Financial Arbitrator

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A w a r d

In the proceedings commenced on 7th April 2015 under Sec. 8 of the Act No. 229/2002 Coll., on Financial Arbitrator, as amended (hereinafter referred to as „the Financial Arbitrator Act“) by [redacted] (hereinafter referred to as „the Complainant“), against Chequepoint, a.s., identification number 005 41 389, place of residence Železná 483/2, 110 00 Prague, Czech Republic, incorporated in the Commercial Register maintained by the Municipal Court in Prague, Section B, Entry 133 (hereinafter referred to as „the Institution“) for the reimbursement of the difference between the amount of CZK 3,002 and the amount of CZK 5,218, held pursuant to the Financial Arbitrator Act and, as stipulated by Sec. 24 of the Financial Arbitrator Act, adequately pursuant to the Act No. 500/2004 Coll., Administrative Procedure Code, as amended (hereinafter referred to as „the Administrative Procedure Code“) the Financial Arbitrator authorized to decide disputes under Sec. 1 of the Financial Arbitrator Act decided as follows:

According to Sec. 15 Par. 1 of the Financial Arbitrator Act the complaint is hereby dismissed.

R e a s o n i n g :

1. Subject of the dispute and competence of the Financial Arbitrator to decide the dispute

By filing a complaint the Complainant sought the reimbursement of the difference between the amount of CZK 3,002 obtained in money exchange of EUR 200 to Czech Korunas (hereinafter referred to as “the Korunas”) and the amount of CZK 5,218 that the Complainant claims to would have obtained should he had made the money exchange in a bank.

According to Sec. 2 Par. 1 of the Act No. 277/2013 Coll., on money exchanges, as amended (hereinafter referred to as “the Money Exchanges Act”) the money exchange shall mean *“a transaction consisting in exchange of banknotes, coins or cheques denominated in one currency for banknotes, coins or cheques denominated in a different currency”*.

Pursuant to Sec. 1 Par 1 letter f) of the Financial Arbitrator Act, the Financial Arbitrator is authorized, inter alia, to decide disputes between money exchange providers and persons considering money exchange, or persons with whom a money exchange has been made.

Based on the disputed money exchange receipt that the Institution issued to the Complainant, the Financial Arbitrator found out that a money exchange of EUR 200 to Korunas took place on 7th April 2015 at 14:05. The Financial Arbitrator therefore considers proven that a money exchange in the sense of Sec. 2 Par. 1 of the Money Exchanges Act took place between the Complainant and the Institution.

Accordingly, the Complainant is a person with whom a money exchange has been made in the sense of Sec. 1 Par 1 letter f) of the Financial Arbitrator Act, as well as Sec. 3 Par. 2 of the Financial Arbitrator Act listing the persons who may file a complaint in the proceedings before the Financial Arbitrator.

The Institution is incorporated in the Registry of the Exchange Offices and is therefore an exchange office in the sense of Sec. 4 of the Money Exchanges Act (a person entitled to provide money exchanges based on a licence to act as an exchange office granted by the Czech National Bank), as well as a money exchange provider in the sense of Sec. 3 Par. 1 letter f) of the Financial Arbitrator Act listing the institutions against which a complaint may be filed in the proceedings before the Financial Arbitrator.

The Financial Arbitrator is authorized to decide the dispute in question as a dispute between the money exchange provider and the person with whom a money exchange has been made (Sec. 1 Par. 1. letter f) and Sec. 3 Par. 1 and 2 of the Financial Arbitrator Act) is concerned, and at the same time there is an authority of the Czech court to decide the dispute pursuant to Art. 4 Par. 1 of the Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

4. Contentions of the Complainant

The Complainant asserts that he has exchanged EUR 200 to Korunas with the Institution. The actual exchange rate was 15.01 while on the exchange rate list other exchange rate was stated. The Complainant does not remember the exact exchange rate stated on the exchange rate list, however there was a big difference between the "sell"/"buy" rate in euros.

