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List of Abbreviations

AACCM	The Arbitrazh Arbitration Court of the City of Moscow
ADR	The alternative dispute resolution
ArbAct	The Arbitration Act
BCB	The British Caribbean Bank
BelCCI	The Belarusian Chamber of Commerce and Industry
BIT	The Bilateral investment treaties
BörseG	The Austrian Stock Exchange Act (Börsegesetz)
CAC	The Czech Arbitration Court
CCJ	The Court of Justice
CCP	The Code of Civil Procedure
CEO	The chief executive officer
CETA	The EU-Canada Comprehensive Economic and Trade Agreement
CIETAC	The China International Economic and Trade Arbitration Commission
CIRS	The currency interest rate swap
CRCICA	The Cairo Regional Centre for International Commercial Arbitration
EAEU	The Eurasian Economic Union
EDAC	The Energy Disputes Arbitration Center
EGZPO	The Introductory Act to the Code of Civil Procedure
ELRI	The Energy Law Research Institute
ESIPA	The EU - Singapore Investment Protection Agreement
EU	The European Union
EVIPA	The EU - Viet Nam Investment Protection Agreement
EXAA	The Energy Exchange Austria

FETÖ	The Fethullahist Terrorist Organization
FITR	Fork in the road clauses
FTA	Free Trade Agreement
HICA	The Helsinki International Commercial Arbitration
HKIAC	The Hong Kong International Arbitration Centre
IAC	The International Arbitration Court
IAL	The International Arbitration Law
IBA	The International Bar Association
ICC	The International Control Commission
ICSID	The International Centre for Settlement of Investment Disputes
IP-adress	The Internet Protocol address
ISTAC	The Istanbul Arbitration Centre
ISTAW	The Istanbul Arbitration Week
ITOTAM	The Istanbul Chamber of Commerce Arbitration and Mediation Center
JCAA	The Japan Commercial Arbitration Association
JN	The Jurisdictional Act
LCIA	The London Court of International Arbitration
LLC	The Limited Liability Company
MASAK	The Turkish Financial Crimes Investigation Board
OECD	The Organisation for Economic Co-operation and Development
OIC	The Organization of Islamic Cooperation
OIC-AC	The Organization of Islamic Cooperation Arbitration Centre
OTA	Orascom Telecom Algérie S.P.A.
OTH	Orascom Telecom Holding S.A.E.
OTMT	Orascom TMT Investments S.à r.l.
PAI	The permanent arbitration institution
PEL	Patel Engineering Limited
PILA	The Private International Law
SAKIG	The Court of Arbitration at the Polish Chamber of Commerce in Warsaw

SAL	The Court of Arbitration at the Confederation of Lewiatan
SIAC	The Singapore International Arbitration Centre
SIDiR	The Polish Consulting Engineers and Experts Association
SPA	The Share Purchase Agreement
TOBB UYUM	The Union of Chambers and Commodity Exchanges of Türkiye
TPA	The Trade Promotion Agreement
UAE	The United Arabic Emirates
UK	The United Kingdom
UN	The United Nations
UNCITRAL	The United Nations Commission on International Trade Law
VIAC	The Vienna International Arbitration Centre
ZPO	The Code of Civil Procedure (Zivilprozeßordung)

Articles

Angelika Ziarko | Tadeusz Zbiegień

Award on Costs as a Tool to Counter Abuse of Procedure under Polish Law

Key words:
abuse of procedure| Polish arbitration law| decisions on costs| procedural economy

Abstract | *This paper explores the concept of abuse of procedure under Polish law. Particularly it focuses on decisions on costs used as a tool to address the issue of misconduct in arbitration. The discussion begins with an explanation of the general understanding of abuse of procedure in Polish law. Two theories are presented: the external theory and the internal theory. The article then examines specific legislative measures in Poland that address procedural abuse, including amendments to the Code of Civil Procedure (CCP). The paper discusses how Polish law does not offer a separate definition of abuse of procedure for arbitration proceedings, but indicates that principles such as honeste procedere apply universally. It highlights that while direct application of certain CCP provisions in arbitration is debated, the general prohibition against abuse of procedure is recognized. The paper concludes by emphasizing the importance of decisions on costs as a tool against abuse of procedure in arbitration. It underscores the need for arbitrators and counsels to be mindful of these principles to ensure fair and efficient proceedings. In particular, the cost decisions should be made predictably and transparently to avoid surprises and potential unenforceability under Polish law.*

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I. Introduction

11.01. There is a frequently used phrase in Poland: 'Everyone knows what a horse is.' It has a similar meaning to the English 'as plain as the nose on one's face' and comes from an entry in one of the first encyclopedias written in Polish.[1] It is still used in Poland to describe something that is so obvious, that there is no point in discussing it further. The same could be said of some of the guerrilla tactics used in arbitration or, more broadly speaking, of abuse of procedure. Everyone knows one, when they see one. However, the international arbitration community continuously works on the tools, which could counter such obvious and blatant practices, so as to prevent them from recurring.

11.02. One of the tools that has been mentioned is the use of an award of costs as a means of countering an abuse of the procedure. Almost all common arbitration rules authorize the arbitrators to make such an award as they consider appropriate on the basis of the relevant circumstances. These relevant circumstances could be, *inter alia*, the conduct of the parties and their counsel in the arbitration.

11.03. This article analyses the issue of using cost awards as a tool against abuse under Polish law. First, the authors discuss what constitutes an abuse of process under Polish law. The authors then present the tools available to counter such practices under Polish procedural law focusing on decisions on costs within the framework of Polish arbitration law.

II. Abuse of Procedure under Polish law

11.04. Court proceedings serve to protect the rights of individuals. To do so, the individuals are required to make use of their procedural rights (powers), which in Poland are regulated in the Code of Civil Procedure (**CCP**). However, in some cases, proceeding seemingly in line with the literal wording of the provision of law may lead to a wrongful or unlawful outcome.

11.05. In principle, the exercise of parties' procedural rights should not entail negative consequences for the parties. However, this may not be the case if the exercise of procedural rights, although within the limits set by the content of the procedural rules, is inconsistent with the purpose for which they were established. This inconsistency may consist either in the fact that the procedural act in question has been undertaken at all, or the manner in which the procedural act is carried out. Such acts

[1] *B. Chmielowski*, Nowe Ateny [title in translation: *New Athens*] (1746).

may indicate that the party's intent is not so much to obtain the result, which would correspond to the nature and purpose of the procedural act in question, but rather to postpone an unfavorable decision, or even to obtain a result, which may turn out different from that which would have been reached, if the proceedings had been conducted fairly.[2] Such a situation may constitute an abuse of procedural rights.

11.06. Hence, the parties' conduct should comply not only with the formal conditions and rules prescribed in the Code of Civil Procedure, but also follow the principles of fairness, loyalty and integrity (*honeste procedere*). Such understanding of how procedural rights should be used is deeply rooted within the understanding of what constitutes a right to a fair trial as well as due process.[3] The obligations of being fair, loyal and acting with integrity apply not only vertically (i.e. between the parties and the court), but also horizontally (i.e. between the parties).[4]

11.07. Sometimes the interest of justice system could differ from the particular interests of the parties to a proceeding. Generally, the claimant seeks to achieve a time/cost-efficient conclusion of the proceedings. The defendant could have contrary interests and seek to delay the proceedings and issuance of the final judgment, if aware of the fact that the likelihood of an unfavorable outcome for is significant. Each party exercises their procedural rights in order to achieve the result desired by it.

