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The Impact of Uniform Law on National Law. Limits and Possibilities. Czech Republic / National Report

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UNIFORM LAW IMPACT QUESTIONNAIRE

From your National Law perspective, would it be proper to include within the notion of "Uniform Law" usages of the trade or "customs", general principles of law, general principles of contract law or of the law of obligations, transnational Law, *lex mercatoria*, general rules of procedure? Uniform Law below shall mean Uniform Law according to the meaning assigned to this expression in your reply to this Question 1.

To begin with, I have to stress that the Czech Republic is a country within a continental law system. This means that the development of the legal system in the Czech Republic has been strongly influenced by the Roman Legal Tradition. At the same time, this means that in this legal system decisions of the Courts cannot be of a normative nature, but are used merely as a means of interpretation. In fact, the position of case law within the legal system is of a growing significance, but the importance of case law can not cross over the limits of the legislation (the statutory law). Case law can not be accepted as a rule of interpretation, even if it is very important, with a number of practical consequences and is often used as an instrument of legal arguments by the practice in similar cases (earlier there was an exception to quote in the *common* practice a case law) The Roman Legal Tradition has left a strong sense for the Principles of Law in the Continental legal systems. Generally speaking, these principles are the legal backbone of the legal norms enacted in the Czech Republic, primarily in the areas of Constitutional, Commercial and Civil law, and play an important role in the interpretation of these normative acts.

From the perspective of Czech Law, the concept of "Uniform Law" itself has to include the general principles of law, as has been stated above, like the general principles of contract law, which have been incorporated into the national legal system through the system of international treaties and conventions signed and ratified by the Czech Republic (the former Czechoslovakia). Further, when speaking about the General Principles of Law, I have to stress that an important

step moving toward the unification of principles also plays an important role as a facet of Uniform Law . We are generally speaking about the UNIDROIT Principles of International Commercial Contracts (2004) and the unifying tendencies under the auspices of the EU, especially the Principles of European Contract Law (1995). The latter could be employed by the Czech Courts merely as soft law, which is, in fact, just exceptionally. This status is mainly influenced by the fact that such terms as Principles of European Contract Law, Generally accepted Rule of Laws, UNIDROIT or *lex mercatoria*, *transnational* rules etc are completely unknown in a large part of the legal practice and, while not used in daily practice, the Courts deal with such an agenda only in exceptional cases. Simplifying the current influence of the General Principle of Laws, and therefore the Unified Rules of whatever nature, except those contained in the statutory law through Conventions signed and ratified by the Czech Republic, is minimal in daily practice. There has been no Czech case law published, quoting any reference to Uniform law since ten years ago. Uniform law is, therefore, mainly the legislature used as a source for drafting the statutory law, for the Academics and for a limited part of Czech legal practice which is involved in international matters, international arbitral proceedings etc.

The practical implications cannot be underestimated with respect to arbitration as arbitral practice certainly works with Uniform Law Standards. The main reason is the luck of publication and the quotation of arbitral awards and other arbitral decisions, which are covered by strict confidentiality, and by this reasoning, only the insignificant parts of the decisions taken in Arbitration will be presented to the public. However it has to be noted that Arbitration became a very popular kind of dispute settlement in the Czech Republic, while the awards rendered by arbitrators upon a valid arbitration clause can not be appealed through civil jurisdictional way and are usually enforceable (domestic awards without any court recognition).

Customs and usages of trade have a special position in Czech Commercial Law (as the *lex specialis* within the system of *civil law*).They are taken into account when they are not at variance with the provisions of the applicable National Law or the provisions of a contract entered by the parties.

From the perspective of National Law, transnational Law and *lex mercatoria* cannot be understood as falling within the concept of “Uniform Law” because the lines between these categories of law are too blurred; they originate outside of state supervision and regulation; and

because the option to apply such rules by national courts will undermine the principle of legal certainty. It would also impose an inappropriate burden on the judges in the sense of the *iura novit curia* principle.

