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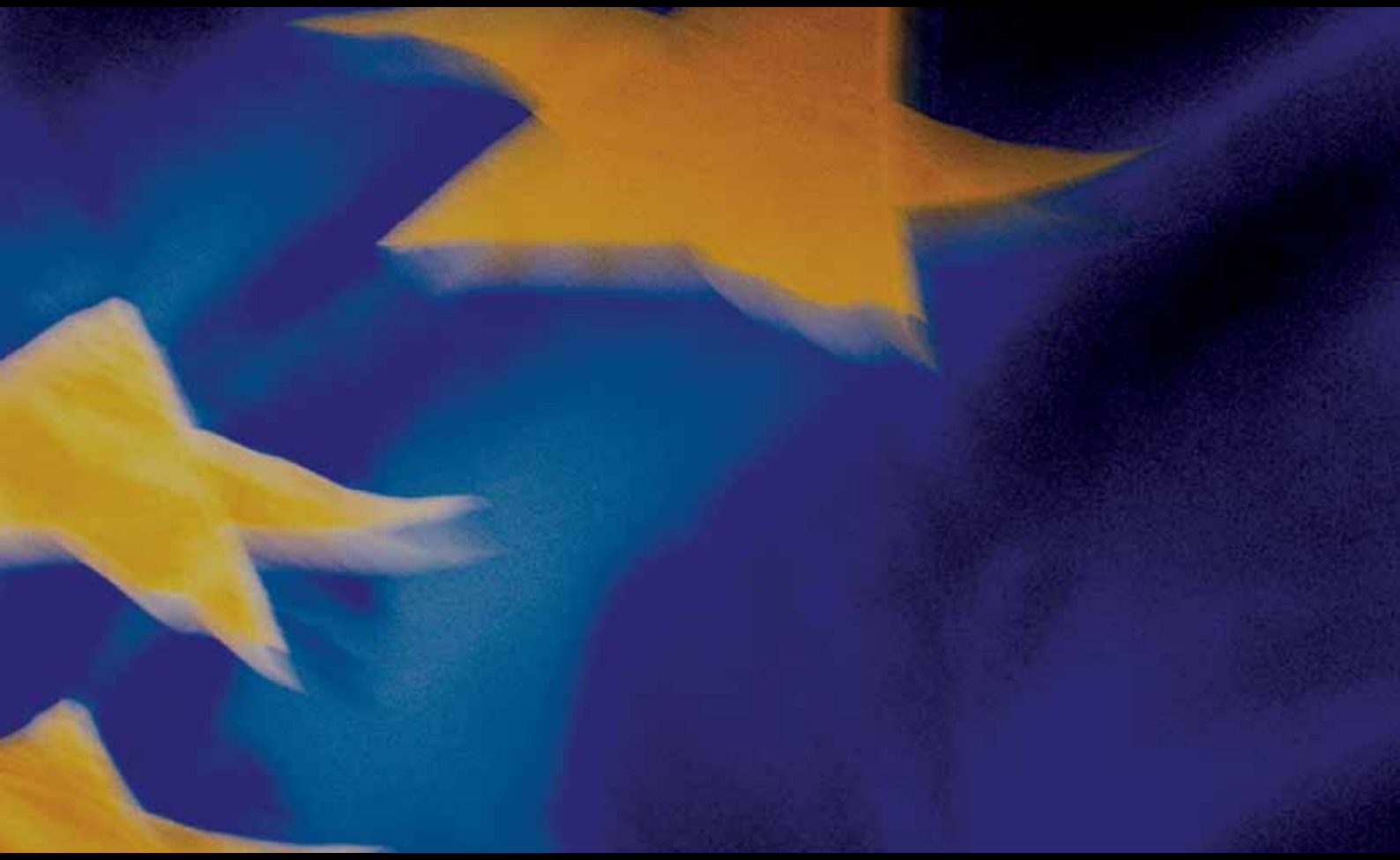

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Poland

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The Polish economy proved to be very resilient to the economic and financial crisis. Polish GDP grew by 3.8 per cent during 2010 and by 4.3 per cent in the first half of 2011, figures which were surprising for many but encouraging to both domestic and international business. The arbitration community has played a part in this vibrant level of business activity by contributing to the modernisation of the economy. Although the gap between the number of court cases (7.5 million) and the arbitration cases (1,000) is still dispiriting, there are several encouraging developments.

