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Arbitration as a successful method of resolving disputes in the Polish energy sector: Implications for managers

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Keywords

Company law, Commercial arbitration, Investment arbitration, Contract law, Investment disputes

Abstract

The main purpose of the article is to evaluate the possibility of using alternative dispute resolution (ADR) methods in resolving investment disputes in the energy sector. The basic method is the analysis of the literature on the subject, laws regarding the use of ADR methods and their interpretation presented by representatives of the doctrine. The article consists of two main parts. The first presents the characteristics of ADR methods: negotiations, mediation, conciliation, arbitration and mixed methods. The second part analyses in depth the selected ADR method—arbitration—based on the literature on the subject and comments from representatives of the doctrine and attempts to justify the claim that arbitration is a beneficial method of dispute resolution in the energy sector. Through the analysis of laws and subject literature, potential advantages and disadvantages of using ADR methods in resolving investment disputes in the energy sector are indicated. The authors take the view that combining the positive aspects of a court with the advantages of ADR supports arbitration as a method of resolving investment

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disputes in the energy sector. However, an unambiguous assessment will only be possible after conducting future research in the form of multiple case studies, which will allow for the empirical verification of the propositions identified during the literature review on the subject. Because of the specificity and importance of the energy sector, the dispute resolution method used in that sector should predominantly be investment arbitration; however, in certain situations (depending on the legal form and ownership structure of the entity represented by the manager), commercial arbitration may also be used in the discussed sector.

I. Introduction

Increased energy consumption in the world is caused by the dynamic development of the economy, progressing industrialisation and an increasing number of users. The costs of production, supply, manufacture, processing and distribution of all commodities—foodstuffs, manufactured goods and services—go hand in hand with the consumption of huge amounts of energy. The situation is even more evident during the COVID-19 pandemic, when much work is performed remotely, which obviously translates into increased energy consumption, thereby increasing the importance of the energy sector. Investments in the energy industry are mostly investments in the extraction of raw materials, construction of oil or gas pipelines, electricity transmission networks, and the acquisition or expansion of existing energy and gas infrastructure. It must be pointed out that under Polish law there is no legal definition of the term 'energy sector'. The definition published on the official website of the Energy Regulatory Office, which is the central state administrative body regulating the Polish energy market, states that the energy sector is composed of many coordinated parts constituting a collection of power companies conducting business activities in the area of producing, processing, storing, transmitting or distributing fuels and energy, or trading in fuels or energy. Those are usually grouped into the following basic sub-sectors (Energetyka w Unii Europejskiej, 2006):

- electric power industry,
- gas industry,
- raw material and fuel industry, subdivided into the extraction of black coal, brown coal and liquid fuels,
- renewable energy industry.

Presently, the Polish energy sector is implementing the energy transformation plan adopted for the years 2021–2040 (Energy Policy of Poland until 2040, 2021). According to its assumptions, the sector is to undergo profound changes, and investment is expected to relate mainly to renewable energy sources (RES) and

nuclear energy (Kud and Woźniak and Badora, 2021, p. 5551). The assumptions about the future of the Polish energy sector focus on investments in renewable energy, natural gas and projects implemented with neighbouring countries (Energy Policy of Poland until 2040, 2021). In the same way, they imply a number of challenges related to such undertakings. Firstly, one should point to the following types of risk: political and legal, technical, economic and social. Political and legal risk is the most significant one relating to energy investment since it is difficult to predict. This category of risk involves possible amendments to the legislation on grants awarded in the area of RES or the reduction of emissions and other pollution, both at the global level and at the level of the EU, a country or its region. Such modifications translate into both the costs of implementing a project and operating costs, which, accordingly, reduce the returns on investment or even preclude its implementation because of new legislation (Michalak, 2014, pp. 106–111). Such investments are usually recovered for many years and, in consequence, are very susceptible to political influences involving, in extreme situations, expropriation or compulsory nationalisation (Wajdzik, 2012, pp. 131–142) which may lead to a situation of conflict between a private investor and the state. This article aims to present alternative dispute resolution (ADR) methods in the energy sector and to serve as a recommendation for persons managing enterprises in the energy sector that may be affected by the problems of dispute resolution in that sector. The study primarily addresses the problems of arbitration, presenting that method against the backdrop of other dispute resolution alternatives.