From the national perspective, both of these categories could only be employed if the rules included in these legal schemes were to be implemented into the national legal system as sources of Public International Law by means of International Treaties or Conventions

General Principles of Procedure cannot, as a whole, be seen as being part of "Uniform Law". Like in the case of the previous sources, these are only reflected when they have been implemented by means of a ratified International Treaty. This means that Uniform Law is applicable to the limited extent of the implemented international sources of law ratified by the Czech Parliament.

The situation is different in the case of arbitration, where the parties can, by mutual agreement, divert from national procedural law (to a limited extent) and agree on their own set of procedural rules or choose an existing set of procedural rules (e.g. the 1985 UNCITRAL Model Law on International Commercial Arbitration).

To what extent has your country incorporated Uniform Law as National Law through treaty ratification, other enactments or court decisions?

First and foremost, the concept of Uniform Law influences Czech National Law through the implementation of instruments of International Law.

With regard to the individual categories quoted and described under the previous question and legal tradition, it may be appropriate to rank the aforementioned categories in terms of legal force according to Czech Law.

At the highest level, I have to place the General Principles of Law and General Principles of Contract Law stemming from the International Treaties and Conventions, which, if ratified by the Czech Republic and therefore becoming a part of the Czech statutory law, take priority in their application in accordance with the Constitution of the Czech Republic, and so the local Court is obliged to apply these instruments before domestic law. Under the concept of Uniform Law as defined above, we must place the following important international instruments, which

have been incorporated into the Czech national legal system and which have an impact on the national legal system:

Under UNCITRAL, as a truly Uniform International Law:

Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)

- legally binding in the Czech Republic since January 1, 1993;

Convention on the Limitation Period in the International Sale of Goods (1974)

- legally binding in the Czech Republic since January 1, 1993; and

United Nations Convention on Contracts for the International Sale of Goods (1980) (CISG)

- legally binding in the Czech Republic since January 1, 1993.

In addition, I have to list the instruments establishing the international organizations and concluded under their auspices as the GATT, WTO and EC/EU, in which the Czech Republic also participates. In this regard, we would like to point out the unifying tendencies under the EU, especially the 1980 Rome Convention on the Law Applicable to Contractual Obligations.

Another important level at which Uniform Law is represented in National Law is within the category of trade usages. The Czech Commercial Code regulates the applicability of trade usages as part of *lex mercatoria* in commercial relations between parties.

The introductory provisions of the Commercial Code feature the ranking of the sources applicable to commercial relations regulated by the Commercial Code. Apart from other particular fields of interstate law, the Commercial Code utilizes the trade usages and customs as supporting sources that could be used in the event that the written law does not deal with the question at hand. It is expressly stated that the trade usages regularly used in a particular business sector, which are not at variance with a contract concluded between parties or with the law, are taken into account as the means of interpretation.

The trade usages that have been expressly included in the contract shall take precedence in their application over the relevant provisions of the Czech Commercial Code. This is, however, valid for the international trade usages (different from national trade usages, but anchored in the same Principles of Law) commonly respected in international trade in the relevant trade sector.

As for General Customs, these are expressly listed in the supplementary sources of law and are only invoked in commercial relations regulated by the Commercial Code in exceptional cases. These Customs are not set out in the Commercial Code in a uniform manner, but are primarily derived from the General Principles of Law.

From the aforementioned, it is clear that Czech Commercial Law leaves a fair amount of leeway with respect to the contractual freedom of the parties, and thus for the application of the rules of *lex mercatoria inter partes*, for example; The UNIDROIT Principles of International Commercial Contracts (2004), within the bounds set by National Law.

As a general rule, the General Principles of Law are primarily anchored in the Constitution of the Czech Republic and the subsequent constitutional documents, such as the Declaration of Basic Rights and Freedoms. The principles are further specified in the relevant acts in our case, especially in the Commercial Code and Civil Code, the latter of which is also applicable to trade relations, as the Commercial Code only regulates specific areas of Commercial Law, the basic institutions of which are derived from the provisions of the Civil Code. To this extent, the General Principles of the Law, as part of Uniform Law, are also deeply anchored in the national legal system. However, the interpretation of these principles is derived from national interpretation, which is primarily seated in the doctrine of legal theory.

