Czech (& Central European) Yearbook of Arbitration®

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Rights and Duties of Parties in Arbitration

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Contents

List of Abbreviations..... xi

ARTICLES

Alexander J. Bělohlávek
Rights and Duties of Parties in Connection with Taking of Evidence in Investor-State Arbitration..... 3

Ondřej Čech
A Party's Right to Appoint an Arbitrator and its Limits Issue Conflict in International Arbitration..... 23

Petr Dobiáš
Rights and Duties of Parties in Insurance Arbitration..... 43

Cristina Ioana Florescu
The Contractual Legal Nature of the Relationship Between the Major Participants in Arbitration 69

Garðar V. Gunnarsson | David Earnest
Raul Gallardo | Tobiasz Kaczor
How to Sharpen the Sword of Efficiency in International Arbitration? 101

Andrzej Kubas | Maciej Durbas
Conditional Effectiveness of the Arbitration Agreement 125

Harald Sippel
Med-Arb: Recent Trends and an Outlook on the Future..... 151

Antuen Skënderi | Aulona Hazbiu | Klotilda Bushka (Ferhati)
Legal Framework and Implementation Issues Concerning Parties' Rights and Duties During the Arbitration Process: An Albanian Case Study..... 177

Elena Zucconi Galli Fonseca | Carlo Rasia
Third Parties Between Arbitration Agreements and Review of Arbitral Awards..... 191

CASE LAW

Poland

Kuba Gąsiorowski | Magdalena Matejczyk | Kamil Zawicki
The Supreme Court Judgments..... 213

NEWS & REPORTS

Jan Iosifovich Funk | Inna Vladimirovna Pererva
Settlement of Disputes by International Arbitration Court at BelCCI..... 227

Asko Pohla
Validity of Arbitration Agreements in Estonian law..... 247

BIBLIOGRAPHY, CURRENT EVENTS, CONFERENCES, CYIL & CYArb® PRESENTATIONS, IMPORTANT WEB SITES

Alexander J. Bělohlávek
Selected Bibliography for 2015..... 271
Current Events..... 285
Past CYIL and CYArb® presentations..... 301
Important Web Sites..... 303
Index..... 315

All contributions in this book are subject to academic review.

List of Abbreviations

AA 1996	United Kingdom the English Arbitration Act 1996
AAA Code of Ethics	AAA The Code of Ethics for Arbitrators in Commercial Disputes
AAA	American Arbitration Association
AAR	ARIAS (UK) Arbitration Rules, per the wording in force as of 1 January 2014 (Third Edition)
ADR	Alternative Dispute Resolution
AFTAR	ARIAS (UK) Fast Track Arbitration Rules (2013)
AIIB	Asian Infrastructure Investment Bank
Albanian CCP	Albanian Code of Civil Procedure
AMA Protocol	Arb-Med-Arb Protocol
ARIAS U.S.	AIDA Reinsurance and Insurance Arbitration Society United States
ARIAS UK	AIDA Reinsurance and Insurance Arbitration Society United Kingdom
ARRUS	ARIAS Rules for the Resolution of U. S. Insurance and Reinsurance Disputes
ARRUS	ARIAS Rules for the Resolution of U. S. Insurance and Reinsurance Disputes
CEFAREA	French Reinsurance and Insurance Arbitration Center
CEFAREA Rules	CEFAREA's 2013 Arbitration Rules
CEFAREA-ARIAS France	The new rules of the French Reinsurance and Insurance Arbitration Centre

CIETAC	China International Economic and Trade Arbitration Commission
CLE BC	Continuing Legal Education Society of British Columbia
Directive	EU's Mediation Directive
EU	European Union
HKIAC	Hong Kong International Arbitration Centre
IBA Rules	International Bar Association's Rules on the Taking of Evidence in International Commercial Arbitration
IBA	International Bar Association
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)
ICDR	International Centre for Dispute Resolution
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965
ICSID	International Center for Settlement of Investment Disputes
JCAA	Japan Commercial Arbitration Association
KCAB	Korea Commercial Arbitration Board
LCIA Rules	LCIA Arbitration Rules – The London Court of International Arbitration (see also 'LCIA')
LCIA	London Court of International Arbitration (see also 'LCIA Rules')
MEDART	Albanian Centre on Commercial Mediation and Arbitration
Model Law	UNCITRAL Model Law on International Arbitration[1]
SCC Rules	SCC Institute Arbitration Rules. Arbitration Rules of the Arbitration

[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).

