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LINGUISTIC CHALLENGES TO INTERNATIONAL COMMERCIAL ARBITRATION IN POLAND

Abstract. In the realm of Polish law, arbitration is anything but a new concept. In an ever-developing economy, arbitration has become a useful tool in resolving disputes that are commercial in nature. The issue pertinent to the choice of language in an arbitral proceeding has been thoroughly investigated in the doctrine of international arbitration, yet the conclusions are not set in stone and are likely to change and evolve over time. As evidenced by the technological revolution, introduction of mechanical translations, and artificial intelligence ("AI") it may seem that the challenges will be difficult to predict. Alternatively, the status quo of the English language as the number one language in the arbitral proceedings will remain. The parties can easily dismiss the linguistic and interpretative problems surrounding arbitration agreements. Thus, this article endeavors to consider the possible implications of a case scenario, wherein a party would attempt to arbitrate an international dispute with a Polish party on the basis of a contract that would be in a language that differs from Polish. Additionally, attention is drawn to the role of witnesses in an arbitration proceeding as such witnesses may speak languages that are the same, similar, or entirely different to the language spoken by the parties involved in the arbitration, as well as differ from the primary language of the arbiters. This article examines the aforementioned hypothetical case-scenario with the emphasis on relevant Polish acts of law. The research presented in this article is also focused on the examination of regulations vested in the statute of the most prominent Arbitration Court in Poland, and its provisions pertinent to language.

Keywords: arbitration proceedings, Polish language, translation, contract interpretation, witnesses.

1. Introduction

When analyzing Poland, it would be an overstatement to state that the county's history evidences a preference and favoring of arbitration in resolving litigious matters. However, and over the years, the evolution of Polish arbitration law has been significant and cannot be overlooked. After 1989, capitalism propelled Poland to a far more liberal market economy and, ever

since then, private systems of dispute resolution have kept making its way into the minds of Polish entrepreneurs (Gessel-Kalinowska, 2014, p. 25). For many years the advancement and continued growth of various arbitration institutions has enabled Poland to leapfrog into the world of international arbitration. Some prominent scholars even argue that Poland is now witnessing what is termed an "arbitration crisis" and that the country is currently a witness to a significant decline in cases sent to arbitration (Szumański, 2019, p. 99). However, it is true that the current dynamic and challenges faced by the arbitration community in Poland are perhaps different than the ones that are most pressing worldwide. To put it simply, when international arbitration strives to detract from judicalization and to manage the raising costs, the Polish arbitration world puts more emphasis on overcoming tendencies transposed from traditional litigation (Zachariasiewicz & Kocur, 2019). Nonetheless, the praise for arbitration is not always justifiable, as ADR mechanisms may not always be a viable alternative to legal proceedings. Setting a legal precedent, or imposing an enforceable solution on the parties may be one of the few reasons why, in some cases, arbitration may not be the desirable tool to resolve a dispute (Wallgren-Lindholm, 2018). On the same note, navigating through the minds of clients is not an easy task as few lawyers receive actual training regarding the psychology of humans/clients. It has been highlighted by a vast body of research that lawyers must have a nuanced understanding of the values and goals that they deem relevant to such decisions. Nevertheless, little empirical research has been presented that concerns the actual link between the psychology of litigants regarding such decision-making tasks (Shestowsky, 2018). If more attention would be paid to factors that litigants consider while selecting legal procedures, and what kind of a role lawyers play in such proceedings and decision making, perhaps controversies surrounding language in an arbitration proceeding would not be considered a high priority. Hypothetically speaking, arbitration proceedings may have many variables that make it extremely difficult to allow scholars and/or observers an opportunity to draw uniform and general conclusions. This is not to say that there are none; however, the problem at stake is quite 'fluid' and is prone to change.

