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DOI: 10.15290/mhi.2024.23.01.12

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## **COURT OF ARBITRATION OF THE WARSAW MONEY EXCHANGE (1921–1939)**

### **Abstract**

In recent years, suggestions have been made to create a specialized court for the capital market, which would have jurisdiction over disputes that have arisen between participants in the market, as well as to introduce new special judicial procedures to, among other things, protect investors and streamline the settlement of stock market disputes. These suggestions are primarily due to the recognition of the peculiarities that characterize trade in the capital market (with particular emphasis on the stock market). Economic transactions in the broadest sense of this term are a dynamic phenomenon and, because contractual relationships constantly change and repeatedly form the basis for further transactions, disputes arising under commercial law require the quickest possible resolution.

Therefore, it can be said that trade at stock exchanges is the quintessence of these dynamics and complexities of the legal relationships such trade involves, and this requires even greater efficiency and diligence in protecting the interests of its

participants, including the ensuring of the right of recourse to a court. In addition, the settlement of disputes arising in the capital market requires not only knowledge of procedural law, but, most importantly, expertise in the trade in financial instruments. These issues and the resulting needs were recognized long ago, soon after Poland regained its independence in 1918, when the first exchanges were established on Polish soil to operate under national legislation. The commodity and stock exchange law enacted at the time provided for the need to ensure adequate protection of the interests of exchange members by, among other things, allowing them to assert their rights in courts.

Although the status of the arbitration courts established pursuant to the provisions of the law was unclear, as they were a sort of intermediate solution between a court exercising coercive powers and an arbitral court, they certainly contributed to the implementation of exchange trade participants' right to recourse to a court and to ensure high ethical standards in the conclusion of transactions. One such court operated between 1921 and 1939 at the most important Polish exchange of the interwar period in terms of trading volume – the Warsaw Money Exchange. The purpose of this article is to introduce this institution, also by discussing how the court was appointed against the background of the organization of the exchange and by presenting the scope of competence and the proceedings before the court. The authors also focused on presenting and analyzing data on the activities of the said institution.

**Key words:** arbitration court, exchange, commodity and stock exchange law, interwar period

## 1. Introduction

After Poland regained its independence in 1918, an intensive process of legal unification began. It was also necessary to introduce unified commodity and stock exchange legislation, for until then commodity and money exchanges had operated according to rules taken over from the legislation of the former partitioning powers. In the case of the money exchanges, these were Austrian legislation for the Krakow and Lwow exchanges, German legislation for the Poznan exchange, and Russian legislation for the Warsaw, Lodz, and Wilno exchanges.<sup>1</sup>

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<sup>1</sup> B.P. Marks, *Kwestie etyczne w prawie giełdowym okresu zaborów i pierwszych lat niepodległości Polski (do 1921 r.)*, „Annales. Etyka w Życiu Gospodarczym” 2010, vol. 13, no. 2, p. 74.

To address the need to unify commodity and stock exchange legislation, a parliamentary committee was formed, and on January 22, 1920, a meeting was held at the Ministry of Treasury, attended by representatives of exchanges and chambers of commerce and industry, which resulted in the establishment of a ministerial committee tasked with evaluating submitted draft laws.<sup>2</sup>

The result of the year-long legislative work was the enactment on January 20, 1921, of the Act on the organization of exchanges in Poland<sup>3</sup> (hereinafter also: Act of 1921). Its most important provisions include: the introduction of an exclusive division into money and commodity exchanges (Article 1); the granting of legal personality to exchanges (Article 3); the establishment of an exchange commissioner as a supervisory body representing the government (Article 2); the regulation of the subject of trading (Article 1) and the conditions of exchange membership (Articles 4–6); and the introduction of uniform rules for the internal organization of exchanges.

Pursuant to that act, the Warsaw Exchange was transformed into the Warsaw Money Exchange. The statute of the exchange<sup>4</sup> (hereinafter: the statute of 1921) was drafted and approved by the competent ministers on November 4, 1921. The following changes associated with this transformation were indicated as the most important ones:<sup>5</sup>

1. A limitation of the object of trading (the Warsaw Exchange was a place that brought together all trade in commerce and industry; however, Article 1 of the Act of 1921 established a closed catalogue of values permitted to be traded);
2. A change of the terms and conditions of membership in the exchange;
3. Replacement of the exchange committee with an exchange board and assigning a different scope of authority to the newly created body;
4. Establishment of an arbitration committee.

