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Contract of Arbitrage in the Domestic Regulations on the Examples of Poland and France

Abstract

Arbitration represents a desirable alternative dispute resolution in the realities of modern economically developed countries. Whereas the arbitration contract is the realisation of this possibility. Submission to arbitration by the parties – in other words signing an arbitration contract, constitutes *de facto* the only way to exclude the potential dispute from under the jurisdiction of common courts. It is particularly important in commercial proceedings as it may significantly influence the swiftness of the process due to its flexibility, costs and speed of the proceedings.

Key words: contract, arbitration, agreement, arbitration rules, dispute

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International regulations – UNCITRAL and Arbitration Rules ICC

Before discussing specific solutions in national regulations, it is necessary to briefly mention some of the most relevant international soft law regulations governing arbitration.

The first of the regulations in question is the UNCITRAL Model Law, which is an essential source of law also for national courts and, primarily, has had the greatest impact on the unification of arbitration proceedings, both locally and globally¹.

The second regulation is the rules of the International Chamber of Commerce, an organisation which is located in Paris. This choice in turn is justified by the importance of this organisation in international arbitration proceedings conducted by its permanent arbitration court².

UNCITRAL

UNCITRAL is a model law on international commercial arbitration adopted by the resolution of the United Nations Commission on International Trade Law on 21 June 1985 (Model Law on International Commercial Arbitration). Its adoption was dictated by the need to comprehensively regulate arbitration proceedings at a time when the world economies were undergoing a phase of dynamic development. It also coincided with the systemic changes in the newly reconstituted democratic states³.

The UNCITRAL Model Law comprises 36 articles, which regulate, in a highly structured manner and at a high editorial level, the most important issues relating to arbitration⁴. An important document in the scope of this Model Law is also the Secretariat's commentary on its drafting. Below a succinct discussion of selected relevant regulations of the UNCITRAL Model Law will be made.

1 A. Szumański [in:] *System Prawa Handlowego*, vol. 8, *Arbitraż handlowy*, ed. idem, Warszawa 2015, p. 13.

2 ICC wins Best Development in International Arbitration Award, <https://iccwbo.org/media-wall/news-speeches/icc-wins-best-development-in-international-arbitration-award/> [access: 29.07.2021]; A. Szumański, op. cit., p. 28.

3 A. Kąkolecki, P. Nowaczyk [in:] *System Prawa Handlowego...*, p. 13.

4 Ibidem.

In 2006, the law in question was amended, with clarification of some of the relevant issues. One of these is the definition of arbitration, featured in Art. 2, according to which arbitration is any arbitration whether conducted by a permanent arbitral institution or in another form⁵.

This Model Law also addresses the concept of an arbitration agreement, by defining it and specifying its form⁶. Nowadays, after the amendment of the law in 2006, Art. 7 of the Model Law indicates a free form for an arbitration agreement. Whereas in accordance with the recommendations of the UN Convention Commission, a choice of two solutions has been put forward with regard to the form of the arbitration agreement. The first one adopts (in accordance with the original content of the Model Law) the written form of the agreement itself, but with a free form for the specific provisions of the agreement in question, so that the parties can specify it primarily in electronic form. The introduction of an electronic version also complies with the UN Convention on the Use of Electronic Communications in International Contracts, adopted by the Commission in 2005⁷. The second solution proposed by the Commission is to dispense entirely with any special form for the arbitration agreement itself as well as its special provisions. The Commission has left the choice of the implemented solutions to individual states at the level of national legislation⁸.

An important issue regulated by the Model Law in question is the relation between the proceedings before the ordinary court and the arbitration agreement. The regulations on this subject are featured in Art. 8 and 9 of the Act. Pursuant to the content of this regulation, in the event where the parties have concluded an arbitration agreement, the common court obligatorily refers to the arbitral tribunal. Obviously, arbitration proceedings will not be possible when the arbitration agreement itself turns out to be unenforceable or simply invalid⁹.

5 Original: „any arbitration whether or not administered by a permanent arbitral institution”.

6 This has been set out in detail in a note explaining the regulations contained in the UNCITRAL Model Law drawn up by the Commission Secretariat.

