

Interruption of limitation period of claim covered by arbitration agreement

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Introduction

The limitation of claims under Polish law is a matter of substantive law, not procedure.⁽¹⁾ However, procedural acts (ie, the start of litigation or arbitration) are important in this regard, as they can interrupt the limitation period. The effective interruption of the limitation period of a claim can be crucial to the final success of litigation or arbitration. However, parties are often unsure whether a case is more suited to arbitration or whether it should be heard by a state court. If they make the wrong choice, there is a chance that the limitation period will run uninterrupted and the claim may become time barred.

This issue is problematic in Poland and remains unresolved. It is unclear whether a party can interrupt a limitation period by bringing a case before an improper forum or by initiating conciliatory proceedings before a state court regarding a claim covered by an arbitration agreement.

The Supreme Court recently had an opportunity to resolve the latter issue, but refrained from doing so for procedural reasons (Decision III CZP 30/15, June 18 2015 available in Polish [here](#)). Consequently, parties have no significant precedent to follow. This update highlights the risks and caveats relating to attempts to interrupt the limitation period of a claim covered – at least ostensibly – by an arbitration agreement.

Interruption of limitation period before improper forum

Under Article 1165(1) of the Code of Civil Procedure (modelled on Article 8(1) of the United Nations Commission on International Trade Law Model Law), a court will reject a statement of claim or motion to initiate non-contentious proceedings if the defendant requests – before entering into the dispute as to its merits – to refer the parties to arbitration. The rejection of a statement of claim or a motion means that this is treated as if it had not been filed. Consequently, the limitation period is not interrupted and a claim brought in these proceedings can become time barred. Poland did not follow the example of Austria, which has a special rule that allows proceedings initiated before an improper forum to be continued if the action is immediately brought before the proper forum.⁽²⁾

The Supreme Court adopted a strict approach towards interrupting limitation periods before an improper forum. It firmly stated that a limitation period is interrupted only when a case covered by an effective arbitration agreement is initiated before an arbitral tribunal. If it occurs during the arbitration proceeding that such an agreement does not exist, the period runs uninterrupted.⁽³⁾ Consequently, if a statement of claim is rejected and the limitation period has lapsed, the claim becomes time barred. The claimant will almost certainly have no chance of succeeding on the merits if the other party invokes the limitation.

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This approach has been criticised by scholars who argue that the limitation period should be interrupted irrespective of whether the arbitral tribunal or state court before which the claim is brought is competent.⁽⁴⁾ Other authors have indicated that the rejection of a statement of claim under Article 1165(1) of the code should not prevent it from interrupting the limitation period.⁽⁵⁾

However, Polish courts are still unconvinced and follow the Supreme Court ruling.⁽⁶⁾ Consequently, filing a case before an improper forum can still leave the limitation period uninterrupted.

Interruption of limitation period before state court

Although bringing a case covered by an arbitration agreement before a state court does not interrupt the limitation period, it is still argued that this rule does not apply in conciliatory proceedings. These proceedings are regulated by Articles 184 to 186 of the Code of Civil Procedure. One party can call the other to conclude a settlement before a court. If the other party does not agree to a settlement, the proceedings end. However, the limitation of claims is interrupted and starts to run anew. Consequently, conciliatory proceedings are often used to interrupt a limitation period.⁽⁷⁾

If Article 1165(1) of the code applied in conciliatory proceedings, motions for conciliatory proceedings in cases covered by arbitration agreements could be rejected and the reasoning presented above would apply. However, the issue remains unclear.

Supreme Court decision

The Krakow Regional Court asked the Supreme Court to clarify whether, under Article 1165(1) of the Code of Civil Procedure, a party can motion to refer a case covered by conciliatory proceedings to arbitration. The court was of the opinion that this provision also applies in conciliatory proceedings. Consequently, a party could ask the court to refer the parties to arbitration which would lead to the rejection of a motion. In such a situation, the limitation period would not be interrupted and the claim could become time barred.

In its June 18 2015 decision the Supreme Court refused to hear this issue on formal grounds. However, the reasoning of this decision suggests that the Supreme Court expects the courts to analyse the wording of arbitration clauses and verify whether the parties wanted to refer the dispute merely for adjudication or also for resolution. It can be argued that in the former case, they excluded only contentious state court proceedings. In the latter case, they might have excluded any court proceedings (including those leading to the resolution and not the adjudication of the dispute, thus including conciliatory proceedings). However, the Supreme Court has still not presented a firm opinion on the issue.

Judicial and scholarly approach

Such opinions on the interruption of the limitation period in conciliatory proceedings before state courts have been presented in law journals and by courts and arbitral tribunals. There are several decisions according to which a party can initiate and continue conciliatory proceedings, even as to the claim covered by an arbitration agreement.⁽⁸⁾ The courts justified this view by invoking the nature of conciliatory proceedings, where parties do not enter into a dispute and the court does not hear the case as to its merits. The court in conciliatory proceedings acts as a facilitator; evidence is not taken, the parties do not present their case in full and the court renders no judgment. Either the parties settle or the proceedings finish without any substantive decision.

