

Statutory limitations of claims periods excluded from public order

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Introduction

In one of its latest arbitration rulings,⁽¹⁾ the Supreme Court held that the autonomous position of arbitration courts as an alternative to state courts means that the judicial review of an arbitral award by an arbitral tribunal cannot be considered the equivalent of appellate review by a court. The control over arbitration exercised by common courts is primarily aimed at eliminating abuses of arbitration, which constitute violations not only from the point of view of the parties, but also against the public order in general; however, the Supreme Court ruled that provisions regarding the statutes of limitations of claims are excluded from this category.

Main legal issues

The main issues discussed in the Supreme Court judgment were whether:

- the provisions regarding the statutes of limitations of claims constitute part of the public order;⁽²⁾ and
- an arbitral tribunal is bound by the legal assessment and directions for further proceedings referred to in the statement of reasons of a state court judgment setting aside a previous award in the same case.

Facts

The dispute in this case arose from the contract for services concluded in October 2003 between a Polish company (the plaintiff) and a German company (the defendant). The contract provided for an arbitration clause. In 2006 the arbitral tribunal issued its first award, ordering the defendant to pay a certain amount to the plaintiff, together with the statutory interest, as the remuneration from the contract plus the costs of the proceedings.

Following the defendant's motion to set the first award aside, in a judgment of 6 March 2008 a regional court upheld the application, stating that the defendant was deprived of its right to present its case before the arbitral tribunal (the correspondence in this case was not delivered due to the incorrect indication of the defendant's former business name).⁽³⁾

After the re-appointment of the members of the arbitral tribunal and proceeding with the defendant's participation, on 21 November 2012 the arbitral tribunal awarded an amount almost identical to the first award, together with the statutory interest, as the remuneration from the contract plus the costs of the proceedings. Crucially, the arbitral tribunal examined the argument of the statutes of limitations of claims, stating that the period of limitation had not expired. According to the second award, the limitation period was effectively interrupted by the notice of arbitration. This was

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contrary to the assessment made in the regional court's 2008 judgment (ie, that the notice of arbitration and other writs were not effectively delivered to the defendant), and predicated on the finding that, in principle, the arbitral tribunal was not bound by the assessments made in the 2008 judgment.

Next, the defendant filed an application with the regional court regarding the second award, claiming that it should be set aside for numerous reasons. In its judgment of 12 December 2014 the regional court eventually upheld the complaint, primarily on the basis of Articles 1206(1)(4) and 1206(2)(2) of the Code of Civil Procedure. The complaint was upheld due to non-compliance with regulations on the arbitral tribunal composition requirements; further, the judgment basically stated that the second award was contrary to the public order (ie, it was contrary to the principle of the validity and permanence of final and non-revisable rulings).⁽⁴⁾

Subsequently, the plaintiff successfully appealed the unfavourable judgment.⁽⁵⁾ On 16 December 2016 the appellate court rendered a decision contradicting the position and reasoning of the regional court. The appellate court did not agree with the regional court's statement that the arbitral tribunal was improperly appointed, because if that were so, the defendant would certainly have filed a motion to disqualify the challenged arbitrator; in the view of the court therefore, the lack of action on the stage of arbitration proceedings showed the acceptance of the arbitral tribunal's composition. Further, the appellate court stated that the binding force of final and non-enforceable judgment (ie, *res judicata*) referred only to the operative part of a judgment and not to its motives or findings (ie, not to the findings regarding the effectiveness of the delivery of the notice of arbitration).

Decision

Eventually, the defendant filed a cassation complaint to the Supreme Court in which it contended that the appellate court had violated several provisions of the Code of Civil Procedure. The Supreme Court dismissed the defendant's cassation complaint. The Supreme Court's decision addressed, among other things, whether the statutes of limitations of claims are part of the Polish public order; it answered this question in the negative. According to the Supreme Court, the provisions on the statutes of limitations of claims do not constitute the fundamental principles of Poland's legal order.

Further, the Supreme Court commented on both the positive and negative aspects of *res iudicata*, and why it is important for the safety of the legal system, basically agreeing that the binding force of a final and non-enforceable judgment (ie, *res iudicata*) refers only to the operative part of a judgment. The Supreme Court explained that the arbitral tribunal assessing the case again could ascertain the effectiveness of the delivery of the notice of arbitration differently even from the assessment made in the 2008 judgment. According to the Supreme Court, *res iudicata* did not cover this issue. The Supreme Court further underlined that the autonomous position of the arbitral tribunal means that the judicial review of an arbitral award does not constitute, and cannot be considered, an equivalent to appellate review by a common court. Crucially, while the case was being reconsidered, the arbitral tribunal was not bound by the legal assessment and directions for further proceedings referred to in the statement of reasons for the 2008 judgment setting aside the first award.

Comment

Generally speaking, the Supreme Court was correct in stating that the provisions regarding statutes of limitations of claims do not belong to the category of Polish public order. This is particularly important when parties to a contract wish to modify the limitation periods in order to introduce some kind of certainty in their contractual relationship – as in the case with construction contracts based on International Federation of Consulting Engineers conditions of contract. Lengthy disputes often result from such modifications.

The Supreme Court judgment underlines that arbitration is best suited to such disputes, especially when the parties want to be sure that the contractual limitations of claims periods can be included in the outcome of disputes. The dominant view of the doctrine and case law is that contractual provisions on the limitation of claims periods are invalid. To make such provisions effective, therefore, the matter should be subject to arbitration.

Regarding the relationship between arbitration and the state judiciary, the Supreme Court judgment

accepts that an arbitral tribunal is not bound by the legal assessment or directions for further proceedings that are referred to in the statement of reasons for a judgment setting aside an arbitral award in the same case. The control over arbitration exercised by the common courts has therefore been significantly limited. Indeed, although this control is indispensable and common to every legal order, the jurisprudence generally establishes its limits, thereby making arbitration a more effective tool for the settlement of legal disputes. The Supreme Court judgment clearly states that this control is not the equivalent to appellate review in the common courts. Of course, in setting aside an award, common courts may include in their judgment tips and guidelines for the arbitral tribunal that will reconsider the same case; however, the arbitral tribunal does not have to use these legal assessments or directions to render an award that is acceptable for recognition.

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Endnotes

- (1) See the Supreme Court ruling of 26 May 2017 (I CSK 464/16), [available here](#) (in Polish).
- (2) Some standards have already been recognised by the case law as fundamental principles of the public order. For further details, please see "[Public order – compensatory function of penalty clause](#)".
- (3) See Article 1206(1)(2) of the Code of Civil Procedure.
- (4) See Article 365(1) of the Code of Civil Procedure.
- (5) On 1 January 2016 significant amendments were introduced to the proceedings for setting aside an award in Poland. The number of instances in which post-arbitral cases can be heard was reduced to one.

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