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Interaction of Arbitration and Courts

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We regret to announce the death of our most reputable colleague Prof. Pierre Laive from Switzerland. We are thankful for his efforts invested in our common project. His personality and wisdom will be deeply missed by the whole editorial team.

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List of Abbreviations

AAA	American Arbitration Association
AC	Arbitration Court at the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic
ACICA	Australian Centre for International Commercial Arbitration.
ADR	Alternative Dispute Resolution
ArbAct	Act of the Czech Republic No. 216/1994 Coll., on Arbitration and the Enforcement of Arbitral Awards, as amended
CC	Act of the Czech Republic No. 89/2012 Coll., the Civil Code
CCP	Act of the Czech Republic No. 99/1963 Coll., the Code of Civil Procedure, as amended
Charter	Resolution of the Presidium of the Czech National Council No. 2/1993 Coll., on the promulgation of the Charter of Fundamental Rights and Freedoms as part of the constitutional order of the Czech Republic, as amended
CIArb	Chartered Institute of Arbitrators
CIETAC	China International Economic and Trade Arbitration Commission
CivC	Act of the Czech Republic No. 40/1964 Coll., the Civil Code, as amended
CJA	Act of the Czech Republic No. 6/2002 Coll., on Courts and Judges, as amended
CJEU	Court of Justice of the European Union

ComC	Act of the Czech Republic No. 513/1991 Coll., the Commercial Code, in effect until December 31, 2013
ConCourt	Constitutional Court of the Czech Republic
CPR	Conflict Prevention and Resolution
CR	Czech Republic
EBH	Equal Treatment Authority
ECHR	European Court of Human Rights
EU	European Union
European Convention (1961)	European Convention on International Commercial Arbitration, done in Geneva on 21 April 1961
ExecC	Act of the Czech Republic No. 120/2001 Coll., on Execution Agents and Execution, as amended
Geneva Protocol (1923)	Protocol on Arbitration Clauses, Geneva, 24 September 1923.
IBA	International Bar Association
ICC Guide (2014)	Effective Management of Arbitration. A Guide for In-House Counsel and Other Party Representatives
ICC Rules	Rules of Arbitration of the ICC International Court of Arbitration
ICC	International Chamber of Commerce (often used in terms International Court of Arbitration attached to the International Chamber of Commerce)
ICJ	International Court of Justice
ICSID	International Center for Settlement of Investment Disputes
IJB	International Judicial Bodies
InsAct	Act of the Czech Republic No. 182/2006 Coll., the Insolvency Act, as amended
LCIA Rules	LCIA Arbitration Rules – The London Court of International Arbitration (see also 'LCIA')
LCIA	London Court of International Arbitration (see also 'LCIA Rules')
MDC	Multi-door courthouses
NAFTA	North American Free Trade Agreement
New York Convention (1958)	New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958)
Panama Convention	Inter-American Convention
PCA	Permanent Court of Arbitration
PCIJ	Permanent Court of International Justice
Polish Lewiatan Rules	Rules of the Court of Arbitration at PKPP Lewiatan
SC	Supreme Court of the Czech Republic

SCC Rules	SCC Institute Arbitration Rules. Arbitration Rules of the Arbitration Institute of the Stockholm Chamber of Commerce (see also *SCC*)
SCC	Stockholm Chamber of Commerce. In this book in the sense of the Arbitration Institute of the Stockholm Chamber of Commerce (see also 'SCC Rules')
TFEU	Treaty on the Functioning of the European Union
UML	UNCITRAL Model Law on International Arbitration[1]
UNCITRAL Rules 1976	UNCITRAL Arbitration Rules within the meaning of the UN General Assembly resolution 31/98 of 15 December 1976[2]
UNCITRAL Rules 2010	UNCITRAL Arbitration Rules within the meaning of the UN General Assembly resolution 31/98 of 15 December 1976,[3] as amended in 2010 by the UN General Assembly resolution 65/22[4]
UNCITRAL Rules	UNCITRAL Arbitration Rules; either the UNCITRAL Rules 1976 or the UNCITRAL Rules 2010 or generally the standard of these rules, depending on the context. If in doubt, it is necessary to apply the last version, i.e. the UNCITRAL Rules 2010.
UNCITRAL	United Nations Commission on International Trade Law[5]
VIAC	Vienna International Arbitration Centre
Vienna Rules	Vienna Arbitration Rules

[1] The template was approved on 21 June 1985 as UN Document A/40/17, Annex I, within the framework of the unification program of the UN Commission on International Trade Law (UNCITRAL).

[2] Available online in English at: http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules/arb-rules.pdf (accessed on 5 May 2014). Also available in other UN languages.

[3] Available online in English at: http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules/arb-rules.pdf (accessed on 5 May 2014). Also available in other UN languages.

[4] Full text of the UNCITRAL Rules 2010 is available online in English at: http://www.uncitral.org/pdf/english/texts/arbitration/arb-rules-revised/arb-rules-revised-2010-e.pdf (accessed on 5 May 2014).

[5] See www.uncitral.org.

Andrzej Kubas | Agnieszka Trzaska

Two Examples of Interaction between State Courts and Arbitration: Ruling on the Competence of an Arbitral Tribunal to Adjudicate and Injunctive Relief in Arbitral Proceedings

Key words:
Arbitrability | arbitral tribunal | arbitration | arbitration law | interim measures | interim relief | jurisdiction | jurisdiction provisions | litigation | model law | national courts | New York Convention | preliminary rulings | state courts | UNCITRAL Model Law

Abstract *| Although international arbitration has achieved a substantial level of independence from state courts, the role of such courts is still important for effectiveness of arbitral proceedings. Interactions between state courts and arbitral tribunals may be particularly intensive in those areas in which tribunals and state courts have parallel or concurrent competence in the course of arbitration. State courts play an important part in the examination of the jurisdiction of the arbitral tribunal in a given case. Such an examination may take place before initiation of arbitration if the other party raises a charge of arbitration agreement in separate proceedings, or during arbitration itself when the state courts can control the decision of the arbitral tribunal on its jurisdiction. The state court's decision that arbitration is the proper forum for hearing parties' dispute is binding both on the arbitral tribunal and the parties themselves. It is also binding on the state courts in post-arbitration proceedings as far as these may concern the circumstances which the court examined when it referred the parties to arbitration. Various interactions between state courts and arbitral tribunal may take place in the course of deciding on temporary relief (formally known as the securing of claims).*

