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## SOME REMARKS ON THE ROLE OF DOMESTIC COURTS IN INVESTMENT ARBITRATION FROM POLAND PERSPECTIVE AS A NON-ICSID COUNTRY

(ICSID'E ÜYE OLMAYAN POLONYA'DA YATIRIM TAHKİMİNDE YEREL MAHKEMELERİN ROLÜ)

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### ÖZET

Yatırım tahkimi usulüne yerel mahkemeler ancak istisnai hallerde müdahale edebilmektedir. Bunun Sebebi, yabancı yatırımcılara, çoğunlukla yerel mahkemelerin kontrolü dışında kalan hukuki bir alan sağlayabilmektir. Polonya her ne kadar ICSID'e üye olmasa da, bu durum Polonya'da yabancı yatırımcılara gerekli hukuki korumanın sağlanamadığı anlamına gelmemelidir. Bu makalede, Polonya'daki yabancı yatırımcıların korunmasına yönelik imkânlar, tahkimle ilgili iki taraflı yatırım antlaşmaları ve yerel kanunlardaki düzenlemeler çerçevesinde incelenmiştir.

**Anahtar Kelimeler:** Yerel mahkemeler, ICSID tahkimi, yatırım tahkimi, iki taraflı yatırım antlaşmaları, yabancı yatırımcıların korunması, hakem mahkemesi, ihtiyati tedbirler, Polonya hukuku.

### ABSTRACT

*The domestic courts hardly play a role in ICSID arbitration proceedings. The aim is to provide foreign investors with a judicial area*

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which is mostly out of the domestic courts' control. Poland is a non-ICSID country. However that does not mean that there is not enough protection for the foreign investors. In this study, Polish mechanisms including arbitration in bilateral investment treaties and national civil procedure for protection of foreign investors will be enlightened.

**Keywords:** Domestic courts, ICSID arbitration proceedings, investment arbitration, bilateral investment treaties, protection of foreign investors, arbitral tribunal, interim measures, Polish Law.

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## I. Introduction

In light of Venezuela's recent denunciation of membership in the International Centre for Settlement of Investment Disputes ("ICSID"), this article provides information on the available procedures for conflict resolution used by a non-ICSID country such as Poland.

The number of countries that either never became members of the ICSID such as Brazil, Mexico, India, South Africa and Poland, or denounced their membership, such as Bolivia or Ecuador is not insignificant<sup>1</sup>. The application of Canada and Russia still awaits ratification.

Therefore, any referral to Polish regulations that this article may contain serves a deeper purpose than only presenting the Polish national law. It aims at demonstrating the type of procedures that might be employed in bilateral investment treaties or national civil procedures in order to protect the investor's interest.

Recently a Canadian mining company Rusoro filed a claim against Venezuela a week before the state withdrew from the ICSID. Also an investor in BMW and Mini Cooper raised its claim solely against the same country and only a day before this deadline. Both these investors managed to protect themselves under the ICSID "umbrella".

<sup>1</sup> See also I. Vincentelli, *The Uncertain Future of ICSID in Latin America* available at: <http://ssrn.com/abstract=1348016>, p. 3.

However, there are numerous other possibilities provided by bilateral investment treaties to start arbitral proceedings before an *ad hoc* tribunal or an arbitration center.

It is useful to note that when international investment arbitration occurs, the interferences between these arbitral tribunals and national courts should be expected. The national courts play an important function in the resolution of investment disputes as arbitration does not occur in a vacuum, and the arbitral tribunals and national courts have a symbiotic relationship<sup>2</sup>.

## II. Substantiation for the Lack of ICSID Membership from the Perspective of the Role of the Domestic Court

The most common substantiation for the lack of ratification of the ICSID convention is the fear of its self-enclosed procedural system which allows for the direct enforceability of a final arbitral award in all states parties to the ICSID.

The domestic court system is seen as deprived of the opportunity to refuse to recognize the award before a domestic court. Domestic investors can, in this situation, be considered as underprivileged in comparison with the international (foreign) ones who do not have to engage any domestic laws on the recognition of arbitral awards.

Some states claim to consider the arbitral jurors biased, as they are appointed mainly by the bodies dominated by the United States, Western Europe or the representatives of the industry<sup>3</sup>.

