ANTI-SUIT INJUNCTIONS IN ARBITRAL AND JUDICIAL PROCEDURES IN THE CZECH REPUBLIC

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Abstract: *Anti-suit injunctions are rather unknown in the civil law legal system of the Czech Republic. The policy reasons for the rejection of anti-suit injunctions in the Czech Republic are rooted in the constitutional right of every person to assert, through the legally prescribed procedure, their rights before an independent and impartial court or, in specified cases, before another body. In other words, every person may commence proceedings before a competent court, or respectively before any court or another body (e.g. like an arbitral tribunal, etc.), which is then exclusively empowered to rule on its jurisdiction. Therefore, there is also no distinction between anti-suit injunctions in domestic and international litigation. Czech law does not have any alternative procedural or substantive devices that may have similar functions as anti-suit injunctions related to arbitration. It means that it is not possible to obtain a court order against a respondent prohibiting the respondent from commencing or continuing court proceedings in another forum in violation of an arbitration agreement.*

Keywords: *anti-suit injunctions, anti-arbitration injunctions, ordre public, recognition and enforcement of judgements, recognition and enforcement of arbitral awards, arbitration, arbitration agreement, Charter of Fundamental Rights, Constitutional Law, jurisdiction, Kompetenz-Kompetenz, Lis Pendens, Res Iudicata, procedural conditions, objective arbitrability*

1. ANTI-SUIT INJUNCTIONS AND THE CZECH LAW

Anti-suit injunctions are (as a creature typically of *common law*) rather unknown in the civil law legal system of the Czech Republic. There are no statutes laying down any rules relating to anti-suit injunctions, and there is no case law that would deal with the topic of anti-suit injunctions. Logically, there are also no cases in which anti-suit injunctions are available in Czech law. It is not possible to obtain an anti-suit injunction of any kind in the Czech Republic. Therefore, there are no requirements for obtaining an anti-suit injunction.

Application for an anti-suit injunction would be rejected by the Czech courts due to the non-existent statutory basis for issuing such an injunction, which is unknown in Czech law and incompatible with the Czech legal system (as will be explained below). Furthermore, the issuing of an anti-suit injunction would, without any doubt, violate basic and constitutional principles of the Czech Republic, and therefore it would evidently and unambiguously violate the *ordre public*.

Naturally even the landmark decision of the ECJ in the matter Turner[1] does not impact the conclusions above in any way, as it only clarifies that the Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (as amended) precludes the granting of an injunction that would prohibit

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[1] Judgement of the CJEU C-159/02 of 27 April 2004, in the case *Gregory Paul Turner/Felix Fareed Ismail Grovit, Harada Ltd* v. *Changepoint SA* [ECLI:EU:C:2004:228, ECR 2004, I, 3565].

a party from commencing legal proceedings before a court of another contracting state, even where that party is acting in bad faith to frustrate the existing proceedings. This case is in line with the position of Czech law towards anti-suit injunctions as described above.

2. REASONS BEHIND ANTI-SUIT INJUNCTIONS POLICY AND THE ATTITUDE TO PARALLEL FOREIGN PROCEEDINGS WHERE AN ANTI-SUIT INJUNCTION IS OBTAINED OR IS SOUGHT

The policy reasons for the rejection of anti-suit injunctions in the Czech Republic are rooted in the constitutional right of every person to assert, through the legally prescribed procedure, their rights before an independent and impartial court or, in specified cases, before another body. Therefore, no one can be preliminarily restrained from utilizing the means that the law offers them to pursue their claim, i.e. to file a lawsuit.

An anti-suit injunction issued in foreign proceedings would only be considered before Czech courts in case of the recognition and enforcement of said anti-suit injunction in the Czech Republic. Otherwise, Czech courts are naturally not authorized in any way to influence the issuance of an anti-suit injunction before any foreign courts.

