HUNGARIAN LABOUR LAW
E - J O U R N A L

Alternative ways of dispute resolution in Czech labour relations

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Introduction

There is a uniform system of state courts in the Czech Republic. No specialized Labour Courts exist that would create an independent judicial system and whose jurisdiction would cover the scope of individual labour disputes and/or disputes arising from collective agreements. The result is an issue that stays on the top of the charts: the unreasonable length of court proceedings in the labour dispute area.

Official data collected by the Czech Ministry of Justice states that the ordinary length of a dispute in employment matters, from lodging a suit to the final decision, took no less than 580 days in 2011. It has not been such an overnight success because twelve years earlier, in 1999, the length was 554 days.[1] Apparently, said figures prove that the enforceability of social rights has become a daunting challenge in the Czech Republic. Citizens truly consider a system of law to be fair and just, only if it guarantees effective and speedy recovery and resolution. A ministerial survey in 2011, confirms a second conclusion: the total amount of employment cases have been going down rapidly since 1989. In numbers, there were 21,778 labour cases in 1983 (total number of disputes was 139,521) compared to 5,578 in 2011 (total number of disputes

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[1] Ministry of Justice: Statistický přehled soudních agend (the Statistic Survey of Court Agenda), second volume, 2011, p.33 and p.40. Compare with the official database at http://cslav.justice.cz/InfoData/statisticke-rocenky.html (Citation: 18 November 2014).

776,279).[2] Because the number of labour disputes have definitely not been reduced due to ongoing improvements in labour law, this data could be interpreted as another proof of the limited enforceability of employment rights.

Because this phenomenon is substantial and disturbing, since it could well weaken the legitimacy of the state as a guarantor of legality and bearer of public authority in the eyes of the addressees of the rules, therefore it is necessary to act as soon as possible. Writing this article the authors offer arbitration as one of two possible solutions to the said political challenge, nevertheless, it is not so clear cut.

Although arbitration has a long history in the legal predecessors of the Czech Republic (second section titled From Historical Perspective), the current legal situation is not favourable (third section of this article). Collective labour-law disputes are excluded from court as well as arbitration jurisdiction. Individual labour-law disputes may be arbitrated, if they comply with strict conditions given in the Act on Arbitration. Even so, we see as a real response limited changes in the Czech arbitration procedure. They are not only more feasible, than the reconstruction of the labour law judiciary, but it has been also proved over time in the first half of the previous century. Hence, the forth section of this article analyses a few developments that could improve the validity of the system and help regain stability and social cohesion in employment relationships. The portrait of Czech arbitration would not be complete without some general remarks summoned in the final section.

From a historical perspective

Czech historic tradition holds long periods, when industrial disputes were resolved both by specialized courts, which contained more or fewer elements typical for alternative methods of resolution of industrial disputes (for example the influence of the parties, more precisely professional groups, on the composition of the court, etc.), and further also by arbitration courts.

From the mid- 19th century to 1948

In the second half of the 19th century, industrial disputes between employees and employers were resolved by Trade Courts established for certain territories and employment sectors. The members of these courts were elected for an appropriate term, partly by employers and partly

[2] Ministry of Justice: Statistický přehled soudních agend (the Statistic Survey of Court Agenda), first volume, 2012, p. 192. Accessible at http://cslav.justice.cz/InfoData/statisticke-rocenky.html (Citation: 18 November 2014).

by employees, on a parity principle. Trade Court jurisdiction was non-exclusive for most of their existence, i.e. it was (in sorts) an alternative way of resolving industrial disputes, where the parties of the dispute could at their own discretion turn to general (regular) courts. These regular courts also decided on any appeals against the decisions of Trade Courts. Gradually, the developing Trade Courts were then newly regulated by the Act No. 218/1896 of the Imperial Code, on establishing Trade Courts and on judiciary in disputes ensuing from labour, apprenticeship, and hired trade relationships.

