ABSTRACT OF THE PHD THESIS

Grounds to refuse the recognition and enforcement of a foreign arbitral award pursuant to the New York Convention

prepared by Stanisław Sołtysik under the supervision of prof. dr hab. Karol Weitz with the participation of dr Marcin Dziurda (acting as the auxiliary supervisor)

The PhD thesis titled „Grounds to refuse the recognition and enforcement of a foreign arbitral award pursuant to the New York Convention” is focused on a segment of the broad issue of proceedings to recognize and enforce a foreign arbitral award – namely on the norms which form the substantive basis of the state court’s decision. The object of the thesis is a holistic characterization the content of the said norms (which are referred to in the thesis as grounds) regulated by Article V of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards done in New York on June 10, 1958 (text published in the Official Polish Journal of Laws under No. Dz.U.1962.9.41 – hereinafter as the Convention).

The PhD thesis comprises of 6 chapters. The first chapter is designed as an introduction to the object of the thesis. It contains an attempt at presenting the position of the grounds to refuse the recognition and enforcement in the proceedings to recognize and enforce a foreign arbitral award and at describing the character of the said grounds.

Additionally, this chapter characterizes the Convention as the most important treaty regulating specific salient aspects of the said proceedings, in particular the grounds to refuse the recognition and enforcement of a foreign arbitral award.

The second chapter of the thesis discusses issues common to all of the grounds to refuse the recognition and enforcement of a foreign arbitral award. It contains, in particular, an attempt at presenting the division of the said grounds according to different criteria and the deliberations on the interpretation of Article V of the Convention (and other provisions of the Convention) as the provision of a treaty (i.e. an instrument of international law). Much of this chapter is devoted to the issue of the basis to apply the criteria (institutions) of preclusion and causality under the Convention as well as to the problem of whether the Convention affords the state court the liberty to grant the motion to recognize and enforce a foreign arbitral award if any of the grounds to refuse this under the Convention is met.

The next four chapters of the thesis are an attempt to comprehensively characterize each of the grounds under the Convention – based on one of the divisions discussed in chapter 2 of the thesis. The respective grounds are analyzed in detail according to uniform criteria – first of all the object and function of each ground is being presented, then its historical background is outlined and finally the specific contentious issues related to the said ground are being described and resolved.

Going through the last four chapters one by one, the third chapter contains the characterization of the grounds related to the competence of the arbitral tribunal – concerning the lack of capacity to arbitrate and the invalidity of the arbitration agreement (Article V(1)(a) of the Convention) and the excess by the arbitral tribunal of its jurisdiction and/or of its competence to decide the dispute (Article V(1)(c) of the Convention. The focus of chapter four is on the grounds which pertain to the course of the arbitral proceedings – the one regulating the inability of the party to present its case (Article V(1)(b) of the Convention) and the one generally touching upon the problem of irregularities in the arbitration proceedings (Article V(1)(d) of the
Convention). Chapter five in turn discusses the ground directly concerning the arbitral award itself and its binding force (Article V(1)(e) of the Convention). Finally, chapter six presents the grounds which safeguard the most important interests of the country, the court of which is deciding on the recognition and enforcement of the arbitral award. It discusses thus the lack of arbitrability (Article V(2)(a) of the Convention) and the public policy exception (Article V(2)(b) of the Convention). Since both these grounds directly refer to the law of the country of the court deciding on the recognition and enforcement, this chapter also characterizes the relevant provisions of the Polish law regulating the arbitrability and forming part of the Polish ordre public.