The Warsaw Court of Appeal expressly stated that a party cannot request a court to refer parties to arbitration pursuant to Article 1165(1) of the Code of Civil Procedure since this provision does not apply until the statement of claim is filed.⁽⁹⁾ This is because in conciliatory proceedings, the parties do not enter into a dispute. Therefore, the deadline for the defendant's request (before entering into a dispute as to its merits) is inapplicable in conciliatory proceedings. Article 1165(1) applies only when the "statement of claim or a motion to initiate non-contentious proceedings"⁽¹⁰⁾ has been filed. It does not mention the motion to initiate conciliatory proceedings.

Some practitioners suggested that a party can invoke Article 1165(1) of the code in conciliatory

proceedings and ask the court to refer the parties to arbitration, attempting to rebut the arguments presented above.⁽¹¹⁾ They invoked Article 1166(1) of the code, under which submitting a case to arbitration does not exclude the possibility for a state court to secure the claim. They also underlined that conciliatory proceedings before a state court go against the will of the parties that wanted to submit their case to arbitration.

Consequently, the issue of whether a party can interrupt the limitation period of a claim covered by an arbitration agreement in conciliatory proceedings still has not been settled and requires the parties to plan litigation with extra care.

Comment

The following main conclusions can be drawn from the above analysis:

- In the opinion of the Supreme Court, an imitation period can be interrupted only by an action taken before a proper forum (ie, before a state court or an arbitral tribunal).
- The issue of whether a party can initiate conciliation proceedings as to the claim covered by an arbitration agreement is unresolved. The courts do not generally exclude such a possibility.
- Parties need to pay extra attention to assessing whether their case is covered by an arbitration agreement. They should perform this assessment long before the limitation period lapses. This will give them a second chance if the first attempt to resolve a dispute (and interrupt the limitation period) fails because it has been brought before an improper forum.

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Endnotes

(1) Under Article 119 of the Code of Civil Procedure, the general limitation period for claims is 10 years and three years for claims for periodic payments or claims connected to conducting business activities. The limitation periods in specific types of cases can be even shorter.

(2) [Article 584\(4\)](#) of the Code of Civil Procedure:

"If an action is rejected by a court due to the jurisdiction of an arbitral tribunal, or by an arbitral tribunal due to the jurisdiction of a court or of another arbitral tribunal, or when an arbitral award is set aside in setting aside proceedings due to lack of jurisdiction of the arbitral tribunal, the proceedings are deemed to have been properly continued if the action is immediately brought before the court or arbitral tribunal."

(3) Supreme Court Decision V CK 467/04, February 18 2005, available in Polish [here](#).

(4) Maciej Zachariasiewicz and Jacek Zrałek, "Nieskuteczność przerwania biegu terminu przedawnienia w przypadku wniesienia pozwu przed niewłaściwe forum arbitrażowe lub państwowe" ("Ineffectiveness of interrupting the limitation period by filing a statement of claim before an improper arbitration or state court forum"), *Przegląd Sądowy (Court Review)*, 4/2015, pp87 *et seq*.

(5) Szczęsny Kazimierczak, "O możliwości przerwania przed sądem powszechnym biegu przedawnienia roszczeń podporządkowanych kognicji sądu arbitrażowego" ("On the possibility to interrupt the limitation period of claims before a state court"), *Biuletyn Arbitrażowy (Arbitration Bulletin)*, 4/2011, pp95 *et seq*; Joanna Kuźmicka-Sulikowska, "Zapis na sąd polubowny i postępowanie przed tym sądem a przerwanie biegu przedawnienia" ("Arbitration agreement and proceedings and interruption of the limitation period"), *ADR Arbitraż i Mediacja (ADR Arbitration and Mediation)*, 4/2010, p33.

(6) Warsaw Court of Appeal Decision VI ACa 1214/12, March 15 2013, available in Polish [here](#); Lublin Court of Appeal Decision I ACa 166/13, June 19 2014, available in Polish [here](#).

(7) Conciliatory proceedings are inexpensive. The court fee for conciliatory proceedings was previously PLN40 (approximately \$10 or €9). However, as of January 1 2016, this fee applies only to cases with an amount in dispute not higher than PLN10,000 (in other cases the court fee is PLN300).

(8) Warsaw Court of Appeal Decision I ACa 960/12, January 8 2013, available in Polish [here](#); Szczecin Regional Court Decision VIII Gz 139/13, June 13 2013, available in Polish [here](#); Katowice Court of Appeal Decision V ACz 343/14, May 8 2014, available in Polish [here](#); Arbitration Tribunal Judgment SA 56/06 under the auspices of the Court of Arbitration at the Polish Chamber of Commerce, June 11 2007, cited in A Proksa, "*Orzecznictwo Sądu Arbitrażowego przy Krajowej Izbie Gospodarczej*" ("Case law of Court of Arbitration at the Polish Chamber of Commerce"), *Biuletyn Arbitrażowy (Arbitration Bulletin)*, 12/2009.

(9) Warsaw Court of Appeal Decision I ACa 960/12, January 8 2013, available in Polish [here](#).

(10) Non-contentious proceedings pertain to land, corporate, family and inheritance matters or cases where the interest of the state and security of transactions are of equal importance as the parties' rights and needs.

(11) D Bryndal and M Robenek, "Arbitration agreement as a bar to an effective summons to a conciliation hearing before a national court", *Arbitration e-Review*, 3-4(10-11)/2012, pp24 *et seq*, available [here](#).

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