Czech (& Central European) Yearbook of Arbitration®

Czech (& Central European) Yearbook of Arbitration®

Volume X

2020

Arbitration and International Treaties, Customs and Standards

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LEX LATA

Printed in the EU.
ISBN/EAN: 978-90-829824-2-8
ISSN: 2157-9490

Lex Lata B.V.
Mauritskade 45-B
2514 HG – THE HAGUE
The Netherlands

Typeset by Lex Lata B.V.

Address for correspondence & manuscripts

Czech (& Central European) Yearbook of Arbitration®

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Proofreading and translation support provided by:
SPĚVÁČEK překladatelská agentura s.r.o., Prague, Czech Republic and Pamela Lewis, USA.

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List of Abbreviations

ADR	Alternative Dispute Resolution
ALARB	The Latin American Arbitration Association
BITs	Bilateral investment treaties
Brexit	The United Kingdom's departure from the European Union
CCP	The Code of Civil Procedure
CIArb	Chartered Institute of Arbitrators
CJEC	the Court of Justice of the European Communities
EU	European Union
HKIAC	Hong Kong International Arbitration Centre
IBA	International Bar Association
IBA Guidelines	IBA Guidelines on Conflict of Interest in International Arbitration
ICC	International Chamber of Commerce. May also refer to the ICC International Court of Arbitration, depending on the context.
ICC Rules	ICC Rules of Arbitration (either the 1998 ICC Rules, or the 2012 ICC Rules, depending on the context; the current version is the 2012 ICC Rules as amended and effective since 1 March 2017).
ICC Court	ICC International Court of Arbitration.
ICCA	International Congress and Convention Association
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the settlement of investment disputes between States and nationals of other States (1958)
ISDS	Investor-state dispute settlement
LCIA	London Court of International Arbitration
MMR	Morbidity and Mortality Report
NAFTA	North American Free Trade Agreement
P2P	Peer-to-Peer
PILA	(Swiss) Private International Law Act
RAS	Riunione Adriatica di Sicurtà

SCC	Stockholm Chamber of Commerce. Also refers to the Arbitration Institute of the SCC, depending on the context.
SCC Rules	Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (the current version entered into force on 1 January 2017).
SCEUS	Salzburg Centre of European Union Studies
SIAC	Singapore International Arbitration Centre
SLTA	Swiss LegalTech Association
UKIP	The United Kingdom Independence Party
UNCITRAL Model Law	UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006
UNCITRAL	The United Nations Commission on International Trade Law
UNCITRAL Rules	UNCITRAL Arbitration Rules, as amended in 2013
UNCTAD	United Nations Conference on Trade and Development
US	United States
ZPO	Zivilprozessordnung

Articles

Rafał Kos | Magdalena Mentel-Rogowska

New Provisions Regarding Arbitration that Were Entered into Force by the Polish Act of 31 July 2019 Amending Certain Acts in Order to Limit Regulatory Burdens (Journal of Laws of 2019, item 1495)

Key words:
arbitrability | settleability | civil procedure | domestic law

Abstract | *This article discusses the latest amendments to the Polish Act of 17 November 1964 - The Code of Civil Procedure (Journal of Laws of 2019, item 1460, as amended) regarding arbitration. New regulations were entered into force on 8 September 2019 as a result of suggestions made by scholars over the past few years, especially regarding the notion of arbitrability. The aim of this article is to explain the doubts that arose based on the previous wordings of provisions regarding arbitrability, and to present the current provisions of the Code of Civil Procedure. The authors also analyze the new provisions on arbitration, and discuss some of the concerns that might arise from those new provisions regarding arbitration and arbitrability. The authors especially focus on doubts raised regarding the arbitrability of disputes concerning the validity of resolutions of companies, as well as presenting questions regarding the newly remodeled provisions concerning this matter.*

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I. Introductory Notes

4.01. Under the Polish Act of 31 July 2019 Amending Certain Acts in Order to Limit Regulatory Burdens (Journal of Laws of 2019, item 1495), the provisions of the Act of 17 November 1964 - The Code of Civil Procedure (CCP) (Journal of Laws of 2019, item 1460, as amended) concerning arbitration were amended. In particular, Article 1157 of the Code of Civil Procedure concerning arbitrability was amended, as well as Article 1163 of the Code of Civil Procedure concerning the possibility of including a provision for an arbitration court in the articles of association (statutes) of a commercial company. The new provisions on arbitration were entered into force on 08 September 2019.

4.02. Pursuant to the new wording of Article 1157 of the CCP, unless a special provision provides otherwise, the parties may submit the following matter for settlement to an arbitration court if: 1) the disputes are about property rights, except for alimony cases; or 2) the disputes are about nonmaterial rights, if they may be the subject of a court settlement.

4.03. The introduction of the new wording of Article 1157 of the CCP eliminates the existing dispute concerning the material scope of the arbitrability. Until now, due to the fact that the provision contained the restriction of the 'subject-matter of a court settlement',[1] it was unclear whether the requirement of settleability referred only to non-economic disputes or if this requirement concerned both property and non-economic disputes.

