

**Czech (& Central European)
Yearbook of Arbitration[®]**

**Czech (& Central European)
Yearbook of Arbitration®**

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Recognition and Enforcement of Arbitral Awards



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„We regret to announce the death of our most reputable colleague Prof. Nikolay Natov from Bulgaria. 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

1923 Geneva Protocol	Protocol on Arbitration Clauses signed in Geneva on 24 September 1923
1927 Geneva Convention	Convention on the Execution of Foreign Arbitral Awards signed in Geneva on 26 September 1927
1961 Geneva Convention	European Convention on International Commercial Arbitration signed in Geneva on 21 April 1961
ADR	Alternative Dispute Resolution
AUT	Austria
BIT	Bilateral Investment Treaty
Brussels I Regulation	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
CCP	Polish Code of Civil Procedure
CDC	Cartel Damage Claims
CETA	The Comprehensive Economic and Trade Agreement
CJEU	Court of Justice of the European Union
COMI	Centre of Main Interest
COMMISA	Corporación Mexicana De Mantenimiento Integral
Constitutional Court RF	Constitutional Court of the Russian Federation
ČR	Česká republika (Czech republic)
DEU	Deutschland (Germany)
Directive	Directive on Alternative Dispute Resolution in Consumer Cases
EC	The European Community
EC Treaty	Energy Charter Treaty signed in Lisbon on 17 December 1994
ECHR	European Court of Human Rights
ECJ	European Court of Justice
EEA	European Economic Area
EEC	European Economic Community
EGPC	Société Egyptian General Petroleum

	Corporation
EU	European Union
FCI Arb	Fellow of the Chartered Institute of Arbitration
Global Panel	Global Enforcement and Recognition Panel
HLV Report	The Heidelberg-Luxembourg-Vienna Report
ICAC	International Commercial Arbitration Court at the Chamber of Commerce of Trade and Industry of the Russian Federation
ICC	International Chamber of Commerce
ICCA	International Congress and Convention Association
IC Ct	The International Criminal Court
ICSID	International Centre for Settlement of Investment Disputes
INSOL-Europe	International Association of Restructuring, Insolvency & Bankruptcy Professionals
ISDS	Investor-state dispute settlement
KBC	Karaha Bodas Company
KKO	Korkein oikeus (The Supreme Court of Finland)
LCIA	London Court of International Arbitration
NATCAS	Société National Gas Company
New York Convention	Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York on 10 June 1958
OHADA	Organisation for the Harmonization in Africa of Business Law
OTV	Omnium de Traitement et de Valorisation
Pertamina	Persusahaan Pertambangan Minyak Dan Gas Bumi Negara
PIL	Private International Law
PPP	Public-private partnership
RAA	Russian Arbitration Association
RIMA	Russian Institute of Modern Arbitration
SCC	Stockholm Chamber of Commerce
Swiss PILA	Swiss International Private Law
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union
U.A.E.	United Arab Emirates
UK	United Kingdom

UN	United Nations
UNCITRAL	United Nations Commission on International Trade Law
UNCITRAL Model Law	The UNCITRAL Model Law on International Commercial Arbitration adopted in 1985
US	United States of America
VIAC	Vienna International Arbitral Centre
WJA	The World Jurist Association
ZBP	Polish Bank Association
ZPO	Zivilprozessordnung

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Arbitration Case Law 2018

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Key words:

comprehensive consideration of the case | court of arbitration | public order clause | Polish arbitration law

States involved:

[POL] - [Poland]

Laws Taken into Account in This Ruling:

Kodeks postępowania cywilnego z dnia 17 listopada 1664 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 233, 1184, 1197, 1206¹

[Rationes Decidendi]:

12.01. The fact that the court of arbitration is not a court composed of professional judges cannot explain the lack of comprehensive

¹ Article 233. k.p.c. [POL] (unofficial translation) § 1. The court shall assess the reliability and validity of evidence at its discretion, following extensive deliberations of the available material.

§ 2. The court shall assess the significance of a party's refusal to present evidence or a party's interference with the taking of evidence despite the court decision on the same basis.

Article 1184. k.p.c. [POL] (unofficial translation) § 1. Unless otherwise provided for by this Act, the parties may determine the terms and conditions and the procedure of proceedings before an arbitration court.