11.08. Polish legal scholars have long attempted to define what constitutes 'an abuse of civil procedural rights' and what does not. Two competing theories have been developed that aim to describe what constitutes a violation of 'honest conduct', the external and internal theory.

11.09. The external theory states that abuse of one's rights comprises of an exercise of that right made by the right's holder because of illicit motive or purpose. According to the external theory, an abuse of the right is an action that is consistent with the content of the right and is within the limits of said right but - nevertheless - is an abuse.[5]

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[2] Cf. *A. Kubas*, Nadużycie prawa procesowego – próba oceny ostatnich zmian legislacyjnych [title in translation: *Abuse of procedural rights - an attempt to assess recent legislative developments*] [in:] PALESTRA 11–12/2019.

[3] Cf. Ł. Błaszczak [in:] Ł. Błaszczak (ed.), System Postępowania Cywilnego. Tom 2. Dowody w postępowaniu cywilnym [title in translation: *System of Civil Procedure. Vol. 2. Evidence in Civil Proceedings*], Warsaw 2021.

[4] Cf. K. Weitz, Nadużycie „prawa" procesowego cywilnego [title in translation: *Abuse of civil procedural „rights"*] [in:] Polski Proces Cywilny 1/2020.

[5] Cf. Ł. Błaszczak, Nadużycie prawa procesowego w postępowaniu arbitrażowym [title in translation: *Abuse of procedure in arbitration proceedings*], CH Beck 2018; T. Justyniański, Nadużycie prawa w polskim prawie cywilnym [title in translation: *Abuse of rights in Polish civil law*], Kraków 2000.

11.10. The internal theory states that abuse of one's right comprises of an exercise of that right which goes beyond the content and manner of exercising the right. Application of this theory leads to a situation as if the right did not belong to the holder of the right at all.[6] According to the internal theory the action is contrary to the content of the right and thus is an abuse.[7]

11.11. Obligation to proceed in a fair and loyal way does not preclude the parties from using procedural tactics and treating civil proceedings as an instrument that allows them to pursue their legal interests. It does, however, set certain limits for them in this respect. Dishonesty should not be allowed and must therefore be prevented.[8]

11.12. Although the requirement of *honeste procedere* was always derived from the general provisions of law, it has not been expressly regulated until 2011 (in force since 2012[9]). In 2012 Article 3 CCP was amended and now states that: 'the parties and participants in the proceedings are obliged to perform procedural acts in accordance with good practice, to provide arguments about the circumstances of the case truthfully and without concealing anything and to present evidence.'

11.13. The obligation, up until the entry into force of the above-mentioned provision, was derived from general ethical principles stemming. from the Constitution. However, introduction of the said provision resulted in the fact that such obligation acquired a substantive status with regard to parties and participants in the proceedings. This provision imposed a specified ethical obligation on the parties.[10] Although this obligation has not been linked to any general sanction (penalty), if a party fails to comply with it, it should expect an adverse procedural outcome, as the court may take such a situation into account when making procedural decisions.[11]

11.14. The amendment of CCP introduced in 2019 constituted another step in regulating the issue of abuse of procedural rights.[12] Then

[6] Cf. K. Osajda, Nadużycieprawa w procesiecywilnym [*Abuse of rights in civil proceedings*] [in:] PS 2005/5/47.

[7] Cf. Ł. Błaszczak, Nadużycieprawaprocesowego w postępowaniuarbitrażowym [title in translation: *Abuse of procedure in arbitration proceedings*], CH Beck 2018; T. Justyniański, Nadużycieprawa w polskimprawiecywilnym [title in translation: *Abuse of rights in Polish civil law*], Kraków 2000.

[8] Cf. K. Weitz [in:] T. Ereciński (ed.), Kodeks postępowania cywilnego. Komentarz. Tom I. Postępowanie rozpoznawcze. Artykuły 1-124 [*Code of Civil Procedure. Commentary. Vol. I. Preliminary proceedings. Articles 1-124*], WKP 2023.

[9] Act of 16 September 2011 amending the Act - Code of Civil Procedure and certain other acts (Journal of Laws of 2011, No. 233 item 1381).

[10] Cf. Supreme Court decision of 20 September 2022, Case ref. no. I CSK 1298/22.

[11] Cf. Supreme Court resolution of 11 December 2013, Case ref. no. III CZP 78/13. Cf. M. G. Plebanek, Nadużycieprawprocesowych w postępowaniucywilnym - zagadnieniaogólne [title in translation: *Abuse of procedural rights in civil proceedings - general issues*] [in:] St.Prawn. 2012/1/69-121.

[12] Act of 4 July 2019 on amending the Act - Code of Civil Procedure and certain other Acts (Journal of

two new provisions were implemented: Article 4(1) CCP and Article 226(2) CCP.

11.15. Under Article 4(1) CCP: 'The right provided for in the procedural rules must not be used by the parties and participants in the proceedings in a manner incompatible with the purpose for which it was established (abuse of procedural rights). 'It was argued that the purpose of Article 4(1) CCP was to moralize the process. The introduction of this provision was motivated primarily by the need to strengthen the court's control over the parties' exercise of their procedural rights. Although, prior to the entry into force of the provision, Article 3 CCP was already in force, it was generally not used by the state courts to sanction the parties for its violation.[13] Thus, the lawmakers decided to implement Article 4(1) CCP that expressly deals with abuse of procedural rights and is complementary to Article 3 CCP.[14]

11.16. The assessment that a party's action constitutes an abuse of a procedural right within the meaning of Article 4(1) CCP, should be based on the determination of the purpose that the party seeks to achieve by taking the action in question and on an assessment of whether that purpose is justified in the light of the procedural purpose of the institution in question. In other words, whether the purpose of the party's action *in concreto* is compatible with the purpose of the procedural institution *in abstracto.*[15]

11.17. The wording of Article 4(1) CCP refers generally to all procedural rights provided for in the CCP, which means that the lawmakers did not exclude any procedural rights from the scope of application of the said provision and all these rights may hypothetically be abused. Therefore, it is argued that Article 4(1) CCP applies not only to conduct in the course of the proceedings (e.g. time-barred evidence, bringing baseless allegations, lodging appeals, raising unwarranted pleas etc.), but also – which is important – to the right to bring the action initiating the proceedings and the rights connected with proceedings following the final termination of the case.[16] Thus,

Laws of 2019 item 1469).

13 Cf. P. Feliga [in:] T. Szanciło (ed.), Kodeks postępowania cywilnego. Komentarz. Komentarz. Art. 1-458(16). Tom I [title in translation: *Code of Civil Procedure. Commentary. Art. 1-458(16). Vol. I*], Warsaw 2023.

14 Cf. G. Kamieński, Zakaz nadużycia praw procesowych [title in translation: *Abuse of procedural rights*], WKP 2021, para. 2.2.

15 Cf. District Court in Poznań judgement of 9 July 2020, case ref. no. II Ca 574/20.

16 Cf. K. Weitz [in:] T.Ereciński (ed.), Kodeks postępowania cywilnego. Komentarz. Tom I. Postępowanie rozpoznawcze. Artykuły 1-124 [title in translation: *Code of Civil Procedure. Commentary. Vol. I. Preliminary proceedings. Arts. 1-124*], WKP 2023, Lex.

considers not only actions *within* the proceedings, but also *before* and *after* them.