There is a broad belief that the lack of judicial review of the awards may in fact provide for an unfair advantage for the industry interest over the public interest.

Other reasons for which the country may choose not to join the ICSID are: a relatively small interest in attracting international investors,

<sup>2</sup> S. D. Franck, *Foreign Direct Investment, Investment Treaty Arbitration and the Rule of Law*, Global Business and Development Law Journal, 2007 vol. 19 p. 368; see also: [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=882443](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=882443).

<sup>3</sup> Compare: <http://justinvestments.org/2012/08/is-canada-close-to-ratifying-the-icsid-convention-heres-why-we-hope-not/>.



fear of undermining the policy of no-intervention in it, and violation of most-favored nation clauses<sup>4</sup>.

### III. Mechanisms Included in Bilateral Investment Treaties as an Alternative to the ICSID System: Any Space for the Domestic Courts?

Bilateral investment treaties, guaranteeing the fair and equitable treatment of foreign investments, provide a body of law that includes a range of mechanisms for dispute resolution in the absence of the ICSID<sup>5</sup>. These treaties form a hybrid of international and domestic law due to the private and commercial interests governed by it<sup>6</sup>.

Poland has entered over 60 bilateral investment treaties with major capital exporting countries<sup>7</sup>. All of them provide for at least one of the following methods of dispute resolution<sup>8</sup>.

Firstly, parties may decide that the dispute will be resolved through an *ad hoc* arbitration tribunal. It is rather uncommon for the parties to specify the arbitration procedure in the treaty. However, if parties decide to do so, they most frequently point to the UNCITRAL rules. Such a solution can be found in bilateral treaties between Poland and Argentina, Chile, France, Belgium, Norway, Finland, Germany, Croatia, Egypt and Greece.

Secondly, a common practice is to specify an institutionalized arbitral tribunal, such as the International Chamber of Commerce in Paris, or International Institute of the Stockholm Chamber of Commerce. A provision of this type can be found in Polish International Bilateral Treaties,

<sup>4</sup> I. Vincentelli, The Uncertain Future of ICSID in Latin America available at: <http://ssrn.com/abstract=1348016>, p. 15-16.

<sup>5</sup> K. Michałowska, *Międzynarodowy arbitraż inwestycyjny*, e-Przegląd Arbitrażowy, nr 1, 2010, p. 1.

<sup>6</sup> P. Kosiński, *Rola prawa krajowego*, Studia Toruniensia 2011, t. III p. 76 after Z. Douglas, *The Hybrid Foundations of Investment Treaty Arbitration*, 2003, 74 BYIL151, p. 195.

<sup>7</sup> M. Świątkowski, *Investment Treaty Arbitration in Arbitration in Poland*, Warszawa 2011, p. 160; K. Michałowska, *op. cit.*, p. 1.

<sup>8</sup> All bilateral investment treaties referred to in this article can be found on the webpage of the Polish Ministry of Justice: <http://www.traktaty.msz.gov.pl/?lang=en>.

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with Cyprus, Egypt, Estonia, the Netherlands, Lithuania, Malaysia and Slovakia.

The third possibility to shape future dispute resolution is to include a clause in a BIT which enables the submission of a case to "a competent national court" or to the competent court of the contracting party in the territory of which the investment has been made.

The first phrase was used in a BIT between Poland and Albania<sup>9</sup>, the latter in an agreement between Poland and Croatia<sup>10</sup> and Poland and Romania<sup>11</sup>.

These two methods are always used as an alternative clause in the investment treaty and never constitute the sole possibility for the investor. It is common that one investment treaty provides several methods which the investor will be able to choose after a lapse of a period of three to six months in which no amicable solution could be reached.

States often include an additional clause which aims to embrace possible future political developments. It provides a possibility of submitting a dispute to the Arbitral tribunal under the ICSID convention, however, only when the convention becomes binding for both contracting parties. Such a solution can be found in investment treaties with Argentina, Austria, Chile, Croatia, Cyprus, Czech Republic, Egypt, France, Israel, Indonesia, the Netherlands, South Korea, Lithuania and Romania. It is worth noting that over 70% of BIT's entered into by Poland contain this clause<sup>12</sup>.