The Complainant requests the reimbursement of the difference between the amount of CZK 3,002 actually obtained and the amount of CZK 5,218 that he would have obtained should he had made the money exchange in a bank.

6. Contentions of the Institution

The Institution asserts that the Complainant has signed the Pre-contractual information stating the exchange rate before the money exchange took place. The Institution considers his signature to constitute his unconditional agreement with the terms of the transaction. Once the receipt has been signed, the Institution accepts no complaints (as it visibly announces in its branches).

The Institution describes the process of money exchanges taking place in its offices as follows. When a customer enters the branch office, the cashier welcomes him/her and offers help to him/her. The customer reads the exchange rates list and if he/she accepts the conditions he suggests the amount to exchange and specifies the currencies between which the money exchange shall take place. The cashier fills in the pre-contractual information, hands it over to

the customer and asks him/her for signature. The customer reads the information and if he/she accepts the conditions he/she signs the pre-contractual information. The cashier adds the transaction into the information system of the Institution and then the exchange is performed. The customer may refuse the money exchange until he/she signs the pre-contractual information and hands the money over to the cashier. If, after having read the pre-contractual information, the customer refuses to sign it the cashier and the customer may agree upon a different exchange rate that the cashier may offer under the Institution´s internal guidelines.

The Institution further asserts that the size of the board displaying the exchange rate list is 53 x 29 cm.

The Institution asserts that it also provides better rates than those stated on the exchange rate list for transactions above CZK 500 and under individual agreements governed by its internal guidelines. The clients are informed of this possibility by an informational board.

The Institution mentions that an unannounced Czech National Bank inspection took place in the Branch Office pursuant to the Prices Act which found no violation of the price regulation.

The Institution concludes that all its cashiers are obliged to follow the laws and regulations of the Czech National Bank. All the cashiers follow the internal guidelines of the Institution when negotiating the exchange rates.

7. Evidence and evaluation of evidence

According to Sec. 12 Par. 1 of the Financial Arbitrator Act, the Financial Arbitrator shall decide disputes based upon his/her best knowledge and belief, impartially, fairly, without undue delay and only on the basis of the facts established in accordance with the Financial Arbitrator Act and other legislation. Pursuant to Sec. 12 Par. 3 of the Financial Arbitrator Act, the Financial Arbitrator shall not be bound by the complaint and shall procure evidence on his/her own; the Financial Arbitrator shall make decisions based on the established facts of the case and shall weigh evidence in his/her discretion.

The Financial Arbitrator has established the following facts of the case:

1. on 7th April 2015 the Complainant performed the money exchange of EUR 200 to Korunas in the Branch Office; that follows from the unanimous contentions of the parties, the Pre-contractual information and the Receipt;
2. the exchange rate was 15.01, the exchange fee was 0 % and the exchanged amount was CZK 3,002; that follows from the unanimous contentions of the parties, the Pre-contractual information and the Receipt.

To make the decision the Financial Arbitrator dealt with the following issues:

a) whether the Institution displayed the exchange rate list in the Branch Office on 7th April 2015 as required by Sec. 11 Par. 1 of the Money Exchanges Act;
b) whether the exchange rate list contained all the information prescribed by Sec. 11 Par. 2 of the Money Exchanges Act;
c) whether such information was displayed on the exchange rates list in the manner prescribed by Sec. 11 Par. 3 of the Money Exchanges Act;
d) whether the Institution offered its money exchange services also under different conditions

than those stated on the exchange rates list on 7th April 2015, and if yes, if it followed the rules laid down by Sec. 12 Par. 1 and 2 of the Money Exchanges Act;

e) whether the Institution complied with its obligation to provide the Complainant, sufficiently in advance and in accordance with Sec. 13 Par. 1 of the Money Exchanges Act, with the information prescribed by Sec. 13 Par. 2 of the Money Exchanges Act;
f) whether the disputed money exchange constitutes a null and void legal action in the sense of Sec. 583 of the Act No. 89/2012 Coll., Civil Code, as amended (hereinafter referred to as "the Civil Code");
g) whether the Complainant is entitled to request the cancellation of the contract under Sec. 1793 of the Civil Code;
h) whether the disputed money exchange constitutes a null and void legal action in the sense of Sec. 588 of the Civil Code.