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II. Characteristics of ADR methods

Classical consumer and investment disputes are resolved in court. This results in a final resolution of the conflict between the parties, with legal legitimacy, which was dominant until recently. However, there has been a clear increase in the application of out-of-court dispute resolution methods, especially in the USA, Japan and certain European countries. Interest in ADR is also growing in Poland. Such dispute resolution offers a number of benefits; it takes less time, provides a chance to preserve or restore positive relations between the conflicting parties, is informal, and is cheaper than traditional court proceedings. At the same time, its use reduces the number of matters brought to court, thereby relieving the judicial system. In the context of foreign energy investment, ADR ensures greater impartiality (Kalisz and Zienkiewicz, 2014). The basic ADR methods include (Głodowski, 2020, pp. 8–19):

– negotiations,
– mediation,
– conciliation,
– arbitration.

Negotiations are a process of communicating with the intention to reach an agreement, where the parties have opposing interests or partly aligned and partly opposing interests. In large measure, negotiations are based on persuasive communication; they may lead to a situation in which both parties are satisfied with the outcome (win–win), however, they can also end up in a situation where one of the parties feels disadvantaged (win–lose). In principle, negotiations should be voluntary and based on a relative balance between the conflicting parties. Negotiations may be handled by the interested parties themselves, their attorneys or by professional negotiators.

Mediation is a method based on a meeting between the conflicting parties together with a third party—the mediator. The mediator's task is to create conditions conducive to dialogue between the parties to the dispute. The mediator may also encourage the participants of the mediation procedure to amicably resolve the conflict; however, the mediator does not impose any solution and is expected to be impartial. One can point to three basic characteristics of mediation—optionality, confidentiality and informal nature (Sobolewski, 2006, pp. 31–37).

Conciliation is an ADR method similar to mediation—in both cases, discussions involve a third party alongside the conflicting parties. However, in conciliation, it is the conciliator (conciliation commission) who proposes the solution to the conflict. The proposed solution is not binding on the parties and does not have to be accepted by either of them. It may be rejected or submitted to further discussion (Głodowski, 2020, pp. 8–19). Conciliation, mediation and negotiations are conciliatory models in which the conflicting parties decide about the outcome of the procedure.

Arbitration (resolution by arbitration courts) is a method of resolving disputes by a private body with consequences analogous to state court adjudication. The arbitration model is an adjudicative model, the only one in the above catalogue which is a binding dispute resolution method from the point of view of the parties, and not merely a proposal for resolving the conflict as in the case of the other ADR forms. Since arbitration is the only form of ADR binding on the parties, the authors have decided to analyse that very method. This is the case as, potentially, it may be the most successful and most widely used in the context of investments in the energy sector. With a view to assessing the possibility of using arbitration in the Polish energy sector, a review of the literature on the subject has been conducted. For that purpose, the following keywords were used: "arbitration;"

"investment arbitration;" "commercial arbitration;" "investment dispute resolution;" "energy disputes," both in Polish and English, in the databases: Google Scholar, Web of Science, LEX Legal Information System, Legalis C. H. Beck System and the EUR-Lex legislation database of the European Union. Because of the specificity of the research area, some of the results derive directly from legislative acts, which are usually excluded from literature reviews in management and quality sciences (Snyder, 2019, pp. 333–339), ; however, in the present context, they are of key importance for the purpose of the article. The interdisciplinary nature of the study and the validity of certain legislative acts, e.g. the Convention on Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958 (Dz. U. 1962 Nr 9, poz. 41, as amended, enclosed) also enforces the lack of time limits for the conducted review, which in turn, in studies such as academic articles or chapters in monographs, implies the need to reject certain results on account of references made to outdated legal provisions. After rejecting duplicates, articles on outdated legal solutions, and papers not directly related to the subject of the review, 34 sources have been taken into account. The cited limitations affect the methodological rigour, making the considerations similar to the traditional literature review methodology (Snyder, 2019, pp. 333–339); however, in the authors' opinion, they are necessary to achieve the purpose of the research, which is the assessment of the possibility of using arbitration in the Polish energy sector.