Polish BITs contain widely phrased jurisdiction clauses. Some provide that either all disputes (Spain, Canada) or disputes in relation to the investment (United States, Austria), or disputes concerning breaches of BIT may be referred to arbitral proceedings. Several agreements establish specific causes, such as expropriation or nationalization (Switzerland, United Kingdom)<sup>13</sup>.

<sup>9</sup> <http://www.traktaty.msz.gov.pl/fd.aspx?f=P0000005428.pdf>.

<sup>10</sup> <http://www.traktaty.msz.gov.pl/fd.aspx?f=P0000006375.pdf>.

<sup>11</sup> <http://www.traktaty.msz.gov.pl/fd.aspx?f=P0000006458.pdf>.

<sup>12</sup> M. Świątkowski, *op. cit.*, p. 162.

<sup>13</sup> Also M. Świątkowski, *op. cit.*, p. 161-162.



The BIT agreements do usually not contain a clause that obliges investors to seek remedies on the local or national level before submitting their claim to the arbitration tribunal.

Nevertheless, some treaties may provide for such a requirement. In the context of the pre-arbitration phase, two types of clauses should be mentioned, as they aim at avoiding complications caused by the national court system.

The first type relies on the invocation of the “most favored nation” clause. Investors can successfully claim that MFN clauses in bilateral investment treaties allow them to rely on other BIT agreements that the hosting state entered into.

Another method is an umbrella clause which stipulates that the parties to a treaty are obliged to observe any obligations they may have entered into with respect to the investment<sup>14</sup>. The umbrella clauses were developed in order to protect not only against evident breaches of law, but also simple violations of the contract by the hosting state<sup>15</sup>.

So far approximately 20 cases were brought by investors against Poland, seven of which (initiated by Ameritech, France Telecom, Saar Piper, Lutz Schaper, Eureko, Cargill and Nordzucker) have already been concluded<sup>16</sup>. Polish companies have also initiated proceedings on the basis of BITs. Bringing an action against a country is a means of last resort for any investor. However, it needs to be noted that BITs provide a stable environment for investments.

#### IV. The Role of Domestic Courts in Investment Arbitration

There are several ways in which the domestic courts and arbitral tribunals interact with each other within a framework of investment dispute resolution<sup>17</sup>. This paper describes the interactions in the field of jurisdiction, evi-

<sup>14</sup> P. Kosiński, *Rola...*, op. cit., p. 99; also Ch. Schreuer, *Interactions of International Tribunals and Domestic Courts in Investment Law*, p. 82 at: [http://www.univie.ac.at/intlaw/wordpress/pdf/interactions\\_int\\_tribunals\\_domestic.pdf](http://www.univie.ac.at/intlaw/wordpress/pdf/interactions_int_tribunals_domestic.pdf).

<sup>15</sup> Compare P. Gautam, *The Umbrella Clause: A Search for Greater Legal Certainty*, available at <http://ssrn.com/abstract=1635145>.

<sup>16</sup> M. Świątkowski, op. cit., p. 163.

<sup>17</sup> Ch. Schreuer, *Interactions...*, op. cit., p. 72.

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dence as well as the recognition, enforcement and execution of an arbitral award.

#### 1. Jurisdiction – Conflict, Cooperation or Harmonious Succession?

One of the most significant legal questions in the stage prior to the arbitral proceedings is whether the investor needs to exhaust domestic remedies.

Another important problem is whether the choice of the method to resolve the problem will be final in a given jurisdiction. In the context of the latter question, one should mention the “fork in the road” clause which offers an investor a choice between a state’s domestic courts and international arbitration<sup>18</sup>.

Once the investor makes his choice, the decision becomes final and binding. For example, if the entrepreneur decides to pursue her claim in the national court of the host state, she will be denied access to international arbitration proceedings. In practice, the arbitral tribunals have established a rule that a fork in the road clause will only have its effect if the same dispute involving the same parties and cause of action has been submitted to the national court of the host state<sup>19</sup>.

According to Art. 41(1) of the ICSID it is the arbitral tribunal that holds the powers to decide about its own competence.

The same rule is widely accepted in reference to international commercial arbitration. Tribunals have exclusive power to establish their competence to hear a case.

As a consequence an arbitral tribunal will resist an attempt of a respondent who tries to challenge its jurisdiction. In *Inceysa v. El Salvador* the legality of the investment was a prerequisite of the tribunal’s jurisdiction. The tribunal had to determine if the investment had been made in violation of the host state’s law. In the tribunal’s opinion it had the power to make an autonomous decision on the matter and refused to submit the case to a competent national court on the territory in which the investment was made<sup>20</sup>.