As an introductory remark, arbitration is not clearly defined in the Polish dictionary. Nevertheless, in the Polish language, arbitration may be understood both from a perspective of conflict resolution (*arbitraż)*, as well as a unilateral decision making process (*arbitralne rozstrzygnięcie*). Arbitration (*arbitraż*) is a method of conflict resolution that is resolved by an arbitrator (*rozstrzyganie sporu przez arbitra*). Surprisingly, the word arbitrator (*arbiter*) – the person resolving the conflict – is not defined at all. Seemingly,

another definition presents arbitration from an economic angle. Arbitration is the act of selling and purchasing currency, securities and shares on different markets with the purpose of acquiring profit, while also taking advantage of the currency fluctuation or the interest rate. It is also defined as an investment that includes two separate transactions (PWN, 2020). Perhaps the economic definition may cause some difficulty. As arbitration most commonly occurs in a commercial setting, one could expect that the parties understand the concept of arbitration, at least in general terms. Thus, the recent statistics presented by the Ministry of Justice of Poland, which show that almost 50% of Polish entrepreneurs do not know what arbitration is, poses some concern and may call for further scientific assessment. According to data presented by Ultima Ratio, the first electronic arbitration court in Poland, the value of almost 96% of all claims does not exceed 100.000 PLN. Assuming that the remaining 4% of those are high-profile and high value cases, it is still not enough to make arbitration a widely-appreciated dispute-solution mechanism. Hence, if one was to draw a conclusion based on those statistics, it could be argued that institutionalized arbitration courts are well-equipped to handle complex legal disputes and, more importantly – that the parties are willing to pay for it. From a scientific standpoint, it is imperative to highlight the importance of data collection and the relevance of statistics. Only a proper data assessment process on both sides of the spectrum, both scientific and empirical, can give tangible and reliable results for the conflict-bound parties to learn from.

In Poland, the main controversies arising from a practical standpoint are inherently intertwined with international arbitration. Those controversies concern prevalent issues that may affect the outcome of an arbitration proceeding. In the spirit of practicalities, it has been highlighted by scholars and arbitration practitioners alike that the state of empirical research in the field of arbitration, up to a certain point, has been limited because it concerns private, rather than public, adjudication. It is true that much of what was known about international arbitration was based on anecdote – the facts of individual cases, attorney "war stories," and the like (Drahozal, 2006, p. 291).

With that being stated, one of the biggest and most thorough investigations of the current state of Polish arbitration laws has indeed given an impetus for change in the Polish arbitration regulations (*See for example*: Diagnoza Arbitrażu, Rapport 2014). For instance, one of the more recent changes has been the amendment regarding the extension of *subject matter arbitrability* in relation to corporate disputes. Arbitration practitioners in Poland highly value said changes, and see the latest changes in the Polish

Code of Civil Procedure as an opportunity for arbitration (Olechowski & Tujakowska, 2019). Experts highlight one of the amendments that addresses quite a significant issue – that being the determination of the applicable version of the rules of procedure of a permanent arbitral institution to which the parties have submitted their dispute (art. 1161 § 3 CCP). Presently, precedent is given to the arbitration rules in force at the time of the conclusion of the arbitration agreement.

2. The study

It is evident that the landscape of an arbitration dispute is painted with the brush held not only by the parties and arbitrator, but also third parties like the interpreters. The evidence points to the fact that interpreters play such an important role in the proceeding, and that they can have a profound impact on the procedure. Therefore, more credence needs to be given to the role of language and interpreters in arbitration.

As such, it is clear and evident that language is a significant issue in an arbitration proceeding. International commercial arbitration presents a vast array of either opportunities or obstacles, which if wrongly addressed by the parties, may have significant impact on the case. As highlighted in this study and on a practical level, the problem has been analyzed with special emphasis on the issues relevant to translations. The selection of the *arbitral language* has been described as the exercise of party autonomy (Harpole, 2016). The *arbitral language per se* has the underlying power to determine not only the entire arbitration procedure, but more importantly the outcome. In a speech given at the 7th Asia Pacific ADR Conference in Seoul in November 2018, Neil Kaplan emphasized the importance of the choice of language with the following example: if the language is not agreed to in the arbitration agreement it can and most likely will lead to great delays. He had a case where there was a delay of ten years simply because the language was not agreed to (Kaplan, 2018, p. 99). Following up on Kaplan's insight, it is critical to realize that just as in the court of law, time is of the essence in arbitration as well. It also seems that the choice of language may be one of the most controversial issues and/or disagreements between the parties, which could pose another impediment of the parties reaching a resolution. It is crucial to remember that the process of translating from one language to another is not limited to a cookie cutter solution. In its entirety, it is a thorough process that entails an analysis of comparative law, cognition, and more (Curran, 2005).

