International Journal of Public Administration, Management and Economic Development
Faculty of Administration and Economic Studies in Uherské Hradiště, Jagiellonian College in Toruń

Selected issues of arbitration as effective tools for resolving business dispute

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Abstract

Arbitration has become more important as a tool for solving the disputes between entrepreneurs and between consumers. The arbitration proceedings on the one hand, it is a quick and less formal way how to solve disputes between entrepreneurs, which may be an advantage even in the emphasis on greater expertise, as the arbitrator may not always be a lawyer, but an expert in the field that is the subject of the dispute. On the other hand, some arbitration disputes between consumers which are negotiated on the basis of an arbitration clause with an ad hoc arbitrator and a consumer are subject to criticism on the grounds that one contractor (entrepreneur), such as a credit provider, charges the other party (consumer) , which decides to claim on the basis of a contract. However, this contract (on a loan, credit, etc.) is to the detriment of the consumer and the text of this contract and the selection of the arbitrator is decided by the entrepreneur and the consumer has no effect. The aim of this paper is to point out these in all different contexts.

Keywords Arbitration proceedings; Advantages and disadvantages of arbitration; Arbitration clause Disputes between entrepreneurs and between consumers; Court proceedings

1. Introduction

Arbitration is undoubtedly not the achievement of modern times; on the contrary, it is an ancient institute that developed organically before the state-guaranteed judicial power. Arbitration began in the territory of the Czech lands to develop in the 12th - 13th centuries. Since the 13th century, the parties have been able to submit to arbitration proceedings in principle in any dispute and at any stage of the proceedings. The first written mention of the arbitration procedure can be found in the text of the Konrad Ota Statute of 1237, which speaks of the so-called “tribunal court”, which allowed to solve small disputes freely with the help of arbitrators.

However, the development of the arbitration proceeded only in the 19th and 20th centuries, when the arbitration procedure became very popular and when the first adaptation of the arbitration procedure appeared (Schelle, Schelleová, 2002). The Civil Procedure Code of 1895 (Act No. 113/1895, on legal proceedings in civil litigation) has already enabled the development of arbitration clauses when, in § 577 et seq. provided that the condition of the arbitration procedure is a valid expression of private will, according to which the matter in question should be decided by private persons (Winterová, 2004). This will had to be expressed in the written

agreement of the parties when it could have been a dispute already existing or only in the future (Schelle, Schelleová, 2002). Moreover, there had to be a dispute that would otherwise have been the responsibility of a proper court and which could be concluded (Vích, 2002). Consequently, it can be concluded that arbitration has historically been an alternative to litigation, and that it is not about the advancement of modern capitalism (Rozehnalová, 2013).

2. Analysis of arbitration proceedings

The constitutional basis of the institute of arbitration can be considered as Article 36 of the Charter, where it is stipulated that everyone can claim their rights in an independent and impartial tribunal and, where appropriate, in another body. The constituent here certainly cannot have an administrative authority, as is clear from the logic of the matter (Whitesell, Silva, Romaro, 2003). This other body is the person of the arbitrator or the permanent arbitration court according to the CRC. Arbitration is fundamentally regulated in Czech law by Act No. 216/1994 Coll., on arbitration. Some provisions on international arbitration can be found in Act No. 91/2012 Coll., On Private International Law. To a substantial extent, the arbitration procedure is governed by so-called arbitration rules issued by individual arbitral tribunals or arbitration bodies. Decision-making is generally defined in theory as the resolution of disputes by private persons or by non-state arbitration bodies which are entitled under the relevant legislation submitted to debate and decide (Růžička, 2005, Schwartz, 1993). However, a clear and universally accepted definition of arbitration does not exist in the literature. Legal theorists have come up with various ways of interpreting the substance of the arbitration procedure over time, depending on the view of the proceedings within the constitutional system. There are four basic theoretical concepts of arbitration. However, it is important to mention that even in the relevant literature, the views of the authors differ in this regard.

The first is contractual theory. It is based on the assumption that the power to discuss and rule the case only gives arbitrators an arbitration agreement (Bělohlávek, Pezl, 2013). A classical branch of a contractual theory considers the arbitrator to be a party representative whose task is to determine the content of the agreement between the parties and the content to be pronounced in the arbitration award (Vam den Berh, 1993).