III. Arbitration as a method of resolving investment disputes in the energy sector

As already mentioned above in this study, arbitration is one of the ADR methods. However, its distinctive feature compared to other ADR methods is, predominantly, the characteristic shared with the ordinary judicial system, that is the adjudicative nature, which means the delivery of an award binding on the conflicting parties, which finally concludes the dispute brought to the court and has the power of res judicata. This feature distinguishes arbitration and ordinary court adjudication from other methods of dispute resolution (Szumański, 2015, pp. 3–72). In literature, attention is drawn to the fact that, in the area of energy investments, guarantees for investors are especially important since state authorities in the energy sector are especially bureaucratic, and sometimes investors become victims of political turmoil (Koziński, 2015, pp. 1019–1115). In this context, investment arbitration can offer better assurance of investor interests being protected. On the other hand, in commercial arbitration, as in economic transactions, we may encounter a situation in which not all parties to a given legal relationship are entrepreneurs, and so commercial arbitration may

involve consumer participation. This aspect of arbitration has an extensive legislative background in Polish law, especially in Part V of the Code of Civil Procedure (CCP) entitled 'Arbitration court', which relates to commercial arbitration. As far as commercial arbitration is concerned, attention should be paid to Art. 1163(1) CCP, under which 'an arbitration clause included in a deed (articles of association) of a commercial partnership or company in relation to disputes arising out of the partnership or company relationship shall be binding on the partnership or company, its members and the partnership's or company's governing bodies and members of such bodies'. In the same way managers, already at the stage of establishment of a new entity, may choose commercial arbitration as the method of resolving disputes relating to the established company. This provision may enjoy great popularity in the near future because of the entry into force on 01 July 2021 in the Polish legal system of the simple joint-stock company (Ryszkowski and Witoszek-Kubicka, 2020, pp. 71–88; Adamus and Malinowski, 2021, pp. 1–508). In European Union law, there is no legislation on commercial arbitration. The Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters was superseded by Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters, which, under Recital (12) and under Art 1(2) letter (d), does not apply to arbitration courts. Moreover, under Recital (12), the Regulation does not encroach on the competences vested in the Member States '(...) to decide on the recognition and enforcement of arbitral awards in accordance with the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, done at New York on 10 June 1958 ("the 1958 New York Convention"), which takes precedence over this Regulation'. Furthermore, under Art 73(2), the Regulation does not affect the application of the 1958 New York Convention (Ryszkowski, 2019, pp. 1–312). It is worth mentioning that neither the New York Convention (Dz.U. 1962, Nr 9, poz. 41) nor other pieces of international legislation on arbitration courts provide for consumer protection (Ryszkowski, 2021, pp. 205–217). In addition, it must be pointed out that an arbitral award delivered in commercial arbitration may have legal force equal to a judgement of a state court under Art. 1212(1) CCP. (Act of 17 November 1964 – Code of Civil Procedure [Dz.U. 1964, Nr 43, poz. 296, Dz.U. 2020, poz. 1575]): 'Award of an arbitration court or settlement concluded before an arbitration court shall have legal force equal to a judgement of a court or settlement concluded before a court upon its recognition by the court or declaration of its enforceability by the court'. The dynamic development of international arbitration has turned it into a universal institution tailored to the needs of an economy undergoing globalisation processes. International arbitration develops in an evolutionary process determined by changing circumstances and

