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Contents

Poland

BOOK REVIEWS

News & Reports

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

All contributions in this book are subject to academic review.

List of Abbreviations

AAA	American Arbitration Association
ACCP	Austrian Code of Civil Procedure
ADR	Alternate dispute resolution
ArbAct	Act [Czech Republic] No. 216/1994 Coll., on Arbitration and Enforcement of Arbitral Awards, as amended
BEPS Project	Base Erosion and Profit Shifting Project
BIT	Bilateral Investment Treaty
CAFTA	Central American – United States Free Trade Agreement
CAM	Chamber Arbitral Maritime
CAS	Chromalloy Aeroservices
CCI RF	Chamber of Commerce and Industry of the Russian Federation
CETA	Comprehensive Economic and Trade Agreement
CFC	Controlled Foreign Companies
CIArb	Chartered Institute of Arbitrators
CIETAC	China International Economic and Trade Arbitration Commission
CJEU	Court of Justice of the European Union
DIS	Deutsche Institution für Schiedsgerichtsbarkeit
DTC	Double Tax Conventions
ECT	Energy Charter Treaty
ECtHR	European Court of Human Rights
EU	European Union
European Convention on International Commercial Arbitration	European Convention on International Commercial Arbitration Geneva, 1961
FAA	Federal Arbitration Act
FCIArb	Fellow of the Chartered Institute of Arbitrators
FOSFA	Federation of Oil,Seeds and Fats Associations
FTA	Free Trade Agreement

GAA	Guarantees Acknowledgment Act of Alberta
GAFTA	Grain and Feed Trade Association
GCCP	German Code of Civil Procedure
Geneva Convention 1927	Convention on the Execution of Foreign Arbitral Awards, Geneva, 26 September 1927
Geneva Protocol 1923	Protocol on Arbitration Clauses, Geneva, 24 September 1923
Hague Convention	Convention for the Pacific Settlement of International Disputes adopted at the 1907 Hague Peace Conference
HKIAC	Hong Kong International Arbitration Centre
ICAC	International Commercial Arbitration Court
ICC	International Chamber of Commerce
ICCA	International Congress and Convention Association
ICDR	International Centre for Dispute Resolution
ICSID	International Centre for Settlement of Investment Disputes
ICSID Convention	Convention on the Settlement of Investment Disputes between States and Nationals of other States, Washington, 1965
ICT	International Court of Justice
ICT Rules	the Rules of the International Court of Justice of 1978
ICT Statute	the Statute of the International Court of Justice of 1945
ILA	International Law Association
IMA	Arbitration Center at the Institute of Modern Arbitration
JAMS	Judicial Arbitration and Mediation Services
LCIA	The London Court of International Arbitration
LMAA	London Maritime Arbitrators Association
MAC	Maritime Arbitration Commission
MAP	Mutual Agreement Procedure

MGIMO	Moscow State Institute of International Relations
ML	UNICITRAL Model Law on International Commercial Arbitration
NAFTA	North American Free Trade Agreement
New York Convention	Convention in the Recognition and Enforcement of Foreign Arbitral Awards, New York, 1958
OECD	Organisation for Economic Cooperation and Development
PAI	Permanent Arbitral Institution
PILA	(Swiss) Private International Law Act
PILS	Private International Law of Switzerland
QMUL	Queen Mary University of London
RAAB	Arbitral Institution for Constructions
RF CCI	Chamber of Commerce and Industry of the Russian Federation
RIAA	Reports of International Arbitral Awards
RSPP	Arbitration Center at Russian Union of Industrialists and Entrepreneurs
SCC	Stockholm Chamber of Commerce
SIAC	Singapore International Arbitration Centre
Slovak Arbitration Act	Act No. 244/2002 Coll. on Arbitration, as amended
Slovak Constitution	Act No. 460/1992 Coll. Constitution of the Slovak Republic
Swiss Federal Constitution	Federal Constitution of the Swiss Confederation of April 18, 1999
TAS	Tribunal arbitral du sport
UAL	Law of Ukraine "On International Commercial Arbitration"
UCCI	Ukrainian Chamber of Commerce and Industry
UML	UNCITRAL Model Law on International Arbitration
UNCITRAL	United Nations Commission on International Trade Law
UNCITRAL Arbitration Rules	Arbitration Rules of the United Nations Commission on International Trade Law
UNCITRAL Model Law	Model law on International Commercial Arbitration as adopted by the United