Arbitration landscape

Polish law

Arbitration is governed by part V of the Polish Code of Civil Procedure (CCP). The current rules applicable to arbitration were formulated in the amendment to the CCP enacted in 2005, which was based on the 1985 UNCITRAL Model Law on International Commercial Arbitration. It should be noted that the Polish legislator did not provide for a distinction between domestic and international arbitration, and made them both subject to the same regulation. Since 2005, the Polish arbitration law has not been modified in any material respect.

International law

Poland is a party to the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and to the 1961 European Convention on International Commercial Arbitration. It is also a party to the Energy Charter Treaty. Poland has not so far ratified the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States. However, Poland is a party to more than 60 bilateral investment treaties, the majority of which provide for the resolution of investment disputes in accordance with the rules laid down in the Washington Convention.

Arbitration rules

As in the case of other developed jurisdictions, the Polish statutory regulations on arbitration procedure may be supplemented or modified by the parties.[1] However, under article 1161 section 3 of the CCP, where an arbitration clause specifies a permanent court of arbitration as the body competent to resolve a dispute, the arbitration rules of that arbitration court are binding upon the parties. A characteristic feature of the Polish arbitration law is that, unless parties agree otherwise, parties are bound by the arbitration rules in force when the arbitration agreement was executed. Any contrary agreement must be expressly made in the arbitration clause.

This issue is of particular significance when an arbitration agreement refers to the Court of Arbitration at the Polish Chamber of Commerce, which is the largest and most popular arbitration court in Poland. It should be noted that over the last 20 years, the rules of this arbitration court have been substantially revised five times, including the amendments introduced every year in the period 2005 to 2007. Therefore, when dealing with arbitration agreements executed prior to 2007, it is necessary to carry out a thorough analysis of both the arbitration agreement and the successive versions of the rules of arbitration in order to determine the applicable rules governing the arbitration procedure.

Arbitration before the Polish courts

Since the Polish arbitration law follows to a great extent the UNCITRAL Model Law, the legislative provisions in the CCP are of little practical interest. Of more relevance is the issue of how those provisions operate in the Polish commercial context, and how they are applied by Polish state courts and Polish-seated arbitral tribunals. A review of the case law, as presented below, highlights the direction in which Polish courts are inclined to proceed when deciding on key legal issues relating to arbitration.

Arbitrability

Article 1157 of the CCP provides that the parties may submit to arbitration disputes regarding property rights and non-property rights – that may be subject to a court settlement – with the exclusion of claims for maintenance.

This provision was for a long time the subject of controversy as to whether the condition as to dispute settlement capability (contained in the phrase 'that may be subject to a court settlement') referred only to non-property claims, or whether it also extended to property claims. This issue was resolved in the Supreme Court's decision of 21 May 2010.[2] The Supreme Court held that this phrase referred to disputes over both property and non-property rights. It is now clear that dispute settlement capability constitutes the fundamental condition of arbitrability in any type of case.

In line with the Supreme Court's resolution of 7 May 2009,[3] the above principle applies also to internal corporate disputes, including actions to annul or set aside resolutions of the general shareholders meetings of joint stock and limited liability companies. In deciding on this issue, the Supreme Court solved a long-term controversy over the principles to be employed when determining the arbitrability of such disputes. The source of the concern was the provision of article 1163 section 1 of the CCP. Some legal writers argued that this provision had the nature of *lex specialis* to the general rule in article 1157 of the CCP and that, since article 1163 section 1 did not mention the condition of settlement capability, disputes arising out of a corporate relationship were arbitrable regardless of whether or not '[they] may be subject to a court settlement.' The Supreme Court did not share the above opinion and decided that the arbitrability of internal corporate disputes should be determined by the general principles set forth in article 1157. The Supreme Court concluded that arbitrable are only those disputes arising out of the corporate relationship that have settlement capability. The Supreme Court did not address the very issue of settlement capability of

internal corporate disputes, including the most frequent actions to annul or set aside corporate decisions. Nonetheless, the vast majority of legal writers refuse to acknowledge the settlement capability of disputes involving actions to annul or set aside corporate decisions, and it is thus assumed that such disputes are not arbitrable.

The closely related issues of arbitrability and settlement capability have been frequently dealt with by the Supreme Court. One reason for this is the fact that there is no legal definition of dispute settlement capability in the Polish legal system. Legal writers assume that – in addition to cases in respect of which settlement capability was expressly excluded[4] – all cases in which a party may not freely dispose of its rights resulting from the disputed relationship cannot be resolved under a court settlement.