In case of the recognition and enforcement of an anti-suit injunction issued by a foreign court, Czech courts would first establish the applicable rules, and then subsequently decide on the enforceability of the foreign anti-suit injunction in question.

In case of an anti-suit injunction issued by a court of an EU member state, Czech courts would refuse to enforce the anti-suit injunction on the basis of Regulation (EC) No. 1215/2012 of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, and the related case law of the Court of Justice of the European Union (CJEU),[2] which is respected and followed by the Czech courts.

In case of an anti-suit injunction issued by a non-EU member state, Czech courts would refuse to enforce the anti-suit injunction based on the public policy exception laid down in Article 15, Paragraph 1 (e) of Act No. 91/2012 Coll., on the private international law, as they would consider the anti-suit injunction to be in direct contradiction with the constitutional right of every person to a rightful judgement and the right to pursue its claims

[2] Judgment of the Court (Grand Chamber) C-185/07 of 10 February 2009 (reference for a preliminary ruling from the House of Lords (United Kingdom)) — *Allianz SpA, formerly Riunione Adriatica di Sicurta SpA, Generali Assicurazioni Generali SpA* v. *West Tankers Inc.* [operative part of the judgement] *"It is incompatible with Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters for a court of a Member State to make an order to restrain a person from commencing or continuing proceedings before the courts of another Member State on the grounds that such proceedings would be contrary to an arbitration agreement."* See also for instance BĚLOHLÁVEK, A. J. West Tankers as a Trojan Horse with Respect to the Autonomy of Arbitration Proceedings and the New York Convention 1958: On the contentious concept of the importance of the dispute subject matter in light of subsequent decisions on the fate of anti-suit injunctions from the vantage point of Brussels-Luxembourg officialdom. *ASA Bulletin*. 2009, No. 4, pp. 646–670, and others.

before a competent court,[3] which includes the right to file a lawsuit before a state court. This constitutional right is generally considered to be absolutely essential, because without this right, all other rights would be unenforceable and thus just empty proclamations. The right to pursue a claim and file a lawsuit with a competent court thus represents an essential and most probably the most important procedural tool that ensures the enforceability of all other constitutional rights. An order not to commence judicial proceedings would therefore be considered an unacceptable and principal infringement of this constitutional right, and would not be enforced due to the application of the public policy exception.

3. ALTERNATIVE PROCEDURAL OR SUBSTANTIVE DEVICES WHICH MAY HAVE SIMILAR FUNCTIONS AS ANTI-SUIT INJUNCTIONS AND CONSTITUTIONAL ASPECTS

For the reason explained below, it is *not* (in any manner) possible to obtain a court order against a potentiall respondent prohibiting the respondent from commencing or continuing court proceedings in another forum.

As briefly described above, under Article 36, Paragraph 1 of Act No. 2/1993 Coll. (Charter of Fundamental Rights and Freedoms of the Czech Republic) (the "Charter of Rights"), every person has a right to assert, through the legally prescribed procedure, their rights before an independent and impartial court or, in specified cases, before another competent body. In other words, every person may commence proceedings before a competent court, or respectively before any court or another body (e.g. like an arbitral tribunal, etc.), which is then exclusively empowered to rule on its jurisdiction.[4] Nobody can be therefore restrained in any manner to commence (or to initiate on an appropriate way) proceedings whatever nature and with whatever body, incl. courts, administrative authority, arbitral tribunals etc. This right is without any doubt of immense importance in Czech law and it forms a part of the public policy of the Czech Republic, because it is among the most fundamental pillars of the due process.

