

# Words, words, words: concise reasoning not grounds to vacate award



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Arbitration & ADR, Poland

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## Introduction

Parties which lose in arbitration often continue to fight off a claim before a state court in post-arbitral proceedings, despite not having a strong case. This provides a double benefit for Polish arbitration practice: not only are a vast majority of these attempts defeated, but the Supreme Court also has a chance to confirm its pro-arbitration approach and give guidelines to other courts. One of its recent decisions (available in Polish [here](#)) underlines that the mere fact that the reasoning of an arbitral award is concise is insufficient grounds to vacate the award.

## Facts

An unsuccessful claimant motioned to vacate an unfavourable award. The Court of Appeals dismissed the motion. The claimant filed a cassation complaint with the Supreme Court, claiming that there was a point of law to be resolved pertaining to prerequisites of the correct reasoning of an arbitral award. It also argued that the Court of Appeals had not interpreted the parties' agreement properly, which amounted to a violation of public policy.

## Decision

Although the Supreme Court refused to hear the case, its decision clarified several important issues. First, a party invoking public policy cannot invent a specific narrow rule and claim that it is a part of public policy. Public policy covers only the most principal rules of the Polish legal system. A right to know all of the reasons of an arbitral tribunal's decision is not an element of public policy, but an instrumental and narrow rule created by a party to question a valid award.

Second, the Supreme Court – invoking ample case law – reiterated that pursuant to Article 1197(2) of the Code of Civil Procedure, an arbitral award should contain reasoning and not a full substantiation, as in the case of state court judgments. It is therefore sufficient if one may establish, on the basis of the award, what premises the arbitration court followed when deciding the parties' claims. Defects in reasoning also do not warrant vacating the award as long as it is possible to control the award. In the case at hand, the manner in which the arbitration tribunal had formulated its justification of the award did not prevent the discovery of its motives. The claimant was also unsuccessful in showing that the motives behind the arbitral award were obviously contradictory or illogical.

Third, the Supreme Court dismissed the claimant's arguments as to the scope of the court's control over the arbitral award. It explained that an arbitral tribunal resolves a case on its own, in place of a state court. It is therefore for the arbitral tribunal to determine the factual basis and legal assessment of a dispute. The state court does not hear the case *de novo* in terms of either the facts or the law. Similarly, it is for the arbitral tribunal, and not the state court, to interpret the parties' agreement. A party which is simply dissatisfied with the tribunal's finding in this regard will

almost certainly not succeed in post-arbitral proceedings. The court should not control the interpretation of a contract because it would go against the idea of arbitration, where state court intervention is limited. Further, the court clarified that even if a state court considered a different interpretation of a contract to be justified and would therefore assess the legal relationship between the parties in a different way than the arbitration tribunal, this would not *per se* mean that public policy was violated.

### **Comment**

The Supreme Court's reasoning is undisputable. Once a case is resolved by a tribunal, a party must have important arguments to question the award. A different approach to facts or the law is insufficient for a successful challenge. This is another reason why Poland's judiciary favours arbitration and properly understands the mechanism of this means of dispute resolution and its interplay with the state judiciary system.

Further, although international arbitration practice established a set of rules on the content and form of a tribunal's reasoning, such detailed rules do not necessarily have to have been followed in simpler cases. Parties choose arbitration in order to avoid litigation and its flaws, including formalistic rules and those pertaining to the justification of a judgment. As long as a tribunal includes the gist of the matter in its award – even in a concise way – a party cannot question its reasoning.

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