The second theory of jurisdiction is based on the idea that the state has the power to regulate arbitration and, within its jurisdiction, delegates its jurisdiction to the arbitration body. According to this theory, the arbitration procedure is a controversial procedure, which has a contradictory nature. The judges thus exercise their decision-making power on the basis of the power conferred on them by the State, and not by the parties. The Arbitration Treaty is no longer assigned such meaning. The key here is the state and its legal order, which allows the arbitration procedure to be determined and defines its conditions (Rozehnalová, 2013).

The last autonomous theory rejects all previous theories. It is based on the view that it should be considered as a whole in the arbitration procedure and the nature of the arbitration procedure must be judged according to its purpose (Růžička, 2003). Thus it is possible to focus on the needs of legal practice and subsequently to settle the rules of the arbitration proceedings. The Constitutional Court of the Czech Republic has repeatedly expressed its views on the question of the nature of arbitration. Until 2011, the ÚS cloned to the contractual theory of arbitration, when in its resolution of 15 July 2002, file no. IV. ÚS 174/02 concluded that the arbitrator did not find the law but formed a binding relationship on behalf of the parties when he stated: „His power is not delegated by the sovereign power of the state, but comes from the private power of the parties to determine the fate they entrusted . The arbitration award is not handed down by the arbitration tribunal but by the arbitrators. It is enforceable because of the

enforceability of the obligation that was concluded by the arbitrator on behalf of the parties.“ This view of the SC has repeatedly held in its decisions and it was therefore possible to refer to this opinion as constant.

The shift towards the theory of jurisdiction was made by the ÚS in the finding of March 8, 2011, sp. I. ÚS 3227/07. The Constitutional Court stated here that arbitration is a sort of civil process, inter alia, the ÚS stated: “The law provides the parties with the possibility of arbitrating the jurisdiction of the court and establishing the jurisdiction of an arbitrator who will find the right in their case and the result of this activity to the authoritative decision - the arbitration award. “ According to the aforementioned decision, the arbitrator, in his decision making activity, finds the right objectively and independently of the will of the parties (Lisse, 2012).

This ground-breaking opinion of the ÚS was also confirmed by the order of 27 June 2013, sp. stmp II. ÚS 4314/12, when he stated that the decision of I. ÚS 3227/07 „overcame the contractual theory and confirmed the jurisdictional basis of the arbitration (although based on the contractual autonomy of the parties).“ The nature of the arbitration proceedings must always be examined in a comprehensive way, taking into account both its usual legal adaptation as well as historical context. It is primarily up to the state to decide to what extent the disputes can be resolved by bodies other than the courts and the conditions for arbitration. However, only the parties themselves may voluntarily confer the authority to resolve the dispute to another authority.

3. Court or arbitration proceedings

What is the liking of this business solution? As we have already suggested in our article, arbitration may be, in the first instance, significantly faster than in court. For example, the Arbitration Court at the Czech Chamber of Commerce and the Agrarian Chamber of the Czech Republic offers the possibility of an accelerated arbitration procedure, within which the matter can be decided within a few months. It is also possible to negotiate an accelerated arbitration with one arbitrator. Moreover, the arbitration is less formal than what we are accustomed to in court, and parties can adapt their form and leadership to their needs. In particular, for arbitrary or minor cases, arbitration proceedings may be negotiated with one arbitrarily appointed arbitrator who leads the proceedings completely informally and can decide not only quickly but also relatively cheaply (Nicklich, 1995, Platte, 2002). For large and complicated cases, it is preferable to conduct arbitration before a large number of arbitrators at a renowned arbitration institution. Such institutions include the already mentioned Arbitration Court at the Chamber of Commerce of the Czech Republic and the Agrarian Chamber of the Czech Republic; abroad, for example, the Arbitration Court at the International Chamber of Commerce in Paris, the Arbitration Court at the Stockholm Chamber of Commerce, or the London Court for International Arbitration. Such proceedings are typically significantly more formal and also more expensive and slower than arbitration in a single arbitrator appointed for the case (Bernini, 1980).