Ad a) to c)

Pursuant to Sec. 11 Par. 1 of the Money Exchanges Act *"[t]he Provider* (i.e. the person entitled to perform the money exchanges – comment of the Financial Arbitrator) *shall publish the exchange rates list in the business place* (i.e. the place where the money exchanges are being performed, in this case in the Branch Office – comment of the Financial Arbitrator)*."*

According to Sec. 11 Par. 2 of the Money Exchanges Act the exchange rates list shall include: *„a) a designation showing that an exchange rates list is concerned, b) trade name, or company name, or name/s and surname/s of the merchant and its identification number, c) names or other designations of the currencies between which the money exchange shall take place, d) information on the money exchange rates to be used for calculation of the money exchange which are the least advantageous for the person interested in the money exchange (hereinafter referred to as "the Interested"), and e) information on the money exchange fee"*.

Pursuant to Sec. 11 Par. 3 of the Money Exchanges Act *"[t]he data displayed on the exchange rates list shall be given in the appropriate size and in the exact and comprehensible manner. Numbers shall be written in Arabic numerals."*

The Institution has submitted the exchange rates list of 7th April 2015 as well as the photograph showing where the exchange rates list is located in the Branch Office. Based on the evidence the Financial Arbitrator has found out that:

1. the exchange rate list is displayed in the Branch Office on a large screen located next to the cashier desk enabling the customer to approach close to it;
2. in the top of the board the following data were displayed on 7th April 2015: "CHEQUEPOINT" "Exchange rates / Kurzovní lístek", "CHANGE CAMBIO VALUTA WECHSEL", "Company Chequepoint, Inc. Corporate ID-No. 005 41 389 / Společnost Chequepoint, a.s., IČ: 005 41 389"; which represent the Czech and English designation of the exchange rate list (although in the English version the word "list" is missing the Financial Arbitrator finds that this details is not able to cause any confusion), the business name and the trade name of the Institution, the identification number of the Institution and the date;
3. under the above mentioned data the screen was vertically divided into three parts; the left column´s heading was "Currencies A to Z Měny od A do Z", the middle column´s heading was "We SELL prodáváme You give CZK Vy skládáte CZK" and the right column´s heading was "We BUY nakupujeme You give foreign currency Vy skládáte cizí měnu";

4. in the left column the currencies were enumerated starting with "1 AUD" and ending with "1 ZAR", 22 in total, "1 EUR" being placed in the 6th row;
5. in the middle and right columns the rates were displayed for the relevant exchange, in concrete for euros the "sell" exchange rate was 28.79 and the "buy" exchange rate was 15.01;
6. the heading of the exchange rates list, as well as the exchange rates were displayed in black colour on the white background, while the rest of the exchange rates list was displayed in white colour on the dark blue background;
7. under the list of the exchange rates a separate part dedicated to fees was displayed stating: "Poplatek za směnárenský obchod 0% Transcation fee of 0%" and "0% poplatek za prodej cizích měn / 0% COMMISSION ON CURRENCY SALES";
8. in the bottom of the exchange rates list the following sentences were displayed: "Společnost může s klientem před transakcí dohodnout individuální podmínky směny ve prospěch klienta" and "The company may agree with the customer individual terms of exchange prior to the transaction in favour of the customer."