	Nations Commission on International Trade Law on 21 June 1985, with amendments on 7 July 2006
UNCTAD	United Nations Conference on Trade and Development
VIAC	Vienna International Arbitral Centre
WIPO	World Intellectual Property Organization
ZPO	German Civil Procedure Code

Articles

Grzegorz Pobożniak | Paweł Sikora

The Admissibility of a European Account Preservation Order in the Event of an Arbitration Clause

Key words:
European account preservation order | jurisdiction |civil law | civil procedural law | contract | EU Regulation | jurisdiction | Polish arbitration law | temporary injunction | State Courts |

Abstract | *This article discusses the recent rulings of Polish courts in a case where a party to an agreement e in which all disputes were to be resolved by arbitration filed a petition to a State Court. They requested the issuance of a European Account Preservation Order under Regulation (EU) No 655/2014 of the European Parliament and of the Council of 15 May 2014, which established a European Account Preservation Order to facilitate cross-border debt recovery in civil and commercial matters. The Court of First Instance (Regional Court) dismissed the petition arguing that under the provisions of the European Account Preservation Order Regulations a Preservation Order may not be granted in cases referred to arbitration. The Appellate Court reversed this decision and remanded the case back to the lower court thus allowing the possible application of a Preservation Order. The purpose of the paper is to present the argumentation provided by the Courts of both instances and to comment on the advisability of these decisions.*

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I. Background

11.01. In a recent case before the Polish Regional Court in Rzeszów, 6th Commercial Division, an issue arose, concerning the possibility of adopting specific provisions of Regulation No. 655/2014[1] (Regulation) to the specifics of the case in a situation where there was an arbitration agreement between the parties. The Regional Court dismissed the petition submitted by one of the parties requesting a European Account Preservation Order[2] (Preservation Order) in their attempt to secure the requesting entity's claim for payment against the opposing party. The requesting party appealed to the Appellate Court in Rzeszów, which resulted in the higher court's decision referring the case back to the Regional Court for rehearing. What may seem to be the most problematic aspect of the case is the possibility of the issuance of a Preservation Order under such circumstances, in light of the particular provisions of both the Regulation and the Polish Code of Civil Procedure (the Civil Procedure Code).[3] The aim of this article is to review the decision in question in the above-mentioned context.

11.02. Before presenting the details of the case, it seems essential to briefly describe the main subject of the Regulation. When discussing the characteristics of the Preservation Order, what should be stated first is that it functions as an instrument allowing the creditors to preserve the amount owed in a debtor's bank account, serving as an alternative to national procedures for cross-border cases.[4] Pursuant to Article 22 of the Regulation, the Preservation Order issued in one of the Member States is recognised in the other Member States without the need for a declaration of enforceability. Accordingly, this is precisely what one of the parties in the case under consideration tried to seek before the Regional Court. To date, they have not been successful.

11.03. In this case the applicant and their adversary were parties to a contract for manufacturing and supplying specific devices. Under the contract, the performance of the agreed scope of work was divided into particular stages of completion. After each of the stages, payment of a part of a due amount was to be made to the requesting entity pursuant to the provisions

[1] Regulation (EU) no 655/2014 of the European Parliament and of the Council of 15 May 2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters; EUR-Lex - 32014R0655, .

[2] Hereinafter: 'the Preservation Order'.

[3] Ustawa z dnia 17 listopada 1964 r. Kodeks postępowania cywilnego, Dz.U.2016.1822.