On the other hand, management management at a renowned arbitration institution is, to a certain extent, a guarantee both of the quality of the arbitration award on its content, as well as of its formal integrity and enforceability. Arbitrage may or may not be cheaper than court proceedings. For example, the court fee for lodging an action with the Czech court makes for disputes typically 5% of the defendant's amount. At the Arbitration Court at the Chamber of Commerce of the Czech Republic and the Agrarian Chamber of the Czech Republic it is 4% (Bělohlávek, 2012, Bureš, Drápal, Mazanec, 2000). Additionally, we can add to the fact that arbitration is faster, so the parties get a decision on the matter earlier, and there are a number of

economic impacts. By contrast, the cost of arbitration before international arbitration institutions may be extremely high, but in such cases, typically, these are highly complex large-volume disputes, where they simply pay for the quality and expertise of individual arbitrators.

However, not every litigation can be resolved by arbitration. Arbitration can typically be resolved by commercial litigation, while arbitration is severely restricted or totally excluded in labor law or insolvency matters. In addition, in order to resolve the dispute, the parties to the dispute must agree in advance. The agreement may take the form of a so-called arbitration clause, that is to say, an additional provision already contained in a related commercial contract or, where appropriate, a dispute settlement agreement in arbitration, which is concluded only after the dispute has arisen. In other words, arbitration is appropriate for resolving disputes, where the matter needs to be decided quickly, informally, and where the parties are willing to accept a compromise solution that, in addition to the formality, takes into account the business reality of the case. Often, the parties are also subject to cases subject to business secrets, as this is essentially unpublished. Finally, arbitration is also appropriate in dealing with complicated international business disputes. This applies especially in cases where there is a combined requirement for both the neutrality of the arbitral tribunal and the professional, legal and technical expertise of individual arbitrators. Typically, such cases are decided by international leaders in the field and guaranteeing a high-quality result of the dispute.
As already mentioned above, arbitration is almost always the one-court procedure, which means that the award of the arbitration award ends. The second stage is only rarely used in this type of procedure and the possibility of its use must be expressly agreed by the parties. However, in practice, this institute is often not used, as the parties are interested in a quick decision. In view of the above-mentioned uninstance and also informality, the speed of arbitration is a significant advantage, which many welcome with the judgment of civil courts (Jehlička, Švestka, Škárová, 2004). The informal nature of the proceedings is based, among other things, on the possibility for the parties to negotiate the rules according to which the arbitrators should proceed or the possibility to determine that the arbitrators will follow the order of a particular arbitration tribunal (Růžička, 2005). Of course, there is also the possibility of informal communication, which is reflected in the speed of management especially when delivering abroad.

The parties have the option of selecting an arbitrator. As an arbitrator, they can use the well-educated person, for example in the technical fields, which are able to judge the expert profession themselves (Bělohlávek, Pezl, 2004), thus again sometimes greatly reducing the costs of the proceedings.

An important advantage of arbitration is the fact that the procedure itself is not public. It is only in the presence of parties and arbitrators (arbitrators), or witnesses and experts. For the parties, this procedural principle of control may be appealing to maintain business secrets or other confidential information.

The disadvantage of the arbitration is certainly the fact that the arbitrators have no coercive powers in the proceedings, as is the case in court proceedings. The process itself can be negatively affected by the behavior of the parties, in particular their unwillingness to cooperate. The proceedings may be unnecessarily prolonged if one of the parties is interested, for example by challenging the validity of the arbitration agreement, by trying to exclude an arbitrator, etc.

The arbitration may also be inconsistent with arbitration proceedings. There is no unified decision-making practice or the same views on the various interpretations of the legal issues in question as part of arbitration decisions. It is not, therefore, ensured that the same decision is made in the same way and in a similar manner. In the arbitration procedure of an

international dimension, the difference in national adjustments may also play a negative role, in particular the difference in the arbitrability of the dispute.

4. Arbitration following so-called consumer novels

At present, the rules on arbitration are entrusted to Act No. 216/1994 Coll. on Arbitration and Arbitration, which was adopted on 1 November 1994. This law is based on many provisions of the previous Act, but the text of the Act was also inspired by some foreign modifications, and also the 1985 UNCITRAL Model International Trade Arbitration Act (Leboulanger, 1996). This law finally resulted in the extension of disputes that can be subject to arbitration also disputes of a non-commercial nature. The law regulates the whole process in a comprehensive manner, from the establishment of the arbitrators' authority, through the performance of the arbitration procedure to the performance of the arbitral award.