The Financial Arbitrator considers proven that the following information prescribed by Sec. 11 Par. 2 of the Money Exchanges Act was displayed at the exchange rate list: the trade name (*"Společnost Chequepoint, a.s."* and the translation thereof *"Chequepoint, Inc."*), the identification number (*"IČ: 005 41 389"* and the translation thereof *"Corporate ID-No. 005 41 389"*), the designations of the currencies between which the money exchange shall take place (*e.g. "1 EUR", "We SELL prodáváme You give CZK Vy skládáte CZK"* and *"We BUY nakupujeme You give foreign currency Vy skládáte cizí měnu"*), information on the money exchange rates (the "sell" exchange rate for euros of 28.79 and the "buy" exchange rate for euros of 15.01) and the information on the money exchange fee (*"Poplatek za směnárenský obchod 0% Transcation fee of 0%"* and *"0% poplatek za prodej cizích měn / 0% COMMISSION ON CURRENCY SALES"*).

Also, the Financial Arbitrator considers proven that the data displayed on the exchange rates list were given in the appropriate size. The Institution asserts that the size of the board displaying the exchange rate list was 53 x 29 cm. If compared to a person appearing on the photograph of the Branch Office, the Financial Arbitrator is satisfied that the size of the board is as asserted by the Institution. Considering that there were 32 lines on the screen in total and taking into account the necessary spaces between the separate lines, the Financial Arbitrator is convinced that the size of the letters must have been no less than 1 centimetre which, in the circumstances where the location of the exchange rates list enabled the customers to approach close to it (to step right in front of it in fact), the Financial Arbitrator considers appropriate. In addition, all the numbers were given in Arabic numerals and the way the data were displayed on the exchange rates list could not cause any confusion (in the part displaying the rates it was quite clear what rate applies to which currencies and if it applies to an exchange from Czech to foreign currency or to the opposite direction exchange).

Ad d)

According to Sec. 12 Par. 1 of the Money Exchanges Act *„[t]he Provider shall not perform any money exchange using an exchange rate or fee which is less advantageous for the Interested than the exchange rate or fee displayed on the exchange rates list."*

Pursuant to Sec. 12 Par. 2 of the Money Exchanges Act *„[s]hould the Provider offer an exchange rate or fee which is more advantageous for the Interested than the exchange rate or fee*

displayed on the exchange rates list the information thereon shall not be confusingly similar to the exchange rates list, or the information on it, particularly to the exchange rate. Should the offer of the more advantageous exchange rate or fee only apply under certain circumstances the Provider shall publish information on such conditions together with the information on more advantageous conditions. The provision of Sec. 11 Par. 3 applies accordingly."

Under Sec. 12 of the Money Exchanges Act the Institution is not prevented from offering more advantageous exchange rates or fees than those stated in its exchange rates list, however, the Institution may not present such exchange rates or fees to the customers in such a way that it could be confused with the exchange rates or fees stated on the exchange rates list. The point of the provision is to protect the customers from starting the money exchange relying on the „better" exchange rate or fee while there are actually other conditions he/she would need to meet in order to get such better exchange rate or fee (typically a large amount of money to exchange).

In this case no such confusion occurred. None of the parties asserts there were also more advantageous exchange rates or fees displayed in the Branch Office that the Complainant would confuse with those stated on the exchange rates list. The Institution submitted a photograph of the Branch Office displaying the board showing the information on better rates which stated: *"Better rates for large transactions from 500 CZK ask cashier"*. Therefore, the board only informed about such possibility but did not display any rate at all.

Ad e)

Pursuant to Sec. 13 Par. 1 of the Money Exchanges Act *„[t]he Provider shall communicate to the Interested, sufficiently in advance before entering into the money exchange, information specified in Paragraph 2. Such information shall be communicated to the Interested in textual form, in the exact and comprehensive manner and at least in the Czech and English language.*