11.18. All the above speaks of what an abuse of procedure is in theory. This in itself is an interesting issue; however not as interesting as what particular conduct was found to constitute an abuse of procedure.

11.19. CCP does not provide any concrete list of what exact behavior may constitute an abuse of procedure under Polish law. It only contains– and only since recently – a legal definition in Article 4(1) CCP. The definition is rather broad and uses general language in order to encompass a wide category of procedural conduct. However, there are certain examples of behaviors provided by the legal scholars and case law, that may constitute an abuse of procedure within the meaning of both Article 3 and Article 4(1) CCP:

- submission of a request for postponement of a hearing in one case on account of a conflict between its date and the date of a hearing in another case, combined with the cancellation of the power of attorney of a counsel in the first case, in order to delay the examination of both cases[17], as well as filling repeated requests for postponement of a hearing due to repeated change of counsel or party's excused absence,[18]
- submission of repeated requests for the exclusion of a judge, based on the same vague circumstances, which cannot be verified,[19]
- submission of a request for a settlement attempt for the sole purpose of interrupting (formerly) or suspending (now) of the running of statute of limitations,[20]
- submission by a counsel of a pleading titled 'appeal' on the last day of the time-limit, which fails to meet the formal requirements of an appeal, in order to obtain additional time to file a proper appeal,[21]
- lodging an appeal and indicating the amount at dispute at 4,71 PLN (ca. 1 EUR),[22]

[17] Cf. Supreme Court judgement of 25 March 2015, Case ref. no. II CSK 443/14.

[18] Cf. Supreme Court judgement of 1 May 2018, Case ref. no II CSK 457/17.

[19] Cf. Supreme Court judgements of 25 November 2015, Case ref. no. II CSK 752/14 and of 16 June 2016, Case ref. no. V CSK 649/15.

[20] Cf. Supreme Court judgements of 27 July 2018, Case ref. no. V CSK 384/17 and Court of Appeals in Kraków judgement of 22 January 2020, Case ref. no. I ACa 338/19.

[21] Cf. O.M. Piaskowska [in:] O.M. Piaskowska (ed.),Kodeks postępowania cywilnego. Postępowanie procesowe. Komentarz aktualizowany [title in translation: *Code of Civil Procedure. Procedural proceedings. Updated commentary*], LEX/el. 2023.

[22] Cf. Supreme Court decision of 20 November 2009, Vase ref. no. III CZP 90/09.

- raising a plea of lack of jurisdiction by an employee, if the employee is bound by a jurisdiction agreement in the collective labor agreement,[23]
- raising a plea of invalidity of the proceedings based on a defective mandate of counsel in the cassation appeal before the Supreme Court against an unfavorable judgement, while the same counsel actively participated during all stages of the proceedings,[24]
- submission of the request for permission to file a pleading, in order to reply to the cassation appeal/complaint, while the party failed to file a reply to the cassation appeal/complaint within the statutory time limit,[25]
- a party, by means of deceitful, dishonest or bad faith actions, makes use of evidence which has either been obtained unlawfully or is falsified,[26]
- submission of evidence with the aim of causing obstruction of justice, evidence that is inadmissible or cannot be taken at all, evidence relating to facts or allegations covered by legal privilege, fishing expeditions.[27]

III. Tools to Counter Abuse of Procedure under Polish Procedural law

11.20. Unlike Article 3 CCP, Article 4(1) CCP is not toothless. The lawmakers alongside Article 4(1) CCP introduced Article 226(2) CCP, which provides for specific sanctions if the court finds that a party abused its procedural rights.

11.21. Under Article 226(2) § 2CCP:Where the court finds that a party has abused a procedural right, it may, in the final judgement: 1) impose a court fine on the abusing party, 2) irrespective of the outcome of the case, if a delay of the resolution of the case was caused by such abuse, impose an obligation to reimburse costs to a greater extent than the outcome of the case would indicate, or even to reimburse costs in full, 3) at the request of the

[23] Cf. P. Feliga [in:] T. Szanciło (ed.), Kodeks postępowania cywilnego. Komentarz. Art. 1-458(16). Tom I [title in translation: *Code of Civil Procedure. Commentary. Art. 1-458(16). Vol. I*], Warsaw 2023.

[24] Cf. Supreme Court judgement of 27 January 2016, Case ref. no. III PK 62/15.

[25] Cf. Supreme Court decisions of 22 March 2018, case ref. no III CSK 9/18 and of 13 September 2018, Case ref. no. II CSK 37/18, of 22 May 2018, Case ref. no. III CZ 16/18.

[26] Cf. Ł. Błaszczak [in:] Ł. Błaszczak (ed.), System Postępowania Cywilnego. Tom 2. Dowody w postępowaniu cywilnym [title in translation: *System of Civil Procedure. Vol. 2. Evidence in Civil Proceedings*], Warsaw 2021.

[27] Cf. Ł. Błaszczak [in:] Ł. Błaszczak (ed.), System Postępowania Cywilnego. Tom 2. Dowody w postępowaniu cywilnym [title in translation: *System of Civil Procedure. Vol. 2. Evidence in Civil Proceedings*], Warsaw 2021.

opposing party: (a) award from the abusing party increased legal costs in accordance with the increase in the opposing party's workload for the case caused by the abuse, but not more than twice, (b) increase the rate of interest awarded against the party whose abuse has caused delay in hearing the case for a period corresponding to that delay, but the rate may be increased by no more than double; the provisions on the maximum permissible amount of statutory interest for delay shall not apply. The introduction of a general clause regulating abuse of procedural rights (Article 4(1) CCP), as well as its further development in Article 226(2) CCP, serves the purpose of disciplining the parties to the proceedings and, in effect, to ensure the adherence to the principle of an efficient and speedy trial. It is not, therefore, the institution of *punitive damages* and should not be used to that effect[28]. The sanctions are also procedural in nature and, although they depend to some extent on a request from the injured party, do not generate any substantive law claims.[29]

11.22. The sanctions listed in Article 226(2) CCPappear to be of general character in the sense that they seem to apply for each case of violation of procedural rights by a party.[30] The court's powers under Article 226(2) CCP are of a discretionary character; the court may (but is not obliged to) apply the sanctions provided for in the said provision.[31]

11.23. Before the introduction of the provision into the CCP in 2019, and aside from Article 226(1) CCP, there were other additional provisions that empower the court to impose certain sanctions on the party acts contrary to good faith principles and abuses its procedural rights.[32]

[28] C f. District Court in Gdańsk judgement of 19 October 2020, Case ref. no. I C 588/19.

[29] Cf. K. Flaga-Gieruszyńska [in:] K. Flaga-Gieruszyńska, A. Zieliński (eds.), Kodeks postępowania cywilnego. Komentarz [title in translation: *Code of Civil Procedure. Commentary*], Warsaw 2022.

[30] Cf. Ł. Błaszczak, ch. 1.12.4.3 [in:] Ł. Błaszczak (ed.), System Postępowania Cywilnego. Tom 2. Dowody w postępowaniu cywilnym [title in translation: *System of Civil Procedure. Vol. 2. Evidence in Civil Proceedings*], Warsaw 2021.

[31] Cf. A. Jakubecki, Sankcje za nadużycie uprawnień procesowych w Kodeksie postępowania cywilnego [title in translation: *Sanctions for abuse of procedural powers in the Code of Civil Procedure*] [in:] Palestra 2019/11-12/181-199.

