

New landmark arbitration judgement

For the first time the doctrine of issue estoppel has been applied to enforcement of an arbitration award under the New York Convention.

Following this landmark decision yesterday, resulting in victory for the Czech Republic in the case of *Diag Human S.E. v. Czech Republic - Ministry of Health*, Peter Bridson, Managing Partner and Head of Dispute Resolution at DWFMBeckman Solicitors, who acted for the Czech Republic, commented:

“This is the first time the doctrine of issue estoppel has been applied to enforcement of an arbitration award under the New York Convention.

The effect on the entire international arbitration community will be fundamental. The rule book has been re-written.”

This doctrine says that where the same issue has been decided between the same parties by a court of competent jurisdiction then they are bound by that decision with the result that they cannot re-litigate it. The judge found that the issue whether the award was binding had been finally decided between the same parties by the Austrian Supreme Court and the Municipal Court in Prague so Diag was not entitled to re-litigate the same issue in England.

In addition, the judge found that the award was not binding because the arbitral review process had not come to an end.

Mr Bridson further commented: “This case is also unique because for the first time the judge made a number of findings resulting from the application of Czech law to the facts of the case.”

Having considered expert evidence about Czech law the judge found as a fact that under Czech law the various signatories to the four documents which had commenced the arbitral review process were all entitled to sign those documents and so the arbitral review process had been validly commenced.

Background to the case

In a very long running dispute between Diag Human SE and the Czech Republic about the effect of a letter written in 1992 by the then Minister of Health concerning Diag an arbitral award was made in 2008 which provided for a payment to Diag by the Czech Republic of CZK4,089,716,666.00 plus interest. That award remains subject to review within the arbitral proceedings in the Czech Republic. Despite the review process Diag has since 2011 attempted to enforce the award under the New York Convention in a number of countries worldwide, including England. In both Austria and France the enforcement proceedings ended up in their Supreme Courts. In each case the courts of those countries refused to enforce the award because the arbitral review process had not yet come to an end and so the award was not binding.

In England the same issue came before the Commercial Court in London. On 22nd May 2014 Mr Justice Eder refused to enforce the award as well. He ordered Diag to pay the costs of the English proceedings and refused Diag permission to appeal. He also ordered Diag to make a payment on account of the costs of £275,000 by 12th June 2014.

The judge decided the case in favour of the Czech Republic on every issue.