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I. Introductory Remarks

7.01. Admittedly, the system of arbitration maintains far reaching independence from the state courts, yet this independence is not absolute and for systemic and pragmatic reasons it must have its limits. These limits can be set by the nature of the case, as not all cases are arbitrable after all,[1] but also, as examples in literature aptly indicate, the inadmissibility of engagement by the arbitral tribunal in any 'acts that would require the state system of coercion to be used'.[2] Hence, if a party to arbitration proceedings does not of its free will enforce an award issued in relation thereto, the winning party may enforce the award solely via institutions of the state administration of justice in the country of enforcement. Especially in international arbitration, voluntary submission to an arbitral award should be a key principle and in practice this is frequently the case. However, it seems that the 'force' of the arbitral tribunal's authority as well as legal awareness

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[1] In the jurisprudence of international arbitration it is stated that certain types of disputes cannot be arbitrated – the so called non-arbitrability doctrines. See Article II.1. of the below defined NYC and Articles V.2. and Articles 24.2.b and 36.1.b.i of the UNCITRAL Model Law. Legislation of particular countries differ as to specific solutions in that regard, excluding certain types of cases from arbitral jurisdiction, generally speaking for policy reasons. In particular, this refers to cases concerning such areas in which the parties' autonomy is subject to material limitations. In most cases the following types of case are subject to exclusive state courts' jurisdiction and cannot be referred to arbitration by the will of the parties: insolvency cases, labor disputes, consumer cases, industrial property cases as to granting of such protection – see GARY B. BORN, INTERNATIONAL ARBITRATION: LAW AND PRACTICE, Alphen aan de Rjin: Kluwer Law International 82-85 (2012). Also ALAN REDFERN, MARTIN HUNTER, NIGEL BLACKABY, CONSTANTINE PARTASIDES, LAW AND PRACTICE OF INTERNATIONAL COMMERCIAL ARBITRATION, London: Sweet & Maxwell 163–172, paras. 3.12–3.34 (2004). See also Article 2059 of the French Civil Code of Procedure, Article 1030 of the German Code of Civil Procedure (ZPO), Article 177 (1) of the Swiss Federal Statue on Private International Law.

[2] Tadeusz Ereciński, Arbitraż a sądownictwo państwowe (*Arbitration and state court system)*, 2 PRZEGLĄD USTAWODAWSTWA GOSPODARCZEGO (REVIEW OF ECONOMIC LEGISLATION) PUG 2 et seg. (1995). TADEUSZ ERECIŃSKI; KAROL WEITZ, SĄD ARBITRAŻOWY, (COURT OF ARBITRATION), Warszawa: Lexis Nexis 53–54 (2008) and literature therein presented.

and the integrity of parties are not always enough to cause this. This is because of the substantial threat, existing in all contemporary legal systems, of a forced enforcement of an arbitral award through institutions of the state (in particular due to the universal nature of the New York Convention of 1958[3]) and *imperium* only they are entitled to. Within recent years there has been a visible tendency in arbitral jurisdiction, to loosen the limitations on the freedom of arbitral jurisdiction imposed by the interference of state courts, especially in international arbitration. In all European legal systems, it would be an exaggeration to say that the competences of the arbitral and state judiciary collide, but they certainly come into contact in several substantial areas. Specifically, these include: *ad hoc* establishment of an arbitral tribunal, settlement of doubts regarding the competence of the arbitral tribunal, securing of claims pursued in arbitration, cooperation in some procedural action, particularly hearing of evidence, and finally recognition and/or ascertainment of enforceability of arbitral awards issued by both domestic and foreign arbitral tribunals. The present paper draws attention to two of the above mentioned 'points of contact' between the state courts and arbitration, namely: ruling on the competence of arbitral tribunals and the securing of claims pursued before them.[4]

[3] Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the NYC) (New York, 1958) (adopted 10 June 1958, entered into force 7 June 1959, 4739 UNTC (, ratified by 152 states, see: http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/NYConvention_status.html (accessed on 22 September 2014).

[4] These issues have been discussed for some time in both Polish and European jurisprudence. For example: Tadeusz Ereciński, , *supra* note 2, at 2 and subsequent; TADEUSZ ERECIŃSKI; KAROL WEITZ, *supra* note 2, at 53–61. Sławomir Cieślak, *Stosunek postępowania arbitrażowego do innych rodzajów postępowania cywilnego* (*Relation of arbitration to other types of civil proceedings*), 4(16) KWARTALNIK ADR ARBITRAŻ I MEDIACJI (*ADR Arbitration and Mediation Quarterly*) 15, 25–27 (2011). Włodzimierz Głodowski, *Zabezpieczenie roszczeń dochodzony przed sądem polubowny* (*Securing of claims pursued in arbitration*), Materiały pokonferencyjne 'Perspektywy rozwoju sądownictwa arbitrażowego', Katowice, 20.–21.11.2008, (Post-conference materials form conference 'Perspectives of arbitration', Katowice, 20-21.11.2008). Michał Kocur, *Zabezpieczenie roszczeń dochodzonych przed sądem polubownym* (*Securing of claims pursued in arbitration*), 15 MONITOR PRAWNICZY (*Legal Monitor*) 794 and subsequent (2005); Adam Górski, *Postępowanie zabezpieczające przed sądem polubownym w świetle nowelizacji KPC z 28.7.2005 r.* (*Securing of claims in arbitration under the amendment of CCP of 28.7.2005*), 18 MONITOR PRAWNICZY (*Legal Monitor*), 971 and subsequent (2006); Andrzej W. Wiśniewski, *Charakter prawny instytucji arbitrażu w świetle nowelizacji polskiego prawa arbitrażowego* (*Legal nature of arbitration under the amendment of Polish*

II. Examining the Competence of Arbitral Tribunals

II.1. Examining the Arbitral Tribunal's Competence Prior to Commencement of Arbitral Proceedings

7.02. The state court can settle issues related to the competence of an arbitral tribunal in a specific case, even before formal commencement of the arbitral proceedings themselves. This occurs when the defendant raises the charge of a binding arbitration agreement prior to engaging in a dispute on the merits of the case, but after an action before a state court was brought. Such an approach, favourable for arbitration, is 'guaranteed' by the provision of Article 2 of the NYC, which stipulates as follows: '*The court of a Contracting State*, when seized of an action in a matter in respect of which the parties have made an agreement within the meaning of this article, shall, *at the request of one of the parties, refer the parties to arbitration, unless it finds that the said agreement is null and void, inoperative or incapable of being performed*.' (emphasis by the authors) and Article 8 of the UNCITRAL Model Law, i.e. domestic legislation of countries that implemented this Model Law.[5]

