01 January 2014). For more details concerning the said issue, see also Alexander J. Bělohlávek, *Procesní smlouvy a kvalifikace rozhodčích a prorogačních smluv: aplikace hmotněprávní* úpravy *na smlouvy* s *procesním* účinkem *pro futuro* [Title in translation – *Procedural Agreements and Qualification of Arbitration and Choice-of-Court Agreements: Application of Substantive Law to Agreements with Procedural Effects Pro Futuro*], 151(9) PRÁVNÍK 389–418 (2012); Alexander J. Bělohlávek, *The definition of procedural agreements and the importance to define the contractual nature of the arbitration clause in international arbitration*, in MARIANNE ROTH, MICHAEL GEISTLINGER, YEARBOOK OF INTERNATIONAL ARBITRATION. VOL II, Antwerp / Copenhagen / Zurich / Vienna: Intersentia / Neuer Wissenschaftlicher Verlag (2012), et. 21–50.

8.19. Judgment of the Supreme Court of the Czech Republic, Case No. 23 Cdo 3439/2014 of 30 March 2016:[73] [**investment services contract; arbitrability**] The parties to a property dispute arising from the provision of investment services are free to agree that their dispute shall be submitted to an arbitrator or a permanent arbitral institution.[74]

8.20. Judgment of the Supreme Court of the Czech Republic, Case No. 23 Cdo 1782/2017 of 11 July 2017:[75] [**objective arbitrability; profit share; payment of profits**] **(1)** The distribution of profits and assumption of losses in a partnership can be subject to rules that are incorporated in the Memorandum of Association and depart from the applicable law (Section 82 of the Commercial Code;[76] the law applicable since 01 January 2014 is Section 112 of the Business Corporations Act);[77] consequently, a partner's claim for a profit share against the partnership can be the subject of a settlement. (**2**) Provided that the remaining criteria of arbitrability are met (a property dispute that does not involve a consumer and that would be subject to court jurisdiction in the absence of an arbitration clause), the partner's claim for a profit share can be the subject of an arbitration clause (Section 2 of the ArbAct).

8.21. Judgment of the Supreme Court of the Czech Republic, Case No. 23 Cdo 3085/2016 of 05 April 2017:[78] [**objective arbitrability; rights *in rem*; security interest (lien); acknowledgment of debt; identification of the arbitrator**

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[73] The annotation has been adopted from: Petr Vojtek, *Výběr rozhodnutí v oblasti civilněprávní*, 23(7-8) SOUDNÍ ROZHLEDY 249 (2017).

[74] Adopted from: Jan Hušek, *Rozhodčí doložka – Smlouva o poskytování investičních služeb*, (8) OBCHODNÍ PRÁVO 311 [title in translation - Commercial Law] (2016).

[75] The *ratio decidendi* has been adopted from: Jan Hušek, *Rozhodčí smlouva (doložka) – Podíl na zisku obchodní společnosti*, (11) OBCHODNÍ PRÁVO 409 [title in translation - Commercial Law] (2017).

[76] Commercial Code 1991 [Czech Republic] (approximate translation, cit.): Section 82 - *(1) Profits shall be distributed among the shareholders equally. Unless the Memorandum of Association stipulates otherwise, the profit share calculated on the basis of the financial statements is due and payable within three months after the financial statements are approved. (2) Any loss identified in the financial statements shall be assumed equally by the shareholders. (3) Subsections 1 and 2 shall apply, unless the Memorandum of Association stipulates otherwise.*

[77] Business Corporations Act 2012 [Czech Republic] (approximate translation, cit.): Section 112 - *(1) Profits and losses shall be distributed among the shareholders equally. (2) A shareholder shall be entitled to a profit share amounting to 25% of the amount paid by him or her to fulfil the contribution obligation. If the company's profit is not sufficient for the payment of such a profit share, it shall be distributed among the shareholders according to the proportion of the amounts paid by them to fulfil their contribution obligation. The remaining profit shall be distributed among the shareholders in compliance with Subsection (1). (3) Where a profit share is granted to a shareholder pursuant to Section 103(2), the provisions of Subsection (2) or (3) shall only apply to the part of the profit that is not distributed in this manner. (4) Where the Memorandum of Association contains a provision that departs from Subsection (1) only for the profit share or only for the share in loss, such provision of the Memorandum of Association shall, in case of doubt, be deemed to apply both to profit share and share in loss.*

[78] The *ratio decidendi* has been adopted from: Jan Hušek, *Rozhodčí* řízení – *Arbitrabilita – Zástavní parvo – Uznání závazku – Označení osoby rozhodce*, (9) OBCHODNÍ PRÁVO 319 [title in translation - Commercial Law] (2017).

in the arbitration agreement] **(1)** A dispute concerning a security interest (lien) must also be deemed a property dispute, because it belongs to the category of absolute property rights. The acknowledgement of debt falls into the category of property disputes too, because it affects the parties' assets (Section 2(2) of the ArbAct). (**2**) An arbitration clause also covers disputes concerning the determination of the (non)existence of the right to performance from a security interest (lien) or the acknowledgment of debt or, as applicable, the validity of such relationships (Section 2(4) of the ArbAct).[79] **(3)** If the parties enter into an arbitration agreement in which they agree on a particular arbitrator as an individual identified by his or her name, surname, registered office or place of business, and other identification data (occupation of the individual), the identification is flawless. **(4)** If the person to be appointed as arbitrator resolving the dispute must meet certain qualification criteria (such as being an attorney), the parties' will to that extent must be expressed in a clear and unambiguous manner in the arbitration clause; this requirement is not met if the designation of "attorney" is simply another piece of information identifying the arbitrator.

8.22. Judgment of the Supreme Court of the Czech Republic, Case No. 23 Cdo 4576/2016 of 11 April 2017:[80] [**invalidity of the arbitration clause; reference to Rules; legal entity other than a permanent arbitral institution; selection of arbitrator; *res judicata*; objections and challenges must be made in the course of the arbitral proceedings**] **(1)** If the arbitration clause lacks any direct identification of an ad *hoc* arbitrator and only refers to "Rules on Arbitration" issued by a legal entity other than a permanent arbitral institution established under the law,[81] the arbitration clause (as a whole) is null and void pursuant to Section 39 of the Civil Code 1964[82] for being contrary to the law.[83] **(3)** The Arbitration Act (ArbAct) does not prevent the

[79] This provision is quoted above in the introduction to Part II of this case-law selection.

[80] Preceding decisions in the case: (i) Judgment of the District Court in Liberec [Czech Republic], Case No. 22 C 148/2011-64 of 24 January 2014; and (ii) Judgment of the Regional Court in Ústí nad Labem, Liberec Office [Czech Republic], Case No. 36 Co 145/2014-92 of 28 March 2014.

[81] See Section 13 of the ArbAct.

[82] Civil Code 1964 [Czech Republic] (approximate translation, cit.): Section 39 – *A juridical act is invalid if the content or the purpose thereof violates or evades the law or is* contra bonos mores.

[83] The Supreme Court of the Czech Republic invoked its previous case-law, specifically the decision of the Grand Chamber in Case No. 31 Cdo 1945/2010 of 11 May 2011. However, it is necessary to make reference to subsequent case-law, which tends to favour partial invalidity. This decision rather attests to a transitional phase in which the case-law shifted from fully liberal autonomy to principal restrictions on pain of nullity of the arbitration agreement (this phase is typical for the second decade of the current century), and reverted to the autonomous concept in terms of the respect for partial invalidity.

issue of the arbitrator's jurisdiction (or lack thereof) from being examined in enforcement proceedings as well.[84]

8.23. **Judgment of the Supreme Court of the Czech Republic, Case No. 23 Cdo 2741/2016 of 05 April 2017:**[85] [**objective arbitrability; security interest (lien); rights *in rem*; acknowledgment of debt; property value; property relationship; hire purchase; invalidity; contestability; acknowledgment of debt**] **(1)** The category of property disputes primarily includes disputes from a (private-law) property relationship on the basis of which a right *in rem*, a right from a contract or any other right or property value has been or is to be transferred for consideration, as well as disputes from a property relationship the subject matter of which is the purchase of a hired asset, used rights or other property values. It also includes a property relationship established in connection with any of the above-mentioned legal relationships in consequence of their modification or expiration, or with respect to their invalidity or contestability. Hence, a property right within the meaning of a "property dispute", or "dispute over property rights" under the Arbitration Act (ArbAct) must be interpreted very broadly; it can include any and all disputes reflected in the assets of the parties to the legal relationship, i.e. disputes the subject matter of which can be expressed in property values, provided that they can be appraised in money and their value can be calculated. **(2)** A dispute concerning a security interest (lien) and a dispute concerning the acknowledgment of debt must also be deemed property disputes in terms of Section 2(1) of the ArbAct.[86]

8.24. **Judgment of the High Court in Prague** [**Czech Republic**]**, Case No. 5 Cmo 103/2018 of 22 May 2018:**[87] [**finding of invalidity of an arbitration agreement; legal interest**] There can be no legal interest in a court's finding that the relevant arbitration agreement is invalid once the arbitration is opened.