As the reader may be aware, there is a joke surrounding arbitrations – that usually the language of the arbitration proceedings is not English, but bad English; it seems that the problem of interpretation and translation will continue to be of primary importance. Hence, the most important problem in this study lies within the impact of translations on arbitration proceedings. In literature, it has been rightfully noted that translation includes an evaluation of important legal issues. For instance the translated documents may be important parts of evidence, such as witness statements, hearings, and so on (Chang-fa Lo, 2016, p. 201). Similarly, some argue that the role of language in an arbitration proceeding is prevalent on three main stages: the grievance, the hearing, and the decision (Fraser, 1980). Also, a language-relevant factor is indeed the hearing and examination of witnesses. In spite of the growing numbers of multi-cultural international arbitrations, it is best to consider drafting a detailed arbitration agreement and decide on the language of the arbitration as early as possible (Russell, 2015).

3. The dynamics of the language and law

In order to pin-point the dynamics between language and law in the context of arbitration, one has to realize that arbitration is nothing more than litigation that is put in a different context. However, the point of departure should be the dismantling of the term: *'law.'* Many have tried to untangle the bundle of elements that law consists of – or in other words, what law actually is. Another common inquiry revolves around the connection between law and language and, more so – how is it relevant in an arbitration procedure? Some argue that law is about establishing the facts, applying a special kind of language and exercising discretions of language (Roebuck, 1992). Therefore, without the application of a 'special' kind of language, law is not anything other than a communication process. Given the continuous technological developments in online dispute resolution platforms ("ODR" – *online dispute resolution)*, soon arbitration, or any form of legal negotiation, may be replaced by technology (see G. Kaufmann-Kohler, 2005), ultimately being reduced to a simple button. With arbitrators who are semi-trusted entities in the social network that facilitate communication or assist in the conclusion of a business transaction (Brownstein, Dolev, Gilboa & Hermoni, 2016), it cannot be expected that the role or importance of legal translations in an arbitration setting will remain the same.

Berman argues that one of the most important languages spoken by a community is the language of law (Berman, 2013, p. 36). Nevertheless, and paradoxically, little attention has been given to the most profound means of communication in a society. The attention that has been given to the language of law is primarily focused on the interpretative challenges that include, but are not limited to its ambiguities, circularities, susceptibility to distortion, excessive technicality, its arbitrariness. Further Berman contends that law has an underlying power to command respect, resolve conflict and, most importantly, it establishes channels of cooperation (Berman, 2013). In sum, simplicity and clarity are the most desirable virtues in legal language. Therefore, in essence, the law is nothing but a tool to communicate between the parties, and the lawyers are the interpreters. Arbitration in that sense mirrors the court proceedings, as the party representatives untangle the difficulties surrounding the entire arbitration procedure. The greatest challenge is to make arbitration "understandable" for the parties. Notwithstanding the utter importance of the English language in international proceedings, it is worthwhile to mention that perhaps in the arbitration world English will not be superseded by any other language anytime soon. The reason being quite simple – introducing a new language is a lengthy process. Yet with regard to the example of Latin and French, one may argue that anything is possible.

4. The relevance of witness testimony in an arbitration proceeding

The science of law is an attempt to seek the truth – but what kind of value does the truth present itself to the parties in an arbitration proceeding? Due to obvious reasons, credible evidence as to the relevance of truth seeking in an arbitration proceeding is limited. Nonetheless, taking evidence in an arbitration proceeding and witness participation is of paramount importance. A quick observation made on the account of the role of witnesses – the language that they communicate with the arbitration tribunal and other actors in an arbitration proceeding has the potential to open up a bigger discussion on the relevance and importance of witness participation in arbitrations in general. At this point only a few remarks will be made just to paint a bigger picture of the problems inherently intertwined with language and arbitration generally. The famous astrophysicist, Neil de Grasse Tyson, makes the connection between the credibility of witnesses in science and a court of law. He says: "*There is nothing more fickle and unreliable than eyewitness testimony, no matter the pedigree of the person who made*