There was also a variety of semi-judicial institutions established on the basis of particular provisions such as the Act on Works Councils,[3] the Act on Home Work,[4] the Trade Order,[5] or special regulations in the mining industry and in the building trades (including enterprises engaged in manufacturing and transportation of building materials).[6] For example Trade Arbitration Committees were established under the Trade Order in order to resolve disputes between members of the trade association and their helpers if they arose from employment or training relationships. These committees were composed of a parity of employers and employees. Another example is arbitration courts in the mining industry, where they could also decide, besides the 'collective labour disputes' (e.g. some disputes between the works council and management of the company - mine owner) most of the individual labour disputes, such as wage disputes, disputes on termination of employment etc. Individual cases were decided by parity chambers, composed of two Lay Judges from each participating group. Lay Judges were proposed by trade unions as well as mine owners.[7]

This rather perplexed (but efficient) system was transformed when a separate system of labour courts was established by Act No. 131/1931 Coll., on the judiciary in disputes arising from

[3] The Act of 12 August 1921, No. 330 Collection on Work Councils. Arbitration bodies established on the bases of the Act on Work Councils were considered by most scholars to be arbitration courts. Nevertheless, the Surpeme Administrative Court ruled out in a number cases that these arbitration bodies are administrative agencies. See Hora, V.: Československé civilní právo procesní, III volume, Prague: Wolters Kluwer ČR, a.s. 2012, p. 262. An important rule of proceedings was that the judgment should be declared, if possible, immediately after the hearing in the case and the first hearing in the case should be ordered as a rule within seven days of filing the action (Section 3 I Lit. g) of Act No. 330/1921 Coll.). Nevertheless, the rule was only disciplinary; its violation did not cause any negative effects. Hora, V.: Československé civilní právo procesní (Czechoslovakian Civil Procedure Law), III volume, Prague: Wolters Kluwer ČR, a.s. 2012, p. 101.

[4] The Act of 12 December 1920, No. 29 Collection on regulation of employment situated at the employee's home working environment. In accordance with Articles 24 and subsequent, the law empowered the minister of labour to create local committees that were endowed with the right to advise, propose, and to deliver an arbitration award if either of involved parties lodged a claim or the trade agency or a trade inspector called for a hearing. Nevertheless, it has to be stressed that the collective of employees and not individual employees were entlitled to start the procedure. Most experts are inclined to consider these entities to be rather administrative agencies than arbitration courts. See Schelle, K.; Schellova, I.: Rozhodčí řízení (Arbitration Procedure), Prague, EUROLEX Bohemia 2002, pp. 34-35.

[5] The Emperor´s Decree of 20 December 1859, No. 227 Collection.

[6] Act No. 100/1921 Collection.

[7] Hora, V.: Československé civilní právo procesní, III volume, Prague: Wolters Kluwer ČR, a.s. 2012, p. 258.

employment, service, and training relationships (on Labour Courts). Even in the functioning of these courts, their establishment, can be seen as elements typical of dispute resolution designated as the alternative, at present, because the chambers were composed of a Presiding Judge (or his deputy) and two Lay Judges (one from a group of employers and one from the employees' group). The Presiding Judge of the Labour Court chose the Lay Judges, so that they belonged to the same, and if not possible, at least, to a similar occupation as the parties in a dispute.

Labour Courts were separate courts established in addition to the general courts in places, where it was demanded due to economic and social conditions. Therefore, they were not always sited in the same place as District Courts and sometimes were even covering several districts. The Labour Court entertained claims and decided in chambers consisting of a Presiding Judge and Lay Judges who were, for a term of three years, appointed on a parity principle, at the proposal of trade unions and employers.

Ultimately, the above period proves that especially before World War II, there existed in addition to specialized Labour Courts, a number of institutions of alternative justice, more precisely, of an alternative for decision in industrial disputes which had had many years of tradition by this time.

During the Protectorate of Bohemia and Moravia (1939 - 1945), there was a suspension of the system of Labour Courts. After the war, it was renewed for a short time and subsequently, after the takeover of power by the Communist Party in February 1948, in the framework of the so-called initiative of popularization of the judiciary, the system of the Labour Courts was abolished by the Act No. 319/1948 Coll., on popularization of the judiciary.[8] Although the Communist Party had a burning ambition to acquire all means of power, it seems that, at least to certain degree, the unification of the court structure was also justified by generally acceptable reasons, such as economic reasons and increased efficiency. Nevertheless, an experiment with a special arbitration court created by Act No. 143/1946 Collection for employment relationships transformed by the revolution in 1945 proves that the communist regime did not incline towards arbitration in labour law disputes. The regime was frightened by the appearance of losing control. The above mentioned arbitration court was not even allowed to start its activity in Bohemia and Moravia. In Slovakia, the special arbitration court began to deliver awards but it was almost immediately silenced.[9]

[8] See Section 141 of Act. No. 319/1948 Coll.