During the law's expiration, both its positive and the negative were revealed. First of all, it has been shown that arbitration has been heavily used in the case of disputes arising from form contracts, which however has been severely abused by the weaker position of the consumer. At the time of this work, the law encompasses seven novelties.

The most important yet, implemented by Act No. 19/2012 Coll., Will be addressed below.

Another national source of arbitration is the statutes and rules that may be issued by permanent arbitration tribunals under the authorization of § 13 (2) of the CRC. These orders contain a comprehensive set of procedural rules for a particular arbitration body. The parties to the dispute may, according to the order, select a particular institution, or in an ad hoc arbitration procedure, the parties may include certain procedural rules in their contract by reference.

The amendment to the WIPO, adopted by Act No. 19/2012 Coll., Is a sort of conclusion to the long-term process of ensuring the compatibility of the Czech legislation with the EU requirements for the laws of the Member States, in particular ensuring the implementation of a number of EU directives aimed at protecting the consumer (Důvodová zpráva, 2018).

Under Article 169 TFEU, the EU contributes to promoting consumer interests and ensuring a high level of consumer protection, in particular to protect the health, safety and economic interests of consumers and to promote their right to information, education and the right to associate themselves with the protection of their interests. A number of directives have been adopted to implement this EU consumer policy. This is mainly about:

- Council Directive 85/577 / EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises (Důvodová zpráva, 2018).
- Council Directive 93/13 / EEC of 5 April 1993 on unfair terms in consumer contracts.
- Directive 97/7 / EC of the European Parliament and of the Council of 20 May 1997 on the protection of consumers in respect of distance contracts.
- Directive 2000/31 / EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.
- Directive 2002/65 / EC of the European Parliament and of the Council of 23 September 2002 concerning the placing on the market of financial services for consumers as regards the distance marketing of consumer financial services and amending Council Directive 90/619 / EC and Directives 97/7 / EC and 98/27 / EC.

- Directive 2008/122 / EC of the European Parliament and of the Council of 14 January 2009 on the protection of consumers in respect of certain aspects of timeshare, long-term holiday products, resale and exchange.
- Directive 2011/83 / EU of the European Parliament and of the Council of 25 October 2011 on consumer rights amending Council Directive 93/13 / EEC and Directive 1999/44 / EC of the European Parliament and of the Council and repealing Council Directive 85/577 / EEC and Directive 97/7 / EC of the European Parliament and of the Council.

If there were no amendments to the ZRŘ, the Czech Republic would be exposed to considerable sanctions on the part of the EU. The amendment made by Act No. 19/2012 Coll. Is commonly referred to as consumer amendment or as euronovela. The WRC did not, in any way, reject current consumer protection trends in its provisions, so it was inevitable to include consumer protection principles in the area of arbitration, as the courts did in practice, both SDEU and national courts, which often did not have their own conservation decisions support in the law (Platte, 2002).

The primary purpose of the amendment was thus to protect the consumer, when the law did not specify this area until the adoption of the amendment, and the application and interpretation problems were left exclusively in the case law. It was also inevitable to take into account the relatively settled SDEU case law, which mainly concerns the validity of arbitration agreements in consumer relations. The SDEU has inferred that the national court is also required of its own motion to examine the nullity of the arbitration clause, even in the context of the enforcement procedure (eg Case C-168/05 Mostaza Claro or Asturcom C-40/08).

Both the concept and the text itself are a compromise solution between the public's interests in the position of consumers and the entrepreneurial interest. As Belohlavek (Bělohlávek, 2012) points out, its development has been influenced by a number of political interests as well as attempts to completely eliminate the arbitrability of consumer disputes. However, it must be noted that the change made is a fundamental change only in relation to consumer disputes, that is to say, on the one hand the consumer is on the one hand, in general the ZRŘ changes are rather more precise and there are no significant changes in the character and principles of the arbitration proceedings. the amendment was made to the German arbitration rule from which the proposed model was based, and the elements set out in European Commission Recommendation 98/257 / EC on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes (Lisse, 2012).

As a consumer protection element, among other things, the obligation to conclude the arbitration agreement on a stand-alone document, the obligation to provide certain mandatory data in the arbitration agreement, a tightening of the arbitrator's requirements or the obligation to decide consumer disputes in accordance with consumer protection law. I will focus on the particular changes made by the consumer amendment in the following part.