that observation. This is why eyewitness testimony comprises the lowest form of evidence in science (curiously, unlike courts of law)", (de Grasse Tyson, 2019, p. 28). Hence, from a scientific perspective, it seems that eyewitness testimony could be excluded altogether from any legal procedure. As far as witness examination, language, and credibility of such evidence in arbitration is concerned, the Polish Court of Arbitration (SAKIG) offers a flexible solution available to the parties. The parties are free to establish whatever language is going to prevail when examining witnesses. Hence, witness examinations may be concluded in a different language than the language of the arbitration proceeding. Therefore, it is possible to use a different language for different purposes. The fact that witnesses may be questioned in their native language seems reasonable and necessary, especially if witnesses do not know the language of the arbitration proceeding, or if documents, and other relevant evidence has been made in a different language.

5. Code of Civil Procedure

Next, it is essential to highlight the scope and actual reach of the Polish Code of Civil Procedure regarding language and arbitration. Arbitration is codified in Title V (arbitration tribunal) in art. 1154–1217 of the Polish Code of Civil Procedure. In its entirety it is based on the UNCITRAL Model Law. Title V Proceeding, art. 1187 explicitly deals with the issue of language in an arbitration proceeding:

> § 1. *The parties may agree to the language or languages of the arbitration proceeding. In absence of such an agreement, the language or languages will be decided upon the discretion of the arbitration tribunal. The decision of the parties regarding the language of the proceedings or the decision of the tribunal, unless otherwise specified, shall be binding on all written statements made by the parties, hearings, awards or other notices issued by the arbitration tribunal.*
>
> § 2. *The arbitration tribunal may order that all documents be translated on the language or languages prior agreed by the parties or determined by the arbitration tribunal.*

It is clear, therefore, that the parties are free to choose one or more languages of the arbitration proceeding. As mentioned before, the Polish regulation in its core mirrors the provisions set out in art. 22 of the UNCITRAL Model Law:

> *(1) The parties are free to agree on the language or languages to be used in the arbitral proceeding proceedings. Failing such agreement, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision or other communication by the arbitral tribunal.*
>
> *(2) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal*

The Code makes it clear that the parties are free to choose any language or languages in the arbitration proceeding. In absence of such a provision, it is left to the arbitration tribunal's discretion which language should be most appropriate for the proceedings. Certain difficulties may arise; such an example could present itself in the due course of arbitration when or should the parties change the language after the constitution of the arbitration tribunal. One of the key doubts in said circumstances may be the fact that the arbitrators simply do not speak the new language that has been chosen by the parties. In such an event, there are three case scenarios that may eventually result in an arbitrator stepping down. The arbitrator (1) may step down invoking an important circumstance (§ 1175 Polish Code of Civil Procedure), (2) may be revoked with the consent of both parties (1177 §), or (3) at the request of both parties by the national court (Asłanowicz, 2017). In fact, even if the parties speak the same language – they are not in any way limited to choose a different language.

Another document relevant in the context of language and arbitration issued by the United Nations Commission on Trade Law ("UNCITRAL"), are the notes on Organizing Arbitral Proceedings. Special focus is drawn to the language of the proceedings. It is recognized in the notes on page 17 that many rules and national laws vest the power to decide the language of the proceeding on the arbitration tribunal. That is not any different form the Model Law or the Polish arbitration law. Next, on page 18, the notes consider an important case scenario wherein important documents that are relevant to the proceeding are submitted later and are in a different language. Of crucial importance are the needs of the proceeding and economy. However, the notes do not explicitly declare translations to be necessary at this point. Tracking the language "*it may be considered whether the arbitral tribunal should* (...) *be accompanied by a translation.*" Another matter that must be considered is whether interpretation will be necessary during oral hearings, as well as who deems the interpretations to be necessary or not.

If the language of the proceeding is different than the native language of one party, it is obvious that interpretations will be needed. The thing to consider here is whether the translations will be simultaneous or consecutive. Moreover, the decisions relevant to translations also concern costs – therefore, it is imperative to decide who will be bearing those costs.