7.03. The charge that parties are bound by an arbitration agreement should be raised by a party when it engages in its first procedural act in the case, before engaging the merits of the case.[6] Usually, such first procedural act is an answer to the statement of claims, which also includes the other charges and statements on the merits of the case,

arbitration law), 2 KWARTALNIK ADR ARBITRAŻ I MEDIACJI (*ADR Arbitration and Mediation Quarterly*) 73 and subsequent (2008); Grzegorz Żmij, *Środki tymczasowe i zabezpieczające w międzynarodowym arbitrażu handlowym* (*Temporary and securing reliefs in international commercial arbitration*), *in* ROZPRAWY PRAWNICZE. KSIĘGA PAMIĄTKOWA PROFESORA MAKSYMILIANA PAZDANA (*Legal Dissertations. Commemorative Book of Professor Maksymilian Pazdan*), Kraków: Zakamycze 557 and therein invoked literature (2008) in particular: Alexander J. Bělohlávek, *Arbitration from Perspective of Right to Legal Protection and Right to Court Prodeeding* (*the Right to Have One's Case Dealt with by a Court*): *Significance of Autonomy and Scope of Right to Fair Trail*, *in* CZECH & CENTRAL EUROPEAN YEARBOOK OF ARBITRATION 50 (Alexander J. Bělohlávek; Naděžda Rozehnalová (eds.), 2011). ALAN REDFERN, MARTIN HUNTER, NIGEL BLACKABY, CONSTANTINE PARTASIDES, *supra* note 1, at 388–415.

[5] See Section 1032 of the German ZPO, Sec. 9-11 of the English Arbitration Act of 1996, Article 1165 of the Polish Code of Civil Procedure.

[6] See Article VI Section 1 of the European Convention on International Commercial Arbitration, Geneva (adopted 21 April 1961, entered into force 7 January 1964) 7041 UNTC, currently 31 states are parties to this convention: https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XXII-2&chapter=22&lang=en#3 (accessed on 22 September 2014), ('Geneva Convention of 1961').

raised as potential statements and charges in the event that the charge of lack of the state court's competence is not allowed. However, this formal charge should be formulated and included in the pleading (an answer to the statement of claims) in the first order, in those legal systems that qualify such a charge as a procedural one. If the court finds the charge justified, it will refer parties to arbitration. The provisions of NYC and those of the UNCITRAL Model Law do not specify the form of such a decision, and therefore the procedural law of a particular state will regulate this issue. In the case of Polish courts, the statement of claims is rejected without examining the merits of the case.[7] When rejecting the statement of claims, the state court does not remit the case to the arbitration tribunal, even when it is a permanent court of arbitration that has jurisdiction. In such a situation, the claimant decides whether to lodge a new statement of claims before an arbitration tribunal after a failed attempt to pursue claims before a state court, or whether it will cease pursuing its claims at all.

7.04. Both the mentioned domestic and international regulations provide that the state court examining the charge of arbitration agreement is competent to assess the validity, effectiveness and enforceability of the arbitration agreement.

7.05. In turn, the French law on arbitration (Article 1448 of the French CCP[8]) has adopted a different formula. If the charge of a binding arbitration agreement is raised, it recognises, *prima facie*, the competence of the court of arbitration. In such a case, the French court refers parties to arbitration unless '(…) the agreement is obviously invalid or obviously inapplicable in the given case'. If the arbitral tribunal has already been established, then the French court will not even examine an obvious invalidity or unenforceability of the arbitration agreement. Rather, it will simply refer parties to arbitration where they shall exercise their right to raise appropriate charges. Such a regulation 'guarantees' that the arbitral tribunal has priority, before the state court, in deciding on its own competence to hear the dispute. In the jurisprudence of international arbitration it is also emphasized that

[7] See: Article 1195 (1) of the Polish CCP. Similarly Section 1032 of German ZPO. The English Court will stay the proceedings - see Section 9-11 English Arbitration Act of 1996.

[8] See: GARY B. BORN, *supra* note 1, at 52. The full text of the Article 1448(1) of the French Code of Civil Procedure provides as follows: 'When a dispute subject to an arbitration agreement is brought before a court, such court shall decline jurisdiction, except if an arbitral tribunal has not yet been seized of the dispute and if the arbitration agreement is manifestly void or manifestly not applicable. A court may not decline jurisdiction on its own motion. Any stipulation contrary to the present article shall be deemed not written'.

the arbitral tribunal should be the first to decide on its own jurisdiction. Thus '(…) if there is any plausible argument that a valid arbitration agreement exists, the arbitrators should be permitted initially to resolve the jurisdictional issues (subject to subsequent judicial review); only if it is clear that there is now a valid arbitration agreement, may a claim be litigated.'[9] The right of an arbitral tribunal to resolve the matter of its own jurisdiction over the dispute when the arbitration has already been initiated is also stipulated in Article VI Section 3 of the Geneva Convention of 1961:

> Where either party to an arbitration agreement has initiated arbitration proceedings before any resort is had to a court, courts of Contracting States subsequently asked to deal with the same subject-matter between the same parties or with the question whether the arbitration agreement was non-existent or null and void or had lapsed, shall stay their ruling on the arbitrator's jurisdiction until the arbitral award is made, unless they have good and substantial reasons to the contrary.

7.06. The state court in course of examination of the charge of the arbitration agreement assesses the existence, validity, and enforceability of such an agreement (such is the case in Poland and other countries that adopted the solution from Article 8 of the UNICITRAL Model Law). In such cases, it should be assumed that if the state court's decision allowing the charge of the arbitration agreement (in other words: decision referring parties to arbitration)[10] becomes valid and final, then in the subsequent arbitration proceedings, parties may no longer question the arbitral tribunal's jurisdiction. The latter, as well as the parties, are bound by the state court's ruling 'in favour' of arbitration. Exceptions to this include if new previously unknown facts or evidence indicating that the arbitration agreement is invalid, ineffective, unenforceable, or lost its force are revealed after the state court's decision had been issued. Jurisdiction can also be questioned if the claims raised in arbitration go beyond the limits of the clause or the new claims are not arbitrable. In such a situation, the party questioning the jurisdiction of the arbitral tribunal may raise this charge again in the arbitral proceedings, observing the requirements for it to be raised in an appropriate time.

7.07. An original solution – as far as the assessment of the jurisdiction of an arbitral tribunal by a state court is concerned – is contained in German Code of Civil Procedure, which stipulates that a party may file a

[9] GARY B. BORN, *supra* note 1, at 54.