4.04. The amendment to the provision of Article 1157 of the CCP eliminated the aforementioned dispute. In view of the new wording of the provision, there is no longer any doubt that the criterion of settleability should be applied only to disputes concerning nonmaterial rights.

4.05. Further, the introduction of an amendment to the provisions of Article 1157 of the CCP also results in the final conclusion of a discussion lasting for years concerning the possibility of submitting disputes concerning the validity of resolutions of capital companies to an arbitration dispute resolution.

[1] Pursuant to Article 1157 of the CCP as amended before 08 September 2019: Unless a special provision provides otherwise, the parties may submit to an arbitration court disputes on property rights or on non-property rights - which may be the subject of a court settlement, with the exception of cases on alimony.

II. Understand the Notion of Arbitrability under the Previous Regulations

4.06. The concept of *arbitrability* (Polish *zdolność arbitrażowa*, French *arbitrabilité*, German *Schiedsfähigkeit*) is understood as the property of a dispute or case that makes it possible for a given dispute to be submitted to arbitration court by the parties to the dispute. In other words, arbitrability means that the dispute(s) in question can be submitted to the jurisdiction of the arbitral tribunal.[2]

4.07. Pursuant to the previous wording of the of Article 1157 of the CCP, the parties could submit disputes concerning property rights or non-life rights - which could be the subject of a court settlement, with the exception of alimony cases, to an arbitration court. Of course, the scope of arbitrability, as defined by Article 1157 of the CCP, should be interpreted together with the provision of Article 1 of the CCP[3] and Article 2 of the CCP,[4] i.e. with the provisions defining the commencement of a civil case and the concept of admissibility of court proceedings in civil cases.

4.08. The category of cases which could be submitted to arbitration on the basis of the previous provision of Article 1157 of the CCP was broad. In fact, all civil cases for which court proceedings were admissible, were also arbitrable, provided, of course, that the case possessed settleability. Therefore, arbitrability was provided in civil law cases, i.e. cases in which there is equivalence of entities and equivalence of benefits. Therefore, all cases in the scope of administrative law and criminal law were excluded. Additionally, it included cases in labour law and family and guardianship law, provided that these cases were settleable. The existing provision of Article 1157 of the CCP directly excluded only proceedings in alimony cases from the jurisdiction of arbitration courts.

4.09. As already indicated above, all civil cases for which court proceedings were admissible were arbitrable. This included both disputes over property rights and non-asset rights, provided

[2] TADEUSZ ERECIŃSKI, KAROL WEITZ, SĄD ARBITRAŻOWY [ARBITRAL TRIBUNAL], LexisNexis (2008).

[3] In accordance with Article 1 of the CCP: The Code of Civil Procedure regulates court proceedings in matters relating to civil law, family and guardianship law and labor law, as well as in matters relating to social security and other matters to which the provisions of this Code apply by virtue of special acts or civil cases.

[4] Pursuant to the provision of Article 2 of the CCP:

paragraph 1. Common courts are established to hear civil cases, unless they fall within the jurisdiction of special courts, and the Supreme Court.

paragraph 1a. (repealed).

paragraph 2. (repealed).

paragraph 3. Civil law cases shall not be dealt with in judicial proceedings if specific provisions confer on them the jurisdiction of other authorities.

that such disputes were suitable for settlement, i.e. as long as such disputes could be the subject of a court settlement.

4.10. It is generally recognized that the arbitrability must first and foremost be interpreted on the basis of provisions of substantive law, but the relevant provisions of procedural law may also be relevant, in particular the first sentence of Article 184 of the CCP[5] which indicates that Civil cases of a certain nature may be settled before filing a complaint.

4.11. As a general rule, a court settlement may be reached in a case concerning a legal relationship in which the parties have, under substantive law, the possibility of having their own rights or claims arising from that relationship at their disposal. This means that the parties to the proceedings have the possibility to dispose of the rights and claims themselves, e.g. on the basis of a contract or an agreement. On the other hand, a lack of settleability occurs when the parties to the proceedings are not able to dispose of their rights and claims independently (in other words, when they are not at the disposal of the parties).[6]

4.12. As already mentioned above, both disputes over property rights and non-asset rights have arbitrability. In the Polish system of civil law, the property nature of cases is such that they are aimed at the execution of a law or a right directly affecting the property relations of the parties, while the claim itself does not have to be of a pecuniary nature. This means that matters of property may include both claims for benefits and claims for the determination or formation of a law or a legal relationship.[7] For example, disputes about property rights will be disputes about proprietary rights, family rights or rights on intangible assets, e.g. copyrights. On the other hand, disputes concerning non-property rights *per analogiam* are disputes which do not have a direct impact on the property relations of the parties. Therefore, they will be mainly disputes about personal rights, as well as disputes about non-property family rights, e.g. resulting from marriage or kinship.