8.25. **Resolution of the Supreme Court of the Czech Republic, Case No. 29 Cdo 4089/2016 of 30 August 2018:**[88] [**causal**

[84] The Supreme Court of the Czech Republic has invoked the case-law of the Constitutional Court of the Czech Republic, specifically (i) the judgment in Case No. II. ÚS 3406/10 of 14 March 2013, as well as (ii) the judgment in Case No. IV. ÚS 2078/12 of 26 February 2014.

[85] The *ratio decidendi* has been adopted from: Výběr rozhodnutí, 25(1) SOUDNÍ ROZHLEDY 20 (2019). The decision was also published in: 100/2018, C 16490). See also Pavel Horák, *Objektivní arbitrabilita – možnosti rozhodčího* řízení [title in translation – *Objective Arbitrability – Possibilities of Arbitration*], 9 BULLETIN ADVOKACIE 27 (2018).

[86] This provision is quoted above in the introduction to Part II of this case-law selection.

[87] The *ratio decidendi* has been adopted from: Výběr rozhodnutí, (7-8) SOUDNÍ ROZHLEDY 235 (2017). No further information concerning the case is available, although it would undoubtedly be important.

[88] The *ratio decidendi* (excerpt from the decision adjusted for publication purposes) has been adopted from: Jan Hušek, *Rozhočí doložka – Kauzální pohledávka – Zajišťovací směnka – Pravomoc rozhodce,* 28(9) OBCHODNÍ PRÁVO 35 [title in translation - Commercial Law] (2019).

claim; bill of exchange/promissory note as a security instrument; arbitration clause] If the agreed arbitration clause is incorporated in a juridical act (contract) different from the parties' agreement on having their causal claims secured by a bill of exchange/promissory note, and if the contract is silent in this respect on the bill of exchange/promissory note as a security instrument, the only disputes or claims that can be submitted to arbitration are disputes or claims arising from the said juridical act/contract, and the arbitration clause does not cover any claims arising from the bill of exchange/promissory note used as a security instrument, and such disputes are not subject to the arbitrator's jurisdiction.

III. Form, terms, execution and validity of an arbitration agreement

8.26. Connected, *inter alia*, to the provisions of Section 3 of Act of the Czech Republic No. 216/1994 Coll., on Arbitration and the Enforcement of Arbitral Awards

ArbAct: Section 3 [Form, terms and execution of an arbitration agreement][89]

Current Version of Section 3 of ArbAct:

(1) The arbitration agreement must be executed (entered into) in writing; otherwise, it is invalid. The arbitration agreement is also considered executed in writing if it is negotiated by telegraph, fax or any electronic means that would provide a record of the terms of the agreement and the identification of the individuals or entities who concluded the arbitration agreement.

(2) However, if the arbitration clause is incorporated in the terms and conditions governing the main contract to which the arbitration clause applies, the arbitration clause is also considered validly negotiated if a written offer of the main contract with the arbitration clause was accepted by the other party in any manner clearly indicating the latter party's consent with the terms of the arbitration agreement.

Article IX of Act No. 258/2016 Coll., Amending Selected Legislation in Connection with Consumer Credit Act:

1. The validity of an arbitration agreement shall be governed by Act No. 216/1994 Coll., as applicable at the moment at which the arbitration agreement is entered into.

2. Arbitrations commenced on the basis of arbitration agreements entered into before the effective date of this Act shall be conducted and resolved pursuant to the former laws and regulations.

3. Arbitrators entered on the list of arbitrators as of the day preceding the effective date of Act No. 216/1994 Coll. shall be subject to the wording of Sections 40a to 40d of this Act applicable before the effective date of this Act.

Section 3 of ArbAct in Effect as of 01 April 2012 (until 1 December 2016):

(1) The arbitration agreement must be executed (entered into) in writing; otherwise, it is invalid. The arbitration agreement is also considered executed in writing if it is negotiated by telegraph, fax or any electronic means that would provide a record of the terms of the agreement and the identification of the individuals or entities who concluded the arbitration agreement.

(2) However, if the arbitration clause is incorporated in the terms and conditions governing the main contract to which the arbitration clause applies, the arbitration clause is also considered validly negotiated if a written offer of the main contract with the arbitration clause was accepted by the other party in any manner clearly indicating the latter party's consent with the terms of the arbitration agreement.

(3) An arbitration agreement for the resolution of disputes arising from consumer contracts must be negotiated separately, not integrated in the terms and conditions governing the main contract; otherwise, the arbitration agreement is invalid.

(4) The professional shall provide the consumer with a proper explanation reasonably preceding the execution of the arbitration clause, so that the consumer can assess the potential consequences of entering into the arbitration clause for the consumer. Proper explanation shall be interpreted as meaning the explication of all consequences of the arbitration clause.

(5) The arbitration clause concluded pursuant to Subsection (3) must also contain truthful, accurate and complete information on:
(a) the arbitrator or the fact that the arbitral award will be delivered by a permanent arbitral institution,
(b) the manner in which arbitration is to be commenced and conducted,
(c) the fee paid to the arbitrator and the anticipated types of costs the consumer may incur in arbitration, and the rules for successfully claiming compensation for such costs,
(d) the place of arbitration,
(e) the method of service of the arbitral award on the consumer, and
(f) the fact that a final arbitral award is enforceable.

(6) If the arbitration clause vests the jurisdiction to resolve the dispute in a permanent arbitral institution, the requirement under Subsection (5) is also fulfilled by reference to the statutes and rules of permanent arbitral institutions issued under Section 13.[90]

Legislative Developments Since 01 April 2012:

Section 3 of the ArbAct, as amended by Act No. 245/2006 Coll., Act No. 296/2007 Coll., Act No. 7/2009 Coll., Act No. 466/2011 Coll., Act No. 19/2012 Coll. and Act No. 91/2012 Coll., was newly reformulated by Act No. 258/2016 Coll., Amending Selected Legislation in Connection with the Consumer Credit Act – see Part Seven, Article VIII of the said Act, which took effect on 01 December 2016. In view of the fact that no arbitration clauses can be entered into in consumer contracts since 01 December 2016, Subsections (3) to (6) in Section 3 of the ArbAct were also repealed with effect as of the said date. However, arbitration agreements entered into before 01 December 2016 shall be subject to the version of the ArbAct in effect as of the day on which the arbitration agreement was entered into. Hence, arbitration agreements entered into from 01 April 2012 to 30 November 2016 shall be subject to Section 3 of the ArbAct in effect during the said period.[91]

8.27. Judgment of the Supreme Court of the Czech Republic, Case No. 29 Cdo 3309/2015 of 27 October 2015:[92] [**endorsement of a bill of exchange/promissory note, new creditor, jurisdiction over a motion for annulment of an arbitral award**] As the legal successor to the original creditor, the claimant to whom the bill of exchange/promissory note was endorsed after a protest was made for default on payment or after the time limit for protest expired, is bound by the existing arbitration agreement entered into by the creditor.

[89] The titles of the individual Parts and Sections provided in square brackets in this publication are not part of the normative text and have been supplemented by the author for better transparency of the contents.

[90] Act on Arbitration and the Enforcement of Arbitral Awards – Act of the Czech Republic No. 216/1994 Coll. (approximate translation, cit.) – Section 13 [Permanent arbitral institutions]: (*1) Permanent arbitral institutions may only be established by another law or only if another law expressly allows their establishment. (2) Permanent arbitral institutions can issue their own statutes and rules, which must be published in the Business Journal; these statutes and rules may determine the method of appointment and the number of arbitrators, and may stipulate that the arbitrators shall be selected from a list administered by the permanent arbitral institution. The statutes and rules may also determine how the arbitrators shall conduct the proceedings and render their decisions, as well as resolve other issues connected with the activities of the permanent arbitral institution and the arbitrators, including rules regulating the costs of proceedings and fees for the arbitrators. (3) If the parties agreed on the jurisdiction of a particular permanent arbitral institution and failed to agree otherwise in the arbitration agreement, they shall be deemed to have submitted to the regulations specified in Subsection (2), as applicable on the day of commencement of the proceedings in the permanent arbitral institution. (4) No entity may carry out its activities using a name that evokes a misleading impression that the entity is a permanent arbitral institution under this law, unless a different law or regulation or an international agreement integrated in the legal system authorizes the entity to use the name.*

[91] See Article IX of Act No. 258/2016 Coll., quoted above.

[92] The *ratio decidendi* has been adopted from: Výběr rozhodnutí, 22(11-12) SOUDNÍ ROZHLEDY 370-371 (2017).

