State court not obliged to review arbitral case file

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Introduction

In post-arbitral proceedings, parties challenging an unfavourable award or its enforcement often argue that they were deprived of the right to present their case or that the tribunal violated the rules of procedure or committed some other procedural error. In order to prove allegations of this sort, the parties often request the state courts to order the tribunal to present the arbitral case file. A recent Supreme Court decision evaluated the usefulness and necessity of granting such requests and clarified that such measures should be granted only rarely.**(1)**

Facts

The respondent filed a motion to set aside an International Chamber of Commerce (ICC) award that was unfavourable to it. In the award, rather than quote every argument raised by each of the parties, the tribunal underlined that it had heard all of them and had considered all of the evidence gathered in the proceedings. Despite this, the respondent argued that the tribunal had deprived it from presenting its case, had violated the rules of procedure and thus the award should be set aside (Article 1206, Section 1, points 2 and 4 of the Code of Civil Procedure, modelled after Articles 34(2)(a)(ii) and (iv) of the United Nations Commission on International Trade Law Model Law 2006).

The motion to set aside the award was dismissed by the Court of Appeals. The respondent filed a cassation complaint to the Supreme Court arguing that the Court of Appeals had violated the rules of procedure because it had heard the motion to set aside the award without the files of the case having been shared by the ICC.

Decision

The cassation complaint was dismissed by the Supreme Court. In its complaint, the respondent invoked Article 1204 of the Code of Civil Procedure, which regulates issues relating to arbitral case files after the rendering of an award. Under said provision, the case file together with the original copy of the award are filed by the arbitration court to the state court. However, arbitral institutions may store files in their own archives and should make them available to the court and other authorised authorities upon their request.

The Supreme Court underlined that the Court of Appeals, hearing the motion to set aside the award, could not violate the provision in question in any way (as it was addressed to the arbitral tribunal). However, what could be an issue in this and similar cases was whether the state court can render its decision in post-arbitral proceeding without examining the arbitral case file in full.

The Supreme Court underlined that the parties had submitted certain documents to the (state court) case file, including the award, procedural orders and minutes of the hearing. The documents were enough to enable the Court of Appeals and the Supreme Court to establish that the respondent's right to be heard and the procedural rules had not been violated.

In particular, the documents in question proved that a private expert opinion had been filed six months after the deadline for the submission of evidence established by the tribunal. The tribunal extensively justified its decision not to admit the opinion as evidence invoking the delay and respondent's previous consent to a tribunal-appointed expert. The Supreme Court also invoked the tribunal's reasoning in denying the respondent's request for document production. The tribunal underlined that the claimant had partly complied with the request; however, in reference to other documents, the motion had not been filed in accordance with the International Bar Association Rules on the Taking of Evidence in International Commercial Arbitration and thus could not be granted.

Comment

The Supreme Court's decision confirms that a party's request to the state courts to order a tribunal to present its case file should be treated as an exceptional measure. Most cases can be easily resolved on the basis of an award itself. In other cases, a party challenging an award should usually be in possession of documents that can prove its position (eg, minutes of the hearings, briefs or evidence that were not admitted by the court). Consequently, only when a party shows that it cannot justify the error in an arbitral award with the evidence it possesses should a state court consider asking the arbitral institution to present the case file.

There are several reasons why the measure in question should be limited in application. The confidentiality of arbitration, expeditiousness of post-arbitral proceedings and the autonomy of arbitral institutions are of primary importance in this regard. Therefore, the Supreme Court's decision should be applauded as it confirms the pro-arbitration status of Polish courts.

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Endnotes

(1) Supreme Court decision of 8 November 2018, II CSK 481/18, available here in Polish.

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