§ 2. Unless the parties have agreed otherwise, an arbitration court may, subject to the provisions of this Act, conduct proceedings in a manner which the arbitration court deems proper. The arbitration court is not bound by the provisions on proceedings before the court.

Article 1197. k.p.c. (unofficial translation) § 1. A judgment of an arbitration court should be made in writing and signed by the issuing arbitrators. If a judgment is issued by an arbitration court panel of three or more arbitrators, the signatures of the majority of arbitrators, accompanied by an explanation why the other signatures are not provided, are sufficient.

§ 2. A judgment of an arbitration court should include the *ratio decidendi*.

§ 3. A judgment of an arbitration court should contain reference to the arbitration clause on the basis of

recognition of the case. On the other hand, non-subordination to the legal provisions with regard to the examination of civil law cases, collecting evidence, its assessment and expressing opinions about its value does not mean that some obvious standards of fair and equal treatment for the parties were not applicable. The evidence provided by the parties of the proceedings shall be carried out and referred to, and therefore not only to those which are the basis supporting a final resolution but also to evidence to the contrary, its credibility, integrity, because it shall allow the court's reasoning to be followed.

[Descriptions of the Facts and Legal Issues]:

- 12.02.** The dispute in this case concerned the effectiveness of the withdrawal by A – the Plaintiffs, on 5 October 2012 from a construction works contract within the framework of the Project “B in W” concluded on 22 December 2009 with B – the Defendant.
- 12.03.** In the preliminary judgment on 29 September 2016, the Court of Arbitration at the Polish Chamber of Commerce established that A effectively withdrew from the abovementioned contract.
- 12.04.** B submitted a complaint against the judgment and claimed that the decision of the Court of Arbitration violated the basic principles of the legal order of the Republic of Poland, pursuant

which the judgment was issued, identify the parties and the arbitrators and specify the date and place of issue. If each arbitrator signs the judgment in a different state and the parties did not determine the place of issuance of the judgment, that place is determined by the arbitration court.

§ 4. A judgment of an arbitration court is served on the parties.

Article 1206. k.p.c. [POL] (unofficial translation) § 1. A party may file a motion to set aside a judgment of an arbitration court if:

- 1) there was no arbitration clause, or an arbitration clause is void, invalid or has expired according to relevant law,
- 2) a party was not duly notified of the appointment of an arbitrator or proceedings before an arbitration court, or was otherwise deprived of the possibility to defend his rights before an arbitration court,
- 3) a judgment of an arbitration court concerns a dispute which is not covered by an arbitration clause or falls beyond the subject-matter and scope of that clause, however, if adjudication in matters covered by an arbitration clause may be separated from adjudication in matters not covered by that clause or falling beyond the subject-matter and scope of that clause, a judgment may only be set aside insofar as it concerns those matters which are not covered by the arbitration clause or fall beyond the subject-matter and scope of that clause; the fact that a judgment falls beyond the subject-matter and scope of an arbitration clause may not be a basis to set that judgment aside if a party who attended proceedings did not raise allegations against the hearing of claims falling beyond the subject-matter and scope of the arbitration clause,
- 4) requirements concerning the composition of an arbitration court or the basic principles of proceedings before that court, as provided for by this Act or determined by the parties, were not met,
- 5) a judgment was achieved by means of an offence or on the basis of a false or falsified document,
- 6) a non-appealable court judgment has been issued in the same case between the same parties.

§ 2. Moreover, a judgment of an arbitration court shall be set aside if the court determines that:

- 1) the dispute cannot be settled by an arbitration court according to this Act,
- 2) a judgment of an arbitration court is contrary to the basic principles of the legal order of the Republic of Poland (the public order clause),
- 3) a ruling of an arbitration court deprives a consumer of the protection afforded to them by the mandatory provisions of the law applicable to the agreement to which the consumer is a party, and where the applicable law is a law selected by the parties - the protection afforded to the consumer by the mandatory provisions of the law which would be applicable should no law have been selected.

to Article 1206 section 1 point 2 k.p.c. [POL], in particular: the principle of comprehensive consideration of the case, including all the collected evidence and its assessment, which resulted in the lack of recognition of the essence of the case in regard to the effectiveness of the withdrawal; the principle of the burden of proof expressed in Article 6 of the k.c. [POL] which caused the lack of recognition of the case in regard to the effectiveness of the withdrawal; gross violation of the substantive law, i.e. Article 476, Article 491 and Article 640 k.c. [POL], resulting in the violation of the principle of equality of the parties to civil law proceedings and the adequacy of the rights of the parties to civil law proceedings in the event of the other party's infringement.