Pursuant to Sec. 13 Par. 2 of the Money Exchanges Act *„[t]he Interested shall be, in accordance with Paragraph 1, provided with the following information on*

a) the Provider
   1. trade name, or company name, or name/s and surname/s,
   2. address of the seat and address of the business place where the contract is being concluded, or another address, including the electronic one, that is important for the communication of the Interested with the Provider, and
   3. identification number,
b) the money exchange
   1. names or other designations of the currencies between which the money exchange shall take place,
   2. amount of money to be presented by the Interested,
   3. exchange rate,
   4. amount of money that corresponds to the amount of money presented by the Interested for money exchange after conversion made using the exchange rate,
   5. money exchange fee,
   6. amount of money to be presented to the Interested after conversion, if different from the amount of money under point 4, and
   7. date and time of presentation of the information, and
c) other rights of the Interested
   1. information on the right of the Interested to file a complaint with the supervising body,

and

2. *information on the right of the Interested to file a complaint with an out-of-court decision-making body deciding disputes between the Interested and the Provider and the name and the address of the seat of such body.*

Based on the original of Pre-contractual information signed by the Complainant the Financial Arbitrator considers proven that the Institution has presented to the Complainant the pre-contractual information which included the following:

1. *"Chequepoint, a.s."* (i.e. the trade name of the Institution);
2. *"IČ/ID-No.: 005 41 389"* (i.e. the identification number of the Institution);
3. *"se sídlem / with registered office at: Železná 483/2, Praha 1, PSČ 110 00"* and *"Adresa provozovny) Branch address: Václavské nám. 48, Praha 1, 110 00"* (i.e. the address of the seat of the Institution and the address of the business place);
4. *"Klient má právo podat stížnost k České národní bance, a to na adresu podatelny Česká národní banka, Senovážná 3, 115 03 Praha 1. The client has the right to complain to the Czech National Bank on the registry of the Czech National Bank Senovážná 3, 115 03 Prague 1."* (i.e. the information on the right of the Complainant to file a complaint with the supervising body – Czech National Bank);
5. *"Klient má právo podat návrh orgánu mimosoudního řešení sporů – Kancelář finančního arbitra Legerova 69, 110 00 Praha 1. The client has the right to apply for authority of alternative dispute resolution – Office of the Financial Arbitrator, Legerova 69, 110 00 Prague 1."* (i.e. information on the right of the Complainant to file a complaint with the out-of-court decision-making body deciding disputes between the Complainant and the Institution – the Financial Arbitrator – and the name and the address of the seat of such body);
6. *"Date 07/04/2015 Time 13:57"* (i.e. the date and time of presentation of the information);
7. *"Název měny/Name of currency: eur"* (i.e. designation of the currency from which the money exchange took place);
8. *"Částka, která má být složena k provedení směny/Amount to be paid by the client to do the exchange trade: 200"* (i.e. the amount of money presented by the Complainant);
9. *"Směnný kurz/Exchange rate: 15,0100"* (i.e. the exchange rate);
10. *"Částka, která má být zájemci vyplacena po provedení směny/The amount to be paid to the client: 3,002.00"* (i.e. the amount of money corresponding to the amount of money presented by the Complainant after conversion made using the exchange rate);
11. *"Úplata za provedení směnárenského obchodu / Fee for the exchange: 0%"* (i.e. the money exchange fee).

The Pre-contractual information displays the date and time of 7th April 2015, 13:57. The Receipt displays the date and time of 7th April 2015 at 14:05, i.e. 8 minutes later than the Pre-contractual information which the Financial Arbitrator finds sufficient for the Complainant to read the Pre-contractual information.

The Financial Arbitrator finds that the Pre-contractual information only contained the designation of the currency that the Complainant presented to the Institution (euro), not of the currency the Complainant obtained from the Institution (Korunas). Nevertheless, based on the circumstances (mainly the assertion of the Complainant that he wished to exchange euros for Korunas and the fact that this issue is not disputed between the parties), the Financial Arbitrator finds the Pre-contractual information clear as to both currencies between which the money exchange was to take place. As a result, the Financial Arbitrator concludes that the Institution

communicated all the information required by the Money Exchanges Act, sufficiently in advance, in textual form, in the exact and comprehensive manner in Czech and English to the Complainant. The Pre-contractual information clearly stated that the money exchange rate was 15.01.