It should be noted that the condition of settlement capability is considered to relate only to the abstract possibility for the parties to dispose of the rights in question and not the possibility to enter into a court settlement with specific content. This was acknowledged in three judgments issued by the Supreme Court in 2010, ie, the decisions of 21 May 2010,[5] 18 June 2010,[6] and the resolution of 23 September 2010.[7] Each of the above judgments was issued in connection with a dispute in which bank customers requested declaration of the non-existence of foreign exchange option contracts on grounds of the invalidity of those contracts. It is well known that under such contracts numerous entrepreneurs suffered considerable financial losses as a result of the global economic recession and the resultant weakening of the Polish currency. In each of the above cases, the same question arose: in light of the fact that the issue of existence, validity or invalidity of the contract cannot be determined by the intention of the parties and consequently cannot be the subject of a settlement, did such disputes have settlement capability?

The Supreme Court gave an affirmative answer to this question. It concluded that it was hypothetically possible for the parties to dispose of their rights resulting from a foreign exchange option contract and, therefore, a dispute regarding the validity of such agreement has settlement capability. It went on to hold that the fact that a dispute regards the issue of existence, validity or other defect of a legal transaction does not in the least affect the arbitrability of such dispute.

Arbitration agreement – ratione personae

It is well-established under Polish law that an arbitration agreement is binding not only upon its original parties, but also upon their legal successors, both universal and singular.[8] This rests on the premise that it is not the parties to an arbitration agreement but the specific legal relationships set forth in such an agreement that is submitted to arbitration (article 1161 section 1 of the CCP).

However, situations still occur in which courts have doubts as to the scope *ratione personae* of an arbitration agreement. An example is the dispute in which the Supreme Court adopted its resolution of 13 July 2011.[9] In the case in question, a bank executed with a registered partnership a framework agreement regarding execution and settlement of financial transactions, which provided for resolution of any disputes over the performance of the agreement by the court of arbitration at the Polish Bank Association. When a dispute arose, the bank filed a claim for payment of its receivables resulting from the agreement, not only against the registered partnership, but also against one of its partners and a limited liability company that had acquired the business enterprise of the partnership. The bank requested adjudication of the amount claimed from all the three respondents jointly and severally. The bank based its claim against the partner in the registered partnership on article 22 in conjunction with article 31 of the Code of Commercial Companies (CCC), pursuant to which, inter alia, each partner in a registered partnership is liable for the partnership's obligations without limitation, jointly and severally with the partnership. It based its claim against the purchaser of the business enterprise on article 55(4) of the Civil Code (CC), pursuant to which, inter alia, the purchaser of a business enterprise is jointly and severally liable with the seller thereof for the seller's obligations in connection with the running of the business enterprise.

In deciding the case, the Supreme Court addressed three questions: first, whether a joint and several debtor is bound by an arbitration agreement executed by another joint and several debtor; second, whether a partner in a registered partnership is bound by an arbitration agreement executed by the partnership; and third, whether a purchaser of a business enterprise is bound by an arbitration agreement executed prior to the sale of the business enterprise, between the seller and its creditor, where such arbitration agreement covers disputes involving obligations related to the running of the business enterprise.

The Supreme Court's answer to the first question was negative. It reasoned that each joint and several debtor had an independent status under a specific contractual obligation and, therefore, in order for such debtor to be bound by an arbitration agreement, its express consent was required. In this respect, the Supreme Court compared the legal situation of a joint and several debtor to the situation of a guarantor who is not bound by an arbitration agreement covering disputes arising out of a legal relationship between the creditor and the debtor. The Supreme Court's answer to the second question was also negative. It reasoned that a registered partnership was an entity separate from the partners who formed it. Article 22 and article 31 of the CCC do not affect that interpretation. The Supreme Court pointed out that the obligations of a registered partnership for which its partners were liable were, from their point of view, the obligations of a third party. Therefore, their situation cannot be considered equivalent to the situation of (universal or singular) successors in title, who are bound by an arbitration agreement. Finally, the Supreme Court gave an affirmative answer to the third question, pointing out that the liability of a purchaser under article 55(4) of the CC was recognised in the legal texts as a cumulative accession to a debt. The Supreme Court decided that the legal situation of a purchaser of a business enterprise was equivalent to the legal situation of the original debtor (seller); hence, such a purchaser acceding to a debt was also bound by an arbitration agreement covering disputes over obligations related to the running of the business enterprise. In this respect, the Supreme Court compared the situation of a purchaser of a business enterprise to that of a party taking over a debt.

Arbitration agreement – ratione materiae

Polish legal texts on arbitration and case law both endorse a broad interpretation of arbitration agreements stating only in general that 'any and all disputes arising out of a given contract (or in relation thereto) are to be referred to arbitration for resolution'. Such a general and concise wording of arbitration clauses is usually seen in model clauses recommended by Polish and foreign arbitration institutions and used in Polish commercial contracts.