	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')
SIAC	Singapore International Arbitration Centre
SIMC	Singapore International Mediation Centre
UNCITRAL Rules	UNCITRAL Arbitration Rules within the meaning of the UN General Assembly resolution 31/98 of 15 December 1976,[2] as amended in 2010 by the UN General Assembly resolution 65/22[3]
UNCITRAL	United Nations Commission on International Trade Law[4]
VIAC	Vienna International Arbitration Centre

[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] 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).

[4] See www.uncitral.org.

Case Law
Poland

Kuba Gąsiorowski | Magdalena Matejczyk | Kamil Zawicki
The Supreme Court Judgments 213

Poland – the Supreme Court Judgments

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Magdalena Matejczyk, associate, Kubas Kos Gałkowski – Adwokaci
Kamil Zawicki, attorney at law, partner, Kubas Kos Gałkowski - Adwokaci (ed.)

Abbreviations

k.c. [POL]	Kodeks cywilny z dnia 23 kwietnia 1964 r. [*Civil Code of 23 April 1964*] published in: Dziennik Ustaw [*Journal of Laws*] 1964, No. 15, item 93, as amended;
k.p.c. [POL]	Kodeks postępowania cywilnego z dnia 17 listopada 1964 r. [*Code of Civil Procedure of 17 November 1964*], published in: Dziennik Ustaw [*Journal of Laws*] 1964, No. 43, item 296, as amended;
New York Convention	New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958 [*Konwencja o uznawaniu i wykonywaniu zagranicznych orzeczeń arbitrażowych, sporządzona* w *Nowym Jorku dnia 10 czerwca 1958 r.*], published in: Dziennik Ustaw [*Journal of Laws*] 1962, No. 9, item 41[1];

[1] Poland signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 10 June 1958; it was ratified by Poland on 3 October 1961 and entered into force in Poland on 1 January 1962. The text of the New York Convention was published in Polish in the Journal of Laws 1962, No. 9, item 41.

1. The lack of one chain of a dispute resolution process under multi-tier disputes resolution clause renders the arbitration agreement, encompassed by the multi-tier clause, ineffective (Supreme Court (*Sąd Najwyższy*) Civil Chamber Decision, Case No. V CSK 231/14 of 5 February 2015)[2]

Key words:

domestic arbitration | *multi-tier dispute resolution clauses* | *Polish arbitration law* | *ineffective arbitration agreement*

States involved:

[POL] – [Poland];

Laws Taken into Account in This Ruling:

Kodeks postępowania cywilnego z dnia 17 listopada 1964 r. [*Code of Civil Procedure of 17 November 1964*] [k.p.c.] [POL], published in: Dziennik Ustaw [*Journal of Laws*] 1964, No. 43, item 296, as amended; Articles: 1165 § 1[3], 1168 § 1 and 2[4];

[*Rationes Decidendi*]:

10.01. Parties may agree for a multi-tier dispute resolution process to be administered by a Contract Administrator. However, when

[2] Full text of this Decision available in Polish on the website of the Polish Supreme Court at: http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/V%20CSK%20231-14-1.pdf.

[3] Article 1165 k.p.c. [POL] (unofficial translation): § 1. If a case is brought before a court concerning a dispute covered by an arbitration clause, the court shall reject a statement of claim or a motion to initiate non-contentious proceedings if the defendant or participant to non-contentions proceedings raises the existence of the arbitration clause before entering the merits of the case.
§ 2. The provisions of § 1 shall not apply if an arbitration clause is invalid, ineffective, unenforceable or has expired, and if the arbitration court declines jurisdiction.
§ 3. The fact that an action has been brought before a court does not prevent an arbitration court from hearing the case concerned.
§ 4. The provisions of the preceding paragraphs also apply if the venue of proceedings before an arbitration court is located outside the borders of the Republic of Poland or is not defined.

[4] Article 1168 k.p.c. [POL] (unoffical translation): § 1. If person indicated in the arbitration agreement as an arbitrator or presiding arbitrator refuses to act in such capacity or if performing his or hers duties prove to be impossible due to other reasons, the arbitration agreement loses its binding power, unless the parties agreed otherwise.
§ 2. In absence of the agreement of the parties, the arbitration agreement loses its binding power, should the court of arbitration indicated in the agreement refue to accept the case for examination or should the examination of the case by this court prove to be impossible due to other reasons.

the contract is fully performed, in result of which the Contract Administrator is relieved of his duties, there is no competent (contractually selected by the parties) person through which parties may start the dispute resolution process. This also concerns the initiation of arbitration as the final stage of the multi-tier dispute resolution procedure. In such instances, in the absence of this one chain of the dispute resolution process, the arbitration agreement, covered by the multi-tier clause, is rendered ineffective by the virtue of law.