4.13. It should be noted, however, that in the scholarly doctrine there has been a dispute as to whether, on the basis of the wording of the previous provision of Article 1157 of the CCP, settleability should be available both in disputes concerning property and non-property rights or only in disputes concerning non-

[5] Pursuant to Article 184 of the Civil Procedure Code, civil cases whose nature permits it may be settled by a settlement concluded prior to filing a statement of claim. The court will declare the settlement inadmissible if its content is inconsistent with the law or the principles of social coexistence or if it is aimed at circumventing the law.

[6] TADEUSZ ERECIŃSKI, KAROL WEITZ, SĄD ARBITRAŻOWY [COURT OF ARBITRATION], LexisNexis (2008).

[7] Judgment of the Supreme Court of 05 August 2009, ref. no. II PZ 6/09.

property rights (see below for further discussion). However, apart from the problem pointed out above, it should also be noted that significant cases of disputes concerning nonmaterial rights cannot be the subject of a court settlement at all, and thus do not have arbitrability. Such cases which do not have the capacity to be settled, although they are civil cases for which judicial proceedings are admissible, include, *inter alia*, some family law cases, e.g. for the annulment of marriage, for divorce and separation, or for determining the child's descent.[8]

4.14. It is also worth noting that settleability, and thus – arbitrability, may also be explicitly excluded under other legal provisions. For example, social security cases have also been explicitly excluded from arbitration courts.[9]

4.15. In literature and jurisprudence it is debatable whether disputes concerning the validity of resolutions of limited liability companies[10] have arbitrability. While legislators explicitly provided arbitrability for disputes arising out of company relations,[11] a group of scholars have indicated that it is not possible to submit to courts disputes concerning the validity of resolutions of meetings of capital companies to the cognition of arbitration, because such disputes are not settleable, as we will show below.

III. The Issue of the Settleability Criterion

4.16. As already mentioned, under the previous wording of the provision of Article 1157 of the CCP, arbitrability was possible in disputes that were settleable, but on the basis of this provision it was disputed whether the so-called settleability test applied only to disputes concerning non-financial rights or also to disputes concerning property rights.

4.17. The doubt that emerged in the scholarly doctrine was due to the way the provision was formulated: Unless a special provision provided otherwise, the parties could submit disputes concerning property rights or non-property rights - which may be the subject of a court settlement to an arbitration court,

[8] JOANNA BODIO [IN:] ANDRZEJ JAKUBECKI, KODEKS POSTĘPOWANIA CYWILNEGO. KOMENTARZ AKUTALIZOWANY [CODE OF CIVIL PROCEDURE. UPDATED COMMENTS], Vol I, LexisNexis (2019).

[9] Pursuant to Article 477^{12} of the CCP, concerning proceedings in social matters: It is not permissible to conclude an amicable settlement or submit a dispute to an arbitration court.

[10] According to the Act of 15 September 2000. - The Commercial Companies Code (i.e. Journal of Laws of 2019, item 505, as amended), capital companies include limited liability companies and joint-stock companies.

[11] Pursuant to Article 1163 paragraph 1 of the CCP in the wording prior to 08 September 2019: The arbitration court clause contained in the commercial partnership agreement (also known as the articles of association) concerning disputes arising from the partnership relationship is binding on the partnership and its partners.

with the exception of cases concerning alimony. Due to the placement of the reservation 'which may be the subject of a court settlement' directly after the indication of disputes concerning non-material rights, some commentators took the view that the so-called settleability test applied only to disputes concerning nonmaterial rights.

4.18. Rafał Morek, a professor at the University of Warsaw and a member of the Arbitration Council of the Court of Arbitration at the Polish Chamber of Commerce, and an attorney at law, for example, took the view that, in principle, all property rights disputes were arbitrable in nature and were not subject to selection from the point of view of settleability. The criterion of settleability concerned the calculation of property rights disputes, as indicated by the inclusion in the provision 'which may be the subject of a court settlement'.[12] A similar position[13] was taken by Andrzej Zieliński, a professor at the University of Warsaw, who pointed out that the provision of Article 1157 of the CCP objectively excluded from the purview of arbitration courts all non-physical rights disputes which could not be the subject of a settlement and alimony disputes.[14]

4.19. However, according to the dominant position of authors, the so-called settleability test concerned both non-asset and property rights disputes. The supporters of the second position argued that in light of the provisions of Article 1157, the settleability of the dispute is a necessary condition of arbitrability in all categories of the dispute, both property and non-property. To them, the intention was to place alimony disputes in the provision by placing this exclusion after the phrase 'which may be the subject of a court settlement', and not after the phrase 'disputes over property rights', out of the cognisance of arbitration courts. Such a formulation of the provision of Article 1157 of the CCP, according to the supporters of the second theory, was supposed

[12] RAFAŁ MOREK, MEDIACJA I ARBITRAŻ (MEDIATION AND ARBITRATION), (Articles 183^1-183^{15}, 1154-1217 kpc), Warsaw: C.H. Beck 114-115 (2006).