needs, which have a significant impact on its construction and operation. International commercial arbitration ceases to be only a system of resolving private law disputes between private law subjects but also includes other disputes of such type involving the state (or the state's organisational units). International arbitration becomes a forum where international investment disputes of a public law nature are resolved between foreign investors and the states in which such investors have made investments. Therefore, the operating scope of international arbitration becomes extended. As a consequence, the changes affect its shape and nature, as well as the rules governing the arbitration procedure (Rajski, 2011, pp. 1813–1825). International treaty-based investment arbitration is a relatively new phenomenon, answering particular political and economic needs. Countries started to enter into bilateral and multilateral treaties on the promotion and protection of investment less than 30 years ago. This led to the conclusion of over 2500 international investment treaties intended, among others, to replace the method of resolving investment disputes through the diplomatic protection of the investor's state by establishing procedures for international investment arbitration. This way, a new type of international arbitration has formed, based on the provisions of international investment treaties, supplemented by common provisions of international public law. The process of its formation is delimited by the development and evolution of international investment treaties (Rajski, 2011, pp. 1813–1825). Investment arbitration, as a conceptual category, is completely separate from commercial arbitration. While commercial arbitration allows for the resolution of private law disputes, in the case of investment arbitration, the subject matter of resolution involves disputes in the area of international public law (Szumański, 2015, pp. 3–72). Consequently, arbitration also reflects one of the fundamental divisions of law into public and private law. It can be concluded that the division of arbitration into private and state is a corollary of the division of economic law into private economic law. Disputes in the area of international public law arise in the context of bilateral investment treaties (BITs) on the promotion and mutual protection of investment concluded between countries, under which an investor, a private law subject, may sue the state in which the investment was implemented, a public law subject, for non-performance of such a public law agreement. Such treaties may also be multilateral, which is important from the point of view of this article, e.g. the Energy Charter Treaty (ECT) of 07 December 1994 (Energy Charter Treaty and Energy Charter Protocol). It should be noted that, in light of constitutional law, an international agreement is a source of law. Under Art. 91(1) of the Constitution of the Republic of Poland (Constitution of the Republic of Poland of 2 April 1997), 'After promulgation thereof in the Journal of Laws of the Republic of Poland (Dziennik Ustaw), a ratified international agreement shall constitute part of the domestic legal order and shall be applied directly, unless its application depends on the

enactment of a statute'. One should point to the features of investment arbitration that differ from commercial arbitration. The advantages of proceedings before an arbitration court are generally known (Torbus, 2008, pp. 37–51). These advantages stem from the features of arbitration, which, according to academic literature, include (Ryszkowski, 2018, pp. 148–160)

- reliance on the parties' intention,
- quick and informal nature of the proceedings leading to the resolution of disputes,
- 'limited' application of substantive law in adjudication, including the possibility of an equitable award (ex aequo et bono),
- confidential nature of arbitration proceedings and the contents of the award (Szumański, 2015, pp. 3–72).

On the other hand, as far as investment arbitration is concerned, it is not based on the parties' intention but proceeds by operation of law. In the case of investment arbitration, it is not necessary to conclude an arbitration agreement since an arbitration clause follows from the international treaty (either bilateral, i.e. BIT, or multilateral, such as ECT). This is a so-called standing offer of arbitration from the defendant (the host country) which, in the event of being sued by a foreign investor before an arbitration court, e.g. International Chamber of Commerce in Paris (ICC), Stockholm Chamber of Commerce (SCC), International Centre for Settlement of Investment Disputes (ICSID) or an *ad hoc* arbitration court in accordance with the UNCITRAL Arbitration Rules, agrees 'in advance' to submit to the jurisdiction of such arbitration court without knowing yet which foreign investor will be the claimant in a given arbitration case. Investment arbitration is characterised by specific parties to the dispute, distinguishing it from commercial arbitration. The claimant is always a private law subject (foreign investor, usually an entrepreneur) and the defendant is the state in which a given investment was implemented. Therefore, in reference to investment arbitration, the term 'investor—state arbitration' is used. In a reverse situation, when the state sues a foreign investor before an arbitration court, be dealing with commercial arbitration. This is why investment arbitration is always international arbitration, whereas commercial arbitration does not necessarily have to be international since domestic commercial arbitration is also possible when the parties to the dispute, the applicable law and post-arbitration stages do not extend beyond the territory of one country (Szumański, 2015, pp. 3–72). It should be noted that the solutions adopted in Part Five of the Polish Civil Procedure Code, entitled Arbitration Court (Articles 1154-1217), containing standards for commercial arbitration, were modelled on and are largely consistent with the UNCITRAL Model Law on International Commercial Arbitration

(1985), with amendments as adopted in 2006 (UNCITRAL Model Law) and the New York Convention, i.e. legal acts of an international nature.

At this point, it is worth mentioning another characteristic feature distinguishing investment arbitration from commercial arbitration. As opposed to commercial arbitration, which is confidential, investment arbitration is usually public. Loss of a dispute by a country implies a need to pay from the defendant country's budget a usually high compensation to the investor, which for the most part is derived from the taxes paid by citizens and legal persons. This may lead to a significant reduction of the planned expenditures from that budget for public purposes.