8.28. **Judgment of the Supreme Court of the Czech Republic, Case No. 23 Cdo 4093/2015 of 03 May 2016:**[93] [**telefax; form of juridical act; written form**] A juridical act performed by telefax meets the requirement of the written form if the document transmitted by telefax is signed by the person who performs the juridical act.

8.29. **Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 1095/2016 of 12 August 2016:**[94] [**dismissal of an application for enforcement; discontinuation of the enforcement proceedings; prohibition of enforcement; jurisdiction; nullity of the arbitration agreement; settlement; agreement on the approval of settlement; unambiguous arbitration agreement; doubts about the validity of the arbitration agreement; arbitration agreement replaced by a new one**] **(1)** Unless the agreement entered into by and between the obligor and the obligee and approved by the competent court pursuant to Section 99(1) and (2) of the Code of Civil Procedure clearly indicated which arbitration clause (incorporated in a clearly identified agency agreement) was to be replaced by it, the agreement cannot be deemed capable of establishing the jurisdiction of an arbitrator to resolve a particular dispute. **(2)** If there are any doubts about the validity of the arbitration clause or, as applicable, a lack of jurisdiction of the arbitrator, the parties are free to make another agreement on such jurisdiction, even if the original arbitration clause is obviously invalid. **(3)** However, the new agreement on the choice of arbitrator must be sufficiently unambiguous to specifically express the will to resolve disputes in arbitration and thereby prevent any doubts about the existence of the particular arbitrator's jurisdiction to resolve a particular dispute.

8.30. **Judgment of the Constitutional Court of the Czech Republic, Case No. III. ÚS 1336/18 of 08 January 2019:**[95] [**partial invalidity of the arbitration agreement; excessive formalism; autonomy of the parties; selection of arbitrator**] If the courts dismiss the application for enforcement against the debtor on grounds of an arbitration clause that the courts consider null and void as a whole because a part of the clause fulfilled the requirements of transparency (specified a particular

[93] The *ratio decidendi* has been adopted from: Petr Vojtek, *Výběr rozhodnutí v oblasti civilněprávní*, (9) SOUDNÍ ROZHLEDY 293 (2017). Also published in: SJ 55/2017, C 15808. The case did not concern arbitration (arbitration agreement), but the conclusions made by the Supreme Court can be generalised. The case was subsequently submitted to the Constitutional Court, but the constitutional complaint was ultimately rejected by Decision Case No. IV. ÚS 2654/2016.

[94] Preceding decisions in the case: (i) Resolution of the District Court in Pardubice [Czech Republic], Case No. 34 EXE 3182/2013-97 of 31 March 2015; and (ii) Resolution of the Regional Court in Hradec Králové – Pardubice Office [Czech Republic], Case No. 18 Co 404/2015-161 of 30 July 2015.

[95] This decision is also annotated in connection with objective arbitrability in: Výběr rozhodnutí, 25(1) SOUDNÍ ROZHLEDY 20 (2019). The decision was also published in: Sbírka rozhodnutí, 100/2018, C 16490.

arbitrator who was supposed to resolve the dispute), whereas another part thereof did not (because the choice of arbitrator was at the discretion of one of the parties), despite the fact that the respective dispute was indeed ultimately resolved by an arbitrator who was determined properly in the arbitration clause from the perspective of the requirements posed on the transparency of arbitration clauses, the courts' procedure must be qualified as overly formalistic and ultimately interfering with the parties' autonomy of will.[96]

8.31. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 4022/2017 of 23 January 2018:[97] [**standard form contracts; discontinuation of the enforcement proceedings; repeated appointment as arbitrator; discontinuation of the enforcement proceedings as an exceptional protective measure**] **(1)** The fact alone that the arbitration agreement entered into with a consumer pursuant to the ArbAct was executed as a standard form contract cannot justify the finding of the invalidity of the arbitration agreement for being allegedly *contra bonos mores* pursuant to Section 580 of the Civil Code,[98] nor does it justify the discontinuation of the enforcement proceedings. **(2)** An arbitrator cannot be disqualified from the hearing and resolution of a case merely on the basis of an allegation that the arbitrator has been repeatedly and on a long-term basis nominated to serve as arbitrator by one of the parties to the arbitration agreement. **(3)** The ArbAct and the protection it affords in any envisaged civil litigation cannot be circumvented with the hope of finding such protection in any subsequent enforcement proceedings; if any protection is to be proffered in, and as late as, the enforcement proceedings, then

[96] The Constitutional Court of the Czech Republic distinguished the case from the opinions articulated, *inter alia*, in the following rulings of the SC:

» Resolution of the Grand Chamber of the Civil and Commercial Division of the Supreme Court of the Czech Republic, Case No. 31 Cdo 1945/2010, also published in Sbírka, 2011, No. 11, et. 409,

» Judgment of the Supreme Court of the Czech Republic, Case No. 23 Cdo 1112/2013 of 28 November 2013,

» Judgment of the Supreme Court of the Czech Republic, Case No. 33 Cdo 2504/2014 of 29 September 2014,

» Resolution of the Supreme Court of the Czech Republic, Case No. 21 Cdo 4529/2014 of 16 December 2014

to the effect that the partial invalidity of the agreement on the selection of arbitrators would destabilise the legal relationships of the parties to arbitration to such an extent that the arbitration clause would have to be declared invalid as a whole in consequence thereof. The Constitutional Court has argued that, conversely, the principles of contractual freedom necessitate an approach according to which the will of the parties shall be protected to the maximum possible extent. Also adopted from an annotation published in Výběr rozhodnutí, (4) SOUDNÍ ROZHLEDY 117 (2019).

[97] The *rationes decidendi* have been adopted from: Petr Vojtek, *Přehled rozhodnutí NS neschválených v roce 2018 do sbírky soudních rozhodnutí a stanovisek*, (2) SOUDNÍ ROZHLEDY 39-40 (2019).

[98] Civil Code 2012 [Czech Republic] (approximate translation, cit.): Section 580 – *(1) A juridical act is also invalid if it is* contra bonos mores *or contrary to a statute, if so required by the sense and purpose of such statute. (2) A juridical act is invalid if something impossible is to be performed thereunder.*

the only justification for such procedure can be the necessity of intervention justified by exceptionally persuasive arguments (primarily invoking constitutional law), i.e. only if the contents of the arbitral award, the enforcement of which is sought, conflicts with the fundamental principles of a democratic legal system.

8.32. **Judgment of the High Court in Prague** [**Czech Republic**], **Case No. 5 Cmo 103/2018 of 22 May 2018:**[99] [**finding of invalidity of an arbitration agreement; legal interest**] There can be no legal interest in a court's finding that the relevant arbitration agreement is invalid once the arbitration is opened.

8.33. **Resolution of the Supreme Court of the Czech Republic, Case No. 23 Cdo 3439/2018 of 16 May 2019:**[100] [**form of arbitration agreement; electronic communication, e-mail; New York Convention (1958); European Convention on International Commercial Arbitration; *lex specialis*; qualified electronic signature**] (1)** As concerns the issue of the validity of an arbitration agreement entered into by and between entities from different States in international commerce by an exchange of e-mails without a qualified electronic signature, it is appropriate to apply the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention 1958) as a *lex specialis* vis-à-vis the European Convention on International Commercial Arbitration. **(2)** The requirement that the arbitration agreement must be contained in an "exchange of letters or telegrams" must be interpreted as including an exchange of communication by e-mail. If no qualified electronic signature on the arbitration agreement contained in an exchange of e-mails is *stricto sensu* required, the persons or entities from different States are free to execute a valid arbitration agreement in international commerce by an exchange of e-mails without a qualified electronic signature.[101]

8.34. **Judgment of the Constitutional Court of the Czech Republic, Case No. I ÚS 3962/18 of 06 April 2021:** [**invalidity of the arbitration agreement; mandatory review of the arbitration agreement; separability of the main contract / agreement from the arbitration agreement**] Courts of general jurisdiction may[102] examine in the enforcement proceedings whether

[99] The *ratio decidendi* has been adopted from: Výběr rozhodnutí, (7-8) SOUDNÍ ROZHLEDY 235 (2017).

[100] The *rationes decidendi* adopted from: Judikatura, 27(19) PRÁVNÍ ROZHLEDY 679–681 (2019).