7 United Nations Convention on the Use of Electronic Communications in International Contracts, New York, 2005, https://uncitral.un.org/en/texts/ecommerce/conventions/electronic_communications [access: 1.04.2023].

8 *UNCITRAL Model Law on International Commercial Arbitration 1985 With amendments as adopted in 2006*, Vienna 2008, p. 28.

9 *Ibidem*, p. 29.

Arbitration Rules ICC

The International Court of Arbitration of the International Chamber of Commerce, in operation since 1923, is „the world’s most renowned arbitration institution”¹⁰. A very important body within the Court is its Secretariat, which consists of an international team of more than 90 lawyers, headed by the Secretary General. The Secretariat is a controlling and advisory body, and supports the activities of the parties as well as the arbitrators¹¹.

The official languages of the ICC are English and French, however, documents drawn up by its organs are translated into many world languages. One of the ICC’s most significant documents is the Secretariat’s Guide to ICC Arbitration Chamber of Commerce (Secretariat’s Guide to ICC Arbitration), by Jason Fry, Simon Greenberg and Francesco Mazza¹², who sit on the Secretariat of the ICC Arbitration Court; Jason Fry in his role as its Secretary General from 2007 to 2012¹³. It discusses arbitration proceedings in detail and is a fairly comprehensive study of 505 pages¹⁴.

The current Regulations, effective from 1 January 2021, are available on the ICC’s website¹⁵. The Regulations consist of eight chapters – Introductory Provisions, Commencing the Arbitration, Multiple Parties, Multiple Contracts and Consolidation, The Arbitral Tribunal, The Arbitral Proceedings, Awards, Costs, Miscellaneous. There are also a number of documents supplementing the Regulations, which are its annexes, such as the Statute of the International Court of Arbitration and the Rules of Procedure of the Court.

In accordance with the Rules, the initiation of proceedings shall be effected at the request of a party, which is received by the Secretariat. The date of receipt of the application shall be deemed to be the date on which proceedings are commenced [Art. 4(2) of the Rules]. It is also required to pay a registration fee, the amount of which is governed by Annex III to the Rules, which contains

10 Ibidem, p. 28.

11 *Global Reflections*, eds. G. Aksen et al., Geneva 1985, p. 420–424.

12 A. Kąkolecki, P. Nowaczyk, op. cit., p. 28.

13 https://www.cliffordchance.com/people_and_places/people/partners/fr/jason_fry.html [access: 30.07.2021].

14 A. Kąkolecki, P. Nowaczyk, op. cit., p. 28.

15 <https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/> [access: 30.07.2021].

a fees chart (Arbitration Costs and fees). In accordance with the Rules in force from 1 January 2021, the registration fee is USD 5000 [Art. 1(1) of Annex III]¹⁶.

Once proceedings have been initiated, an adjudicatory panel is appointed, which cannot include arbitrators whose independence may be questioned. They shall be required to

report promptly to the parties and to the Secretary if any circumstances that may give rise to such doubts appear¹⁷. The arbitral panel shall comprise one or three arbitrators, the number being dictated by the will of the parties or the high value of the subject-matter of the dispute (in which case a three-member panel shall be appointed). The panel shall be chaired by an arbitrator indicated by the Court¹⁸.

The proceedings are based on a document drawn up by the arbitrators called Terms of Reference (Acte de mission), which is also given to the parties to sign. It includes the most significant information on the case, i.e.: the claims of the parties, their demands or the list of matters to be resolved¹⁹.

The Rules also provide for emergency arbitration L'arbitrage d'urgence, Emergency Arbitration – regulated in Art. 29 of the Rules and in Art. 8 of Annex V. The arbitrator's rulings under this procedure take the form of so-called ordonnances (orders) and cover matters that require urgent security in the form of interim decisions – „pour régler d'urgence certaines difficultés dans leur [de parties – author's note] relations au moment de l'introduction d'une instance arbitrale”²⁰.

