

Amendments to arbitral law – more efficient post-arbitral proceedings

October 15 2015 | Contributed by [Kubas Kos Gałkowski](#)

Introduction

Amendments introduced by ADR Law

Impartiality and independence of arbitrators

Setting aside awards

Recognition and enforcement of arbitral awards

Constitutionality of one-instance post-arbitral proceedings

Comment

Introduction

Arbitration is often described as a quick means of dispute resolution in comparison to state court proceedings. Whether this argument is still valid regarding the length of arbitral proceedings themselves is debatable. However, arbitration does not operate in a vacuum and state court proceedings are also needed to preserve or enforce the rights of the parties. If a winning party wants to enforce a favourable award, it seeks the state court's assistance in recognition or enforcement proceedings. If a party is not content with the outcome of the arbitral proceedings, it can motion the state court to set aside the award. Consequently, post-arbitral proceedings are a necessary complement of the arbitral proceedings. Thus, the length of the former should be added to that of the latter to determine the overall length of enforcing claims in arbitration. When arbitral and post-arbitral proceedings are examined together, it is clear that the efficiency of post-arbitral proceedings is crucial in maintaining a quick resolution of disputes. This remains a challenge in many jurisdictions, including Poland.

Amendments introduced by ADR Law

Parliament recently adopted the Act on Amendments of Certain Acts Due to Support of Alternative Dispute Resolution ('ADR Law'). This law was prepared by the Ministry of Economy based on the work of a taskforce composed of various practitioners in the field of alternative dispute resolution and arbitration. The ADR Law (which, in general, enters into force on January 1 2016) contains significant changes to procedural law that are worthy of comment. Most of the modifications refer to mediation. However, there are several amendments to the rules on arbitral proceedings contained in Book V of the Code of Civil Procedure that require explanation.

Impartiality and independence of arbitrators

The first change pertains to Article 1174(1) of the Code of Civil Procedure. Under the rules previously in force, arbitrators had to disclose to the parties any circumstances which could raise doubts regarding their impartiality and independence. The statement of independence was required only when the parties or the arbitral rules provided as such. Following the amendments, the statement of independence from the arbitrator would be required by the code itself. The same applies to the disclosure of any new circumstances that affect impartiality and independence. This change aims to raise standards in this regard and to develop the parties' trust in arbitration as a neutral means of dispute resolution.

Setting aside awards

AUTHORS

[Rafał Kos](#)



[Maciej Durbas](#)



The new rules also affect the proceedings for setting aside an award. Previously, these proceedings were treated as regular proceedings before a state court – that is, in principle, the rules on contentious proceedings applied under Articles 1207(1) and (2) of the code. Therefore, parties had the right to appeal the judgment of the first instance and – in some cases – to file a cassation to the Supreme Court.

The ADR Law changed these rules. Under the new wording of Articles 1207(1) and (2) of the code, the rules on appellate proceedings and appeals will apply to proceedings initiated by the motion to set aside an award and the motion itself. Further, under Article 1208(1) of the code, the motion to set aside an arbitral award under new rules should be filed, in principle, within two months of receipt of the award (not three, as before). Pursuant to the same provision, post-arbitral cases were transferred to the jurisdiction of the appeal courts from regional or district courts. The new Section 3 of Article 1208 of the code provides for the possibility to file a cassation to the Supreme Court (as well as other extraordinary means of appeal) from the court judgment rendered in the proceedings initiated by a motion to set aside an award.

Recognition and enforcement of arbitral awards

Similar amendments were introduced to the proceedings for the recognition and enforcement of arbitral awards. As a result, these cases will belong to the jurisdiction of the appeal courts (Article 1213¹(1)). Further, the provisions on appellate proceedings will also apply (Article 1213¹(2)).

The ADR Law designed post-arbitral proceedings to be one-tiered. Further, the possibility to appeal a court decision rendered in post-arbitral proceedings to a court of higher instance was deleted from Articles 1214(1) and (2). However, as with proceedings for setting aside an award, the parties can file a cassation to the Supreme Court, but only with respect to foreign arbitral awards (Article 1215(3)). State court decisions rendered in cases pertaining to domestic awards can be appealed to a different bench of the respective appeal courts (Article 1214(4)).

The legislature clarified the possibility for a party to file a response to a motion for the recognition and enforcement of an arbitral award in Article 1213(2).

Constitutionality of one-instance post-arbitral proceedings

The quick resolution of post-arbitral proceedings involving only one instance appears to be the norm in many jurisdictions (eg, Austria, Switzerland and Spain). In other jurisdictions, parties are granted only a limited right to appeal the judgment rendered in such proceedings (eg, Belgium and Sweden). However, in amending the code, the legislature had to confront the problem of the alleged constitutional requirement for every state court case to be heard in two instances. The problem stems from the wording of the Constitution and not from Poland's international obligations. This is because Article 6 of the European Convention on Human Rights, which guarantees a right to a fair trial, does not require the case to be heard in two instances.⁽¹⁾ The same applies to Article 10 of the Universal Declaration of Human Rights and Article 14 of the International Covenant on Civil and Political Rights. The Constitution sets a high level of procedural rights for the parties before the courts.

Under Article 78 of the Constitution, each party has the right to appeal a decision or judgment passed in the first instance. The exception to this principle and the manner of appeal should be described by an act of Parliament. Pursuant to Article 176(1) of the Constitution, the court proceedings will be at least two-tiered. Consequently, it might be argued that any court proceedings conducted in Poland must be heard in two instances and a party must have the right to appeal a first-instance judgment.

However, the right to two-instance proceedings does not extend to all court cases. The Constitutional Tribunal decided in one of its judgments that Article 176 of the Constitution requires a right to appeal only in those proceedings which are heard "from beginning to end" by the state court.⁽²⁾ Proceedings in which a state court controls a decision rendered by an authority other than a state court (eg, some disciplinary decisions) do not fall into the category of 'court proceedings' within the meaning of Article 176. This also applies to post-arbitral proceedings. Consequently, these

proceedings need not be two-tiered and no full appeal is required, as state courts perform only limited control over arbitral tribunals.

Comment

Polish arbitration law has not been modified significantly since the adoption of the Model Law in 2005. In the past 10 years, the arbitration community has proposed many amendments that would improve arbitration. Some of these proposals were included in the ADR Law and are more than welcome. They allow the period for enforcing claims in arbitration to be shortened by reducing:

- the time period for filing a motion to set aside an award; and
- the number of instances in which post-arbitral cases will be heard.

Further, the fact that cases will be heard by appeal courts will unify case law. Only time will tell how these amendments will work in practice. However, they mark a step forward in making Poland a more arbitration-friendly jurisdiction.

For further information on this topic please contact [Rafał Kos](#) or [Maciej Durbas](#) at Kubas Kos Galkowski by telephone (+48 22 206 83 00) or email (rafal.kos@kkg.pl or maciej.durbas@kkg.pl). The Kubas Kos Galkowski website can be accessed at www.kkg.pl.

Endnotes

(1) A requirement to provide a right to appeal exists in criminal cases: *cf* Article 2 of Protocol 7 of the European Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocol 11.

(2) Judgment of the Constitutional Tribunal, June 13 2006 (SK 54/04).

The materials contained on this website are for general information purposes only and are subject to the [disclaimer](#).