[9] Rubeš, J. et al: Komentář k občanskému soudnímu řádu, 1 volume, Prague, Orbis 1957, pp. 54-55.

Resolution of industrial disputes in the years 1948 - 1989

Even after the Communist takeover of power in 1948, partial aspects of alternative ways of resolving industrial disputes remained within the Czech legal system. But they were substantially limited.

To begin with, the employer was under the centrally planned economy, and almost always, the so-called socialist organization and arbitration procedure between such organization and the employee was carried out by trade union bodies, at that time the one and only ('unified and state-wide') trade union organization named the 'Revolutionary Trade Union Movement' (ROH). The Trade Union, which became a part of the State, established the relevant arbitral bodies. The structure was completely new and the old way of arbitration was deliberately uprooted.[10] The Communist regime preferred a special kind of out of court mechanism, if we may call it arbitration at all, when one of the fundamental principles is breached. Trade unions authorised to create arbitral bodies and to deliver justice were neither independent nor impartial. Apart from being representatives of employees, they were united under the auspices of the ROH, a part of the totalitarian state.[11] Courts lacked jurisdiction to entertain a claim in labour law disputes before the arbitration was ended futilely. It was not a surprise, that the Civil Procedure Order, enacted in 1950, confined the general regulation of arbitration to disputes, where a company was involved as one of the contesters.

The Labour Code of 1965 contained provisions governing the specific rules of the arbitration procedure in industrial disputes, which were resolved by the so-called arbitration body until 1969. Subsequently, the communist regime had to face a recurrent problem of poor motivation in work. Its response was to harden work discipline, but reform arbitration. Surprisingly, the government chose to turn back the clock and weakened control over arbitration bodies. The Labour Code regulated temporarily only the so-called conciliation proceedings carried out by renamed arbitration bodies, committees for labour disputes. In addition their members were elected by employees.[12] Apparently, these changes did not increase efficiency and the VIII. General Assembly of ROH decided to reverse its actions. The weakening of ROH´s institutions

[10] The legislation prepared a sequel of the Act on Works Councils. It was even published as the president´s decree of 24 October 1945, No. 145 on Business´ and Works 'Councils. Nevertheless, the changed political situation and every moment stronger Communistic party hampered the implementation of the decree. Arbitral bodies were created by Act No. 66/1950 on employment relationships and salaries of state employees. Said act was implemented by governmental regulation No. 120/1950 Collection.

[11] Status of the united trade union organisation was set forth in Act No. 37/1959 Collection. Directives regulating arbitration procedure were regulated in Decree No. 184/1959 published in a special collection titled as Official Gazette in Czech "Úřední list".

[12] The reform was brought by Act No. 153/1969 Collection which amended the Labour Code and Decree No. 23/1970 Collection.

was stopped and after 1975, the institution of arbitral proceedings was re-embodied into the text of the Labour Code and from this code arbitral proceedings of the disputes were heard and decided by arbitration committees, arbitration bodies were re-incorporated in trade unions.
Before these bodies, disputes over claims defined in the Labour Code were heard (some disputes were referred to the exclusive jurisdiction of general courts) and if the Labour Code established the jurisdiction of an arbitration committee to hear a particular dispute, a general court could decide such case, only if the hearing before the arbitration committee was fruitless, that being the conciliation was not approved or committee's decision was challenged by litigant objections, or in the case where there was not an arbitration committee established at the employer.

Resolution of industrial disputes after 1989

As we have seen, the out of court mechanism implemented by the totalitarian state was far from being independent and impartial. It was placed under strict state control. The momentum came with the democratization of economic and political life in the Czech Republic after November 1989. Decision-makers had to respond and determine its further destiny. They chose the total extinction of arbitral proceedings in cases of individual labour disputes, because both its reform or the resurrection of special labour law courts (abolished in 1948) were considered to be beyond the possibilities of the day.
Specifically, the amendment of the Labour Code No. 3/1991 Coll. abolished, with effect from 1 February 1991, in full, hearing and decision of industrial disputes by arbitration committees in arbitral proceedings. Since that time, individual labour disputes have been decided only by the general courts. Another problematic figure was and still is, in the area of collective industrial disputes, i.e. disputes connected with entering into or implementation of a collective agreement, which are excluded from jurisdiction of general courts and resolved by intermediaries, eventually arbitrators in proceedings under a special regulation which is Act No. 2/1991 Coll., on collective bargaining (inspired by the rich tradition of Netherlands).
Even if the new regulation of industrial relations contained in the new Labour Code adopted in 2006, and effective from 1 January 2007, after 15 years of absence of arbitral proceedings in industrial disputes, has enabled the parties in dispute may turn to arbitration courts in individual matters, whose nature allows them to be decided in arbitral proceedings (see below), such cases are not very frequent but nevertheless strongly criticized by trade unions recently. The tendency that the general courts are still overloaded, most of all by industrial disputes, has persisted. This naturally leads, in conjunction with the extension of litigations, to an entirely new type of