Court decisions, as instruments of the implementation of Uniform Law, do not play a significant role in the Czech Republic in shaping the relationship between Uniform Law and National Law. Since the court system in the Czech Republic is not based on the *stare decisis* principle, court decisions, except for the impact of *inter partes*, only have secondary interpretative connotations, and serve for the clarification and specification of the common legal provisions of the Statutes.

To what extent should your National Law be considered as including Uniform Law when designated as proper law of the contract? the law governing the tort? When your country is designated as place (seat) of the arbitration?

The answer to this question is already included in the previous answer to Question No. 2. We would like to stress that the main instruments that typically implement elements of Uniform Law into national legal systems are the sources of International Law (mainly International Treaties), which, as such, take precedence over National Law in their application. A detailed description of

the application mechanism of Uniform Law in the area of Czech Commercial law has been provided under the answer to Question No. 2 above.

As to the extent of the applicability of Uniform Law in relation to the law governing tort, we have to point out that Czech Law does not recognize the concept of tort, but it is possible to compare the concept of tort to that of civil delict, which is of course not fully equivalent to tort, which is of course set out by means of a different concept of Czech National Law. In such a case, it has to be stated that this depends on the nature of the breached obligation. The concept of civil delict is firmly anchored in Civil Law and, as such, Civil Law is applicable together with the rules of Uniform Law that have been implemented by means of international documents or that are the same as the principles of Czech law based on Constitutional Instruments.

Arbitration, as an alternative to a court procedure, is characterized by being a less rigid and informal way of resolving a dispute. This means that it is more open and offers more opportunities to apply the rules of Uniform Law. The extent of the application of Uniform Law depends, to a significant degree, on the nature of the arbitration, e.g. the difference between national and international arbitration.

"National arbitration", is governed by Act No. 216/1994 Coll., of November 6, 1994, on Arbitration Proceedings and the Enforcement of Arbitral Awards (hereinafter the "Act").

Following this Act, from the perspective of substantive law, it must be concluded that the arbitrators decide the dispute on the basis of the substantive law determined by the conflicts of law. From this point of view, the applicability of the concept of Uniform Law depends on the extent to which Uniform Law has been implemented into National Law.

Further, the Act provides the parties with the option (if expressly agreed upon by parties to the dispute) to entrust the arbitrator(s) to decide the dispute under the principle of *ex aequo et bono,* which offers the possibility to decide the case wholly on the basis of the international envisagement of Uniform Law. Such solution depends of course on the individual arbitrator and his/her understanding of the concept of *ex aequo et bono,* respectively Uniform Law, but this option is still limited by the cogent norms which could hinder such award from recognition and enforcement.

The designation of the place of arbitration is in the Czech Republic connected with the choice of law, which "dominates" the arbitration. Such law is also decisive with regard to the extent of the possible intervention of the national courts in the proceedings. This means that choosing the Czech Republic as the place of arbitration predominantly entails the Czech Rules of Procedure, if the parties do not agree on the use of specific procedural rules or they do not create such rules by consent notified to Arbitrators. Such norms then limit the extent of the facultative application of procedural law, thus limited by the Czech cogent *(not only) procedural* norms.

The procedural rules of arbitration, pursuant to the Act, also include the standing order of the permanent courts of arbitration in the event that the parties choose this court.

These rules can be set aside by means of a written agreement between the parties, to be replaced by their own set of procedural rules. This option is of no great practical benefit, because most parties do not prepare their own set of rules, but this option opens the door for the application of other procedural sets of norms as, for example, the 1985 UNCITRAL Model Law on International Commercial Arbitration.

