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PRACTICE NOTE

ARBITRATION
MAY 2025

SELECTED SLOVAK COURT DECISIONS IN 2023 IN NON-CONSUMER ARBITRATION MATTERS

In 2023, Slovak courts rendered several decisions in non-consumer arbitration matters. Out of these decisions, we have selected those we consider the most important for the application practice.

(1) Slovak Supreme Court: a dispute between a guarantor and a creditor is only arbitrable if both the guarantor and the creditor have unambiguously expressed their will to submit to arbitration

The Slovak Supreme Court, as an extraordinary appellate court, assessed conclusions of lower courts on the personal scope of an arbitration clause contained in a tripartite framework purchase agreement between a seller, buyer and the buyer's guarantor.

The Slovak Supreme Court concluded that the lower courts hearing the guarantor's action for setting aside an arbitral award have not adequately addressed the issue of the personal scope of the arbitration clause that referred to "*the parties*" (which could have covered all three parties to the framework purchase agreement, including the guarantor), but other provisions of the framework purchase agreement provided that it "*has two parties and is made in two counterparts, one of which shall be received by each party*" (which might corroborate an interpretation that the parties to the arbitration clause are to be understood as only the seller and the buyer, but not the guarantor). Specifically, according to the Slovak Supreme Court:

> "*15. [...]. The Arbitration Act regulates in a dispositive manner the scope of relationships to which such an arbitration clause applies. It does not follow from any provision of the Arbitration Act that an arbitration clause also applies to entities outside the legal relationship, in which the arbitration clause establishes an arbitrator's or arbitral tribunal's jurisdiction to decide the case. Section 3(1) of the Arbitration Act provides clearly that an arbitration agreement is an agreement between the parties that all or some disputes which have arisen or will arise between them in a specified contractual or other legal relationship shall be decided in*

> *arbitration. However, an arbitration clause shall not apply to legal relationships involving third parties who have not consented to arbitration. A dispute between a guarantor and a creditor could only be arbitrable if the guarantor and the creditor had expressed their own will to vest jurisdiction over a dispute between them in arbitration, whether in an arbitration clause in the guarantor's declaration or otherwise, which must be clearly verified in their mutual agreement.*"[1]

The Slovak Supreme Court's decision does not appear convincing. In particular, it does not follow from this decision's reasoning that the text of the arbitration clause limits its personal scope to the seller and the buyer. To the contrary, the reference to the "*parties*" in the arbitration clause contained in a tripartite agreement between the creditor, the debtor and the guarantor captured in a single document is, in our view, a relatively straightforward indicator that the arbitration clause also applies to the guarantor. In addition, the court's decision does not tend towards a pragmatic resolution of disputes of this type because it does not ensure that such disputes can be heard before the same forum; as a result, the creditor will not be able to sue both the primary debtor and the guarantor in one proceeding, but will have to pursue arbitration in parallel with court proceedings, which also contradicts the presumption that the parties are interested in resolving their disputes before one forum.

(2) Slovak Supreme Court: a failure to invoke the review of the validity of an arbitration agreement through a specific action for setting aside an arbitral award cannot be circumvented by filing a general action for declaration that the arbitration agreement is invalid

The Slovak Supreme Court, as an extraordinary appellate court, assessed the admissibility of a general action for declaration of invalidity of an arbitration agreement under the Civil Procedure Code in a situation where the unsuccessful party to the arbitration could (and it also initially did) seek the review of the validity of the arbitration agreement through a specific action for setting aside an arbitral award under the Arbitration Act.

The Slovak Supreme Court upheld the lower courts' conclusions that such general action is inadmissible and the unsuccessful party to the arbitration may only seek the review of the validity of the arbitration agreement through a specific action for setting aside an arbitral award under the Arbitration Act:

> "*31. In the present case, in the lower courts' opinion, the question of the admissibility of the action was essential to the case. They gave sufficient and understandable reasons for their conclusion that it was inadmissible. The appellate court, referring to Section 40(1)(a) and Section 41 of the Arbitration Act, reasoned that the applicant had other available means under the law to reverse the arbitral award's effects, but it de facto failed to make effective use of them because it withdrew its earlier and timely filed action for setting aside the arbitral award, whereas that statutory and*

[1] Order of the Slovak Supreme Court dated November 29, 2023, docket no.: 7Cdo/104/2022.

> *time-limited possibility to review either the arbitral award or the underlying arbitration clause cannot subsequently circumvented by using (repeatedly) an action in civil proceedings for declaring the arbitration agreement's invalidity.*"[2]

The conclusion of the Slovak Supreme Court and the lower courts appears logical and correct. Slovak law recognizes an effective tool to review the validity of an arbitration agreement after an arbitral award has been rendered, which is an action for setting aside an arbitral award under the Arbitration Act. This act also sets out certain conditions for such review (e.g. a 60-day limit for filing such specific action) reflecting the internationally accepted UNCITRAL Model Law. Permitting the review of the validity of an arbitration agreement through a general declaratory action under the Civil Procedure Code would thus circumvent the specific conditions for such review set out in the Arbitration Act, significantly undermine the principle of legal certainty and, last but not the least, go against the legislator's declared objective of making the Arbitration Act compliant with the UNCITRAL Model Law.