The opinion that general arbitration clauses shall be construed as broadly as possible was shared by the Supreme Court in its

decision of 5 February 2009.[10] In that case, the arbitration clause covered any disputes as to the interpretation or performance of the provisions of an agreement on commercial cooperation. A dispute arose over actions taken by one of the parties in connection with performance of the agreement, which also constituted an act of unfair competition. The Supreme Court concluded that submission to arbitration of disputes resulting from a contractual relationship means that the arbitral tribunal is competent to decide any claims for performance of the agreement, claims resulting from non-performance or improper performance of the agreement, claims for restitution in the event of nullity or rescission of the agreement and even claims based on tort (delict) arising from an instance of non-performance or improper performance of the agreement.

This decision was well received by Polish arbitration practitioners. Therefore, it was all the more surprising to see the Supreme Court's decision of 2 December 2009,[11] issued just 10 months later, in which a much narrower interpretation of an arbitration clause was applied to very similar facts. In that case, the parties had entered into three agreements, incorporating identical arbitration clauses. The parties had agreed that any disputes arising out of the agreements or in connection therewith would be submitted to arbitration. The object of the agreements was commercial cooperation, consisting in the defendant selling in supermarkets goods purchased from the plaintiff. The plaintiff claimed reimbursement by the defendant of the profits obtained as a result of an act of unfair competition in the form of fees, other than the trade margin, charged by the defendant for admitting the goods into trading. The Circuit Court and the Court of Appeal both concluded that the dispute related to the agreements and, therefore, the arbitration clause applied. That interpretation was in line with the Supreme Court's decision of 5 February 2009. However, this time the Supreme Court did not share the above opinion and concluded that the arbitration clause did not apply to the dispute in question. The Supreme Court reasoned that it could hardly be assumed that, when executing the provisions in question, the parties had anticipated an act of unfair competition to be committed by one of them and that such disputes should be submitted to arbitration. This decision was badly received by arbitration practitioners, being regarded on the one hand as incoherent in the context of the Court's previous case law and on the other as a step backwards in relation to the broad interpretation of general arbitration clauses.

Multi-tier arbitration clauses

Over the past five years, the number of construction disputes has soared in Poland. A substantial portion of such disputes are handled by arbitral tribunals. This increase is not surprising given the fact that the construction industry is one of the key sectors driving the Polish economy. In 2010 alone, the value of contracts for freeway and motorways construction exceeded 60 billion Polish złotys. Such contracts represent only a fraction of all the construction investments currently underway in Poland.

It is well known that the majority of large infrastructure investments, such as freeways or stadiums, are made pursuant to contracts based on standard conditions developed by the International Federation of Consulting Engineers (FIDIC). Characteristic features of those standard conditions of contract include multi-tier arbitration clauses that create an obligation on the parties to submit claims to a Dispute Adjudication Board (DAB) prior to referring the same to arbitration.

An example of such a multi-tier arbitration provision is Clauses 20.2 through 20.7 of the FIDIC Red Book. It is on the basis of those provisions that the Court of Appeal in Warsaw issued its judgment of 19 November 2010,[12] in which it addressed, inter alia, the issue of the legal consequences of a party's failure to satisfy the requirement to submit a claim to a DAB. The Court of Appeal reasoned that a failure to satisfy that requirement did not affect the jurisdiction of the arbitral tribunal and, therefore, all decisions of arbitral tribunals to reject the claims in such a case due to lack of jurisdiction were incorrect. The Court of Appeal concluded that a failure to exhaust the DAB procedure resulted only in a temporary lack of the defendant's capacity to be sued and, in consequence, a statement of claim filed under such circumstances should be dismissed as premature. At this point, the Court of Appeal referred by analogy to Supreme Court case law concerning a failure of the parties to exhaust the pre-court claim procedure that conditions the right to pursue claims in court pursuant to article 75 of the Transportation Law. The Court of Appeal relied on the Supreme Court's judgment of 10 April 2002,[13] in which it had held that a failure to exhaust the above claim procedure – imposed by the law – causes only a temporary lack of the capacity to be sued and should result in the statement of claim being dismissed as prematurely filed. In the opinion of the Court of Appeal, where a tribunal finds that a party has failed to the DAB procedure – provided for in a contract – it should act in a similar way.