industrial dispute, and has been, thanks to the modification of legislation in recent years, originating generally in a slowing down of the resolution to cases, as has been mentioned several times above.

The present situation can then be assessed roughly as follows: the resolution of industrial disputes by general courts is not, for reason of general overloading, speedy in any direction; in addition, it is not with regard to the related costs inexpensive; ultimately, with regard to the lack of specialization, particularly in lower courts, and method of division of cases, ideal with respect to professionalism, accuracy or fairness in decision.

This means, in total, a deficit in the functioning of the state, both in terms of the right to a fair trial in the sense just mentioned and in terms of the obligation to provide protection of subjective rights as such, more precisely in terms of the obligation to create an appropriate environment and mechanism for the implementation of rights with a positive status which are associated with industrial relations.

Especially with regard to the sensitivity of issues that are resolved, particularly in connection with individual labour relations, (termination of employment, payment of outstanding wages, compensation, etc.) and partially also with regard to specificity of industrial relations, which by nature, specifically in the context to the extension of the current legislation, presupposes and requires a unique specialization; it is possible to consider a system of specialized courts and/or other institutions (Alternative Dispute Resolution) having the jurisdiction to decide disputes over rights in this area, as a rational way that can partially ensure faster and markedly more consistent, and that means also fairer, resolution of industrial disputes.

The Act on Arbitration, the Labour Code and future developments

The legal regulation of arbitral proceedings is included in Act No. 216/1994 Coll., on Arbitration and Enforcement of Arbitral Awards (hereinafter "the Act on Arbitration").[13] Under this Act, it is possible to submit a dispute for resolution either to an ad hoc chosen arbitrator (arbitrators) or to the permanent arbitration court.[14] A dispute may be submitted to arbitration,

[13] According to Section 1 of the Act on Arbitration this Act sets forth rules for the resolution of property disputes by independent and impartial arbitrators and the enforcement of arbitral awards.

[14] In the Czech Republic, these three permanent courts can be indicated as the most important institutions in this area: Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic, the Exchange Court of Arbitration attached to the Prague Stock Exchange, the Arbitration Court attached to the Czech-Moravian Commodity Exchange Kladno.

if the law allows the hearing of such a dispute in arbitration (the issue of the dispute's arbitrability) and the parties entered into a valid arbitration agreement. Objective arbitrability is set forth in Sections 1 and 2 of the Act on Arbitration and requires:

- a dispute between the parties to an arbitration agreement,
- the dispute shall be a property dispute;
- it must not be a dispute arising in connection with enforcement proceedings, incidental disputes are excluded as well. Formerly the law also excluded as non-arbitrable those disputes which involved public non-profit institutional health care facilities;
- the subject matter of the dispute shall be capable of settlement; and
- the resolution of the dispute would otherwise fall within the jurisdiction of a court or another authority.

Decision in the arbitral in proceedings, more precisely arbitral award, becomes effective when delivered to participants of the arbitral proceedings and is enforceable. That is, in the arbitral proceedings if the agreement of the parties does not state otherwise award is materially non-reviewable and within this meaning a single-instance and therefore also an accelerated process.

Recent changes in consumer disputes

The driving force of recent changes in the Act on Arbitration has been the role of arbitration in consumer disputes. In this regard, keeping in mind the similarity of consumer relationships with individual labour-law relationships and with regard to outlined unsatisfactory situations in justice, it would apparently be suitable to deal with the question of whether or not to enable arbitrating of a wider group of labour-law relationships in arbitration proceedings, namely disputes concerning termination of relationship etc., along with fully ensuring rightful proceeding rights, that would take account of, as well as in some different countries, necessary specifics of the position of an employee in employment law dispute arbitration proceedings. The above mentioned can be, with necessary divergences, given by the nature of collective employment relationships, applied to a certain extent, to the issue of collective employment law relationships, including possible future disputes (not legally regulated on the European level yet) from supranational agreements (supranational collective agreements such as transnational company agreements).