[***Description of Facts and Legal Issues***]

10.02. The dispute in this case concerned a construction contract. The construction contract was administered by the so called Contract Administrator. It also contained a multi-tier dispute resolution clause. According to that clause, should a dispute concerning the performance of the contract arise, the parties would be required to undergo certain stages of the dispute resolution process.

10.03. First, the parties were required to notify the Contract Administrator of their dispute within 14 days of the moment in which the dispute arose. Then the dispute was first examined by the conciliatory commission. If the efforts of the conciliatory commission failed and the dispute between the parties still remained, the contract stipulated that an adjudicator should be appointed to present a solution. In the event the parties rejected the adjudicator's solution only then could the parties refer their dispute to arbitration.

10.04. According to the facts of the case, A, the construction company and the claimant, sued B, the defendant, before a state court for payment of interest under the contract. B, however, raised a charge of the existing arbitration agreement. In result, the court of first instance rejected the statement of claims of A, by applying Article 1165 § 1 of the Code of Civil Procedure and referred parties to arbitration. A appealed against that decision to the court of second instance (Court of Appeal), however the Court of Appeal dismissed the complaint and concurred with the court of first instance.

10.05. Subsequently, A filed a cassation complaint to the Supreme Court. A argued, among others, that the Court of Appeal adopted an unacceptably broad interpretation of the arbitration agreement, thus violating Article 1165 of the Code of Civil Procedure. Moreover, A stated that the Court of Appeal failed to apply Article 1168 according to which the arbitration agreement contained in the contract was ineffective and lost any binding

power by virtue of law, because it was impossible to examine the case in arbitration *verba legis* "due to other reasons".

[Decision of the Supreme Court]

10.06. The Supreme Court accepted the reasoning of A, overruled the decision of the court of second instance and remitted the case to the Court of Appeal for re-examination.

10.07. According to the Supreme Court, the Court of Appeal failed to notice that in the case at hand Article 1168 § 2 of the Code of Civil Procedure should be applied. This provision provides that in the absence of an agreement between the parties, the arbitration agreement loses its binding power, should the court of arbitration indicated in the agreement refuse to accept the case for examination or should the examination of the case by this court prove to be impossible due to other reasons. In the opinion of the Supreme Court, the court of second instance should have noticed that there may be "other reasons" present, which make it impossible to examine the case in arbitration.

10.08. Namely, the Supreme Court stated that if the contract was fully performed and the Contract Administrator was relieved from his duties several years prior, there is currently no person who should be notified of the dispute between the parties and who could start the procedure of dispute resolution and the selection of arbitrators.

10.09. Therefore, the Supreme Court concluded, if it is impossible to examine the case in accordance with the arbitration agreement, either because it is impossible to select the arbitrators (in a matter described in the arbitration agreement) or there are certain circumstances which make it impossible to examine the case by the arbitral panel indicated in the arbitration agreement or if both of those preconditions are present, as in the examined case, then – if the parties did not agree otherwise – the arbitration agreement loses its binding power under Article 1168 of the Code of Civil Procedure.

2. If the parties modify the rules of the court of arbitration, the arbitral tribunal may agree to hear the case in accordance with the changed rules or may refuse to hear the case (Supreme Court (*Sąd Najwyższy*) Civil Chamber Decision, Case No. II CSK 352/14 of 20 March 2015)

Key words:

two instance arbitration proceedings | arbitration award | recourse against the award Polish arbitration law

States involved:

[POL] - [Poland];

Laws Taken into Account in This Ruling:

Kodeks postępowania cywilnego z dnia 17 listopada 1964 r. [*Code of Civil Procedure of 17 November 1964*] [k.p.c.] [POL], published in: Dziennik Ustaw [*Journal of Laws*] 1964, No. 43, item 296, as amended; Articles: 1161 § 3[5], 1184 § 2[6], 1205 §2[7], 1206 § 1 point 4 *in fine*[8];

[5] Article 1161 k.p.c. [POL] (unofficial translation): §1. Submission of the dispute to be resolved by arbitration requires the agreement of the parties, in which the subject-matter of the dispute or a legal relationship from which the dispute may arise or has arisen should be mentioned (arbitration agreement).
§2. The provisions of the arbitration agreement are ineffective if they infringe on the principle of equality of the parties, in particular entitling only one of the parties to file a request for arbitration or a statement of claim before a court.
§3. The arbitration agreement may indicate an arbitral institution as having jurisdiction. Unless otherwise agreed by the parties, they are bound by the rules of the arbitral institution in force at the time of conclusion of the arbitration agreement.