(3) Regional Court in Bratislava: to decide on a request to suspend the enforceability of an arbitral award being challenged by a setting aside action until after rendering a decision on merits contradicts the purpose of the concept of suspension of enforceability of an arbitral award and the principle of the parties' legal certainty

The Regional Court in Bratislava, as an appellate court, assessed a case in which the first-instance court decided on a request to suspend the enforceability of arbitral award being challenged by a setting aside action until after having rendered a decision on the merits of such action. The Regional Court in Bratislava concluded that such procedure of the first-instance court contradicted the purpose of the concept of suspension of enforceability and the principle of the parties' legal certainty:

> "*20. With regard to the petitioner's objection concerning the first-instance court's decision on the petitioner's request to suspend the enforceability of the arbitral award at hand until after having rendered the judgment on merits (the second operative part of the challenged judgment), the appellate court holds that is not clear from which statutory provision the petitioner derives its argumentation, according to which the competent court should have decided on the suspension of enforceability of an arbitral award in its first interaction vis-à-vis the petitioner, but it is necessary to agree with the appellant that, in order to achieve the purpose of the concept of suspension of enforceability of a final, binding and enforceable decision, as well as in the interest of legal certainty of the parties to the dispute, it is desirable for the court hearing the case to rule on similar requests sooner than in the final decision on merits.*"[3]

The conclusion of the Regional Court in Bratislava can be welcomed. The standard practice of first-instance courts on requests to suspend the enforceability of arbitral

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[2] Judgment of the Slovak Supreme Court dated September 28, 2023, docket no.: 2Cdo/191/2021.

[3] Judgment of the Regional Court in Bratislava dated February 23, 2023, docket no.: 1CoR/3/2021.

awards being challenged by setting aside actions is just like the one criticized by the Regional Court in Bratislava. In practice, this often means that first-instance courts decide on a request to suspend the enforceability more than a year after it was filed, which significantly reduces the effectiveness of the concept of suspension of enforceability because there is often an ongoing execution based on the challenged arbitral award that may lead to irreversible consequences.

(4) Regional Court in Banská Bystrica: the execution court may, even on its own motion, stay execution proceedings based on an arbitral award, if the arbitral award has been challenged by a setting aside petition before a general court, although the general court hearing such action has not decided on the suspension of the arbitral awards' enforceability

The Regional Court in Banská Bystrica, as an appellate court, reviewed a decision of the execution court, by which it stayed the execution proceeding pending the proceedings before a general court on an action for setting aside an arbitral award being enforced. The execution court did so without the debtor's request, referring to the general provision of the Civil Procedure Code permitting a court to stay proceedings if there are other pending legal proceedings dealing with an issue that may be relevant to the court's decision. The Regional Court in Banská Bystrica upheld this decision of the execution court as correct:

> "*14. The first-instance court stayed the execution proceeding pending the proceedings before the District Court Banská Bystrica under docket no. 63Cr/4/2022. The appellate court holds that the first-instance court correctly reflected the pending proceedings before the District Court Banská Bystrica under docket no. 63Cr/4/2022 between the creditor in the position of respondent and the debtors in the position of claimants, in which the debtors seek the setting aside of the arbitral award, based on which the execution proceeding at hand was commenced and is to be carried out. As the execution proceeding can only be carried out based on an enforceable decision rendered in arbitration, then in case that there is a pending proceeding that may result in the execution title being annulled, the district court correctly suspended the execution proceeding "ex officio" because the decision in the matter pending before the District Court Banská Bystrica under docket no. 63Cr/4/2022 may have impact also on the decision to terminate execution, if the execution title was annulled in such proceeding.*
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> *15. By reference to the above, the appellate court holds that the execution proceeding at hand factually relates with the proceedings before the District Court Banská Bystrica under docket no. 63Cr/4/2022 in terms of the execution title because the court's decision in that proceeding may have a relevant impact on the course and final outcome of the execution. Therefore, it is uncertain in this stage of proceeding whether the execution in its further stage would be carried out based on a relevant execution title. Therefore, the continuation of the execution proceeding before rendering a decision by the District Court Banská Bystrica in the proceeding under docket no. 63Cr/4/2022 could violate the primary condition for carrying out the execution because, under Section 45(2)(d) of*

the Execution Code, only an enforceable decision rendered in arbitration, including a settlement approved therein, may be an execution title."[4]

These decisions appear controversial and it would be appropriate for the highest judicial instances to correct the conclusions expressed in them. In particular, the execution court's decision had practically the same effect on the arbitral award being enforced as a decision of a general court to suspend the enforceability of an arbitral award in a proceeding for setting aside an arbitral award under the Arbitration Act. If, however, a general court does not decide on such suspension, the execution court should not, as a matter of principle, interfere with that competence of the general court and certainly not on its own motion.