Arbitrability of individual labour law disputes in the Act on Arbitration

Currently, only individual labour-law disputes, from all of the labour law disputes, can be arbitrated in arbitration proceedings, according to the meaning of the Act on Arbitration.[15] Into the powers of an arbitrator or arbitration court is entrusted decisions regarding relevant matters within an arbitration agreement (dispute already originated), or by an arbitration clause to cover possible disputes which might arise in the future from a certain legal relationship or from a determined number of legal relations. The arbitration agreement is permissible provided claims arising from employment relationships have a property nature.[16] These are disputes concerning a particular property (usually pecuniary) performance.

According to prevailing legal opinion in arbitration proceedings, disputes cannot be arbitrated concerning invalidity of the termination of an employment relationship, which is a group of very frequent disputes initiated by employees against employers, who in their opinion, had terminated their employment relationship unlawfully.[17] These disputes are by their nature very important for employees with regard to the protection of stability of their employment relationship and, to repeat, cannot be arbitrated in arbitration proceedings.[18]

Changes in the Labour Code

Since 1st January 2007, i.e. since the new Labour Code became effective, the Labour Code contains no provision, which would generally prevent other individual labour-law disputes from being arbitrated in arbitration proceedings, provided that the general attributes of arbitration are met.[19] With regard to an increasing overload of the general courts, the length of duration of labour-law disputes and a considerable advantage in arbitrating disputes in arbitration proceedings, i.e. speed, must be duly noted. If it is an employee, who makes a claim for payment of an outstanding wage, severance pay, compensation for damages, etc., against an employer in

[15] Section 2 paragraph 1 of Act No. 216/1994 Coll.

[16] This may include, for instance, claims for compensation for damages or losses sustained at work, other property performances from an employment relationship etc.

[17] Bělohlávek, A.J.: Arbitration Law of Czech Republic: Practice and Procedure, JURIS, USA, JurisNet, LLC 2013, p. 171.

[18] Rozehnalová, N.; Havlíček, J.: Rozhodčí smlouva a rozhodčí řízení ve světle některých rozhodnutí …aneb quo vadis …? (The arbitration agreement in light of chosen court decision) In Právní forum 2010, No. 3, p. 114 or Hýblová, K. Rozhodčí řízení v pracovněprávních vztazích (Arbitration procedure in employment relationships), Dny práva – 2009 – Days of Law, Volume from Conference accessible at http://www.law.muni.cz/edicni/dny_prava_2009/files/prispevky/rozhodci_rizeni/Hyblova_Karla__1307_.pdf (Citation 10 October 2014).

[19] Drápal, L., Bureš, J. et al. Občanský soudní řád (Civil Procedure Order) I, II Komentář. 1 Edition. Prague: C. H. Beck, 2009, p. 707. To the previous regulation in Section 207 of the first Labour Code Compaq Součková, M.: Novela zákoníku práce (Amendment to the Labour Code, Právní rozhledy 1994, No. 5, p. 145.

an arbitration proceeding, it is obvious, that he/she can reach a final ruling significantly faster, than in the case of the use of the general court system.

Furthermore, the Amendment of Labour Code effective from 1st January 2012 extended the scale of potential possible disputes from the area of individual labour-law relationships, specifically for example, with a new type of disputes, connected with claims of employees occurring as a result of termination of an employment relationship due to transfer of rights and duties from labour-law relationships. Besides, it is obvious that there is a real threat of further slowdown of judicial activity of Czech courts caused by continuous growth of disputation agenda.[20]

Individual employment relationships are characterized by a relatively higher degree of the factual inequality of their participants. Current legislation is trying to settle this inequity by implementation of security features in the relevant civil law regulations, with the purpose to provide the weaker party of these relations, that being consumers, or employees, a greater protection than is the case of relationships where it is assumed, in principle, there is smaller or no factual inequality of the participants.[21]

In addition, it would obviously be suitable to give attention to completely neglected alternative methods for the solution of disputes that are different from arbitration proceedings, which are namely, good services, or mediation, the potential of which (across all possible variants of labour-law disputes) is significant. It can be said, that the aforementioned applies namely in cases of mediation led by a professional mediator, who would provide parties with objective and legally well defined arguments completed with examples of former jurisdiction of courts and would on their basis suggest such dispute resolution and that would generally correspond with court rulings. Such way of dispute resolution would be advantageous with respect to speed of decision in the case, as well as to costs, and professionalism, or more precisely, correctness, fairness, and justice.

