

12th
Edition

2018-2019

The
Baker McKenzie
International
Arbitration Yearbook

Poland





Poland

Sylwia Piotrowska¹ and Aleksandra Żanowska²

A. Legislation and rules

A.1 Legislation

Arbitration proceedings in Poland continue to be governed by the rules embodied in the Polish Civil Procedure Code. These rules are based on the UNCITRAL Model Law.³ In 2018, no amendments to these rules took place.

A.2 Institutions, rules and infrastructure

There are two main arbitration institutions that administer arbitrations and also provide the rules of arbitration and the facilities where arbitration may be conducted. These two institutions are the Court of Arbitration at the Polish Chamber of Commerce and the Lewiatan Court of Arbitration at the Lewiatan Confederation.

On 1 June 2018, the Court of Arbitration of at the Polish Chamber of Commerce introduced the rules on the expedited procedure. Pursuant to these rules, the expedited procedure is applicable if the amount in dispute does not exceed approximately USD 20,000. This procedure is applicable by default, though the parties may opt-out of it. The parties may also agree to apply the expedited procedure to cases in which the amount in dispute exceeds approximately USD 20,000.

¹ Sylwia Piotrowska is a counsel at Baker McKenzie's Warsaw office and a member of the Firm's Global Dispute Resolution Practice Group. She specializes in commercial proceedings before arbitration and common courts. She closely cooperates with other Baker McKenzie departments in litigation matters, in particular with the Real Estate Department and the IT Department.

² Aleksandra Żanowska is an associate at Baker McKenzie's Warsaw office and a member of the Firm's Global Dispute Resolution Practice Group. She specializes in litigation and arbitration.

³ The UNCITRAL Model Law before the 2006 amendments.

The main features of the expedited procedure are: (i) a tribunal consisting of a sole arbitrator; (ii) an obligatory establishment of the procedural timetable for the proceedings, which must include deadlines for, among others, evidence collection; (iii) obligatory organization hearing; (iv) electronic filing (via email); (v) no hearing; (vi) evidence of factual witnesses or expert witnesses only in the form of written witness statements or written expert reports; (vii) six months deadline for the issuance of the award from the conclusion of the minutes of the organization hearing.

The above rules are applicable to cases commenced on or after 1 June 2018.

B. Cases

B.1 Public policy encompasses comprehensive examination of the case in the arbitral award

The Supreme Court dealt with the issue of whether a preliminary arbitral award in which the reasoning does not deal with a significant amount of the evidence submitted by a party is contrary to the public policy of Poland.⁴

The case concerned an award rendered in a construction dispute. The arbitral proceedings were conducted under the Arbitration Rules of the Arbitration Court at the Polish Chamber of Commerce. In the proceedings, the claimants prevailed. The award, though lengthy, did not include an explanation as to why the tribunal did not rely upon a significant amount of evidence submitted in the course of the proceedings. In these circumstances, the respondent filed a motion to set aside the award. It alleged that the award was contrary to the public policy of Poland. It argued that as the tribunal did not deal with all evidence submitted in the proceedings, it breached one of the principles of procedure in Poland, the obligation to comprehensively examine the case.

⁴ Judgment of the Polish Supreme Court of 7 February 2018, case file no. V CSK 301/17.



In the first instance proceedings, the Court of Appeal considered the case and found that such a breach has indeed occurred, although it noted that, in setting aside proceedings, a court is not entitled to examine the merits of the arbitral award. Accordingly, the Court of Appeal decided to set the award aside. The claimants to the arbitration filed a cassation appeal from this decision, and the matter was put before the Supreme Court.

The Supreme Court confirmed that courts are not entitled to assess the merits of the arbitral award. At the same time, it confirmed that the non-observance of basic principles of procedural rules may be considered contrary to public policy. In the view of the Supreme Court, this included principles that ensure the equality of the parties.

Upon these observations, the Supreme Court found that the arbitral tribunal had an obligation to competently and in line with the required procedure, render the award. This included considering the evidence filed by both parties, as required by the principle of party equality. The Supreme Court stated that arbitral tribunals may not omit evidence from their awards without explanation, be it documentary evidence, witness testimony or expert reports. Such an omission proves that the arbitral tribunal selectively, and, thus, unreliably, decided the case. At the same time, this conclusion did not mean that the Supreme Court examined the merits of the arbitral award, as this is a separate issue.