[32] Cf. G. Kamieński, Zakaz nadużycia praw procesowych [title in translation: *Prohibition of abusing procedural rights*], WKP 2021, ch. 2.3. Under Art. 103 CCP, the court may, irrespective of the outcome of the case, impose an obligation on a party to reimburse the costs of the proceedings, caused by their negligent or manifestly wrongful conduct. Under 255 CCP, a party who has made allegations and denied the authenticity of an official or private document, in bad faith or recklessly may be fined. Under Art. 53(1) § 2 CCP, the court may leave the request for the exclusion of the judge without further action, if it is based solely on circumstances relating to the court's taking of evidence, filed again as to the same judge citing the same circumstances, or relating to a person who is not a judge in the case. Under Art. 186(1) CCP, a pleading which was lodged as a statement of claim, and from which no demand for the resolution of a civil dispute arises, may be rejected by the court without any further action, unless exceptional circumstances justify its continuation. Under Art. 117(2) § 1 CCP, if an application for the appointment of a counsel is dismissed, a party may not reapply for the appointment of a counsel by relying on the same circumstances that justified the rejected application. Under Art. 350(1) § 1-4 CCP, the court may leave the request for the rectification

IV. Award on Costs as a Tool to Counter Abuse of Arbitral Procedure under Polish Arbitration Law

11.24. Polish law does not provide for an additional definition of abuse of procedure for the sake of arbitration itself. The obvious question arises whether Article 4(1) and Article 226(2) CCP discussed above may be applied directly during the arbitral proceedings if they are subject to Polish procedural law. As of now, in the absence of publicly available high-profile cases tackling this issue, it is worthwhile to direct the attention towards the position of authorities on the topic.

11.25. The position on the applicability of Article 4(1) CCP appears to be quite complex.[33] The principle of *honeste procedere* and, consequently, the prohibition of abuse of procedural law in Polish law, including Polish arbitration law, regardless of its source, applies. Yet, the scope of sanctions remains an open question. The polish legal doctrine indicates that the powers stemming from Article 226(2) CCP do not apply in arbitration proceedings.[34] Also, as already noted above, the prevailing view is that Article 226(2) CCP does not constitute a basis of a substantive claim in a strict sense.[35]

11.26. So, if Article 226(2) CCP is not to be applied directly, where can arbitrators get a precise basis (apart from general decision-making powers concerning the procedure) for sanctioning the parties in a cost award and therefore one of the sanctions provided for in this article, but which is not supposed to be applicable?

11.27. As rightly pointed out, the source of the prohibition of abuse of procedure in arbitration law does not necessarily have to

(correction), supplementation or interpretation of a judgement without further action, if it is inadmissible, e.g. it is a second and subsequent request by the same party as to the same judgment. Under Art. 394(3) § 1-3 CCP, the court may leave a complaint without further action, if it is inadmissible, e.g. it is brought only for the purpose of delaying the proceedings.

33 Cf. e.g. K. Weitz [in:] Kodeks postępowania cywilnego. Komentarz.[title in translation: *Code of Civil Procedure. Commentary.*] Tom I. Postępowanie rozpoznawcze. Artykuły 1-124] Tom I. Postępowanie rozpoznawcze. Artykuły 1-124, vol. VI, ed. T. Ereciński, Warszawa 2023, Art. 4(1).; J. Paszkowski [in:]T. Szanciło (ed.), Kodeks postępowania cywilnego. Komentarz. [title in translation: *Code of Civil Procedure. Commentary.*] Komentarz. Art. 1–45816. Tom I. Vol. 2, Warszawa 2023.

34 Ł. Błaszczak, M. Dziurda [in:] Kodeks postępowania cywilnego. Koszty sądowe w sprawach cywilnych. Dochodzenie roszczeń w postępowaniu grupowym. Przepisy przejściowe. Komentarz do zmian.[title in translation: *Code of Civil Procedure. Court costs in civil cases. Investigation of claims in group proceedings. Interim provisions. Commentary on changes]*Tom I II, ed. T. Zembrzuski, Warszawa 2020, Art. 226(2); On that note in the context of Art.226 (2) § 2. Sec. 3(b) CCP application of the additional scope of interest seems to be highly controversial even from the very perspective of the subjective scope of the arbitration agreement – the prevailing view is that such sanction in not possible, however the discussion on the topic is much more complex and falls outside the scope of this paper.

35 Cf. K. Flaga-Gieruszyńska [in:] K. Flaga-Gieruszyńska, A. Zieliński (eds.), Kodeks postępowania cywilnego. Komentarz [title in translation: *Code of Civil Procedure. Commentary*], Warsaw 2022; District Court in Gdańsk judgement of 19 October 2020, case ref. no. I C 588/19.

arise from Article 4(1) CCP. Most often it stems directly from the arrangements of the parties.[36] Including, in particular, as to the parties' arrangements with regard to the applicable arbitral rules. The concept of responding to abuse of procedure by awarding costs as one of the methods is widely developed in the doctrine of international arbitration (especially under the general umbrella of measures aimed against guerilla tactics), which is reflected, directly or indirectly, in the most important arbitration rules.[37] Hence, it is unsurprising that such reflection may be found also in Polish arbitration rules.

11.28. Having in mind the scope of this paper the authors will highlight the provisions of leading arbitral institutions in Poland which deal with the possibility of sanctioning abuse of procedure with decisions on costs.

11.29. Under the Arbitration Rules of Court of Arbitration at the Polish Chamber of Commerce in Warsaw (SAKIG Rules) there are three core provisions that are worth paying attention to in the discussed context. First, §7 sec. 2 SAKIG Rules establishes a general obligation of the parties to 'act in good faith and seek to make the proceedings speedy and efficient and to avoid unnecessary costs.'[38] Second, §48 sec. 1 SAKIG Rules indicates that while deciding on costs of the arbitration, the Arbitral Tribunal shall resolve the issue 'in the ruling ending the proceeding, reflecting the result of the proceeding and (which is key in the context of this paper) other relevant circumstances.'[39]Additionally §48 sec. 2 SAKIG Rules determines that only 'justified costs of the parties connected with conducting the proceedings' shall be included in the costs of arbitration.[40] Consequently and conversely there it necessitates the existence of a category of 'unjustified costs of the

[36] Ł. Błaszczak [in:] Kodeks postępowania cywilnego. Koszty sądowe w sprawach cywilnych. Dochodzenie roszczeń w postępowaniu grupowym. Przepisy przejściowe. Komentarz do zmian.[title in translation: *Code of Civil Procedure. Court costs in civil cases. Investigation of claims in group proceedings. Interim provisions. Commentary on changes]*Tom I II, ed. T. Zembrzuski, Warszawa 2020, Art. 4(1).

[37] See in particular: E. Gaillard, Abuse of Process in International Arbitration, ICSID Review 2017; S. Wilske, Sanctions Against Counsel in International Arbitration – Possible, Desirable or Conceptual Confusion?, Contemporary Asia Arbitration Journal, Vol. 8, No. 2, at 14 (1)-184, 2015; see also: ICC Arbitration and ADR Commission Report, Techniques for Controlling Time and Costs, n. 4, para. 82 and ICC Commissions Report on Decisions on Costs in International Arbitration, par. 78-85 apart from directly stating that the allocation of costs can be a useful tool to encourage efficient behaviour and discourage unreasonable behaviour, includes a nonexhaustive list of examples of behaviour which is considered to be unreasonable.