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<sup>2</sup> M. Puławski, *Dwieście lat minęło. Krótkie opisanie dziejów giełd papierów wartościowych w Polsce*, „Finanse, Rynki Finansowe, Ubezpieczenia” 2017, no. 5 (89), part 2: *Rynki kapitałowe*, p. 177.

<sup>3</sup> Act of January 20, 1921 on the organization of exchanges in Poland, “Journal of Laws of 1921”, no. 13, item 71.

<sup>4</sup> Decision of the Ministers of Treasury and Industry and Trade of November 4, 1921, on approval of the statute of the Warsaw Money Exchange (M.P. 1921, no. 271).

<sup>5</sup> *Giełda Pieniężna w Warszawie. Sprawozdanie za rok 1921*, Publishing House of the Money Exchange in Warsaw, Warszawa 1922, pp. 6–7.

The Act of 1921 was replaced after only a few years by the Regulation of the President of the Republic of Poland of December 28, 1924 on the organization of exchanges<sup>6</sup> (hereinafter: Regulation of 1924). It was argued that the new regulation was needed in order to clarify the provisions of the Act of 2021, which was enacted in exceptional circumstances – in great haste and in the absence of a possibility to use national legislation as a model -<sup>7</sup> and to revise those provisions that did not work in practice. Changes involving, among other things, clarification of the terms and conditions of membership in the exchange and modification of its internal organization<sup>8</sup> required the issuance of a new statute of the Warsaw Money Exchange. The new statute was developed by the exchange board and approved on May 8, 1925 by the Minister of Treasury and the Minister of Industry and Trade.<sup>9</sup>

Thereafter, changes to the commodity and stock exchange law were made only by way of amendments to the Regulation of 1924. These amendments were: the Amending Regulation of 1928,<sup>10</sup> the Regulation on the announcement of the consolidated text of the Regulation of 1924,<sup>11</sup> and, already under the new constitution, the Act on the amendment of the Regulation of 1924<sup>12</sup> Even though some of them were far-reaching, the changes introduced by these acts did not transform the fundamental principles of commodity and stock exchange law since the entry into force of the Act of 1921.<sup>13</sup>

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<sup>6</sup> Regulation of the President of the Republic of Poland of December 28, 1924 on the organization of exchanges, (=”Journal of Laws of 1924”, no. 114, item 1019.

<sup>7</sup> *Giełda Pieniężna w Warszawie. Sprawozdanie za rok 1924*, Publishing House of the Money Exchange in Warsaw, Warszawa 1925, p. 8.

<sup>8</sup> R. Czerniawski, *Statuty Giełdy w Warszawie*, Skorpion, Warszawa 1996, p. 70.

<sup>9</sup> Decision of the Minister of Treasury in consultation with the Minister of Industry and Trade of May 8, 1925, on approval of the statute of the Warsaw Money Exchange, M.P. 1925, no. 116.

<sup>10</sup> Regulation of the President of the Republic of Poland of March 6, 1928 amending certain provisions of the Regulation of the President of the Republic of Poland of December 28, 1924 on the organization of exchanges, “Journal of Laws of 1928”, no. 27, item 250.

<sup>11</sup> Regulation of the Ministers of Industry and Trade, and Treasury and Justice of February 12, 1930 on the announcement of the consolidated text of the Regulation of the President of the Republic of Poland on the organization of exchanges, “Journal of Laws of 1930”, no. 23, item 209.

<sup>12</sup> Act of March 18, 1935 amending the Regulation of the President of the Republic of Poland of December 28, 1924 on the organization of exchanges, “Journal of Laws of 1935”, no. 24, item 163.

<sup>13</sup> M. Puławski, *Dwieście lat minęło*, op. cit.

## 2. Internal organization of the Warsaw Money Exchange

The statutory bodies of the exchange included a general meeting of exchange members, an exchange board, a disciplinary committee, an arbitration committee, and an audit committee.

The general meeting brought together all the members of the exchange. The powers of this body included: appointing the members of the other bodies (except for the members of the disciplinary committee); approving of the closings of the exchange's accounts; approving of the board's requests for the purchase, sale, and encumbrance of the exchange's real estate assets; considering requests brought by the board; and deciding on the dissolution of the exchange (sec. 39 of the statute of 1925 – the previous statute stipulated the same powers except for deciding on the dissolution of the exchange). Ordinary meetings were convened annually to conduct standard activities. It was also possible to convene an extraordinary meeting “in the event of an immediate need” (sec. 34 of the statute of 1921 and sec. 39 of the statute of 1925). Both types of meetings were convened by the president of the exchange board, while an extraordinary meeting required the prior adoption of an appropriate resolution by the board.