[10] In Poland this is referred to as the decision on rejection of the statement of claims.

petition with the court for determination of admissibility or inadmissibility of arbitration in a given case.[11]

II.2. Examining the Competence of the Arbitral Tribunal in the Course of the Arbitral Proceedings

II.2.1. The Principle of Competence – Competence

7.08. In accordance with the *competence-competence* principle, commonly recognised both in legislation and in arbitration practice[12] as well as the rules of leading arbitration institutions,[13] the assessment of whether a specific dispute arising between parties is to be resolved in arbitration[14] should be made by the arbitral tribunal which is competent to consider and rule on its own jurisdiction.

7.09. It is doubtful whether the arbitral tribunal may rule on its non-competence *ex officio* (on its own motion) or only to a raised charge. From granting a general competence to the arbitral tribunal to rule on its own jurisdiction, one might reason that it is also entitled to examine this issue *ex officio.* Yet we are of the opinion that it should be adopted as a principle that the arbitral tribunal assesses its jurisdiction only when a party raises a suitable charge.[15] The failure to raise the charge of the lack of an arbitral tribunal's jurisdiction within the prescribed time

[11] Section 1032 (3) of the German ZPO states that until the arbitral tribunal has been formed, a petition may be filed with the courts to have the courts determine the admissibility or inadmissibility of arbitration proceedings.

[12] See: Article 16 (1) of the UNCITRAL Model Law, Section 1040 (1) of the German ZPO, Article 592 (1) of the Austrian of the ZPO, Section 30 (1) of the English Arbitration Act of 1996, Article 1465 of the French CCP, Article 1180 § 1 of the Polish CCP.

[13] See: Article 23 (1) of the UNICITRAL Arbitration Rules, as revised in 2010 (UNICITRAL Rules), Article 24.2 sentence 1 of the Vienna Arbitration Rules (in force from 1 July 2013) (Vienna Rules), Article 23.1 of the new LCIA Arbitration Rules (effective from 1 October 2014) (LCIA Rules), Article 6 of The ICC Arbitration Rules (in force from 1 January 2012) (ICC Rules). § 27.1 of the Rules of the Court of Arbitration at PKPP Lewiatan (enforced from 1 march 2012) (Polish Lewiatan Rules).

[14] This assessment in principle comes down to examining whether the parties concluded a valid arbitration agreement that is effective and enforceable, and whether the dispute submitted for adjudication is included in the subjective and objective scope of the arbitration covenant, as well as whether the very dispute submitted by parties is arbitrable, i.e. whether it may be subject to the tribunal's cognizance at all.

[15] Thus in Polish doctrine Tadeusz Ereciński [in]: Tadeusz Ereciński, Karol Weitz, *supra* note 2, whereby the author indicates that examination of the so-called arbitrability of the dispute submitted to its adjudication should be an exception from this rule. Sławomir Cieślak, *supra* note 4, at 15, 19.

limit results in the expiration of the party's right to question this jurisdiction in the further course of proceedings before this court. Allowing the arbitral tribunal to rule *ex officio* would practically render the regulation limiting a possibility of raising such a charge by a party pointless. A regulation to the contrary would mean that in such an event, at any status of the case, a party would be able to 'indicate' to the arbitral tribunal a need to examine the issue of its competence *ex officio*, which would render any statutory limitations and requirements in terms of questioning the tribunal's jurisdiction merely illusory. However, this does not pertain to examination of the tribunal's competence from the point of view of the arbitrability of the case. Nevertheless, in certain cases, it seems justified to grant the arbitral tribunal the right to issue a negative decision regarding its own jurisdiction for reasons other than the non-arbitrability of the case. It may happen that the charge of the lack of jurisdiction of the arbitral tribunal is not raised effectively, yet the lack of such jurisdiction is beyond the tribunal's doubts and this lack of jurisdiction follows from reasons which may neither be repaired in the course of the proceedings nor upon their conclusion. In our opinion, the arbitral tribunal may rule on its non-competence *ex officio* in such a case. The postulate for the arbitral tribunal's right to examine its jurisdiction *ex officio* is substantiated particularly in cases when lack of such jurisdiction is connected with the lack of arbitrability of the dispute. Such a defect may lead to a refusal of recognition or ascertainment of enforceability of the award issued in the case and, in principle, regardless of whether such a charge is raised in the recognition proceedings or not. (See: Article 5. 2.A of the NYC). Obviously, such a stance requires the arbitral tribunal to 'examine' the law of the state where the award is to be recognised or enforced. It may be an onerous task at times, especially when the legal system to be analysed is based on different principles, different values, and it operates in a different social and civilizational context. Nevertheless, the tribunal has to be able to meet this challenge. It would be entirely irrational to expose a party to the risk of engaging and conducting a sometimes extremely time-consuming and costly arbitral proceeding when it is known from the very start that it will not lead to the result intended by the parties, namely the issuance of a ruling that will be effective or that can be enforced if the losing party does not surrender of its own free will. Occasionally there are 'transgressions' of other types which can impact the tribunal's jurisdiction or lack thereof. These include when the arbitration clause does not extend to the case at hand, or it is invalid in light of the documents submitted on file. For example when an

arbitration covenant is concluded by a person not authorised to represent the legal person, or an attorney acts without the power of attorney or transgressing the scope of such a power of attorney or when there is a failure to remedy such a defect in the manner required by the statute. In such cases, it is necessary to assume that without a charge raised by the party, the tribunal is not authorised to issue a decision *ex officio*. It is so since these defects, although extremely grave, may still be convalidated by parties in the course of the arbitral proceedings.

7.10. As regards the issue of the charge of non-competence or transgressing the scope of the arbitration agreement raised by a party, the arbitral tribunal may decide by issuing a separate ruling regarding its jurisdiction. However, it may also adopt a stance thereto only in the award settling the case as to its merits, with the manner of settling these issues remaining at the arbitral tribunal's discretion in principle[16] Obvious practical issues seem to favour the issuance of a separate decision, especially because the tribunal convinced of the legitimacy of its ruling does not have to stay the arbitral proceedings when the party dissatisfied with the court of arbitration's decision dismissing the charge of its non-competence petitions a state court for resolution. German arbitral regulation (Article 1040.3. of the German ZPO and Section 592.1. of the Austrian ZPO) indicates that dismissing such charges by the tribunal in a separate ruling should be a principle. The same process dominates in proceedings before Polish permanent courts of arbitration. In turn, the regulation of the English Arbitration Act of 1996 assumes that the parties' agreement on the preferred form of settlement shall be decisive in this extent.