According to Art. 31 of the Rules of Procedure, verdict must be given within six months of the date of the required signature of the Mission Act („Such time limit shall start to run from the date of the last signature by the arbitral tribunal or by the parties of the Terms of Referece”), subject to the procedure provided for in Rules 23(3) and 24(2) of the Rules. According to the Art. 32 of the Rules, awards shall be made – in the case of a three-member panel – by a majority and, in the absence of a majority for a decision, the wording of the judgement shall be determined by the chairman. The award shall state the reasons upon which it is based – Rule 32(2)).

16 https://iccwbo.org/dispute-resolution-services/arbitration/rules-of-arbitration/#article_c1 [access: 30.07.2021].

17 A. Kąkolecki, P. Nowaczyk, op. cit., p. 29.

18 Ibidem.

19 Ibidem.

20 D. Vidal, *Droit français de l'arbitrage interne et international*, Paris 2012, p. 60.

It is also worth pointing out that the ICC has published an example of the content of an arbitration clause, to be included as part of the contract in order for the arbitration to be conducted in the ICC Court. In English, it reads: „All disputes arising out of or in connection with the present contract shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules”²¹.

Polish and French regulations on arbitration agreement – opening remarks

The basis for the possibility to use arbitration to resolve a dispute is an agreement between the parties, also referred to as „submission to arbitration”. In the Polish legal system, this institution is regulated in Art. 1161 of the C.C.P. It is similar, for example, in the French legal system, where an arbitration agreement is provided for in Art. 2059 of the French Civil Code, which regulates the right to resort to arbitration for anyone who enters into a contract. However, further provisions exclude such matters as divorce, separation, and cases involving public entities, with certain exceptions in this respect (Art. 2060).

Polish regulations on arbitration agreement

The provisions of the Polish Code of Civil Procedure regarding arbitration are based on the abovementioned model law developed by UNCITRAL. Polish law provides for an arbitration agreement (the so-called submission to arbitration) in Art. 1161 of the Code of Civil Procedure. It should be noted at this point that the arbitration agreement is the source of the authority of the arbitral tribunal; without it, the provisions of law itself shall be applied²². Article 1163 of the C.C.P.C. also provides for the possibility to include submission to arbitration in the contract or articles of association of a commercial company,

²¹ <https://iccwbo.org/dispute-resolution-services/arbitration/arbitration-clause/> [access: 30.07.2021].

²² M. Tomaszewski [in:] *System Prawa Handlowego...*, p. 6.

the same applies to the statutes of cooperatives and associations²³. In this respect, it is important to share the view of one of the authors that in the case of founding deeds or statutes granted by one person we do not deal with arbitration agreements, but in fact strictly with submission to arbitration, as there is no other party at the time the document is drafted²⁴. It is also possible to submit a dispute that already exists to arbitration on the basis of a so-called compromise. There are so-called compromise clauses in such situations, but this is not a very widely used solution²⁵. It should also be mentioned at this point that according to Art. 1161 1 of the C.C.P., which will enter into force on 1 July 2023, it will be permissible to submit to arbitration a case already pending before common court and until the case is finally resolved by this court²⁶. The above solution is undoubtedly aimed at enabling litigants who engaged in legal proceedings before a common court, often lasting for many years, to have their dispute resolved more expeditiously by an arbitral tribunal.

As regards the definition of an arbitration agreement, it is formulated as follows, under this term „it shall be understood as a contract under which the parties submit a legal dispute to the decision of an arbitral (arbitration) tribunal”²⁷. One of the elements of the arbitration agreement may be the designation of a permanent arbitral tribunal to decide the dispute, while in the absence of such a provision, *ad hoc* arbitration is deemed to have been accepted²⁸. In case of choosing a permanent arbitral tribunal and in the absence of other provisions between the parties to the dispute, Art. 1161 § 3 of the C.C.P. provides that the parties are bound by the rules of that court, in the version in force on the date of filing a claim. The Polish Code of Civil Procedures clearly specifies the conditions for the effectiveness of an arbitration agreement and its form. In accordance with Art. 1162 § 1 of the C.C.P., an arbitration clause should be made in writing, but § 2 also allows such an agreement to be drawn up by means of distance communication. Thus, the provisions introduced are in line with the recommendations of UNCITRAL in both the more stringent form (§ 1) in force before the 2006 amendment, as well as the one mitigated by this amendment (§ 2). However, as regards special proceedings, more restrictive

23 R. Morek [in:] *Polskie prawo handlowe*, ed. J. Ciszewski, Warszawa 2015, p. 440.

24 M. Tomaszewski, *op. cit.*, p. 8

25 R. Morek, *op. cit.*, p. 440.

26 Art. 1161 1 added by the Act of 9 March 2023 amending the Act – Code of Civil Procedure and certain other acts (Journal of Laws 2023, item 614).