Statistics show that for years arbitration has been the preferred method of resolving international energy disputes, which is confirmed also by the latest 2020 ICC report, according to which last year 167 new cases were registered in the energy sector (ICC Dispute Resolution Statistics, p. 17). These data are additionally confirmed by the report of the International Centre for Settlement of Investment Disputes (Figure 1) (2020 ICSID Annual Report, p. 25).

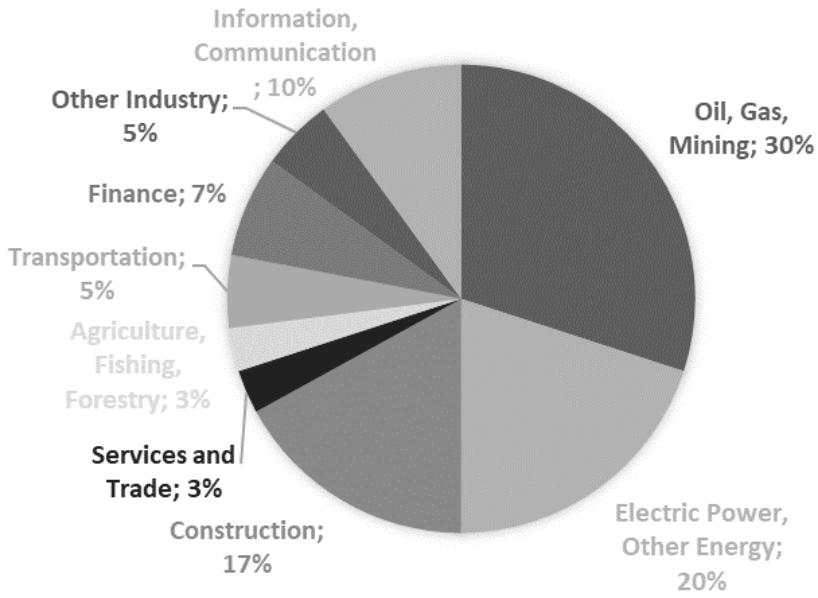

Figure 1: Distribution of cases registered in Fiscal Year (FY) 2020 by economic sector. Source: 2020 ICSID Annual Report, p. 25. ICSID, International Centre for Settlement of Investment Disputes

Despite many advantages of arbitration, the specificity of the energy industry generates certain challenges related to that dispute resolution method. A frequent problem is the consolidation of multilateral transactions in complex contracts and joint venture agreements. In such cases multiple arbitration procedures arise in

respect of the same or similar facts or legal issues (Vlavianos and Pappas, 2019, p. 244). Although consolidation procedures are introduced by many arbitration institutions, it remains a challenge to consolidate many arbitrations without the consent of the involved parties. Another procedural challenge, particularly important in disputes involving a joint venture, is the question of arbitrability. While many claims related to joint ventures can be remedied by monetary compensation, claims involving JV deadlocks, changes of control or parties' insolvency may call into question the jurisdiction of the arbitration court. Sometimes, the arbitration court may be requested to terminate the JV partnership or order specific performance for the parties involved (Vorburger and Petti, 2018, p. 1294).

The pursuit of mechanisms ensuring security for investment in the energy industry led to the signature on 07 December 1994 in Lisbon of the ECT, which was a draft international legal regime for investments in the energy sector (Wajdzik, 2012, pp. 131–142). The ECT provides for international investment arbitration. The purpose of the ECT is to facilitate economic growth by taking measures to liberalise investment and commerce in the energy sector (Koziński, 2015, pp. 1019–1115). The ECT must be considered a multilateral investment agreement, very close in its contents to many BITs concluded between the countries participating in the ECT (Szumański, 2015, pp. 3–72). An analogy can be traced in its solutions on the protection of investment to other provisions of international investment law, including similarities to the North American Free Trade Agreement (NAFTA) with regard to the form of resolving investment disputes. Energy investment law incorporates part of the investment law rules developed by arbitration case law, including the umbrella clause. The ECT indicates international arbitration as a means of promoting and protecting investment and regulates dispute resolution between the contracting parties and between a contracting party and an investor, whose content refers to such significant pieces of international legislation on commercial arbitration as the New York Convention (Dz. U. 1962, Nr 9, poz. 41) and the UNCITRAL Arbitration Rules. Both the aforementioned normative acts, the former being hard law and the latter a soft law instrument, relate directly and are applied to international arbitration. The New York Convention is a piece of international legislation and, at the same time, a source of law generally applicable in the Republic of Poland (Ryszkowski, 2019, pp. 1–312). Another question pointing to the relationship between investment arbitration and the private sector is the possibility of resolving private law disputes in investment arbitration if a BIT provides for this expressly. Such an option takes the form of the so-called umbrella clause, in light of which a violation of private law of the host country is treated as tantamount to a violation of a BIT, which is an international public law agreement. An important role in investment arbitration is played by the Washington

