

2021-2022 Statistics of Polish Post-Award Case Law: Poland is (Still) Arbitration-Friendly

Our previous post on this Blog explored the Polish post-award case law from 2020. We tried to answer whether Poland is an arbitration-friendly jurisdiction. And we concluded that out of the more than 200 proceedings we have been able to review, arbitral awards were set aside or refused enforcement / recognition only in a relatively small number of cases. In over 90% of cases, arbitral awards survived their post-award review by the Polish Courts of Appeal. In this blog post, we take another look at the Polish arbitration landscape in 2021 and 2022 to compare our findings.

NEW CASES

According to the information we received from the Courts of Appeal, there were 317 new post-award cases initiated in 2021 (compared to 299 in 2020, this is an increase by approximately 6%):

- 33 new motions to set aside arbitral awards (compared to 35 in 2020, this amounts to a decrease by approximately 6%);
- 245 motions to enforce or to recognize domestic arbitral awards (with 232 in the year 2020, the numbers increased by approximately 6%); and
- 39 applications to enforce or to recognize foreign arbitral awards (in 2020, the number of cases was 32 and therefore there has been an increase by approximately 22%).

As for 2022, 292 new post-award cases were initiated during the year (yearly decrease by approximately 8%). This includes:

- 52 new motions to set aside arbitral awards (yearly increase by approximately 57%);
- 208 new motions to enforce or to recognize domestic arbitral awards (yearly decrease by approximately 16%); and
- 32 new applications to enforce or to recognize foreign arbitral awards (yearly decrease by 18%).

As in last year's review we have to make a few important comments on the data. First, we were not able to obtain information regarding all of the cases. We relied on the data sent to us by the Courts. Second, we did not examine whether the Appellate Courts' decisions were reviewed by the Supreme Court and what was the result of such review. Once again there was a discrepancy between the number of cases declared by the official statistics and the ones we received from the Courts. Third, especially in the context of 2022 case law and the Warsaw Court of Appeal (the biggest contributor to the overall caseload), there was a significant number of cases (over 50) in which motions were rejected due to formal deficiencies without being examined on the merits, and which were not transferred to us by the Appellate Courts and consequently not considered in the overall analysis. Again, however, our main focus was to review the cases we had received in order to get a bird's eye view of the current status of post-arbitration proceedings in Poland and spot some key patterns (or changes thereof).

NEW CASES INITIATED

2020	2021	2022
299 new post-award cases	317 new post-award cases	292 new post-award cases
35 motions to set aside an arbitral award	33 motions to set aside an arbitral award	52 motions to set aside an arbitral award
232 motions to enforce or to recognize a domestic arbitral award	245 motions to enforce or to recognize a domestic arbitral award	208 motions to enforce or to recognize a domestic arbitral award
32 motions to enforce or to recognize a foreign arbitral award	39 motions to enforce or to recognize a foreign arbitral award	32 motions to enforce or to recognize a foreign arbitral award

DECISIONS RENDERED IN 2021 AND 2022

According to the statistics of the Courts of Appeal, there were 322 decisions rendered in post-award cases in 2021. This represents an increase of ca. 14% compared to the numbers from 2020. In 2022, 289 decisions were rendered (which is a yearly decrease of ca. 11% from 2021 and an increase of ca. 2% since 2020). Consequently, the number of post-award cases initiated compared to those that ended was almost the same, with more cases being finished than started (conversely, in 2020, more cases were initiated than concluded).