[4] Monique Hazelhorst, Free Movement of Civil Judgments in the European Union and the Right to a Fair Trial, T.M.C. Asser Press—Springer 26 (2017).

stipulated in the contract. The debtor did not pay for one of parts of the amount due despite the proper completion of the contract and the issuance of a VAT invoice (accepted by the debtor) and a call for payment by the applicant was sent to the debtor. After unsuccessful pre-arbitration negotiations, proper arbitration commenced. It should be stated that the parties had agreed under the contract that any and all disputes arising from their contract was to be submitted for settlement by an arbitration court. This procedure against the debtor had already been initiated and concluded after the claim had been admitted by the respondent in the course of arbitration

II. Findings of the Regional Court

11.04. The Regional Court cited the provisions of Article 2 Section 2 letter e, Article 4 point 8, Article 5, Article 10 Section 1, Article 35 Section 3 of the Regulation and found that the Regulation gives priority to arbitration in the case of initiating negotiations without applying state coercion. For this reason the Regional Court found that there was an impediment to the issuance of the Preservation Order.

11.05. Addressing the matter of jurisdiction, the Regional Court pointed to Article 6 Section 1[5] of the Regulation and indicated that when interpreting the terms of jurisdiction, what should be taken into consideration is Article 7(1)(a)[6] regarding the place of jurisdiction and 7(5)[7] of the Regulation no 1215/2012[8] which deals with a dispute arising out of the operations of a branch, agency or other establishment. These regulations, may justify jurisdiction of a State Court. In order to advocate the Regional Court's thesis that an arbitration agreement excludes the jurisdiction of a common court of law, the Court referred to the European Court of Justice's interpretation provided in judgment C-391/95,[9] passed under the Brussels Convention of 1968[10] and

[5] 'Where the creditor has not yet obtained a judgment, court settlement or authentic instrument, the jurisdiction to issue a Preservation Order shall lie with the courts of the Member State which have jurisdiction to rule on the substance of the matter in accordance with the relevant rules of applicable jurisdiction.'

[6] 'A person domiciled in a Member State may be sued in another Member State in matters relating to a contract, in the courts for the place of performance of the obligation in question.'

[7] 'A person domiciled in a Member State may be sued in another Member State as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place where the branch, agency or other establishment is situated.'

[8] Regulation (EU) no 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, EUR-Lex - 32012R1215 - EN.

[9] ECJ Judgment of 17 November 1998, C-391/95, *Van Uden Maritime BV, trading as Van Uden Africa Line* v. *Kommanditgesellschaft in Firma Deco-Line and Another* [1998] ECLI:EU:C:1998:543.

[10] Brussels Convention of 27 September 1968 on jurisdiction and the enforcement of judgments in civil and commercial matters, (the Brussels Convention), EUR-Lex - 41968A0927(01) - EN.

specifically its Article 24.[11] In the Court's view these might correspond with Article 35 of Regulation No. 1215/2012,[12] and were also applicable in light of the Brussels I Regulation[13] and consequently Regulation No. 1215/2012. This interpretation was that where the parties excluded the jurisdiction of a common court and agreed on arbitration, there are no courts that have jurisdiction on the merits and the basis for issuing a temporary measure by a Court is Article 35 of Regulation No. 1215/2012.

11.06. According to the Regional Court, the lack of jurisdiction is based on the grounds of Regulation No. 1215/2012. The European Court of Justice case also involved a situation in which the parties decided upon arbitration. Under Polish law this would not be considered as a lack of jurisdiction, but rather a case does not qualify for court legal action, pursuant to Article 1165 Section 1 of the Code of Civil Procedure.[14] In the Court's view, the above remains applicable against the backdrop of Article 6 Section 1 of the Regulation, which provides the Court having jurisdiction on ruling in the main proceedings, shall have the jurisdiction to issue the Preservation Order, in accordance to Regulation No. 1215/2012.

III. The Decision of the Appellate Court

III.1. Exclusions Contained in the Regulation

11.07. The decision by the Regional Court was appealed by the requesting entity to the Appellate Court who eventually referred the case back to the Regional Court for rehearing. The Appellate Court ruled that the complaint should be allowed, as according to the Appellate Court, the Regional Court mistakenly found a lack of jurisdiction on issuing the Preservation Order.