This issue is not only of theoretical significance; it carries serious consequences for the parties to an arbitration proceeding. According to the decision of the Court of Appeal, the arbitral tribunal should, in such a case, issue an award dismissing the statement of claim as premature. The claimant's remedy at law in the case of such a decision would be an application for setting aside the award. However, if we assume that a failure to satisfy the above requirement resulted in lack of jurisdiction of the arbitral tribunal, then, pursuant to article 1198 section 2 of the CCP, the arbitral tribunal should issue a decision discontinuing the proceeding. As article 1198 section 2 is of iuris dispositivi nature, it is often modified in institutional arbitration rules and replaced with a decision on rejection of the statement of claim. Such a modification is of no significance from the parties' point of view as, in such a case, neither the decision on discontinuation of the proceeding nor the decision on rejection of the statement of claim is appealable. This was acknowledged in the Supreme Court's judgment of 28 January 2011,[14] pursuant to which only a positive jurisdictional decision of an arbitral tribunal may be appealed to a state court, while a negative one cannot be challenged. Furthermore, it is argued in the legal texts that such an approach to the DAB issue may result in arbitration clauses being circumvented by the parties. It should be borne in mind that if the arbitral tribunal declares itself to be without jurisdiction, the competent court will be the state court. Therefore, if wishing to avoid a dispute being decided by arbitration as agreed upon in the arbitration clause, a party might, while bypassing the DAB procedure, refer the dispute to a state court.

This issue of the legal consequences of a failure to satisfy the prerequisite to submit a claim to a DAB is currently under consideration by the Supreme Court, which may endorse either of the above concepts or support a third view, ie, that a failure to satisfy such a requirement does not trigger any legal consequences apart from the parties' liability for damages in connection with non-performance of the contractual provisions.

Bankruptcy

One of the characteristic features of Polish arbitration law is the relationship between arbitration and bankruptcy proceedings. It is argued that in order to accomplish the goals of a bankruptcy procedure, a dispute involving a bankrupt party should be resolved in strict compliance with the letter of the substantive and procedural law. In that context, the flexible nature of arbitration proceedings is said to be not desirable in the event one of the parties is declared bankrupt.

For these reasons, the Polish legislator introduced the provisions of article 142 and article 147 of the Bankruptcy and Reorganization Law (BRL), which provide that an arbitration agreement executed by a party expires on the date of its entry into bankruptcy proceedings and any arbitration proceedings pending on that date are discontinued. These rules apply both to a declaration of bankruptcy with the possibility of entering into an arrangement with creditors and to a declaration of bankruptcy coupled with liquidation of the party's assets.

These provisions raise a number of issues, mostly procedural in nature, that have been considered by the Supreme Court on numerous occasions. In its decision of 25 March 2009,[15] the Supreme Court held that the expiry of an arbitration agreement means that where a statement of claim is filed with a state court following the declaration of bankruptcy, the defendant cannot effectively raise an objection based on the existence of an arbitration clause. In consequence, rejection of the statement of claim on the basis of article 1165 section 1 of the CCP is excluded. The Supreme Court sustained the above opinion in its decision of 23 September 2009,[16] in which it further reasoned that the expiry of an arbitration agreement as a result of a declaration of bankruptcy caused discontinuance only of pending arbitration proceedings involving the bankrupt party and did not affect any court proceedings or administrative procedures. In particular, a proceeding before a state court, for setting aside an arbitral award, is not subject to discontinuance under such circumstances. Incidentally, the Supreme Court noted that if the arbitral tribunal did not discontinue an arbitration proceeding and rendered an award despite a prior declaration of a party's bankruptcy, the expiry of the arbitration agreement resulting from bankruptcy served as grounds for setting aside such an award.

The operation of these regulations in the international arbitration context seems to be of special interest. The decision most frequently referred to in this respect is the judgment of the Court of Appeal in Warsaw, dated 16 November 2009,[17] in the *Vivendi v Elektrim* case. The Court of Appeal addressed the question of whether it could recognise an award of a London-seated LCIA arbitral tribunal, issued despite the fact that the respondent, the Polish company Elektrim, had been declared bankrupt during the course of the arbitration proceedings. The Circuit Court in Warsaw had refused to recognise the award, reasoning that, due to the mandatory nature of the provision of article 142 of the BRL, recognition of the award would be in conflict with the public policy of the Republic of Poland. The Court of Appeal did not share this opinion. It referred to the definition of mandatory rules in article 7 of the 1980 Rome Convention and article 9 of the Rome I Regulation. The Court of Appeal held that there existed no grounds for recognizing article 142 of the BRL as a mandatory rule, because it did not serve the purposes of providing a direct protection of important public interests of the Republic of Poland. The purpose of the said provision is, in the first place, to guarantee the accomplishment of the goals of the bankruptcy procedure, notably the protection of creditors of the bankrupt debtor. The interest of a group of creditors, no matter how large the group, could not be equated with the public interest of the Republic of Poland.