[101] Also annotated in: Výběr rozhodnutí, 26(11-12) SOUDNÍ ROZHLEDY 377 (2020). Published with the following *ratio decidendi* (cit.): *Individuals or entities from different States may enter into a valid arbitration agreement in terms of Article II of the New York Convention (1958) by an exchange of e-mails that do not contain a qualified electronic signature.*

[102] The entire *ratio decidendi* has been adopted from: Výběr rozhodnutí, 21(6) SOUDNÍ ROZHLEDY 198-199 (2017). However, the quoted source has somewhat distorted the text of the decision, because the published version uses the term "must" whereas the judgment explicitly states "may". It is a major qualitative difference.

a proper arbitration agreement was entered into, be it an arbitration clause or a post-dispute arbitration agreement, and whether the arbitrators had jurisdiction to deliver the arbitral award at all. Principal defects discovered in the enforcement order may result in a discontinuation of the enforcement proceedings pursuant to Section 268(1)(h) of the Code of Civil Procedure.[103] Findings concerning the invalidity of the main contract / agreement may, depending on the circumstances, also concern the invalidity of the arbitration agreement.[104] [***Reasoning***]: The case essentially reacts to obviously extreme *contra bonos mores* situations, etc. But it is interesting to note the concept of invalidity in connection with the principle of the separability of the arbitration agreement from the main contract/agreement, as reflected by the court of general jurisdiction and by the Constitutional Court of the Czech Republic. Indeed, the court of first instance based its decision in the case, whereby the court granted the applicant's motion for the discontinuation of the enforcement proceedings, on the opinion that if a credit facility agreement is *contra bonos mores* and therefore clearly invalid, the arbitration agreement – negotiated for the purpose of resolving disputes arising from the former – is invalid as well, which in turn means that the arbitrator does not have jurisdiction. However, the appellate court based its resolution on the prohibition of a review on the merits of the decision, the enforcement of which is sought, which – according to the appellate court – follows from the principle of the separability of the arbitration agreement from the main contract/agreement. The appellate court held that the arbitration agreement was not invalid in such case, and that the court of first instance should only have addressed the formal and material enforceability of the enforcement order. However, the Constitutional Court has repeatedly held that the courts of general jurisdiction conducting enforcement proceedings should examine whether a proper arbitration agreement was entered into, be it an arbitration clause or a post-dispute arbitration agreement, and whether the arbitrators had jurisdiction to deliver the arbitral award at all. The opinion of the Constitutional Court of the Czech Republic, already articulated in the judgment of the Constitutional Court

[103] The *ratio decidendi* has been adopted from: Výběr rozhodnutí, 21(6) SOUDNÍ ROZHLEDY 198-199 (2017).

[104] The *ratio decidendi* was published in: Výběr rozhodnutí, 21(6) SOUDNÍ ROZHLEDY 198-199 (2017) and contained the following summary (cit.): *The opinion of the Constitutional Court that the invalidity of the credit facility agreement renders the arbitration clause invalid also applies in the case of a separate arbitration agreement, the contents and purpose of which suggest that it could be deemed an arbitration clause.* But this summary is incorrect and could essentially suggest that the principle of separability was denied by the Constitutional Court of the Czech Republic, which, however, is not the case.

in Case No. III. ÚS 4084/12, that the invalidity of a credit facility agreement results in the invalidity of the arbitration clause, also applies, as the Constitutional Court has held in the present case, in the case of a separate arbitration agreement, the contents and purpose of which allow it to be considered an arbitration clause. Hence, as the Constitutional Court has ruled, if the appellate court put forward the principle of separability of the arbitration agreement from the main contract/agreement, it is necessary to have regard to the applicant's allegation that the main contract/agreement and the arbitration agreement form **one business construct** in the present case: the arbitration agreement was signed on the same day as the proposal to enter into the revolving credit facility agreement and, consequently, the agreements were clearly intertwined, as neither could exist without the other, which testifies to the nature of the arbitration agreement as an arbitration clause. Consequently, the fact alone that the arbitration agreement was agreed in a separate document can under no circumstances justify, from the perspective of constitutional law, the waiver of the review (and assessment in light of *bonos mores*) of the entire process of contract formation, including the negotiation of the arbitration agreement. The approach of the appellate court in the said case was, according to the Constitutional Court, a manifestation of an excessive legal formalism, which should have no place in a democratic country honouring the principle of the rule of law, especially in similar cases in which one of the parties is in a manifestly weaker position. [***Author's Notes***]: The Constitutional Court's ruling might *prima facie* suggest that its legal conclusions negate the principle of the separability of the arbitration agreement from the main contract. The opposite is true, though. The Constitutional Court has simply held that, in view of the circumstances of the case, the grounds for the invalidity of the main contract (agreement) must be extended to cover the arbitration agreement as well, because the entire concept of the main contract (contractual terms and conditions) and of the arbitration agreement are principally *communicating vessels* (*connected construct*).

IV. Nature and Enforceability of Arbitral Award

8.35. Connected, *inter alia*, to the provisions of **Section 28 of Act of the Czech Republic No. 216/1994 Coll., on Arbitration and the Enforcement of Arbitral Awards**

ArbAct: Section 28 [Legal Force and Effect, Enforceability][105]
Current Version of Section 28 of ArbAct: **(1)** The arbitral award executed in writing must be served on the parties and, having been duly served, stamped with the confirmation of legal force and effect. **(2)** If the arbitral award cannot be subject to review pursuant to Section 27 or if the time limit for filing the motion for review pursuant to Section 27 has expired without the motion having been lodged, the award has the effects of a final and conclusive court judgment and is enforceable by courts upon receipt.
Section 28 of ArbAct in Effect as of 1 April 2012: Identical
Legislative Developments Since 1 April 2012: No amendments adopted in the relevant period

8.36. Resolution of the Supreme Court of the Czech Republic, Case No. 29 NSČR 29/2009 –A-108 KSOS 31 INS 3370/2008 of 17 February 2011:[106] [**insolvency proceedings; nature of the arbitral award in the course of the proceedings for annulment of the arbitral award; formal finality; effects of legal force and effect; formal effects; material effects; binding force of the operative part of the arbitral award; suspension of enforceability; creditor's claim in insolvency proceedings**] **(1)** The suspension of enforceability of a judicial decision is without prejudice to the effects of the legal force and effect of the decision, manifested (i) by the fact that it cannot be challenged by an appeal as a regular remedy (formal finality) and (ii) by the binding effects and irreversibility of the operative part of the decision (material finality). **(2)** An insolvency petitioner's claim awarded by a final arbitral award that has the effects of a final court decision cannot be classified as contested

[105] The titles of the individual Parts and Sections provided in square brackets are not part of the statutory text and have been supplemented by the author for better transparency of the contents.

[106] The *rationes decidendi* have been adopted from the database of the Supreme Court of the Czech Republic. The Supreme Court has essentially clearly agreed that claims relying on a final arbitral award are enforcement orders. It is all the more surprising, then, to come across decisions such as the decision of the Regional Court in Prague [Czech Republic], Case No. 37 ICm 1216/2011-53 of 06 March 2012, issued in insolvency proceedings conducted in the said court under Case No. KSPH 37 INS 14063/2010, available at: http://kraken.slv.cz/37ICm1216/2011 (accessed on 15 February 2022).

(unsupported in terms of Section 105 of the Insolvency Act)[107] based on the fact alone that the proceedings for the annulment of the arbitral award are pending in which the court allowed a suspension of the enforceability of the arbitral award.

8.37. Resolution of the Regional Court in Pilsen [Czech Republic], Case No. 18 Co 25/2012 of 19 January 2012:[108] **[service of documents to the obligor's registered address; when the dropping of documents in the mailbox is prohibited; proper service; expiration of the period for collecting the document]**

If the arbitrator orders the service of the arbitral award to the obligor's registered address, but prohibits the possibility of simply dropping it in the mailbox in case the arbitral award is to be served on the basis of the expiration of the period for collecting the award pursuant to Section 49(4) of the CCP,[109] the enforcement order is not properly served and the court shall dismiss the motion for enforcement. The reason is that the service of a document by the expiration of the period for collecting it is contingent on the requirement that the service shall comprise the implementation of any and all procedural

[107] Insolvency Act – Act [of the Czech Republic] No. 182/2006 Coll. (approximate translation, cit.): Section 105 – *If the insolvency petition is filed by a creditor, the creditor is obliged to prove an outstanding claim against the debtor and enclose an application for registration of the claim with the creditor's petition; if the claim belongs to the category of claims that otherwise do not require registration, the claim is deemed registered pursuant to Section 203 after the decision on insolvency is issued.*

[108] The *ratio decidendi* has been adopted from: Karel Svoboda, *K problému doručování rozhodčích nálezů podle § 49 odst. 4 občanského soudního* řádu*, vyloučí-li rozhodce jejich vhození do schránky I.* [title in translation – *Service of Arbitral Awards pursuant to Section 49(4) of Code of Civil Procedure in Case Arbitrator Prohibits Dropping Arbitral Award in Mailbox I*], 18(6) SOUDNÍ ROZHLEDY 212 (2012). An annotation of the decision is provided in the same place.

