Kluwer Arbitration Blog

One Instance for Setting Aside and Enforcement Proceedings in Poland as of the Start of 2016

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Introduction

On 1 January 2016, the Act on Promoting Amicable Dispute Resolution Methods (dated 10 September 2015, published on 13 October 2015, Official Journal of Laws of the Republic of Poland, item 1595), available in Polish here ("**Amendment**"), which was a subject of my previous post, will come into force. The Amendment is the first major amendment to the Polish Arbitration Law (part five of the Polish Code of Civil Procedure ("**CCP**"), Official Journal of Laws of the Republic of Poland, No 43, item 296, as amended) since 2005 when the UNCITRAL Model Law was introduced. The Amendment will apply to arbitral proceedings initiated on, or after 1 January 2016.

One judicial instance for setting aside proceedings

The main amendment to the Arbitration Law, which relates to the efficiency and effectiveness of the arbitration procedure is that a claim challenging an arbitration award will be decided by only one judicial instance, the court of appeal, which would have jurisdiction had the parties not submitted their dispute to arbitration (in total 11 courts of appeal). In certain cases, it will be possible to file a cassation appeal with the Supreme Court of the Republic of Poland (art. 1208 § 1 CCP, as amended by the art. 1 point 18) letters a) and b) of the Amendment).

The Amendment conforms to a recent trend to introduce one full instance for setting aside proceedings in other jurisdictions – this trend was adopted first in Austria in 2014, and in the Netherlands in 2015.

According to the sec. 615 of the Austrian Arbitration Law, the decision about a claim challenging an arbitration award is made by just one judicial instance, the Austrian Supreme Court (see Michael Nueber's post on *Amendments to Austrian Arbitration Law Abbreviate the Proceeding to Challenge an Arbitration Award*, available here). Consequently, the Austrian amendment introduced a system similar to the one in Switzerland, where the sole judicial authority to decide on setting aside is the Swiss Federal Supreme Court (art. 191 of the Swiss Federal Statute on Private International Law).

Dutch Arbitration Law, since 1 January 2015 provides that the setting aside proceedings and enforcement proceedings regarding foreign arbitral awards are limited to one factual instance, the

courts of appeal (see Daniella Strik and Marc Krestin's post on *New Dutch Arbitration Law Adopted*, available here and Barbara Rumora-Scheltema and Bo Ra Hoebeke's post on *The New Dutch Arbitration Act 2015*, available here). The Dutch amendment introduced a system similar to the one in Germany. According to the sec. 1062 (1) 4 of the German Arbitration Law, the Higher Regional Court designated in the arbitration agreement or, failing such designation, the Higher Regional Court in whose district the place of arbitration is situated, is competent for decisions related to setting aside, the enforceability of an award, or the setting aside of the declaration of enforceability. Poland follows these two jurisdictions.

Justification of the Amendment

According to the official justification of the Amendment, available in Polish here, main goal of the Amendment is to promote arbitration and to encourage, especially entrepreneurs, to use arbitration as a dispute settlement mechanism. According to the drafters of the Amendment, out-of-court dispute settlement systems (including arbitration) will positively influence Polish market in terms of competitiveness.

The introduction of one full instance for setting aside proceedings aims to strengthen one of the most important advantages of arbitration – speedy procedure. Parties to arbitration treat post-arbitral proceedings as a necessary part of arbitration. As it was a case in Poland under the amended rules (until 1 January 2016) at least two court instances were available to the parties for a claim to set aside an arbitral award. It was rightly pointed out in the Justification that post-arbitration proceedings, in certain cases, lasted longer than arbitration proceedings themselves.

The second goal of the Amendment is to create more specialized court system for setting aside proceedings. According to the Justification, courts of appeal will more effectively maintain the high standard of adjudication. Moreover it will be easier to unify case law in the field of arbitration.

The constitutionality of one instance for setting aside and enforcement proceedings

The drafters of the Amendment had to confront the issue of the alleged non-constitutionality of one instance for setting aside and enforcement proceedings.

According to art. 176 sec. 1 of the Polish Constitution, court proceedings shall have at least two instances. Simultaneously, each party shall have the right to appeal against judgments and decisions made at the first instance. Exceptions to this principle and the procedure for such appeals shall be specified by statute (art. 78 of the Polish Constitution).

These allegations are however doubtful, as it is confirmed in the jurisprudence of the Polish Constitutional Tribunal. In cases dated 8 December 1998 (docket file no. K 41/97), 26 January 2006 (docket file no P 10/04), and 13 June 2006 (docket file SK 54/06), the Polish Constitutional Tribunal decided that constitutional 'two-court instance' rule applies only to the proceedings initiated before a state court, as a first instance (from the beginning to the end), which is not a case in arbitration. This is in line with the decision of the Supreme Court of Poland (decision dated 12 April 2006, docket file no. III PO 1/06), which dealt with disciplinary proceedings, which are also out–of-court system at the first instance, reviewed by the state court as a second instance.

Recognition and enforcement of an arbitral award

The Amendment reviewed also the rules regarding recognition and enforcement proceedings. The competent court for hearing the motions to recognize and enforce awards will be the court of appeal, which would have jurisdiction had the parties not submitted their dispute to arbitration (art. 12131 § 1 CCP, as added by the art. 1 point 21) of the Amendment).

In case of foreign arbitral awards, the court of appeal will be the only instance. In certain cases it will be possible to file a cassation appeal with the Supreme Court of the Republic of Poland (art. 1215 § 3 CCP, as amended by the art. 1 point 23) of the Amendment). In the case of a domestic arbitral award, it will be possible to file an appeal to the different panel of the court of appeal (art. 1214 § 4 CCP, as added by the art. 1 point 22) (b) of the Amendment).

The Justification of the Amendment provides the same underlying goal for this change as for shortening setting aside proceedings – to make recognition and enforcement proceedings time and cost effective.

Conclusion

The Amendment is welcomed. It proves that the Polish Arbitration Law implements internationally recognized standards, and creates much more arbitration-friendly legal regime. The future will show whether it was just the first step of the reform, as many other amendments to the Polish Arbitration Law were suggested.

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