Setting aside an arbitral award

An arbitral award may be set aside only in the context of an application filed at court under the relevant provisions (articles 1205 through 1211 of the CCP). Such application is filed with the state court that would have been competent to resolve the case had the parties not executed an arbitration agreement. The deadline for filing such an application is three months following the date on which the award was served or, in the event that a party requests supplementation, rectification or interpretation of the award, three months following the date on which the arbitral tribunal renders its decision on such a request. This time limit is one of the longest ones offered by the Polish legislator to an entity for challenging any judgment of a court or tribunal.

The list of grounds upon which an application for setting aside an arbitral award may be based is contained in article 1206 of the CCP. That is an exhaustive list which, to a great extent, repeats the grounds set forth in article 34 of the UNCITRAL Model Law. Two of those grounds may be raised by a state court ex officio, namely the situation in which a dispute is not arbitrable and where the arbitral award is in conflict with the fundamental principles of the legal order of the Republic of Poland (the public policy clause).

Unsurprisingly, the public policy clause raises the most serious concerns. The scope of that provision has been considered by the Supreme Court on numerous occasions. In an attempt to define this broad concept, the Supreme Court concluded on several occasions that it covered exclusively the fundamental constitutional rules and the supreme principles governing the specific fields of law, both substantive and procedural,[18] that fell within the scope of 'public policy.' Thus, not every type of infringement upon the substantive or procedural law, and not even an obvious one, may serve as grounds for setting aside an arbitral award on the basis of the public policy clause.

The Supreme Court has faced the problem of identifying the supreme principles of the Polish legal order on numerous occasions. In its judgment of 11 June 2008,[19] the Supreme Court pointed out that adjudication of compensation in the event no damage had been inflicted should be deemed to be in conflict with the fundamental principles of the Polish legal order. It assumed that the principle of the restitutive nature of liability for damages, according to which compensation should correspond to the damage and not result in enrichment of the injured party, was one such principle. In another judgment of 27 November 2007,[20] the Supreme Court concluded that substitution of the parties by the arbitral tribunal in making declarations on the extension of the term of lease agreements is in conflict with the principle of freedom of contract. The Supreme Court argued that such a decision, given the absence of any express provision of the agreement permitting such rulings, infringed a fundamental principle of the Polish legal order, ie, the principle of autonomy of civil law entities. Finally, in its judgment of 11 July 2002,[21] the Supreme Court noted that an arbitration award approving, in breach of the requirements set forth in statutory provisions, the consequences of a tender procedure that had deprived the claimant of the possibility of effectively applying for an award of contract, could infringe the constitutional principle of freedom of business activity and, as such, constitute a ground for setting aside an arbitral award.

A recent judgment of the Supreme Court, dated 9 September 2010,[22] deserves special attention. This was a rare case in which the Supreme Court referred to 'procedural public policy' as the ground for setting aside an arbitral award. In that case, after completion of the arbitration proceedings, it was discovered that one of the arbitrators maintained social and professional relations with the claimant. The Supreme Court concluded that the lack of impartiality on the part of the arbitrator caused the arbitral award to be in conflict with the fundamental principles of the legal order. It reasoned that the right to be heard, provided for in article 45.1 of the Constitution of the Republic of Poland (under which 'everyone shall have the right to have their case heard by an independent court in fair proceedings') had been infringed upon. The Supreme Court emphasised that the principle of having a case heard by a competent, impartial and independent court applied to each and every court proceeding, and also one before an arbitral tribunal which is deemed a court of trust.

Arbitration culture

Courts of arbitration

There are several dozen permanent courts of arbitration in Poland. However, many of them do not carry out any activities and exist only formally. Only a few courts of arbitration play a significant role in commercial matters. Among those, the Court of Arbitration at the Polish Chamber of Commerce (PCC) and the Court of Arbitration at the Polish Confederation of Private Employers Lewiatan (Lewiatan) are of key importance. Those two courts not only resolve the vast majority of arbitration disputes in Poland, but also shape arbitration culture by organising conferences, workshops and seminars.

The Court of Arbitration at the PCC has the longest history. Established in 1950, it was for a long time the only institution offering the assistance of experienced, well-qualified arbitrators. Over the last 60 years, the Court of Arbitration at the PCC has built a reputation and won recognition among lawyers and businessmen, which has translated into the PCC administering the greatest number of arbitration disputes handled in the region (between 300 and 500 disputes annually).