<sup>18</sup> Ch. Schreuer, *Interactions...*, op. cit., p. 78.

<sup>19</sup> Ch. Schreuer, *Interactions...*, op. cit., p. 78.

<sup>20</sup> Ch. Schreuer, *Interactions...*, op. cit., p. 87.



## 2. Comparison of Cooperation between the National Courts and Arbitral Tribunals under ICSID and Polish Law

### a. Obtaining Evidence

The first area where cooperation between national courts and arbitral tribunals can be observed is the question of obtaining evidence<sup>21</sup>.

According to Article 43 of the ICSID, except the parties agree otherwise, the tribunal may, if it deems it necessary at any stage of proceedings (...) visit the scene connected with the dispute and conduct such inquiries as it may deem appropriate. However, this does not mean that under the Convention the tribunal may request the national court's assistance in regards to evidence<sup>22</sup>.

Any other tribunal, not bound by a similar restriction can request assistance from the national court in Poland under Article 1192 of the Code of Civil Procedure (CCP). The tribunal's request may regard evidence or any other measure that the tribunal cannot undertake on its own. Hence, it is possible for the international tribunal to ask for the assistance of the Polish courts.

### b. Interim Measures

As far as interim measures are concerned, the ICSID Convention established that except as the parties agree otherwise, the tribunal may, if it considers that the circumstances so require, recommend any provisional measures which should be taken to preserve the respective rights of either party (Article 47 of the ICSID). This rule is not applicable to the non-ICSID arbitration.

The Polish law provides two methods for requesting interim measures<sup>23</sup>. Firstly, the parties (not the arbitral tribunal) may submit a request to the Polish court in order to receive an interim measure, inde-

<sup>21</sup> See also R. Kulski, *Sposób prowadzenia dowodów w postępowaniu przed sądem polubownym* [in:] J. Olszewski (ed.), *Sądy polubowne i mediacja*, Warszawa 2006, p. 269-287.

<sup>22</sup> Ch. Chreuer, *The ICSID Convention. Commentary*, Cambridge University Press 2001, p. 653 Art. 43 note 29.

<sup>23</sup> D. Kała, *O relacjach między sądownictwem państwowym a polubownym w znaczeniu wąskim*, ADR 2012/1, p. 78; I. Schmit, *Conservatory measures in Arbitration*, Arbitration Bulletin, 2012/17, p. 100-101.

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pendently from arbitral proceeding (Article of the 1166 CCP). This rule applies equally to the arbitration proceedings pending in Poland and outside of the country.

Secondly, pursuant to Article 1181 CCP, the arbitral tribunal can grant interim measures to the party. In order for the party to be successful several premises have to be met. There should be no contrary agreement that both parties entered into, an interim measure may be granted only when one of the parties brings forth the motion (the petitioner has the burden to prove probability of the claim). When granting an interim measure, the arbitral tribunal may request a security deposit from the party that applied for it. The payment of the deposit may become a prerequisite for awarding an interim measure. The decision of the arbitral tribunal to grant interim measures has to be recognized by a Polish court and receive an enforcement clause. The order can be executed only with an enforcement clause.

The national court may also conduct evidence or other activities which the arbitral tribunal cannot conduct (Article 1192 of the CCP). The national court can cooperate with the arbitral tribunal and help in conducting arbitral proceedings, but the factual activities undertaken within the framework of this regulation are only of an incidental nature<sup>24</sup>.

The parties of the arbitral agreement can stipulate that the arbitral tribunal is excluded from using these procedural regulations<sup>25</sup>. In this model the party may request interim measures independently from the arbitral or national proceedings<sup>26</sup>.

Another model of regulation for interim measures provides that the role of the court is strictly subsidiary to the role arbitral tribunal<sup>27</sup>. It is

<sup>24</sup> D. Kała, *O relacjach między sądownictwem państwowym a polubownym w znaczeniu wąskim*, ADR 2012/1, p. 89 and 82.

<sup>25</sup> D. Kała, *O relacjach między sądownictwem państwowym a polubownym w znaczeniu wąskim*, ADR 2012/1, p. 84.