The Czech Constitutional Court has commented on this provision of the Charter of Rights numerous times. In one of the most cited cases pertaining to this provision, it expressly stated that: "[*T*]*he aim and essence of the provision of Article 36, Paragraph 1 of the Charter of Rights is the state's obligation to provide everyone with the protection of their rights, because in a state in which the rule of law prevails, there cannot be a situation where the subject of a right could not demand their protection. Generally, the idea is that the state exists to protect its citizens and other people who are currently in its territory, and to provide them with the safeguards that their rights will be protected.* (…) *Since every person can pursue their rights before a competent court or other body, the legally prescribed procedure to*

[3] Section 36, Paragraph 1 of Act No. 2/1993 Coll. (Charter of Fundamental Rights and Freedoms of the Czech Republic): *"Everyone may assert, through the prescribed procedure, their rights before an independent and impartial court or, in specified cases, before another body."*

[4] The jurisdiction of a court is a necessary condition for the issuance of a judgement on the subject-matter of the dispute.

do so cannot entirely prevent them from exercising this right and deny them this fundamental constitutional right. The provision of Article 36, Paragraph 1 of the Charter of Rights grants everyone the right to assert their rights before a competent court or other body in all cases."[5]

In an earlier decision, the Czech Constitutional Court explained (in respect of the limitations laid down by the statutes) that (cit.): *"In other words, no person can be entirely deprived of the possibility to assert their rights, even if such deprivation is for a specific case, because their right guaranteed by the provision of Article 36, Paragraph 1 of the Charter of Rights would be annulled. The opposite interpretation would lead to the conclusion that the right to assert one's rights through the legally prescribed procedure before the courts or other bodies – endowed with the highest legal authority – would be useless, since it could be annulled by the common statutes made by lawmakers."*[6] It is thus the case in the Czech Republic that no statute can deprive a person of the possibility to file a lawsuit to protect their rights. Since the courts are obliged to follow the statutory law, they cannot issue any procedural or substantive devices that may have similar functions as anti-suit injunctions, because they would be in direct contradiction with the right guaranteed by the provision of Article 36, Paragraph 1 of the Charter of Rights.

The subject of this right is every natural person and legal entirty person filing for the protection of their rights. The phrase *through the legally prescribed procedure* in Article 36, Paragraph 1 of the Charger of Rights entails that the statutes may lay down additional conditions and terms, such as the jurisdiction and competence of the court to hear the dispute, the competence of the court to hear a dispute, the essential content of the lawsuit, conditions of the legal representation, time limits for filing a lawsuit, deadlines for submitting appeals, rules applicable for taking evidence, bearing of the costs etc. However, every such condition must be legitimate and restrained within constitutional limits. **No law or judicial decision may deprive a person of their constitutional right to assert their rights before a competent court or another body, as it would be the case of an order restraining to commence any proceedings.** As described below, if the claim is filed with a court or another body that is **not** competent to hear it, the court has to terminate the proceedings, but no person can be restricted in their right to *file* a lawsuit.

As suggested in the previous paragraphs, the right to file a lawsuit with a competent court does not open the way for a party to easily frustrate other on-going proceedings. For a civil court to go forward with the initiated proceedings, order a hearing or issue a judgement on the subject matter of a civil law adversarial case, several conditions must first be met. These are called "conditions of a proceeding" and are usually divided into four main groups: **(i)** existence of a lawsuit, **(ii)** conditions pertaining to the party to the proceedings, **(iii)** conditions on the side of the court, and **(iv)** other conditions. The court must examine

[5] Decision of the Czech Constitutional Court No. Pl. ÚS 14/10 of 1 July 2010, Paragraph 34. Author's unofficial translation for the purposes of this text only. The same opinion was expressed in in Paragraph 24 of Decision of the Czech Constitutional Court No. Pl. ÚS 14/10 from 1 July 2010.

[6] The decision of the Czech Constitutional Court No. Pl. ÚS 12/07, of 20 May 2008. Author's unofficial translation for the purposes of this text only. The same argumentation was also applied in the previous Decision of the Constitutional Court of the Czech Republic No. Pl. ÚS 72/06, of 29 January 2008.

these conditions as a *first step* after the lodging of a lawsuit,[7] and in case the conditions are *not* satisfied and this shortcoming cannot be corrected, the court shall *terminate the proceedings*.[8] The conditions are briefly summarized in the following paragraphs for a better understanding of Czech civil procedure and the reasons why it is not possible to issue an anti-suit injunction (or any similar order) under Czech law. Considering the purpose of this text, the author does not consider it necessary to describe these conditions in greater detail.