[38] The parties to the proceeding shall act in good faith and seek to make the proceeding speedy and efficient and to avoid unnecessary costs.

[39] Upon application of a party, the Arbitral Tribunal shall resolve the costs of the arbitration proceeding in the ruling ending the proceeding, reflecting the result of the proceeding and other relevant circumstances.

[40] The costs of the arbitration proceeding shall include: 1) the registration fee, 2) the arbitration fee,
[3)] expenses, and 4) justified costs of the parties connected with conducting the proceeding, determined in accordance with the Arbitration Rules and the Tariff of Fees in force on the date of commencement of the proceeding.

parties' which cannot be taken into account. Finally, under §51 sec. 2 SAKIG Rules develops on the rule established in §48 sec. 2 SAKIG Rules.

11.30. Despite the fact that none of the cited articles directly says that costs stemming from abuse of procedure should be charged from the abusing party or should lead to a higher cost burden on the abusing party regardless of the outcome of the case is rather uncontroversial. In Polish law, regarding the decisions on costs, this is referred to as the 'principle of guilt'. This rule is expressed directly in Article 103 CCP[41] in the regulation of traditional state court proceedings, but commentators directly point to the existence of this principle in the arbitration under the SAKIG Rules likewise.[42]

11.31. What may be controversial, of course, is how to measure the parties' guilt against the costs incurred. A simple solution might be for the other party to determine the extent of the costs it was forced to incur, or to demonstrate that the costs the abusing party incurred for the purposes of *abuse* are not justified and should not be included in the cost award.

11.32. Rules of the Court of Arbitration at the Confederation of Lewiatan (**"SAL Rules"**) follow a similar approach. First, in §2 sec. 5 a general rule which in particular indicates that 'In matters not expressly provided for in the Rules the Lewiatan Court of Arbitration, the arbitral tribunal and the parties shall act in the spirit of the Rules, seeking to ensure the broadest possible effectiveness of the arbitration agreement, the expeditiousness and efficiency of arbitral proceedings as well as the enforceability of awards.'[43] Second, in §47 sec. 1 'the reasonable costs of the parties' legal representation; as well as other reasonable costs incurred by the parties' are covered within the costs of arbitration under the SAL Rules. Finally, in § 48 sec. 1 the arbitral tribunal is once again empowered to, subject of a party's request, make a decision on costs bearing 'in mind: (i) the outcome of the arbitration and (ii) other relevant circumstances.'[44]

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[41] Regardless of the outcome of the case, the court may impose an obligation on a party or intervener to reimburse costs caused by their unprincipled or manifestly improper conduct.

[42] R. Morek, §48 Regulamin Arbitrażowy [in:] M. Łaszczuk, A. Szumański (eds.), Regulamin Arbitrażowy Sądu Arbitrażowego przy KIG. Komentarz [title in translation: *Arbitration Rules of the Court of Arbitration at the Polish Chamber of Commerce. Commentary*], Warszawa 2017.

[43] The rule is then also further developed through the SAL Rules e.g. in §22 sec. 3-4 The partiesundertake to carry out the orders and other rulings of the arbitral tribunal. […] The arbitral tribunal and the parties are obliged to conduct the arbitration in an expeditious and coste-ffective manner.

[44] The arbitral tribunal may, at the request of a party, award the costs of legal representation and other costs incurred by the party in the award or in other ruling which brings the arbitration to an end. In making a decision, the arbitral tribunal should bear in mind: (i) the outcome of the arbitration and (ii) other relevant circumstances.

11.33. Once again, there is no direct empowerment to sanction abuse in the decision on costs.[45] However, also once again there is little to no doubt that sanctioning could take place. Commentary to the SAL Rules directly highlights the approach to decisions on costs which 'encourage parties to take actions that promote procedural economy, and discourage unreasonable actions, such as those resulting in prolonged proceedings.'[46] Commentators explicitly express that respect for this procedural economy can be taken into account in the award of costs as 'other relevant circumstances.'[47] Commentators also go so far as to say that costs may not be awarded at all if the arbitral tribunal determines that the party's counsel intentionally caused unnecessary prolongation of the proceedings and significant costs to be incurred.[48]

11.34. Two more institutions which play a crucial rule on the Polish arbitration market are worth consideration on that topic.

11.35. First is the Court of Arbitration at the General Prosecutor's Office of the Republic of Poland. Rules of this institution include a specific provision on the procedural economy in §35, which however deal mostly with the evidentiary procedure. Only §35 sec. 1[49] and sec. 5[50] express a general efficiency principle with the explicit imposition of an obligation on the parties to the proceedings to promptly point out violations of procedure, which, however, is already apparent in the CCP. In turn §43 once again follows the typical model of 'cost follow the events' with the possibility of taking into account other relevant circumstances

11.36. Second is the Polish Consulting Engineers and Experts Association (SIDiR) which yet again follows the already

[45] A. Różalska-Kucal, 3.4. Sposób orzekania [in:] Postępowanie przed sądem polubownym. Komentarzdo Regulaminu Sądu Arbitrażowego przy Konfederacji Lewiatan [title in translation: *Proceedings before the Arbitration Court. Commentary to the Rules of the Court of Arbitration at the Confederation of Leviathan*], Warszawa 2015.

[46] A. Różalska-Kucal, 3.4. Sposób orzekania [in:] Postępowanie przed sądem polubownym. Komentarz do Regulaminu Sądu Arbitrażowego przy Konfederacji Lewiatan[title in translation: *Proceedings before the Arbitration Court. Commentary to the Rules of the Court of Arbitration at the Confederation of Leviathan*], Warszawa 2015, at 599; quoting from Techniques for Controlling Time and Costs in Arbitration. Report from the ICC Commission on Arbitration, ICC 2009, nr 843.

[47] A. Różalska-Kucal, 4.3. Inne okoliczności [in:] Postępowanie przed sądem polubownym. Komentarz do Regulaminu Sądu Arbitrażowego przy Konfederacji Lewiatan [title in translation: *Proceedings before the Arbitration Court. Commentary to the Rules of the Court of Arbitration at the Confederation of Leviathan*], Warszawa 2015.

[48] *Ibid.*

[49] The Arbitral Tribunal in guiding the course of the proceedings, ensures its efficiency, striving for the quickest possible conclusion without violating the parties' right to be heard, to present their claims and conclusions.

[50] If there has been a violation of the rules of procedure, each party should immediately draw attention to such failure. If the violation occurred during the hearing, the filing of the objection should take place at the hearing, and otherwise - within 7 days from the day the party became aware of the violation. If the plea is not filed within the time limit, the party loses the right to invoke the plea in the course of the proceedings, as well as in an action to set aside the arbitral award.

established scheme. First, it establishes a general principle of efficiency (§11).[51] Second, it goes on to list the elements of costs of arbitration and opens the list with inclusion of a general clause of 'reasonable costs' (§ 47).[52] Finally it links tribunals discretion in the decision on costs with the principle of efficiency itself (§50).[53]

11.37. Thus, one can see a clear pattern in the way regulation of decisions on costs is carried out. Consequently, two basic comments follow.