(5) Slovak Constitutional Court: a refusal to recognize a foreign arbitral award due to violation of the right to due process as part of Slovak public policy is only possible if the violation was so fundamental that it rendered the arbitration as a whole unfair

The Slovak Constitutional Court assessed under what circumstances a violation of the right to due process in arbitration may constitute a ground for refusal to recognize and enforce a foreign arbitral award due to a conflict with Slovak public policy (a so-called public policy exception).

The case concerned the recognition and enforcement of an arbitral award rendered by an arbitral tribunal of the Geneva Chamber of Commerce and Industry under Swiss substantive and procedural law. In this context, the Slovak Constitutional Court applied the public policy exception under the Convention between the Czechoslovak Republic and Switzerland on the Recognition and Enforcement of Judgments and its Supplementary Protocol, which, according to the Slovak Constitutional Court, corresponds to the public policy exception under the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The Slovak Constitutional Court concluded that the application of the public policy exception is only possible if the violation of the right to due process in the arbitration was so fundamental that it rendered the arbitration as a whole unfair:

"*103. The concept of public policy does not have its legal definition in international instruments or domestic law. Its task is to ensure that "the effects of foreign law do not subvert the cornerstones of the social and legal order of the state (a so-called public policy – ordre public)" (CSACH, K., ŠIRICOVÁ, Ľ. Introduction to the Study of Private and Procedural International Law. Košice : UPJŠ, 2011, p. 50). This concept constitutes a so-called rescue lever for states that allows competent authorities to prevent the enforcement of such arbitral awards on the territory of that state that are contrary to public policy and thus directly or indirectly harm or could harm the interests protected by that state (MIČINSKÝ, Ľ., OLÍK, M. Convention on the Recognition and*

[4] Order of the Regional Court in Trnava dated December 5, 2023, docket no.: 14CoEk/7/2023.

Enforcement of Foreign Arbitral Awards. Commentary. Wolters Kluwer, 2016, p. 251).

104. Both procedural and substantive law issues can be subsumed under the concept of public policy. The basis of procedural public policy is indisputably the right to due process as a fundamental human right. It is clearly in the public interest that fundamental procedural guarantees are respected also in arbitration (NOVÝ, Z., DRLIČKOVÁ, K. The Role of Public Interest in International Commercial and Investment Arbitration. 1st edition. Prague : C. H. Beck, 2017, p. 102). Thus, the court should refuse to recognize a foreign arbitral award if the arbitration was not conducted in accordance with the right to due process. The right to due process forms part of the (international) public policy of the Slovak Republic within the meaning of Article V(2)(b) of the New York Convention (and thus also within the meaning of Article I of the Treaty between the Czechoslovakia and Switzerland), and its violation may therefore lead to a contradiction with public policy and a refusal to recognize an arbitral award.

105. If a state refuses to recognize an arbitral award due to contradiction with public policy where the right to due process has been violated in the arbitration, it will not violate Article 46(1) of the Constitution, but the application of public policy will be affected by the manner in which the right to due process has been violated. Not every violation of the right to due process must lead to a refusal to recognize an arbitral award. Only where the arbitration as a whole shows that the process was not just, the court should refuse the recognition (Nový, Z., Drličková, K. The Role of Public Interest in International Commercial and Investment Arbitration. 1st edition, Prague : C. H. Beck, 2017, p. 44-45).

106. The relevant question was whether, in the circumstances of the case at hand, the right to due process was violated in such fundamental way that the arbitration as a whole was unfair and, therefore, it is necessary to refuse the recognition and enforcement of the arbitral award."[5]

The Slovak Constitutional Court's conclusions seem to be correct. The Slovak Constitutional Court followed-up on the conclusion of the Slovak Supreme Court in the reviewed order dated January 27, 2021, docket no. 5ECdo/16/2017, that the right to due process is part of Slovak public policy. The Slovak Constitutional Court clarified this Slovak Supreme Court's conclusion by narrowing down the possibility of judicial review of arbitral awards, which we consider to be a step in the right direction.

This case is also a useful reminder that when recognizing and enforcing foreign arbitral awards, it is also necessary to examine the existence of bilateral and other international treaties that may override the New York Convention and may otherwise lay down grounds for non-recognition and non-enforcement of a foreign arbitral award. In the present case, the bilateral treaty in question is the one with Switzerland that regulates the grounds for a refusal to recognize and enforce a foreign arbitral award more restrictively and does not recognize some of the grounds set out in the

[5] Order of the Slovak Constitutional Court dated March 29, 2023, docket no.: III. ÚS 433/2021.

New York Convention. However, this does not apply to the public policy exception, which the Slovak Constitutional Court has held to be identical as the public policy exception under the New York Convention, and therefore, in our opinion, the Slovak Constitutional Court's conclusions in the present case are equally applicable to the public policy exception under the New York Convention.

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