11.08. The applicant and the Appellate Court argued that Article 2(2) (e) of the Regulation[15] should be interpreted to state that the Preservation Order may not be issued in proceedings before an arbitration court. As the Appellate Court correctly recognized,

[11] 'An application may be made to the courts of a Contracting State for such provisional, including protective, measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.'

[12] 'The application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.'

[13] Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, EUR-Lex - 32001R0044 - EN.

[14] 'If a case is brought before a court concerning a dispute covered by an arbitration clause, the court shall reject a complaint or a petition to institute non-contentious proceedings if the defendant or participant to non-contentions proceedings brings an allegation of the arbitration clause before defending on the merits of the case.'

[15] 'This Regulation does not apply to arbitration.'

there is no reason to question the possibility of granting security provided by the provisions of the Regulation where both parties agreed on arbitration or even when the proceedings before an arbitration court have already been initiated, since this does not fall within the exclusion. This is obviously a reasonable solution for a way of executing the Preservation Order provided by the Regulation. Moreover, as noted by the Appellate Court, such an interpretation may very well be supported by the jurisprudence of the European Court of Justice, which presents such a view in the judgment C-391/95 invoked by the Regional Court. It is also stated in the judgment that temporary or precautionary measures generally do not intend to conduct proceedings before an arbitration court. They are rather issued in parallel with such a procedure, in order to support it. The subject of these measures is not arbitration as such, but security of various claims of the creditor.

11.09. Accordingly, the European Court of Justice has excluded applying precautionary measures pursuant to Article 5 of the Brussels Convention[16] if parties decided to refer their disputes to an arbitration court. Yet, it has also indicated that these measures might be executed according to another provision of the convention, namely Article 24.[17]

III.2. Different Legal Situations

11.10. Furthermore, as pointed out by the Appellate Court, the assessment by the European Court of Justice concerned a disagreement regarding jurisdiction on the basis of the Brussels Convention. Such an assessment on the grounds of the Regulation must take into account the aim of its introduction and the fact that it was not possible to include currently existing regulations in the judgment under discussion. The fact that the Regulation does not involve any analogical provision is of

[16] 'A person domiciled in a Contracting State may, in another Contracting State, be sued:
1. in matters relating to a contract, in the courts for the place of performance of the obligation in question;
2. in matters relating to maintenance, in the courts for the place where the maintenance creditor is domiciled or habitually resident;
3. in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred;
4. as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings;
5. as regards a dispute arising out of the operations of a branch, agency or other establishment, in the courts for the place in which the branch, agency or other establishment is situated.'

[17] 'Application may be made to the courts of a Contracting State for such provisional, including protective measures as may be available under the law of that State, even if, under this Convention, the courts of another Contracting State have jurisdiction as to the substance of the matter.'

great relevance. What is applicable in the case under discussion here is the Regulation, not Regulation No. 1215/2012. The only reference to the latter concerns the issue of the court's jurisdiction. It should be noted that Article 6 Section 1 of the Regulation serves as *lex specialis* to Article 35 of Regulation No. 1215/2012, and by that, clearly excludes applying it.

11.11. Additionally, the judgment at bar concerned other Member States whose internal laws covering the admissibility of securing claims may have been different than Poland's, and this is undoubtedly the major matter in the case under consideration. In this respect, it should be mentioned that there are no specific provisions of the Regulation or Regulation No. 1215/2012 which might provide for the exclusion of a court's jurisdiction in terms of an arbitration agreement. The Community law does not regulate this matter at all, leaving it to State law. Consequently, in light of the Regulation, the issue of an arbitration agreement and its effects is subject to the internal law of a state.

11.12. In case of a Polish court, this matter should be decided in accordance with Article 1154 and following the Code of Civil Procedure. Accordingly, the Code of Civil Procedure directly allows common courts to secure claims asserted before an arbitration court, and it does so in Article 1166 Section 1 and 2.[18] Thus, according to Polish law, a common court obviously has jurisdiction to secure a claim that it might not be able to rule on. In that context, the fact that pursuant to Article 1144(3) Section 1 of the Code of Civil Procedure, for any matters not covered by its regulations in terms of procedures aiming at the Preservation Order, provisions for security for claims procedure shall apply *mutatis mutandis,* and should be taken into consideration.