Perhaps in the discussion of accuracy of translations and its impact on arbitration, it is also relevant to mention the regulations concerning ethical aspects of translations in Poland.[1] Although the nature of codes of ethics is considered to be conventional, some of the provisions do speak volumes to the high-risk factor that can affect the procedure at hand. For instance, par. 1 § of Polish Code of the Sworn Translator is centered on the concept of the translator's dignity and what that entails. First and foremost, a translator is considered to be a profession of public trust. The translator does everything in his/her power, with due regard to ethical standards, to ensure his/her performance is in accordance with the society's requirements. The requirements that are taken into consideration include, but are not limited to: due diligence, neutrality, further development of competences, abiding by professional standards relating to confidentiality, and professional loyalty (which excludes unfair business practices). What constitutes unfair business practices are misrepresentations and omissions. Interestingly, in the realm of Polish law, the same high standard of professional conduct is expected from translators and experts alike (see for instance art. 281 and art. 265 § 2 p. 1 of the Polish Code of Civil Procedure).

In sum, the Polish doctrine of arbitration law does not give preference to any language being used in the proceedings – however, the problem that has been signaled is that one party may be put in a more advantageous position than the other depending on which language is chosen and/or agreed to by the parties. In the Polish legal context, given the leniency of the arbitration procedure, a few things would have to be taken into consideration:

1) Quite obviously, the extension of the *kompetenz-kompetenz* clause would reach in so far as the arbitration agreement is concerned; therefore if an agreement cannot be reached, the tribunal can, and will determine the language of the proceeding;
2) If one party would challenge the language clause in the arbitration agreement/or arbitration clause, it would be ultimately left for the arbitration tribunal to determine whether that provision is void;
3) If the contract was to be concluded in English, but both parties would be Polish, what are the odds of an arbitration tribunal giving preference to Polish as the language of the arbitration?

6. Rules of the Polish Arbitration Court

When taking a closer look at the choice of language regulation of the Polish Arbitration Court affiliated at the Polish Chamber of Commerce (Regulamin Sądu Arbitrażowego przy Krajowej Izbie Gospodarczej, abbreviated as "SAKIG"), it is evident that SAKIG makes an attempt to bridge the gap between national legislation and international regulations. The SAKIG Regulation (and many other regulations – LCIA, ICC, etc.), in its current shape and form, mirrors other international regulations, such as the UNCITRAL Model Law.

Not surprisingly, the language provisions that are mentioned in the SAKIG regulations are indeed in a way bridging the gap between the parties' interests, while at the same time securing fluent and timely procedure. First of all, it is necessary to look at the provisions that are vested in the SAKIG regulation.

> Art. § 13 [**The language of the proceeding**]
> 1. The parties are free to choose the language of the proceeding. In the case there's a lack of a choice of language provision, the language of the arbitration proceeding shall be Polish.
> 2. The Arbitral tribunal may, with due regard to the claims of the parties as well as circumstances surrounding the case, especially the language of the contract, other documents that may be considered as evidence, as well as the language of the experts and parties, decide that for specified actions the language of the proceeding shall be another language.

It is true that the ability to choose the language of the arbitration procedure is something that truly distinguishes arbitration from a classic court proceeding. Moreover, what speaks volumes to the party autonomy principle is indeed the fact that the parties are free to decide upon which part of the procedure is going to be conducted in a certain language. That ability and freedom to choose seems quite relevant, as some parties may have documents that they would wish to invoke in an arbitration proceeding that are in a different language than the chosen language of the arbitration proceeding. It is important to emphasize that the consequences of such a choice have the potential to impact the arbitration procedure in a significant way. The regulation gives the parties leeway to choose the language they prefer. At this point, there may be several problems that are pertinent to the arbitration proceeding, namely the language competences not only of the arbitrators, but also counsel, the secretary, and experts. Putting the language competences in the aforementioned context of language globalization, it is

important to highlight that even linguists agree that proficient speakers, in a twenty-first century definition of the term, are able to move between contexts and communities (Canagarajah, 2007). Some linguists also highlight that the local and transnational adaptation of English offers exciting and potentially liberating opportunities (Sewell, 2012).