27 M. Tomaszewski, *op. cit.*, p. 9.

28 R. Morek, *op. cit.*, p. 440.

requirements have been introduced, e.g. in Art. 1164 with regard to disputes concerning matters of labour law, according to which such a record must be in written form and may only be made after the dispute has arisen. Analogous requirements for submission to arbitration apply to disputes arising out of contracts to which the consumer is a party, which follows from the wording of Art. 1164 1 of the Code of Civil Procedure.

The necessary elements of an arbitration agreement under Polish law, pursuant to Art. 1161 §1 of the Code of Civil Procedure, are: 1) designation of the parties to that agreement, in a manner enabling their identification; 2) expression of the will to submit the legal dispute to arbitration; and 3) indication of the subject matter of the dispute or legal relationship from which the dispute has arisen or may arise²⁹. The optional elements of the arbitration agreement, on the other hand, can include: 1) the appointment of the arbitrator or arbitrators constituting the arbitral tribunal (Art. 1168 § 1 of the C.C.P.); 2) determining the number of arbitrators (Art. 1169 § 1 of the C.C.P.); 3) agreeing on the method of appointment of arbitrators (Art. 1171 § 1 of the C.C.P.); 4) determining the qualifications required of arbitrators (Art. 1174 § 2 of the C.C.P.); 5) determining the procedure for the exclusion of an arbitrator (Art. 1176 § 1 of the C.C.P.)³⁰.

The parties may also make certain arrangements concerning the conduct of the proceedings themselves, among which may be distinguished, *inter alia*, the choice of the place of the proceedings (Art. 1155 § 1 of the C.C.P.), the choice of the language in which the proceedings are to be conducted (Art. 1187 of the C.C.P.), authorising the arbitral tribunal to resolve the dispute according to general principles of law or principles of equity (Art. 1194 § 1 C.C.P.), or the possibility to conduct a single or multi-instance arbitration (Art. 1205 § 2 of the C.C.P.)³¹. Although in practice the latter solution is extremely rarely used.

An arbitrator in arbitration proceedings, pursuant to Art. 1170 of the Civil Procedure Code, may be a natural person with full capacity to perform civil law acts; however, he or she may not concurrently perform the functions of a state judge³². This restriction does not apply to retired judges. The principle of impartiality and independence concerning arbitrators is included in Art. 1173 § 1 of the C.C.P., while its violation may be the basis for the exclusion of

29 M. Tomaszewski, *op. cit.*, p. 27.

30 *Ibidem*, p. 30.

31 *Ibidem*.

32 R. Morek, *op. cit.*, p. 440.

an arbitrator, which is regulated by Art. 1174 § 2 OF THE C.C.P. The procedure for the exclusion of an arbitrator may be determined by the parties to the dispute, which is made possible by the content of Art. 1176 of the C.C.P. Thus, the parties may choose the arbitrator freely, at the same time they have the right to specify the requirements for an arbitrator in the arbitration agreement itself. The parties and the arbitrator, once the arbitrator is elected, enter into a separate contract, referred to in the literature as *receptum arbitri*. It is a de facto unilateral, tacit acceptance by the arbitrator of his or her designation, from the moment he or she takes the first procedural steps. The agreement, which is usually concluded in this form, requires – on the part of the arbitrator – to conduct the proceedings with due diligence, and on the part of the party to the dispute – to pay the arbitrator his remuneration³³. The arbitral panel usually consists of three arbitrators, but a single arbitrator is also quite common³⁴. It is also possible for a party or parties to appoint, in the event of the death, resignation, removal or expiry of the appointment of the originally appointed arbitrator – a substitute arbitrator, which is enabled by the content of Art. 1171 § 3 of the Civil Procedure Code.