11.13. Because of that, and in light of the Regulation, it is impossible to agree with the Regional Court that an arbitration agreement automatically results in the case not qualifying for a court's legal action (according to Article 1165 Section 1 of the Code of Civil Procedure). Importantly, what the Regional Court failed to recognize is that an arbitration clause leads to the rejection of the petition only provided that the participant to non-contentions proceedings brings an allegation of the arbitration clause, which undoubtedly did not occur in the present case. If this circumstance is not alleged by the participant (in this case:

[18] 'Section 1. The fact that a dispute has been brought before an arbitration court shall be notwithstanding the possibility to have the claims sought before the arbitration court secured by a court.'
'Section 2. The provisions of Section 1 also apply if the venue of the proceedings before an arbitration court is located outside the borders of the Republic of Poland or is not defined.'

the debtor), a State Court may recognize the case despite the existence of an arbitration agreement.[19]

11.14. Furthermore, Article 1166 Section 1 and 2 of the Code of Civil Procedure clearly stipulates that an arbitration agreement shall be notwithstanding the possibility to have the claims secured by a State Court even when a dispute has been brought before an arbitration court. What it means is that, applying the provisions to a security for claims procedure *mutatis mutandis*, the refusal to issue the Preservation Order may not take place based on the mere existence of an arbitration clause or even the initiation of proceedings before an arbitration court. It is essential to notice that the Appellate Court expressed the same view, referring to the Polish doctrine and jurisprudence.[20]

11.15. Another significant provision could be found in Article 1158 Section 1 of the Code of Civil Procedure, pursuant to which a court is competent to take action whether it would be competent to hear a case if the parties had not made an arbitration clause. Consequently, the mere fact that parties made an arbitration agreement does not forbid the jurisdiction of the Polish court, should it be the competent court in line with Article 1144(4) Section 1 *in principio* of the Code of Civil Procedure. Considering that the Regulation does not cover the matter of securing a claim in a case before an arbitration court, these are regulations that must be applied under the present circumstances. The exclusion in Article 2(2)(e) should relate only to the application of the Regulation and issuance of the Preservation Order by an arbitration court.

III.3. Lack of Exclusion of a Common Court's Jurisdiction

11.16. As Article 6 Section 1 of the Regulation stipulates, the jurisdiction to issue the Preservation Order lies with the State Courts which have jurisdiction to rule on the substance of the matter in accordance with the relevant rules of the applicable jurisdiction. Indeed, as the Regional Court noted, a Polish court, in principle, has jurisdiction to recognise the substance of the matter concerning the claim which is to be secured by the Preservation Order, according to both the Polish law and the Brussels Convention. In the present case, the application for the Preservation Order was submitted before filing for

[19] See Mariusz P. Wójcik, *Art. 1165*, Kodeks postępowania cywilnego. Tom II. Komentarz do art. 730-1217, wyd. VII, Warszawa: Wolters Kluwer Polska pkt 4 (Andrzej Jakubecki ed., 2017).

[20] The Supreme Court judgment of 8 April 2009, V CSK 405/08 and the Appellate Court in Kraków decision of 7 August 2013, ACz 1251/13).

payment. Since it consequently means that the creditor had not yet obtained a judgment, court settlement or authentic instrument (Article 6 Section 1 of the Regulation), the petition was permitted. The Appellate Court recognized that at this stage it is not yet possible to clearly establish whether a Polish court might have jurisdiction, because even if it was found that the above-mentioned judgment should apply to the case, jurisdiction could be granted to a Polish court following the provisions of Article 26 Section 1 of Regulation No. 1215/2012. This would be true in the case of ending the case without issuing a judgment, or with the debtor entering an appearance before a Polish court.