The situation is thus different in the case of international arbitration, where it is possible to apply, to a significant degree, the International Customs commonly challenged in front of the permanent International Arbitration Courts.

To what extent will legal notions in your country applicable in the process of deciding a dispute by courts or arbitrators (including public policy and International mandatory rules or *lois de police* (national or foreign)) accept Uniform Law incorporated in the foreign law (substantive or procedural) applicable, as the case may be, to the contract giving rise to the dispute/at the foreign arbitral place or seat?

Generally, when a dispute is decided by a judicial or arbitral organ (further referred to as the "Organ") in the Czech Republic, and the conflict of laws rules will refer to foreign law, the Organ is basically obliged to use the foreign legal order which has been assessed by the rules of the Conflict of Laws. This obligation is connected with the obligation to ascertain the content of the foreign law. This obligation cannot be interchanged with the principle of *iura novit curia,* which is only applicable to National Law. The local organs are not obliged to know the foreign law, but merely have an obligation to ascertain its wording and content. Further, this means that there exists no obligation to ascertain the existence and content of the foreign mandatory norms,

which are not decisive under the rules of the Conflict of Laws for the given legal relation between the parties. It is the responsibility of a party that challenges these norms to prove their existence and the text of such norms.

Foreign norms are used in the same manner as in their country of origin. The national organs shall use the foreign norms with respect to the foreign application praxis, jurisprudence, etc. This means that the application and interpretation of Uniform Law incorporated or included in the foreign legal system by other means should adhere to the national (in this case foreign) means of application and interpretation of these rules with respect to all national (foreign) instruments of interpretation, especially jurisprudence, etc. This means that Uniform Law should be used, to the extent of its incorporation, via the instruments of International Law to apply the praxis or jurisprudence of the foreign courts of *legis causae.*

As for national public policy rules; if the effect of the application of such rules would contravene the principles of the social and governmental establishment of the Czech Republic and its legal system, which have to be implicitly adhered to then, then, under this basic principle, foreign laws (rules and norms) are not applicable,. This is the principle which is applicable to the so-called "passive" public policy rules. These rules have, in practice, been limited to the extent of the fundamental endangerment of the principles of the rule of law, and it has to be noted that in the area of the applicability of Uniform Law they are rarely used. The application of the public policy rules also depends on how close the relationship is to the Czech Republic.

The issue of the applicability of foreign public policy rules is connected with the obligation to use the legal order determined by the rules of the conflict of law *en bloc*. This is of course true for the substantive norms only, because the Czech Conflict of Laws norms set the obligation upon Czech organs to follow the national procedural rules in their proceedings. On the other hand, it is not possible to deny the application of domestic legal norms because of the existence of foreign public policy rules.

The mandatory norms are norms the use of which is obligatory with regard to specific questions in comparison to the common content of public policy. From the perspective of the European Union, it must be noted that in the 2006 the Czech Republic ratified the Rome Convention on the law applicable to contractual obligations (1980). This Convention, unifying the choice of law rules, also covers the issues of the application the mandatory norms.

The application praxis of the European Court of Justice has also divided the scope of the application of the mandatory rules, where Article 3, and in particular, its Paragraph 3, is applicable to the intrastate mandatory rules (case Arblade C 369/96 and C 374/96), and Article7 also governs the international mandatory rules (case Ingmar GB Ltd. v. Eaton Leonard technologies Inc., C 381/96).

To what extent are arbitral awards officially published or informally disseminated in business and legal circles in your country? Is your country a *stare decisis* country? If so, to what extent *stare does decisis* apply to arbitral determinations/awards? To what extent is issue preclusion or collateral estoppel (if accepted in your legal system) applicable in arbitration (from court of law to arbitral tribunal and viceversa / between arbitral tribunals)?

The systematic arbitral activities in the Czech Republic are performed by the permanent courts of arbitration. Even though these institutions are founded on the basis of normative authorization, the quality of their arbitral activities depends solely on the experts enlisted as arbitrators in such institutions. We have to note that the quality of the institutions and thus their arbitral praxis differs significantly. As far as we know, only one such institution, the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic, regularly publishes its awards, which have been anonymized prior to publication.