11.38. The first comment is that the structure of the regulation of this issue is essentially uniform throughout Polish arbitral institutions, and corresponds to the international standards of regulating issue of costs.[54] The Polish outlook being that a party's behavior and abusive behavior in particular can be taken into account while deciding on costs, especially to justify the departure from or modification of costs follow the events rule.[55]

11.39. This theoretical possibility seems to be reflected in the actual cases resolved in the SAKIG as indicated in a recent report analyzing cost rulings before this institute.[56] The report provides interesting (and arguably not obvious) examples of behaviors which were sanctioned in decisions on costs. Such situations included: groundless objection to the jurisdiction of the arbitral tribunal raised by the party which in the end won the case; did not agree to consolidating several cases, which could have expedited the proceedings or similarly, when a party asserted

[51] The court, the Arbitral Tribunal and the arbitrators have a duty to exercise due diligence so that the proceedings are conducted efficiently and effectively and the award issued is effective and enforceable.

[52] Arbitration costs include: (1) registration fee, (2) arbitration fee, (3) reasonable costs, (4) reasonable costs of the parties related to the conduct of the arbitration, determined in accordance with the Rules and the Fee Schedule.

[53] 1. When deciding on a party's request for the costs of the proceedings, the Arbitral Tribunal shall take into account the costs of legal representation and other reasonable costs incurred by the party in connection with the proceedings.

2. When deciding on the costs of legal representation, the Arbitral Tribunal shall take into account the remuneration of the attorney at a reasonable rate, taking into account the outcome of the proceedings, the amount and efficiency of the attorney's work, the nature of the case and other relevant circumstances.

[54] See e.g. Art. 42 UNCITRAL Arbitration Rules (with Article 1, paragraph 4, as adopted in 2013 and Article 1, paragraph 5, as adopted in 2021), Art.37 and in particular Art. 37 sec. 5 ICC Rules of Arbitration entered into force on 1 January 2021; Art.28.3 LCIA Arbitration Rules effective 1 October 2022; Art. 49 in particular Art. 49(6) SCC Rules entered into force on 1 January 2023; Art. 33.3 2018 DIS Arbitration Rules effective as of 1 March 2018; Art. 38 sec. 2 VIAC Rules of Arbitration and Mediation in force as of 1 July 2021; Art. 34 and in particular Art. 34.3 2018 HKIAC Administered Arbitration Rules in force as of 1 November 2018.

[55] Apart from many others quoted already see e.g. Ł. Błaszczak, Nadużycie prawa procesowego w postępowaniu arbitrażowym [title in translation: *Abuse of procedure in arbitration proceedings*], Warszawa 2018; P. Pietkiewicz, Koszty postępowania przed sądem polubownym [title in translation: *Arbitration costs*], in: A. Szumański (ed.), System prawa handlowego, v. 8, Arbitraż handlowy [title in translation: *Commercial arbitration*], Warsaw 2009 and for analogous international outlook see e.g. S. Wilske, Cost Sanctions in the Event of Unreasonable Exercise or Abuse of Procedural Rights - A Way to Control Costs in International Arbitration?! in: SchiedsVZ 2006Gotanda J. Y. (1999): Awarding Costs and Attorneys' Fee in International Commercial Arbitrations, Michigan. Journal of International Law Vol. 21 No. 1.

[56] Kocur & Współnicy, Koszty arbitrażu w Polsce [Costs of arbitration in Poland], 2023, at 26.

several related claims in separate proceedings.[57] More obvious examples of violations of established rules that affected the ruling on costs included violations concerning, for example, the manner of exchange of pleadings (exceeding the established page limit or failure to send copies of the pleadings in the previously agreed upon form).[58]

11.40. This possibly warrants a conclusion that, within the framework of Polish arbitration practice, it is not only a direct violation of an existing obligation that could influence a decision on costs. Decision on costs may also sanction failures to exercise a right left to the will of the parties, which may adversely affect the efficiency of the proceedings, consequently sanctioning sub-optimal behavior. Counsels acting within the Polish arbitral framework should be aware of this risk.

11.41. The second comment is that it is also uniform that there is no clear algorithm for how other relevant circumstances - including abuse of procedure - can be taken into account in a ruling on costs. Polish regulations seem to generally employ the cost follow the event principle,[59] but this is primarily a starting point. The remaining part of the regulation is quite flexible. This flexibility alongside with the discretion it brings,[60] forces caution on the part of arbitrators. Especially since the award of costs occurs, as a rule, in the final award, and therefore at a point where the parties (again, as a rule) no longer have any way to oppose the decision on costs (apart from post-award proceedings).

11.42. Having established, that decision on costs is available in the toolbox of an arbitrator operating under Polish law, one could now look into how to use said tool. Apart from direct provisions on decisions on costs it is worthwhile to take into consideration the best practices on that matter as well as key issue of the so-called 'surprising awards' under the Polish arbitration law.

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[57] *Ibid.*

[58] *Ibid.*

[59] Cf. R. Morek, § 48 Regulamin Arbitrażowy [in:] M. Łaszczuk, A. Szumański (eds.), Regulamin Arbitrażowy Sądu Arbitrażowego przy KIG. Komentarz [title in translation: *Arbitration Rules of the Court of Arbitration at the Polish Chamber of Commerce. Commentary*], Warszawa 2017; P. Pietkiewicz, Koszty postępowania przed sądem polubownym (Arbitration costs), in: A. Szumański (ed.), System prawa handlowego, v. 8, Arbitraż handlowy (Commercial arbitration), Warsaw 2009; see also: M. Neumann Zasady ponoszenia kosztów postępowania przed Sądem Arbitrażowym przy KIG na tle tendencji światowych [in:] BIULETYNA 2015, Nr 1; P. Nowaczyk, A. Szumański, M. Szymańska, Regulamin Arbitrażowy UNCITRAL. Komentarz. [title in translation: *UNCITRAL Arbitration Rules. Commentary*] Warszawa 2011.

[60] And in turn also the uncertainty that it could generate, see. e.g. Bühler M., Awarding Costs in International Commercial Arbitration: an Over-view, ASA Bulletin 2/2004 and in the Polish context in particular M. Neumann Zasady ponoszenia kosztów postępowania przed Sądem Arbitrażowym przy KIG natletendencjiświatowych [in:] BIULETYNA 2015, Nr 1 and P. Pietkiewicz, Kosztypostępowaniaprzedsądempolubownym Arbitration costs), in: A. Szumański (ed.), System prawahandlowego, v. 8, Arbitrażhandlowy (Commercial arbitration), Warsaw 2009.

11.43. As to the best practices, ICC Commissions Report on Decisions on Costs in International Arbitration[61] as well Chartered Institute of Arbitrators International Arbitration Practice Guideline on Drafting Arbitral Awards[62] provide an extensive point of reference on that matter.

11.44. It is not the aim of this paper to quote what was already extensively explained in the quoted practice guidelines. With that being said, few basic principles are worth bringing up.

11.45. The implementation of these assumptions may translate, at the very least, into discussing the issue of a particular tribunal's approach to the awarding of costs in a case management conference.[63] It might also translate into a specific provision on costs as part of the provision in the procedural order. Decisions on costs should also affect the structure of the procedural schedule in such a way as to provide parties with directions on the timing and nature of submissions on costs.[64]

11.46. Of course, the best practices are only as good as the applicable law lets them to be. The CCP does not contain special regulations on the arbitration court's award of costs. Interestingly, the logic provided for in application of Article 226 (2) § 1CCP seems to mimic the one that would be suggested by best practices arbitration (regardless of the prevailing view that considers Article 226 (2) CCP to be inapplicable in the arbitration proceedings by virtue of Art. 1184 § 2 CCP).

