Polish Supreme Court ruling
dated 16 March 1948
Case No. I C 1260/47

Summary by arbitraz.laszczuk.pl:

One shareholder brought an action in the regional court against two other shareholders, seeking a declaratory judgment that an arbitration provision in the articles of association was invalid. The clause provided that in any dispute among shareholders, regardless of how many were involved, each shareholder had a right to appoint one arbitrator, and those arbitrators would then appoint the presiding arbitrator. The shareholder alleged that the clause violated or excluded the impartiality of the arbitral tribunal, and sought a judgment amending the clause to provide that in any dispute among shareholders, regardless of how many were involved, there could be only two sides; each of the two sides could appoint one arbitrator, and those two arbitrators would appoint a presiding arbitrator.

The regional court set aside a default judgment granting the relief sought, and denied the claim. The Warsaw Court of Appeal affirmed and denied the appeal.

On cassation appeal, the Supreme Court found that the clause in question could indeed favour one side by giving it a right to appoint a majority of the arbitrators. The court accordingly vacated the judgment of the court of appeal and remanded the case for reconsideration.

Excerpt from the text of the court's ruling:

A clause under which one of the parties is given the right to select all or a majority of the arbitrators conflicts with fair practice, as it provides one party an advantage in appointing the arbitrators and subjects the other party to its discretionary power.