There is no general definition of the CRC's arbitration agreement, however, a definition can be found in Article 7 of the UNCITRAL Model Law: „Arbitration agreement is the parties' agreement that all or certain disputes that arise or arise from a particular legal relationship, whether contractual or will be dealt with in the arbitration proceedings.“ (Frick, 2001) This definition corresponds in principle to our legal regulation contained in § 2 (3) of the RAG and subsequently in § 3, even if the adjustment is not too detailed. This is a wider scope for legal practice and jurisprudence, which is very important in this area.

In the provision of Section 2 (3), the WRC distinguishes two types of arbitration contracts. The resolution criterion is the time of the dispute and the amount of disputes. In the event that the arbitration agreement falls on a specific dispute that has already arisen, it is an

arbitration agreement. Conversely, if the arbitration agreement concerns all disputes that arise in the future from a particular legal relationship, this is an arbitration clause.

I consider it appropriate to mention at least briefly the legal nature of the arbitration agreement. The assessment of the legal nature of the arbitration agreement is closely related to the concepts of arbitration itself. Thus the theory of jurisdiction emphasizes the procedural nature of the arbitration agreement, but the concept of the contract clones to the substantive conception of law. It should be noted that even in the literature there is no clear opinion as to when both concepts have a supporter in legal theory. Rozehnalová (Rozehnalová, 2013) tends to conceive of the arbitration agreement as an institute of procedural law, since it is an institute that only creates the conditions for resolving the dispute but does not interfere with the merit of the dispute. This is also evidenced by the fact that the subject of the arbitration agreement is the transfer of authority and not the settlement of relations. The consequences of this treaty are also procedural, that is, the delegation of authority (Knapp, 1960). I also favor this conception, which is undoubtedly supported by the adoption of a mixed theory of arbitration, as I have already stated above.

The arbitration agreement is, of course, like any other contract, by bilateral legal proceedings, as such must undoubtedly be governed by the provisions of the Civil Code on the legal requirements. It must be a free, serious, sufficiently clear and comprehensible manifestation of will. The arbitration agreement is open to anyone who has a legal personality, ie who is eligible to have rights and obligations (Bureš, Drápal, Mazanec, 2000).

The arbitration clause may be included in both the main contract (ie in the substantive agreement), it may also be a separate contractual arrangement and only refer to the main contract. However, the relationship between the arbitration agreement and the main contract is always considered to be a relationship of separate contracts, based on the application of the principle of separation of the two treaties. The direct consequence of this doctrine is that the invalidity of the arbitration agreement does not automatically invalidate the principal contract, which is also true. An indirect consequence of this is that the arbitrators' power is to decide on their authority, the so-called doctrine of authority (Bělohlávek, 2012, Rozehnalová, 2013).

The arbitration agreement must be made in writing in accordance with Section 3 (1) of the WFD in writing, where the lack of written form causes invalidity. However, according to the above provision, the written form is preserved even if the arbitration agreement is concluded by telefax, telex or electronic means. This option does not explicitly recognize the New York Convention, nor the European Convention. However, it is clear that, given the time of the creation of these conventions, this possibility could not be enshrined in the conventions given the technical background at that time. However, in the context of historical interpretation, this option is now commonly amongst the ways of concluding an arbitration agreement.

The only exception to the requirement of a document is Section 3 (2) of the CRC, which provides that if the arbitration clause forms part of the conditions governing the main contract, the arbitration clause is also validly agreed even if the written draft of the main contract with the arbitration clause contained in the conditions were accepted by the other party in a manner that shows its consent and the content of the arbitration agreement. These are cases where consent to the main contract was given, for example, by factual fulfillment. However, the implicit consent of the arbitrator to the case before the arbitrator without the existence of a written arbitration agreement cannot be regarded as the defendant's passivity in the arbitration proceedings already commenced. This view has been repeatedly also judged by the Supreme Court, for example in the Resolution of the NS CR, filed 20 Cdo 2857/2006 of 11 September 2007, which stated: From Act No. 216/1994 Coll. it cannot be inferred that the passivity and inactivity of the defendant in the arbitration procedure would have the effect of subjecting the

arbitrator to the jurisdiction; such a consequence could only be associated with the behavior of the defendant who would be active in the dispute, and at the latest in his first act on the merits, he did not object to the arbitration agreement (§ 15 para. 2 of Act No. 216/1994 Coll.). Another situation would arise if the arbitration agreement was concluded, albeit invalid. In such a case, the arbitrator's jurisdiction would be based on the award; defense of the defendant would consist in bringing an action for annulment of the arbitration award (Bělohlávek, 2012). Thus, the defendant's passivity does not in any way constitute consent to the hearing of the case before the arbitrator.

