

Arbitration clauses in consumer affairs with impact on execution proceeding

Abstract

Arbitration is one of the forms of alternative dispute resolution. The arbitration institute is not a novice in the area of law. Its foundations can be seen from ancient times. However, today's legal regulation of arbitration can be observed since the first half of the 19th century. The essence of the arbitration procedure is to delegate the hearing and decision-making of certain disputes to the jurisdiction of the courts, to the arbitrator. The arbitrator then issues an arbitration award, which may be relied upon in the proceedings in which he was issued as an enforcement or enforceable title. In the legal order of the Czech Republic we find the primary regulation of the arbitration procedure in Act No. 216/1994 Sb. By passing this Act, the arbitration procedure was extended to national disputes. As a result of arbitration proceedings, disputes arising from consumer contracts could also be resolved. However, the method of resolving disputes between consumers and entrepreneurs has proved to be a widely used institute, even when overused and misused. The situation was so extreme that the lawmaker had to come up with a bill amendment to strengthen consumer protection in arbitration. Not only the legislative power, but also the judicial power, has responded to this development.

As the arbitration award, as a result of the arbitration proceedings, is in compliance with the terms of the litigant in whose favor it was issued, it is possible to use it as an enforceable title, the number of executions ordered by arbitration. The advantages of arbitration itself are about all two advantages - speed and lower cost. It is a great prerequisite especially for non-banking (but also banking) institutions to obtain a fast execution title. Entrepreneurs incorporated an arbitration clause into consumer contracts, and their clients often did not know the meaning and implications of the arbitration clause. The clauses were often determined by one particular arbitrator who had to deal with the dispute, or the arbitrators' determination was similarly problematic, especially with regard to their impartiality. Consumers then often did not know how to defend themselves. The turnaround occurred only a few years later when in 2016 the amendment to the Act No. 258/2016 Sb., which already excluded the conclusion of arbitration agreements with the consumer, came into effect.

Courts began abusively on the basis of arbitration awards. However, over time, different views on the invalidity of the arbitration findings, the wording of the arbitration clauses, on the basis of which the arbitrator has the power to rule the dispute. The court's point of view at first on the arbitration clause was different, and it took several years for the jurisprudence to come to a conclusion that the arbitration clauses are valid and which are invalid. If it is, and even

according to the most recent case law, the execution is executed on the basis of an invalid arbitration award, it must also be reflected in the enforcement proceedings, even in the light of the newer case-law and the finalized enforcement proceedings. At the same time, it has other consequences for the next procedure, especially on the part of the creditors, since it is quite obvious that the suspension of the execution of the debt does not disappear, in connection with the question of the limitation of the debt, whether arbitration proceedings are in progress in the arbitration proceedings and in the enforcement proceedings.

Although jurisprudence seems to be unified in the area, there are other cases of arbitration clauses (contracts) and with the related new issues and procedures that are put to the courts of execution, which in principle do not have to deal with when it is explicitly stated that in the enforcement proceedings a substantive review is not possible. A completely new case law emerges, which states that, when examining the eligibility of the execution title, whether the arbitrator has the power to rule, is not a matter of fact review. However, the case law goes further and determines the circumstances in which the court must deal with the conclusion that enforcement is ordered on the basis of an ineligible execution title. How will the judgments relating to arbitration clauses (contracts) and how the courts will react will show only time.