Existence of Lawsuit

This condition is inherent to the nature of adversarial civil disputes, in which the court is not empowered to initiate the proceedings on its own and only acts upon the application by the requesting party. Simply put, without a lawsuit, there is no adversarial civil proceeding.

Conditions Pertaining to Party to Proceedings

This set of conditions is designed to ensure that parties to the dispute have legal personality and full capacity to legally act on their behalf. The court can only go forward with the proceedings if the parties have legal personality and full capacity to legally act on their behalf. Should the parties not meet this condition and this shortcoming cannot be remedied, the court will terminate the proceedings.

Conditions on Side of Court

The main conditions on the side of the court are: the authority to hear the dispute, the competence to hear the dispute, and the composition of the tribunal.

In civil cases, a court has the *authority to hear the dispute* arising from private law (subject to some statutory exceptions), and cannot hear disputes that do not fall within this authorization.[9] The court is obliged to examine this condition at the beginning, and can examine its authority throughout the proceedings. In case the court finds that it does not have the authority to hear the dispute, it has to terminate the proceedings and refer the matter for final resolution to the authorized body (if any).

Another condition is the *competence of the court to hear the dispute*. Czech law recognizes two (2) main categories of the competence of the court – substantive and territorial. *Substantive* competence determines which courts of the general, "3-layer"[10] court system are competent to hear the dispute. *Territorial* competence ascertains which specific court of the competent "layer" has the authority to hear the dispute.

The condition of the right composition of the tribunal requires that the court be composed of either one or three impartial and independent judges.

[7] Section 114 of Act No. 99/1963 Coll. (Code of Civil Procedure).
[8] Section 104 of Act No. 99/1963 Coll. (Code of Civil Procedure).
[9] Section 7 of Act No. 99/1963 Coll. (Code of Civil Procedure).
[10] In the Czech Republic, the general court system is comprised of the courts of three instances – district courts, regional courts and high courts.

Other Conditions

The first of the "other" conditions is the non-existence of an arbitration agreement. If any party to court proceedings contends (during the first subject-matter motion of the party, at the latest) that there is an arbitration agreement between the parties, the court has to terminate the proceedings.[11]

The second of such "other" conditions is the non-existence of earlier commenced and pending court proceedings that pertain to the same subject matter between the same parties (*Lis Pendens*).[12]

The third of the "other" conditions is the non-existence of a final and binding decision concerning the same subject matter between the same parties (*Res Iudicata*).[13]

As mentioned before, in case all the procedural conditions are not met, the court has to terminate the proceedings. This mechanism is designed to ensure that every person has the right to file a lawsuit and to be heard before the competent court. An anti-suit injunction, or any other order injunction or request with a similar effect, would be in contradiction with the constitutional right mentioned above, and would ultimately violate the public policy of the Czech Republic.

For these reasons, it is not possible to obtain any alternative procedural or substantive devices that may have similar functions as an anti-suit injunction. Also, interim relief proceedings or proceedings on the merits cannot be instituted to obtain such relief, for instance, for the breach of a forum selection clause.

4. ANTI-SUIT INJUNCTIONS RELATING TO ARBITRATION IN THE CZECH REPUBLIC AND ALTERNATIVE PROCEDURAL TOOLS. INJUNCTIONS AS AN INTERIM MEASURE RENDERED BY ARBITRAL TRIBUNALS

In line with the explanation given above, there is no distinction between anti-suit injunctions in domestic and international litigation, as the anti-suit injunction, or any other similar alternative does not exist in the Czech legal system. Therefore, there are no categories of anti-suit injunctions and it is not possible to obtain an anti-suit injunction in the Czech Republic. This applies also for all and any arbitral proceedings commenced and conducted on the territory of the Czech Republic.

