Chapter 7

Setting Aside an Arbitration Award

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1. **Nature, subject and scope of action** to set aside award

1.1. Nature of action to set aside award

The most invasive form of state court intervention in the arbitration process is represented by an action to set aside an arbitral award. It is an extraordinary avenue of review, and does bear some resemblance to various forms of appeal. In procedural terms, however, an application to set aside commences a civil proceeding before the court − comparable to filing a statement of claim that will be decided in a trial.

There is no appeal to the common court against a final award. The only recourse against the award is to apply to the common court to set aside the award.

Polish law does not allow the parties to exclude the right to file an application to set aside the award or to limit the grounds for setting aside an award, even in international arbitration.

1.2. Arbitral award as the subject of action to set aside

Polish arbitration law provides for a single set of rules governing setting aside of awards rendered in institutional arbitration or by *ad hoc* tribunals, and regardless of whether the arbitration is of a domestic or international nature.

An application to set aside may be filed with respect to a final award rendered in Poland. An action to set aside an award in Poland will only lie

against an award made in Poland. Thus, Polish arbitration law follows the territorial principle of an award. However, the place where the award is "made" is not defined in the CCP, and it is debatable whether it always coincides with the place of arbitration, or some other criteria are also relevant.

Polish arbitration law uses the term "award" alongside the broader term "ruling," as well as the term "order," implying that not every ruling by an arbitral tribunal is an "award." An "award" which a party may file an application to set aside means a ruling by the tribunal that decides on the merits of the relief demanded by the parties (Art. 1205 § 2 CCP), while a ruling that does not decide on the merits, for example a ruling discontinuing the proceedings, is an "order" (Art. 1198 and 1199 CCP). The substance of the ruling, however, not the title given to it by the tribunal, determines whether it is an "award" or an "order".[1]

Consequently no application to set aside will lie from an order by the tribunal on procedural matters. Once an award is rendered, however, it may be possible to raise procedural errors by the tribunal as grounds to set aside the award.

In order to be regarded as an award, a ruling on the merits must also be made in writing, rendered by persons appointed as arbitrators[2] (even if there were irregularities in their appointment − an issue that may be raised as grounds to set aside the award), and signed by a majority of the arbitrators. The requirement that an award was rendered by arbitrators is of great practical significance, because it prevents use of the setting aside procedure with respect to decisions made by various types of bodies that are not arbitral tribunals − for example, findings by an appraiser jointly appointed by the parties to make a valuation.

An application to set aside will lie against any ruling on the merits of the relief sought by the parties, including a partial award.

An additional (supplementary) award may be the subject of an application to set aside along with the main award which it supplemented (Art. 1208 § 1 CCP), while an interpretation of an award, rendered by the tribunal, is regarded as an integral part of the award (Art. 1200 § 2 CCP). A correction to an award is made in the form of an order and is not regarded as a standalone award. Thus, in principle none of these acts by the tribunal are subject to an application to set aside on their own, but they would be if the tribunal went so far as to render, in essence, a new ruling on the merits.[3]

[1] Decision of the Supreme Court of 17 May 2006, I CSK 104/05.
[2] Decision of the Supreme Court of 14 February 1956, IV CO 29/55.
[3] Decision of the Supreme Court of 17 May 2006...

An application to set aside may be filed even if the award has already been recognized or declared enforceable.[4]

A ruling by the tribunal on a plea of lack of jurisdiction (affirmative or negative) is regarded as an "order" if it is made separately from the decision on the merits, i.e. separately from an award (Art. 1180 § 3 CCP). Thus, such a ruling is not subject to an application to set aside.[5] However, when the tribunal makes an affirmative ruling upholding its own jurisdiction (i.e. denying a plea that the tribunal does not have jurisdiction or that a new claim raised during the proceedings exceeds the scope of the submission to arbitration), separately from a ruling on the merits, the CCP provides for the party to seek a ruling from the common court (Art. 1180 § 3 CCP). However, this is not an action to set aside.

A ruling by the tribunal that it lacks jurisdiction is not subject to this special review, or an application to set aside, but is binding on the common courts and unreviewable.[6] As a consequence, in a civil action a plea that the claim is subject to an arbitration agreement must be denied if the tribunal has ruled that it lacks jurisdiction (Art. 1165 § 2 CCP).

