SPANISH CONSUMPTION ARBITRATION REGULATION: PROBLEMS AND SOLUTIONS

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I. Introduction

The Spanish consumption arbitration, extra judicial system of disputes resolution, created by Royal Decree 636/1993, dated 3 May has been used by consumers or users during the past two decades, having supposed a successfully method of disputes resolutions which has avoided bringing a lawsuit to judicial courts. The aim of this paper is firstly, to provide a brief description of the Spanish consumption arbitration system, considering its past and present regulations. Secondly, to emphazise the current extrajudicial system advantages for disputes resolution. Thirdly, to describe current consumption arbitration problems the optional or voluntary nature of this method as the principal difficulty for its success has been pointed out. Fourthly, to suggest some modifications of the current consumption arbitration regulation in order to increase the number of professionals and companies submitted to this disputes resolution system. Finally, we comments will be provided on the results of a Public Administration's campaign designed to encourage professionals and companies to join this system.

II. Consumption Arbitration Laws in Spain

In Spain, consumption arbitration was established by Royal Decree 636/1993, dated 3 May as an extrajudicial disputes resolution system which resolves differences between consumers or users and professionals or companies; nowadays, this procedure is regulated by Royal Decree 231/2008, dated 15 February.

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Pursuant to Article 1 of Royal Decree 231/2008, this conflicts resolving method can be used by consumers or users[1] and professionals or companies,[2] enabling the mentioned consumers and users to use this method in order to solve a controversy against a professional or company. However, professionals or companies are not authorized to start consumption arbitration against a consumer or user.

Since the establishment of this system, consumers have used this procedure to solve their disputes, making this method a considerable success. In 1993, in the Community of Madrid there were 3,580 controversies decided using this method while in 2011 the figure increased up to 20,360.

Advantages

The advantages of consumption arbitration have led consumers to solve their disputes with professionals, because of the following features of the procedure:

1. In accordance with article 41 of Royal Decree 231/2008, there are no costs for the parties involved in an arbitration case.
2. Pursuant to article 49 of Royal Decree 231/2008, the Consumption Arbitration Board is obliged to take a decision in a maximum period of 6 months.
3. The arbitration solution can be adopted by applying the law or by an equity decision, and the arbitral award is to be compulsory obeyed by both parties. According to article 1 of Royal Decree 231/2008, this award has the same effectiveness as a judicial sentence.

III. Problems and Solutions

Despite the great progress of this disputes resolution method, some conditions of this system could be modified in order to improve this procedure. Since no

1 This concept is defined by the article 3 of the Consolidated Text of the General Act on the Protection of Consumers and Users (Legislative Royal Decree 1/2007, of 16th November) as the natural person or company that is acting for purposes which are not related to his trade, business or profession.

2 This term is described, according to the article 4 of such Legislative Royal Decree1/2007, as the natural person or company, public or private, that is acting regarding his trade, business or profession.

minimum amount required to be submitted in a controversy through this system of disputes resolution, some awards have solved cases where the amount was lower than the costs of the consumption arbitration. Hence, I would recommend denying the use of this system in case of claims where the amount may not exceed the cost of the procedure (arbitrary fees, notifications, etc.). For example, the Consumption Arbitration Board of Aragon has decided on claims where mail expenses have been larger than the amount of the case. In one of these claims, consumers demanded the refund of improper incurred payments of 879 Euros (1085 U.S. Dollars[3]) or 965 Euros (1208 U.S. Dollars[4])[5].

The draft of Royal Decree 231/2008 established the prohibition of committing a consumption arbitration claim in case of a paltry amount. There are authors who talked of the inconvenience of this proposal. For example Marcos Francisco does not agree with the possibility of not admitting a request because of economic rights affectation with an insignificant value, principally due to the fact that the decision of not admitting that request would rely on the Consumption Arbitration Board President's opinion.[6] From my point of view, the formulation of this rule would have been highly useful by virtue of avoiding the existence of cases where amounts do not exceed the costs of the procedure. In any case, this proposal was finally refused and was not included in the final version of the adduced Royal Decree.