Czech law does not have any alternative procedural or substantive devices that may have similar functions as anti-suit injunctions related to arbitration. Therefore, it is not possible to obtain a court order against a respondent prohibiting the respondent from commencing or continuing court proceedings in another forum in violation of an arbitration agreement. Under Czech law, a claimant has different procedural tools to defend itself against a respondent that commences court proceedings in another forum in violation of an arbitration agreement.

[11] Section 106 of Act No. 99/1963 Coll. (Code of Civil Procedure).
[12] Section 83 of Act No. 99/1963 Coll. (Code of Civil Procedure).
[13] Section 159a of Act No. 99/1963 Coll. (Code of Civil Procedure).

Due to the provision of Section 106, Paragraph 1 of Act No. 99/1963 Coll. (Code of Civil Procedure),[14] Czech courts are obliged to terminate proceedings if any of the parties raises an objection that there is a valid arbitration agreement between the parties. This objection has to be raised during the first motion of the party in the proceedings, commonly in its answer to the lawsuit. If the objection is well grounded, the court has to terminate the proceedings. The objection is well grounded if there is a valid agreement between the parties to submit their dispute to final resolution [in the merits of the dispute] by arbitration. There are two exceptions to the said rule. The court will not terminate the litigation in case that (i) all the parties expressly state that they do not insist on the application of the arbitration agreement and they consent to litigation; or (ii) the subject matter of the dispute is objectively not arbitrable (the subject matter in the dispute cannot be subject to arbitration in the Czech Republic pursuant to the *lex arbitri – objective arbitrability*) or not subject to the arbitration agreement.

Moreover, the provision of Section 106, Paragraph 3 of Act No. 99/1963 Coll. (Code of Civil Procedure) states that in case the arbitral proceedings were commenced prior the court proceedings, the court shall suspend the decision on the existence or validity of the arbitration agreement until the arbitral tribunal rules on its jurisdiction and on its competence to hear the dispute, in respect of the *Kompetenz-Kompetenz* principle,[15] or issues its final decision. This rule of Section 106, Paragraph 3 of Act No. 99/1963 Coll. (Code of Civil Procedure) is to ensure that *Kompetenz-Kompetenz* is observed and that the parties cannot frustrate the on-going arbitration by commencing court proceedings for declaratory relief that the arbitration agreement is invalid or null (null and void).

Due to the non-existence of anti-suit injunctions in the Czech Republic, there are no known cases that would deal with this issue. The author has never encountered an anti-suit injunction issued by a Czech court, resp. by any arbitral tribunal.

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[14] Article 106 of Act No. 99/1963 Coll. (Code of Civil Procedure):
"(1) As soon as the court, upon the defendant's objection raised not later than at the moment of their first act on the merits, finds out that, according to the agreement of the participants, the case is to be heard in arbitration proceedings, the court shall not go on hearing the case and shall terminate the proceedings; however, it shall hear the case if the participants state that they do not insist on the agreement. The court shall also hear the case if it finds that, according to Czech law, the case cannot be subject to an arbitration agreement or that the arbitration agreement is null, or that it does not exist at all, or that the hearing of the case before the arbitrators exceeds the scope of the jurisdiction conferred upon them by the agreement, or that the court of arbitration refused to deal with the case.
(2) If the proceedings before the court according to Paragraph 1 were stayed and if a petition for commencement of arbitration proceedings concerning the same case was filed, the legal effects of the original petition shall remain preserved if the petition for commencement of arbitration proceedings is filed within 30 days after the delivery of the ruling of the court on the stay of the proceedings.
(3) If the arbitration proceedings were commenced before it came to the proceedings before the court, the court shall interrupt the proceedings on the non-existence, nullity or extinction of the agreement until the jurisdiction or the merits are decided in the arbitration proceedings."

