

**Polish Supreme Court resolution**  
**dated 28 May 1938**  
**Case Nos. C III 2479/36 and C III 1301/36**

**Summary by arbitraz.laszczuk.pl:**

Pursuant to certified questions, a seven-judge panel of the Polish Supreme Court was asked to rule on whether a cassation appeal would lie from an order of the state court of second instance refusing to appoint an arbitrator, setting or refusing to set an arbitrator's fee, holding an arbitration clause to be expired or denying a claim for such a determination, or on enforceability of an arbitration award or a settlement made before an arbitration court. If so, was there a threshold requirement for the amount in dispute? How should the amount in dispute in such cases, and the court filing fee, be determined?

When the state court issues an order appointing an arbitrator, that is only preliminary to the arbitration proceeding and does not end the proceeding itself. When the state court refuses to appoint an arbitrator, however, the order effectively ends a separate proceeding, and thus a cassation appeal would lie. The same was true for the other types of orders considered by the court.

The court thus issued a resolution holding that a cassation appeal would generally lie from the orders in question, subject to the applicable threshold requirements for the amount in dispute. The court also issued guidelines for calculating the amount in dispute and the court filing fee.

**Excerpts from the text of the court's ruling:**

**1. In a proceeding in the common court, governed by the regulations of Part 1, Book 3 of the Civil Procedure Code, if such book does not provide otherwise the provisions of Part 1, Book 2 of the Civil Procedure Code should be applied as relevant.**

**2. A proceeding commenced upon motion of a party to appoint an arbitrator or a presiding arbitrator is essentially a separate proceeding which is only to prepare the proceeding before the arbitration court. No interlocutory appeal will lie from the appointment of an arbitrator or presiding arbitrator (Civil**

**Procedure Code Art. 485 §2), and thus there may not be a cassation appeal either, as there is no cassation appeal against an order by the court of first instance. However, an interlocutory appeal does lie from the refusal to make an appointment, and a cassation appeal lies from the order of the court of second instance upholding the negative determination of the court of first instance, as from an order ending the proceeding.**

**3. A proceeding upon a motion by an arbitrator to set his fee is also a separate proceeding, based on the arbitration agreement. Both the arbitrator and the parties litigating before the arbitration court may file interlocutory appeals against the order of the court of first instance and cassation appeals against the order of the court of second instance, as from an order ending the proceeding.**

**4. A proceeding commenced upon motion of a party seeking a ruling that an arbitration clause has expired is also a separate proceeding before the common court. Here, the state court rules after hearing the dispute between the parties concerning the effectiveness of the agreement. The order resolving this dispute should be considered comparable to a judgment, and thus the parties have a right to file an interlocutory appeal against the order of the court of first instance and a cassation appeal against the order of the court of second instance.**

**5. Finally, an order on enforceability of an arbitration award or a settlement concluded before the arbitration court also ends a separate proceeding commenced upon motion of a party. ... An interlocutory appeal will thus lie from the order of the court of first instance concerning enforceability, and a cassation appeal will lie from the order of the court of second instance.**

**6. The court filing fee should be charged on a cassation appeal in the cases referred to above in accordance with general rules.**

**7. In these instances, the amount in dispute and the amount of the appeal will be the amount in dispute that would be subject to resolution by the arbitration court.**

**8. In all the foregoing instances, a cassation appeal is obviously permissible only when the amount of the appeal is [at least] PLZ 500 (subject to [Civil Procedure Code] Art. 425 §§ 2 and 3 and Art. XX §1 of the regulations introducing [the Civil Procedure Code]).**