Despite the problem regarding consumption arbitration cases of paltry amount, it seems to me that the main difficulty of this disputes resolutions system is its voluntary nature. According to Garcia Gomez this impossibility of configuring the consumption arbitration as an obligatory method stems from

3 According to the value of the U.S. dollar on December 16, 2003.

4 According to the value of the U.S. dollar on February 4, 2004.

5 These two cases are included in the following document: *Junta Arbitral de Consumo de Aragón, Cuadernos de Consumo,* 107-108 & 125-126 (2008); *available athttp://www.aragon.es/consumo/bibliodigital/32967.pdf* (last visited June 3, 2012).

6 Diana Marcos Francisco, *El Arbitraje De Consumo y Sus Nuevos Retos,* 173, (2010).

article 24 of W Spanish Constitution.[7] [8] Concerning this opinion, the Spanish Constitutional Court's judgement 174/1995, of 23-11, configured article 38.2 of the Law 16/1987, dated 30 July, on the Land Transport, as an unconstitutional rule because, according to the court, this article (which created the necessity of committing to a special arbitration cases of an amount lower than a determined quantity) violates articles 24.1 and 117.1[9] of the Spanish Constitution.

In accordance with article 37 of Royal Decree 231/2008, a consumer or user cannot force a company or professional to solve a controversy between these parties in case the professional or the company does not agree to solve this dispute through the mentioned system. The professional or company can agree to submit to this method and all controversies arising with consumers or users, while being compulsory obliged to stand consumption arbitration for any claim filed by a consumer or user. Apart from this possibility, a professional or a company which has not previously accepted to undergo this system, can authorize to solve a single case by this method in case a consumer or user requires the resolution of a specific problem arisen between these litigants.

IV. Suggestions to Modify Consumption Arbitration Regulation

A professional or company decision of accepting to stand consumption arbitration for any claim filed by a consumer or user would have positive consequences as this agent would be capable of increasing the credibility of the

7 Article 24 of the Spanish Constitution says thus:

1. Every person has the right to obtain the effective protection of the Judges and the Courts in the exercise of his or her legitimate rights and interests, and in no case may he go undefended.

2. Likewise, all persons have the right of access to the ordinary judge predetermined by law; to the defence and assistance of a lawyer; to be informed of the charges brought against them; to a public trial without undue delays and with full guarantees; to the use of evidence appropriate to their defence; to not make self incriminating statements; to not declare themselves guilty; and to be presumed innocent. The law shall determine the cases in which, for reasons of family relationship or professional secrecy, it shall not be compulsory to make statements regarding alleged criminal offences.

8 Ramón García Gómez, 1 *El convenio arbitral de consumo,* Homenaje al Profesor Mariano Alonso Pérez, *Arbitraje de consumo y justicia material, Estudios de derecho de obligaciones* 789 (2006).

9 Article 117.1 of the Spanish Constitution: Justice emanates from the people and is administered on behalf of the King by judges and magistrates of the judiciary who shall be independent, irremovable, and liable and subject only to the rule of law.

trade and it would develop the brand image and improve the reputation among the costumers. However, sometimes, all these advantages are not considered enough by the professional or the company to decide to undergo this method. A successful arbitration consumption needs the adhesion of a high amount of professionals and companies (this fact has been emphasized by the authors; as Lara Gonzalez has pointed out, an arbitral consumption system would not be efficient "in case it has not the confidence of professionals"[10]). Concerning this subject, I would recommend introducing some modifications into consumption arbitration regulation in order to increase the number of professionals and companies submitted to this conflict resolution system:

1. By implementing public aids to professionals and companies (which agree to this method of resolving disputes) these agents would find direct monetary resources for accepting consumption arbitration.

2. Public administration giving priority to contract with those companies and professionals who have accepted the consumption arbitration system, would enforce this system as an enterprise strategy to win public sector tenders.

3. A fiscal tax benefits policy stimulating professionals and companies to admit this system would move these agents to accept it due to the saving of money that carrying out this decision can suppose.