The exchange board was a governing body, so its duties included everything related to the conduct of the affairs of the exchange. Both statutes contained a list of over ten specific tasks of the board (sec. 25 of the 1921 statute, sec. 49 of the statute of 1925), which included allowing currency and securities to be traded; admitting members to the exchange and allowing their proxies at the exchange; examining candidates for sworn brokers; appointing members of the disciplinary committee from among its members; and imposing penalties for breach of order. The term of office of the board members was 3 years, and their election had to be approved by the Minister of Treasury. The exchange was represented externally by the president of the board or his deputy.

The role of the disciplinary committee was to “resolve charges of an ethical nature, in particular charges of acts that violate merchant confidence brought against members of the exchange or their authorized representatives” (sec. 56 of the statute of 1925). Individual cases were considered by so-called disciplinary adjudication teams consisting of at least 3 people. The committee had the power to impose

the following penalties: a reprimand; a financial penalty; suspension from membership or substitution for an exchange member; and expulsion from the exchange. On one occasion (in the exchange report for 1924), mention is also made of the functioning of a disciplinary committee for brokers, which considered one case.<sup>14</sup> However, the statute does not contain provisions constituting this body.

The arbitration committee was appointed with 25 (sec. 37 of the statute of 1921) and later 24 (sec. 70 of the statute of 1925) members, from among whom the arbitrators for the court of arbitration were selected. Members of the committee were obliged upon election to take an oath before the president of the exchange board with the following wording:

“I vow that in the position of arbitrator entrusted to me I will contribute to the consolidation of law and justice, that in deciding cases in the arbitration court I will administer justice according to my conscience, without being influenced by partiality, desire for profit, or any other personal considerations, that I will fulfill the duties of my office zealously. So help me God.”<sup>15</sup>

The audit committee had five members. Its tasks included vetting the exchange’s financial statements and balance sheets, and verifying their conformity with the accounting records. The results of audits were submitted by the committee to the exchange board for reading at the ordinary general meeting.

### 3. Court of arbitration

#### 3.1. Mode of appointment and composition of the court

The institution of a court of arbitration for the Warsaw Money Exchange was introduced at the time of establishment of the exchange by the Act on the organization of exchanges in Poland. Its Article 14, and later the analogous provision of the Regulation on the organization of exchanges stipulated:

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<sup>14</sup> *Giełda Pieniężna w Warszawie. Sprawozdanie za rok 1924...*, op. cit., p. 8.

<sup>15</sup> *Giełda Pieniężna w Warszawie. Sprawozdanie za rok 1925*, Publishing House of the Money Exchange in Warsaw, Warszawa 1926, pp. 19.

“for the settlement of disputes arising out of exchange transactions, an arbitration court shall be established exclusively, unless otherwise agreed by the parties in writing, the members of which shall be appointed by the parties from among the members of the arbitration committee.”

Thus, the court of arbitration was not a permanent institution, but it was appointed on an *ad hoc* basis when a dispute arose from among the members of the arbitration committee. The aforementioned provision was further clarified by the relevant provisions of the statutes of the exchange. Sec. 38 of the statute of 1921 provided for the selection of one arbitrator by each party, and sec. 71 of the statute of 1925 provided for the possibility of appointing “in equal numbers, one or more” arbitrators by each party. The president of the panel was elected by the arbitrators. If one of the parties did not appoint an arbitrator or the arbitrators could not agree among themselves on the choice of the president, the power to appoint them passed to the president (vice-president) of the exchange board or its member on duty (sec. 71 of the statute of 1925).

As it turned out, the seemingly clear and uncomplicated provisions raised questions in the doctrine. This was pointed out in the *Przegląd Prawa Handlowego* journal by Henryk Kon<sup>16</sup> who stated that because neither the act nor the regulation provide for a situation in which the defendant does not elect – in accordance with the right it enjoys – a member of the court, the provisions of the statutes that provide for the election of an ex-officio judge contradict these acts. This, in turn, leads to the inability to appoint a court of arbitration whenever the defendant refuses to choose an arbiter.<sup>17</sup> Henryk Kon thus argued that if the legislature wants to uphold the principle of selection of judges by the parties, it should supplement the existing regulation with a provision that allows the competence to designate a judge to pass to the president (or to the vice-president or member on duty) of the board of the exchange. However, arguing that the court in question has all the characteristics of a coercive court, he recommended that this rule should be abandoned altogether, and the selection of judges should be left to the chairman of the arbitration committee.<sup>18</sup>

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<sup>16</sup> A lawyer and a lecturer, a co-editor of the commentary *Prawo o Spółkach handlowych*. From 1925, an editor of the journal „Przegląd Prawa Handlowego”.