7.11. When the arbitral tribunal hears the charge raised and dismisses it, finding itself competent in the case, and this ruling is issued as a separate decision, national legislations furnish the parties with the possibility to challenge such a decision on jurisdiction before a state court. Obviously, in hearing the appeal, the state court is not bound by factual findings or the legal assessment made by the court of arbitration for the needs of examination of the jurisdiction in the case. The court performs its own assessment in this scope. In finding that the arbitral proceedings in the case are inadmissible and contrary to the assessment expressed by the arbitral tribunal, it is assumed that the state court

[16] See: Article 16 of the Model Law, Section 31.4 of the English Arbitration Act of 1996, Article 1465 of the French CCP , Article 186.3 of the Swiss Federal Statute on Private International Law, Article 23.3 of the UNCITRAL Rules, Article 6(3) of the ICC Arbitration Rules, Article 23.4 of LCIA Arbitration Rules, Article 24.2 of the Vienna Rules, .Sec. 27.4 of the Polish Lewiatan Rules.

ought to set the challenged decision of the tribunal aside and ascertain its non-competence. A final ruling of the state court is binding for the arbitral tribunal, which in such a situation should terminate the ongoing proceedings without issuing a decision as to the merits of the case. Yet, if it continued to proceed despite that and issued an award, then such an arbitral award would be subject to setting aside in the frames of the complaint proceedings or it would be refused recognition or enforcement. In the above-mentioned post-arbitration proceedings, the state court would be bound by an earlier ruling of the state court on the lack of the tribunal's jurisdiction in the case.[17] Sometimes it is claimed that such a verdict would be simply invalid.

7.12. In case the arbitral tribunal negatively settles the issue of its own jurisdiction in the dispute, such a ruling usually tends to be final and is not subject to verification by the state court.[18]

7.13. As already mentioned above, the arbitral tribunal in principle rules on its competence by means of a separate preliminary ruling only when an adequate charge is raised by the defendant. If it does not raise the charge of non-competence (lack of jurisdiction) in the arbitration proceedings, it is doubtful whether the party may effectively challenge the award issued by this court, basing the complaint for the setting aside of the arbitral award lodged with the state court on the charge of the lack of the arbitration agreement or its non-validity, non-effectiveness or lack of binding force according to the law applicable thereto.[19] In our opinion, the party that did not raise such a charge before the arbitral tribunal within the prescribed time limit or did not raise it at all does not lose the right to raise it in the motion for setting aside of the arbitral award.[20] Yet, when hearing the motion for setting aside, the state court may arrive at a conclusion that the defects of the arbitration agreement were cured by the defendant's passive conduct in the course of the arbitral proceedings. The Defendant's conduct during

[17] On the grounds of the Polish CCP – Article 356.1 of the CCP in conjunction with Article 1180. 3. sentence 2. Of the CCP, Article 1207.2, Article 13.2 of the CCP.

[18] Such a solution is provided in Article 16 of the Model Law, provisions of the Polish CCP drawing thereon–see: Article 1180.3 of the CCP, Article 1205 of the CCP.

[19] See Article V.2. of the Geneva Convention of 1961. .

[20] For an opposite view see Tadeusz Ereciński, Karol Weitz, *supra* note 2, at 246 and subsequent, who stated that the lack of raising a charge on an arbitration agreement before the state court causes its preclusion and in result bars a party from invoking this charge in a motion for setting aside of an arbitral award as well as in the proceedings for recognition or enforcement of an arbitral award. According to Tadeusz Ereciński and Karol Weitz, whose view we share in that regard, a lack of effective raising of a charge on an arbitration agreement does not cause its expiration.

the arbitration proceedings may be treated as a tacit acceptance of the arbitral tribunal's jurisdiction. However, this is not the case if the arbitration award dismissing the charge of non-competence is subject to the state court's control as a result of a suitable motion lodged by a party. If this occurs and the state court accepts it by virtue of the valid decision, then in our opinion, referring once again in the motion to this charge is ineffective, based on the same circumstances. The same applies to the proceedings for the recognition or ascertainment of the enforceability of an arbitral award in which such an award is subject to the control of the state court within the limits prescribed in procedural statute or international agreements. However, if the defects of the arbitration agreement removable by parties' will are not cured (removed or repaired), until the moment the state court rules on the legitimacy of the complaint or on the recognition or ascertainment of enforceability of the arbitral award, then in our opinion, the state court will set such an award aside or refuse to ascertain its enforceability regardless of whether or not a party raised such a charge in the course of the arbitral proceedings. The fundamental principle of arbitral proceedings provides that the arbitral tribunal may act only in arbitrable cases and only on the grounds and within the limits of the arbitration agreement binding the parties. State courts, therefore, may not accept these arbitral awards which violate this fundamental constitutional principle.

II.3. Examining the Competence of the Court of Arbitration by the State Court in the Incidental Proceedings

7.14. The issue discussed in this paper – i.e. the matter of examining the arbitral tribunal's competence in a given case by the state court – is connected to another issue. There arises a question whether the state court has the authority to perform such an assessment only in the scope of proceedings designed specifically for this purpose on the examination of the charge of the lack of jurisdiction as a result of challenge of the tribunal's decision on its jurisdiction. Or perhaps such authority exists also in the scope of other incidental proceedings in the course of the arbitral process.[21]

[21] Obviously, we are going to omit in this paper post-arbitration proceedings where the lack of tribunal's jurisdiction or a dispute's non-arbitrable nature constitute prerequisites for the setting aside or refusal of the recognition/ascertainment of enforceability of the arbitral award.

II.3.1. Procedures related to the establishment of the tribunal's composition

7.15. In considering the chronology of state court's potential interventions in arbitral proceedings, a question arises at the outset whether the state court has the authority to refuse to perform such an appointment, in the scope of the procedure for the appointment of a super-arbitrator, and thereby indicating that arbitration is not competent in the dispute.[22] We are of the opinion that it does not. The mere lack of a valid, effective, and enforceable arbitration agreement on the date of commencement of the proceedings may be repaired by the parties concurrently submitting the dispute for adjudication by the court of arbitration. The state court depriving them of such a possibility would be contradictory to the principle of parties' autonomy. Some legislation,[23] nevertheless, allow for such an assessment and such a settlement already at this initial stage of the state court's intervention.

7.16. A different situation is when the non-competence of the arbitral tribunal in a given case does not follow from transgressions related to the arbitration agreement itself, but from an irremovable lack of the dispute's arbitrability (i.e. inadmissibility for a given type of case to be heard by a court of arbitration). In such a situation, the state court refuses to appoint an arbitrator or presiding arbitrator, *ipso facto* depriving the arbitral tribunal of the possibility to decide on its own jurisdiction. The issue of arbitrability is regulated by mandatory provisions. The state court may not evade from applying them as a prerequisite of its own decision meant to provide an opportunity to conduct the case in the proceedings, which would be *ab initio* affected by a defect impossible to cure.