Moreover, the cases from arbitral praxis are widely used (also in anonymized form) in specialized publications or other educational literature by authors who usually hold positions as arbitrators and academics simultaneously. In conclusion, we have to add that the use of arbitral case law, especially of the aforementioned court of arbitration, is relatively widespread among experts and practitioners because of the relatively high quality, coherency and applicability of these awards.

Regarding the second part of the question, the author of this paper has to stress that the Czech Republic, as a country with a continental legal system, does not apply the doctrine of *stare decisis* and *collateral estoppel.*

To what are extent National Laws and state courts in your country “arbitration friendly”? Does your answer change depending on whether a state party or a state interest is directly involved in or affected by the resolution of the dispute or the contract may be labeled as “a public” or as an

“administrative” contract under your legal system? Whether the arbitration is “International or domestic”? Whether its seat/place is within/outside your country?

The Charter of Fundamental Rights and Freedoms of Czech Republic establishes the right of individuals to claim protection of their rights in front of the court or another organ. This principle is further specified in the aforementioned Act and simultaneously in other acts of a procedural and substantive nature. In Act No. 99/1963 Coll., of December 4, 1963, on the Rules of Civil Procedure, an auxiliary and supportive function of the national courts is set out in relation to arbitral proceedings, especially in relation to the appointment and withdrawal of arbitrators, and the execution of procedural acts which have to be executed under the auspices of the state authority. State courts also serve as an archive for the archiving of arbitral awards.

From the aforementioned examination of the relationship between the arbitral courts and state courts, it is apparent that the execution of the arbitration as defined in the Act in the territory of the Czech Republic would not be possible without close cooperation between both types of institution. It is clear that the Czech Republic is an “arbitration friendly country.” This statement is of course valid for all sub-questions posed in this section.

As for the sub-questions concerning international arbitration and the issue of awards outside of the territory of the Czech Republic, it must be further stated that the Czech Republic, as a signatory country of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), follows the obligations set forth in this Convention. Czech law does not apply the institution of *exequatur*. The recognition and enforcement of foreign awards is carried out in one proceeding, in which the court will formally take the foreign award into account.

To what extent are arbitral awards subject to control on the merits (including from the outlook of private International Law or choice-of-law methodologies, rules or principles applicable or accepted in your country) or in respect of procedural notions or matters (e.g., due process) when rendered in your country or (if rendered abroad) when brought for enforcement/recognition in your country?

First, we have to differentiate between national (domestic) and foreign arbitral awards. The regulation of domestic arbitral awards is rendered in the aforementioned Act.

As has already been stated in the answer to the previous question, Czech law does not apply the institution of *exequatur*, so the recognition of foreign awards is implemented in terms of the enforcement procedure itself, and it must be further stressed that the award is not subject to control on the merits at all. This statement is, of course, as valid for national as for foreign awards, the enforcement of which is sought in the territory of the Czech Republic. The only possible control on the merits of the award exists if the parties have stipulated such an option in the terms of the arbitral agreement. Such agreement then opens the possibility for the parties, respectively, for the party which has not been successful in the dispute, to invoke an appellate review on the merits.

The request for the appellate review has to be dispatched to the other party within the period of 30 days from the issuance of the award. The arbitral award comes into force and is enforceable if it is not possible for such award to be subject to appellate review, or where the time limit for such review has already lapsed.