[13] The same position was also taken by Katarzyna Piwowarczyk, who pointed out that: 'The distinction between property and non-property rights is important due to the content of Article 1157 of the CCP. The wording of this provision indicates that the legislator allows the arbitration court to decide on any property disputes and only such non-property disputes that may be the subject of a court settlement'. Katarzyna Piwowarczyk, *O zmianie ustawy – Kodeks postepowania cywilnego (Arbitration agreement in the light of the act of 28 July 2005 – Civil procedure code*), 6 Prawo spółek (2006).

[14] ANDRZEJ ZIELIŃSKI, KODEKS POSTĘPOWANIA CYWILNEGO. KOMENTARZ [CODE OF CIVIL PROCEDURE. COMMENTS], Legalis/El. (2017).

to prove that the settleability condition applies to all disputes, including those concerning property rights.[15]

4.20. In the context of the second position presented above, it is also worth noting, for example, the verdict of the Supreme Court of 07 May 2009 in the justification to which the Supreme Court indicated that the provision of Article 1157 of the CCP sets the limits of arbitrability of a dispute. It stated, in short, that the essential criterion for such suitability - both in property and non-asset rights cases - is the settleability of a dispute.[16] A similar position was taken by the Supreme Court in its ruling of 21 May 2010 – in its justification to which the Supreme Court pointed out that since in the provision of Article 1157 of the CCP the legislature bound arbitrability with settleability and distinguished disputes concerning property and non-financial rights, it is reasonable to state that the said reservation applies to both categories of disputes distinguished in the provision of Article 1157 of the CCP.[17]

IV. Doubts Regarding the Arbitrability of Disputes Concerning the Validity of Resolutions of Companies

4.21. On the basis of the previous wording of the provision of Article 1157 of the CCP, there was also another dispute among both practitioners and theoreticians of law: whether it was possible to submit cases to an arbitration court from relations of a capital company (for example a limited liability company or joint-stock company) in the matter of a dispute over the validity of a resolution of a meeting of shareholders, i.e. a dispute over the declaration of invalidity of a resolution or over revocation of a resolution.

4.22. The provisions of the Commercial Companies Code provide that an active right to bring an action to repeal a resolution of shareholders or a general meeting of shareholders shall be vested in the management board, supervisory board, an audit committee and their individual members, as well as in the shareholder or partner who voted against the resolution and after its adoption that such an objection be recorded in the

[15] KAROL WEITZ (IN: TADEUSZ ERECIŃSKI), KODEKS POSTĘPOWANIA CYWILNEGO. KOMENTARZ. TOM VI. MIĘDZYNARODOWE POSTĘPOWANIA CYWILNE. SĄD POLUBOWNY ARBITRAŻOWY [CODE OF CIVIL PROCEDURE. COMMENTS. VOL VI. INTERNATIONAL CIVIL PROCEEDINGS. ARBITRATION COURT], LexisNexis (2016).

[16] Judgment of the Supreme Court of 07 May 2009, ref. no. III CZP 13/09.

[17] Judgment of the Supreme Court of 21 May 2010, ref. no. II CSK 670/09.

minutes.[18] In each case, a passive mandate is granted to the company.

4.23. It should be noted that in the case of disputes concerning the validity of a resolution, the interests of shareholders who pursue their interest either by exercising their rights resulting from shares or by appealing against the resolution are realised. However, the entity defending the resolution is not the shareholders who voted for the adoption of the resolution, but the company. Thus, a situation arises in which even if the shareholders included an arbitration clause in a given resolution (or the company's articles of association or statutes), an entity bounded by this clause would appear, which is not a party to this clause, and at the same time has an exclusive passive mandate in the proceedings.[19]

4.24. Supporters of the theory of the lack of arbitrability of disputes concerning the invalidity of resolutions also point to three reasons excluding such arbitrability: (i) the specificity of the 'character' (nature) (ii) a sanction of a potential defect, i.e. a declaration of invalidity of the resolution, and (iii) the specific configuration of disputes concerning the validity of resolutions.[20]

4.25. In the context of the specific nature of the dispute to declare a resolution invalid, it is pointed out that the parties to the dispute to declare a resolution valid lack, firstly, the power to dispose of the subject matter of the dispute, because the legal effect pursued by means of an action to declare a resolution invalid may be realised only by virtue of a judgment of a common court.[21] Other commentators, on the other hand, argue that the Act of 15 September 2000 – Commercial Companies Code (Journal of Laws of 2019, item 505, as amended) provides only two mechanisms that allow a binding resolution to be deprived of its binding force: it is either a repeal of a resolution by virtue of the adoption by shareholders of a new resolution repealing the existing resolution, or obtaining a final court ruling on the invalidity of a resolution. At the same time, according to the presented position, it is not possible to repeal, amend or

[18] Pursuant to the provisions of Article 249 in conjunction with Article 250 of the Commercial Companies Code and Article 422 of the Commercial Companies Code.

