

Legal Alert

Witness statements in arbitration



December 2015

Among the many differences between a trial in the state courts and arbitration, the way witness testimony is handled is particularly noticeable. In arbitration, it is increasingly permissible to submit written witness statements. This is a valuable solution.

Witness testimony is one of the types of evidence used in both state courts and arbitration courts, but in arbitration it may be admitted in a different form.

In Poland, under Art. 271 of the Civil Procedure Code, a witness testifies in proceedings before the state court exclusively orally, while in arbitration it is becoming increasingly common to allow witness statements to be submitted in writing.

When identifying the evidence they will present, the parties to an arbitration proceeding may request that a given witness submit his or her testimony in writing. In that case, the arbitrators should permit all parties to submit a list of questions to be asked of the witness. Then their lists are forwarded to the witness, who provides answers in writing and submits them to the arbitration court, which in turn distributes them to the parties. Then, depending on the rules and practices followed before the given arbitration court, once the written witness statements have been filed they may be treated as final, or, at the request of the parties or the panel, the witness may be called to appear in person for oral questioning.

It should be stressed that this procedure may be followed only if the rules of the arbitration institution provide for it, or if the parties mutually agree to its use.

The use of witness statements, popular in Anglo-Saxon legal systems, is also winning increased recognition in Poland. This can be seen in the inclusion of the procedure for filing of written witness statements in the 2015 amendments to the Arbitration Rules of the Court of Arbitration at the Polish Chamber of Commerce. §33(8) of the rules provides that evidence from a witness may be taken in two stages as described above, with a written statement followed by supplementary questioning at a hearing.

Like any solution, it has supporters and detractors, but it should be regarded as a positive development. While appreciating the arguments of sceptics that it can prolong the proceedings if a statement is first taken in writing and then followed up by oral testimony, nonetheless this approach has many advantages. One is that it allows witnesses to provide testimony without travelling to the hearing. It makes it easier to obtain testimony, because the witnesses can prepare their statement at a time convenient to them rather than testifying at the time set by the arbitration court. This improves the chances of obtaining testimony when, for example, witnesses are ill or live far from where the arbitration is being held. This is particularly significant considering that in Poland, appearing to testify in arbitration is entirely voluntary. Unlike in the state courts, there are no tools that can be used to compel a witness to appear before an arbitration court.

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