Finally, I come to the novelties in the field of consumer arbitration agreements introduced by the Consumer Amendment. One of the proposed options was also the absolute abolition of the arbitrability of consumer disputes, but finally, new provisions were introduced into § 3 of the WFD which contain specific conditions for the conclusion of a valid arbitration agreement for disputes arising from consumer contracts. New arbitration agreement in consumer relations must be included in a separate document, ie. in a document distinct from the main contract (Lisse, 2012). The arbitration clauses contained in various business general terms are also void. It should be noted that autonomy is not absolute in technical terms, that is, the arbitration agreement may be part of the same charter as the main contract, but it must be absolutely clear that it constitutes a separate contractual act and that it has been negotiated, negotiated and concluded separately (Rozehnalová, 2013). According to Bělohlávek (Bělohlávek, 2012) it is therefore possible for the arbitration agreement to be a separate part of the instrument, in the following, the main contract is included, provided that it is signed separately.

Paragraph 3 (4) governs the preconceived phase. That provision requires the consumer to be provided with information on the differences between the arbitration procedure and the proceedings before the court before reaching the arbitration agreement in good time. This is to ensure that the consumer is able to properly assess the consequences of the conclusion of this contract. In practice, however, this provision may be problematic because it is not easy to specify the time horizon of „sufficient advance“ that the law speaks of. The question remains how much information is to be communicated to the consumer. According to the legal wording "Explanation of all consequences", this may be a considerable amount of information, which, on the contrary, may be detrimental to the consumer. The procedure, which would overwhelm the consumer, could act contrary to what the legislator intended, because the more information the consumer is told, the less his attention is. In view of the intended purpose, this provision should be interpreted rather restrictively (Růžička, 2003).

The amendment further extended the scope of mandatory requirements of the arbitration agreement concluded by the consumer in § 3 (5). This must continue to include truthful, accurate and complete information about the arbitrator or the decision of the permanent arbitration tribunal, the manner of opening and the form of arbitration, the remuneration of the arbitrator and the types of costs that may arise for the consumer and the rules for their award, the arbitration procedure, the manner of delivery of the arbitration award and the fact that the final award is enforceable. This provision is defined quite precisely and clearly and does not in practice give rise to interpretation problems. The requirements (Rozehnalová, 2013) are, if the Permanent Court of Arbitration is to be decided, already fulfilled by reference to the statutes and the rules of the permanent arbitral tribunals, if they contain those particulars.

The arbitration agreement must be made in writing in accordance with Section 3 (1) of the WFD in writing, where the lack of written form causes invalidity. However, according to the above provision, the written form is preserved even if the arbitration agreement is concluded by telefax, telex or electronic means (Dubisson, 1984, Okuma Katuzake, 2003). This option

does not explicitly recognize the New York Convention, nor the European Convention. However, it is clear that, given the time of the creation of these conventions, this possibility could not be enshrined in the conventions given the technical background at that time.

7. Arbitration clause and its quality

If you decide to resolve the dispute through arbitration, we recommend that you take full care of the text of the arbitration clause or arbitration agreement. Such a contract or clause may be concluded in parallel with a commercial contract, or even later, after a dispute has already been settled and the party seeks to resolve it (Branson, Wallace, 1998). When preparing an arbitration clause, account must be taken of a number of circumstances, including the suitability of the dispute in the arbitration proceedings, the place of arbitration, the language of proceedings and the applicable law for the settlement of the dispute. Likewise, the formal aspect of the arbitration is important, so how many arbitrators will be called to discuss the case and whether the case will be armed by the arbitration board or will be conducted as a separate procedure before the arbitrators appointed only for this case. A well-established arbitration clause is a guarantee of further smooth driving. When negotiating an arbitration clause, we recommend that you contact experienced experts (Devolvé, 1993, Pilz, 1997).