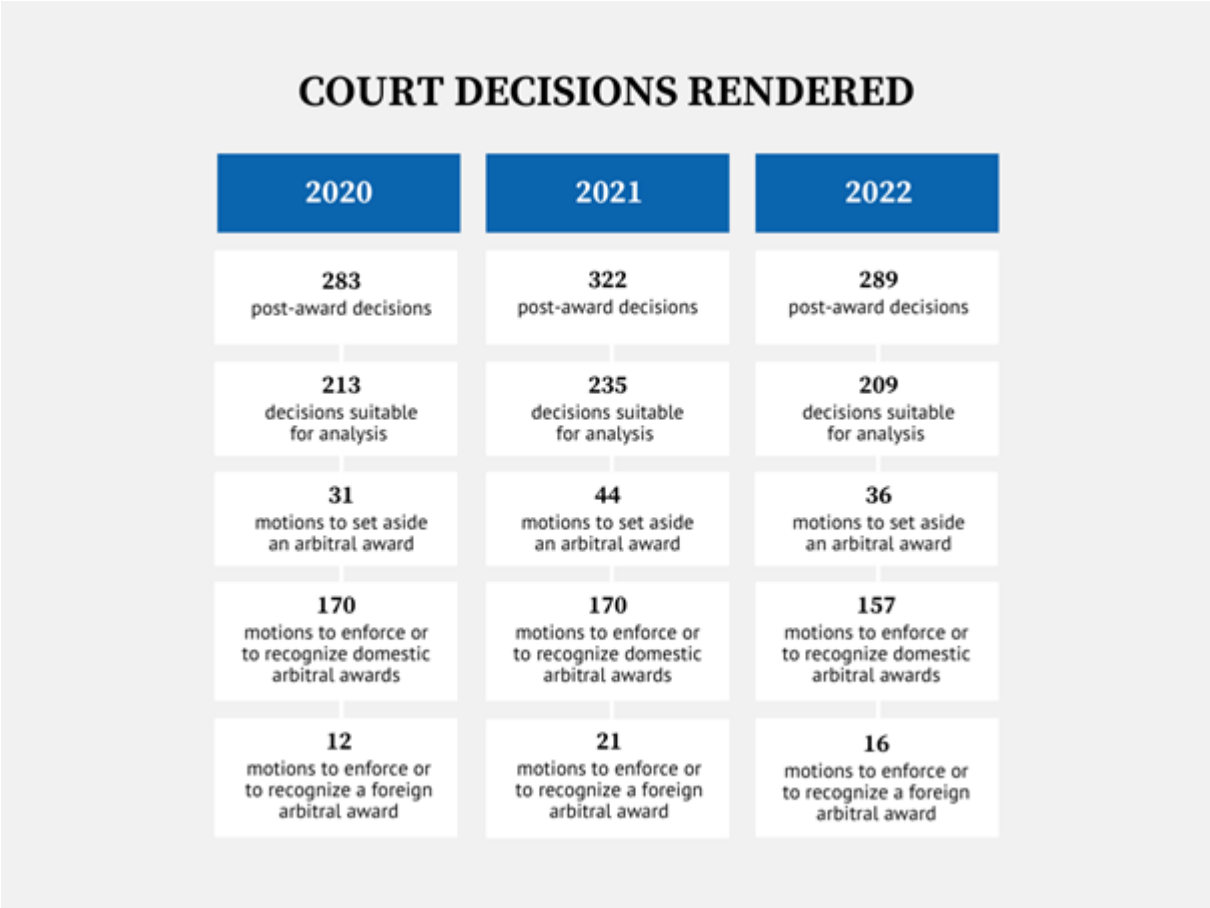
Of the 322 decisions rendered in 2021, only 235 decisions, i.e., ca. 73%, were suitable for our analysis (compared to 213 out of 283, i.e., 75% in 2020). This applies to decisions rendered in 2022 as well, in which we were able to review 209 cases, i.e., once again, ca. 73%. We have not analyzed the decisions relating only to formal or procedural issues (e.g., cases in which proceedings were discontinued or transferred to another court).

Out of 235 decisions, which were rendered in 2021 (only 213 were rendered in 2020), we were able to study:

- 44 decisions relating to motions to set aside arbitral awards (compared to 31 we reviewed from 2020);
- 170 motions to enforce or recognize domestic arbitral awards (we had an identical number available to us in 2020); and
- 21 rendered as a result of motions to enforce or recognize foreign arbitral awards (in 2020, the number was 12).

Out of 209 decisions, which were rendered in 2022, we were able to study:

- 36 decisions relating to the motions to set aside arbitral awards;
- 157 motions to enforce or recognize domestic arbitral awards; and
- 16 rendered as a result of motions to enforce or recognize foreign arbitral awards.



In 2021, only 6 of the studied motions to set aside arbitral awards succeeded (the same number as in 2020). This means that 86% of the motions to set aside arbitral awards failed within the sample of motions against arbitral awards in 2021.

