

Katowice Court of Appeal judgment
dated 18 November 2016
Case V ACa 67/16

Summary by arbitraz.laszczuk.pl:

One of the parties to an arbitration before the Court of Arbitration at the Polish Chamber of Commerce applied to the Katowice Court of Appeal to set aside the arbitration award issued in December 2015, alleging among other grounds that the presiding arbitrator had not been properly appointed, infringing the equal treatment of the parties.

The two arbitrators appointed by the parties (J.O., appointed by the petitioner, and M.K., appointed by the respondent) could not agree on appointment of a third arbitrator as the presiding arbitrator. Following the arbitration court's procedure for default appointment, the Arbitral Council appointed P.M. as the presiding arbitrator. The Arbitral Council was not aware that P.M. had already been considered by the two arbitrators but was objected to by J.O. After the appointment of P.M., neither of the other arbitrators objected to his appointment. However, one of the parties filed a challenge to P.M., which was denied.

In the proceeding to set aside the award, the petitioner argued that there was a custom in international arbitration that in the case of default appointment of an arbitrator, the authority making the appointment should be informed of the candidacies that were already considered and rejected by the arbitrators, and none of those rejected candidates should be appointed in the default procedure. The petitioner submitted to the court a provision to this effect included in the Code of Best Practice for Permanent Arbitration Courts adopted by a Polish association.

The court held that this was insufficient to establish a custom constituting a fundamental principle of arbitration procedure, and found that the presiding arbitrator had been properly appointed pursuant to the arbitration rules of the Court of Arbitration at the Polish Chamber of Commerce.

The court denied the petition to set aside the arbitration award accordingly.

Excerpts from the text of the court's ruling:

1. The set of fundamental principles of procedure before the arbitral tribunal includes only the rules arising under the Civil Procedure Code and the rules agreed by the parties, which does not include the custom [under §9(3) of the Code of Best Practice for Permanent Arbitration Courts, providing that a party applying for default appointment of an arbitrator subject to nomination by both parties or by the previously appointed arbitrators should notify the appointment authority of all candidacies considered and rejected by the parties or the arbitrators and none of those persons should be appointed in the default procedure].

2. The legal classification of a contract by the arbitral tribunal is not subject to review on a petition to set aside an arbitration award.