It can be recognized that the law of the non-arbitrary designation of the arbitrator (arbitrators) still does not have to be constitutional conformation (and thus unconstitutional acceptable), as is convinced by the abundant jurisprudence of the Constitutional Court (see Resolution IV 3779 / 11 of 10 January 2013, eventually file No. IV ÚS 2735/11 of 3 April 2012 and many others), which he later reflected (on the subject of "non-transparent determination of the arbitrator") and the Supreme Court Resolution of the Grand Chamber of the Civil and Commercial College dated 10 July 2013, sp. 31 Cdo 958/2012 (also referred to as "R 92/2013").

First, the conclusion of that case-law (R 92/2013), when it stated that 'in the case where the proceedings found that the arbitration agreement did not contain a direct designation of the ad hoc arbitrator, a specific way of its determination, and only referred to the arbitration order issued by a legal person that is not a permanent arbitration court established by law, and therefore the arbitration award has been issued by an arbitrator who did not have jurisdiction under the Arbitration Act "is" the fact for which enforcement is inadmissible "clearly has a different factual basis than that based on the case under consideration, formed by the specific wording of the arbitration agreement in the form of the grounding of the nominal appointment of the arbitrator (natural person) his profession to arbitrarily determine the arbitrator (to decide the dispute), but only for himself (see also contr. the so-called "Arbitration Centers" according to the Supreme Court Resolution of 28 April 2015, ref 26 Cdo 3662/2014). It follows that it is clear from the case-law cited in Case R 92/2013 - precisely for that distinction - that the arbitration clause in question 'contained ... a non-transparent and hence an invalid clause' (as a result of which 'it was not ... to assess the entire arbitration clause as invalid "), to which the Court of Appeal has come, it is obviously not possible. Secondly, to deviate from the express wording of the law (Section 7 (1) of the second sentence of Act No. 216/1994 Coll.) Naturally presupposes (exceptionally) qualified reasons, because the court is legally bound. The absence of such a justification, as it happened in the appeal court's judgment, is then not only a relevant (serious) lack, but one that reaches the level of constitutional law.

Through the SWOT analysis in this subchapter there will evaluate the strengths, weaknesses, opportunities and threats of the arbitration.

Table 1: SWOT

Strengths	**Weaknesses**
Informality Speed Proposing only part of the claim Expert knowledge of the arbitrators Uninterruptedness International Recognition of Arbitration Findings	Abusive link between the arbitrator and the plaintiff The necessity to draw up an arbitration clause Interference of the courts in the formal conditions of the arbitration proceedings It is not beneficial for the consumer
Opportunities	**Threats**
Extension of arbitration to litigation	Changes in the Rules of Arbitration Limitation of contractual freedom to negotiate an arbitration clause

Source: Own preparation based on Redfern, Hunter, Blackaby, Partasides (2004), Rozehnalová (2013), Bělohlávek (2012) and Winterová (2004).

8. Conclusion, summaries and considerations de lege lata and de lege ferenda

Arbitration can serve as a very fast, effective and factual tool to resolve disputes between entrepreneurs and consumers. The State gives it to the parties to voluntarily choose an arbitrator or a legal arbitration tribunal as a counterweight against a court that is cumbersome and often ignorant of the substance. Therefore, it is possible to agree with certain limitations and reservations in resolving arbitration disputes arising from consumer contracts. There is the problem that an entrepreneur (such as a leasing provider) tries to impose on a consumer a disadvantageous contract with the designation of the arbitrator or arbitrators who are affiliated with that entrepreneur. These were partly addressed by the aforementioned consumer amendment, which stipulated that arbitrators in consumer disputes must have legal education and at the same time be entered on the list of arbitrators of the Ministry of Justice. By contrast, for entrepreneurs and consumers, it would be advisable to extend de lege ferenda a range of disputes to arbitrators, for example by setting their mandatory decision-making in disputes, for example, up to 50 or 100 thousand. (Approximately EUR 2 to 4 thousand), with the possibility of resolving these disputes for example. arbitrators registered in the said list of the Ministry of Justice with the simultaneous oversight of the state. De lege lata, the arbitrator (arbitrators) must send the arbitral tribunal to the District Court within 3 months of the arbitration award. The state would appear cheaper and, in the author's opinion, it would welcome the parties to the dispute if it was faster.

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