[109] Code of Civil Procedure [Czech Republic] (approximate translation, cit.): Section 49 – ***Service of Documents to Addressee Personally*** *– (1) Documents shall be served to the addressee personally if such service is required by law or ordered by the court. (2) If the delivering authority did not reach the addressee, the document shall be kept with the relevant authority and a written notice shall be left for the addressee in an appropriate manner, requesting that the addressee collect the document. If the notice cannot be left in the place where the document was to be served, the delivering authority shall return the document to the court-sender and make a note of the day on which the addressee was not reached. The court-sender shall put up a notice on the official board requesting the addressee to collect the document at the court. (3) The document is deposited (a) on the premises of the postal offices provider, if the document is being served by the provider, (b) at the court to which the document was returned because no notice could be left at the place of delivery, (c) at the district court with territorial jurisdiction over the place of delivery, if Paragraphs (a) and (b) do not apply. (4) If the addressee fails to collect the document within 10 days from the day on which the document was ready for collecting, the document is deemed served on the last day of this period whether or not the addressee was aware that the document was so deposited. The delivering authority shall drop the document in the addressee's home mailbox or any other mailbox used by the addressee after the said period expires without the document being collected, unless the court prohibits such procedure, whether at the request of a party or on its own motion. If no such mailbox exists, the document shall be returned to the court-sender and a notice thereof shall be put up on the court's official board. (5) Service pursuant to Subsection (4) is prohibited with respect to a document if such a prohibition is stipulated by law or ordered by the presiding judge. In such case, the delivering authority shall return the document to the court-sender after the expiration of the 10-day period following the day on which the document was ready for being collected. (6) Service of a document via the public data network is deemed service of the document to the addressee personally. (7) If the delivering authority discovers that the addressee passed away, the document shall be returned with a report to the court-sender.*

acts that secure the most likely placing of the document at the addressee's disposal.

8.38. Resolution of the High Court in Olomouc, Case No. 36 ICm 2130/2010, 12 VSOL 35/201-69 (KSOS 36 INS 11470/2010), of 02 February 2012:[110] [**insolvency proceedings, evidencing a claim, document**] Although a final arbitral award is not a decision of a public authority, it has analogous effects as a judicial decision. Consequently, a claim evidenced in insolvency proceedings by a final arbitral award is proven in compliance with Section 177 of the Insolvency Act.[111]

8.39. Resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 2487/2010 of 16 August 2012:[112] [**nature of arbitration; essence of arbitration; contractual theory; jurisdictional theory; difference from civil litigation; conditional exclusion of court jurisdiction; *lis pendens*; *res judicata*; autonomy; level and scope of protection afforded to the parties in arbitration by courts; finding law in arbitration**] The fundamental difference from civil procedure in court (i.e. litigation) lies in the definition of the managing and decision-making authority – a court in civil litigation, an arbitrator or a permanent arbitral institution in arbitration. The arbitrator's[113] power to hear and resolve a dispute is based on the joint will of the parties to the dispute expressed in their arbitration agreement. This procedural agreement of the parties excludes the jurisdiction of the courts (only conditionally, in view of Section 106(1) of the Code of Civil Procedure)[114] and establishes the jurisdiction of (an) arbitrator(s). Based on the

[110] Adopted from: ONDŘEJ RICHTER, VĚŘITELÉ A UPLATŇOVÁNÍ POHLEDÁVEK V INSOLVENČNÍM ŘÍZENÍ. KOMENTÁŘ. [title in translation – CREDITORS AND REGISTRATION OF CLAIMS IN INSOLVENCY PROCEEDINGS. A COMMENTARY.], Prague: C. H. Beck (2014), et. 115.

[111] Insolvency Act – Act [of the Czech Republic] No. 182/2006 Coll. (approximate translation, cit.): Section 177 – *Applications whereby claims are to be registered must be lodged together with the documents referred to in the application. Enforceability of a claim shall be proven by a public deed.*

[112] Preceding decisions in the case: (i) Resolution of the District Court for Pilsen-City [Czech Republic], Case No. 73 Nc 1420/2009 of 5 November 2009; and (ii) Resolution of the Regional Court in Pilsen [Czech Republic], Case No. 12 Co 12/2010-165 of 10 February 2010.

[113] The shorthand used by the Supreme Court of the Czech Republic in the reasons for the decision should be interpreted as including an arbitrator [*ad hoc*], as well as a [permanent] arbitral institution.

[114] Code of Civil Procedure [Czech Republic] (approximate translation, cit.): Section 106 – *(1) As soon as the court discovers, upon the respondent's objection lodged together with or before the first act of the respondent on the merits, that the agreement of the parties requires the case to be submitted to arbitrators or to an arbitral committee of an association, the court must desist from further examination of the case and discontinue the proceedings; the court, however, hears the case if the parties declare that they waive the agreement or that they do not insist on having the case heard by the arbitral committee of the association. The court also hears the case if the court determines that the matter is not arbitrable under the laws of the Czech Republic, or that the arbitration agreement is invalid or non-existent, or that examining the agreement in arbitration exceeds the scope of jurisdiction vested in the arbitrators by the agreement, or that the arbitral tribunal refused to hear the case. (2) If the court proceedings under Subsection (1) were discontinued and the same case was submitted to arbitrators or to the arbitral committee of the association, the original motion to commence the proceedings retains its legal effects, provided that the motion to commence the proceedings before the arbitrators or the arbitral committee of the association is lodged no later than within 30 days of*

voluntary acts of the parties, **the arbitrator thus replaces the court** where the latter should otherwise hear and resolve the case. However, the rights of the parties to direct the dispute resolution procedure are even more far-reaching; the parties to the dispute are, for instance, allowed to select the arbitrators, and to determine the applicable procedural rules, the seat of arbitration, the type of proceedings (oral or written), and even the criteria that should be applied to the merits (Section 25(3) of the ArbAct).[115/116] **(2)** Arbitration **excludes parallel civil** [court] **proceedings** concerning the same issue. Arbitral awards have the same effects as final court decisions (Section 28(2) of the ArbAct),[117] which means that arbitral awards constitute *res judicata*, barring the parties from litigating the same claim again in the courts. **(3)** In compliance with the principle of the autonomy of will, the law honours the freely expressed will of the parties who wish to have their dispute heard and resolved by an arbitrator; courts are therefore not allowed to intervene in arbitration, except in strictly defined situations specified in the Arbitration Act. On the other hand, this does not mean that the purpose of arbitration is to eliminate or reduce the

receipt of the court's resolution discontinuing the proceedings. (3) If the arbitral proceedings were opened before the court proceedings, the court stays the proceedings on the non-existence, invalidity or expiration/termination of the agreement until the arbitrator(s) decide on their jurisdiction over the case or on the merits.

115 The Supreme Court of the Czech Republic has held that the nature of arbitration in terms of *contractual theory* v. *jurisdictional theory* is also a significant question of law. In this regard, the Supreme Court of the Czech Republic invoked the landmark judgment of the Constitutional Court of the Czech Republic in Case No. I. ÚS 3227/07 of 08 March 2011, which favoured the jurisdictional essence of arbitration.

116 Act on Arbitration and the Enforcement of Arbitral Awards – Act of the Czech Republic No. 216/1994 Coll. (approximate translation, cit.) – Section 25 [Making Arbitral Award and Reasoning]:

Current version: *(1) The arbitral award must be adopted by the majority of the arbitrators, must be made in writing, and must be signed by at least the majority of the arbitrators. The operative part of the arbitral award must be clear and unambiguous. (2) The arbitral award must contain reasons, unless the parties have agreed to dispense with reasons; this also applies to any arbitral award rendered pursuant to Section 24(2). (3) When making the award, the arbitrators apply the substantive law applicable to the dispute; they may, however, resolve the dispute according to the rules of equity, but only if the parties have explicitly authorized them to do so.*

The Act in effect as of 1 April 2012: *(1) The arbitral award must be adopted by the majority of the arbitrators, must be made in writing, and must be signed by at least the majority of the arbitrators. The operative part of the arbitral award must be clear and unambiguous. (2) The arbitral award must contain reasons, unless the parties have agreed to dispense with reasons; this also applies to any arbitral award rendered pursuant to Section 24(2). An arbitral award rendered in a dispute arising from a consumer contract must always contain reasons and instructions regarding the right to file a motion with the court to annul the award. (3) When making the award, the arbitrators apply the substantive law applicable to the dispute; they may, however, resolve the dispute according to the rules of equity, but only if the parties have explicitly authorized them to do so. In disputes arising from consumer contracts, the arbitrators shall always abide by consumer protection laws and regulations.*

Legislative developments since 01 April 2012: Section 25 of the ArbAct, as amended by Act No. 245/2006 Coll., Act No. 296/2007 Coll., Act No. 7/2009 Coll., Act No. 466/2011 Coll., Act No. 19/2012 Coll. and Act No. 91/2012 Coll., was newly reformulated by Act No. 258/2016 Coll., Amending Selected Legislation in Connection with the Consumer Credit Act, which took effect on 1 December 2016. The law has reverted to the version that was in effect before 01 April 2012.