The author of this article believes, however, that given the expansion of other languages, akin to international arbitration such as Chinese, English should be considered the lingua franca of arbitration. That correlates with another crucial issue, which is the cost of the legal translations. All in all the costs accrued by a party to an arbitration proceeding may be much higher than anticipated, which in the future may serve as a deterrent to arbitration. Also, according to Morek (2017, p. 152), the choice of language is critically intertwined with the place of the arbitration proceeding, which arguably may contribute to higher costs. Significantly, the place of the arbitration eventually determines the language used by the court in its enforcement of the arbitration award that is going to be sought. The language integrity of the proceeding does not have to correspond to the actual place where the arbitration is concluded. In fact, it is quite common that the arbitration takes place in Poland, yet the language of the arbitration proceeding is English.

For obvious reasons, in absence of an agreement by the parties, Polish will be the language that is going to be chosen by the arbitration panel. Additionally, Polish is the language most commonly used by the SAKIG arbitrators. However, it is possible to choose two languages that may be used for different operations and awards. Most controversial and problematic issues arise when there are discrepancies between two versions of the contract. In such an instance, the first draft to be concluded and accepted by the parties will be the prevailing version of the contract. The first draft will ultimately determine the language whilst establishing the parties' obligations, duties, and/or requirements under the contract. With that being said, other versions of the contracts may serve as a supplement for the purposes of interpretation. An important feature of the process that cannot be overlooked is the principle of equality with regard to language selection. While it is important at the outset of the procedure, it is extremely difficult for the tribunal to evaluate who is in a more privileged position, or who is willing to invest more in fighting the linguistic ambiguities. Usually, translations are not challenged on grounds of incurring unnecessary costs. In the event that ambiguities arise, the arbitration tribunal has the competence to investigate translations in question *ex officio*. It is critical, therefore, that the linguistic competences of the arbitrators are of a high standard (Morek, 2017). As a side note, it is interesting to point out that the parties may have their

own interpreters as well, who are essentially translating and whispering in the parties' ears (from the word: *chuchotage* in French). Although helpful, that may also be dangerous to the parties. Different translations may sabotage the outcome of an arbitration.

7. The Polish Constitution of 1997

With respect to this study, a thorough investigation of the principles of the Polish Constitution is not necessary. However, a few principles are worth of considering. In the preamble of the highest act of law in Poland, it specifies that the Polish language constitutes a *fundamental element of national identity and presents a value of the national culture*. Therefore, under the law, language is considered as a national good. The principle is greatly understood and appreciated by most legislatures around the world (Polish Constitution, 1997).[2] Moreover, the preamble goes on to highlight the experiences of history when the conquerors' and occupiers' fight with the *Polish language was an instrument of denationalization*. What is also significant is that the Act highlights and recognizes the *need to protect national identity in the process of globalization*. In spite of the need to protect a nation's identity through acts of law, in that context the significance of arbitration is somewhat different. Needless to say, arbitration is in its core a byproduct of globalization contributing to a more unified approach to dispute resolution management and legal practices.

Obviously, the principles that are enshrined in the Polish Constitution do not run contrary to the party autonomy and choice of language principles in an arbitration proceeding. Yet, what is worthy to observe is the ever-present tension of the need to protect the cultural value of one nation's language and the pressing need to respond to the market needs of the parties accordingly. What is noteworthy, however, is the fact that the Constitution explicitly mentions that Polish culture constitutes a contribution to the development of a common and culturally diverse Europe, as well as the preservation of this culture and development is possible only through the protection of the Polish language.

Art. 27 § of the Polish Constitution designates Polish as the official language. The regulation does not infringe upon rights of minorities that stem from international agreements. In a judgment issued by the Voievodship Warsaw Administrative Court on July 5th 2016, (VI SA/Wa 859/16), it is explicitly stated that the court cannot take into consideration evidence that has not been translated into Polish. However, according to the interpreta-

tion of the Constitutional Tribunal, in relations that are private in nature, the use of the Polish language is by no means mandatory. Moreover, it takes into account the fact that Art. 27 of the Constitution, in principle, does not impair subjects of Polish civil law to make declarations of intent (Safian & Bosek, 2016). Additionally, the use Polish is relative in the sphere of legal relations, especially concerning consumers and whilst executing labor law provisions (Kubuj, 2016). Taking all of that into consideration, the constitutional framework for the functioning of the Polish language seems solid, as evidenced by the opinions of the judiciary as well as constitutionalists. Given that arbitration is also a by-product of the private relations, it needs to be acknowledged that the parties, just like in consumer (B2C, C2C) relations, are free to choose their own tool of communication.