<sup>17</sup> H.W. Kon, *Sąd rozjemczy giełdy warszawskiej*, „Przegląd Prawa Handlowego” (hereinafter: PPH) 1925, no. 1, p. 35.

<sup>18</sup> Ibidem.

Henryk Kon's recommendations to amend the provisions of the regulation were supported by Stanisław Wróblewski.<sup>19</sup> However, the latter found the refusal to give effect to the provisions of the statute of the exchange insofar as they provided for the ex-officio selection of an arbitrator to be too far-reaching. In his opinion, the fact that the will of the parties is the decisive factor should be taken into account already at the initial stage, that is, when deciding whether the court of arbitration is to have jurisdiction to settle the dispute at all. This is because, as indicated above, the competence of the court could be ruled out by the prorogation agreement entered into by the parties in writing. Thus, since the tacit consent of the parties subjected the dispute to a settlement by a court of arbitration, Stanisław Wróblewski did not see any problems with the fact that this implied consent also extends to the application of the provisions of the statute (selection of a judge ex officio) if a party does not exercise its right.<sup>20</sup>

Wróblewski's interpretation was reflected in practice and sec. 71 of the statute was applied in the discussed scope. However, the rightful demands to rephrase the wording of sec. 27 of the Regulation on the organization of exchanges were not approved by the legislature – this issue was omitted from the amending regulation of 1928 and the original wording of the provision remained unchanged until the end of the operation of the Warsaw Money Exchange due to the German and Russian attack on Poland in September 1939 (formally, the Regulation on the organization of exchanges was repealed by the Decree of September 21, 1950 on the State Trade Inspection)<sup>21</sup>.

The statutes also provided for the requirement to exclude a judge from considering a case if: he was a party to the dispute or a representative of one of the parties, or the outcome of the case affected his interests; he was a relative of one of the parties; there was another important reason justifying doubts about his impartiality (sec. 40 of the statute of 1921 – section 72 of the statute of 1925 provided for the application of the provisions of the previous statute in this regard).

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<sup>19</sup> A judge, a university teacher, the author of commentaries and textbooks on civil and commercial law. Later also the President of the Supreme Audit Office and the Senator of the Republic of Poland.

<sup>20</sup> S. Wróblewski, *Giełdowy Sąd Rozjemczy a Sąd Polubowny*, PPH 1925, no. 7, p. 375.

<sup>21</sup> Regulation of September 21, 1950 on State Trade Inspection, "Journal of Laws of 1950", no. 44, item 396.



#### 4. Scope of competence

Both the Act of 1921 and the Regulation of 1924, and the statutes of the Warsaw Money Exchange issued pursuant to the two acts, granted to the court of arbitration the authority to settle disputes arising from exchange transactions. The definition of an exchange transaction does not appear only in the statute of 1921. In the other acts, the definitions are identical in content, the one indicated in the statute of 1925, however, is more concisely worded:

“Exchange transactions shall be defined as contracts that have been concluded at the exchange premises and time designated by the Exchange Board (at an exchange meeting), regarding values that are admitted to be traded and quoted at the exchange, and that have been certified by a contract sheet” (sec. 21).

Only members of the exchange (and, on their behalf, their representatives) were entitled to enter into exchange transactions, according to Section 8 of the statute of 1925, so the court of arbitration was competent to settle disputes that arose only between such persons. If a transaction was concluded at the exchange, but involved values other than those admitted to be traded and quoted at the exchange, i.e., securities, bills of exchange, checks, money orders, currency, coins, and precious metals indicated in Article 1 of the Act of 1921 or sec. 3 of the Regulation of 1924, a state court was competent to adjudicate any disputes arising from such a transaction. The requirement to certify the transaction by a contract sheet meant that only contracts entered into through a broker (and not directly by the parties) were subject to the competence of the court of arbitration.

Henryk Kon believed that if a counterclaim is filed by a defendant, the settlement of which will affect the possibility of settling the main action, it is a state court, not the court of arbitration, that should adjudicate both actions.<sup>22</sup> He supported this valid argument by inferring a legal analogy from Article 39 of the Act of November 20, 1864 – Civil Judicial Procedure, which was then in effect in the former Kingdom of Poland,<sup>23</sup> according to which the magistrate should withhold a ruling on the

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<sup>22</sup> H.W. Kon, *Sąd rozjemczy...*, op. cit., p. 38.