11.47. That is whenever a party's behavior in light of the circumstances of the case indicates that they had abused their procedural rights, the arbitral tribunal shall instruct them about the possibility of taking measures aimed at tackling such possible abuse.[65]

11.48. One of the specific requirements that commentators point out, which is fully in line with the basic principles of arbitration, is to include all the circumstances that led to the decision on costs, in order for the parties to have full opportunity to comment on these circumstances.[66] Logically, this would seem

[61] ICC Comission Report, Decisions on costs in international arbitration, ICC Dispute Resolution Bulletin 2015, Issue 2.

[62] Chartered Institute of Arbitrators, International Arbitration Practice Guideline, Drafting Arbitral Awards Parts III – Costs, last revised 8 Juner 2016.

[63] See in particular Article 1 of Chartered Institute of Arbitrators, International Arbitration Practice Guideline, Drafting Arbitral Awards Parts III – Costs, last revised 8 June 2016 and paras. 32-33 of ICC Comission Report, Decisions on costs in international arbitration, ICC Dispute Resolution Bulletin 2015, Issue 2 which provide informative list of issues that could be discussed with the parties.

[64] See e.g. para. 43 of ICC Comission Report, Decisions on costs in international arbitration, ICC Dispute Resolution Bulletin 2015, Issue 2.

[65] Vis-à-vis Art. 226 (2)§ 1CCP.

[66] See. eg. A. Różalska-Kucal, 4.3. Inne okoliczności [in:] Postępowanie przed sądem polubownym. Komentarz do Regulaminu Sądu Arbitrażowego przy Konfederacji Lewiatan[title in translation: *Proceedings before the Arbitration Court. Commentary to the Rules of the Court of Arbitration at the Confederation of Leviathan*], Warszawa 2015.

to suggest (assuming that the costs award is in the final award) that the parties should learn about these circumstances and the possible shape of the costs award (especially if it were to deviate materially from the principle of costs follow the events) not from the award itself, but even before it.

11.49. This is in line with the prohibition on 'surprising arbitral awards' under Polish arbitration law.[67] Awards on costs are unlikely to be an exception to that principle. An award on costs contrary to public policy will be unenforceable under Polish law.[68] Consequently, in the event of such a surprise by the arbitrators, one must be aware of the risk of annulling the arbitral award at least to the extent of the costs award[69] on the grounds of violation of procedural public policy. For this pragmatic reason alone, one should be attentive to the issue of the costs award from the outset, and not treat it as a secondary issue to be simply ticked off in the final award.

[67] From the Polish case law see in particular Judgment of the Court of Appeal in Gdańsk of September 16, 2020, V ACa 162/20(*The need to ensure a fair trial for a party and the right to be heard by each party prohibit surprising the parties with a ruling in the sense that it is impermissible to obtain a ruling based on assertions and evidence, and consequently facts or legal grounds to which a party has not had an opportunity to respond and comment);* see also: Szumański A., Zakaz zaskakiwania podstawą rozstrzygnięcia przez sąd Arbitrażowy [title in translation: *Zakaz zaskakiwania podstawą rozstrzygnięcia przez sąd Arbitrażowy*] [in:] EXPERIENTIA DOCET. KSIĘGA JUBILEUSZOWA OFIAROWANA PANI PROFESOR ELŻBIECIE TRAPLE, ed.P. Kostański, P. Podrecki, T. Targosz, Warszawa 2017; Orkusz M., „Zaskoczenie" stron wyborem podstawy prawnej orzekania przez sądpolubowny a pozbawienieprawa do obrony [title in translation: *The 'surprise' of the parties by the choice of the legal basis for the arbitral tribunal's decision and deprivation of the right to defense*] [in:] Arbitration BulletinYoungArbitration No. 24, Court Of Arbitration at the Polish Chamber of Commerce in Warsaw, Warsaw 2016; while it is rather uncontroversial that the decision on costs in the form of a award can be appealed, the issue of challenging an order rendered in this regard is more complex (e.g., orders concerning lack of jurisdiction), see e.g. P. Pietkiewicz, Koszty postępowania przed sądem polubownym [title in translation: *Arbitration costs*], in: A. Szumański (ed.), System prawa handlowego, v. 8, Arbitraż handlowy [title in translation: *Commercial arbitration*], Warsaw 2009, at 659-660.

[68] See e.g. A. Różalska-Kucal, 2.3.3. Wynagrodzenie od sukcesu [in:] Postępowanie przed sądem polubownym. Komentarz do Regulaminu Sądu Arbitrażowego przy Konfederacji Lewiatan [title in translation: *Proceedings before the Arbitration Court. Commentary to the Rules of the Court of Arbitration at the Confederation of Leviathan*], Warszawa 2015.

[69] See e.g. Judgment of the Warsaw Court of Appeals of 28 March 2017, case ref. no. VI ACa 603/16; decision of the Warsaw Court of Appeals of 31 March 2015, case ref. no. I ACz 358/15; decision of the Cracow Court of Appeals of 27 November 2012, case ref. no. I ACz 1737/12 (the court did not dwell on the problem at hand in detail); M. Asłanowicz, Sąd polubowny (arbitrażowy). Komentarz do Art. 1154-1217 KPC [title in translation: *Arbitration.Commentary to Articles 1154-1217 of the CCP*], Warszawa 2017, kom. do Art. 1205, nb. 4; B. Kowalczyk, K. Szmit-Fąderska, Stwierdzanie wykonalności wyroku sądu polubownego w zakresie kosztów postępowania [title in translation: *Declaring the enforceability of the arbitral award with regard to the costs of the proceedings*], Glosa nr 3/2016; J. Szpara, Kilka uwag o wykonalności rozstrzygnięcia o kosztach postępowania arbitrażowego w przypadku braku właściwości sądu polubownego do rozstrzygnięcia sporu [title in translation: *Some remarks on the enforceability of an award of arbitration costs in the absence of jurisdiction of the arbitral tribunal to resolve the dispute*][in:] B. Jelonek-Jarco, R. Kos, J. Zawadzka, Usus magister est optimus. Rozprawy prawnicze ofiarowane Profesorowi Andrzejowi Kubasowi, Warszawa 2016, at 735; W. Głodowski, Skarga o uchylenie wyroku sądu polubownego [title in translation: *Action to set aside an arbitration award*], Warszawa-Poznań 2014, at 185. Ł. Błaszczak, Postępowanie o stwierdzenie wykonalności krajowego i zagranicznego wyroku sądu polubownego (wybrane zagadnienia) [title in translation: *Proceedings for declaration of enforceability of a domestic and foreign arbitral award (selected issues)*], Radca Prawny nr 6/2012, at 16D, see also: P. Kraft, S. Kröll [in:] K.-H. Böckstiegel, S. Kröll, P. Nacimento (eds,.), Arbitration in Germany: The Model Law in Practice, Aalphen aan den Rijn 2015, at 389.

V. Conclusion

11.50. Decisions on costs are one the many possible tools in arbitrator's toolbox in order to combat abuse of procedure. Probably one of the simplest and most severe ones. A few basic principles presented in this paper emerge. Being aware of those principles, burden lies not only on arbitrators who must decide on the issue in a safe manner, particularly, in the Polish context they should be careful to make *unsurprising* decisions notwithstanding their possible discretion. The burden also lies on counsels who must be aware that their actions may negate their substantive success in the arbitration due to perceived misconduct and that such a possibility is already decipherable from the basic provisions of arbitration rulesets.