The Lewiatan Court of Arbitration was established in 2005. It is a dynamic institution actively engaged in promoting the idea of arbitration, thanks to which the number of disputes it handles has considerably increased. Despite the fact that the Lewiatan Court of Arbitration has been operating for only six years, it has already registered 64 arbitration disputes, including 15 disputes in 2009, 21 disputes in 2010, and no fewer than 17 in the first half of 2011.

The natural competition between the Court of Arbitration at PCC and the Lewiatan Court of Arbitration has substantially stimulated Polish arbitration culture. Those courts attempt to outdo each other in proposing initiatives promoting the idea of arbitration in academic and business circles. Over the last two years, the two courts have been involved in a dozen or so arbitration conferences and seminars. Such events have frequently been organised in cooperation with foreign arbitration organisations and institutions, and have proved to be very popular with European arbitration practitioners. Notable conferences include the 'International Commercial Arbitration – Austrian/Polish Twin Conference' organised by the Lewiatan Court of Arbitration in cooperation with the Austrian Arbitration Association; and 'Dispute resolution in M&A transactions: Tactics, Challenges, Defenses' organised by the Lewiatan Court of Arbitration in cooperation with the International Chamber of Commerce. Both the Court of Arbitration at PCC and the Lewiatan Court of Arbitration publish bulletins dedicated to Polish and international arbitration.

Arbitration organisations

The arbitration culture in Poland is influenced not only by the initiatives put forward by permanent courts of arbitration, but also by the activities of arbitration organisations. The leading organisation in this field is the Polish Arbitration Association (PAA), which has been supporting the development of arbitration in Poland for over 20 years. PAA holds arbitration seminars and produces a quarterly publication dedicated to arbitration and other methods of alternative dispute resolution.

Younger arbitration practitioners are gaining more and more importance. In December 2010, the first Polish organisation of arbitration practitioners under the age of 40 was established: the Young Arbitration Practitioners in Poland (YAPP), affiliated with the Lewiatan Court of Arbitration. The purpose of YAPP is to offer younger arbitration practitioners an opportunity to exchange opinions on and knowledge about arbitration. By organising conferences, seminars and workshops, YAPP promotes arbitration in Poland and Poland in arbitration circles abroad. One of the major goals of YAPP is to assist moot court participants in expanding their arbitration expertise. YAPP is a co-organiser of Polish pre-moots for VIS, FDI and FIAMC.

Interestingly, in September 2011, the Court of Arbitration at PCC also established a dedicated platform for young arbitration practitioners, in this case for lawyers under 45. Although the Young Arbitration Forum does not have the status of an organisation, it does provide an equally appealing formula for regular meetings of young arbitration practitioners and will undoubtedly contribute to promoting the idea of arbitration in Poland.

Cases

The majority of arbitration disputes in Poland are resolved by permanent courts of arbitration, and most of them by the Court of Arbitration at PCC and the Lewiatan Court of Arbitration. The statistics of those two courts show that the number of arbitration cases handled in this region has substantially increased over the last four years. It is sufficient to refer to the caseload of the Court of Arbitration at PCC. In 2008, 260 arbitration proceedings were instituted in that court alone; in 2009, the number of such proceedings rose to 352; and in 2010, no fewer than 440 new proceedings were instituted. Up to 31 August 2011, 270 new arbitration disputes were registered, which shows that the upward trend is being maintained.

It is also worth mentioning that the number of disputes involving at least one non-Polish party keeps increasing. In 2008, 47 such disputes were instituted at the Court of Arbitration at the PCC; in 2009, the number of such disputes rose to 66; and in 2010, no fewer than 100 disputes with the participation of a foreign entity were instituted. The value of arbitration disputes also continues to increase. The overall value of disputes in 2008 and 2009 was similar, at approximately 755 million Polish złotys, but in 2010 that figure increased to 1.5 billion Polish złotys. The average value of a claim has also increased, from approximately 3 million Polish złotys in 2008, to approximately 3.5 million Polish złotys in 2010.

The statistics of the Court of Arbitration at the PCC and of the Lewiatan Court of Arbitration show that the majority of arbitration cases in Poland involve the real estate sector, and that most of such

procedures are construction disputes. Disputes regarding commercial issues rank second. Certainly, when compared with the number of civil law cases instituted at state courts, the number of disputes resolved by courts of arbitration is very small. However, it would perhaps be premature to read too much into this disparity, given that the Polish free market economy has only recently celebrated the 20th anniversary of its establishment.