<sup>23</sup> W. Nowakowski, *Ustawa postępowania sądowego cywilnego z dnia 20 listopada 1864 roku ze zmianami zaprowadzonemi przez najwyżej zatwierdzone postanowienie z dnia 19 lutego 1875 r. i z objaśnieniami ułożonemi przez Władysława Nowakowskiego. Cz. 1 (Art. 1–201)*, Warszawa 1878.

main action and leave it to the parties to resolve the dispute before a district court in a situation where the counterclaim falls outside the scope of the magistrate's competence.<sup>24</sup>

The amending regulation of 1928 introduced a significant expansion of the competence of the court of arbitration. Pursuant to Article 1 (16) of that regulation, firstly, the court's competence was expanded to include disputes arising from transactions not related to an exchange (i.e., entered into outside the designated exchange premises or time), and secondly, a paragraph was added to sec. 27 of the Regulation of 1924, which reads as follows:

“Disputes between members and non-members of an exchange, insofar as the subject of the dispute involves values authorized at the exchange in question, may be subject to adjudication by the court of arbitration of the exchange, provided that the parties to the dispute have submitted the dispute to the adjudication by this court by written agreement.”

It seems that the addition of this paragraph was a response to a practice, which has been in place for years, where parties to a transaction concluded outside the exchange agreed to arbitration and designated the court of arbitration of the exchange as the court competent to adjudicate the case. This procedure was noticed and described as early as 1925 by Stanisław Wróblewski who, in the aforementioned publication *Giełdowy Sąd Rozjemczy a Sąd Polubowny* [The Exchange Court of Arbitration and a Court of Conciliation] gave an affirmative answer to, among others, the question of whether the court of arbitration can consider a matter outside its competence, which is submitted to it only on the basis of the consensual will of the parties (and there is no statutory provision prohibiting the consideration of that matter by the court of arbitration).<sup>25</sup>

The author emphasized that his considerations mainly concerned the legal status prevailing in the territory of the former Austrian partition, but there did not seem to be any obstacle to the application of this practice also on the grounds of the legislation in force in the territory of the former Russian partition. In any case, any doubts in this regard were dispelled by the 1928 amendment.

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<sup>24</sup> Ibidem, p. 43.

<sup>25</sup> S. Wróblewski, *Giełdowy Sąd Rozjemczy...*, op. cit., p. 378.

The changes introduced by the Regulation were positively assessed in the exchange report for 1928, where, due to the expansion of the authority of the court of arbitration, a prediction was made that, among other things, the number of cases heard by the court would increase and that this would contribute to “a more accurate and robust discharge of transactions.”<sup>26</sup> It is not known how the amendment affected reliability in contract performance, but one can certainly say that it did not contribute to an increase in the number of lawsuits brought before the court of arbitration in subsequent years. Indeed, according to data presented in annual exchange reports, the number of cases heard by this court between 1929 and 1938 was no more than 20 per year.<sup>27</sup>

## 5. Proceedings before the court of arbitration

The commodity and stock exchange legislation regulated only certain procedural issues. Accordingly, in the proceedings before the exchange court of arbitration, the provisions of the relevant acts regulating the civil procedure had to be applied to the remaining issues. With respect to the Warsaw Money Exchange, until 1933 the applied law was the aforementioned Act of November 20, 1864 on the judicial procedure.

Admittedly, the relevant provisions of the Act of 1921 (Article 14) and the Regulation of 1924 (Section 28) provided for the application of the provisions of legislation in force in former partitions only with regards to the validity and enforceability of rulings of the court of arbitration, but there are no grounds for denying the act’s applicability also in the remaining scope necessary to ensure a proper procedure. In 1930, after more than a decade of legislative work, the Regulation of the President of the Republic of Poland – the Code of Civil Procedure<sup>28</sup> was enacted, and came into force on January 1, 1933; from then on, it was the law applicable to proceedings before the court of arbitration of the Warsaw exchange.

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<sup>26</sup> *Giełda Pieniężna w Warszawie. Sprawozdanie za rok 1928*, Publishing House of the Money Exchange in Warsaw, Warszawa 1928, p. 14.

<sup>27</sup> The exact statistics on the number of cases handled by the court of arbitration in each year of the operation of the Warsaw Money Exchange are given further in this article.

<sup>28</sup> Regulation of the President of the Republic of Poland of November 29, 1930 – Code of Civil Procedure, “Journal of Laws 1930”, no. 83, item 651.

Section 28 of the Regulation of 1924 stipulated that proceedings before the court of arbitration were open to members of the exchange and to those who took their place in the exchange. However, the openness could be ruled out in special cases.