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[22] Article 179.3 of Swiss IPRG which stipulates that in proceedings for selection of an arbitrator, the state court examines the existence and validity of the arbitration agreement. Refusal of undertaking of action due to invalid or non-binding agreement can happen only if those deficiencies are evident. An opposite view (see literature cited by the Tadeusz Ereciński, Karol Weitz, *supra* note 2, at 188 in note 123) prevails under German and Anglo-American laws.

[23] See Article 1455 of the French CCP, which provides: 'If an arbitration agreement is manifestly void or manifestly not applicable, the judge acting in support of the arbitration shall declare that no appointment need be made. An order in this scope can be challenged.'

II.3.2. Examining competence in the frames of legal assistance

7.17. Due to the 'private' nature of arbitration and the inability to use coercion, a majority of national legislation[24] provide for a possibility within arbitral proceedings to turn to the state court for assistance in performing specific acts related to arbitral proceedings, in particular connected to evidentiary proceedings. The question raises whether the state court may refuse to perform a specific act (the performance of which was sought by the arbitral tribunal or, on the grounds of such tribunal's authorisation, one of parties to arbitral proceedings) on the basis of the lack of tribunal's jurisdiction in the dispute for whose needs such an act is to be performed. It is a controversial issue.[25] In our opinion, such a refusal is substantiated only on the grounds of the cases of non-arbitrability. Additionally, this is true exclusively when this issue was not previously verified by the state court in the context of the state court's examination of whether the arbitral tribunal has jurisdiction. The state court may not co-operate with actions contradicting the law (as a rule stemming from the principle of the rule of law). Allowing the state court for arbitration proceedings in a case concerning matter which cannot be resolved in arbitration would be such an action contradicting the law, in the case at hand, with provisions firmly setting the inviolable limits of the autonomy of will of the parties.

7.18. However, it is indicated that examination by the state court of competence of the arbitral tribunal in a given case within the framework of incidental proceedings is not binding for the arbitral tribunal. This is unlike the verification of correctness of the arbitral tribunal's ruling dismissing the charge of its alleged lack of jurisdiction.

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[24] Article 27 UNCITRAL Model Law provides that the arbitral tribunal or a party with the approval of the arbitral tribunal may request from a competent court of this State assistance in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence, Sections 42–45 *Powers of court in relation to arbitral proceeding* English Arbitration Act of 1996. Article 1192 of the Polish CCP. Section 1050 of the German ZPO. Articiel 184.2 of the Swiss IPRG.

[25] Karol Weitz, *Przesłanki i zakres pomocy sądu państwowego dla sądu polubownego w postępowaniu dowodowym* (art. 1192 KPC) (*Preconditions and scope of legal aid of the state court in arbitration in evidentiary proceedings* (Article 1192 KPC)), 2 KWARTALNIK ADR ARBITRAŻ I MEDIACJI (*ADR Arbitration and Mediation Quarterly*) 9 (2009).

III. State of Litispendence between a Court of Arbitration and a State Court

7.19. The issue discussed in this paper is also connected to the matter of a mutual relation between proceedings before the state court and an arbitral tribunal if the claimant lodged the statement of claims in the same case with both courts (state and arbitration), taking advantage of the possibilities provided by procedural legislation.

7.20. Hence, is it possible to speak of the litispendence of the case in such a situation if the same claim between the same parties is subject to proceedings pending before both the state court and arbitral tribunal? If, in the proceedings before the state court, the charge of a binding arbitration clause is raised at an appropriate time, then the state court's final decision on the legitimacy of this charge ultimately settles the existence or non-existence of the tribunal's jurisdiction in the case, in a manner binding both for the arbitral tribunal and parties to the dispute. Such a charge not being effectively raised before the state court most frequently results from failing to comply with the preclusion time limit for raising the charge. If this occurs, then the state court's competence, only provisional at the moment of initiation of the action, also becomes definitive and in the same proceedings may not be questioned by either party. However, a doubt then arises as to whether the state court's competence, resulting from party's forbearance (concealment) of the effects of the binding arbitration agreement, has the same binding force for the arbitral tribunal as the state court's decision on the formally correct charge raised by a party. If a party raises the charge of non-competence of the arbitral tribunal in the same case pending before the arbitral tribunal, then the said court shall rule on its own competence. In this situation, litispendence of the case before the state court is not an obstacle for the court of arbitration to recognise itself as competent to hear the case and to conduct arbitral proceedings. The party whose charge of non-competence of the arbitral tribunal was not allowed by the tribunal may petition the state court to verify this stance within the framework of special appeal proceedings. The judgement issued by the state court will therefore be binding both for parties and the arbitral tribunal. However, what happens when the ruling of the arbitral tribunal confirming its 'parallel' competence is not challenged and becomes final and valid? Does it mean that it will be possible or necessary for two proceedings to be pending before two different courts using different rules of procedure and adjudication and a possibility to issue two radically different rulings? Neither national statutes nor the model law regulate the manner for solving this

'competition' of proceedings. We are of the opinion that in such a situation, the arbitral tribunal should suspend the arbitral proceedings until the final conclusion of the proceedings before the state court. The verdict issued by the court of arbitration and colliding with the ruling issued by the state court would stand slim chances for recognition or ascertainment of enforceability in recognition proceedings. A state where two conflicting court rulings issued in the same case with the same 'binding force' function in so-called 'legal transactions' would undoubtedly stand in contradiction with the fundamental principles of public policy.[26]

IV. Securing of Claims Pursued in Arbitration

7.21. As indicated at the beginning of this paper, one of the spheres in which arbitration 'competes' with state courts is in making decisions on temporary relief for claims pursued in arbitration. This is formally referred to as the securing of claims, also called interim or relief measures. All court proceedings before both state and arbitration courts aim at granting the entitled party real legal protection. Among other measures, an indispensable condition of such protection comes from the possibility of real and effective enforcement of court rulings in compliance with their contents. Securing claims pursued before both state and arbitration courts constitutes the most important and efficient legal instrument ensuring enforceability and effectiveness of judgements to be issued, in most cases. The granting of relief may be pronounced by both state and arbitration courts. Such a parallel model of competence is adopted in Article 9 of the UNCITRAL Model Law and is prevailing in arbitration laws of some specific counties and also accepted by most rules of permanent courts of arbitration. During recent years the competences of arbitral tribunals were expanded. This is evidenced by amendments to Article 17 of the Model Law and expansion of the particular rules of permanent courts of arbitration. Only a few legal systems forbid arbitral tribunals deciding on such matters.