It is worth mentioning at this point that the holding of a hearing in the context of an arbitration is not an obligatory part of it. Through the declaration of the parties made to the court to conduct the proceedings without a hearing, the court is obliged to decide the case in this manner (Art. 1189 § 1 of the Code of Civil Procedure)³⁵. This is primarily intended to expedite the ruling. The award itself, on the other hand, is made by majority vote with a multi-member panel, unless otherwise agreed in the arbitration agreement. It is made, however, upon the signatures of all arbitrators sitting in the arbitral panel (Art. 1197 of the C.C.P.). It is also permissible to conclude a settlement agreement after the conduct of the arbitration proceedings or its inclusion in the content of the award – giving the the settlement agreement the form of an award, whereby the case will be granted a status under the which it enjoys *res judicata*³⁶. The award should indicate in its content the arbitration clause on the basis of which it was issued, the names of the parties and the arbitrators, as well as the place and date of its issuance, in accordance with the requirements contained in Art. 1197 § 3 of the C.C.P., as well as the

33 M. Tomaszewski, op. cit., p. 11.

34 R. Morek, op. cit., p. 440.

35 Ibidem.

36 Ibidem.

reasons for the award, which is regulated by Art. 1197 § 2 of the C.C.P. Both a settlement and a judgement are enforcement titles pursuant to Art. 1214 § 2 of the Code of Civil Procedure, regardless of country they were issued in, they are subject to recognition by the court or, upon confirmation by the court of their enforceability by the court, thus acquiring the same legal force as a court judgement or settlement concluded before a court (Art. 1212 of the C.C.P.). In turn, pursuant to the wording of Art. 1213 § 1 on recognition or declaration of enforceability of an arbitral award or settlement the court rules at the request of a party.

Due to the specific nature of arbitration proceedings, they rarely take the form of multi-instance proceedings. Therefore, de facto only by means of an action for setting aside of an award submitted pursuant to Art. 1205 § 2 of the C.C.P., a party may bring about a change in the effects of the judgement by nullifying them. Among the grounds for setting aside an arbitral award, pursuant to Art. 1206 of the C.C.P., one can enumerate: invalidity or lack of submission to arbitration, depriving a party of the possibility to defend its rights before the court, or exceeding the scope of submission to arbitration³⁷.

Pursuant to the wording of Art. 1208 of the C.C.P., an action must be brought within two months of the date of service of the judgement, and should be brought before the court of appeal in the area of the court which would have had jurisdiction to hear the case if there had been no submission to arbitration, or in the absence of such grounds – to the Court of Appeal in Warsaw. However, the time limit is calculated differently in the case of setting aside an award pursuant to Art. 1206 § 1.5 or § 1.6 – then the time limit begins to run from the day the party learns of this ground, but may not be longer than five years from the date of service of the arbitration award on the party. Pursuant to § 3 of the said Art. 1208 of the C.C.P., it is possible to also to lodge a cassation appeal against an order issued in the matter of setting aside of the award of the arbitration court, as well as the possibility of requesting reopening of the proceedings and declaring the illegality of a final award issued in the scope of setting aside the award of the arbitration court.

37 Ibidem.

French regulations on arbitration agreement

The choice of French law in the scope of this study is not only dictated by the author's academic interests, but also by the fact that the International Chamber of Commerce (Chambre de commerce internationale) is based in Paris. Hence, it is worthwhile to reach out to the regulations of a country that has such a great tradition of arbitration.

Within the framework of national legislation, arbitration is regulated in the French Code Civil Code (Code civil), in book four, with the original regulation of arbitration in French law dates back to 1981, thus predating the Model Law developed by the UNCITRAL, which dates from 1985³⁸. French law is currently considered to be the most conducive to arbitration³⁹.

Among the most important provisions of French law on arbitration one can find, in addition to the Civil Code referred to, the Code de procédure civile (French Code of Civil Procedure), as well as the Réforme du 13 Janvier 2011, decree, with which the previous regulations contained in the Code of Civil Procedure were replaced, dividing the previous Book IV into six titles, consisting of Art. 1442 to 1503 covering domestic arbitration, and Art. 1504–1527 – covering international arbitration⁴⁰.