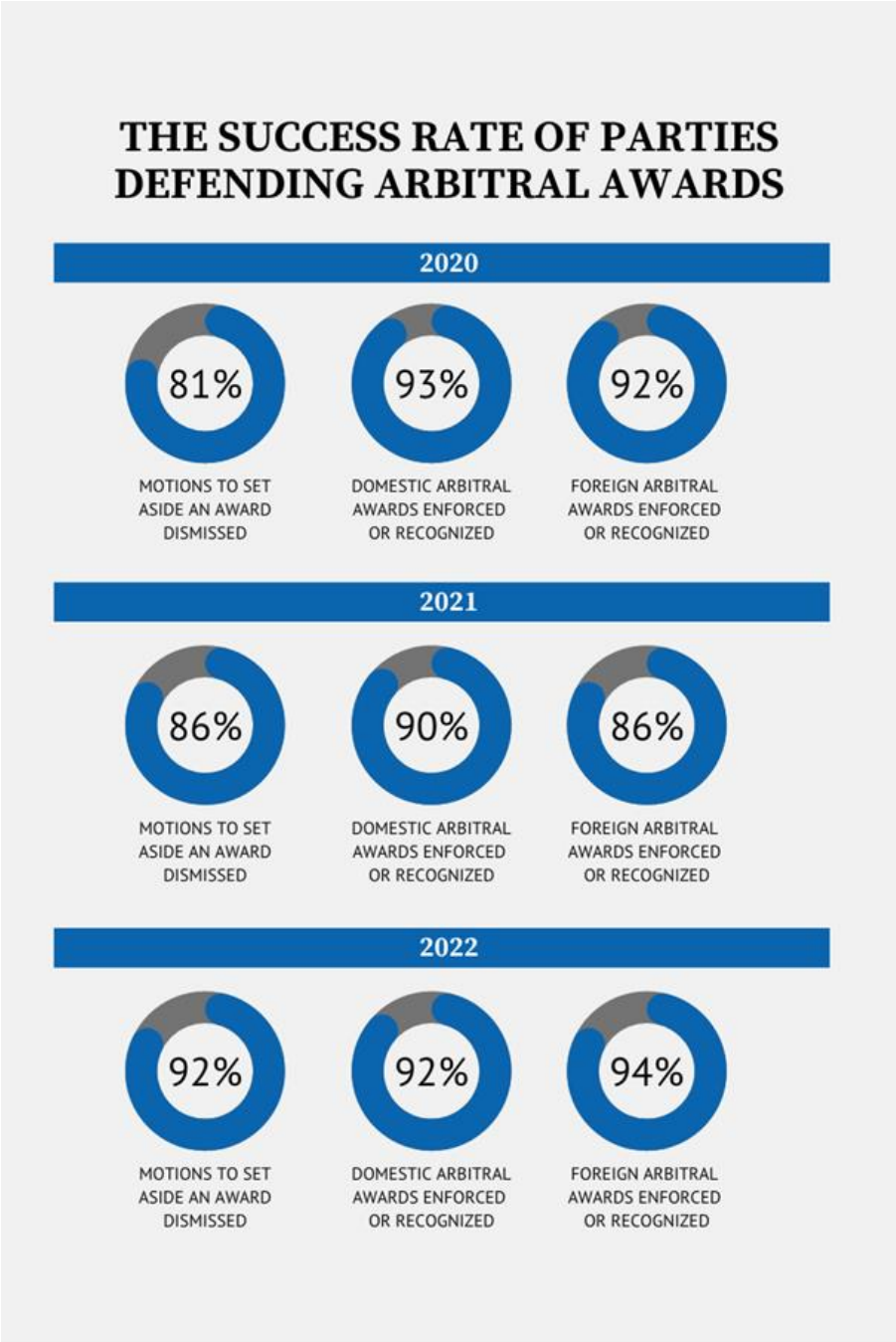
Similarly, out of 191 motions to enforce or recognize arbitral awards, 90% of domestic (153 out of 170) and 86% of foreign (18 out of 21) arbitral awards were successfully enforced or recognized in 2021.

We have reached a similar conclusion for the data from 2022. Out of 36 judgments suitable for review, only in 3 instances awards were set aside by the Courts of Appeal. Hence the percentage of unsuccessful motions to set aside, which were reviewed on the merits, went up to 92% (from 81% in 2020 and 86% in 2021). We have noted that parties filed 157 motions to enforce or recognize arbitral awards, out of which courts successfully enforced or recognized 92% of domestic (144 out of 157) and 94% of foreign (15 out of 16) arbitral awards. This is similar to the data from 2020 and 2021 (approximately 90 % in both years).

This compares to the statistics from 2020 as follows:

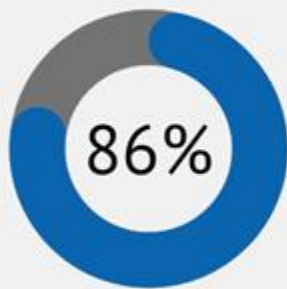
- 169 out of 182 arbitral awards were successfully enforced or recognized (approximately 93%), including
 - 11 out of 12 foreign awards (approximately 92%); and
 - 158 out of 170 domestic awards (approximately 93%).