Finally, while still considering the importance of the usage of Polish in an arbitration proceeding, it is noteworthy to point out the most important provisions stemming from The Polish Language Act of 7 October 1999. It is significant to recognize that the adoption of the Act has been made with due regard to principles that in a way mirror Poland's history and carry a deep meaning to the society in general. What is important, however, is Art 7 of the Language Act (corresponding to the principles outlined in the Constitution), which specifically outlines that on the territory of the Republic of Poland, in legal relations concerning consumers and executing labor law, the use of polish language is mandatory when: (1) the consumer or employee is domiciled in Poland in the moment of contract conclusion, and (2) if the contract was to be performed in Poland. The relevance of this provision in an arbitration scenario for a polish party would most likely concern illegal '*mass concesssion'* agreements (ex. telecommunication agreements) when the consumer was not aware of the arbitration provision in a contract in the first place. The choice of language and the likelihood of the language being polish in a mass claim arbitration is less than likely.

8. Conclusion

In Poland, the balance of the judicial system has been, and continues to be, disturbed. The number of cases administered by courts continues to be so high that the average time of a civil claim/case to be decided is well beyond six months.[3] Among the many prominent proponents of change within the judicial system is the Polish Ombudsman, who calls for wider use of alternative dispute resolution methods.[4] Raising awareness with re-

gard to alternative dispute resolution methods is inevitably key. However, it is as equally important to be raising awareness and putting emphasis on meaningful communication, which is the pivot of ADR and a democratic society in general. Arbitration being a specific field of ADR warrants the usage of a specific language, or a specific code of communication. Untangling the bundles of hidden meanings in arbitration, and specifically international commercial arbitration, is a quest that cannot be underestimated neither by the parties involved in an arbitration procedure, nor by the courts that ultimately have the power to enforce the arbitration award. The science behind language interpretation in an arbitration proceeding surely will not be solved anytime soon. This article is only an attempt to highlight some of the concerns that a translator, a witness, or a party may have while entering an international arbitration procedure.

Certainly there are many ways to circumvent the traditional judicial system and arbitration does seem like a viable solution for the parties who come from different countries and have a different command of the language of the procedure. As a rule of thumb, it can be stated that the Polish Code of Civil Procedure, as well as Arbitration Rules of SAKIG, correspond with international standards relevant to translations. All of the rules vested in the Polish regulations are consistent, and give the parties procedural safety, ensuring their interests will not be compromised. Language and translations in the world of arbitration, with international trade and the fast developing economies, are two powerful forces capable of making a difference in the outcome of an arbitration proceeding. It is perhaps a truism, but the world is changing at such a fast pace and language is not immune to such changes. Therefore, to finish with the words of the one and only Prof. Noam Chomsky, who summarizes changes for a perspective of a linguist: "*When we talk about language changing* (...) *what's actually happening* (...) *it's like species changing it's a mix of dialects and the mix changes overtime, either because of conquests or some political changes or repositioning of boundaries* (...) *Between generations there are usually small changes having to do with influences from outside* (...)". Thus, recognizing the change and responding to it accordingly is, and always will be, the mission of linguists and lawyers alike, regardless of whether a court of law or an arbitration proceeding is concerned.

NOTES

[1] The Code of the Sworn Translator (*Kodeks Tłumacza Przysięgłego*), of June 30 2011.

[2] Interestingly enough, for instance the United States Constitution does not contain a provision on English being the official language of the United States of America. Despite the efforts of Congress, so far no amendments were implemented.

[3] Case administration statistics vary from region to region. On the latest statistics see statistics published by the ministry of Justice: https://isws.ms.gov.pl/pl/porownania-krajowe/

[4] https://oko.press/bodnar-prezydenta-najwazniejszy-problem-sadownictwa-przeciazenie-sadow/

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