[19] WITOLD JURCEWICZ, CEZARY WIŚNIEWSKI, ZDATNOŚĆ ARBITRAŻOWA SPORÓW KORPORACYJNYCH – PERSPEKTYWA POLSKA (ARBITRABILITY OF CORPORATE DISPUTES - THE POLISH PERSPECTIVE), LexisNexis (2015).

[20] MARCIN ASŁANOWICZ. SĄD POLUBOWNY (ARBITRAŻOWY). KOMENTARZ DO CZĘŚCI PIĄTEJ KODEKSU POSTĘPOWANIA CYWILNEGO [ARBITRATION COURT. COMMENTARY ON PART FIVE OF THE CODE OF CIVIL PROCEDURE], Legalis/El. (2017).

[21] MARCIN ASŁANOWICZ. SĄD POLUBOWNY (ARBITRAŻOWY). KOMENTARZ DO CZĘŚCI PIĄTEJ KODEKSU POSTĘPOWANIA CYWILNEGO [ARBITRATION COURT. COMMENTARY ON PART FIVE OF THE CODE OF CIVIL PROCEDURE], Legalis/El. (2017).

declare a resolution invalid on a different basis, e.g. by way of an agreement or agreement between shareholders.[22]

4.26. Further, with regards to the argument concerning the sanction of possible defectiveness, the commentators argued that under the previous wording of the provision of Article 1163 paragraph 1 of the CCP,[23] the provision only exclusively referred to the company and its shareholders, bypassing at the same time other persons, that according to the Act of Commercial Companies Code have a legitimacy to challenge the resolution. Thus, in a case where the arbitration clause was to be put in the company's articles of association, a duallity arises. On one hand, the company and its shareholders can challenge the resolution in an arbitration court or in the common court. Other persons (e.g. company's management board and its members) can only challenge the resolution in the common court, since they cannot be a party to the arbitration clause, according to the previous provision of Article 1163 paragraph 1 of the CCP.[24]

4.27. In the literature on the subject, one could also distinguish a different position, i.e. the position according to which it was possible to submit a dispute over the validity of a resolution to the court of arbitration. Supporters of the latter position indicated that the assessment of whether a given dispute is arbitrable should be made in an abstract manner. Moreover, such an assessment should always be made with reference to the category of rights or legal relationship. Therefore, the arbitration capacity should not be assessed with reference to certain categories of claims (or other 'partial' rights) which arise out of such claims. In other words, it is a hypothetical possibility to settle a dispute on this path, and thus to determine whether the law allows a settlement in this category of cases.[25] The arbitrability of a dispute should therefore be assessed in an abstract manner, detached from specific legal circumstances and conditions and from the considerations whether a possible settlement concluded by the parties would be acceptable in the

[22] MACIEJ TOMASZEWSKI, O ZASKARŻANIU UCHWAŁ KORPORACYNYCH DO SĄDU POLUBOWNEGO – DE LEGE FERENDA [ON REPEALING CORPORATE RESOLUTIONS TO AN ARBITRATION COURT, Prawo spółek (April 2012).

[23] Pursuant to the provisions of Article 1163 paragraph 1 of the CCP: The arbitration court clause in the commercial company's contract (or articles of association) concerning disputes arising out of the company's relationship is binding on the company and its partners.

[24] MARCIN ASŁANOWICZ. SĄD POLUBOWNY (ARBITRAŻOWY). KOMENTARZ DO CZĘŚCI PIĄTEJ KODEKSU POSTĘPOWANIA CYWILNEGO [ARBITRATION COURT. COMMENTARY ON PART FIVE OF THE CODE OF CIVIL PROCEDURE], Legalis/El. (2017).

[25] RAFAŁ KOS, ZDATNOŚĆ ARBITRAŻOWA SPORÓW O WAŻNOŚĆ UCHWAŁ SPÓŁEK KAPITAŁOWYCH [ARBITRABILITY OF DISPUTES CONCERNING THE VALIDITY OF RESOLUTIONS OF LIMITED LIABILITY COMPANIES], Przegląd prawa handlowego (March 2014) [following:] Decision of the Court of Appeals in Gdańsk of 29 March 2010, ref. no. I Acz 277/10).

light of Article 203(4) in conjunction with Article 223(2) of the CCP, applying Article 917 in conjunction with Article 58 of the Act of 23 April 1964 – Civil Code (Journal of Laws of 2019, item 1145, as amended).[26]

4.28. The advocates of the position of the arbitrability of disputes concerning the validity of a resolution also claimed, taking the need for an abstract assessment of the suitability of the settlement agreement into account, that the dispute is suitable for settlement. This is because the repeal of a resolution of shareholders may take place not only through the issuance of an appropriate decision by a common court, but also as a result of the aforementioned conventional action of shareholders, i.e. through the adoption of a resolution on the repeal of the contested resolution[27] – i.e. under the shareholders agreement.