The data we analysed proves that the post-award caseload of Polish Courts is rather stable and there seems to be a continuing trend toward an increase in the “arbitration friendliness” of the Courts. Each year the percentage of awards that were successfully defended before the Courts is steady and relatively high.

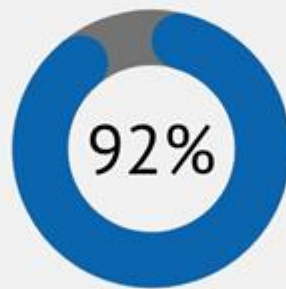


Overall, in the past three years, in ca. 90% of post-award decisions, Polish courts either enforced or refused to set aside arbitral awards and thus upheld the effectiveness of arbitral awards.

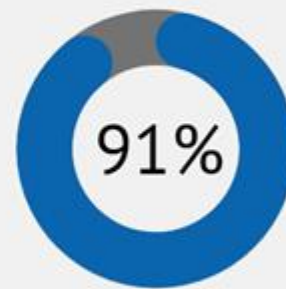
THE SUCCESS RATE OF PARTIES DEFENDING ARBITRAL AWARDS IN 2020-2022



MOTIONS TO SET ASIDE
AN AWARD DISMISSED



DOMESTIC ARBITRAL
AWARDS ENFORCED
OR RECOGNIZED



FOREIGN ARBITRAL
AWARDS ENFORCED
OR RECOGNIZED

DISCUSSION

Based on the data, we can draw conclusions about the past three years in Polish arbitration and the possible future and compare with the data previously explored in the Polish Post-Award Case Law from 2020 post on this Blog.

First, for the third year in a row the ratio of decisions upholding the effectiveness of arbitral awards to those which did not do so was relatively high, ca. 90%. We believe three years are enough to declare a pattern, and these figures may be grounds for optimism.

Second, from a three-year perspective, the post-arbitration caseload seems relatively stable, i.e., 283 cases initiated in 2020, 322 in 2021, and 292 in 2022. The same applies to decisions rendered, i.e., 213 analyzed decisions in 2020, 235 in 2021, and 209 in 2022.

In 2021, parties filed fewer motions to set aside (-6%) and more motions to enforce / recognize domestic (+6%) and foreign awards (+22%) compared to 2020. In 2022, the number of motions for setting aside arbitral awards compared to motions to recognize awards has risen. However, in parallel to the increase in setting aside cases, effectiveness of such motions has declined – fewer awards have been successfully challenged (14% in 2021 and only 8% in 2022).

Hence, from a three-year perspective, we note the stability of the caseload and a continuing trend toward an increase in the “arbitration friendliness” of the Courts.

Third, – as in previous years – the Polish arbitration market prefers institutional arbitration over ad hoc arbitration, and cases from the Polish arbitration institutions constitute the bulk of the Courts’ caseload. It is quite unsurprising, considering the significantly smaller cost of arbitration at Polish arbitral institutions compared to the international ones.

Fourth, the Warsaw Court of Appeals decided more than 30% of all post-award cases in 2021 and 2022 (similar results in 2020). This amount correlates to the ratio of advocates (attorneys) that declare themselves as specializing in arbitration in the National Register of Advocates and Trainee Advocates, with more than half of them practicing in Warsaw.

In 2021 and 2022, there were no significant changes to the legal arbitration framework in Poland. However, some planned changes might influence the caseload from 2023 onwards. First, the reform of Polish arbitration law aims to facilitate the conversion of pending litigations into arbitrations (including a procedural framework and financial incentives for doing so). This legislative move attempts to reduce the overwhelming number of commercial cases brought before Polish courts. Second, introducing a new vehicle for estate planning (family foundation) will be accompanied by the possibility of submitting family foundation-related disputes to arbitration.

Our primary aim in this report was to recognize any possible patterns of Polish post-arbitration cases. In particular, we wished to spot the judgments that signify “unfriendliness” to arbitration. Out of the past three years of research based on data from the Courts of Appeal, only in a relatively insignificant portion of cases was the effectiveness of arbitration awards undermined (ca. 10%). Notably, many motions to recognize failed on formal grounds, not on substantive ones (e.g., public policy). This does not mean that “unfriendly” decisions do not exist, but they are exceptional.

In recent years, Polish courts and lawmakers seem to look at arbitration with trust. This could be evidenced by the ratio of cases favorable to arbitration and the planned and introduced changes in the law that aim to promote arbitration.

We will continue our research in the future and try to establish yearly patterns as to Poland’s arbitration-friendliness.