Henryk Kon, already mentioned herein, pointed out two fundamental flaws in the solutions provided for proceedings before the court of arbitration by the commodity and stock exchange legislation. The first was the finality of the judgments issued in the first instance.<sup>29</sup> Both Section 27 of the Regulation of 1924 and Section 72 of the statute of the exchange issued thereunder stipulated that appeals against the verdicts of the court of arbitrations were inadmissible. It is known that, due to the dynamics of the relations and the volatility of the market values, disputes arising from exchange transactions should be resolved as quickly as possible. However, this is not a sufficient reason to deprive a party of the right to appeal the judgment. Another serious shortcoming, in Henryk Kon's opinion, was the legal loophole associated with the fact that a time limit for the court of arbitration to hear a case and issue a verdict was not set (either in the act or in the regulation), which, in extreme cases, could lead to the deprivation of a party's right to resort to a court.<sup>30</sup>

## 6. Activities of the court of arbitration from 1922 to 1938

The major part of the information on the activities of the court comes from the exchange reports prepared annually. Unfortunately, there too one does not often come across a more detailed description and analysis of the cases handled in a given year. As a rule, the paragraph in the report devoted to the court of conciliation only provides statistics on the number of the handled lawsuits and the hearings allocated for this purpose, as well as indicates how many of the proceedings ended with an amicable settlement and how many had to end with the court's judgment. The chart below (Chart 1) covers the years from 1922 to 1938, since the Act of 1921 became effective 6 months after the date of its promulgation (Article 24), and the exchange was not transformed (from the Warsaw Exchange to the Warsaw Money Exchange) until the end

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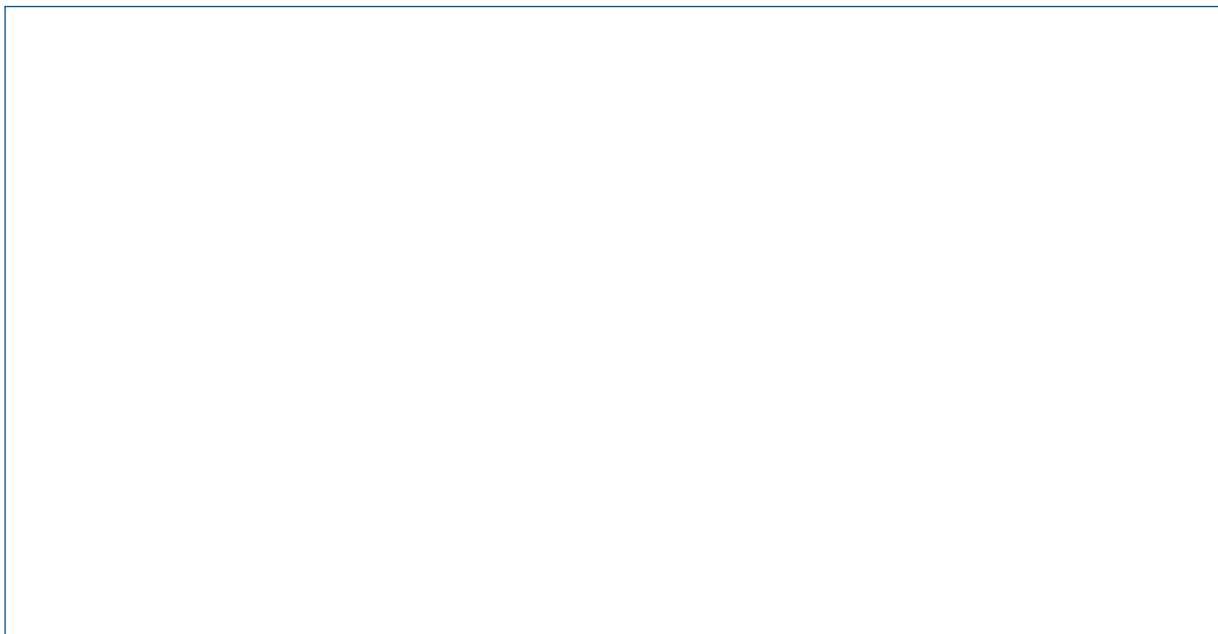
<sup>29</sup> H.W. Kon, *Sąd rozjemczy...*, op. cit., p. 43.

<sup>30</sup> Ibidem.

of the year.<sup>31</sup> For obvious reasons (the outbreak of World War II), there is also no data for the last months of operation of the exchange.

One can clearly see that the court of arbitration was most active in the first three years of the operation of the exchange. Thereafter, the number of processed cases dropped sharply and remained at a low level until the end of the operation of the exchange (despite the lack of data, it is difficult to expect that in the first half of 1939 the number of adjudicated cases was dramatically different from previous years).