[6] Article 1184 k.p.c. [POL] (unofficial translation): §1. Subject to these statutory provisions, the parties are free to agree on the procedure of the arbitration.
§2. Failing such agreement, the arbitral tribunal may, subject to provisions of the law, conduct the proceedings in such a manner as it considers appropriate. The arbitral tribunal is not bound by the provisions relating to court proceedings.

[7] Article 1205 k.p.c. [POL] (unofficial translation): § 1. An award made in the Republic of Poland can be set aside only in proceedings started pursuant to an application to set aside the award made in accordance with the following provisions.
§ 2. If it is agreed by the parties that the proceedings before the arbitral tribunal shall take place in stages § 1 of this article applies to the final award deciding the claims of the parties.

[8] Article 1206 k.p.c. [POL] (unofficial translation): § 1. A party may by petition demand that an arbitral award be set aside if: 1) there was no arbitration agreement, or the arbitration agreement is invalid, ineffective or no longer in force under the provisions of applicable law; 2) the party was not given proper notice of the appointment of an arbitrator or the proceeding before the arbitral tribunal or was otherwise deprived of the ability to defend its rights before the arbitral tribunal; 3) the arbitral award deals with a dispute not covered by the arbitration agreement or exceeds the scope of the arbitration agreement; however, if the decision on matters covered by the arbitration agreement is separable from the decision on matters not covered by the arbitration agreement or exceeding the scope thereof, then the award may be set aside only with regard to

[***Rationes Decidendi***]**:**

10.10. In an arbitration agreement or in a subsequent agreement the parties may change the rules of the permanent court of arbitration. In such a situation, the arbitral tribunal may agree to hear the case in accordance with the changed rules or may refuse to hear the case. The lack of acceptance of the changes does not authorize the arbitral tribunal to use the unchanged procedure provided in the rules of the permanent court of arbitration, contrary to the parties' agreement. This is because the fundamental principle of arbitration law is to give effect to the mutual intent of the parties.

[***Description of Facts and Legal Issues***]

10.11. On 8 April 2009, A, the claimant and B, the defendant, entered into a contract for building an elevation and roof of a purification plant. The annex to the contract contained an arbitration clause submitting all disputes that could have arisen therefrom, excluding matters relating to promissory notes and checks, which had to be settled by a state court, to arbitration under the auspices of the Court of Arbitration at the Polish Confederation of Private Employers Lewiatan ("Lewiatan Court"), in accordance with the rules of that court. However, the parties agreed that the arbitration will be two-tiered – a solution which was not provided for in the Lewiatan Court's rules at that time.

10.12. On 24 March 2011, A initiated arbitration against B. The defendant raised an objection to the jurisdiction of the arbitral tribunal. In this phase of the proceedings neither party made a statement on the rules of the second-tier's procedure or the appropriate court of appeal.

10.13. On 8 November 2011, the arbitral tribunal dismissed the objection. It found that the arbitration clause in issue is defective, because the relevant rules of the Lewiatan Court did not provide for a two-instance procedure. The tribunal stated that it shall operate in accordance with the rules of Lewiatan Court and, in consequences, the modification of the rules of that Court is not binding. Notwithstanding the above, in the opinion of the tribu-

the matters not covered by the arbitration agreement or exceeding the scope thereof; exceeding the scope of the arbitration agreement cannot constitute grounds for vacating an award if a party who participated in the proceeding failed to assert a plea against hearing the claims exceeding the scope of the arbitration agreement; 4) the requirements with regard to the composition of the arbitral tribunal or fundamental rules of procedure before such a tribunal, arising under a statute or specified by the parties, were not observed; 5) the award was obtained by means of an offence or the award was issued on the basis of a forged or altered document; or 6) a legally final court judgment was issued in the same matter between the same parties.

