Summary of doctoral thesis of Maciej Durbas entitled: Orzekanie o właściwości sądu polubownego (Deciding on the jurisdiction of the arbitral tribunal)

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The doctoral thesis of Maciej Durbas is devoted to the issue of deciding on the jurisdiction of the arbitral tribunal.

The first chapter describes the very concept of the jurisdiction of an arbitral tribunal. A definition of jurisdiction was also proposed as "the possibility of resolving a given dispute in arbitration, which results from its arbitrability (the possibility of resolving a given type, category of disputes in arbitration proceedings), particular arbitrability (the possibility of resolving a subject-specific and person-specific dispute in arbitration proceedings), determined on the basis of concluded and non-defective arbitration clause".

The second chapter discusses deciding on the jurisdiction of the tribunal itself. In particular, the limits of the principles of competence-competence and separability of the arbitration agreement and their mutual relations were determined. The decision-making process regarding the determination of its jurisdiction by the arbitral tribunal, the form of the decision and its effects were also indicated. It was also emphasized that the examination of the jurisdiction by the arbitral tribunal should be comprehensive. It was also pointed out that failure to raise the plea of lack of jurisdiction at this stage of the case deprives the party of the possibility of raising it later, in particular in post-arbitration proceedings.

The third chapter was devoted to the review of the arbitration court's decision on jurisdiction by a state court in the incidental proceedings described in Article 1180 § 3 of the Code of Civil Procedure. Chapter four, on the other hand, discusses the plea for arbitration raised in court proceedings. In the proceedings described above, the assessment of jurisdiction of the arbitral tribunal should be comprehensive. The paper is based on the assumption that the procedure under Article 1180 § 3 of the Code of Civil Procedure should be of key and fundamental importance for examining allegations of lack of jurisdiction of an arbitral tribunal before a state court. It was also proposed that the possibility of discussing this issue in post-arbitration proceedings should be kept to a minimum.

Chapters five and six were devoted to the control of an arbitral award in proceedings initiated by a petition to set aside of an arbitral award and proceedings regarding recognition or enforcement of an award. The review of the jurisdiction of the arbitral tribunal

in this respect is limited to specific matters – i.e. the defectiveness of the arbitration agreement and its coverage of the parties to the proceedings, its material scope and arbitrability. The first two issues are considered in addition solely on the plea of the party. Furthermore, failure to raise the objection of lack of jurisdiction at the stage of the arbitration proceedings and to uphold this objection in proceedings under Article 1180 § 3 of the Code of Civil Procedure, in principle, deprive a party of the possibility of challenging the jurisdiction of an arbitral tribunal in post-arbitration proceedings, except for a few situations, in particular inarbitrability of a dispute.

Chapter seven justifies the inability to investigate the jurisdiction of an arbitral tribunal in incidental proceedings before a state court (e.g. injunction proceedings or proceedings for the appointment of an arbitrator). These proceedings do not constitute a proper procedure for conducting such an examination, unlike other court proceedings, described in chapters three to six.

Finally, chapter eight describes the issue of binding nature of decisions on jurisdiction rendered by a state and arbitration court and mutual relations of these proceedings.

Kraków, 8 June 2020 r.

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