- 12.05.** The complainant requested the setting aside of the contested preliminary ruling and awarding the costs of the proceedings jointly from the other party.
- 12.06.** Having identified the complaint, in its decision of 7 February 2017, the Court of Appeal set aside the abovementioned ruling of the Court of Arbitration. In the reasoning, the Court indicated that a state court does not evaluate an arbitration court's decision in substance, the complaint to set aside that decision is not an ordinary remedy, as a result of which the court shall reconsider the case in as to the merits and its accurate recognition by the court of arbitration.
- 12.07.** Considering that the contested decision violates the basic principles of the legal order of the Court of Appeal referred to constitutional principles and assuming that the Court of Arbitration in this case violated the basic principal in civil procedure, the case has therefore not been considered comprehensively and the collected evidence has not been assessed overall but selectively, relying on part of the documents and disregarding other documents entirely without an explanation. The Court of Appeal indicated that significantly higher freedom to carry out the proceedings, including proceedings to take evidence, by the court of arbitration in comparison with the state court shall not lead to the lack of recognition of the case because its leads to delivering an unfair decision as it has happened in this case. Furthermore, the Court of Appeal stated that the allegations included in B's complaint which concerned: the burden of proof and the violation of substantive law with regard to the principle of equality of the parties to civil law proceedings and the sustainability of the civil law relationship, especially towards the conclusion of the

agreement that the procedure for its termination by way of withdrawal, are unreasonable.

- 12.08.** Ultimately, A filed a cassation complaint to the Supreme Court in which A requested the setting aside of the contested preliminary judgment and the referring of the case back for rehearing, with the order to pay the costs of the proceedings.

[Decision of the Supreme Court]:

- 12.09.** The Supreme Court ruled in favour of B and dismissed A's cassation complaint.
- 12.10.** Firstly, the Supreme Court stated that the Court of Appeal rightly pointed out that its duty is not the substantive recognition of the case because it is not an appeal body for the court of arbitration's decisions. This results from the fact that by making the arbitration clause, the parties limit their constitutional right to a trial, whereas the proceedings to set aside an arbitration court's decision is an extraordinary remedy and its conditions shall be interpreted strictly.
- 12.11.** The essence of this case comes down to the consideration of the cassation complaint's content in terms of failure to comply – or to the contrary – fulfilment by the preliminary decision of the Court of Arbitration at the Polish Chamber of Commerce, of the conditions for infringement of the basic principles of the legal order of the Republic of Poland, hence the necessity of reaching for the public order clause to set aside the decision. According to the Court of Appeal, this necessity occurred due to a violation of the basic principle in civil procedure which is the court's obligation to a comprehensive consideration of the case, including the collected evidence and its assessment, which results in the lack of recognition of the essence of the case. In this case, it was about the lack of recognition of the essence of the dispute with regard to the effectiveness of the withdrawal from the agreement - firstly by one of the parties and further by the other party.
- 12.12.** Subsequently, the Supreme Court indicated that the public order clause applied by the Court of Appeal, due to the lack of comprehensive recognition of the case by the Court of Arbitration, concerns the basic principles of the legal order, although it is not precise, which leaves the ruling court a lot of freedom in this case. .
- 12.13.** The phrase “the basic principles of the legal order”, applied in Article 1206 section 1 point 2 k.p.c. [POL], refers to such violation of the substantive provisions which leads to a violation of the rule of law's principles (principle of legality) and the decision violates the ground rules in force in the Republic of

Poland and affects the current legal order, therefore infringing on the systemic, political and socio-economic principles in force. It is considered that it is about principle matters for the law and civil law procedure, and hence for the course of the proceedings, particularly the preservation of the equality of the parties. However, it is reiterated that when the parties decide to include an arbitration clause in the agreement, they willingly resign from the formal protection given by the different provisions of civil law procedure. As a result, they also accept procedural conditions which consist in significant autonomy of the arbitration procedure, leading to only a minor external audit of the court's decisions.