11.51. Consequently, an active role in the context of cost and case management should lie not only with the arbitrators (who must properly manage the proceedings), but also with the counsels, who can and should actively signal violations of the other side. Parties to the proceedings could reasonably expect the tribunal to take this issue into account when justifying what constitutes *justified costs* of arbitration and what constitutes *relevant circumstances* that should be considered in the decision on costs.

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Summaries

DEU [***Kostenentscheidung im Kampf gegen den Prozessmissbrauch nach polnischem Recht***]

Der Beitrag untersucht den Verfahrensmissbrauch nach polnischem Recht. Dabei befasst er sich insbesondere mit Kostenentscheidungenals Mittel zur Lösung des Problems widerrechtlicher Handlungen im Schiedsverfahren. Die Abhandlung erläutert zunächst das allgemeine Verständnis des Verfahrensmissbrauchs im polnischen Recht. Die Autoren legen zwei Theorien vor: die externe und die interne Theorie. Anschließend erörtert der Beitrag die besonderen von den polnischen Gesetzgebern verabschiedeten Maßnahmen, wozu auch die Neufassung der Zivilprozessordnung gehört. Die Autoren erkläutern, dass das polnische Recht keine besondere Definition des Verfahrensmissbrauchs im Schiedsverfahren bietet, sondern auf der allgemeinen Anwendbarkeit solcher Grundsätze wie der eines fairen Prozesses fußt. Insbesondere wird es betont, dass zwar die direkte

Anwendung gewisser Bestimmungen der ZPO im Schiedsverfahren strittig ist, das generelle Verbot des Verfahrensmissbrauchs jedoch allgemein anerkannt wird. Abschließend hebt der Beitrag die Wichtigkeit der Kostenentscheidung als ein Instrument im Kampf gegen den Missbrauch des Schiedsverfahrens hervor, sowie die Notwendigkeit, dass sich der Schiedsrichter und der Prozessvertreter diese Grundsätze bewusst machen, um so für ein faires und effektives Verfahren zu sorgen. Insbesondere gilt, dass die Kostenentscheidung nach den Maßstäben der Vorhersehbarkeit und Transparenz ergehen soll, um Überraschungen (oder gar der etwaigen Nichtvollstreckbarkeit nach polnischem Recht) vorzubeugen.

CZE **[*Přiznání nákladů jako nástroj boje proti zneužívání řízení dle polského práva*]**

Příspěvek zkoumá zneužívání řízení dle polského práva. Zaměřuje se zejména na rozhodnutí o nákladech používaná jako nástroj pro řešení problému protiprávního jednání v rozhodčím řízení. Pojednání začíná vysvětlením obecného chápání zneužívání řízení v polském právu. Autoři předkládají dvě teorie: vnější a vnitřní teorii. Článek následně zkoumá zvláštní legislativní opatření přijatých v Polsku za účelem řešení problému zneužívání řízení, včetně novelizace civilního procesního řádu. Autoři vysvětlují, že polské právo nenabízí zvláštní definici zneužívání procesu v rozhodčím řízení, nýbrž uvádí, že zásady jako spravedlivý proces jsou použitelné univerzálně. Zdůrazňuje se, že zatímco přímá aplikace některých ustanovení civilního procesního řádu v rozhodčím řízení je předmětem sporu, obecný zákaz zneužívání procesu se všeobecně uznává. Příspěvek závěrem zdůrazňuje důležitost rozhodnutí o nákladech jako nástroje proti zneužívání procesu v rozhodčím řízení. Podtrhuje nutnost toho, aby si rozhodci a právní zástupci byli těchto zásad vědomi, a zajistili tak spravedlivé a efektivní řízení. Zejména platí, že rozhodnutí o nákladech by se měla vydávat předvídatelně a transparentně, aby se předešlo překvapením a potenciální nevykonatelnosti dle polského práva.

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POL **[*Rozstrzygnięcie o kosztach jako narzędzie przeciwdziałania nadużyciom prawa procesowego w prawie polskim*]**

Niniejszy artykuł porusza kwestię nadużycia prawa procesowego, koncentrując się na postępowaniu arbitrażowym i prawie polskim.

Przedstawiono prawne i etyczne ramy, które definiują, czym są takie nadużycia oraz jak im przeciwdziałać, w tym omówiono szczegółowe przepisy Kodeksu postępowania cywilnego, które to regulują. W dyskusji podkreślono rolę rozstrzygnięć o kosztach postępowania arbitrażowego jako narzędzia przeciwdziałania nadużyciom oraz omówiono podstawowe zasady, którymi należy się kierować przy podejmowaniu takich decyzji. Artykuł kończy się akcentuje znaczenie przejrzystych i przewidywalnych rozstrzygnięć o kosztach dla zachowania integralności postępowania arbitrażowego i wykonalności orzeczeń arbitrażowych zgodnie z polskim prawem.

FRA **[*La décision sur les dépens comme outil de lutte contre l'abus de procédure en droit polonais*]**

L'article se propose d'examiner l'abus de procédure arbitrale en droit polonais. Il esquisse les cadres juridique et éthique qui définissent et limitent les abus de procédure, y compris les dispositions spéciales du Code de procédure civile. Les auteurs soulignent le rôle que joue la décision sur les dépens dans la procédure arbitrale en tant qu'outil anti-abus. Ils analysent également les principes clés qui sous-tendent la décision sur les dépens. En conclusion, l'article met en relief l'importance de décisions transparentes et prévisibles sur les dépens, afin de préserver l'intégrité de la procédure arbitrale et de la force exécutoire des sentences arbitrales en droit polonais.

RUS **[*Признание судебных расходов как инструмент борьбы со злоупотреблениями производством в соответствии с польским законодательством*]**

Статья посвящена злоупотреблению производством и фокусируется на арбитраже в соответствии с польским законодательством. В ней излагаются правовые и этические основы, которые определяют и пресекают злоупотребления производством, включая специальные положения Гражданского процессуального кодекса. В дискуссии подчеркивается роль решений о расходах производства в арбитраже как инструмента борьбы со злоупотреблениями; также рассматриваются ключевые принципы, на основе которых принимаются решения о расходах производства. В заключение статьи подчеркивается важность прозрачных и предсказуемых решений о судебных расходах в целях сохранения целостности арбитража и приведения

в исполнение арбитражных решений в соответствии с польским законодательством.

ESP **[*La condena en costas como mecanismo de lucha contra el abuso de procedimiento en el derecho polaco*]**
El documento aborda el tema del abuso del procedimiento y se centra en el arbitraje con arreglo a la legislación polaca. Esboza los marcos legales y éticos que definen y restringen el abuso del proceso, incluyendo disposiciones específicas de la Ley de Enjuiciamiento Civil. La discusión destaca el papel de la condena en costas en el procedimiento arbitral como un instrumento contra el abuso; también discute los principios clave que rigen la condena en costas. El artículo concluye subrayando la importancia de la transparencia y la previsibilidad de las decisiones sobre costas para preservar la integridad de los procedimientos arbitrales y la ejecutabilidad de los laudos arbitrales de conformidad con la legislación polaca.

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