11.17. Moreover, the Regulation does not make any distinction concerning either a common court or an arbitration court, since the only condition is that no judgment was given in the case. The Regional Court correctly noticed that the judgment in question is the one given by a Member State Court. Pursuant to Article 4 Section 2 of the Regulation, 'judgment' means any judgment given by a court of a state, whatever it may be called, also inclusive of a decision on the determination of costs or expenses by an officer of the court. That being said, the Regional Court draws incorrect conclusions from that circumstance. It is to be highlighted that requesting the Preservation Order is possible before initiating proceedings, during proceedings or after giving the judgment. If a case was referred to an arbitration court, then the case is pending. The arbitration procedure is conducted until the issuance of a court ruling which after its recognition should be treated equally with a judgment of a Member State Court. This leads to a conclusion that the mere fact that an arbitration procedure has been initiated should not be considered an impediment to the issuance of the Preservation Order. Such an impediment might occur if the claim is dismissed and the arbitration court's judgment is recognized or in the case of the refusal to recognize the judgment, which may take place only in the longer term, not at the very beginning of the proceedings. Bearing the above in mind, the Regional Court's argument that the Preservation Order cannot be issued due to the exclusion of arbitration from the Regulation seems highly inaccurate.

III.4. The Spirit of the Regulation

11.18. Concurring with the Appellate Court, it should be stressed that just because there is an arbitration clause does not necessarily mean that a Polish court lacks jurisdiction until it is pre-empted.

This is why the Regional Court's findings deserve criticism for they are obviously perfunctory and premature.

11.19. To support the conclusion that the Regional Court did not understand the scope of application of the Regulation correctly, it is striking that in its reasons for the decision it referred to Article 35 Section 3 of the Regulation, This stipulates that the debtor and the creditor may, on the ground that they have agreed to settle the claim, apply jointly to the court for revocation or modification of the Preservation Order. Contrary to what the Regional Court suggested, this provision does not give priority to an arbitration agreement. There is no reasonable ground to question the fact that in a situation of an intention to resolve the dispute through an arbitration clause the parties may, but are not in any way obliged to, apply for a revocation or modification of the Preservation Order. This means nothing more than that they did not jointly file such an application, and the dispute will be resolved by an arbitration court. Moreover, both parties may apply for a modification, which means that based on their joint application such security will effectively last, only in a modified scope. Applying Article 35 Section 3 of the Regulation is not connected with resolving a dispute by an arbitration court, since the consensus that the parties reached concerns only the matter of the security itself.

11.20. The legislator's intention was merely to exclude the possibility of granting security—in the mode and with the effects provided by the Regulation—by an arbitration court, and not the possibility of securing a claim that is asserted before an arbitration court. The matter if the valid arbitration is a legal obstacle for issuance of the Preservation Order is always a matter of Member States' laws. Contrary to what the Regional Court has found, consenting to settle the dispute by an arbitration court may not serve as reasonable grounds to modify or revoke the Preservation Order, as that would require a joint application by both parties. Therefore, even in the case of satisfying the premise from Article 35 Section 3 of the Regulation, if there is no joint application, the Preservation Order may not be modified. If so, the more obvious it is that it may not be issued.

11.21. Moving to the next aspect, namely the spirit of the Regulation, the document in its point (8) of the preamble[21] clearly states that,

[21] 'The scope of this Regulation should cover all civil and commercial matters apart from certain well-defined matters. In particular, this Regulation should not apply to claims against a debtor in insolvency proceedings. This should mean that no Preservation Order can be issued against the debtor once insolvency proceedings as defined in Council Regulation (EC) No 1346/2000 have been opened in relation to him. On the other hand, the exclusion should allow the Preservation Order to be used to secure the recovery of detrimental payments made by such a debtor to third parties.'

apart from several exceptions, the Regulation should concern all the civil and trade law cases. An arbitration procedure as a way of asserting a claim is not specifically excluded from the scope of the Regulation. The latter does not differentiate as far as the way of asserting claims is concerned, as what matters is only the nature of a claim—hence, for obvious reasons, for instance claims falling within social security, wills and succession, bankruptcy proceedings or rights in property have been excluded from the Regulation's application.