117 An approximate translation of the provision is quoted in the introduction to this Part IV of selected case-law.

degree of protection that would otherwise be afforded to the parties in civil litigation; arbitration, just like litigation, aims at the peaceful resolution of the dispute between the parties. It is just that the parties have a special reason (for instance, expeditiousness or the confidentiality of the information discussed in the proceedings) to believe that arbitration is a more suitable solution. The submission of a dispute to arbitration means the transfer of legal protection to a different decision-making and law-finding authority,[118] rather than the waiver thereof; indeed, any other conclusion would render it conceptually unacceptable to consider arbitration as a dispute resolution method representing an alternative to litigation.

8.40. **Resolution of the Supreme Court of the Czech Republic, Case No. 29 Cdo 2254/2011 of 27 June 2013:**[119] [***res judicata*; effects of a final arbitral award**] A final arbitral award has the effects of a final court decision and constitutes *res judicata*[120] in relation to identical cases.[121]

8.41. **Resolution of the Supreme Court of the Czech Republic, Case No. 29 Cdo 392/2011 of 31 July 2013:**[122] [**incidental dispute; insolvency proceedings; decision making according to the principles of equity**] **(1)** "Another authority" in terms of Section 199(2) of the Insolvency Act[123] also means an arbitrator or a [permanent] arbitral institution.[124] The regime applicable to the review of an enforceable claim awarded by a final decision of a "competent authority" also covers an enforceable claim

[118] An arbitrator (permanent arbitral institution) is also designated as "another authority" by judgment of the Constitutional Court of the Czech Republic, Case No. I. ÚS 3227/07 of 08 March 2011.

[119] Preceding decisions in the case: (i) resolution of the Regional Court in Hradec Králové [Czech Republic], Case No. 34 Cm 146/2009 of 23 April 2010, and (ii) resolution of the High Court in Prague [Czech Republic], Case No. 4 Cmo 146/2010-47 of 25 February 2011.

[120] In this regard, the Supreme Court of the Czech Republic also invoked resolution of the Supreme Court of the Czech Republic, Case No. 29 NSČR 29/2009 of 17 February 2011, published as no. 108/2011 in Sbírka soudních rozhodnutí a stanovisek [Court Reports].

[121] As to the issue of *the same case*, the Supreme Court of the Czech Republic summarizes the postulates inferred from the current case-law and invokes, *inter alia*, (i) resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 463/99 of 31 January 2001, (ii) judgment of the Supreme Court of the Czech Republic, Case No. 20 Cdo 2481/99 of 28 November 2001, or (iii) resolution of the Supreme Court of the Czech Republic, Case No. 20 Cdo 2931/99 of 12 December 2001.

[122] One of the preceding decisions was judgment of the High Court in Prague [Czech Republic], Case No. 15 Cmo 250/2009-100 of 18 February 2010.

[123] Insolvency Act – Act [of the Czech Republic] No. 182/2006 Coll. (approximate translation, cit.): Section 199 – *(1) The liquidator who rebutted an enforceable claim shall file a lawsuit with the insolvency court within 30 days of the review hearing whereby the rebuttal will be claimed against the creditor who had registered the enforceable claim. The time period shall not expire if the lawsuit is received by the court on or before the last day of the time period. (2) The grounds for rebutting the existence or the amount of an enforceable claim awarded by a final decision of the competent authority may only consist in the facts which were not asserted by the debtor in the proceedings preceding the issue of the decision; however, the rebuttal may not be based on a different legal assessment of the case. (3) In his or her lawsuit under subsection (1), the claimant may only invoke such circumstances against the rebutted claim for which the claim was rebutted by the claimant.*

[124] Cf. also judgment of the Constitutional Court of the Czech Republic, Case No. I. ÚS 3227/07 of 8 March 2011.

awarded by a final arbitral award delivered by an arbitrator or a [permanent] arbitral institution. If the arbitral award takes the effects of a final judicial decision, it is logically, as such, reviewable in insolvency proceedings in the same way as a final judicial decision. **(2)** The possibility of rebutting an enforceable claim awarded by a final arbitral award is not prevented by the fact that the parties explicitly authorised the arbitrator to resolve the dispute in compliance with the principles of equity (Section 25(3) of the ArbAct).[125]

8.42. Resolution of the Supreme Court of the Czech Republic, Case No. 30 Cdo 3678/2013 of 21 May 2014:[126] [**service of documents; agreement of the parties on service of documents; service of documents to a data mailbox**] **(1)** The ArbAct regime following the ArbAct Amendment allows the parties to agree on the means whereby the arbitral award will be served. **(2)** As concerns the service of the arbitral award in arbitration, whether the parties agreed on the means of such service is always to be determined. In the absence of the parties' agreement, it is necessary to apply the provisions of the CCP that provide for the service of documents. **(3)** The service of documents through the public data network to data mailboxes is provided for in the Electronic Acts Act, which enables documents to be served sent by individuals, individuals doing business and legal entities (other than public authorities). **(4)**

[125] Act on Arbitration and the Enforcement of Arbitral Awards – Act of the Czech Republic No. 216/1994 Coll. (approximate translation, cit.) – Section 25 [Making the arbitral award and reasons]:
Current version: *(1) The arbitral award must be adopted by the majority of the arbitrators, must be made in writing, and must be signed by at least the majority of the arbitrators. The operative part of the arbitral award must be clear and unambiguous. (2) The arbitral award must contain reasons, unless the parties have agreed to dispense with reasons; this also applies to any arbitral award rendered pursuant to Section 24(2). 2. (3) When making the award, the arbitrators apply the substantive law applicable to the dispute; they may, however, resolve the dispute according to the rules of equity, but only if the parties have explicitly authorized them to do so.*
The Act in effect as of 01 April 2012: *(1) The arbitral award must be adopted by the majority of the arbitrators, must be made in writing, and must be signed by at least the majority of the arbitrators. The operative part of the arbitral award must be clear and unambiguous. (2) The arbitral award must contain reasons, unless the parties have agreed to dispense with reasons; this also applies to any arbitral award rendered pursuant to Section 24(2). 2. An arbitral award rendered in a dispute arising from a consumer contract must always contain reasons and instructions regarding the right to file a motion with the court to annul the award. (3) When making the award, the arbitrators apply the substantive law applicable to the dispute; they may, however, resolve the dispute according to the rules of equity, but only if the parties have explicitly authorized them to do so. In disputes arising from consumer contracts, the arbitrators shall always abide by consumer protection laws and regulations.*
Legislative developments since 01 April 2012: Section 25 of the ArbAct, as amended by Act No. 245/2006 Coll., Act No. 296/2007 Coll., Act No. 7/2009 Coll., Act No. 466/2011 Coll., Act No. 19/2012 Coll. and Act No. 91/2012 Coll., was newly reformulated by Act No. 258/2016 Coll., Amending Selected Legislation in Connection with the Consumer Credit Act, which took effect on 1 December 2016. The law has reverted to the version that was in effect before 01 April 2012.

[126] One of the preceding decisions was the resolution of the Municipal Court in Prague [Czech Republic] in Case No. 23 Co 241/2013-10 of 06 June 2013.

However, Section 18a of the EAA[127] stipulates that service of documents from the data mailboxes of such persons or entities to their data mailboxes is only allowed if they made the relevant request at the Ministry of Interior (see Section 2(2) of the EAA[128] and Section 18a(1) of the EAA).[129] [***Author's Note***]: This decision was made in enforcement proceedings and concerns arbitration in which the arbitral award was rendered on 18 October 2012. Hence, the resolution does not factor in Section 19a of the ArbAct.