4.29. Further, supporters of the second theory also pointed out that the function of linking arbitration and settlement is to exclude, from the cognizance of arbitration courts, only those disputes which concern such rights or which give rise to such legal relationships that a legislature wishes to maintain as the arbitration monopoly of the common courts. Therefore, we are talking about such disputes in which it is not possible to achieve given effects by contractual means (and thus also within the framework of arbitration), because only a judgment of a common court may result in the fulfilment of these effects.[28]

4.30. To sum up, according to the second position referred to above, in the opinion of some authors, it was possible to submit a dispute concerning the validity of a resolution of shareholders to the jurisdiction of an arbitration court already on the basis of the hitherto binding provision of Article 1157 of the CCP, subject, of course, to the appropriate introduction and formulation of an arbitration clause (arbitration clause).

V. Arbitrability under the Provisions of the Amended Law

4.31. As indicated earlier, the Act of 31 July 2019 Amending Certain Acts in Order to Limit Regulatory Burdens[29] *inter alia*, amended

[26] Resolution of the Supreme Court of 23 September 2010, ref. no. III CZP 57/10 [following:] Decision of the Supreme Court of 21.052.2010, ref. no. II CSK 670/09.

[27] MARCIN ASŁANOWICZ. SĄD POLUBOWNY (ARBITRAŻOWY). KOMENTARZ DO CZĘŚCI PIĄTEJ KODEKSU POSTĘPOWANIA CYWILNEGO [ARBITRATION COURT. COMMENTARY ON PART FIVE OF THE CODE OF CIVIL PROCEDURE], Legalis/El. (2017).

[28] RAFAŁ KOS, ZDATNOŚĆ ARBITRAŻOWA SPORÓW O WAŻNOŚĆ UCHWAŁ SPÓŁEK KAPITAŁOWYCH [ARBITRABILITY OF DISPUTES CONCERNING THE VALIDITY OF RESOLUTIONS OF LIMITED LIABILITY COMPANIES], Przegląd prawa handlowego (March 2014) [following:] Decision of the Court of Appeals in Gdańsk of 29.03.2010, ref. no. I Acz 277/10).

[29] Journal of Laws (2019), item 1495.

the provision of Article 1157 of the CCP concerning arbitrability as well as the provision of Article 1163 of the CCP concerning the possibility to include an arbitration clause in the articles of association (statutes) of a commercial company.

4.32. On the basis of the new wording of the provision of Article 1157 of the CCP,[30] there is no longer any doubt that the so-called settleability test concerns only to disputes relating to non-financial rights (see: Article 1157(2) of the CCP). The settleability test does not apply to disputes concerning property rights - here all disputes may be submitted to arbitration, unless a special provision explicitly excluded the possibility of submitting a given dispute to the jurisdiction of an arbitration court. Pursuant to Article 1157(1) of the CCP, alimony cases are still excluded from the cognition of arbitration courts.

4.33. Moreover, as a result of the amendment to the provision of Article 1157 of the CCP, there should also be no doubt that disputes concerning the validity of a resolution of shareholders are now also arbitrable, which should also end discussions on the arbitrability of such disputes, which have been going on for years.

4.34. It should also be noted that under the amended provision of Article 1163 of the CCP,[31] the circle of entities which are bound by the arbitration clause has extended: currently, apart from the company and its partners, also company bodies and its members are a party to the arbitration clause.

4.35. Moreover, the new paragraph 2 of the commented provision of Article 1163 of the CCP expressly states that disputes concerning the validity of a resolution of shareholders, the arbitration clause is valid if it provides for the obligation to

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[30] Pursuant to the current wording of Article 1157 of the CCP: Unless a special provision provides otherwise, the parties may submit to an arbitration court for decision:

1) property rights disputes, except in matters relating to alimony;

2) disputes concerning non-economic rights, where they can be the subject of a court settlement

[31] Pursuant to the current wording of Article 1163 paragraph 1 of the CCP: The arbitration clause contained in the articles of association of a commercial company concerning disputes arising out of the company's relationship is binding for the company, its partners as well as on the company's bodies and their members.

paragraph 2. In cases involving the repeal or declaration of invalidity of a resolution of the general meeting of shareholders of a limited liability company or of the general meeting of a joint-stock company, the arbitration court clause shall be effective if it provides for the obligation to announce the commencement of proceedings in the manner required for announcements of the company within one month of the date of its commencement at the latest; the announcement may also state the reason. In such matters, each shareholder may join the proceedings of one of the parties within one month from the date of the announcement. The composition of the arbitration court appointed in the case initiated the earliest shall examine all other cases concerning the repeal or declaration of invalidity of the same resolution of the meeting of shareholders of a limited liability company or the general meeting of a joint-stock company.

paragraph 3. The provisions of paragraph 1 and paragraph 2 shall apply accordingly to the provisions on the arbitration court contained in the statute of a cooperative or association.

announce the commencement of proceedings in the manner required for announcements of the company within one month from the date of its commencement at the latest. However, the announcement may also be published by the plaintiff, who, in each case, will be the company.