The arbitral award could be annulled by the court on the basis of a motion by the party, if:

The award has been issued on a matter which cannot be lawfully decided by the arbitral tribunal;

The arbitration agreement is invalid for different reasons, or it has been cancelled, or is not applicable for the agreed matter;

An arbitrator has been participating in the proceedings who has not, according to the arbitration contract or in any other way, been called upon to decide the dispute, or does not have the capacity to act as an arbitrator;

The arbitral award has not been decided by the majority of the arbitrators;

The party did not have an opportunity to present and discuss the matter in front of the arbitrators;

The arbitral award declares that a party is to provide performance that has not been claimed or that is impossible or illegal under Czech law; or

It has come to light that there are reasons for which it is possible in civil proceedings to claim the resumption of the proceedings. The reasons for the resumption of the proceedings include the existence of facts, decisions or evidence, which cannot be used in the arbitral proceeding at

no fault of the party claiming the resumption, if such circumstances could result in a more favorable outcome for such party. The second situation in which resumption can be invoked is when it was not possible to produce the evidence in the arbitral proceeding, if such evidence could result in a more favorable outcome for this party

From this brief examination of the rules governing resumption in civil proceedings in Czech Republic, it is clear that this institution serves mainly for remedy in cases in which the factual background of the case was not fully ascertained.

These options for annulment cannot be excluded between the parties on a contractual basis.

Furthermore, we can conclude that the institution of the cancellation of the arbitral award is applicable only to a limited extent, where all of the reasons which have been listed above are of procedural in character (Constitutional Due Process Principle), and we can say that this reason exists for the indemnification of the Due Process Principle guaranteed under the auspices of the state courts as a fundamental principle which also has to be obeyed in the regime of arbitration.

The other possibility for the cancellation of the award is in the phase of the enforcement of the (foreign) award where enforcement is sought against the party; this party can request the suspension of the enforcement of the award if:

i) the award is defective from the perspective of Reasons a), d) and f) listed above,

ii) the party which has to be represented by an assignee in the proceedings did not have such assignee, and acting by the assignor has not been retroactively endorsed,

iii) the one who has been acting on behalf of the party or on behalf of its representative did not have power to take such action, and his acting has not been retroactively endorsed.

The first point also refers to the constitutionally endorsed Due Process Principle. In the case of foreign awards, this principle must be assessed from the perspective of the domestic law of the state in which enforcement is sought. Taking precedence over the application of the national rules are also the applicable legally binding norms of International Law regulating this matter.

The second and third points express practically the same matter that is dealt with under point e) above, because in both cases the parties did not have an opportunity to effectively defend their rights and concerns.

The enforcement of awards (both foreign and domestic) in the territory of the Czech Republic is executed in accordance with Czech legal regulations. There is no need for further recognition of domestic awards in the territory of the Czech Republic, because the award itself represents the execution title. In the case of a foreign award, there is no special court decision concerning the recognition of the award, but the options listed above under Numbers i) to iii) represent the only possible procedural protection against the enforcement of the award. This procedural defense is not affected by the procedures initiated under points a) to g) above.

According to contemporary international praxis, for the suspension of the enforcement of a foreign award, the annulment of the foreign award in the country of its origin is decisive.

The primary source of law in the Czech Republic concerning the recognition and enforcement of foreign arbitral awards is rendered in the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958), which, like the interstate regulation of the enforcement of national awards, is based on the tacit recognition of foreign award without the need for a separate declaration of the recognition of the award by the court. In this sense, the Czech national regulation of the recognition of arbitral awards copies the regulation included in the New York Convention.

For arbitral awards which have been issued in a country that is not party to the New York Convention, the Act includes a specific regulation, under which the recognition or enforcement of the foreign award will be recognized and enforced. The recognition and enforcement is executed in the same manner as for a domestic award, if reciprocity is guaranteed. The reciprocity is also presumed to be guaranteed in cases where such foreign country commonly recognizes foreign awards as enforceable under the condition of the reciprocity. The issue of reciprocity is commonly decided by the Ministry of Justice of the Czech Republic. The decision on recognition always has to be reasoned. The recognition or enforcement of the foreign award shall be refused, if:

1) such award is not final or is not enforceable under the law of the country in which it has been issued,

2) the award is defective according to a procedural flaw as listed under Letters a)-g) above, or

3) the award is at variance with the public order.