An application to set aside will not lie against a settlement reached before the tribunal. If the settlement is reduced to an award, however, a party may apply to set aside the award (the fact that it was made on the basis of a settlement could be relevant when the court considers whether grounds for setting aside the award exist).

1.3. Scope of action to set aside award

A party may seek to set aside an award in whole or in part, if such part is separable from the rest of the award,[7] and the court is bound by this election.[8] It seems that if the party seeks to set aside the award in whole, the court may not set aside the award in part. If the parts of the award are so intertwined that they cannot be separated without substantially altering the whole, it is impermissible to set aside the award in part.[9]

2. Standing to seek to set aside award

Standing to seek to set aside an award is held by the parties to the proceedings before the tribunal. In more general terms it may be agreed that standing should be found on the part of any person who may be bound

[4] Decision of the Supreme Court of 31 May 2000, I CKN 182/00.
[5] Decision of the Supreme Court of 28 January 2011, I CSK 231/10.
[6] *Ibidem*.
[7] Decision of the Supreme Court of 31 May 2000...
[8] Decision of the Supreme Court of 27 June 1984, II CZ 67/84.
[9] Decision of the Supreme Court of 29 November 1937, C.II 1252/37.

by the ruling set forth in the award. Standing also extends to the legal successors of the parties (if they are bound by the submission to arbitration as a result of legal succession). Standing is held by any addressee of the ruling on the merits included in the award, regardless of whether it was the claimant or the defendant or whether the award was affirmative or negative.

Persons who may be named as respondents in an action to set aside an award are those indicated in the award as addressees of the ruling on the merits.

Standing to file an application to set aside an award is also vested in the prosecutor and the Ombudsman. If the application is filed by the prosecutor or Ombudsman, but not on behalf of a specific person, all of the persons indicated in the award as addressees of the ruling on the merits should be named as respondents.

3. Grounds for setting aside award

3.1. Nature of grounds for setting aside award

Article 1206 CCP sets forth an exhaustive list of the grounds for setting aside an award. The court may not set aside an award on any other grounds. Article 1206 CCP generally tracks the grounds for setting aside from Article 34 of the UNCITRAL Model Law, with slight differences in wording and enumeration of specific additional grounds. All of the grounds, except for public policy, are of a formal character. No rewiev of the merits of an award is allowed.

3.2. Particular grounds for setting aside award

The CCP distinguishes between grounds for setting aside that may be considered only if raised by a party and grounds that may be considered by the court on its own initiative. A party may seek to set aside an award on the following grounds:

(1) There was no arbitration agreement, or it was invalid, ineffective or no longer in force under the law governing the agreement.

(2) The party was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present its case before the arbitral tribunal.

(3) The award deals with a dispute not falling within the scope of the arbitration agreement, or contains decisions on matters beyond the scope of the arbitration agreement, provided that, if the decisions on matters sub-

mitted to arbitration can be separated from those not submitted, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside. Exceeding the scope of the arbitration agreement shall not be grounds for setting aside the award if the party taking part in the proceedings failed to object to consideration of any claims beyond the scope of the arbitration agreement.

(4) Requirements with respect to composition of the arbitral tribunal or fundamental rules of procedure before the tribunal arising under statute or stipulated by the parties were not complied with.

(5) The award was obtained by means of a criminal offence or on the basis of a forged or altered document.

(6) A legally final court judgment was issued in the same matter between the same parties.

The following grounds shall be considered by the court also on its own initiative:

(7) The dispute is not arbitrable.

(8) The award is in conflict with the fundamental principles of the legal order of the Republic of Poland (public policy clause).

The specific grounds are discussed below.

(A) Lack, invalidity, ineffectiveness or expiration of arbitration agreement

The relevant time for determining whether there was a valid arbitration agreement in force is the time of rendering the arbitral award.[10] Whether a valid arbitration agreement was made should be determined according to the law in force when the arbitration agreement was made. If it is found to be invalid at that time, subsequent events curing any defect, such as ratification by the party, should then be considered.[11]

Under current law (Art. 1180 § 2 and Art. 1193 CCP), lack of a valid arbitration agreement, exceeding the scope of the submission to arbitration, or lack of jurisdiction of the tribunal, may be raised as grounds for setting aside the award only if the party raised such a plea at the latest in the statement of defense before the tribunal (or within some other time agreed by the parties). If the party could not have known of the grounds for such a plea by that time, or the grounds only arose later, the party must raise the plea promptly after the grounds have arisen or become known to the party. If a new claim raised during the proceeding exceeds the scope of the submission to arbitration, the defendant must assert such plea promptly

[10] Decision of the Supreme Court of 21 January 2009, III CZP 136/08.
[11] *Ibidem*.

after such claim is raised. Otherwise, such grounds for setting aside the award are precluded.