[15] Under *Kompetenz-Kompetenz*, an arbitral tribunal is competent and authorized to rule on its own jurisdiction to decide the issue brought before it. The rule of *Kompetenz-Kompetenz* is contained in Article 15 of Act No. 216/1994 Coll. (Arbitration Act) (cit.): *Arbitrators are entitled to examine their jurisdiction. If they conclude that the arbitration agreement presented to them does not give them jurisdiction to resolve the dispute, they render a corresponding resolution.*

Under Czech law, there is no legal basis for the issuance of such an injunction by an arbitral tribunal. Section 22 of Act No. 216/1994 Coll. (Arbitration Act) expressly states: (cit.) *"If it transpires before the commencement of or during the arbitral proceedings that the enforcement of the arbitral award could be jeopardized, the court may, at the request of any party, order an interim measure.*" Therefore, an arbitral tribunal cannot issue universally binding interim measure(s) of any kind, and an arbitral tribunal cannot even ask the court to do so, because only the parties to arbitration may raise such a request with the court. In relation to this issue, the Czech Constitutional Court expressly stated that, under Czech law, *only* courts have the power to issue binding interim measures.[16] Therefore, it can be concluded that no arbitral tribunal is competent to issue a valid and binding interim measure. There can certainly be a discussion whether an anti-suit injunction is a kind of interim measure, but the author is of the opinion that an anti-suit injunction, if it existed in Czech law, would fall into the category of interim measures.

Nevertheless, even if an arbitral tribunal decides to issue an anti-suit injunction anyway (despite the facts mentioned in the previous paragraph), it would, for the reasons explained above, not be enforced by the courts due to the contradiction with the public policy of the Czech Republic.

For the sake of the argument, let's suppose the following theoretical scenario. A party to arbitration files for and obtains an anti-suit injunction issued by a Czech arbitral tribunal, seated in the Czech Republic, ordering the respondent not to commence litigation against the claimant in the same subject matter before Czech courts. The respondent subsequently decides not to comply with the anti-suit injunction and commences such litigation before a state court. During the litigation, the claimant presents the anti-suit injunction to the court.

In the opinion of the author, the court would disregard the anti-suit injunction, because it is not bound by the orders of an arbitral tribunal – in the Czech Republic, judges are only bound by the statutes and treaties that form a part of the Czech legal system.[17]

As stated above, should a Czech court be confronted with subject matter that is being resolved in pending arbitration, it would not examine the competence of the arbitral tribunal,[18] and **upon the objection of one of the parties**, the court will terminate the proceedings. The theoretical question is whether the court would consider the claimant's submission containing the anti-suit injunction to be an objection in the sense of the provision of Section 106, Paragraph 1 of Act No. 99/1963 Coll. (Code of Civil Procedure). Gen-

[16] Decision of the Constitutional Court of the Czech Republic of 22 January 2009, Ref. No. III. ÚS 3156/08 (cit.): *It is important to keep in mind that, under Czech law, only the general courts are exclusively empowered to issue an interim measure.*

[17] Article 95, Paragraph 1 of Act No. 1/1993 Coll. (Constitution of the Czech Republic) (cit.): *"In making their decisions, judges are bound by statutes and treaties that form a part of the legal order; they are authorized to judge whether enactments other than statutes are in conformity with statutes or with such treaties.*"