VI. Summary

4.36. Undoubtedly, some of the newly introduced provisions of the Code of Civil Procedure, which refer to arbitration proceedings, in particular regarding the arbitrability as specified in Article 1157 of the CCP, should be considered justified. Some of the introduced changes have been postulated by scholars for years,[32] since the modification of the provisions eliminates a significant part of the doubts that have occurred so far. Firstly, there is no longer any doubt that only disputes concerning nonmaterial rights must, at the same time, be settleable. Additionally, following the demands made by practitioners of the subject, it was expressly regulated that disputes over the validity of resolutions of shareholders are also arbitrable.

4.37. However, it should also be noted that some of the new provisions introduced by the legislature may be questionable. For example, the provision of Article 1163 paragraph 2 of the CCP states that 'In such matters [concerning the validity of a resolution - MMR footnote] each shareholder or partner may commence proceedings with one of the parties within one month from the date of publication'. Limiting the time limit to join the proceedings may give rise to some doubts as to the validity of an arbitration award issued in a situation in which a shareholder expressed his or her willingness to join the proceedings on one of the parties. However, due to the expiry of the one-month time limit, such accession proved to be impossible.

4.38. Pursuant to the Decision of the Supreme Court - Civil Chamber of 02 February 2018, file ref. II CZ 84/17, in cases which arise in the context of the company relationship, an incidental intervention of a shareholder is of an independent nature, regardless of whether the intervention is reported on the claimant's side (another shareholder, company body, etc.) or on the respondent's side. The Supreme Court stressed that only the status of an indirect intervenor guarantees the possibility

[32] ŁUKASZ CHYLA, UWAGI DE LEGE LATA I DE LEGE FERENDA W ZAKRESIE ELIMINACJI PRZESZKODY BRAKU ZDATNOŚCI ARBITRAŻOWEJ SPORÓW KOMPETENCYJNYCH (REMARKS DE LEGE LATA I DE LEGE FERENDA REGARDING THE ELIMINATION OF THE OBSTACLE TO THE LACK OF ARBITRABILITY OF COMPETENCE DISPUTES), Poznań: Kwartalik Prawo-Społeczeństwo-Ekonomia (2017).

of exercising the right of a shareholder to be heard, which is an essential element of the right to a fair trial, resulting from the right to a court specified in Article 45(1) of the Constitution of the Republic of Poland. It is important that the provisions of the Polish civil procedure do not limit the time to which it is possible to report an incidental intervention. In other words, an intervention may be reported until the trail is closed in the second instance. Therefore, limiting the possibility for a shareholder to enter into arbitration proceedings to only one month may be considered to be contrary to the constitutional right to a hearing, which results from the right to a court - which is also of particular importance taking the fact that a judgment on the company's relationship (and thus also in adopted disputes) has an *ultra-partner* effect. It takes into account the relationship between all shareholders, even those who did not join the proceedings after any of the parties to the dispute.

4.39. Further, the amended provision of Article 1169 of the CCP specifying the method of determining the number of arbitrators should also be noted. According to the newly introduced paragraph 2^1, if two or more persons are or were sued in a suit, they appoint an arbitrator unanimously, unless the arbitration clause provides otherwise. This provision may cause numerous problems if there is no unanimity when selecting an arbitrator. In the case of disputes concerning the validity of a resolution of shareholders in a general meeting, it is very often the case that a resolution is appealed by more than one shareholder. The problem arises as to how an arbitrator will be elected in a situation where two or more shareholders file a claim but do not indicate one arbitrator. The regulations do not provide that in such a situation the possibility to choose an arbitrator should rest, for example, on a third party or that such competence should be vested in a common court. Such under-regulation may raise significant doubts in practice, as it entails the risk of recognising that if an arbitrator cannot be appointed unanimously, arbitration proceedings are inadmissible.

4.40. Summarizing the above, it should be noted that the latest amendments to the Code of Civil Procedure significantly changed some of the existing regulations concerning arbitration proceedings. While some of the introduced changes should be considered justified, such as a clear regulation of the issue of arbitral suitability, due to certain imperfections, some mechanisms of conciliatory proceedings, for example with

regard to the method of selecting arbitrators, may raise significant doubts.

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Summaries

DEU [***Neue Schiedsregeln nach dem polnischen Gesetz vom 31. Juli 2019, die einige Gesetze zwecks Verringerung der regulatorischen Belastungen ändern, sind in Kraft getreten (Rechtsverordnungsblatt, 2019, Teil 1495)***]