Absence of relevant knowledge in this direction connected with occasional excesses, that in some cases, may result in misuse of arbitral clauses and agreements, not respecting the position

[20] By way of illustration it can be mentioned, that "overloaded" courts in the Czech Republic (or more precisely representatives of Court Union) have already refused another agenda to be transferred to general courts, namely such agenda concerning phone fees invoices to be paid to operators - from Czech Telecommunication Office (ČTU), to general courts, potentially cca. 120 000 submissions per year which would be transferred.

[21] From the view of the regulation of arbitral proceedings, in which some aspects should be also reflected in the resolution of industrial disputes in a broader sense, it can be pointed out Act No. 19/2012 Coll., an amendment to Act No. 216/1994 Coll., on Arbitration and Enforcement of Arbitral Awards and other related laws, (effective on January 1, 2012), within which has been regulated a number of rules in the area of arbitral proceedings in relation to dispute resolution brought forth in disputes arising from consumer contracts in order to provide a higher level of consumer protection.

of the employee as a "good party who is worthy of special protection", happens namely in arbitration proceedings with arbitrators "ad hoc" and namely labour unions, leads to the intention of proposing a complete exclusion of labour law disputes from arbitration proceedings (instead of searching for acceptable alternatives) and so that 'the baby will be thrown out with the bath water'.[22]

De lege ferenda

One of the fundamental axioms of law in a democratic state is, at least in Western cultures, the right to a fair trial. The right to a fair trial, as well as a number of further fundamental rights and freedoms, is composed of several of the individual rights. One fundamental right from this group is the right to a speedy hearing (the right to a speedy trial), more precisely to a hearing of the case within a reasonable amount of time, taking into account the circumstances of a particular case, i.e. of the relevant contention of the matter.

The unreasonably long time of proceedings, considerable effort that participation in proceedings requires and usually costs to be incurred for recovery of rights, represent collectively a fundamental deficit in the area of one of the attributes of a democratic legal state. Such deficit can, in an extreme case (if we are considering in the context of the Social Contract Theory), as a rule, in connection with the previously mentioned reason (respectively one of the reasons) as is the complexity of system of law, ultimately leads to weakening of legitimacy of the state as a guarantor of legality and bearer of public authority in the eyes of addressees of rules.

By definition, it is implied that a prerequisite for avoiding the situation described above is primarily the existence of an understandable, clear and transparent system of law and general knowledge of the law in the society, to which the essential prerequisite is, however, a system of law with the attributes just mentioned above – and both are intertwined issues. The aspiration

[22] The Chamber of Deputies, Parliament of the Czech Republic, Research Service official summery says that a group of members of Parliament proposed an amendment of the Labour Code, document No. 618. The proposed Section § 3a had declared that no dispute arbitration agreement shall be valid or enforceable if it requires arbitration of employment. See http://www.psp.cz/sqw/historie.sqw?o=6&T=618 (Cit.: 7.10.2014). Fortunately, there was little prospect of the Parliament´s accepting even this compromise. Respective committees slowed the passage of the proposal through the Chamber of Deputies until there was an official end of the Chamber´s functioning period. Such proposals can be also found in other countries. Compare Senator Russell Feingold, a Democrat from Wisconsin, and his Arbitration Fairness Act of 2007 in Kantor, M.: Legislative proposals could significantly alter arbitration in the United States, Arbitration 2008, 74(4), pp. 444-452.

to achieve the aim mentioned above (the state of objective law) should be the general and the main effort (primarily) of the legislative power.

It should be noted that, despite the effort often declared, it is not, in the activity of the legislative body in the Czech Republic, possible to see sufficiently consistent or strenuous efforts which would lead to fulfilment of the above-mentioned aspirations, or at least to approach them significantly. Political parties see other more pressing issues and said topic is avoided in their discussion as too sophisticated.

With respect to this situation, despite knowing that it is not the elimination of causes but only the solution of results, it is necessary to seek other means which would accelerate the hearing of disputes or allow disputes be heard outside the overloaded "State Apparatus" (i.e. outside the general courts which are increasingly overloaded by contentious agenda in the Czech Republic), that is, to seek alternative forms of dispute resolution concerning enforcement of the protection of rights.