11.22. In addition, according to the spirit of the Regulation that derived from point (11) of the preamble,[22] the Preservation Order should be available to a creditor wishing to secure the enforcement of a later judgment on the substance of the matter. For undisputable reasons, that the later judgment might be an arbitration court's judgment recognized by a State Court. Therefore, there are no grounds to *a limine* disqualify the securing of a claim with the Preservation Order, asserted before an arbitration court. Considering the lack of unitary regulation of the impact of an arbitration clause, or initiation of arbitration proceedings, on the possibility of issuing the Preservation Order, in all the Member States, it is to be noted that the protection of the creditor is provided by Article 34 Section 2 of the Regulation.[23]

IV. Summary

11.23. The decision of the Regional Court has been revoked and the case has been referred back to be heard again. It must be noted though, that according to Article 386 Section 6 in conjunction with Article 397 Section 2 of Code of Civil Procedure, the legal assessment and indications for further proceedings referred to in a justification of decision of the Appellate Court is binding both on the court to which a case is referred, the Regional Court, and on the Court of the Second Instance, the Appellate Court, while the case is reconsidered. This means that the Regional Court will not have the authority to question the interpretation offered by the Appellate Court in this specific case and will only be authorized to assess whether the requesting party has proven the necessity of the issuance of the Preservation Order. The

[22] 'The procedure for a Preservation Order should be available to a creditor wishing to secure the enforcement of a later judgment on the substance of the matter prior to initiating proceedings on the substance of the matter and at any stage during such proceedings. It should also be available to a creditor who has already obtained a judgment, court settlement or authentic instrument requiring the debtor to pay the creditor's claim.'

[23] 'Upon application by the debtor to the competent court in the Member State of enforcement, the enforcement of the Preservation Order in that Member State shall be terminated if it is manifestly contrary to the public policy (ordre public) of the Member State of enforcement.'

Regional Court, therefore will not have the authority to dismiss the requesting party's petition only with reference to the same legal argumentation presented in the previous decision.

11.24. Despite being a valuable hint for other potential cases, the Appellate Court's decision will not be a guarantee that when deciding on admissibility of the Preservation Order, other State Courts will follow the legal interpretation offered by the Appellate Court in the discussed case, as they will not be bound by this interpretation. Undoubtedly, the argumentation presented in the Appellate Court's decision is by all means accurate and the Court has clearly proven that, based on provisions contained in both the Regulation, and the Code of Civil Procedure, an arbitration clause does not disqualify a common court's competence to issue a Preservation Order.

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Summaries

DEU [***Die Zulässigkeit des Europäischen Beschlusses zur vorläufigen Kontenpfändung im Falle einer Schiedsklausel***]

Dieser Artikel befasst sich mit den jüngsten Entscheidungen polnischer Gerichte in einem Fall, in dem eine der Parteien einer Vereinbarung, wonach sämtliche Streitigkeiten im Schiedsverfahren gelöst werden sollten, Klage bei einem ordentlichen (staatlichen) Gericht einreichte. Die Partei ersuchte um den Erlass eines Europäischen Kontenpfändungsbeschlusses im Sinne der Verordnung des Europäischen Parlaments und des Rates (EU) 655/2014 vom 15. Mai 2014, zur Einführung eines Verfahrens für einen Europäischen Beschluss zur vorläufigen Kontenpfändung im Hinblick auf die Erleichterung der grenzüberschreitenden Eintreibung von Forderungen in Zivil- und Handelssachen. Das erstinstanzliche Gericht (Bezirksgericht) wies die Klage mit der Begründung ab, gemäß den einschlägigen Bestimmung der o.g. Verordnung könne kein Pfändungsbeschluss in Sachen ergehen, die im Schiedsverfahren zur Verhandlung und Entscheidung vorgelegt werden sollen. Das Berufungsgericht hob diese Entscheidung auf und verwies die Sache zur erneuten Verhandlung ans erstinstanzliche Gericht zurück, und eröffnete damit den Weg für eine mögliche Anwendung des Pfändungsbeschlusses. Der vorliegende Beitrag möchte die Argumente vorstellen, die von den Gerichten beider

Instanzen vorgebracht wurden, und sich dazu äußern, inwieweit diese Entscheidungen legitim waren.

