

CLIENT ALERT

Human S.E. v. Czech Republic – Ministry of Health: Court Denies Enforcement Under the N.Y. Convention

Nov.08.2018

On October 26, 2018, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the lower court’s decision to deny the enforcement of an arbitral award against the Czech Republic Ministry of Health. *Diag Human, S.E. v. Czech-Ministry of Health*, 824 F.3d 131,132–34 (D.C. Cir. 2016), cert. denied, 137 S. Ct. 1068 (2017). Under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“New York Convention”),¹ federal courts can enforce duly rendered foreign arbitral awards, subject to certain exceptions. Both courts agreed that this award fell into one of those exceptions – the award was not “binding on the parties.”

In 1990, the Czech Republic Ministry of Health entered into an agreement (“framework agreement”) with Diag Human S.E., a blood plasma technologies and production company. Under the agreement, the Ministry of Health would purchase the necessary technical equipment and be given training for medical personnel to ensure fractionated blood products would be safely transported in Czech Republic. By all accounts, Diag Human performed competently under the framework agreement. The arbitration commenced after the Czech Republic allegedly interfered with Diag Human’s blood plasma business in the early 1990s. The arbitral panel awarded an interim award in 1997, a partial damage award of approximately \$10 million dollars in 2002, and an additional arbitral panel awarded Diag Human approximately \$400 million dollars as a final award in 2008.

The Czech Republic’s arbitration law permits parties to agree to a review process in which a second arbitral panel can revisit the original award with the power to uphold, nullify, or modify it. Furthermore, the framework agreement included a two-step arbitration process and specified when an arbitration award would become effective. They agreed that the award would only come into effect if a review application hadn’t been submitted within the deadline. Each of the three awards was submitted for review according to this procedure. The interim and partial awards were confirmed and upheld by review panels consisting of different arbitrators. For the final award, the review panel issued a “resolution” which “discontinued the proceedings.” At issue is whether the resolution prevented the final award from becoming binding on the parties.

The D.C. Court of Appeals ruled that the resolution nullified the final award. The court’s rationale was two-fold. First, in the resolution, the review panel held that the final award should have been precluded as *res judicata* by the earlier partial award and therefore, discontinued the proceedings. Second, when the “binding” status of an award is in doubt under Article V(1)(e) of the New York Convention, the court may look to the law of the rendering jurisdiction. Czech Republic law has two outcomes in an arbitral proceeding: an arbitral award or a resolution. While an arbitral award is judicially enforceable, a resolution ends the proceedings. Therefore, the final award was not “binding” on the Czech Republic and therefore not enforceable.

Two takeaways can be taken from this case. First, it is imperative for litigants to understand the rendering jurisdiction’s arbitrations laws. These laws can influence the court’s interpretation on enforcement of arbitral awards (*i.e.* Czech Republic differentiating between arbitral awards and resolutions). Second, while arbitration is favorable because of its exclusion of an

appeal process, implementing an appeal process in one's agreement can alter whether the courts will review a duly rendered foreign arbitral awards as enforceable.

¹ Convention on the Recognition and Enforcement of Foreign Arbitral Awards, June 7, 1959, 330 UNTS 38; 21 UST 2517; 7 ILM 1046 (1968).

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