<sup>26</sup> W. Głodowski, *Zabezpieczenie roszczeń dochodzonych przed sądem polubownym*, ADR 2009/1.

<sup>27</sup> W. Głodowski, *Zabezpieczenie...*, op. cit.



worth noting, however, that some jurisdictions can foresee that an interim measure may be granted only by the national court<sup>28</sup>.

### c. Differences between ICSID Countries and Poland as Non-ICSID Country in Respect of Recognition, Enforcement and Execution of an Arbitral Award

The matters of recognition, enforcement and execution are regulated by the ICSID. According to Article 54.1 of the ICSID, each contracting state recognizes as binding an award rendered pursuant to the ICSID Convention. The recognition is automatic. The convention provides for its own system of revision. It may be requested within 90 days from discovery by any party of the proceedings in writing. The basis for the revision may be the discovery of new facts, unknown during the proceedings that may affect the award. The tribunal may stay the enforcement of the award, if it considers the circumstances to justify such a measure. The annulment of the award may be submitted within 120 days to the Secretary General on the following grounds: (1) the tribunal was not properly constituted, (2) the tribunal has manifestly exceeded its powers, (3) corruption on the part of a member of the tribunal, (4) serious departure from the fundamental rule of procedure, (5) failure to state the reason on which the award was based (Article 53 of the ICSID). The states ensure the enforcement of pecuniary obligations imposed by that award within its territories as if it was the final judgment of a domestic court<sup>29</sup>. The execution of the award is governed by the laws concerning the execution of judgments in force in the state in whose territories the execution is sought (Article 54.3 of the ICSID).

It is important, however, to remember that only some assets of the state are available for execution.

According to the sovereign immunity doctrine, national courts are prohibited from exercising jurisdiction over another state. The immunity can be overcome when the state engages its assets in commercial activities and is based on the premise that such acts are not sovereign but could also be performed by private parties. The burden of proof that the asset against

<sup>28</sup> W. Głodowski, *Zabezpieczenie...*, op. cit.

<sup>29</sup> For examples of non-pecuniary awards, refer to Ch. Schreuer, *Non-pecuniary remedies in ICSID Arbitration* at [http://www.univie.ac.at/intlaw/wordpress/pdf/71\\_cspubl\\_71.pdf](http://www.univie.ac.at/intlaw/wordpress/pdf/71_cspubl_71.pdf). *YUHFD Cilt: X Sayı: 1 (2013)*

which the execution is sought is carried out by the party requesting execution. In *SOABI v. Senegal*, a Belgian company was involved in a project for the construction of low-income housing in Senegal as well as the establishment of a factory for the prefabrication of reinforced concrete<sup>30</sup>. The ICSID tribunal rendered an award in favor of SOABI, stating that Senegal's government was liable for the termination of the contract. The Belgian company was granted damages. The Paris Tribunal of First Instance, where SOABI sought execution, stated that Senegal did not waive its right to immunity and that the company did not demonstrate that the execution of the award in France would be justified. In another case, *LETSCO v. Liberia*, a French entity won an arbitral award and sought execution against Liberian assets<sup>31</sup>. In order to achieve this goal, it filed a suit in a Southern District of New York against the ship owners located in the U.S. as well as Liberian agents who collected taxes due to the government (fees, registration fees and tonnage fees). Liberia moved to vacate the execution with an argument that although the fees were collected by private parties, they constituted non-commercial assets under the Liberian law. When LETSCO filed a motion to execute claims against the bank accounts, Liberia argued that these constitute "mixed assets" – serving partially commercial and partially non-commercial purposes.

As far as the BIT agreements in non-ICSID countries such as Poland, are concerned, there are no specific provisions that would establish rules for the recognition and enforcement of an arbitral award. It needs to be emphasized that the enforcement of non-ICSID awards falls under the provisions of the New York Convention. If both states are parties to the Convention, each contracting state recognizes the arbitral awards as binding and enforces them in accordance with the rules of procedure of the territory in which the award is relied upon, under the conditions provided for in the New York Convention (Article III of the NYC). Article V of the Convention provides a basis for refusal of the recognition.