Apart from these three mentioned suggestions, active campaigns promoted by public administrations and encouraging professionals and companies to follow this system have increased the number of these agents jointed to the consumption arbitration. In 2003 the City Council of Cordoba developed a campaign encouraging professionals and companies to adhere to the Arbitrate Consumption. 409 of these agents were visited and had been suggested to accept this system and the adhesion of 289 of them was authorised.[11] These results show that an active performance of public administrations can increase the number of professionals and companies added to this system, helping consumers or users to take advantage of consumption arbitration.

10 Rafael Lara González, *La importancia de la participación de los empresarios y de sus entidades representativas en el Sistema Arbitral de Consumo, Aranzadi civil: revista doctrinal,* 2258, (2005).

11 Study available at *http://www.consumo.ayuncordoba.es/secundarias/sae/estad_SAE_2003.aspx* (last visited June 3, 2012).

THE MODEL OF CONSUMER ARBITRATION COURTS IN POLAND

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I. Introduction

Obtaining adequate legal protection for the consumer is one of the foundations of modern standards of consumer law. Recognition and resolution of consumer disputes jointly creates the consumer protection system, which has three dimensions: (a) substantive - referring to the substantive law in the field of consumer sales,[1] (b) institutional - associated with the activities of various institutions and bodies dealing with the protection of consumer rights, (c) procedural - expressed in the judicial and non-judicial methods (present in the legal system) of dispute resolution involving the consumer.

The main issue in this regard is to determine the extent, in an unquestionable manner, in which there appear such terms as "consumer", "with the participation of the consumer", etc. In the Polish legal system (under article 22^1 of the Act of April 23, 1964 - the Civil Code) consumer is a natural legal person who is acting in law outside the sphere of business activity other words, and is a person performing legal acts not directly related to his trade or profession. According to T. Sokolowski, the functional definition of the consumer takes as a starting point the economic role played by the individual within the given time and situation (such a person may then act as a trader in a different situation).[2]

The definition of the consumer derived from article 22^1 of the Civil Code contains four elements. Firstly, only a natural person can be a consumer; secondly, the person must be performing a legal act; thirdly, this action remains in a specific relationship with the social role of the person; and fourthly, the addressee of the declaration of intent (the addressee of the legal action) is a trader.[2]

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1 The Act on the Specific Conditions of Consumer Sale and on Amending the Civil Code July 27, 2002 (*Journal of Laws* [Dz.U.] No. 141, item 1176, as amended).

2 Sokołowski, T. Komentarzdo art. 22 (1) Kodeksucywilnego [in:] Kodekscywilny, Komentarz (ed. A. Kidyba), Volume I, Częśćogólna, bazaelektron. LEX (2009).

The fourth element fully deserves the approval it has gotten. It is necessary to firmly reject the views suggesting that the status of the consumer in the Polish legal system is vital for the degree of legal protection too in the case of bilateral activities in which both parties are non-professionals.[3]

The introduction of a too-broad scope of the term "consumer" would have marginalized the civil laws that apply to legal transactions between persons not running a business activity, or engaged in activities outside the sphere of the course of his business or professional activity.

II. The Scope of Operation and the Status of Consumer Arbitration Courts

In Polish law, an arbitration court is a private court called by the will of the parties who entrust the settling of their legal dispute in arbitrators designated by them. Arbitration is based on the contract allowed by the authority of the state and deals with disputes between the parties of private or public law.[4] A characteristic feature of this alternative form of dispute resolution is, first and foremost, the position of a third party in activities aiming to resolve the dispute and their having their competence to rule on the matter. In the case of arbitration, the third party (or parties) has the ability to issue such a resolution of the dispute (binding or non-binding on the parties), while in other methods of dispute resolution third parties do not have such a power. Their purpose is merely to help the parties find a satisfactory resolution of the dispute and therefore the decision is in the hands of the parties in conflict.

It must therefore be assumed that, in the narrow sense, the "consumer arbitration" (i.e. relevant consumer arbitration) is a private and informal method of resolving consumer disputes by an arbitration body acting on the basis of the agreement between the parties, according to the rules agreed by the parties or statutory rules, completed by the release of the final decision, and binding for the parties.[5]

In the current Polish legal system there operate a number of courts that can cognize cases involving consumers, if they have arbitration eligibility. The latter

3 See: e.g. K. Kruszewska-Sobczyk, M. Sobczyk, Niedozwoloneklauzule w umowachzawieranychprzezkonsumenta, RadcaPrawny 109 (No 4/2004).