§ 2. An arbitral award shall also be set aside if the court finds that: 1) in accordance with the statute the dispute cannot be resolved by an arbitral tribunal, or 2) the arbitral award is contrary to the fundamental principles of the legal order of the Republic of Poland (public policy clause).

nal the incompatibility between the arbitration agreement and the rules of Lewiatan Court were not an obstacle for arbitration.

10.14. By the decision of 29 February 2012, initiated at the motion of B, the Regional Court of Łódź acknowledged the jurisdiction of the arbitral tribunal. The Court found that a two-tier arbitration clause is valid and binding for the parties. Consequently, the arbitral tribunal shall conduct the second-tier procedure in such a manner – subject to the relevant provisions of the Polish Code of Procedure – as it considers appropriate, which, according to the Court, is confirmed in Article 1184 § 2 of the Code of Civil Procedure.

10.15. On 3 April 2012, the arbitral tribunal issued an award on merits. In substance, it ordered B to pay an amount of about PLN 500,000.00 and rejected the remainder of the claim. The copy of award which was delivered to B contained signatures of the President of the Court of Arbitration and the Secretary General confirming final nature of the award, in accordance with the requirements of Article 57 sec. 2 of the rules of the Lewiatan Court[9].

10.16. As a result of the above decision, B requested the arbitral tribunal to determine the procedure for the second instance of arbitration. Thereafter, B filed a motion for the supplementation of the award by establishing the second-tier procedure. Both motions were rejected. In consequences, B filed a motion for setting aside the arbitral award. It argued that the arbitral tribunal, by refusing to hear the case in the second instance, violated Article 1206 § 1 point 4 of the CCP.

10.17. In the decision of 27 March 2013 the Regional Court of Łódź set aside the award. The Court confirmed the defendant's legal argument and stated that there are grounds to challenge the arbitral award.

10.18. The Court of Appeal dismissed the claimant's complaint. The Court confirmed the reasoning of the Regional Court and stated that by giving priority to the rules of the Lewiatan Court, the arbitral tribunal deprived the parties of the possibility to appeal. As the parties to arbitration did not set the second-tier procedure, the arbitral tribunal was obliged to determine relevant procedure on its own.

10.19. As a result, the claimant filed a cassation complaint with the

[9] Article 57 of the previous Rules of Lewiatan Court: 1. An arbitrator's refusal or his inability to sign the award shall be indicated on the award. The award signed by a majority of arbitrators shall be legally binding. 2. The award of the Court of Arbitration should contain signatures of the President of the Court of Arbitration and the Secretary General confirming the authenticity of arbitrators' signatures and final character of the award, as well as the seal of the Court.
3. The Court of Arbitration shall deliver to the parties the copies of the award signed in accordance with the requirements of section 2.

Supreme Court.

[***Decision of the Supreme Court***]

10.20. The Supreme Court ruled in favour of B and dismissed the cassation complaint. Firstly, the Court explained that the parties to arbitration are free to modify the rules of the court of arbitration. That is because the fundamental principle of arbitration law is to give effect to the mutual intent of the parties. Moreover, the rules of the court of arbitration apply only i*f* the *parties had,* expressly or impliedly, agreed on that issue.

10.21. As to the modification of the rules of the Lewiatan Court, the Supreme Court underlined that the arbitral tribunal may agree to hear the case in accordance with the changed rules or if it does not accept the change in rules it may refuse to hear the case. However, if the jurisdiction of the arbitral tribunal to hear the case is confirmed (the tribunal agrees to hear the case), it is obliged to respect the parties' agreement and consequently, it has to conduct the proceeding in accordance with the changed rules.

10.22. The abovementioned is also applicable when the parties agreed on a two-tier dispute resolution procedure, while the rules of arbitration court provide that the procedure is only one instance. Furthermore, in such a situation, the lack of acceptance of changes does not authorize the arbitral tribunal to hear the case in a one-tier procedure.