7.22. A parallel jurisdiction of state and arbitration courts in the scope of granting relief breeds a question whether a party may file a motion for such measures simultaneously with the state court and the arbitral tribunal before which the case is pending. The parallel competence of both courts in the scope of relief settles the query affirmatively *prima facie*. If so, then it is necessary to pose another question, namely: are

[26] The public policy clause, see: Article VI.3 of the Geneva Convention or 1961.

the proceedings to both motions for relief to be prosecuted independently of each other? Following on this question, can judgements to be issued in them be issued without taking into account the 'competitive' proceedings related to the same 'incidental' issue as well as the outcome of such proceedings in the form of the judgement related to an analogical motion? It is obvious that in light of the applicable rules (e.g. of permanent courts of arbitration or national arbitration legislation) it will be the arbitral tribunal which will enjoy a broader 'freedom' in making the decision as to whether and in what form to grant temporary relief. Conversely, the state court will apply its own procedural rules which in most cases prescribe preconditions for interim measures and their allowable forms.

7.23. Which court's competence should take precedence on the matter? Of course, the above issue does not arise if the applicable rules prohibit (at least for the time being) a party from freely turning for temporary relief to the state court as is the case with some rules of permanent courts of arbitration.[27]

7.24. In such situation – the arbitral tribunal should consider the possibility of staying the arbitral proceedings. This is true particularly in situations in which the outcome of other court or administrative proceedings is of significance as a binding prejudicial decision or at least a decision settling an issue important for the final arbitral award. The fact that the court of arbitration is not generally bound by provisions on proceedings before state courts has an important effect. Even though the procedural acts do not contain the mentioned normative rules, the court of arbitration may independently issue a decision on the suspension of the proceedings following a consideration of advisability

[27] See Article 28.2. of the ICC Rules: 'Before the file is transmitted to the arbitral tribunal, and in appropriate circumstances even thereafter, the parties may apply to any competent judicial authority for interim or conservatory measures. The application of a party to a judicial authority for such measures or for the implementation of any such measures ordered by an arbitral tribunal shall not be deemed to be an infringement or a waiver of the arbitration agreement and shall not affect the relevant powers reserved to the arbitral tribunal', and Article 25.3. of the LCIA Rules: 'The power of the Arbitral Tribunal under Article 25.1 shall not prejudice any party's right to apply to a state court or other legal authority for interim or conservatory measures to similar effect: (i) before the formation of the Arbitral Tribunal; and (ii) after the formation of the Arbitral Tribunal, in exceptional cases and with the Arbitral Tribunal's authorization, until the final award. After the Commencement Date, any application and any order for such measures before the formation of the Arbitral Tribunal shall be communicated promptly in writing by the applicant party to the Registrar; after its formation, also to the Arbitral Tribunal; and in both cases also to all other parties'.

(including in particular the so-called procedural economy). This is because the definition of the manner of proceeding within a scope not regulated by the parties to the arbitration covenant falls within this court's exclusive competence.

7.25. Full formally independence of securing proceedings pending before and adjudicated in both courts has the result that the decision of the arbitral tribunal may differ from that of the state court regarding the same issue, at least theoretically. It is not that bad if the arbitral tribunal dismisses the motion and the state court allows it. In that eventuality, only the state court's decision will be enforced. In a situation to the contrary where the state court dismisses the motion and the arbitral tribunal allowed it, the situation is already different. In this situation, the arbitral tribunal's decision granting the securing of claims must be either recognised or ascertained as enforceable by the state court. Admittedly, the state court's previous decision, negative for the applicant, has no formal binding force for the arbitral tribunal. In consequence of this, the state court may not refuse the recognition or ascertainment of enforceability of arbitral decision in scope of temporary relief merely on this basis. However, it is difficult not to agree with the view that the state and arbitration courts' radically different assessment of the same pre-requisite for relief[28] constitutes an undesirable anomaly.

7.26. For the applicant, the sense of such a 'parallel' proceeding on the issue of relief consists of the fact that out of two potential decisions, the applicant shall be able to choose to enforce the most advantageous one, stipulating a wider range and a more effective manner of relief. If the decision of the arbitral tribunal on the granting of the relief precedes the state court's decision, the latter may refuse the granting of the relief due to the lack of the 'legal interest in the relief' if it finds that the relief granted by the arbitral tribunal sufficiently protects applicant's interests.

7.27. From the short comments above it follows that, in the opinion of the authors of the present study, the present regulation assuming the independent parallel competence of state courts and arbitral tribunals as regards the issue of securing of claims pursued in the arbitration is not the best of solutions. We are of the opinion that the exclusive nature of the arbitral tribunal's competence after initiating the proceedings before them should extend to all the issues related to a given case, including the securing of the claim pursued.

[28] Which is usually the applicant's making the pursued claim plausible.

V. Summary

7.28. In spite of the arbitration's independence from the system of state courts there are numerous situations in which these two come into interaction. State courts play particularly important role in examination of jurisdiction of arbitral tribunal in a given case, *i.e.* in examining whether the parties concluded a valid arbitration agreement that is effective and enforceable, and whether the dispute submitted for adjudication is included in the subjective and objective scope of the arbitration agreement. They also examine whether the dispute submitted by the parties to arbitration is arbitrable, *i.e.* whether it may be subject to arbitration at all. Such examination can take place before the initiation of arbitral proceedings – if one of the parties starts proceedings before a state court despite the fact that there is an arbitration agreement and the other party raises in an appropriate time the charge of existing arbitration agreement. The decision of the state court in favor of arbitration will be binding to the state courts and the parties. In particular, the jurisdiction of the arbitral tribunal is examined by the state court in course of the proceedings 'in the second place', *i.e.* after the arbitral tribunal itself made a decision on its jurisdiction and issued a separate decision which was challenged by one of the parties. Such model of resolving those issues is the most preferable one and a decision on the jurisdiction should be pursued at the earliest stage of proceedings. Obviously, the matters connected with the lack of jurisdiction of arbitral tribunal may be subject to a charge in the proceedings for setting aside of an arbitral award as well as they may be precondition for refusal of recognition or enforcement of the arbitral award, however those issues were omitted in the present paper because one cannot speak of interactions between state courts and arbitral tribunals when the arbitration already ended. Issues related to the examination of jurisdiction of arbitral tribunals in the dispute may also appear within incidental proceedings before state courts which are pending in connection with arbitration. This refers to substitute proceedings for appointment of arbitrator by state court or in proceedings for legal aid exercised by state court at the motion of arbitral tribunal – in both cases it should be assumed that the examination of arbitral jurisdiction may only concern the matter of arbitrability. Even if the arbitration agreement itself contains certain defects parties should not be deprived of possibility of curing them in further course of arbitration. In terms of principle 'parallel' powers of state courts and arbitral tribunals as to examination of arbitral jurisdiction in a case (meaning – as to the validity, effectiveness and

enforceability of the arbitration agreement) should be assessed as a proper solution. The case is different with parallel competences of both courts as far as securing of claims (temporary relief) pursued in arbitration is concerned – in such instance it seems that it would be preferable to equip the arbitral tribunals with exclusive jurisdiction on that matter, which is the solution adopted in some of new revised rules of permanent courts of arbitration.