4 T. Ereciński, K. Weitz, S¹d arbitra¿owy, Warsaw 13 (2008).

5 K. Gajda – Rozczynialska, op. cit., http://arbitraz.laszczuk.pl/_adr/52/Alternatywne_metody_rozwiazywania_sporow_konsumenckich_-_arbitraz__wybrane_zagadnienia__cz._III_.pdf

("arbitration eligibility") is a relatively new concept in Polish subject literature. This term defines the feature of the case (the dispute) that allows it to be passed by the parties to be resolved by the arbitration court, and therefore to be subject to its jurisdictional powers as a result of the drawing up of the arbitration clause.[6]

In a general way, relating to all civil cases, this problem is settled by the provisions of article 1157 of the Civil Code, according to which, unless a specific provision decides otherwise, the parties may submit to arbitration disputes concerning property rights or non-property rights - which may be the subject of a court settlement, except for the cases of child support. Thus, we can say that as a general rule (except the indicated alimony) arbitration eligibility is a derivative of settlement eligibility. The latter does not feature in the cases in which - due to the fact that they are not available to the parties, in whole or in some part - it is impossible to settle; these include matters relating to non-pecuniary matrimonial relationships, issues related to parental authority, matters of marital status, as well as matters relating to social security.

In consumer cases relating to their individual interests there undoubtedly is arbitration eligibility, but these issues may not always be recognized by the arbitration court. This applies directly to article 385, paragraph 23 of the Civil Code, according to which, in case of doubt, it is believed that unlawful contract terms are those which exclude the jurisdiction of the Polish courts or submit the matter to be resolved in a Polish or foreign arbitration court, or any other authority, and also impose the examination of the case by the court which, according to the local law, is not competent in terms of the location. Thus, if the arbitration clause is deemed an illegal contract term,[7] then the consumer case will be deprived of the arbitration eligibility.

Returning to the main issue of the status of these courts, as mentioned already, arbitration courts determine their jurisdiction in consumer matters on two levels:

a) General - which is mentioned in the Act creating the court - or in the Act of generally applicable laws (such as the implementing regulation to the Act), or in the statute that shapes the rules for the functioning of the court; and W

6 T. Ereciński, K. Weitz, op. cit., p. 116.

7 The unfair contract provisions are the terms of the contract signed with the consumers who are not agreed upon individually. They do not bind him, if they shape his rights and obligations in a manner contrary to good custom, grossly violating his interests (art. 385, par. 1 of the Civil Code).

b) Detailed - contained in the arbitration clause. As L. Błaszczak and M. Ludwig emphasize, the arbitration agreement has two main legal consequences in the area of competency included in the field of procedural law; namely, a positive result, which is to grant the arbitration court the powers to resolve the dispute under the agreement.There is also a negative effect, that is the exclusion of the state court from the dispute resolution if, contrary to the arbitration agreement, the party is taken to a national court and before the dispute concerning the merits of the case will raise their duly substantiated allegation that the settlement of the dispute in the competence of the arbitration court.[8] It is worth noting that if a permanent court of arbitration is indicated in the arbitration clause as competent to resolve the dispute, procedures in this court are run according to the rules and conduct agreed upon by the parties (article 1184 § 1 of the Civil Code). Only if the parties do not agree on the rules and procedures, are they bound by rules of a permanent arbitration court of the contents as those in force at the date of conclusion of the arbitration agreement. However, as indicated by A. Zielinski, in the event of changes in the rules of the permanent court of arbitration after the conclusion of the arbitration clause the parties may agree to the application of the court's current rules of proceedings.[9]

Thus, the status of consumer arbitration courts is determined on the one hand by the decision-making act of a public authority (acts of law, implementing regulations), which is a unique situation with regard to arbitration, and on the other hand – the act of will of the parties, which is the foundation for the creation of arbitration courts (arbitration clause). Without the latter, it is impossible to speak of the existence of forms of dispute resolution of a voluntary nature.