- 12.14.** Considering the above, the Supreme Court indicated that the procedural public order might be the basis for court of arbitration's decision in two aspects: conformity assessment of the procedure leading to the establishment of the decision by the court with the basic procedural principles of the legal order and the consequences of the said decision in terms of its conformity with the procedural legal order, i.e. if the said principles can be reconciled with the procedural law. The Supreme Court agreed with such an understanding of the public order clause under the conditions specified in this case.
- 12.15.** The Supreme Court explained that in the case of assuming that the lack of comprehensive consideration of the case leading to the lack of recognition, the essence of the case is the basic principle of the proceedings, which is one of the legal order principles in the Republic of Poland. It shall be considered that pointing out a violation of such a legal order means compliance with the condition required to implement the public order clause expressed in Article 1206 section 1 point 2 k.p.c. [POL].
- 12.16.** The Supreme Court indicated that the fact that the court of arbitration is not a court composed of professional judges cannot explain the lack of comprehensive recognition of the case. On the other hand, the non-subordination to the legal provisions with regard to the examination of civil law cases, collecting evidence, its assessment and expressing opinions about its value does not mean that some obvious standards of fair and equal treatment for the parties were not applicable. The evidence provided by the parties of the proceedings shall be carried out and referred to, and therefore not only to those which are the basis supporting the final resolution but also to

evidence to the contrary, its credibility, integrity, because it shall allow the court's reasoning to be followed.

- 12.17.** Further, in the case of the arbitration court's decision, the essence of the case is not only the essence of the dispute which arises between the parties, e.g. the performance or non-performance of the agreement and withdrawal from it, as in this case. However, it does not mean the necessity of reference to each and every piece of evidence, e.g. a large number of documents, but this cannot – as stated in the statement of reasons by the Court of Appeal – regard different periods other than those relevant for the date of ruling or be omitted in their entirety or even left unmentioned. Similarly, this concerns witness statements, in particular expert testimony, appointed to assist the court in specialised matters. The concealment of some evidence in the statement of reasons by the Court of Arbitration results in the fact that the decision becomes unconvincing in its grounds, especially for the party for which it is negative. This comes down to the lack of comprehensive consideration of the case. The result of failing to comply with comprehensive consideration of the case is lack of recognition of the essence of the case, which is subject to the dispute in respect of the effectiveness of the withdrawal from the agreement concluded between the parties to the case.
- 12.18.** As to the grounds of the Court of Arbitration's decision, allegations against it in the appealed judgment of the Court of Appeal, and subsequently, allegations included in the cassation complaint, it should be noted that within the meaning of Article 1197 section 2 k.p.c. [POL] the term "motives" does not literally mean "reasoning" within the meaning of Code of Civil Procedure and in that provision, the term "motives" is used deliberately. However, those aspects of the court's understanding which shall indicate the relevance (accuracy) of the determination in the light of overall evidence collected during the proceedings shall be included in the content of the motives. The Arbitration Rules of the Court of Arbitration at the Polish Chamber of Commerce that underlies the proceedings in the present case, uses the term "reasoning" to cover the motives that guided arbitrators while making the decision. The motives are the component of the reasoning following the determination, although the motives do not constitute a distinct part of the decision as it has in the decisions of the state court. Therefore, the motives shall

include a reference to the overall evidence in order to indicate its comprehensive consideration.

- 12.19.** Certainly, from the essence of the proceedings, the constitutional requirements of the administration of justice by an empowered authority, and therefore also by the court of arbitration, finally from the Arbitration Rules of the Court of Arbitrations, in front of which the proceedings took place, results in the fact that the comprehensive consideration of the case, and hence the overall examination of the circumstances, in particular the performance of taking the required documents, witness statements, expert evidence, hearing of the parties, depending on the subject matter, followed by the assessment of such evidence, constitutes one of the principles of the legal order of the Republic of Poland – the public order clause. The fact that the court of arbitration shall not be bound by the provisions applied before the state court and that pursuant to Article 1184 of k.p.c. [POL] shall itself establish the rules and manner of proceeding, pursuant to the arrangements with the parties, does not mean arbitrariness in respect of the principle of civil law proceedings, which is adversarial.
- 12.20.** According to the Supreme Court, the arbitrators are obliged to assess the credibility and strength of evidence according to its discretion, which means that this discretion shall be expressed in the motives with reference to the evidence relevant to the determination of the issue in the case, and also indicate the reasons which resulted in the other evidence's strength claimed by the requested party being refused. This does not imply only formal shortcomings of the contested decision but also recognition that the case has been examined without the sufficient consideration of the position of the complainant in the proceedings to take evidence.