The final conclusion of the Supreme Court was that the lack of reference to all evidence in the arbitral award went beyond a formal defect of the arbitral award. It amounted to lack of comprehensive examination of the case which is a basic principle of Polish law. And thus, the arbitral award was contrary to Polish public policy.

The decision of the Supreme Court puts to question the limits of court examination of arbitral awards in setting aside proceedings. While the Supreme Court emphasized that it did not examine the merits of the arbitral award, the fact remains that it examined the basis of the arbitral tribunal's ruling. Although, in this case, the Supreme Court

did consider the line between the merits and the basis of the award to be separated, this decision may be the starting point for courts to examine arbitral awards more thoroughly. This could open the gateway for the courts to examine further issues that might be considered merits of an arbitral award, even though they are not entitled to do so.

B.2 A party cannot invoke as a setting aside ground the inability to present its case if it had not raised this objection during the arbitral proceedings

The Court of Appeals in Warsaw dealt with the conditions for a party to successfully invoke the ground of inability to present its case in order to set an arbitral award aside.⁵ The court also dealt with an objection to the impartiality of arbitrators.

The case concerned an award rendered in a commercial dispute arising from two commercial contracts. The arbitral proceedings were conducted under the Arbitration Rules of the Arbitration Court at the Polish Chamber of Commerce. In the proceedings, the claimant raised objections against the impartiality of the presiding arbitrator and the arbitrator chosen by the respondent. The basis for these objections was that the presiding arbitrator had written a paper in which he expressed an unfavorable view on the legal issues arising in the case, while the arbitrator appointed by the respondent had, almost six years prior to the initiation of the proceedings, been a lawyer in the law firm that represented the respondent. These objections were dismissed in accordance with the procedure under the arbitration rules applicable to the dispute and no new objections to the impartiality of the arbitrators were raised. The proceedings continued, and an award was rendered in which the arbitral tribunal partially agreed with the claimant and thus, awarded it part of the sought claim.

⁵ Judgment of the Polish Court of Appeal in Warsaw of 2 August 2018, case file no. VII AGa 1162/18.



The claimant filed a motion to set the award aside in the part that dismissed its claim. There were a number of grounds for setting aside raised by the claimant, including the arguments that the tribunal did not consist of impartial arbitrators, as well as that the claimant was not able to present its case before the arbitral tribunal.

The Court of Appeal dismissed the motion of the claimant. It found that all the grounds raised by the claimant in its motions were baseless.

With regard to the objection based on the alleged lack of impartiality of the arbitrators, the Court of Appeal confirmed that these circumstances are not sufficient to disqualify the panel. And as the procedure foreseen in the arbitral rules for the review of the objections to the impartiality was observed, there are no grounds to set the award aside on that basis.

With regard to the objection raised on the basis of lack of possibility for the claimant to present its case, the Court of Appeal considered three issues. First, the court observed that in fact, the claimant did not rely on any specific bases expressed in the relevant Polish law when formulating its objection. The claimant merely invoked general principles of equality of the parties and did not substantiate its objection. Second, the court noted that having analyzed the conduct of the arbitration, there were no grounds to assume that the claimant was unable to present its case. This is because the claimant had the opportunity to file motions in the proceedings and participated in the hearings, which was confirmed by the minutes of the hearing. Thirdly, the court stated that if a party had an opportunity to raise the objection of inability to present its case during the arbitral proceedings, and did not do so, it cannot rely on this objection in the setting aside proceedings. This is because in such circumstances, no such breach of that party's rights occurred.

This ruling of the Court of Appeals reaffirms the necessity to raise all objection to the conduct of arbitration in course of that arbitration. Otherwise, a party undertakes the risk that in potential post-arbitral

proceedings it will be unable to rely on the relevant grounds for setting aside of the award. Moreover, this judgment confirms that, given the limited scope of court review of arbitral awards, it is necessary to properly present in the motion for the setting aside of the awards all the grounds for it. In particular, it is necessary to specify and justify those grounds, as courts may be reluctant to relieve the parties from this obligation.