8.43. Resolution of the Supreme Court of the Czech Republic, Case No. 23 Cdo 168/2014 of 25 November 2014:[130] **[arbitral award**

[127] Act of the Czech Republic No. 300/2008 Coll. on Electronic Acts and Authorized Conversion of Documents (approximate translation, cit.): Section 18a – *Delivery of documents of natural persons, self-employed natural persons (entrepreneurs) or legal entities – (1) The information system of data mailboxes allows delivery of documents from the data mailbox of a natural person, a self-employed natural person (entrepreneur) or a legal entity to an activated data mailbox of another person or entity. The data mailbox of a natural person can be blocked by the holder thereof with respect to the delivery of documents from the data mailbox of a natural person, a self-employed natural person (entrepreneur) or a legal entity. (2) A document delivered pursuant to the first sentence of Subsection (1) is delivered at the moment the person who has access to the document in view of the scope of his/her authorisation logs into the data mailbox. (3) Unless the person under Subsection (2) logs into the data mailbox within 10 days after the day on which the document was delivered to the data mailbox, the document is deemed delivered on the last day of this time limit. (4) The delivery of the document pursuant to the first sentence of Subsection (1) is subject to a fee payable to the data mailbox information system operator; the fee shall be calculated by the price-setting authority according to the applicable price regulations[5]. The fee shall be paid by the natural person, self-employed natural person (entrepreneur) or legal entity from whose data mailbox the document was sent. The said person/entity may also declare that he/she will pay for the delivery of a reply to the document delivered pursuant to the preceding sentence. On behalf of and with the consent of the natural person, self-employed natural person (entrepreneur) or legal entity from whose mailbox the document was dispatched, the fee under the first sentence may also be paid by another natural person, self-employed natural person (entrepreneur) or legal entity.*

[128] Act of the Czech Republic No. 300/2008 Coll. on Electronic Acts and Authorized Conversion of Documents (approximate translation, cit.): Section 2 – *Data mailbox - (1) A data mailbox is an electronic repository intended for (a) service of documents by public authorities, (b) performance of acts vis-à-vis public authorities, (c) service of documents by natural persons, self-employed natural persons (entrepreneurs) and legal entities. (2) Data mailboxes are created and administrated by the Ministry of Interior (the "Ministry").*

[129] Act of the Czech Republic No. 300/2008 Coll. on Electronic Acts and Authorized Conversion of Documents (approximate translation, cit.): Section 18a – *Delivery of documents of natural persons, self-employed natural persons (entrepreneurs) or legal entities – (1) The information system of data mailboxes allows delivery of documents from the data mailbox of a natural person, a self-employed natural person (entrepreneur) or a legal entity to an activated data mailbox of another person or entity. The data mailbox of a natural person can be blocked by the holder thereof with respect to the delivery of documents from the data mailbox of a natural person, a self-employed natural person (entrepreneur) or a legal entity. (2) A document delivered pursuant to the first sentence of Subsection (1) is delivered at the moment the person, who has access to the document in view of the scope of his/her authorisation, logs into the data mailbox. (3) Unless the person under Subsection (2) logs into the data mailbox within 10 days after the day on which the document was delivered to the data mailbox, the document is deemed delivered on the last day of this time limit. (4) The delivery of the document pursuant to the first sentence of Subsection (1) is subject to a fee payable to the data mailbox information system operator; the fee shall be calculated by the price-setting authority according to the applicable price regulations[5]. The fee shall be paid by the natural person, self-employed natural person (entrepreneur) or legal entity from whose data mailbox the document was sent. The said person/entity may also declare that he/she will pay for the delivery of a reply to the document delivered pursuant to the preceding sentence. On behalf of and with the consent of the natural person, self-employed natural person (entrepreneur) or legal entity from whose mailbox the document was dispatched, the fee under the first sentence may also be paid by another natural person, self-employed natural person (entrepreneur) or legal entity.*

[130] Preceding decisions in the case: (i) Resolution of the District Court for Prague 1 [Czech Republic], Case No. 65 C 58/2013-20 of 13 February 2013; and (ii) Resolution of the Municipal Court in Prague [Czech Republic], Case No. 55 Co 193/2013-69 of 25 April 2013.

imposing an expression of will; suspension of enforceability; consequences of enforcing an arbitral award; imminent serious harm] An arbitral award imposing an expression of will must be viewed as a judicial decision as concerns the possibility of suspending its enforceability. Hence, such assessment of the suspension of enforceability shall be governed by the case-law concerning judicial decisions imposing an expression of will. If the enforceability cannot be suspended of the part of an judicial decision that imposes an expression of will, the enforceability of an arbitral award imposing an expression of will pursuant to Section 32(2) of the ArbAct cannot be suspended to the said extent either.

8.44. **Resolution of the Regional Court in Hradec Králové** [**Czech Republic**], **Case No. 23 Co 188/2014:**[131] [**contractual penalty, material enforceability, review; enforcement proceedings**] **(1)** An arbitral award is materially enforceable if the operative part thereof imposes an obligation to pay a contractual penalty calculated as a percentage of a stipulated amount from a particular date to the moment at which the principal is paid. **(2)** Even if the arbitral award contains an operative part that should not be taken over from a lawsuit and used in a decision made in court proceedings, this deficiency can no longer be remedied at the stage of enforcement. If the review of an award is only allowed exceptionally in cases stipulated by the law, it would be nonsensical to transfer the review on the merits to the enforcement proceedings; the nature of the latter dictates that such proceedings ought to be more formal.[132]

8.45. **Judgment of the Supreme Court of the Czech Republic, Case No. 29 ICdo 11/2014 of 28 January 2016**:[133] [**arbitrability; dispute over the settlement of marital property (joint property of spouses); property dispute; binding effect of the operative part of an arbitral award; *res judicata*; effects relating to finality (legal force and effect)**] The operative part of a final judgment is binding on the parties; to the extent to which the operative part of a final judgment is binding on the

[131] The annotation has been adopted from: Výběr rozhodnutí, 21(7-8) SOUDNÍ ROZHLEDY 276 (2017).

[132] The issue has also been analysed by Igor Pařízek, *K dalšímu posunu judikatury u rozhodčích doložek* [title in translation – *Developments in Case-Law Concerning Arbitration Clauses*], (2) PRÁVNÍ ROZHLEDY 61 et seq. (2015). The decision was discussed together with the resolution of the SC in Case No. 20 Cdo 4656/2008 of 26 November 2010, in which the Supreme Court has adopted a contrary view, and which is the only decision of the cassation court that deals with a comparable issue; however, the tribunal embraced the conclusion reached in the decision of the Regional Court in Hradec Králové [Czech Republic], annotated in this publication.

[133] Preceding decisions in the case: (i) Judgment of the Municipal Court in Prague [Czech Republic], Case No. 88 ICm 2057/2011-53 of 12 July 2012; and (ii) Judgment of the High Court in Prague [Czech Republic], Case No. 88 ICm 2057/2011, 103 VSPH 291/2012-119 (MSPH 88 INS 8429/2010) of 02 October 2013. The decision also deals with the arbitrability of disputes over the settlement of marital property.

parties, it is also binding on all authorities. The case cannot be retried to the extent of such binding effects of the operative part of the judgment. That said, the effects are connected with the finality (legal force and effect) of the judicial decision, not the enforceability thereof. The same applies, within the limits of the arbitrator's jurisdiction, to an arbitral award rendered by an arbitrator that cannot be subject to review pursuant to Section 27 of the ArbAct or an award with respect to which the time limit for filing the motion for review pursuant to Section 27 of the ArbAct has expired without the motion having been lodged and which, consequently, acquires the effects of a final judicial decision and is enforceable by courts at the moment at which it has been served.

8.46. **Judgment of the Constitutional Court of the Czech Republic, Case No. I ÚS 1274/16 of 03 March 2016:**[134] [**arbitrator; appointment of the arbitral tribunal; transparency; arbitral award; jurisdiction of arbitrator; enforcement order**] If the arbitral award was not rendered by an arbitrator who was appointed (selected) according to transparent rules, and if the outcome of such decision-making cannot be accepted either, the arbitral award is not an eligible enforcement order. It is also necessary to have regard to the resolution of the Supreme Court of the Czech Republic in Case No. 31 Cdo 1945/2010 of 11 May 2011, which indicates that the Court has unified the approach to the invalidity of arbitration clauses; it also represents the relevant moment at which the courts must be deemed to have adopted the unified approach to the invalidity of arbitration clauses. Subsequent decisions merely elaborate on the impacts that the preceding conclusions have on the enforcement proceedings. Hence, since 11 May 2011, the courts must have been aware that contested arbitration clauses are invalid and, consequently, cannot establish the jurisdiction of an arbitrator to issue a decision eligible as an enforcement order.

8.47. **Judgment of the Supreme Court of the Czech Republic, Case No. 23 Cdo 3376/2016 of 12 July 2016:**[135] [**service of an arbitral award; agreement on procedure**] **(1)** After the amendment of Section 23 [ArbAct] by Act No. 19/2012 Coll., the parties to arbitration have been allowed to agree on the procedure whereby the arbitral award will be served (Section 19 of the ArbAct, and since 1 January 2014 see also Section 19a of the ArbAct); consequently, there is no need for the service to comply with Section 45 et seq. of the CCP. (**2**) The agreement

[134] The *ratio decidendi* has been adopted from: Výběr rozhodnutí, (9) SOUDNÍ ROZHLEDY 283 (2017).
[135] The *ratio decidendi* have been adopted from the website of the Supreme Court of the Czech Republic.

on the method of conducting the arbitration, including an agreement on a mailing address different from the provisions of the Statute or Rules of the arbitral tribunal, must be contained in the arbitration agreement, i.e. in the arbitration clause, if applicable (Section 13(3) of the ArbAct). **(2)** If the agreement on the mailing address was not incorporated in the arbitration clause and the mailing address was provided only in the purchase order, it does not constitute a special arrangement regarding the means of service in arbitration, but merely an agreement of the parties on the means of communication between the parties, for instance, in connection with the delivery of purchase orders, invoices, etc. **(3)** If the claimant fails to inform the arbitral tribunal of the address for mailing documents and if the tribunal is unable to serve documents to the claimant's data mailbox, the claimant must be served at an address known to the arbitral tribunal, including service implemented by a public data network to the claimant's electronic address (Section 10(1) and (4) of the Rules of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic); this, however, does not apply to documents that must be served personally (Section 10(3) of the Rules of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic). **(4)** If the arbitral tribunal does not succeed in delivering documents that must be served personally to the address (registered address) of the claimant entered in the Commercial Register or, as applicable, the Trade Licensing Register and mentioned in the purchase order, the arbitral tribunal applies Section 10(9) of the Rules of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic and proceeds to the appointment of a person authorised to receive documents.