Ad 1) The application of this paragraph is quite rare, because this regulation will only be used in the event that there exists no international obligation of the Czech Republic (established by a multilateral or bilateral treaty) which could be invoked. It must be stated that in cases where the Czech Republic is bound by more than one such instrument, it is necessary to use the principle of effectiveness, which will guarantee the party with the best possible outcome concerning the recognition and enforcement of the award. Enforceability under the foreign law of the country of issuance is not necessary. This would only lead to double *exequatur*, so the conditions which will be examined in this case only include the conditions of material enforceability.

Ad 2) The refusal to provide recognition and enforcement in this case is only linked to the territory of the Czech Republic. As has already been stated above, the possibility of *revision au fond* is excluded.

Ad 3) There exists no differentiation between the reasons of domestic and foreign public order, but it is generally accepted that this reservation has to be evaluated less strictly in relation to foreign awards. An award being at variance with the public order is generally considered to be an award, the effect of which is in conflict with the fundamental principles of the legal order, which cannot be abandoned, like the basic principles of the social establishment. To a further extent, the vast majority of international practitioners tend to consider awards which impose such obligations as being in conflict with the *ordre public*, where their fulfillment is at variance with the cogent norms of recognition/enforcement, or if obligations set by the award would lead to the execution of public sanctions, or would result in a similar outcome for the party requesting recognition.

What is the notion of and role played by public policy in the recognition or enforcement of arbitral awards rendered abroad? Of lack of arbitrability? International mandatory rules or *lois de police* (national or foreign)? To what extent do any of these reservations/notions serve the purpose of advancing primarily local or domestic notions regarding both substantive law and procedural law matters?

These questions have been dealt with in detail and in due order as a means to clarify the commentary in the previous question.

Bearing in mind your answers to questions 3-8 above, to what extent do arbitral awards or determinations influence, or may be considered as possibly influencing state court decisions or

legislative change in your country? To what extent do courts of law in your country defer to determinations made by local or International arbitral institutions in charge of administering arbitrations? If no experience at hand, what would be the prospective answer to these questions? Please differentiate the areas of the law in which this influence exists or may potentially exist in the future.

From the brief examination of the Czech law of arbitration, it is quite clear that there exists here wide "abrasive areas", where the arbitral activities performed under the auspices of the state courts involve quite a comprehensive area of mutual influence of both groups. These areas are primarily established by the supportive and supervisory role of the state courts in the due prosecution of arbitration, as such. The role is further strengthened in the period after the release of the award, where the state courts present the awards for endorsement by the state authority in the process of enforcement.

Still, we cannot conclude that the arbitral awards (could) have a decisive role in influencing state court decisions. Arbitration, as an institution (in the initial phase) of contractual law as an option for the judicial system of the state, is still too young in the Czech Republic, even if a progressively evolving field. But arbitration is growing in importance. It has opened a Pandora's box in decision-making in the field of International Commercial Law, which is an area that has not been deeply surveyed by the national courts, and the less formal concept of arbitral proceedings is more acceptable to the sort of subjects involved in this realm of business, which are also coming to Czech Republic from abroad with good experience with this kind of dispute resolution. From this perspective, arbitration is gaining great importance, which should not be ignored by the national courts in the immediate future. This is of course also true for the decision-making practice of the foreign or international arbitral institutions, which have specialized in this kind of dispute, and their experience in this field cannot be ignored.

As has already been stated, the problem is that the national arbitral institutions are fragmented to a considerable degree, and aside from the one institution specified above, these courts do not publish their decisions.

We do not think that the arbitral awards or the determination thereof could have a significant impact on the development of legislation in the Czech Republic. As a country with a continental

law tradition, there is not a great deal of influence on the development of legislation by means of decision-making. On the other hand, it must be stated that a considerably high number of arbitrators in the Czech Republic are also academics who regularly participate in the process of negotiating the new laws, so the impact of their praxis on the legislation is perceptible, even if only to a limited extent.