Convention of 18.03.65 on the Settlement of Investment Disputes Between States and Nationals of Other States (ICSID Convention), under which a permanent arbitration court was created, known as ICSID, which has its own rules of conciliation (Rules of Procedure for Conciliation Proceedings) and of arbitration (Rules of Procedure for Arbitration Proceedings). This court is attached to the World Bank (International Bank for Reconstruction and Development [IBRD] and is seated in Washington, just as the IBRD [Szumański, 2015, pp. 3–72]). In respect of countries that have not signed and ratified the Washington Convention, BITs may provide for the application of other arbitration rules to the resolution of a dispute. Most often, these are the UNCITRAL Arbitration Rules as amended in 2013 with regard specifically to investment arbitration (particularly regarding Art. 1(4), introducing the transparency principle in investment arbitration), which rules normally refer to commercial arbitration. As a consequence, the amendment guarantees implementation of one of the characteristic features distinctive for investment arbitration, namely its transparency.

Alternatively, apart from the UNCITRAL Arbitration Rules, these may also be rules of permanent arbitration courts, e.g., ICC, SCC (Szumański, 2015, pp. 3–72), or London Court of International Arbitration (LCIA). This is relevant in the case of Poland, which has not signed or ratified the Washington Convention. Because of the adoption of such solutions, the international public law arbitration procedure in international investment matters is governed by the procedural rules on commercial arbitration. As a result, it must be concluded that the above rules should be applied having regard to the nature and requirements of international treaty-based investment arbitration (UNCITRAL Arbitration Rules). Therefore, the most frequently applied set of provisions in such situations are the UNCITRAL Arbitration Rules, because of the amendment discussed above. Coming back to the Polish legal system, one must not forget about Poland's membership in the European Union and, in the same way, about the principle of primacy of Community law over the Polish legal order (Ryszkowski, 2021, pp. 205–217). According to Court of Justice of the European Union (CJEU), whose case-law includes an opinion about the primacy of European Union law also over the Constitutions of Member States, such principle follows from the EU legal order. However, the principle is also anchored in the Constitution of the Republic of Poland. Under Art. 91(2) and Art. 91(3) of the Constitution of the Republic of Poland (Jacolik, 2018, pp. 43–56):

- An international agreement ratified upon prior consent granted by statute shall have precedence over statutes if such an agreement cannot be reconciled with the provisions of such statutes.
- If an agreement ratified by the Republic of Poland establishing an international organization so provides, the laws established by it shall be applied directly and have precedence in the event of a conflict of laws.

In Polish law, such an international agreement relating to the energy sector is also the International Energy Charter (ICE). The ICE was adopted and signed in 2015 by over 65 countries and organisations, including the European Union and all of its Member States. The purpose of the ICE is to commit as many new countries as possible that are willing to cooperate in the field of energy. The new Charter was drawn up on the basis of the European Energy Charter (EEC) and modernised the EEC. In Title II, the ICE contains item 5 on the promotion and protection of investment, which stresses the importance of arbitration (ICC Dispute Resolution Statistics, p. 17). The fact that international agreements are highly significant for the resolution of energy investment disputes may be illustrated by the situation in Central Asia. Countries with convenient geographical location and various rich energy resources have attracted interest of the international community and have become an important destination of foreign investments (Liu, 2019, p. 110912).

Moreover, the abovementioned significance of commercial arbitration is visible in the proarbitration attitude of state courts in Poland.