CZE [***Přípustnost evropského příkazu k obstavení účtů v případě rozhodčí doložky***]
Tento článek se zabývá nedávnými rozhodnutími polských soudů v případu, kdy strana dohody, dle níž měly být všechny spory řešeny v rozhodčím řízení, podala žalobu u obecného soudu. Strana požádala o vydání evropského příkazu k obstavení účtů dle nařízení Evropského parlamentu a Rady (EU) č. 655/2014 ze dne 15. května 2014, kterým se zavádí řízení o evropském příkazu k obstavení účtů k usnadnění vymáhání přeshraničních pohledávek v občanských a obchodních věcech. Soud prvního stupně (krajský soud) žalobu odmítl s odůvodněním, že dle ustanovení nařízení o evropském příkazu k obstavení účtů nemůže být příkaz k obstavení vydán ve věcech předložených k projednání a rozhodnutí v rozhodčím řízení. Odvolací soud toto rozhodnutí zrušil a vrátil věc soudu nižší instance, čímž připustil možnou aplikaci příkazu k obstavení. Smyslem tohoto příspěvku je prezentovat argumentaci předestřenou soudy obou stupňů a vyjádřit se k odůvodněnosti těchto rozhodnutí.

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POL [***Dopuszczalność europejskiego nakazu zabezpieczenia na rachunku bankowym w przypadku*** [***istnienia***] ***klauzuli arbitrażowej***]
Niniejszy artykuł omawia ostatnie orzeczenia Polskich sądów w sprawie dotyczącej wydania przez sąd powszechny, w toku postępowania arbitrażowego, europejskiego nakazu zabezpieczenia na rachunku bankowym na podstawie Rozporządzenia Parlamentu Europejskiego i Rady (UE) nr 655/2014 z dnia 15 maja 2014 r. ustanawiającej procedurę europejskiego nakazu zabezpieczenia na rachunku bankowym w celu umożliwienia transgranicznej windykacji długów w postępowaniach cywilnych i gospodarczych.

FRA [***L'admissibilité de l'ordonnance européenne de saisie conservatoire des comptes bancaires dans le cas des sentences arbitrales***]
Le présent article est consacré aux décisions récentes de juridictions polonaises portant sur l'admissibilité de la délivrance par une juridiction générale d'une ordonnance européenne de saisie conservatoire des comptes bancaires conformément

au règlement (UE) No 655/2014 du Parlement européen et du Conseil du 15 mai 2014, portant création d'une procédure d'ordonnance européenne de saisie conservatoire des comptes bancaires, destinée à faciliter le recouvrement transfrontalier de créances en matière civile et commerciale, au cours d'une procédure d'arbitrage.

RUS [***Допустимость европейского постановления о применении ареста к банковским счетам в случае арбитражной оговорки***]

Данная статья посвящена недавним решениям польских судов общей юрисдикции, которые рассматривали допустимость вынесения европейского постановления о применении ареста к банковским счетам судом общей юрисдикции в соответствии с Регламентом № 655/2014 Европейского парламента и совета (ЕС) от 15 мая 2014 года, внедряющим в действие процедуру европейского постановления о применении ареста к банковским счетам с целью упростить трансграничное взыскание долгов по гражданским и коммерческим делам в ходе арбитража.

ESP [***Admisibilidad de la orden europea de retención de cuentas en caso de la cláusula arbitral***]

El escrito aborda las recientes decisiones de los tribunales ordinarios polacos que trataban la admisibilidad de la emisión de una orden europea de retención de cuentas por parte del tribunal ordinario de acuerdo con el Reglamento del Parlamento Europeo y Consejo (UE) N.º 655/2014 del 15 de mayo de 2014 por el que se establece el procedimiento relativo a la orden europea de retención de cuentas a fin de simplificar el cobro transfronterizo de deudas en materia civil y mercantil, en el trascurso del procedimiento arbitral.

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