Key words:

Declaration of the enforceability | postponement | public order clause | Polish arbitration law

States involved:

[POL] - [Poland]

Laws Taken into Account in This Ruling:

Kodeks postępowania cywilnego z dnia 17 listopada 1664 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 1206, 1216 § 1, 1217²

[Rationes Decidendi]:

12.21. In a complaint against the decision to declare the enforceability of the debtor reiterated pleas made in the proceedings to set aside the arbitration court's award. In proceedings initiated on the basis of the motion to set aside the award, the court examined these issues. [...] The Debtor did not argue that the facts of the case were altered, but entered into a polemic with the Regional Court's reasoning with reference to the argumentation raised in the cassation complaint. The recognition of the cassation complaint is a matter for the Supreme Court (Decision of the

² Article 1206. k.p.c. [POL] (unofficial translation) § 1. A party may file a motion to set aside a judgment of an arbitration court if:

1) there was no arbitration clause, or an arbitration clause is void, invalid or has expired according to relevant law,

2) a party was not duly notified of the appointment of an arbitrator or proceedings before an arbitration court, or was otherwise deprived of the possibility to defend his rights before an arbitration court,

3) a judgment of an arbitration court concerns a dispute which is not covered by an arbitration clause or falls beyond the subject-matter and scope of that clause, however, if adjudication in matters covered by an arbitration clause may be separated from adjudication in matters not covered by that clause or falling beyond the subject-matter and scope of that clause, a judgment may only be set aside insofar as it concerns those matters which are not covered by the arbitration clause or fall beyond the subject-matter and scope of that clause; the fact that a judgment falls beyond the subject-matter and scope of an arbitration clause may not be a basis to set that judgment aside if a party who attended proceedings did not raise allegations against the hearing of claims falling beyond the subject-matter and scope of the arbitration clause,

4) requirements concerning the composition of an arbitration court or the basic principles of proceedings before that court, as provided for by this Act or determined by the parties, were not met,

5) a judgment was achieved by means of an offence or on the basis of a false or falsified document,

6) a non-appealable court judgment has been issued in the same case between the same parties.

§ 2. Moreover, a judgment of an arbitration court shall be set aside if the court determines that:

1) the dispute cannot be settled by an arbitration court according to this Act,

2) a judgment of an arbitration court is contrary to the basic principles of the legal order of the Republic of Poland (the public order clause),

3) a ruling of an arbitration court deprives a consumer of the protection afforded to them by the mandatory provisions of the law applicable to the agreement to which the consumer is a party, and where the applicable law is a law selected by the parties - the protection afforded to the consumer by the mandatory provisions of the law which would be applicable should no law have been selected.

Article 1216 § 1. k.p.c. [POL] (unofficial translation) If an application to set aside an arbitration court's award pursuant to Title VII is filed, the court with which an application for recognition or enforcement of the award has been filed may postpone hearing of the case. That court may also, on application of a party seeking recognition or enforcement of the award, order the other party to provide appropriate security.

Article 1217 k.p.c. [POL] (unofficial translation) Art. 1217. In proceedings for recognition or enforcement of an arbitration court's award issued in the Republic of Poland or a settlement agreement made before an arbitration court in the Republic of Poland, the court does not examine the circumstances referred to in Article 1214 § 3 if an application to set aside the award is validly dismissed.

Regional Court in Katowice of 15 February 2018, case no. V ACa 53/16).

[Description of Facts and Legal Issues]:

- 12.22.** In the facts of the case the Creditor (the claimant in arbitration proceedings) filed for a declaration of the enforceability of the arbitration court award's in a case, in which the defendant (the debtor) brought forth an action for the annulment of the abovementioned award and received an unfavourable final judgement.
- 12.23.** The dispute on which the arbitration court ruled was related to the performance of the contract of 30 May. Three years later – on 29 October 2014 - the parties, aiming to enter into the initial contract, concluded an additional agreement. In the latter agreement, the parties included a provision not to use this document as evidence in arbitration proceedings.
- 12.24.** The arbitration court ruled in favour of the Creditor. Following the award, the debtor undertook steps to eliminate the said decision. In the motion to set aside the award, he argued that the arbitration court exceeded the arbitration clause and violated several fundamental principles of the legal order of the Republic of Poland.
- 12.25.** In the final judgement of 31 June 2017, case no. V ACa 129/17, the Regional Court in Katowice dismissed the defendant's motion to set aside the judgement. As of the day of adjudication in a case concerning a declaration of enforceability, the Debtor's cassation complaint against the judgement of 31 June 2017 was to be examined by the Supreme Court (*Sąd Najwyższy*).
- 12.26.** In those circumstances, the Regional Court in Katowice in a decision of 27 September 2017, case no. V ACo 53/16, declared the enforceability of the arbitration court award. Subsequently, The debtor filed a complaint against this decision in which he requested the setting aside of the contested decision and referred the case back for reconsideration.
- 12.27.** He advanced three main pleas. Firstly, he argued that the Court did not defer the case and did not suspend the proceedings until the examination of the cassation complaint.
- 12.28.** As regards the second plea, the enforceability was declared despite the fact that the arbitration court exceeded the arbitration clause. In particular, the Debtor argued that the arbitration court took evidence from the agreement of 29 October 2014 despite

the fact that in this document, the parties agreed not to use it as evidence in the arbitration proceedings.

- 12.29.** Thirdly, the enforceability was declared despite the fact that the arbitration court's award violated several fundamental principles of the legal order of the Republic of Poland.

[Decision of the Regional Court in Katowice]:

- 12.30.** The Regional Court in Katowice ruled in favour of the Creditor and dismissed the complaint. None of the pleas raised by the Debtor were founded.

- 12.31.** The court found that there was no basis to defer the case, nor to suspend the proceedings. According to Art. 1216 § 1 k.p.c. [POL], the court with which a motion to declare the enforceability of the judgment has been filed may postpone the hearing of the case. After rendering a final decision on the motion, the postponement is not possible. Consequently, as of the date 31 June 2017, the court had no legal basis for the postponement.

- 12.32.** Moreover, the possibility to set aside the decision regarding an arbitration court award does not constitute grounds to suspend the proceedings concerning a declaration of enforceability. The court may order a suspension only on a joint application by the parties. Such a motion was not filed with the court.

- 12.33.** Regarding second and third matter raised by the Debtor in the complaint, the Regional Court stated that the exceeding of the arbitration clause and the violation of the fundamental principles of the legal order of the Republic of Poland was examined by the court in the judgement the of 31 June 2017.

- 12.34.** According to Article 1217 k.p.c. [POL], the court does not investigate the admissibility of the arbitration clause and the compliance of the award with the public order clause if a motion to set aside a judgment of an arbitration court was finally dismissed. In other words, as long as the final judgement of 31 July 2017 is in force, it is not possible to adjudicate differently on the scope of the arbitration clause and the violation of the public order clause. in the proceedings to declare the enforcement, the court is bound by the abovementioned ruling regarding this issues.

- 12.35.** In particular, it was decided in the proceedings to set aside the arbitration court award that the agreement of 29 October 2014 did not constitute any principles of the arbitration proceedings. According to § 8 par. 3 of the agreement of 29 October 2014 "the agreement may be revealed to the Arbitration Court to the necessary extent, but it cannot be used as evidence for the

benefit of any of the parties. It cannot constitute the basis for the interpretation of the agreement”.

- 12.36.** The Regional Court was of the opinion that the parties agreed on the principles of the proceedings in § 8 of the agreement of 30 May 2011. These rules were confirmed in the procedural documents. Throughout the proceedings, the parties did not mention any other agreement of the parties regarding evidentiary proceedings. The prohibition to use the agreement as evidence was binding only on the parties. Agreements on the evidence are not known to Polish civil procedure. The Regional Court stated that the parties cannot exclude the application of the provisions regarding evidence prohibition in order to bind the court, unless exceptions are expressly provided by the law. The use of a document contrary to the parties’ agreement should be considered as a violation of loyalty, not a violation of the procedural principles by the arbitration court.
- 12.37.** Furthermore, the use of the agreement of 29 October 2014 did not exceed the arbitration clause. The clause covered disputes relating to obligations under the agreement of 30 May 2011. The agreement of 29 October 2014 regarded the conclusion of the first agreement, therefore was within the scope of the arbitration clause.
- 12.38.** Consequently, the Regional Court dismissed the Debtor’s complaint. As a result, the declaration of the enforceability of the arbitration judgement remained in force.