'In 2020, parties initiated 299 cases related to the post award stage. In particular, 35 motions were filed to set aside an arbitral award, 232 motions to enforce or to recognise a domestic arbitral award, and 32 applications to enforce or to recognise a foreign arbitral award. [...] Polish Courts of Appeal issued 283 decisions in 2020 in post-award cases. Out of this number, 70 decisions related to formal issues, e.g., in cases where proceedings were withdrawn. We have therefore excluded these from consideration. [...] In 2020, the courts ruled on 31 setting-aside applications (approximately 15% of all rendered non-formal decisions), 170 applications for recognition or enforcement of domestic awards and 12 applications for recognition or enforcement of foreign awards (approximately 85% of non-formal decisions). [...] Out of the 213 decisions, only in 19 cases (approximately 9%) awards were set aside or refused recognition or enforcement. Successful parties, therefore, defended 194, i.e. more than 91% of awards before Polish courts. [...] Out of the 31 setting-aside proceedings, awards were set aside only in 6 cases, i.e. the courts refused to set aside awards in approximately 81% of cases. Out of the 170 recognition or enforcement proceedings for domestic awards, 158 (approximately 93%) were successful. Out of the 12 recognition or enforcement proceedings for foreign awards, 11 (approximately 93%) applications were granted, and only one was refused' (Durbas and Ziarko and Zbiegień, 2021). These numbers indicate how effective arbitration is in resolving disputes and should dispel any doubts among managers about submitting disputes in the energy sector to arbitration.

As an example of the practical application of investment arbitration, it is worth highlighting the victory of the Polish company PGNiG in its dispute with the Russian company Gazprom before the Arbitration Tribunal in Stockholm in

2020. The Tribunal mandated a retroactive revision of the pricing terms in the Yamal contract. According to PGNiG, this decision means that Gazprom is obligated to return approximately 1.5 billion USD. As the then-President of PGNiG noted: 'Now we will purchase gas at more market-based prices, which will enable us to allocate more resources for investments and development, thereby significantly improving our financial standing' (Dziennik.pl, 2020). The above-mentioned amount was returned by Gazprom; however, in June 2020, the verdict was appealed by the Russian company on formal grounds. Gazprom argued in its complaint that the Arbitration Tribunal had exceeded its authority in resolving disputes between the parties to the Yamal contract. According to PGNiG, the Stockholm Court of Appeal dismissed the complaint in its entirety as unfounded in 2022 (TVN24 Biznes, 2022). This verdict serves as an excellent example of mutual benefits: for PGNiG as an enterprise on the one hand, and for other entities that rely on gas supplied by PGNiG on the other. Moreover, this victory played a pivotal role in Poland's efforts to achieve independence from Russian gas and supported the strategy of diversifying energy supplies (Szőke, 2020).

IV. Discussion and conclusions

The number of pieces of international legislation in the energy sector, entities being the parties of such legislative acts (European Union, EU Member States and other countries), and the question of arbitration, which is raised in such legislative acts, demonstrates the role and significance arbitration has in resolving disputes in the energy sector. In the light of the progressing globalisation, it is increasingly more probable that investment disputes may arise reaching beyond the borders of one country, which requires managers to seek solutions allowing to resolve the dispute, on the one hand, and preserve the relationship between the parties, on the other one. Because of the specificity and importance of the energy sector, the dispute resolution method used in that sector is predominantly investment arbitration (so called treaty-based, public arbitration), however, in certain situations (depending on the legal form and ownership structure of the entity represented by the manager) commercial arbitration may also be used in the discussed sector (so called contractual, private arbitration), including arbitration with a consumer's involvement. Juxtaposition of such solution with the traditional judicial system and ADR methods clearly speaks in favour of arbitration as a method combining the positive aspects of a court—adjudicative nature, impartiality—with the advantages of ADR—possibility to preserve the relationship between the parties and orientation towards solving the causes of the dispute. The statistics on the effectiveness of this method as well as pro-arbitration

attitude of state courts in Poland also have an impact on the assessment of the use of arbitration in resolving disputes. The presented results provide reasons for recommending arbitration as a method of resolving investment disputes in the energy sector. It is worth pointing to the limitations of this study and the need to carry out further research on the use of ADR methods in the energy sector. The authors plan to conduct a future research in the form of multiple case study, which will allow to empirically verify the propositions identified during the review of literature of the subject.

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