

Res iudicata saga continues

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Introduction

The Supreme Court previously opted for a broad and a narrow understanding of *res iudicata* in Polish arbitration law. In its recent judgment (available in Polish [here](#)), the court again leaned towards a narrow understanding of to what degree a court and an arbitral tribunal are bound by a previous judgment or award.

This decision would have been of a limited interest for international practitioners save for an important factor. The decision in question clarifies that winning a test case does not signify that further proceedings will succeed as well.

Facts

A dispute arose over a construction agreement. A contractor sued an employer over the contract price and a small portion of the retention money with statutory interest for delayed payment. The arbitral tribunal awarded the sums in full, but specified a different date (approximately one year later), by which time the retention money should have been returned to the contractor. As a consequence, the tribunal specified a different date from which the interest was to accrue. What turned out to be of utmost importance for the later stages of the case was that the tribunal did not dismiss the claim for payment of the interest in the remaining scope (ie, from the date specified in the statement of claim to the date accepted by the tribunal as the date of the maturity of the claim). The recourse against the award was dismissed in a final and binding manner and the state court enforced the award.

Having succeeded in the test case, the contractor sued for the remainder of the retention money. To its surprise, the arbitral tribunal dismissed the claim in full. The tribunal agreed with the respondent that the claim was time-barred and found that the retention money should have actually been returned to the respondent on the date specified by the contractor in its statement of claim in the test case and not the date established by the tribunal in that case. Therefore, the tribunal in the second case held that the claim was not bound by the determination of the date of the claim's maturity (and therefore the date on which the claim became time-barred).

Decision

The contractor filed a recourse against the second award and succeeded in the first-instance court (the case started before the amendment introducing only one instance post-arbitral proceedings instead of two – for further details please see "Amendments to arbitral law – more efficient post-arbitral proceedings"). The court of appeals reversed the judgment and dismissed the motion to set aside the award. This decision was confirmed by the Supreme Court.

The Supreme Court noted that the arbitral tribunal had made no decision on the interest from the date specified in the statement of claim to the date accepted by the tribunal as the date of the maturity of the claim. Any party could have requested a supplementation of the award but did not do so. Therefore, in the Supreme Court's view, the fact that no

such decision was taken means that the award did not specify when the claim was mature (and therefore when its limitation period had started). The Supreme Court went on to explain that awarding interest from date X (without the dismissal of the claim for interest for the previous period) means only that the claim was mature on that date – nothing more, nothing less. In particular, the award did not exclude that it could have matured earlier.

From a legal perspective, the court underlined that the broad understanding of *res iudicata* is supported by a procedural economy and the uniformity of decisions taken in related cases, while the narrow one has its roots in judicial freedom, as well as the desire to prevent the petrification of erroneous decisions. The court leaned towards the narrow understanding.

Comment

The issue of *res iudicata* in an international context is noteworthy. Arbitration practitioners must be aware that this concept, in particular its scope and effect, differs from jurisdiction to jurisdiction. The Polish approach stemming from the Supreme Court decision in question is quite narrow. Therefore, courts analyse facts and law on a case-by-case basis and only seldom feel bound by a previous decision. This also pertains to test cases – winning such a case does not mean that second proceedings will be equally successful. For parties that lose a test case the decision in question is a reminder that not all is lost after the first battle. The decision should be a caveat for all participants in the Polish legal market that they should play until the whistle is blown.

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