

Supreme Court decides on *res judicata* of arbitral awards

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Introduction

A recent Supreme Court judgment contributed to the debate on the *res judicata* (binding power) of arbitral awards on other cases. In its January 20 2016 judgment, the Supreme Court clarified to what extent findings made in a previous arbitral award (and not only an operative part of the award deciding on claims) should be taken into account when deciding on subsequent disputes between the same parties.⁽¹⁾ This judgment may constitute an important guide for arbitration practitioners who want to make use of arbitral awards that have already been issued to support their position in future litigation or arbitration in Poland.

Res judicata in arbitration law

Res judicata refers to the various binding effects that an arbitral award (or state court decision) has on other dispute resolution bodies in subsequent cases (eg, in state courts or other arbitral tribunals).⁽²⁾

Polish arbitration law is regulated in Chapter V of the Code of Civil Procedure. Under the code there is no separate rule governing the *res judicata* of arbitral awards in Poland; however, Article 1212(1) provides that an arbitral award obtains a similar legal force as a state court decision after having been recognised or enforced.

The application of *res judicata* in arbitration was examined by the Supreme Court in two important decisions. In its November 26 2008 decision there were two subsequent arbitral proceedings between the same parties concerning the same claim for payment.⁽³⁾ In the first proceedings, the arbitral tribunal issued an award in which it ordered the respondent to pay a part of the money claimed, but it dismissed the remainder of the claim. The award was set aside in part. The claimant initiated another (successful) arbitration, again claiming the same monies, including the part dismissed in the first arbitration. The respondent motioned to set aside the second award but failed. In a widely criticised judgment, the Supreme Court stated that an arbitration tribunal is not a state court and therefore cannot be bound by a decision of another arbitral tribunal. This is because Article 365(1) of the Code of Civil Procedure, which governs the binding effect of decisions, applies only to state courts.

This approach was modified by the Supreme Court judgment of April 13 2012.⁽⁴⁾ This case also involved two arbitrations. In the first, the arbitral tribunal was asked to determine the content of the contract between the parties; the proceedings concerned no monetary claims. The first arbitral award was then recognised by a Polish state court. In the second arbitration the claimant sued for payment of monies under the same contract. The arbitral tribunal decided to disregard previous

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tribunal's assessment of the legal relationship between the parties, stating that it was incorrect.

During subsequent proceedings to set aside the second award, the Supreme Court decided that an award that contradicts an award made in previous arbitration between the same parties can violate Polish public policy, provided that the first arbitral award was recognised and obtained the same binding power as a Polish state court judgment.

After these two decisions it was clear in principle that an arbitral award recognised or enforced in Poland has *res judicata* effects and a certain binding power. However, the scope of this binding power remained unclear; namely, to what extent are the legal opinions and findings expressed by an arbitral tribunal binding on any future tribunals. This is where the recent Supreme Court decision is relevant.

Recent Supreme Court case

The case ultimately decided by the Supreme Court revolved around a real estate dispute. The respondent sold a property to the claimant and guaranteed that it would yield a set annual income. To secure this obligation, the claimant withheld part of the price as collateral and promised to pay it when the property yielded the agreed income. However, the respondent, which was also commissioned to manage the property, was authorised to claim the collateral in the event that the property management agreement was terminated owing to the claimant's fault. In that scenario, the claimant would be unable to demand the difference in the projected and actual income from the property.

The claimant terminated the property management agreement in part and the respondent sued the claimant in arbitration for the collateral and won. The tribunal also clarified that the property management agreement had been valid and was terminated due to the claimant's fault. The award was enforced by a state court and executed in part.

However, the claimant argued that the property management contract was invalid and the respondent should return any payments made on that basis. It also claimed that the profit from the property was insufficient and that the respondent was liable for the difference.

Consequently, the claimant offset its claims with the amount awarded to the respondent in arbitration. The claimant then initiated an anti-enforcement action (ie, it motioned the state court to remove the enforcement clause from the arbitral award), arguing that the claim awarded in arbitration expired due to a successful set off.⁽⁵⁾

Regional Court and Court of Appeals judgments

The Regional Court and the Court of Appeals agreed that the arbitral tribunal had decided certain issues in a final and binding manner. It had ordered the claimant to pay the remaining part of the price agreed and this decision was based on a determination that the guarantee of certain income had expired and that nothing remained to be guaranteed. Consequently, the claims for the difference between the guaranteed and actual income were dismissed. The claimant attacked the Court of Appeals judgment through a cassation appeal to the Supreme Court. The claimant argued that only the operative part of the award (ie, the part in which the tribunal orders payment and dismisses claims) was binding, not the tribunal's legal reasoning or findings regarding the facts contained in the substantiation of the arbitral award.

Supreme Court judgment

The court dismissed the cassation appeal. It underlined that pursuant to Article 1212(1) of the Code of Civil Procedure, an arbitral award is equal to the judgment of the state court after being recognised or enforced. Relying on its previous judgment of April 12 2012, the court reiterated that an arbitral award has a binding effect; any decision to the contrary "would render the existence of the arbitration devoid of any purpose". Other courts are therefore bound by a recognised or enforced arbitral award. The court also stated that if an award deals with an issue of a precedential nature (ie, it has a direct effect on future proceedings), that issue cannot be re-litigated in further proceedings.

In the case ultimately decided by the Supreme Court, the arbitral tribunal found that the guarantee of certain income had expired and there was nothing to be guaranteed. This finding – and not only the operative part of the arbitral award – should be binding in further proceedings between the parties.

Comment

The Supreme Court judgment is yet another affirmation of the binding effect of an arbitral award under Polish law. However, there is still some room for discussion regarding the scope of *res judicata*. The Supreme Court's position in the above case was that the scope of the binding effect of an arbitral award or state court judgment is broad, exceeds the decision of the court or tribunal and extends to the reasoning. However, recent Supreme Court decisions concerning state court judgments suggest that only the operative part is binding.

Any arbitration practitioner engaging in a *res judicata* argument before arbitral tribunals that must take Polish public policy into account or acting before Polish state courts in arbitration-linked matters should be aware that there seems to be much room for flexibility in that regard, at least at the present time.

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Endnotes

(1) File reference IV CSK 282/15, available in Polish [here](#).

(2) For a similar approach see S Schaffstein, *The Doctrine of Res Judicata Before International Commercial Arbitral Tribunals*, Oxford University Press, 2016, p7. Strictly speaking, under Polish law, *res judicata* refers to only one aspect of the binding power of adjudicative decisions made by courts or arbitral tribunals (ie, the ban on the re-litigation of a case that was decided in a final and binding manner).

(3) File reference III CSK 163/08, available in Polish [here](#).

(4) File reference I CSK 416/11, available in Polish [here](#).

(5) For further information please see "[Favourable award does not guarantee successful execution of claims](#)".

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