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June 9 2022

MACIEJ DURBAS, RAFAŁ KOS

Rules on limitation of claims are not part of public policy

Kubas Kos Gałkowski | Arbitration & ADR - Poland

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Defendants often invoke that a claim directed against them is time-barred. A recent decision of the Polish Supreme Court confirmed and further clarified its position that Polish public policy does not cover issues related to arbitral tribunals' application of rules on limitation of claims.[(1)] This would be interesting enough, but the Supreme Court explained several essential rules on state court post-award proceedings, which render Poland an arbitration-friendly jurisdiction.

Facts

The arbitral tribunal awarded a claim even though the defendants invoked a time bar. The tribunal interpreted the defendants' activities as an implied acknowledgment of the claim – that is, a situation in which, although the debtor does not expressly acknowledge the claim, the creditor may reasonably infer from its conduct that the debtor is aware of its obligation and intends to perform it voluntarily. Such acknowledgment, under Polish law, interrupts the limitation period and allows the claimant to pursue it successfully.

The defendants filed a motion to set the award aside. They claimed, among other things, that the tribunal violated public policy by refusing to regard the claim as time-barred.

Court of Appeals

The Court of Appeals dismissed the motion to set the award aside. It found that the tribunal had not omitted the rules on the limitation of claims. On the contrary, it evaluated and discussed the defendants' arguments. It also confirmed that the provisions on the limitation of claims serve legal certainty, which remains in the interest of the legal order in general. This, however, does not mean that each of these provisions forms part of public policy, and every misapplication violates *ordre public* (public policy).

Supreme Court

The Supreme Court dismissed the cassation complaint. The Court first confirmed its long-lasting case law that post-award proceedings could not amount to deciding on the case submitted to arbitration as to the merits. These proceedings are equally not appeal proceedings. Thus, a mere error in facts or law is not sufficient to set an arbitral award aside and a violation of public policy is required. However, the cassation complaint (as previously the motion to set the award aside) was a submission questioning the arbitral award on the point of fact and on the point of law.

As to the statute of limitations, Supreme Court agreed with the Court of Appeal that an incorrect interpretation of the statute of limitations' provisions does not lead to the arbitration award violating public policy. This is despite the fact that the nature of the said provisions is mandatory. Thus, a state court cannot assess whether the claim is time-barred if the arbitral tribunal considers it so.

The Supreme Court made two further valuable clarifications of the law. First, it recalled that a party cannot question the assessment of facts by the arbitral tribunal. All the more so, it cannot do this under cover of arguments referring to the interpretation of contracts. The tribunal may violate public policy only if it refuses all evidence of the parties' intent and decides to apply purely textual interpretation. This was not the case. Consequently, all such arguments against the award were groundless.

Second, the Court held that the state court is not obliged to review the arbitral case file. This might be the case only if such a review is necessary to assess the arguments of a party questioning the award, and this party cannot itself submit essential evidence.

Comment

In its previous decisions, the Supreme Court confirmed that public policy does not cover the rules on the statute of limitations. However, older case law (eg, the judgment of 21 December 1973)[(2)] considered the non-application of these rules and the awarding of time-bared claims as a violation of public policy. The 2021 judgment clarified that a party cannot question these considerations post-award if the arbitral tribunal considers the statute of limitations. This clarification is helpful and reinforces legal certainty.

One can, however, argue that the issue is more complex. Particular rules of statute limitations (eg, the length of the limitation period and its start and end) do not form part of public policy. However, if the arbitral tribunal fails to apply the basic framework of limitation (eg, it considers that specific claims are not time-barred and that the limitation period cannot be interrupted at all) – that is, the basic and obvious foundations of civil law – this can go against public policy. This is not an invitation for the state courts to consider every case aspect. A reasonable judge can and should distinguish between what is fundamental and what is not.

Finally, what is worth noting is the Supreme Court's clarification of the (narrow) scope of post-award proceedings. This is obvious for arbitration practitioners and even a non-issue. However, given that recourses against arbitral awards frequently resemble appeals, it is always useful to remind stakeholders that the scope of challenging arbitral awards is minimal.

For further information on this topic please contact Maciej Durbas or Rafał Kos at Kubas Kos Gałkowski by telephone (+48 22 206 83 00) or email (maciej.durbas@kkg.pl or rafal.kos@kkg.pl). The Kubas Kos Gałkowski website can be accessed at http://www.kkg.pl.

Endnotes

(1) Judgment of Polish Supreme Court of 15 June 2021, file ref No. III CSKP 102/21, available in Polish here.

(2) File ref No. I CR 663/73.