Nonetheless, failure to object to the jurisdiction of the arbitral tribunal does not bar assertion of lack of jurisdiction as grounds to set aside the award if the party did not take part at all in the proceedings before the tribunal − in other words, the defendant is not required to appear merely to object to jurisdiction. This ground is also not precluded if the tribunal erroneously rejects the plea as raised too late.

Furthermore, it is understood under Polish law that a submission to arbitration concerning a dispute that is non-arbitrable under the law applicable to the submission is invalid, which could then fall under the ground for setting aside under Article 1206 § 2(1) CCP. However, non-arbitrability of the dispute under Polish law will always be a separate ground to set aside, considered by the state court on its own initiative.

For purposes of an action to set aside, it may be difficult in this context to distinguish between invalidity, meaning that the submission to arbitration is treated as not having any effect from the start, and ineffectiveness or loss of force.

Ineffectiveness, for purposes of Article 1206 § 1(1) CCP, occurs when for reasons in existence at the time the submission was entered into or arising later, the submission to arbitration cannot achieve its overall intended effect, for example because it is prohibited as an abusive clause in a consumer contract,[12] or when the parties appoint an arbitration institution or rules that are no longer in existence and it cannot be found that the parties' intention would have been to resort to *ad hoc* arbitration.

Loss of force of the submission to arbitration means that the legal effects of the submission have ceased at some time after the submission was made. A specific example of loss of force under Polish law is provided by Articles 142 and 147 of the Bankruptcy and Reorganization Law, under which a submission to arbitration by the debtor loses force when the debtor is declared bankrupt.

(B) Lack of notice or inability to present the party's case

The CCP, like the UNCITRAL Model Law, identifies two specific instances of a party's inability to present its case: lack of notice of appointment of an arbitrator or lack of notice of the arbitral proceedings. Lack of notice may involve not only failure to provide any notice, but also notice with defective content, e.g. failing to provide sufficient identification of the arbitrator. However, not every lack of notice is grounds to set aside the award −

[12] Decision of the Supreme Court of 22 February 2007, IV CSK 200/06.

only a lack of notice that resulted in depriving the party of the ability to present its case.

It is not necessary for the party to be unable to present its case completely, throughout the proceedings. Thus lack of notice of the proceedings includes lack of notice of specific actions, such as a hearing, a deadline for submissions, and so on. However, the party will be found to be deprived of the ability to present its case only if the specific violation could affect the result of the arbitral proceedings. Thus if despite defective notice of a hearing the party did participate, it may not rely on the defective notice as grounds to set aside the award unless it can also show, for example, that it received the notice too late to prepare and present its case properly.

Polish courts often reduce their assessment of claims of inability to present the party's case, for example refusal to admit certain evidence offered by the party, to a determination of whether the alleged violation rose to the level of infringing the principle of "equality of the parties."

(C) Exceeding the scope of the submission to arbitration

It has been argued that when the arbitral tribunal decides a dispute not contemplated by the submission to arbitration, the ground for setting aside the award essentially goes to the existence of a valid submission to arbitration. Nonetheless, this ground for setting aside should be interpreted as applicable only when there is a valid submission but the award exceeds the scope of the submission.

Article 1206 § 1(3) CCP is worded more narrowly than Article 34(2)(a)(iii) of the UNCITRAL Model Law or Article V(1)(c) of the New York Convention, which also extend to instances where the tribunal grants relief beyond or inconsistent with that sought by the parties. In Poland, the ground set forth in Article 1206 § 1(3) CCP strictly relates to the scope of the submission to arbitration. However, in some such instances the application to set aside could instead be based on Article 1206 § 1(2) CCP (inability to present the party's case) because the ultimate decision concerned a matter the party had no opportunity to address during the proceedings. The public policy clause could also be invoked in such instances.

Article 1206 § 1(3) CCP provides that if decisions in the award that are within the scope of the submission can be separated from those outside the scope of the submission, only that part of the award which contains decisions on matters not submitted to arbitration may be set aside. In such case the court is not authorized to set aside the entire award.

