

Kluwer Arbitration Blog

Should Arbitration Agreements Contain Fixed Deadlines?

Wolfram Buchwitz (University of Würzburg) · Friday, January 19th, 2024

Assuring a speedy resolution of potential disputes is a very important concern for most parties entering into arbitration agreements. One means to ensure a speedy arbitration can be a fixed deadline for the arbitral tribunal's decision. With a focus on Italian law –under which Article 820(2) of the Code of Civil Procedure fixes a 240-day time limit for all arbitration proceedings– this post examines whether arbitration agreements should contain fixed deadlines and reviews situations in which it is possible to do so.

Background: From General Practice to General Scepticism

In the history of arbitration, fixed deadlines were ubiquitous. Under Roman law, they were considered a necessary part of an arbitration agreement, and the arbitral tribunal's jurisdiction ceased after the expiry of the time limit. In the centuries following, this practice was continued: arbitration agreements in Medieval and Modern Times usually still provided for fixed deadlines.

It was only with the modern codifications, starting in the 18th and 19th century, that fixed deadlines were no longer considered necessary by the law and thereafter became less frequent in contractual practice as well.

Under modern arbitration laws, the parties to the agreement enjoy contractual freedom. They have therefore the possibility to set a date, for example six months after the constitution of the tribunal for the final award, and declare that the tribunal shall not have any powers after this date. Such a fixed or strict time limit would make the tribunal *functus officio* afterwards and thereby create a strong incentive for the tribunal to actively further the proceedings and speedily decide on the pertinent substantive issues. At the same time, the tribunal would not have to fear violating the right to be heard as the parties have themselves declared that they prefer a speedy proceeding to the most exhaustive one.

While this solution seems simple and obvious, it is almost never adopted in international arbitration and there is considerable scepticism regarding fixed time limits in legal literature.

Fixed Deadlines in Modern Arbitration Laws

In modern arbitration laws, there are some examples of legislators expressly enabling the parties to set a time limit for the award. For example, Article 366 of the Swiss Code of Civil Procedure (*Zivilprozessordnung*) expressly allows the parties to set a time limit for the office of the arbitral tribunal. In the interpretation given by Swiss courts, however, such a deadline does not ultimately limit the decision-making power of the tribunal, i.e. a tribunal may nevertheless pass a valid award even if the deadline has been missed.

The time limit under Article 366 Swiss Code of Civil Procedure is therefore in effect only a “flexible” deadline, similar to the six-month time limit for the award which is set in [Article 31 of the ICC Rules](#). These types of flexible time limits impose a certain pressure on the arbitral tribunal, but do not ultimately ensure the speedy resolution of the dispute, as the tribunal can be safe that even in case the time limit is missed there will nevertheless be a continuation of the proceedings.

Fixed Deadlines Under Italian Law

The situation is completely different, however, under Italian arbitration law. Article 820(2) of the Italian Code of Civil Procedure imposes a statutory time limit of 240 days for the passing of the award, calculated from the constitution of the tribunal. If the tribunal misses this deadline, the award is subject to annulment. The parties may shorten or extend the time limit, but they cannot contractually agree to waive the time limit altogether. Rather, the Italian Supreme Court considers the time limit an essential element of the arbitration (Corte di cassazione, decision of 19 January 2015, No. 744).

If the parties agree to shorten the time limit, this agreement has the same binding force as the statutory time limit. In a recently decided case, for example, the parties to a gas supply contract had contractually stipulated a very short period of 90 days. Only the extension of the deadline due to the taking of evidence saved the arbitration award from being annulled (see the wording of the arbitration agreement in the decision of the Corte di cassazione of 3 January 2023, No. 38).

By agreement of the parties or by a decision of the competent state court, the time limit for the arbitral tribunal can be extended (Article 820(3) of the Italian Code of Civil Procedure). The time limit is automatically extended by 180 days if the arbitral tribunal takes evidence, appoints an expert, issues a partial or interim award, or if the composition of the arbitral tribunal changes (Article 820(4)).

These particularities of Italian law have of course to be kept in mind if Italy is the seat of the arbitration, but they may also serve as interesting drafting guidelines for arbitrations in other seats, in case the parties to the arbitration agreement have a special wish to ensure a speedy resolution of the dispute.

Party autonomy gives the parties the possibility to agree on fixed deadlines also under other legal systems, such as Germany, that do not expressly foresee such an agreement in their arbitration laws.

The only legal requirement that has to be observed is the parties’ right to be heard, which is not violated by such an agreement if only a certain minimum time limit is reserved for the proceedings, giving the arbitrators the possibility to assess at least the main aspects of the merits of the case at hand.

In addition to possible acceleration effects, another significant advantage of the fixed decision deadline could also result from the improved predictability of the proceedings. In conventional proceedings – be they court or arbitration proceedings – the end is often hardly foreseeable. The parties have to make corresponding provisions in their balance sheets and the labour of their employees is utilised for an indefinite period of time. With a fixed decision deadline, on the other hand, the end date of the proceedings would be clearly defined. The parties' resources would only be tied up for a specific, predictable period of time.

Conclusion

Fixed decision deadlines for arbitral tribunals are underutilised. They not only offer time advantages in the conduct of the arbitration proceedings, but also enable the parties to better calculate the resources to be allocated to the proceedings. The experiences that Italian law has made with decision deadlines could be usefully transferred to arbitration proceedings in other seats. Under a legal system which does not expressly stipulate rules for such time limits and corresponding possibilities for extensions, the parties to the arbitration agreement should however contractually foresee a possibility to extend the time limit fixed in the arbitration agreement in case the dispute becomes more comprehensive than envisaged beforehand or in case counterclaims are filed. It is advisable to rely on an arbitral institution as a neutral third person to decide on the respective requests for an extension of time. Under these preconditions, fixed deadlines may become a very valuable tool for any disputes lawyer who is drafting arbitration clauses.

The above is an abbreviated version of an article published in the SchiedsVZ | German Arbitration Journal, Vol. 21, No. 6 (2023), which is also included on Kluwer Arbitration. [See here](#) for more information on and other contributions to the Journal.

To make sure you do not miss out on regular updates from the Kluwer Arbitration Blog, please [subscribe here](#). To submit a proposal for a blog post, please consult our [Editorial Guidelines](#).

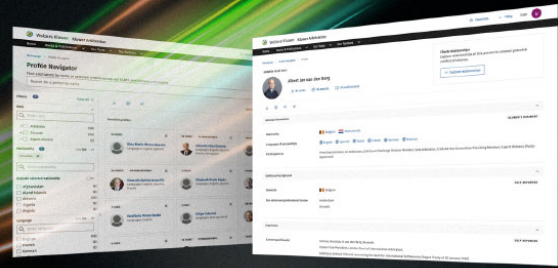
Profile Navigator and Relationship Indicator

Access 17,000+ data-driven profiles of arbitrators, expert witnesses, and counsels, derived from Kluwer Arbitration's comprehensive collection of international cases and awards and appointment data of leading arbitral institutions, to uncover potential conflicts of interest.

Learn how **Kluwer Arbitration** can support you.

Newly updated

Profile Navigator and Relationship Indicator Tools



Request your free trial now →

This entry was posted on Friday, January 19th, 2024 at 8:46 am and is filed under [Arbitration Agreement, Italy, SchiedsVZ](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.