Bearing in mind your answers to questions 1-9 above, to what extent do arbitral awards rendered in your country, enforced or enforceable in your country or concerning nationals of or residents in your country apply or may be deemed as based on Uniform Law? If no experience at hand, what would be your prospective answer to this question?

The application of Uniform Law is still very limited. From the aforementioned it is clear that the concept of Uniform Law and awareness of this area of law in the Czech Republic is relatively low. There are only a few specialists who regularly publish articles about this area of law, so even the legal support for local parties is not ideal.

As has already been stated, arbitration that has initially been established for the parties in their agreement presupposes a fair degree of legal awareness about the presumable legal consequences for them. This is the primary reason why this kind of dispute in the Czech Republic is fairly limited. There are of course disputes in which separate aspects and components originating in Uniform Law are invoked, but these relate more to the written and valid intrastate law, or are derived from the subsequent practice between both parties in their commercial relations.

Bearing in mind your answers to questions (1-10 above), what has been the impact of arbitral awards and determinations on introducing, firming up or applying Uniform Law, including through legislative change or the action of the courts, in your country? Of foreign court decisions regarding arbitral awards or determinations referring to or based on Uniform Law? If no experience at hand, what would be the prospective answers to these questions?

Even if, from a global perspective, arbitration is more open to being decided on the basis of the concepts of Uniform Law, it cannot be stated that this has played a significant role in the promotion of Uniform Law in the Czech Republic. On the other side, a number of the arbitrators who regularly decide the disputes in arbitral tribunals of the permanent national arbitral institutions also take part in arbitral proceedings in foreign arbitral institutions abroad. This is a

trend which should significantly contribute to the importance and evolution of the application of Uniform Law in the Czech Republic.

Moreover, the impact of the decisions of foreign courts based on Uniform Law also has a minimal impact on the practice of the Czech courts, because, as such, these decisions are not subject to control on the merits, so there exists no pressure on the courts that would lead them to carefully analyze foreign decisions and to reason their own decisions and become accustomed to working with and orienting themselves toward this area of law.

Further intensive transformation of the non-binding rules and principles of Uniform Law into international instruments of law, which could then be implemented into binding National Law will also contribute to the expansion of Uniform Law in the Czech Republic. Such action will not only persuade national courts to reflect and apply the norms of this area of law, but will also cause the professional society in the Czech Republic to become acquainted with it.

Bearing in mind your answers to questions 1-9 above what has been the impact on the fashioning of your national legislation on arbitration – domestic or International – or on arbitral awards rendered in your country or concerning nationals of or residents in your country of: (a) the action and rules of International arbitral institutions (e.g. the International Court of Arbitration of the International Chamber of Commerce (ICC), the American Arbitration Association (AAA) and its International Centre for Dispute Resolution (ICDR), the London Court of International Arbitration (LCIA)); (b) the works of International organizations (e.g., UNCITRAL, UNIDROIT, the European Union, NAFTA, the Organization of American States); and (c) foreign court decisions or legislation reflecting the influence of the action or works of institutions or organizations like the ones mentioned in subparagraphs (a) or (b) above? If no experience at hand, what would be your prospective answers to these questions?

The most important facet in developing national legislation with respect to Uniform Law has been the participation in International Organizations, especially in the European Union. Further, the work of UNCITRAL and UNIDROIT has played a significant role in this process, where the international instruments listed under the answer to Question No. 1 of this questionnaire include the most important instruments to have been implemented into the national legal system. As for the future evolution of Uniform Law and its impact on the national legislation of the Czech Republic, the most pivotal role will likely be played by the tendencies stemming from the law of

the European Union, of which the Czech Republic is also a member. This is due to the nature of EU law and the direct effect of the regulations, on the basis of which future legal acts concerning Uniform Law are being prepared.

As for participation in other International Organization, the impact of Uniform Law tendencies will presumably not be as swift as under the EU regime, due to the platform upon which these instruments are being prepared in these forums.

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