(D) Failure to comply with requirements for composition of tribunal or fundamental rules of procedure before the tribunal

Failure to comply with requirements for composition of the tribunal is grounds to set aside the award without any additional qualifications. Such a violation may occur not only by failure to meet the requirements concerning the number of arbitrators, but also requirements concerning their characteristics, qualifications or nationality, under the CCP or the parties' agreement, as well as statutory or agreed rules for challenging an arbitrator. Because the composition of the tribunal is within the control of the parties, this ground will generally be precluded if not raised before the tribunal, unless it concerns rules that the parties cannot opt out of (such as the requirement that the arbitrator have full legal capacity, Article 1170 § 1 CCP, or the requirement for the arbitrators to be independent and impartial).

With respect to violation of procedure, Polish law provides an additional condition, beyond Article 34(2)(a)(iv) of the UNCITRAL Model Law, that only a violation of "fundamental" rules of procedure will be grounds for setting aside the award. This general term reflects a belief that not every violation of statutory or agreed procedure is serious enough to warrant setting aside the award. This ground is subject to preclusion under Article 1193 CCP if not raised before the tribunal, unless it concerns statutory rules of mandatory applicability.

(E) Award obtained through criminal offence or forged or altered document

This ground for setting aside an award is not listed in the UNCITRAL Model Law. An award is considered to be obtained through an offence if a crime was committed in connection with the arbitral proceedings or rendering of the award and it directly or indirectly affects the substance of the award. As long as there is a causal relationship to the award, it is irrelevant whether the crime was committed by a party, counsel, or a third party, but the clearest case is where the crime is committed for the purpose of obtaining a specific award.[13]

Forging or altering a document with the intention of passing it off as authentic may constitute forgery under Penal Code Article 270, but to set aside an award it is sufficient that the award was based on a forged or altered document, regardless of the purpose for which it was forged or altered or whether use of such a document itself constituted a crime (e.g. if the party relying on the document did not know it was inauthentic). The document must be regarded by the arbitrators as material to the decision of the case, however.

[13] Decision of the Supreme Court of 5 February 1999, III CKN 1075/98.

A forged document is one made by a person other than the one who supposedly made it, and an altered document is an authentic document which has been changed by an unauthorized person.[14] A document containing a false statement does not in itself fall into either category, but if making the false statement constitutes a crime under Article 271 of the Penal Code and there is a causal relationship to the award, this may serve as grounds to set aside the award as obtained through an offence.

(F) *Res judicata*

This is another ground not specified in the UNCITRAL Model Law. It will apply only if there is another legally final judgment concerning the same claim and parties as the arbitral award.

"Judgment" in this sense includes a judgment of a Polish common court, a judgment of a foreign court recognized in Poland, as well as an arbitral award that has been recognized or enforced in Poland. In the case of the judgment of a foreign court, "legally final" means that it is effective in Poland, and in the case of arbitral awards, that the order recognizing or enforcing the award is legally final.

The relevant time to consider whether there is a legally final judgment on the same matter in existence is the time that the court rules on the application to set aside the award, regardless of whether or not the party was in a position to raise the existence of the judgment before the arbitral tribunal. This reflects the purpose of the rule, which is to maintain the coherence of the legal system and prevent conflicting decisions from entering into circulation.

(G) Non-arbitrability

An award shall be set aside in any case when the court, on its own initiative, finds that "according to statute" the dispute is not arbitrable. "Statute" in this context should be understood to mean "this statute," that is the CCP, and refers to arbitrability under Polish law. Non-arbitrability should be determined under the law in effect at the time the court rules on the application to set aside the award, but non-arbitrability under the law in effect upon conclusion of the submission to arbitration may also constitute grounds for invalidity of the submission as such.

(H) Public policy clause

As in any other jurisdiction, the public policy clause is general and alludes to a collective set of legal norms. It is left to the courts to narrow

[14] *Ibidem*.

down this general notion, through decisions, to develop a catalogue of fundamental principles of the legal order. What criteria, then, should be used to select which norms within the overall legal system should be deemed to be fundamental principles? As often phrased by courts and commentators, fundamental principles of the legal order include the fundamental constitutional principles governing the socio-economic system and the guiding principles governing specific fields of substantive and procedural law. This implies norms that are of mandatory applicability, but only those embodying and protecting values that are fundamental to the legal system and demarcate the boundaries of freedom of the will of the parties.[15]

Under Polish law there are no grounds to distinguish between domestic and international public policy. However, public policy as understood in the Polish legal system encompasses only the fundamental principles of the legal system. Furthermore, although the content of public policy is considered to be the same regardless of whether an award was issued in domestic or international arbitration, it is believed that court control over awards issued in international arbitration should be lesser.