3. While evaluating whether the applicant submitted the required document concerning the agreement containing the arbitration clause, under Article IV of the New York Convention, it is crucial to determine whether the form of the abovementioned document is consistent with the manner in which the agreement was concluded (Supreme Court (*Sąd Najwyższy*) Civil Chamber Decision, Case No. V CSK 672/13 of 23 January 2015)[10]

Key words:

arbitration award | *enforcement of the award* | *international arbitration*

States involved:

[POL] – [Poland];

[CHN] – [China];

Laws Taken into Account in This Ruling:

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June, 1958 [*Konwencja* o *uznawaniu i wykonywaniu zagranicznych orzeczeń arbitrażowych, sporządzona* w *Nowym Jorku dnia 10 czerwca 1958 r.*], [New York Convention], published in: Dziennik Ustaw [*Journal of Laws*] 1962, No. 9, item 41[11]; Article II Section 2[12], Article IV[13]

[10] The full text of this Decision is available in Polish on the Supreme Court's website at: http://www.sn.pl/sites/orzecznictwo/Orzeczenia3/V%20CSK%20672-13-1.pdf

[11] Poland signed the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 10 June 1958; it was ratified by Poland on 3 October 1961 and it entered into force in Poland on 1 January 1962. The text of the New York Convention was published in Polish in the Journal of Laws 1962, No. 9, item 41.

[12] Article II of New York Convention: 1. Each Contracting State shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not, concerning a subject matter capable of settlement by arbitration.
2. The term "agreement in writing" shall include an arbitral clause in a contract or an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams.
3. 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.

[13] Article IV of New York Convention: 1. To obtain the recognition and enforcement mentioned in the

[***Rationes Decidendi***]**:**

10.23. Article IV of the New York Convention has a functional connection with Article II of the Convention. Article II Section 2 contains an autonomous regulation of arbitration agreements and the wording of this Article enforces the liberal understanding of the concept of "an agreement in writing" as the requirement for the effectiveness of an arbitration clause and requires the acceptance that the parties are free to select the form of the agreement in which they submit their dispute to the jurisdiction of the arbitration court. Consequently, while evaluating whether the applicant submitted the required document concerning the agreement containing the arbitration clause, under Article IV of the New York Convention, it is crucial to determine whether the form of the abovementioned document is consistent with the manner in which the agreement was concluded.

[***Description of Facts and Legal Issues***]

10.24. In the decision of 7 February 2013, initiated at the motion of A, with its seat in Hong Kong, the Regional Court in W. decided to enforce the arbitral award against B, with its registered seat in Poland. The Court stated that there were no grounds to deny the motion, as H.H.I.S. delivered sufficient documentation for the enforcement of the award under the New York Convention.

10.25. This decision was challenged by a complaint of B filed with the Court of Appeal in Wrocław. By the decision of 11 September 2013, the Court of Appeal changed the judgment of the Regional Court and dismissed A's motion. The Court held that the agreement containing the arbitration clause was submitted to the Regional Court in the form of a photocopy, therefore, the form requirements under Article IV of the New York Convention were not fulfilled. In the opinion of the court of second instance, it was a sufficient reason for the denial of the application.

10.26. As a result, A filed a cassation complaint with the Supreme Court.

[***Decision of the Supreme Court***]

10.27. The decision in question was overruled by the Supreme Court and the case was remitted to the Court of Appeal for re-exam-

preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply: (a) The duly authenticated original award or a duly certified copy thereof; b) The original agreement referred to in article II or a duly certified copy thereof.

[2.] If the said award or agreement is not made ill an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

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10.28. Firstly, the Supreme Court stated that the interpretation of Article IV of the New York Convention must reflect the functional connection with Article II of the Convention. It underlined that Article II Section 2 of New York Convention contains an autonomous regulation of arbitration agreements. It is commonly accepted that the wording of this Article requires a liberal understanding of the concept of "an agreement in writing" as the requirement for the effectiveness of an arbitration clause and requires the acceptance that the parties are free to select the form of agreement in which they submit [the dispute] to the jurisdiction of the arbitration court. There is also a view that the applicant fulfils the requirement of submission of the agreement in the original if s/he files a document which constitutes evidence of the conclusion of the agreement, regardless of its form. Consequently, the Supreme Court reasoned that while evaluating whether the applicant submitted the required document concerning the agreement containing the arbitration clause, it is crucial to determine whether the form of the abovementioned document is consistent with the manner in which the agreement was concluded.

10.29. Secondly, the Supreme Court underlined that the condition for the recognition or enforcement of an arbitration award should be the existence of the arbitration agreement, and not the submission of a document confirming its conclusion. The applicant's failure to supply the agreement required under Article IV of the New York Convention does not prevent from granting the application if the existence of the arbitration agreement before a foreign arbitration court is undisputed. In the case at hand, the court of second instance omitted the position presented by the parties during the proceeding before the arbitral tribunal and in consequence, had not sufficiently examined that issue.

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