Ad f)

Pursuant to Sec. 583 of the Civil Code *"[i]f somebody acted being misled regarding a decisive circumstance of the matter by the other party the legal act shall be null and void."*

In this case the Financial Arbitrator considers the money exchange rate to amount to a decisive circumstance of the matter.

However, the Financial Arbitrator found out that the money exchange rate has been displayed on the exchange rates list in the clear and comprehensive manner. Moreover, it has also been stated on the Pre-contractual information presented to the Complainant sufficiently in advance before entering into the money exchange.

The Financial Arbitrator stresses out that the Money Exchanges Act does not prescribe or limit the money exchange rates or the money exchange fees in any way. It focuses on ensuring that the customer gets enough information before the money exchange takes place to make a qualified decision whether to make the money exchange under the conditions offered by the Institution or not. In other words, the Money Exchanges Act lays down specific information obligations on the exchange offices to make sure that the customers are not actually misled by them regarding decisive circumstances of the money exchange. It follows from the Money Exchanges Act that if the exchange office complies with its requirements the customer shall not actually be misled as he/she has been provided with all the information to be able to avoid any mistake.

Therefore the Financial Arbitrator cannot conclude that the Complainant has been misled by the Institution regarding the money exchange rate.

Ad g)

According to Sec. 1793 Par. 1 of the Civil Code *"[s]hould the parties commit to provide mutual consideration and the consideration of one party is in a gross disproportion to what the other party has provided the harmed party may claim cancellation of the contract and reconstitution of the original state, unless the other party compensates the loss having regard to the price common at the time and in the place of conclusion of the contract. This shall not apply if the disproportion is based on the fact that the other party was not aware of, or was not supposed to be aware of."*

To provide interpretation of the above mentioned provision the Financial Arbitrator needed to take into account that it constitutes a novelty in the Czech legal system. The Civil Code has been in force as of 1st January 2014. The official Explanatory Memorandum of the Civil Code comments on this provision as follows: *"[i]t is proposed to provide for a legal institute of the disproportionate lesion (laesio enormis) known from other legal systems (e.g. the Austrian, Swiss or Italian Civil Code or the Bill of the Czechoslovak Civil Code of 1937) also as lesion beyond moiety. In this legal institute a principle of equivalence is reflected meaning that the considerations of both parties to a contract shall not be in gross disproportion and shall comply with the general principles of justice. The legal institute of the disproportionate lesion originates in the Roman law, for the first time it has been enacted by a regulation of the Emperor*

Diocletianus and applied to real estate, later by the Code of Justinian and applied generally. The principles of the disproportionate lesion and its later preservation followed, being influenced by the Canon law, an idea that in obligations the mutual rights and duties shall be balanced and therefore in compliance with the general morals. Currently, the same institute is provided for, besides the Austrian law, e.g. by the French, Italian or Swiss Civil Code. Other legal systems provide for the same issue by a reference to breach of good morals, or misuse of trust, etc. In discussions on the reform of the law of obligations this institute is often criticised for posing uncertainty in the relationship of the parties to a contract – e.g. if a thing is purchased and its common price raises significantly after concluding a contract. The bill deals with this issue by stating that the provision of the disproportionate lesion shall not be used in instances where the disproportion is based on the fact that the other party was not aware of, or was not supposed to be aware of. For the obvious reasons the provision shall not be used in cases where the risk of loss of possible profit is a natural by-product of the contract (e.g. in stock exchange purchases, or in bets, or in games) or where the parties must have been aware of such aspects of the contract or even intended to conclude a contract of this kind. Also if a professional is a party to a contract this provision shall not apply in his/her favour as the professional approach shall be expected from him/her. Based on the results of the discussions that took place in relation to this provision in the stage of legislative intent it is proposed not to use the half of the price as the relevant criterion as it might be inadequately severe in some instances. That´s why the conception known e.g. from the Swiss law (Art. 21 of CO) has been adopted."

