Kluwer Arbitration Blog

Arbitrate in Poland like it’s 2016

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Kocur & Partners, in cooperation with two leading Polish universities, the University of Economics in Katowice and the Kozminski University in Warsaw, conducted a survey on the practice of arbitration in Poland. The survey covered prominent issues that the arbitration community is currently discussing, and provides an insight into the opinions of Polish arbitration users. The survey was answered both by lawyers representing law firms and business representatives. Below, we present some of our findings.

Arbitration or national courts?

We asked our respondents what was their preferred method of dispute resolution. The results of the survey show that arbitration is the preferred method of dispute resolution among lawyers at law firms (57% of lawyers). Conversely, business representatives spoke more in favour of national courts as their preferred method of dispute resolution (also 57% of business representatives). Despite a mixed level of satisfaction with arbitration, 75% of all respondents declared that they intended to use arbitration in the future (with only 10% responding in the negative).

Final award does not mean the end of dispute

We also asked our respondents about their experiences with settlements and with voluntary compliance with arbitral awards. Our survey shows that the arbitration proceedings the respondents participated in rarely ended in a settlement. Over 33% of the respondents stated that none of their cases were settled, while 43% claimed that only a minority of their cases were settled. When asked about voluntary compliance with a final award, only 10% of the respondents asserted that the losing party voluntarily complied with the awards in all of their disputes. On the other hand, 15% claimed that this did not happen in any of their cases, with 22% stating that it happened only in a minority of their cases.

Bias under scrutiny

In general, the respondents were satisfied with the arbitrators’ attitude in arbitration proceedings. However, when asked about their experiences regarding the impartiality of arbitrators, 19% of the respondents stated that in the majority of the cases they took part in at least one of the arbitrators showed bias. A considerable 65% of the respondents stated that impartiality was maintained in most of their cases, but not all.

Role of party-appointed arbitrators

We asked whether the role of a party-appointed arbitrator is different to that of a presiding arbitrator. Feedback suggested that businesses are in favour of a party-appointed arbitrator whose attitude is not affected by the party appointing him or her (as stated by 60% of the businesses). Law firms, on the other hand, seem to prefer the situation when the appointed arbitrator at least ensures that their arguments in the case are heard and understood by the whole tribunal (as stated by 60% of the law firms).

High expectations

The candidate's competence in the sector that the dispute concerns is considered to be the most important feature taken into consideration when appointing an arbitrator (65% of the answers). Impartiality was ranked lower down (46%). It seems that the respondents did not value much features such as: recommendations (19% of the answers), academic achievements (10% of the answers), or a personal acquaintance with the arbitrator (9% of the answers).

The survey showed that arbitration users do expect arbitrators to assume an active role when conducting proceedings and hearings (79% of respondents), including asking the parties and witnesses questions, and identifying arguments that were not raised by the parties themselves. That does not seem to be the standard yet as only 26% of respondents declared that all of the proceedings they took part in were actively managed by the arbitrators.

Most popular institutions

Our survey confirms that, in dispute resolution services, trust in arbitral institutions is of the utmost importance. When asked about the most important criterion of choosing an arbitral institution, the reputation of the institution was the decisive factor (47% of the answers concerning Polish arbitral institutions, and 62% with regard to international institutions). Criteria such as low costs, up-to-date arbitration rules and similar were ranked lower.

The answers in the survey confirm that the Court of Arbitration at the Polish Chamber of Commerce in Warsaw is the most popular arbitral institution in Poland (91% of respondents had used its services). The Lewiatan Court of Arbitration was ranked second (used by 39% of respondents).

According to the respondents, among the international arbitral institutions, the ICC International Court of Arbitration is the most important institution (83% of respondents had used its services). Other popular arbitral institutions our respondents had used are: the London Court of International Arbitration (LCIA) (32% of respondents), the Arbitration Institute of the Stockholm Chamber of Commerce (SCC) (22% of respondents), and the Vienna International Arbitral Centre (VIAC) (20% of respondents).

Costs controversies

We also asked our respondents for their opinion regarding the sometimes controversial issue of costs in arbitration. They unanimously indicated that costs in arbitration are high and that this is a feature of arbitration they are least satisfied with.

Our respondents' answers concerning the preferred principle of deciding costs of arbitration differ. The most interesting result from our questions on the preferred principles of cost allocation is that 15% of the respondents supported the American rule, i.e. the rule under which each party bears its

own costs, regardless of the outcome of the dispute. Amongst those supporting the “loser pays” principle, there were also differences. While 44% of respondents stated that the unrestricted “loser pays” principle should apply, almost 41% of respondents answered in favour of the principle whereby the losing party pays the entire costs of the proceedings, but covers the other party’s costs of legal representation only up to a definite, capped amount. The amount of respondents who chose this “capped fee” option might mean that arbitration users valued the security of not being exposed to the potentially high fees of the opposing legal team.

Final remarks

The findings of our survey shed much-needed light on the experiences and expectations of arbitration users in Poland. The results may serve as guidelines for the Polish arbitration community on what should be improved to increase satisfaction of arbitration users. It appears that emphasis should be put on costs, impartiality of party-appointed arbitrators, and the organization of proceedings. Not surprisingly, these are also the current areas of concern for the rest of the international arbitration community.

The full text of Polish Arbitration Survey 2016 is available here.

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