The BIT agreement between Poland and Germany directs the parties expressly to the New York Convention and stipulates that the recognition

<sup>30</sup> See A. Alexandroff, *Compliance and Enforcement*, p. 1178 at: [http://alanalexandroff.com/wp-content/uploads/2010/11/asa\\_laird\\_ch29.pdf](http://alanalexandroff.com/wp-content/uploads/2010/11/asa_laird_ch29.pdf).

<sup>31</sup> See A. Alexandroff, *Compliance...*, op. cit., 1179.



and enforcement of an award is conducted according to the provisions of the New York Convention.

Even if other BITs do not expressly direct the parties to the New York Convention, its provisions are still applied, if there are premises to go to the text of the Convention.

If the provisions of the New York Convention do not apply, there is no vacuum because, according to Article 1215 of the CCP, the Polish court recognizes an award granted in national or international arbitral proceedings after conducting a hearing<sup>32</sup>. Nevertheless, a court may refuse recognition if (1) there has been no arbitration clause, the arbitration clause is void, ineffective, or its force has lapsed under applicable law; (2) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings, or was otherwise unable to present his case; (3) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains a decision on matters beyond the scope of the submission to arbitration; (4) the composition of the arbitral authority or the arbitral procedure was not in accordance with the law of the country in which the arbitration took place; (5) the award has not yet become binding for the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which that award was rendered.

The Polish law specifies only the grounds for setting aside of the arbitral award issued in arbitral proceedings conducted in Poland (Article 1205 of the CCP). Article 1206 of the CCP established a closed catalogue of causes: (1) invalidity or lack of an arbitration agreement; (2) lack of proper notice to the party; (3) difference between the award and the scope of arbitration; (4) violation of the agreement by the arbitral procedure; (5) the award was granted as a result of crime or forged documents; (6) the case has already been decided in a separate proceeding; (7) the matter cannot be settled in arbitral proceedings according to the Polish law; (8) the recognition would be contrary to public policy<sup>33</sup>. Apart from a cooperation function the national court also has a supervisory function towards the ar-

<sup>32</sup> Compare also D. Kała, *O relacjach między sądownictwem państwowym a polubownym w znaczeniu wąskim*, ADR 2012/1, p. 77.

<sup>33</sup> See Judgment of the Supreme Court dated 15.03.2012, I CSK 286/11. *YUHFD Cilt: X Sayı: 1 (2013)*

bitral tribunal<sup>34</sup>. The arbitral awards issued outside of Poland would fall under the provisions of the state in which the dispute was decided.

## V. Private Law Character of the Investment Arbitration Involving Polish State

In arbitration cases involving the Polish State, it is represented in civil law relations by the State Treasury. This term describes the private law personality of the state attached to the fulfillment of its obligations within the scope of civil legal relations<sup>35</sup>.

According to Article 34 of the Civil Code, the State Treasury is equipped with a legal personality. It is liable for its obligations as well as those of other state legal entities.

The State Treasury acts through organizational units, the so-called *stations fiscali*, therefore a claim against the State Treasury needs to determine the proper entity<sup>36</sup>. The State Treasury Attorney General ("Prokuratoria Generalna") represents the State Treasury on the basis of the act of 8<sup>th</sup> July 2005, the State Treasury Attorney General Act<sup>37</sup>.

The tasks of the State include the legal representation of the State Treasury as a legal entity in private law relations, as well as an entity in public international law. The office does not provide legal assistance to entities owned by the State Treasury, such as the National Bank of Poland<sup>38</sup>.

It is possible for the State Treasury Attorney General to entrust the legal representation in international arbitration to an external attorney, although as a general rule legal representation is carried out by Attorney General legal advisers. Article 17 of the State Treasury Attorney General Act limits the possibility of delegating representation only to cases where knowledge of foreign law, institution or international procedure is re-

<sup>34</sup> D. Kała, *O relacjach między sądownictwem państwowym a polubownym w znaczeniu wąskim*, ADR 2012/1, p. 80.

<sup>35</sup> M. Hartung, *The State in Arbitration Proceedings in Arbitration in Poland*, Warsaw 2011, p. 142.

<sup>36</sup> M. Hartung, *op. cit.* p. 142.

<sup>37</sup> Dz.U. No. 169, Pos. 1417.

<sup>38</sup> M. Hartung, *op. cit.* p. 144.



quired. Given the nature of international arbitration and the forums for dispute resolution, such a provision does not constitute a harsh limitation.

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