**Chart 1.** The activities of the court of arbitration of the Warsaw Money Exchange from 1922 to 1938



Source: prepared by the authors on the basis of the reports of the Warsaw Money Exchange for the years 1922–1938.

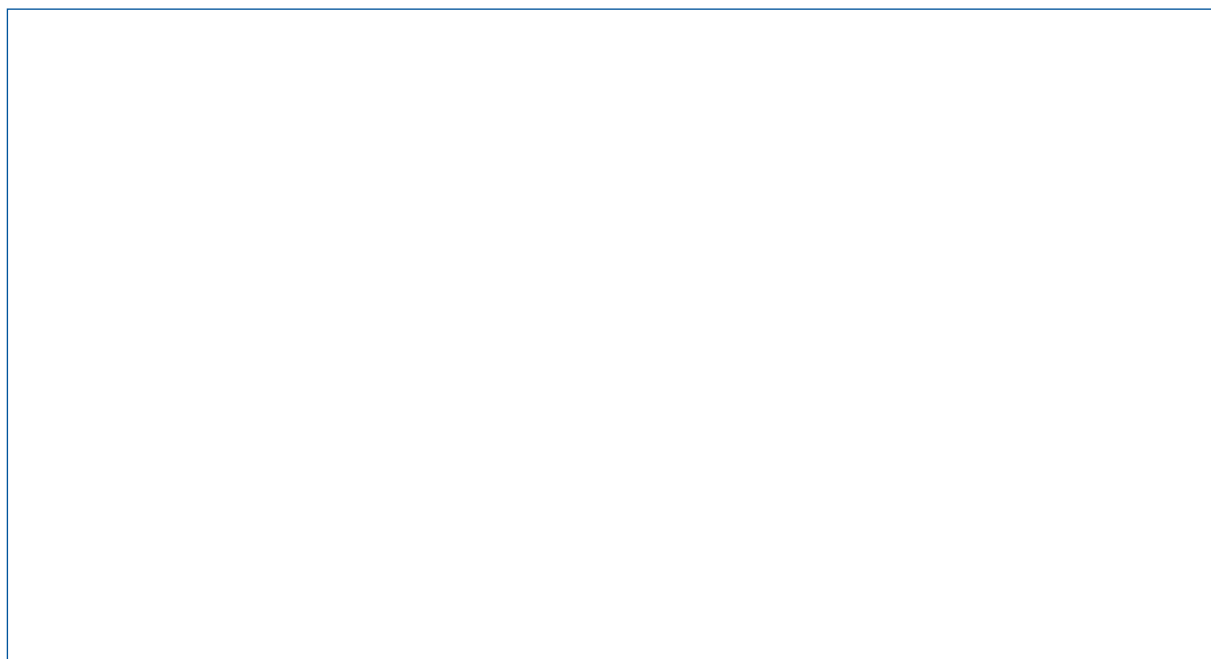
The causes of this situation can be found primarily in the country's economic situation, which was directly reflected in the intensity of trading at the exchange. On the other hand, the number of transactions concluded at the exchange was in a way reflected in the number of disputes arising from those transactions. The beginning of the third decade of the 20th century was a period of tumultuous economic transition and of the intensive reconstruction of the country after 123 years of partitions that ended with the 1st World War. The exchange reports from 1922–1924 almost alternately

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<sup>31</sup> *Giełda Pieniężna w Warszawie. Sprawozdanie za rok 1921...*, op. cit., p. 8.

discuss optimistic sentiments related to, among other things, the reduction of the national debt,<sup>32</sup> and the crisis associated with hyperinflation.<sup>33</sup> At the time, however, Poland was constantly establishing new business contacts, and experts wrote of “increased migration of companies”<sup>34</sup> and of a sharp increase in stock prices.<sup>35</sup> All this caused a significant increase in the volume of trade in currencies and dividend securities,<sup>36</sup> as shown in Chart 2:

**Chart 2.** Number of transactions concluded at the Warsaw Money Exchange from 1922 to 1938



Source: prepared by the authors on the basis of the reports of the Warsaw Money Exchange for the years 1922–1938.

As we can see, 1923 and 1924 brought the highest numbers in terms of the number of transactions concluded at the exchange. This increase corresponds to the number of cases handled by the court of arbitration in those years. After another severe crisis of 1925, the years 1926–1928 were a period of relative stability in the country’s

<sup>32</sup> *Giełda Pieniężna w Warszawie. Sprawozdanie za rok 1922*, Publishing House of the Money Exchange in Warsaw, Warszawa 1923, p. 3.