Although review of an award under the public policy clause requires the court to address the merits of the dispute, the court does not serve as a higher instance, and it does not review or reconsider the merits in an appellate sense. Public policy review is addressed to the substance of the award and may not be conducted on the basis of facts or evidence not available to the arbitral tribunal.

Principles that have been held to be fundamental to the legal order for purposes of the public policy clause include the substantive principles that damages should make the claimant whole but not overcompensate the claimant,[16] equal treatment of creditors in arrangement proceedings,[17] economic liberty and freedom of will of the parties,[18] freedom and enforceability of contracts,[19] equality of persons and social justice,[20] and the procedural principles of thorough consideration of the case and equal treatment of the parties.[21]

As a rule, errors in factual findings by the tribunal are not grounds to set aside the award, but in extreme cases a clear lack of factual grounds for the award may result in setting aside the award on grounds of public policy.

Public policy review may be used to set aside collusive awards, which

[15] Decision of the Supreme Court of 4 October 2006, II CSK 117/06.
[16] Decision of the Supreme Court of 11 June 2008, V CSK 8/08.
[17] *Ibidem*.
[18] Decision of the Supreme Court of 4 October 2006...
[19] Decision of the Supreme Court of 11 August 2005, V CK 86/05.
[20] Decision of the Supreme Court of 28 April 2000, II CKN 267/00.
[21] Decision of the Supreme Court of 6 March 2008, I CSK 445/07.

may be analyzed in terms of the parties' abusing arbitration to injure third parties or to conceal criminality (for example by legitimizing fraudulent transfers or bribes).

4. Judicial proceeding to set aside award

4.1. Competent court

In Poland, there are no specialized courts for actions to set aside. The competent court for action to set aside is the court that would have had subject--matter and geographical jurisdiction to resolve the dispute if the parties had not made a submission to arbitration.

In terms of subject-matter jurisdiction, the amount in dispute, which affects whether the district court or regional court is competent, is of relevance.

In terms of geographical jurisdiction, if general rules were applied, the competent court to resolve the dispute in the absence of a submission to arbitration would be determined on the basis of the domicile of the defendant in the original dispute, and that court would be competent to rule on the application to set aside even if the application is filed by the defendant. In some cases, in the absence of a submission to arbitration, the claimant would have a right to elect between two or more competent courts (for example based on the defendant's domicile or the place of performance of a contract, or based on the different domiciles of multiple defendants). In such cases, any party filing an application to set aside the award should have the same right to elect between the courts that would have been competent in the absence of a submission to arbitration.

4.2. Deadline for filing application to set aside

An application to set aside an arbitral award must be filed within 3 months from service of the award on the party.

If a party has made a timely request for correction or interpretation of the award or for an additional award, the period for either party to file an application to set aside is counted from service of the ruling on the request. The deadline is not extended, however, by correction of the award by the tribunal on its own initiative (Art. 1201 CCP).

The deadline is calculated differently in the case of an allegation that the award was obtained through an offence or on the basis of a forged or altered document, or *res judicata*. Then the period to file the application runs from the date the party learned of the grounds for the application (Art. 1208 § 2 CCP) − but no earlier than service of the award. The latest a party

may apply to set aside on these grounds, however, is five years after service of the award on the party (Art. 1208 § 2 CCP).

The deadline for filing an application to set aside may not be modified by the parties or the court.

4.3. Overview of the proceeding

The proceeding on an application to set aside an award is governed by provisions concerning adversary civil proceedings. The application is considered at a hearing. The court is not bound by any special limits with respect to admission of evidence, and may admit evidence for any circumstances the court finds relevant to decide the matter. The file from the arbitration proceedings will be the key evidence in the proceeding upon the application to set aside the award.

The CCP does not bar an arbitrator from being called as a witness, and thus the arbitrator's testimony is admissible, even if the arbitrator is otherwise bound by confidentiality within the arbitration, as is typically the case. Such evidence cannot take the place of the parties' right to seek correction, interpretation or an additional award, however.

