STRESZCZENIE W JĘZYKU ANGIELSKIM

The purpose of this work is to assess Polish system of control exercised by the national courts over arbitral awards.

There is a wide debate among the international scholars over what is the nature of arbitration, and in consequence, what is the place of arbitration in the respective legal systems. No agreement has been yet reached as to whether arbitration is of juridical, purely contractual or mixed, or, perhaps, autonomous nature. According to the juridical theory, competences of arbitral courts have their source in delegation of the state's judicial power, which in turn stems from the sovereignty of the state on a given territory. The contractual theory, on the other hand, provides that arbitration is of purely contractual character and its existence and functioning depends on the will of the parties, and this common will is a source of judicial power to act and to rule on the matter submitted to arbitration. The mixed theory consolidates the two above-mentioned positions and it sees arbitration as a creature of both juridical and contractual competences. The autonomous theory perceives arbitration as an independent being – an effect of unlimited autonomy of the parties to arbitration.

The discussion on the legal nature of arbitration has a practical dimension too. It allows to understand what is the relation between arbitration and the national judicial systems, without which arbitration could not exist. The juridical theory proclaims that the state must control and regulate arbitration conducted under its jurisdiction and it sees the arbitral award as an act of jurisdiction (by delegation). The contractual theory, in its most far-reaching version states that arbitration, which operates solely on the basis of an agreement between the parties, should not at all be subject to state courts' intervention, and the arbitration award, as a direct consequence of conclusion by the parties of the arbitration clause, is a supplement to this clause and it "*participates in its contractual nature*".[1]

The acceptable level of state intervention in arbitral proceedings is essential to the development of arbitration practice within a given legal system. Each new regulation entered into force is immediately screened by commentators against its "*arbitration-friendliness*". Friendliness towards arbitration is often described and measured by factors such as the

[1] T. Szurski: *Uwagi wprowadzające do problematyki krajowego i międzynarodowego arbitrażu handlowego (gospodarczego)*, PUG, 1/1994.

tendency of the courts to recognize arbitral awards or the practice of unnecessary and purposeless interference disrupting the arbitration proceedings. Arbitration law and national courts will be called arbitration-friendly if there is low probability that an arbitral award will be set aside.[2]

International institutions, publishing houses and internet forums publish studies on the main characteristics of different legal systems, particularly paying attention to the approach of the national courts towards arbitration, knowing that it is of key importance for the parties to an arbitration agreement, who seek to select an arbitration forum that will allow them to conduct the proceedings in a friendly environment. That is why countries like Switzerland, Austria or Sweden are known for their hospitable arbitral environments, with a long tradition of arbitration, where the courts are extremely cautious with interference in the proceedings and decisions of arbitral courts. Other studies and experiences confirm that formal legal infrastructure (*i.e.* national arbitration law, the history of the recognition of arbitration agreements and arbitration awards, neutrality and impartiality of the legal system) are the main factors taken into account by the parties choosing the place of arbitral proceedings.[3]

The study on the control of arbitral awards by Polish national courts includes, firstly, a research and assessment of the approach of the national courts towards arbitration, on the sample of appeals against arbitral awards in the Warsaw appeal district. Secondly, it evaluates Polish arbitration law and attempts to identify the spheres of it that may be causing some of the problems in functioning of that system of control. Finally, the author formulates certain postulates that aim at modernizing and improving the current system. Comparison to experiences and laws of other jurisdictions plays a vital role in the analysis.

This assessment is crucial not only from the point of view of international arbitration, where the parties (coming from different legal systems) are naturally afraid of hostility and foreign interference into their affairs, but also from the point of view of domestic arbitration, where the parties may simply fear excessive prolongation of the disputes, as well as exposure to the public of the mere fact of existence of the dispute. It is enough to mention that German,

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[2] M. L. Moses: *The principles and practice of international commercial arbitration*, Cambridge 2008.

[3] P. Capper, D. Sabharwal: *Section 69 and the "Interventionism" of English Courts*, "*Kluwer Arbitration Blog*", 23/08/2009; G. Born: *The impact of Dallah*, "*Kluwer Arbitration Blog*", 10/02/2011; K. Davies: *In defence of section 69 of the English Arbitration Act*, "*Kluwer Arbitration Blog*", 01/11/2010; G. Born*: Enforcement of International Arbitral Awards in England and the New York Convention*, "*Kluwer Arbitration Blog*", 21/08/2009; . Scherer, G. Born: *Long-Awaited New French Arbitration Law Revealed*, "*Kluwer Arbitration Blog*", 15/01/2011; White&Case, Quinn Mary University of London: *2010 International Arbitration Survey...*

Swiss, French or British systems have been thoroughly screened and numerous studies on that matter were published.