8.48. Judgment of the Supreme Court of the Czech Republic, Case No. 23 Cdo 4576/2016 of 11 April 2017:[136] [**invalidity of the arbitration clause; reference to Rules; legal entity other than a permanent arbitral institution; selection of arbitrator; *res judicata*; objections must be raised in the course of arbitration**] **(1)** If the arbitrator was appointed by reference to "Rules on Arbitration" issued by a legal entity other than a permanent arbitral institution established by law (statute),[137] the

[136] Preceding decisions in the case: (i) Judgment of the Regional Court in Ústí nad Labem, Liberec Office [Czech Republic], Case No. 36 Co 145/2014-92 of 28 March 2014.

[137] See Section 13 of the ArbAct.

arbitral award is not an eligible enforcement order in terms of Section 40(1)(c) of the Enforcement Code,[138] which could be the basis for the opening of enforcement proceedings; the reason is that the arbitrator appointed under an invalid arbitration clause (Section 39 of the Civil Code 1964[139]) lacked jurisdiction to render the arbitral award under the ArbAct. If, despite the above said, the enforcement proceedings were nonetheless opened in such case and if the lack of jurisdiction on the part of the authority that rendered the enforcement order is (*ex post facto*) established by court, the enforcement proceedings must be discontinued at each and every stage for inadmissibility under Section 268(1)(h) of the CCP.[140] **(2)** An identical case concerning the same subject matter of the proceedings and the same parties that was already resolved by an arbitral award rendered by an arbitrator who lacked the jurisdiction to render such an arbitral award does not constitute *res judicata*.[141]

8.49. Judgment of the Supreme Court of the Czech Republic, Case No. 29 ICdo 93/2016 of 20 September 2018:[142] [**prohibition of a review on the merits; statement of fact; insolvency proceedings; contesting the existence of a claim; contesting the amount of a claim; error; factual assessment; legal assessment**] The fact that the arbitral tribunal erred in holding a fact claimed by the debtor in the arbitration preceding the final arbitral award immaterial at the level of law or fact, and erred as to the contents of the statements of fact made by the debtor

[138] Enforcement Code – Act [of the Czech Republic] No. 120/2001 Coll., on Court Enforcement Officers and Enforcement (approximate translation, cit.): Section 40 – *(1) An enforcement order is (a) an enforceable decision of a court or an enforcement officer that awards a right, establishes an obligation or seizes property, (b) an enforceable decision of a court or another law enforcement authority in criminal proceedings that awards a right or seizes property, (c) an enforceable arbitral award, (d) a notarial record with a consent to enforcement, prepared under special legislation, (e) an enforceable decision or another enforcement order of a public authority, (f) other enforceable decisions and approved settlements and documents, the enforcement of which is allowed by law. (2) Unless the enforcement order stipulates a deadline for the performance of the obligation, the presumption is that the obligations imposed by the enforcement order are to be fulfilled within 3 days, or if the decision orders eviction from a dwelling, 15 days after the decision becomes final. (3) If the enforcement order specified in Paragraphs (a), (b) or (c) of Subsection (1) orders that the obligation is to be fulfilled by two or more obligors and the performance is divisible, all obligors are bound to perform the obligations in equal shares, unless the enforcement order stipulates otherwise. (4) A court decision on the sale of collateral can be enforced if the decision identifies the obligee and the obligor, the collateral and the amount of the secured claim and any interest and associated dues.*

[139] Civil Code 1964 [Czech Republic] (approximate translation, cit.): Section 39 – *A juridical act is invalid if the content or the purpose thereof violates or evades the law or is* contra bonos mores*.*

[140] The Supreme Court of the Czech Republic invoked its previous case-law, specifically its decision in Case No. 31 Cdo 958/2012 of 10 July 2013, published under No. 92/2013 in Sbírka soudních rozhodnutí a stanovisek [Court Reports].

[141] The Supreme Court of the Czech Republic invoked its previous case-law, specifically its resolution in Case No. 23 Cdo 4460/2014 of 30 September 2015.

[142] The *ratio decidendi* has been adopted from: Petr Vojtek, *Výběr rozhodnutí v oblasti civilněprávní*, (3) SOUDNÍ ROZHLEDY 90 (2020). Also published under No. Rc 104/2019. *Per analogiam*, see also: Jan Hušek, *Rozhočí* řízení – *Doručování – Dohoda o doručovací adrese – Ustanovení osoby pověřené k přijímání písemností,* (10) OBCHODNÍ PRÁVO 361 [title in translation - Commercial Law] (2017).

therein, does not give the liquidator or the creditor the right to claim the same fact as grounds for contesting the existence or amount of the enforceable claim (rebuttal) awarded by the final arbitral award; the fact still constitutes a fact claimed by the debtor in arbitration in terms of Section 199(2) of the Insolvency Act[143] and Section 200(6) of the Insolvency Act.[144/145]

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[143] Insolvency Act – Act [of the Czech Republic] No. 182/2006 Coll. (approximate translation, cit.): Section 199 – *(1) The liquidator who rebutted an enforceable claim shall file a lawsuit with the insolvency court within 30 days of the review hearing whereby the rebuttal will be claimed against the creditor who had registered the enforceable claim. The time period shall not expire if the lawsuit is received by the court on or before the last day of the time period. (2) The grounds for rebutting the existence or the amount of an enforceable claim awarded by a final decision of the competent authority may only consist in the facts that were not asserted by the debtor in the proceedings preceding the issue of the decision; however, the rebuttal may not be based on a different legal assessment of the case. (3) In his or her lawsuit under Subsection (1), the claimant may only invoke such circumstances against the rebutted claim for which the claim was rebutted by the claimant.*

[144] Insolvency Act – Act [of the Czech Republic] No. 262/2006 Coll. (approximate translation, cit.): Section 200 – *Rebutting Claim by Registered Creditor – (1) Creditors have the right to rebut in writing claims lodged by other creditors. The rebuttal must contain the same requisite information as a lawsuit under the Code of Civil Procedure and must clearly indicate whether the rebuttal contests the existence, amount or rank of the claim. The rebuttal can only be lodged via a form, the requisites of which are prescribed by implementing legislation. The template of the form shall be announced by the Ministry by means enabling remote access; this service must be provided free of charge. (2) Regard to the registered creditor's rebuttal shall only be had if it contains any and all requisite information and if it is delivered to the insolvency court no later than 3 business days before the day of the review hearing concerning the contested claim; Section 43 of the Code of Civil Procedure shall not apply. After the deadline expires, the asserted grounds for the rebuttal can no longer be changed. If the rebuttal is lodged in such form that requires, at the time of the review hearing concerning the contested claim, the supply of additional information in writing, the submission of an original of the rebuttal or, as applicable, the submission of a written pleading with identical contents, the rebuttal shall be disregarded. (3) If the insolvency court concludes that the registered creditor's rebuttal shall be disregarded, the court shall reject the rebuttal by a decision that can only be made before the end of the review hearing concerning the contested claim. (4) The decision under Subsection (3) shall be served separately on the creditor who contested the claim, the creditor to whom the contested claim belongs, the debtor and the liquidator. The decision can be appealed only by the creditor who contested the claim (lodged the rebuttal). (5) Unless the insolvency court rejects the rebuttal, it shall be deemed, after the decision is made on the method of resolving the insolvency, but no earlier than 10 days after the end of the review hearing, to constitute a lawsuit whereby the creditor lodged his or her rebuttal at the insolvency court vis-à-vis the creditor who had registered the claim. (6) The grounds for rebutting the existence or the amount of an enforceable claim awarded by a final decision of the competent authority may only consist in the facts that were not asserted by the debtor in the proceedings preceding the issue of the decision; however, the rebuttal may not be based on a different legal assessment of the case.*

[145] The case continued with a constitutional complaint, which was rejected as being obviously unsubstantiated. See the resolution of the Constitutional Court of the Czech Republic in Case No. I ÚS 4058/18 of 02 April 2019.

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