

THE SUPREME COURT CONFIRMS A POSSIBILITY TO CHALLENGE AN ARBITRAL AWARD SOLELY AS TO THE DECISION ON THE COSTS OF PROCEEDINGS

In its recent decision file no. 23 Cdo 2848/2022, the Supreme Court confirmed that an arbitral award can be subject to a judicial review only as to the decision on the costs of the proceedings and that the decision on the costs of the proceedings also needs to comply with the basic conditions for hearing and deciding the case in arbitration. In case these conditions are not met, it may constitute a ground for annulment.

The case concerned a judicial review of an arbitral award issued by the Arbitration Court attached to the Economic Chamber of the Czech Republic and the Agricultural Chamber of the Czech Republic (the "**Arbitration Court**") in which the Arbitration Court, despite ruling fully in favour of the respondent, did not award the costs of the proceedings to either party. This was contrary to the principle of awarding the costs of the proceedings based on the success in the case contained in the applicable rules. Since the Arbitration Court did not request the parties to comment on costs prior to taking this decision, the respondent filed for an annulment of the decision on the costs of the proceedings.

The case eventually ended up at the Supreme Court, which was presented with two key questions:

- i If it is possible to subject to a judicial review only a decision on the costs of the proceedings, as Czech Act No. 216/1994 Coll., the Arbitration Act, as amended (the "**Arbitration Act**") allows a judicial review of arbitral awards only?
- ii If a decision on the costs of the proceedings also needs to comply with the basic conditions for hearing and deciding the case by an arbitral tribunal, including equality of the parties and a right to apply procedural rights during the arbitration proceedings?

Key Points

- The decision on the costs of the arbitral proceedings shall be delivered in a form of an arbitral award and can be thus also subject to a judicial review.
- The decision on the costs of the arbitral proceedings needs to comply with the basic conditions for hearing and deciding the case by an arbitral tribunal and non-compliance can lead to an annulment.
- The purpose of the judicial review of an arbitral award is not to create additional ordinary or extraordinary remedy against the arbitral award.

To the first question, the Supreme Court initially considered the nature of the decision on the costs of the proceedings. It confirmed that **any decision of an arbitral tribunal or a sole arbitrator on merits of the case, or imposing any obligation on any party to the arbitration (including obligation to reimburse the costs of the proceedings) shall be delivered only in a form of an arbitral award**. Therefore, such decision shall not be excluded from the judicial review according to Section 31 of the Arbitration Act, regardless, whether it is challenged separately, or along with the decision on the merits of the case.

To the second question, the Supreme Court firstly reiterated, that **the purpose of the judicial review of an arbitral award is not to create additional ordinary or extraordinary remedy against the arbitral award**. The purpose of the judicial review is to ensure the compliance with the basic conditions for hearing and deciding the case by an arbitral tribunal. The Supreme Court then reviewed whether party equality was ensured, whether the parties were provided with sufficient space to apply their procedural rights and whether none of the parties was unjustly disadvantaged by the procedural actions of the arbitrator(s). **The Supreme Court then concluded that an arbitral award can be subject to a judicial review pursuant to Section 31 e) of the Arbitration Act regardless of the fact, that only a decision on the costs of the proceedings is being reviewed.**

To some extent, judicial review of arbitral award thwarts one of the major advantages of arbitration which is time effectiveness and independence from state court system. The Supreme Court noted that any decision of a sole arbitrator or arbitral tribunal may be subject to court review if it imposes obligations on the parties, making the potential scope for review appear wide.

The review does not extend to determining whether the decision was materially correct. The Supreme Court does not require that arbitrators decide on costs mechanically, without considering relevant facts, even in this case (after hearing the parties on the cost issue). The court's review is strictly limited to procedural questions and questions of arbitrability. Consequently, the scope for review may be significantly limited by how the arbitrator(s) conduct the procedure.

CONTACTS



Miloš Felgr

Partner

T +420 222 555 209
E milos.felgr@cliffordchanceprague.com



Jan Dobrý

Counsel

T +420 222 555 252
E jan.dobry@cliffordchanceprague.com



Tomáš Brožek

Senior Associate

T +420 222 555 114
E tomas.brozek@cliffordchanceprague.com



Tereza Juráková

BD Manager

T +420 222 555 582
E tereza.jurakova@cliffordchanceprague.com

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

www.cliffordchance.com

Clifford Chance, Jungmannova Plaza,
Jungmannova 24, 110 00 Prague 1, Czech
Republic

© Clifford Chance 2024

Abu Dhabi • Amsterdam • Barcelona • Beijing •
Brussels • Bucharest • Casablanca • Dubai •
Düsseldorf • Frankfurt • Hong Kong • Istanbul •
London • Luxembourg • Madrid • Milan •
Munich • Newcastle • New York • Paris • Perth
• Prague • Rome • São Paulo • Seoul •
Shanghai • Singapore • Sydney • Tokyo •
Warsaw • Washington, D.C.

Clifford Chance has a co-operation agreement
with Abuhimed Alsheikh Alhagbani Law Firm
in Riyadh.

Clifford Chance has a best friends relationship
with Redcliffe Partners in Ukraine.