Notes

1 The rules of arbitration proceedings, as set forth in the arbitration agreement or in the rules of a permanent court of arbitration, may not be in conflict with iuris cogentis provisions of the CCP (Judgment of the Supreme Court, dated 3 June 1987, I CR 120/87, OSNC 1988/12/174).
2 Decision of the Supreme Court, dated 21 May 2010, II CSK 670/09, OSNC 2010/12/170.
3 Resolution of the Supreme Court, dated 7 May 2009, III CZP 13/09, OSNC 2010/1/9.
4 Social security disputes and unlawful form agreements are excluded from settlement pursuant to, respectively, article 477(12) and article 479(41) of the CCP, and consequently these disputes are non-arbitrable.
5 Decision of the Supreme Court, dated 21 May 2010, II CSK 670/09, OSNC 2010/12/170.
6 Decision of the Supreme Court, dated 18 June 2010, V CSK 434/09, LEX No. 738365.
7 Resolution of the Supreme Court, dated 23 September 2010, III CZP 57/10, OSNC 2011/2/14.
8 Judgment of the Supreme Court, dated 3 September 1998, I CKN 822/97, OSNC 1999/2/39; Decision of the Supreme Court, dated 1 March 2000, I CKN 845/99, Biul. SN 2000/7/7.
9 Resolution of the Supreme Court, dated 13 July 2011, III CZP 36/11, Biul. SN 2011/7.
10 Decision of the Supreme Court, dated 5 February 2009, I CSK 311/08, LEX No. 492144.
11 Decision of the Supreme Court, dated 2 December 2009, I CSK 120/09, LEX No. 584183.
12 Judgment of the Court of Appeal in Warsaw, dated 19 November 2010, VI ACa 237/10, unpublished.
13 Judgment of the Supreme Court, dated 10 April 2002, IV CKN 939/00, LEX No. 560880.
14 Judgment of the Supreme Court, dated 28 January 2011, I CSK 231/10, LEX No. 784175.
15 Decision of the Supreme Court, dated 25 March 2009, V CSK 390/08, LEX No. 508817.
16 Decision of the Supreme Court, dated 23 September 2009, I CSK 121/09, OSNC 2010/4/57.
17 Judgment of the Court of Appeal in Warsaw, dated 16 November 2009 r, I ACz 1883/09, unpublished.
18 Decision of the Supreme Court, dated 9 March 2004, I CK 412/03, LEX No. 183721; Judgment of the Supreme Court, dated 3 September 2009, I CSK 53/09, LEX No. 527154.
19 Judgment of the Supreme Court, dated 11 June 2008, V CSK 8/08, LEX No. 400965.
20 Judgment of the Supreme Court, dated 27 November 2007, IV CSK 239/07, LEX No. 488974.
21 Judgment of the Supreme Court, dated 11 July 2002, IV CKN 1211/00, OSNC 2003/9/125.
22 Judgment of the Supreme Court, dated 9 September 2010, I CSK 535/09, LEX No. 602748.

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Maciej Jamka is a Polish advocate with more than 20 years of experience. He practices in all areas of Polish law, with particular emphasis on litigation, mergers and acquisitions and real estate.

Mr Jamka is one of the most respected active lawyers in the litigation and arbitration practice in Poland. He has represented clients in some major disputes in Poland, including representation of the Republic of Poland in some major bilateral investment treaties and leading international corporations with regard to investment disputes. A significant part of his practice relates to construction disputes.

He has advised clients with regard to the acquisition of a variety of companies and assets from various industries, as well as regarding major mergers of companies. He has also advised clients on major greenfield investments in Poland.

A significant portion of Mr Jamka's practice relates to the acquisition of commercial centres, office buildings, undeveloped plots and agricultural land. He has advised clients on the administrative issues related to construction projects in Poland.

Mr Jamka is frequently appointed as an arbitrator in commercial disputes.

Agnieszka Wojciechowska
K&L Gates Jamka Spk

Agnieszka Wojciechowska is a Polish advocate. Her practice focuses on litigation across a wide range of civil and commercial matters. Ms Wojciechowska has extensive experience in representing local and foreign clients in many aspects of dispute resolution, including arbitration and mediation. Her practice encompasses cross-border litigation, institutional and ad hoc arbitration, as well as conduct of settlement negotiations.

Ms Wojciechowska counsels corporates and individuals particularly in the areas of commercial disputes, corporate governance, bankruptcy proceedings, fraud related cases, public tender issues and personal interest protection. She represents clients across a wide variety of industries, including construction, financial services, transportation, real estate, food and energy.

Ms Wojciechowska practices in international litigation and arbitration with a particular focus on complex, high-value disputes involving infrastructure, manufacturing and property development projects. A substantial part of her practice is devoted to resolving disputes in the construction and engineering industry.

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