Such means, which can help partially eliminate the indicated deficit in the functioning of a democratic state and by which the state can (ultimately) meet its liability to ensure fair trial within the meaning of the right to consider a case within a reasonable amount of time, are the so-called alternative forms of dispute resolution. Among alternative forms of dispute resolution there belongs mainly conciliation, mediation[23] and arbitration. All of them have been used in individual labour law disputes with various results. According to current estimates both soft techniques are rare in labour law practice. The main reason may be covered in modern history, Czechs are still unable to maintain a constructive dialogue.

Thus, the state can meet its liability to ensure resolution of the dispute within a reasonable amount of time both:

a) by ensuring its own apparatus (primarily a system of independent specialised labour courts) which is competent to resolve disputes (that is, which is entitled to a particular right or has specific responsibilities) and

b) (whether as a result of necessity or as a result of favouring the principle of autonomy of the will and of a liberal approach in this respect) by allowing the hearing of matters in contention by another, non-state, institution which has for the moment, to a certain extent, the authority of the bearer of public power, because, in the area entrusted, the institution resolves disputes with a binding effect and in some cases finally.

[23] Introduced into Czech law by Act No. 202/2012 on mediation.

As regards the arbitral proceedings it is essential to distinguish between arbitral proceedings before arbitrator or arbitrators appointed *ad hoc* and arbitral proceedings conducted by, for these purposes, specially established, permanent arbitration courts.

By definition and by historical consequence, implies that the primary responsibility of the state is to build a functional judicial apparatus. However, if the judicial apparatus is not always able, irrespective of reasons and circumstances, to ensure its obligation in this area in an appropriate way (i.e. speedy and effective in particular), it is possible and desirable to ensure, or more precisely to supplement fulfilment of the said state's obligation, also by the second from the above mentioned methods, which gives the participants in disputes the possibility of an alternative procedure regulated by law. Conversely, the absence of such tools, while there is a deficit in the area of the right to speedy, and ultimately fair, proceedings, can lead difficulty in the reparation of damage to the legal knowledge of the society (if we do not note the material damages or attempts to "self-help" procedures).

Arbitration avoids hostility; it is usually less expensive and is faster than litigation; is flexible; has simplified rules of evidence and procedure; and is private. Before 1938, Czech arbitration bodies dealing with individual labour law disputes always offered contestants additional expert skills and expertise due to the fact that they were composed of employers and employees representatives. Nevertheless, we have to be also aware of arbitration downsides such as limited recourse, uneven playing field, questionable objectivity, a lack of transparency, and rising costs. If we learn from recent changes in consumer disputes and adopt similar special protective measures, we could not only diminish opposition against arbitration in labour law, but for the first time in last decade offer employees and employers a full scale alternative to overburdened civil courts.

Conclusion

From Social Contract Theory, but also by definition, it is implied that power has been granted to the state, if the state will provide protection of the rights of those who have entrusted power to the state. If the state does not execute the adequate protection of rights of those who have entrusted it with power or does so insufficiently, we can discuss an essential and fundamental breach of the obligation on the part of the state. This can result in dissatisfaction of citizens that could escalate into acts of civil disobedience.

In order to avoid such a situation, it is necessary, that employee rights advocacy groups, academics, and others, who object to the excruciating length of employment disputes, have to

join together to restructure Czech justice. Even if broad arbitration legislation is not enacted soon, there is a real prospect that the Senate (the Upper House of the Czech Parliament) will take up the issue of significantly modifying the Act on Arbitration once its elections are over and a new Senate is seated.

It has been proved, that arbitral proceedings of industrial disputes have a long tradition in the legal predecessors of the Czech Republic. Even in the period 1948-1989, arbitration did not fully cease to exist, although its form was strongly affected by the social and economic conditions prevailing at the time of socialism. Giving the stated struggle to guarantee the right to a fair trial in employment disputes, we could return and combine the best of our legal tradition with recent developments of consumer protection in arbitration. There is no real obstacle for arbitration in labour law, if each party will be entitled to a competent, neutral arbitrator and independent, neutral administration of the dispute; representation by an attorney or other representative at such party´s expense; a fear of arbitration hearing; a face-to-face hearing; the right to present evidence and cross examine witnesses; a written explanation of the basis for the arbitrator´s decision and the right to opt out of the binding arbitration and into the claims court in well defined cases.