Filing of an application to set aside an award does not suspend enforcement of the award. During the proceedings, however, the court may order suspension of enforcement of the award upon motion of a party. The court may make suspension conditional on providing security. The order may be made without a hearing, and there is a right of interlocutory appeal. Suspension may be sought in the application or subsequently, but not prior to filing the application.

4.4. Remission procedure

The procedure set forth in Article 1209 CCP, patterned on Article 34(4) of the UNCITRAL Model Law, is intended to avoid unnecessary interference by the common court by allowing the arbitrators to conduct additional actions that will make the application to set aside moot. Upon motion of a party, the court may suspend the proceeding to enable the arbitral tribunal to resume the proceedings in order to cure the grounds for setting aside the arbitral award. The court issues an order suspending the proceeding on the application for a specific period and indicating to the arbitral tribunal the actions it should conduct again in the resumed arbitral proceeding within that time. There is a right of interlocutory appeal against the order under Article 394 § 1(6) CCP. The resumed arbitral proceeding is referred to as a "remission proceeding" and the award issued accordingly as a "remission award."

Under Article 34(4) of the UNCITRAL Model Law, the arbitral tribunal should take whatever actions it deems fit to cure the grounds for setting aside the award, and the court only authorizes it to do so. By contrast, it may appear from Article 1209 § 2 CCP that in Poland the court will instruct the tribunal what it should do and the tribunal will then act accordingly, but the legislative intent was for the court to "give the arbitral tribunal an opportunity" to amend the award and not to order it to amend the award or amend it in any specific way. The court should thus indicate the defects in general terms. The court may not order the arbitral tribunal to take any specific action. Before issuing the order, the court must determine whether the award is defective and, if so, whether the defects are capable of being cured through the remission procedure.

The remission order restores jurisdiction to the arbitrators to issue an award upon reconsideration. The arbitrators thus may not refuse to reconsider the case based on lack of jurisdiction or a duty to act, but there may be intervening obstacles to reconsideration such as the inability to empanel the same arbitrators.

After conducting the remission, the arbitral tribunal issues a remission award, which is treated like an additional (supplementary) award. The parties may not file a separate application to set aside the remission award, but in the pending proceeding may raise new pleas with respect to the remission proceeding or the remission award.

4.5. Ruling on application to set aside award and avenues of appeal

A ruling on the merits is made in the form of a judgment, in which the court may set aside the award, in whole or in part, or deny the application.

In the judgment, the court may not correct any defects it finds in the award, because it does not exercise appellate review over the arbitral tribunal. When exercising review of non-judicial resolutions of civil disputes, the court may only set aside all or part of the award, if it finds grounds for setting aside.

There is a right to appeal against the judgment on the application to set aside.

The parties may further have a right to file a cassation appeal to the Polish Supreme Court against the decision of the appellate court, under general rules. Whether a cassation appeal is permissible depends on the nature of the dispute resolved by the award – "property" (including financial) or "non-property." In a property dispute, whether a cassation appeal is permissible depends on the amount in dispute, i.e. the amount in dispute in

the case resolved by the arbitral tribunal, or part thereof in the case of an application to set aside part of an award.

5. Legal consequences of setting aside an award

A judgment setting aside an arbitral award is of constitutive legal effect and eliminates the legal status existing under the award. It does not cause the submission to arbitration as such to lose force, unless otherwise agreed by the parties. Even if the award is set aside because the court finds that the submission to arbitration is invalid, the judgment does not create a new legal state but merely confirms that the submission was already invalid.

The judgment eliminates the award from legal circulation, but otherwise the fate of the dispute is left to the parties. They may, for example, start a new arbitral proceeding, or, if the award was set aside because of the lack of a submission to arbitration, file a claim in the common court.

The question often arises in practice whether the arbitral tribunal may consider the dispute again in the same panel after an award is set aside. It is a new proceeding, and in theory there is no barrier to use of the same panel, because it is essentially up to the parties to appoint the arbitrators. In principle, an arbitrator who took part in rendering an award that was later set aside may well refuse to assume the same function again, out of a concern for lack of impartiality. In any event, appointing the same panel may prove difficult in practice.

If a domestic award is set aside and the judgment becomes legally final, the judgment is binding on other Polish courts and bars recognition or enforcement of the award in Poland.

If an award has already been recognized or enforced, and that order has become legally final, and the same award is later set aside, the subsequent judgment setting aside the award should take precedence. An award that has been set aside may no longer be enforced, and if any proceedings to execute the award are pending they should be discontinued.