<sup>33</sup> *Giełda Pieniężna w Warszawie. Sprawozdanie za rok 1923*, Publishing House of the Money Exchange in Warsaw, Warsaw 1924, passim.

<sup>34</sup> M. Paneth, *Giełdy Pieniężne*, in: M. Dąbrowski, P. Lot, eds., *Dziesięciolecie Polski Odrodzonej. Księga pamiątkowa 1918–1928*, Warszawa–Kraków 1928, p. 1125.

<sup>35</sup> *Giełda Pieniężna w Warszawie. Sprawozdanie za rok 1922...*, op. cit., p. 3.

<sup>36</sup> Ibidem.

economic situation and brought hope for fast economic growth. However, this hope turned out futile as early as 1929, when the greatest economic crisis in history broke out (in Poland it continued actually until 1936), after which the economy was unable to fully recover due to the outbreak of World War II. This downward trend was clearly reflected in the limited activities of the court of arbitration.

A completely different issue that can be pointed out by analyzing Chart 1 is that in the first year of operation, the court of arbitration needed significantly more hearings to adjudicate the same number of cases than in the subsequent years. In 1922 there were on average more than 2 court sessions per case (123/53), while in the subsequent years the average number was less than 1.5. This was probably due to the fact that the newly formed body gradually gained experience in resolving disputes concerning specific subject matter.

## 7. Conclusion

In the interwar period in Poland, the institution of a court of arbitration was a novelty in the organizational structure of exchanges. It is therefore not very surprising that certain issues related to its functioning (in particular, the appointment of its arbiters) raised questions in both the doctrine and practice. The role of the legislator in such situations is to appropriately respond and adapt the legislation to the market conditions. In this regard, it should be acknowledged, on the one hand, that the Polish legislator was able to respond efficiently to some of the practices followed by exchange participants (such as the provision on arbitration outside the competence of the conciliation court designated by the act) and to make appropriate amendments and the relevant legislation, while, on the other hand, it should be noted that it remained passive in the most questionable cases. However, this inactivity did not significantly affect the activities of the court of arbitration of the Warsaw Money Exchange – recourse to functional interpretation by representatives of the doctrine and the practice formed in this regard made it possible to adopt provisions in the statute of the exchange that corrected the shortcomings of the law.

The very idea of establishing a court of arbitration should be considered right. This is because the legal relations which entered into in the framework of exchange trading are characterized by complexity and dynamics, and specialized knowledge

is needed to properly resolve the disputes that arise therefrom. Unfortunately, this idea encountered insurmountable external obstacles, primarily the Great Depression and World War II, which hindered or prevented the operation of this institution, making it impossible to give a clear opinion about its performance in the long term. However, from the available data it can be concluded that the court of arbitration of the Warsaw Money Exchange performed its role adequately. This is because, as emphasized several times in annual reports, it consistently contributed to ensuring integrity in the performance of obligations and maintaining high ethical standards in the trade conducted at the exchange.

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## ► SUMMARY

### **The Court of Arbitration of the Warsaw Money Exchange (1921–1939)**

The purpose of this article is to present the institution of the court of arbitration, which existed in the years 1921–1939 at the Warsaw Money Exchange. In the first part of the article the authors focused on providing an overview of the historical and legal context of the establishment of this institution. They discussed the commodity and stock exchange legislation in force during the interwar period in Poland and the provisions of the statute of the exchange that are relevant to the topic under discussion. Further in the article the authors addressed the fundamental issues related to the internal organization of the exchange and the functioning of its various bodies. The institution of the court of arbitration was comprehensively analyzed: the authors describe the mode of appointment and composition of the court while noting the doubts raised by the inexact drafting of the provisions of the relevant act, discuss the procedural issues, and examine the activities of the institution.

The discussion presented in the article allows us to make some important observations. Firstly, the very idea of establishing a court of arbitration was a commendable idea, as it stemmed from a thorough knowledge of the conditions under which an exchange operated and from a recognition of the need to ensure high standards and security of trading. Despite extremely difficult external conditions (critical economic situation,

economic stagnation), the court provided adequate protection for the rights of the parties to exchange transactions until the outbreak of World War II. Secondly, the unique conditions under which the legislative process for commodity and stock exchange legislation took place resulted in certain inaccuracies and loopholes. Sometimes the legislature recognized and eliminated these deficiencies. Sometimes, however, flawed regulations were overlooked and continued to operate in the legal system for many years. Thirdly, despite the sluggishness of the legislature, the doctrine and the practice made it possible to develop appropriate mechanisms to ensure the proper functioning of the court of arbitration.