The distinction between domestic and international arbitration in French law is of considerable importance relevant to practice, as the provisions are generally mutually exclusive, unless the parties agree otherwise, except for the content of Art. 1506⁴¹.

The Code of Civil Procedure provides a legal definition of international arbitration in Art. 1504, which reads: „Est international l'arbitrage qui met en cause des intérêts du commerce international”, which can be translated into English as „International is arbitration that deals with matters of international trade”⁴². This provision remained in the same wording as it had before the 2011 amendment (former Art. 1492), so both in terms of translation and its interpretation, the earlier studies remain valid⁴³. In this aspect, the provisions

38 *Funkcjonowanie sądów polubownych w systemach prawa wybranych państw europejskich*, ed. R. Morek, Warszawa 2017, p. 22.

39 *Ibidem*.

40 D. Vidal, *op. cit.*, p. 23.

41 *Funkcjonowanie sądów polubownych...*

42 *Przepisy francuskiego Kodeksu postępowania cywilnego o postępowaniu arbitrażowym. Przekład z komentarzem*, transl. R. Wojciechowski, „Kwartalnik ADR” 2009, no. 4, p. 183.

43 D. Vidal, *op. cit.*, p. 4.

of the Code are imperative and the will of the parties may not give international matters the character of matters governed by national regulations – „Le caractère international de l'arbitrage ne dépend pas de la volonté des parties mais de la nature de l'opération économique qui est à l'origine du litige”⁴⁴.

With regard to domestic arbitration, as already indicated above, the following, among others, will be applicable – the provisions of Art. 1442 to 1503 of the Code of Civil Procedure. However, one should bear in mind also the provisions contained in the already mentioned Civil Code, where in Art. 2060 we can find limitations in the scope of cases subject to the decision of the arbitration courts such as: cases concerning civil status and legal capacity, divorce, separation, public institutions and concerning public order, but interpreted rather narrowly⁴⁵.

French law has also developed a definition of arbitration, deriving it from the definition of commercial arbitration, which should, however, be applied extensively, to all matters, not only commercial. According to the definition presented by the doctrine, arbitration is a method of dispute resolution alternative to the state model of dispute resolution, by means of the common courts, exempting such settlement from the national judiciary: „[...] est un mode alternatif de règlement des litiges; il est «alternatif» dans le sens où il propose le traitement d'un litige en dehors du cadre judiciaire d'un recours aux tribunaux étatiques”⁴⁶.

As in Polish law, the parties, in order to submit a case to arbitration, must conclude an arbitration agreement (*la convention d'arbitrage*), which takes the form of a „compromissoire clause” or „compromis” (Art. 1442 of the Code of Civil Procedure Code). These terms translate respectively as: a contractual clause (which will apply to future disputes and is pre-determined by the parties) or an arbitration agreement – which is concluded after the dispute has arisen⁴⁷. With regard to the form provided for arbitration agreement, according to Art. 1443 of the Code of Civil Procedure, written form is required for domestic cases, while according to Art. 1507, no special form is required for agreements on international arbitration. Of course, there are no obstacles for such an agreement to take a written form, which will facilitate the identification of the

44 Ibidem, p. 25.

45 Compare: *Funkcjonowanie sądów polubownych...*

46 D. Vidal, op. cit., p. 14.

47 *Funkcjonowanie sądów polubownych...*

arrangements made between the parties, but it will not be a form reserved either „ad validatem” or „ad probationem”⁴⁸.

The basic elements of an arbitration agreement are consensual declarations of intent by the parties to submit a dispute to arbitration, as well as provisions concerning the appointment of the arbitrators, or the method of their appointment. At the same time, it should be remembered that the Code of Civil Procedure contains a separate regulation on the appointment of the arbitral panel, in the absence of a decision by the parties in this respect (Art. 1451 in conjunction with Art. 1444)⁴⁹. The agreement clarifying the submission to arbitration is in French law, previously discussed under the ICC International Court Rules, the *acte de mission* (Mission Act). In it, the parties, together with the arbitrator, clarify their expectations with regard to the proceedings by describing the subject matter of the dispute, the choice of rules, the period within which the procedure should be completed, or its detailed schedule⁵⁰.