Dieser Beitrag analysiert die jüngsten Änderungen des polnischen Gesetzbuches vom 17. November 1964 – der Zivilprozessordnung (Nr. 1460 GBl. aus dem Jahr 2019 in der gültigen Fassung) in Bezug auf das Schiedsverfahren. Diese neue Rechtsregelung ist am 8. September 2019 in Kraft getreten und basiert auf Vorschlägen der akademischen Gemeinschaft in den letzten Jahren, insbesondere auf den Vorschlägen zum Begriff der Schiedsgerichtsbarkeit. Dieser Beitrag will die Zweifel klären, die durch den früheren Wortlaut der Schiedsgerichtsbarkeitsregeln entstanden sind, und die aktuelle Diktion der Bestimmungen der Zivilprozessordnung vorstellen. Die Autoren analysieren zudem die neuen Bestimmungen im Schiedsverfahren und beleuchten einige der Zweifel, die sich aus diesen neuen Vorschriften über Schiedsverfahren und Schiedsgerichtsbarkeit ergeben können. Die Autoren des Beitrags fokussieren sich insbesondere auf entstandene Zweifel an der Schiedsgerichtsbarkeit von Streitigkeiten in Sachen Gültigkeit der Entscheidungen von Handelskörperschaften sowie auf die Beantwortung von Fragen zu den neu formulierten Bestimmungen in diesem Bereich.

CZE [***Nové předpisy o rozhodčí řízení ve smyslu polského zákona z 31. července 2019 měnící některé zákony za účelem snížení regulační zátěže nabyly účinnosti (právní věstník, 2019, částka 1495)***]

Tento článek analyzuje nedávné novelizace polského zákoníku ze dne 17. listopadu 1964 – občanského soudního řádu (č. 1460 Sbírky zákonů z roku 2019, ve znění pozdějších předpisů), které se týkají rozhodčího řízení. Tato nová právní úprava nabyla účinnosti dne 8. září 2019 a vychází z návrhů předložených akademickou obcí v posledních několika letech, zejména z návrhů týkajících se pojmu arbitrability. Cílem tohoto článku je objasnit pochybnosti, které způsobilo dřívější znění předpisů týkajících se arbitrability, a představit stávající dikci ustanovení

občanského soudního řádu. Autoři rovněž analyzují nová ustanovení o rozhodčím řízení a rozebírají některé pochybnosti, které mohou z těchto nových předpisů o rozhodčím řízení a arbitrability vyplynout. Autoři příspěvku se obzvláště zaměřují na vzniklé pochybností týkající se arbitrability sporů o platnost rozhodnutí vydávaných obchodními korporacemi, jakož i na prezentaci otázek týkajících se nově formulovaných ustanovení v této oblasti.

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POL [***Nowe przepisy dotyczące zdatności arbitrażowej wprowadzone Ustawą z dnia 31 lipca 2019 roku o zmianie niektórych ustaw w celu ograniczenia obciążeń regulacyjnych (Dz. U. z 2019 r., poz. 1495)***]

Artykuł omawia zmiany wprowadzone Ustawą z dnia 31 lipca 2019 roku o zmianie niektórych ustaw w celu ograniczenia obciążeń regulacyjnych (Dz. U. z 2019 r., poz. 1495) w zakresie dotyczącym arbitrażu, w tym w szczególności zmiany dotyczące zdatności arbitrażowej (art. 1157 KPC) oraz zmiany dotyczące zapisu na sąd polubowny w umowie (statucie) spółki (art. 1163 KPC).

FRA [***Entrée en vigueur en Pologne de nouvelles règles d'arbitrage en vertu de la loi du 31 juillet 2019 portant modification de certaines autres lois et limitant la charge réglementaire (Bulletin officiel 2019, No 1495)***]

Le présent article se consacre aux amendements apportés à certaines lois par la loi du 31 juillet 2019, limitant la charge réglementaire (Recueil des lois 2019, No 1495), et qui concernent la procédure arbitrale. Ces amendements touchent, entre autres, la question d'arbitrabilité (article 1157 du Code de procédure civile) et les clauses compromissoires dans les contrats sociaux (article 1163 du Code de procédure civile).

RUS [***Вступили в силу новые правила арбитража по поводу польского закона от 31 июля 2019 года, вносящие поправки в некоторые законы в целях уменьшения регулирующего бремени («Юридический бюллетень», 2019, часть 1495).***]

В статье рассматривается внесение дополнений в некоторые законы посредством закона от 31 июля 2019 года в целях уменьшения регулирующего бремени (Свод законов 2019, закон № 1495) в отношении арбитража,

включая поправки, касающиеся арбитрабельности (статья 1157 «Гражданского процессуального кодекса»), и поправки относительно арбитражных оговорок в общественных договорахх (статья 1163 «Гражданского процессуального кодекса»).

ESP [***Nueva normativa del procedimiento de arbitraje en virtud del la ley polaca del 31 de julio de 2019 por la que se modifican algunas leyes con el objetivo de reducir la regulación del procedimiento del arbitraje (Boletín Oficial polaco, 2019, ley número 1495)***]

El artículo da cuenta de la reciente reforma de varias leyes efectuada a través de la ley del 31 de julio de 2019 con el objetivo de reducir la regulación (Boletín Oficial polaco 2019, ley número 1945) del procedimiento de arbitraje, incluidas las modificaciones relativas a la arbitrabilidad (art. 1157 de la Ley de Enjuiciamiento Civil) y las cláusulas compromisorias de los contratos sociales (art. 1163 de la Ley de Enjuiciamiento Civil).

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