# Polish Decisions on Submission to Jurisdiction

*by Michal Kocur and Jan Kieszczynski of Wozniak Kocur, a Polish litigation boutique law firm.*

The Appellate Court in Lublin, Poland passed two separate decisions that stand by the principle that a challenge to international jurisdiction must be clear, substantiated and made right away in the defendant's first appearance before the court.

In decisions taken on 26 March 2013 (file no. I ACz 151/13) and on 8 October 2013 (file no. I ACz746/13), the court found that raising a defense of lack of jurisdiction based on an arbitration clause cannot be treated as contesting the court's international jurisdiction within the meaning of Article 24 of Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels I).

The decision is particularly noteworthy as it deals with a controversial issue, as yet undecided by the Court of Justice of the European Union (ECJ).

**Disputed jurisdiction**

Both of the cases concerned the same dispute that emerged between two parties, a Polish and a French company, concerning the performance of a contract for the international sale of goods (Contract). The Polish company twice sued the French company for payment in the Polish courts. Both cases followed a similar pattern of procedural history, which will be outlined below.

In its statement of defense, the French company filed a motion to dismiss the case, taking the position that the dispute fell within the scope of the arbitration clause contained in the Contract. Apart from raising that jurisdictional defense, the defendant also went into the details of the merits of the case, rejecting the Polish company's claim for payment. The Polish court rejected the French company's jurisdictional defense. The court found that the arbitration agreement contained an exception that allowed the claimant to file a claim in a national court.

The French company appealed that decision. In its appeal, for the first time in the proceedings, the defendant raised a defense specifically invoking the lack of jurisdiction of Polish courts, and filed a motion to dismiss the case on those grounds. The defendant argued that the place of delivery of goods had changed, in light of which French courts had jurisdiction to hear the case, not Polish courts.

In response to the above, the claimant argued that the defendant's challenge to the jurisdiction of Polish courts had not been presented in the statement of defense, and was therefore overdue.According to the claimant, as the Polish courts' international jurisdiction was not contested in due time, the dispute was submitted to Polish courts in accordance with Article 24 Brussels I. Submission under Article 24 Brussels I exists when a defendant enters an appearance before the court, unless the appearance was entered in order to contest international jurisdiction:

> *Apart from jurisdiction derived from other provisions of this Regulation, a court of a Member State before which a defendant enters an appearance shall have jurisdiction. This rule shall not apply where appearance was entered to contest the jurisdiction, or where another court has exclusive jurisdiction by virtue of Article 22.*

The defendant disagreed. It argued that the statement of defense contained a jurisdictional defense based on the arbitration agreement, and that this defense alone was sufficient to properly contest international jurisdiction in the meaning of Article 24 Brussels I.

**Inequality of objections**

The issue whether raising an objection against jurisdiction based solely on an arbitration agreement is tantamount to contesting the jurisdiction of a Member State's court has not yet been decided by the ECJ. The issue is controversial. In Poland, some scholars refer to a position presented in German language publications that a defense of the lack of jurisdiction based on an arbitration agreement by the same token contests jurisdiction in the meaning of Article 24 Brussels I.

In both of the cases at hand, the Appellate Court in Lublin rejected the defendant's view and found that it had international jurisdiction as the cases fell under the rule of submission to jurisdiction.

The court held that a jurisdictional defense based on an arbitration clause did not contest the Polish courts' international jurisdiction in the meaning of Article 24 Brussels I. According to the court, the defendant's properly contested international jurisdiction too late and by that time the cases must have been treated as having been submitted. In the written reasons of the decisions, the court stated that a challenge against jurisdiction based on an arbitration agreement and a challenge against international jurisdiction are two separate challenges. It is not possible to assume that raising a defense of lack of jurisdiction due to an arbitration agreement is effective with regard to international jurisdiction.

The Appellate Court's decision was correct. An objection to

jurisdiction based on an arbitration agreement and an objection to international jurisdiction are based on different legal and factual grounds. This is exemplified by the case at hand. The lack of jurisdiction due to the arbitration agreement was claimed under the provisions of the Polish Code of Civil Procedure, and the dispute centered around the interpretation of the arbitration clause. The defense of lack of international jurisdiction was made under the provisions of Brussels I and on the basis of a disputed place of delivery of the goods. If different facts and different legal provisions have to be presented to substantiate either of the two defenses, one cannot treat them as synonymous in their effect.

**Importance of submission**

The analyzed decision of the Appellate Court in Lublin is also in line with the rules of examining jurisdiction enshrined in Brussels I.

Brussels I provides for an examination of the jurisdiction by the court's own motion only in exceptional situations. That is the case, for example, in Article 22 point 1, which provides for the exclusive jurisdiction of the court in which a property is situated in cases concerning rights in rem in immovable property. Apart from such exceptions, the court only examines its jurisdiction if the jurisdiction is challenged by the defendant. Such challenges must be properly substantiated and raised in the first appearance before the court, i.e. usually, in the statement of defense.

This principle is interconnected with another rule, namely, the rule of submission of jurisdiction if no challenge is made by the defendant at the beginning of proceedings.

Both of the rules make perfect sense, both from the perspective of case management and legal certainty. If the courts were to examine jurisdiction by their own motion at every stage of the case, jurisdiction could be questioned very

late in the proceedings, even before the court of last instance. That would lead to the obstruction of justice and deprive the parties of the right to have their case decided in due time.

Finding identity between a jurisdictional defense based on an arbitration agreement and a defense of lack of international jurisdiction would be contrary to the above rules. It would demand from the court to examine a challenge based on an arbitration agreement way beyond the legal reasoning and facts presented in that challenge. In such a case, if the court decided that the challenge based on an arbitration agreement should be dismissed, then the court would have to examine whether it has international jurisdiction, essentially, by its own motion. It would be the court that would be obliged to establish whether there were any other circumstances, apart from the arbitration agreement, that could potentially affect its jurisdiction to hear the case. This would not be a reasonable solution. Instead, the Brussels I rules discipline the parties to promptly decide whether they question the international jurisdiction of the court where they have been summoned. Those rules also prohibit them from second-guessing their jurisdictional defenses.