Based on the above the Financial Arbitrator finds that the legal institute of disproportionate lesion shall be applied in cases where one party provides performance for a consideration which has a considerably lower value than the performance of the other party. Nevertheless, the disproportion must be enormous, such as if the injured party provides performance or consideration which has actually a value more than half higher than the performance or consideration that party obtained. Even though the wording of Sec. 1793 Par. 1 of the Civil Code does not mention that the lesion shall be "under moiety" it follows from the Explanatory Memorandum that this provisions applies to situations where at least such lesion, or approximately such lesion is achieved.

In the case at hand, the Complainant provided the foreign currency – euros – and obtained consideration of 15.01 Korunas per euro. The Financial Arbitrator has to examine whether the amount of 15.01 Korunas constitutes less than a half or approximately a half of the value of euro.

The task is quite difficult as foreign currency does not have any given price or value, nor does it have any calculable uniform market price. Pursuant to Sec. 35, letter b) of the Act No. 6/1993 Coll., on the Czech National Bank, the Czech National Bank shall publish the exchange rate between the Czech currency and foreign currencies. The exchange rate published by the Czech National Bank does not, however, apply to cash. Moreover, the exchange rate of the Czech National Bank is not divided into "sell" and "buy". Therefore, the exchange rates published by the Czech National Bank do not amount to prices or values generally valid for money exchanges, and, for the case at hand, it may only serve as a reference rate. As follows form the Czech National Bank´s website, the published euro exchange rate was 27,460 on 7th April 2015.

Furthermore, the nature of the money exchange business must be taken into account. To understand the issue it is necessary to think of the money exchanges as of trading any other goods for money in situation where such goods are not fabricated by the trader. If the trader needs to buy some goods before he/she sells it to the customers, he/she needs to sell it for higher

price than for which he bought it at first place to make any profit. In other words if the money exchange provider buys foreign currency for Czech currency (which needs to be considered the "starting" currency for the Czech provider) the provider needs to sell it for higher price than he/she bought it in order to make a profit.

The Financial Arbitrator stresses out, at this point, that the exchange offices are private traders not supported or financed by the government. To be able to trade on foreign currencies, they need to be granted a licence by the Czech National Bank and comply with the requirements imposed by the Money Exchanges Act and other applicable law; however the money exchanges constitute their source of profit. Moreover, there is no legislation that would require the exchange offices to have their exchange rates bounded in any way by the official exchange rates published by the Czech National Bank, or would limit the range between the "sell" and "buy" exchange rate.

The profit the exchange offices make can be determined by an exchange rate (the exchange office buys the foreign currency cheaper than it subsequently sells it to the customers), the money exchange fee (the money exchange office imposes a fee on every money exchange), or a combination thereof. In this case the Institution used the exchange rate only as there was no fee for money exchange.

At the same time, the determination of the exchange rates and the fee is fully in the discretion of the individual exchange office and is, therefore, influenced by many circumstances (e.g. the rental prices and other charges in the location of the exchange office and/or its branch offices, number of employees, common exchange rates in the area, etc.) Naturally, the exchange rates may also change every day.

As a result, it is almost unable to determine any standard value of the foreign currency common for a couple of exchange offices or for a certain area as it is actually specific in each exchange office.

Nevertheless, the wording of Sec. 1793 Par. 1 of the Civil Code refers to the disproportionate lesion as to the situation where "*the consideration of one party is in a gross disproportion to what the other party has provided*". Therefore, the Financial Arbitrator only needs to compare the consideration the Institution provided to the Complainant (15.01 Korunas per euro) and the consideration it provided itself. The Institution´s business (as far as euro – Koruna exchanges are concerned) consists in buying euros from its customers and selling it to other customers. In other words, firstly the Institution provides certain amount of Korunas for one euro and then it is provided certain amount of Korunas for one euro.