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Summaries

DEU [***Zwei Beispiele der Interaktion zwischen der staatlichen und schiedsrichterlichen Gerichtsbarkeit: Entscheidung über die Zuständigkeit des Schiedsgerichts und sichernde gerichtliche Maßnahmen im Schiedsverfahren***]

Obwohl die internationale Schiedsgerichtsbarkeit schon ein bedeutendes Niveau der Unabhängigkeit von den nationalen Gerichten erreicht hat, bleibt die Rolle dieser Gerichte für die Effektivität dieses Verfahrens weiterhin erheblich. Die Interaktionen zwischen der nationalen Gerichten und der Schiedsgerichten können auf den Ebenen besonders intensiv sein, wo die nationalen Gerichte und Schiedsgerichte während des Schiedsverfahrens parallele/konkurrierende Kompetenzen besitzen. Nationale Gerichte spielen eine wesentliche Rolle bei der Prüfung der Gerichtszuständigkeit in der konkreten Angelegenheit. Diese Prüfung kann vor der Einleitung des Verfahrens erfolgen (wenn die andere Partei eine Schiedsgerichtseinrede erhebt) oder während des Schiedsverfahrens als die nationalen Gerichte die diesbezügliche Schiedsgerichtsentscheidung kontrollieren. Die Anerkennung des Schiedsgerichts als des zuständigen forum durch das nationale Gericht bleibt verbindlich sowohl für das Schiedsgericht und für die Parteien, als auch für die nationalen Gerichte dieses Staates im Gange der Verfahren nach dem Schiedsverfahren (bezüglich des Tatbestandes, den das nationale Gericht erwogen hat, als es die Parteien zum Schiedsverfahren verwiesen hat). Verschiedene Interaktionen zwischen der nationalen Gerichten und Schiedsgerichten können auch bei Entscheidung über die vorbeugenden und einstweiligen Maßnahmen entstehen.

CZE [***Dva příklady interakce mezi státními soudy a rozhodčím řízením: rozhodování o pravomoci rozhodčího soudu k rozhodnutí ve věci samé a předběžný petit v rozhodčím řízení***]

Ačkoliv je mezinárodní rozhodčí řízení zásadně nezávislé na státních soudech, je úloha těchto soudů významná pro efektivitu rozhodčího

řízení. Interakce mezi státními soudy a rozhodčími soudy může být v některých případech intenzivní v takových oblastech, kde jsou rozhodčí soudy a státní soudy nadány paralelními nebo konkurujícími pravomocemi v průběhu rozhodčího řízení. Státní soudy hrají významnou úlohu při zkoumání pravomoci rozhodčích soudů v konkrétní věci. Takové zkoumání může probíhat před zahájením rozhodčího řízení, pokud strana uplatní námitky proti rozhodčí smlouvě v samostatném řízení, nebo v průběhu samotného rozhodčího řízení, pokud jsou státní soudy oprávněny kontrolovat rozhodnutí rozhodčího soudu o jeho pravomoci. Rozhodnutí státních soudů o tom, že rozhodčí řízení je řádným fórem pro slyšení ve věci sporu mezi stranami, je závazné jak pro rozhodčí soudy tak pro strany samotné. Takové rozhodnutí je rovněž závazné pro státní soudy v postrozhodčím řízení, když tato rozhodnutí se mohou týkat okolností, kterými se soudy zabývají na návrh stran rozhodčího řízení. K různým druhům interakce mezi soudy a rozhodčími soudy může docházet v průběhu rozhodování o předběžných petitech (označované též jako zajišťovací návrhy).

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POL [***Dwa przykłady interakcji sądownictwa państwowego i arbitrażowego: rozstrzyganie o właściwości trybunału arbitrażowego w sprawie i zabezpieczenie roszczeń dochodzonych w arbitrażu***]
W artykule poruszono kilka praktycznie istotnych kwestii występujących na gruncie dwóch „punktów stycznych" sądownictwa powszechnego i arbitrażowego, a to: orzekania o właściwości sądów polubownych oraz zabezpieczenia roszczeń przed nim dochodzonych, czyli tych dziedzin, w których kompetencje sądów arbitrażowych i państwowych mogą występować równolegle, konkurencyjnie wobec siebie.

FRA [***Deux exemples de l'interaction entre des tribunaux nationaux et des tribunaux arbitraux: une décision sur la compétence d'un tribal arbitral de juger et d'appliquer des mesures conservstoires dans la procédure arbitrale***]
Cet article aborde des questions importantes dans la pratique, se produisant sur la base de deux 'points de connexion' d'une jurisdiction de droit commun et arbitrale, c'est-à-dire: le jugement sur la compétence des tribunaux arbitraux et sur des mesures conservatoires relatives aux prétentions revendiquées devant ces tribunaux – alors des domains dans lesquels des compétences des tribunaux arbitraux et nationaux peuvent se produire parallèlement, compétitivement les uns contre les autres.

RUS [***Два примера взаимодействия между государственными и арбитражными судами: принятие решения относительно компетенции арбитражного суда на рассмотрение по существу и предварительное решение в арбитраже***]

В данной статье рассматриваются несколько важных практических вопросов, связанных с двумя «связывающими звеньями» между арбитражем и государственными судами. Речь идет о решении относительно компетенции арбитражного суда, а также заявлениях об обеспечении иска (решение о предварительных мерах) в отношении арбитражного разбирательства. В этих двух областях компетенции арбитражных судов и государственных судов могут конкурировать друг с другом.

ESP [***Dos ejemplos de interacción entre el procedimiento civil y arbitral: toma de decisiones sobre la jurisdicción del tribunal de arbitraje ante la decisión en los méritos del caso y la propuesta preliminar en procedimientos de arbitraje***]

Este artículo aborda varias cuestiones prácticas e importantes relativas a los dos "vínculos" entre el procedimiento arbitral y los tribunales nacionales. En concreto versa sobre las decisiones relativas a la competencia del tribunal arbitral y a las propuestas de garantía (decisiones sobre medidas provisionales) en relación con el procedimiento arbitral. En estas dos áreas, los tribunales de arbitraje y los nacionales pueden competir entre sí.

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