As regards arbitration agreements concluded in relation to cases of an international nature, the provisions of the Code of Civil Procedure, indicate such elements of the agreement as: the selection of arbitrators (Art. 1508), or the indication of the procedure to which the proceedings are to be subject to (Art. 1509). The Code also contains regulations supplementing the lack of provisions between the parties (e.g. Art. 1505, 1513).

In accordance with the wording of Art. 1450 of the Code of Civil Procedure, an arbitrator may only be a natural person (*personne physique*), exercising in full his or her civil rights. The Code also provides that, where the parties appoint a legal person (*personne morale*), in the arbitration agreement, no capacity is granted to such an entity to conduct the arbitration proceedings. With regard to the role of the arbitrator, the nature of his or her liability is a significant issue in the literature. This is based on the principle of contractual liability (*responsabilité civile*), so claims are formulated on the basis of a civil action. This will apply where they have misconducted the proceedings for which they can be held culpable: „[...] les arbitres engagent leur responsabilité civile a raison de leur inexécution ou mauvaise exécution qui leur serait imputable a faute”⁵¹.

Arbitration proceedings obviously end with a judgement (*sentence*), which must be distinguished from procedural decisions (*décision de procédure*), which

48 D. Vidal, op. cit., p. 210.

49 Ibidem, p. 39.

50 Ibidem, p. 47.

51 Ibidem, p. 70.

are essentially of an organisational and technical matter in the course of the proceedings (e.g. in the appointment of an expert)⁵². It is worth emphasising that, in the field of domestic cases, a judgement may be based on the applicable rules of law or principles of equity (*amiable composition*)⁵³.

As in Polish law, French law provides for an appeal to set aside an arbitral award. As far as domestic arbitration is concerned, Art. 1489 of the Code of Civil Procedure is applicable. According to it an appeal is possible with the agreement of the parties. If so decided, the possibility to bring an action to set aside the award shall be waived. The grounds for setting aside a judgement are, according to Art. 1492 of the Code, irregularities in the appointment of the arbitral tribunal or that the award is contrary to the legal order. This provision also points out formal deficiencies i.e.: „[...] the absence of reasons for the award, lack of the date of the award, lack of indication of the names or signatures of the arbitrators and issuance of the award other than by majority vote”⁵⁴.

In international arbitration, the situation is somewhat different, primarily due to the fact that it is not possible to appeal against an award at all. As for the grounds for setting aside an award, these are contained in Art. 1520 of the Code of Civil Procedure, and among these one can find: „erroneous decision of the tribunal as to its own jurisdiction to hear the case, errors in the constitution of the tribunal, the tribunal’s decision in principle exceeding the mandate given by the parties to the arbitration agreement, breach of procedural fairness and where the recognition and enforceability of the arbitral award is contrary to French public order”⁵⁵.

French law now provides for the possibility of waiving the filing of an action to set aside an arbitral award, as provided for in Art. 1522 of the Code. This possibility is not affected by the nationality of the party involved in the proceedings, but only the declaration of intent to this effect must be expressed explicitly⁵⁶.

52 Ibidem , p. 126.

53 Ibidem.

54 *Funkcjonowanie sądów polubownych...*

55 Ibidem.

56 Ibidem.

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Umowa arbitrażowa w przepisach krajowych na przykładzie Polski i Francji

Streszczenie

Arbitraż stanowi pożądaną alternatywną metodę rozwiązywania sporów w realiach współczesnych krajów rozwiniętych gospodarczo. Umowa arbitrażowa jest realizacją tej możliwości. Poddanie się stron arbitrażowi, czyli podpisanie umowy o arbitraż, stanowi *de facto* jedyny sposób na wyłączenie potencjalnego sporu spod jurysdykcji sądów powszechnych. Ma to szczególne znaczenie w postępowaniach gospodarczych, gdyż może znacząco wpłynąć na szybkość procesu ze względu na jego elastyczność, koszty i szybkość postępowania.

Słowa kluczowe: umowa, arbitraż, zasady arbitrażu, spór