In such situation, the two Koruna amounts may be simply compared as in both cases it constitutes an equivalent of the value of euro in the specific conditions of the Branch Office (in other words the two Koruna amounts constitutes the considerations the two parties exchanged).

In specific terms, the Complainant got 15.01 Korunas for each euro provided. To find out what amount of Korunas the Institution got for one euro in the Branch Office on 7th April 2015 the Financial Arbitrator asked the Institution to provide the list of money exchanges performed in the Branch Office on that day from Korunas to euros. Based on the list provided the Financial Arbitrator found that the average price for which the Institution sold one euro on 7th April 2015 was 28,75. As a result, the consideration the Complainant got per euro (15.01 Korunas) constituted 52,2 % of the consideration the Institution got per euro (in average). Therefore, the

consideration the Complainant provided to the Institution was nearly twice as high as the consideration the Institution provided to the Complainant, though the lesion did not actually reach the moiety.

Nevertheless, according to Sec. 1794 Par. 2 of the Civil Code *"[t]he right specified in Sec 1793 shall not come into being where the harmed party waived it expressly and declared that it accepts the consideration for an exceptional price due to a particular interest, or where that party agreed to a disproportionate price even though it knew or must have known the actual price of the consideration."*

In the case at hand, the Complainant could not know the average price for which the Institution actually sold one euro (28.75 Korunas) but he (as found above) must have known the price stated on the exchange rates list for money exchanges from Korunas to euros (28.79 Korunas) which is even higher. As concluded above, the Financial Arbitrator finds the exchange rates list to comply with the requirements laid down by the Money Exchanges Act and therefore not misleading. As a result, based on the exchange rates list, the Complainant must have assumed that the actual price of euro is 28.79 Korunas with the Institution but accepted the price of 15.01 Korunas per euro. Therefore the Complainant made the money exchange (i.e. agreed to a disproportionate price) even though he must have known the actual price of one euro (or, more precisely, even though he must have supposed the price is even higher than it actually was and, therefore, must have assumed that the lesion was even higher than it actually was). In such circumstances, the Sec. 1794 Par. 2 of the Civil Code shall apply, i.e. the Complainant shall not have any right following from the disproportionate lesion.

Ad h)

Pursuant to Sec. 588 of the Civil Code *"[t]he court shall find null and void, even without a motion to that effect, any legal act that clearly breaches the good morals, or breaches the law and clearly disrupts public order. The same applies where an unfeasible performance (i.e. unfeasible from the very beginning) is required by the legal act."*

The question is whether the disputed money exchange clearly breached good morals (as it did not breach the law, disrupt public order, or require an unfeasible performance). In the case at hand, only two aspects of the money exchange could be questionable as to the good morals – the exchange rate (as such) and the awareness of the Complainant of the exchange rate.

As to the exchange rate, there is a specific provision of the Civil Code that deals with the mutual consideration of the parties (Sec. 1793 of the Civil Code, see above). As far as the awareness of the Complainant of the exchange rate is concerned, there is also a specific provision dealing with the question (Sec. 583 of the Civil Code, see above).

Where there are two different legal rules dealing with the same question while one of them is specific and the other one is general, the legal principle "lex specialis derogat generali" applies. That means, only the specific rule shall be used, in this case Sec. 1793 of the Civil Code and Sec. 583 of the Civil Code, not Sec. 588 of the Civil Code. Both applicable provisions were dealt with above.

Based on all the above the Financial Arbitrator has decided as stated in the verdict.

I n s t r u c t i o n s o n a p p e a l :

Pursuant to Sec. 16 Par. 1 of the Financial Arbitrator Act the award can be contested by reasoned objections filed with the Financial Arbitrator in writing within 15 days of the delivery of the award. Any party may relinquish its right to file objections. The timely objections shall have the suspensive effect.

Pursuant to Sec. 17 Par. 1 of the Financial Arbitrator Act an award which cannot be contested by objection any more shall be in legal force.

In Prague on 29th September 2015

official stamp

Monika Nedelková
Financial Arbitrator