[18] Under Czech law, the concept of *Kompetenz-Kompetenz* is applied. Therefore, the arbitral tribunal is exclusively authorized to rule on its competence to hear the dispute. Article 15 of Act No. 216/1994 Coll. (Arbitration Act) expressly states that (cit.): *"Arbitrators are entitled to examine their jurisdiction. If they conclude that the arbitration agreement presented to them does not give them jurisdiction to resolve the dispute, they render a corresponding resolution.*"

erally, Czech civil procedure is governed by the policy of informality,[19] which states that the courts should assess the procedural actions of the parties by their content. In this respect, the Supreme Court of the Czech Republic recently stated that (cit.): *"It is pertinent to the policy of informality that the courts must assess the procedural actions of the parties by their content. It is therefore irrelevant how the submissions are labelled or what is the understanding of the parties. The court has to assess the content (reason/meaning) of the party's submission and determine which procedural action it represents. However, the court can only proceed in this manner if the party's submission is sufficiently specific and comprehensible, and if it contains all the necessary requirements; in case it is impossible to provide an unequivocal conclusion about the meaning of the submission, the court has to request clarification from the respective party (unspecific or incomprehensible action does not cause legal consequences and is disregarded) or a correction of an imperfect submission (following the procedure laid down in Article 43 of the Civil Procedure Code), only after which can the court assess the submission by its content."*[20] In the theoretical case at hand, it is the author's opinion that the courts would probably consider the respondent's submission containing an anti-suit injunction to be an objection (challenge) in the sense of Section 106, Paragraph 1 of Act No. 99/1963 Coll. (Code of Civil Procedure) and they most probably would terminate the proceedings.[21] In case the court considers the submission to be *unclear* (which is quite probable), the court will ask for clarification, in which the respondent could clarify that by submitting the anti-suit injunction, it intended to file an objection in line with the provision of Section 106, Paragraph 1 of Act No. 99/1963 Coll. (Code of Civil Procedure).

In case none of the parties files an objection that there is a valid arbitration agreement, the court will proceed with the matter and will render a judgement on the merits.

In line with the CJEU's judgement in Re *Gazprom*,[22] the Council Regulation (EC) No. 44/2001 of 22 December 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters does not preclude Czech courts from considering the matter of enforcing an anti-suit injunction issued by an arbitral tribunal. However, the courts would refuse to enforce an anti-suit injunction issued by a foreign arbitral tribunal because it is in violation of the public policy and incompatible with the Czech legal system.

5. RELATIONSHIP BETWEEN COURTS AND ARBITRATION REGARDING ANTI-SUIT INJUNCTIONS. PARALLEL ARBITRATIONS

Arbitral anti-suit injunctions are completely unknown in the Czech Republic. Due to the concept of *Kompetenz-Kompetenz* mentioned already above, the arbitral tribunal is authorized to rule on its competence to hear the dispute. While doing so, it has to

[19] Section 41, Paragraph 2 of Act No. 99/1963 Coll. (Code of Civil Procedure) expressly states that (cit.:) *"The court assesses each procedural action by its content, even if it is incorrectly labelled."*

[20] Decision of the Supreme Court of the Czech Republic No. 21 Cdo 369/2015, of 9 October 2015.

[21] There is no such case reported in the Czech Republic.

[22] Judgement of the CJEU C-536/13 of 13 May 2015, *Gazprom OAO* v. *Lietuvos Respublika* [ECLI:EU:C:2015:316].

follow the general rules of establishing jurisdiction laid down in the Code of Civil Procedure.[23]

The provision of Section 83, Paragraph 1 of Act No. 99/1963 Coll. (Code of Civil Procedure) states that (cit.): *"The commencement of the proceedings precludes proceedings pertaining to the same subject matter before a different forum."* Therefore, when confronted with the fact that there are previously commenced arbitral proceedings, the "second" arbitral tribunal should terminate the proceedings, due to the conditions of proceedings described already above, which are also applicable to arbitration.

To summarize, arbitral anti-suit injunctions are not known in the Czech Republic. Different procedural tools are developed to preclude parallel proceedings.

[23] Article 30 of Act No. 214/1994 Coll. (Arbitration Act) states as follows (cit.): *"Unless the Act stipulates otherwise, the arbitral proceedings shall be reasonably governed by the provisions of the Code of Civil Procedure."*