III. The Catalogue Of Specialist Consumer Courts Of Arbitration Acting In Polish Legal System

With regard to the permanent arbitration courts cognizing consumer cases, the aforesaid general area (referring to the will of the legislature) is particularly important from a methodological point of view as it allows for the emergence of two main types of such courts found in the Polish legal system:

8 Ł. Błaszczak, M. Ludwig, *Sądownictwopolubowne (arbitrażowe*120 (Warsaw 2007).

9 A. Zieliński [in:] *Kodekspostępowaniacywilnego*. Komentarz, ed. A. Zieliński 1758 (Warsaw 2009).

a) courts, which cognize consumer-related cases only;

b) courts, before which cases brought by the consumer are just one of the types of cognized cases.

The first category includes:

1) Permanent consumer arbitration courts operating at the Trade Inspection which deal as a principle with the overall aspects of consumer disputes except those that are specifically excluded by law from their cognition. These courts do not settle disputes relating to energy and financial services (provided by companies such as investment funds, pension funds, brokerage houses and banks) or the postal and telecommunications services. They also do not deal with scientific research services, education services or health and social care services. There is no doubt that they constitute a consistent solution model, which can be an effective subsystem of the developed system of cognizance of different types of consumer cases.

2) Permanent consumer arbitration courts at the President of the Office of Electronic Communications, established in accordance with article 110 of the Act of July 15, 2004 - Telecommunications Law[10], on the basis of agreements on organising such courts, signed by the President of the OEC and non-governmental organizations representing consumers, telecommunications companies and postal operators. The administrative costs of arbitration courts' functioning is covered by the President of the OEC. These agreements specify in detail the principles for covering the costs of the arbitrators' compensation and reimbursement of expenses incurred in connection with the performance of arbitration operations. The Minister of Justice, with regard to the principles of independence, transparency, adversarial representation and the efficiency and specificity of telecommunications and postal affairs, in consultation with the minister responsible for communications, determines, by regulation, the rules of organization and operation of arbitration courts at the President of OEC, including the internal organization of arbitration courts, arbitration courts functioning mode, administrative and jurisdiction operations of the arbitration courts and their bodies, requirements for competence and impartiality of arbitrators.

10 Journal of Laws [Dz.U.] No. 281, item 2794, as amended.

Arbitration courts, referred to herein, cognize the following disputes: property rights arising out of contracts for the provision of telecommunications services, including the provision for the connection to the public telecommunications network concluded between consumers and telecommunication companies, as well as property rights arising out of contracts for the provision of postal services.

3) The Arbitration Court at the Insurance Ombudsman is based on article 20, item 5d of the Act of May 22, 2003 on the supervision of insurance and pensions and on the Insurance Ombudsman,[11] which imposes an obligation on the Ombudsman to organize arbitration courts to resolve disputes between pension funds and members of pension funds and disputes resulting from participation in occupational pension schemes. The court adjudicates in disputes over property rights arising from the insurance relationship between: (a) the insuring, the insured, the endowed or entitled to the insurance and the insurance company, (b) entities entitled to vindicating claims for compensation or benefits from the Insurance Guarantee Fund and the Insurance Guarantee Fund, (c) the parties who are entitled to the claim for compensation or benefit from the Polish Motor Insurers' Bureau in the cases referred to in article 123, items 1, 2 and 5 of the Act of May 22, 2003 on Compulsory Insurance, the Insurance Guarantee Fund and Polish Motor Insurers' Bureau.[12]

The court at the Insurance Ombudsman also cognizes the disputes: (a) between members of pension funds or persons entitled to receive the funds in the event of the death of the pension fund member and the General Pension Societies, (b) between the participants of occupational pension schemes or persons entitled to receive the funds in the event of the death of an occupational pension scheme participant and the entities carrying out occupational pension schemes, (c) between the insuring, the insured, the endowed or entitled in insurance contracts and insurance agents, (d) the endowed or entitled in insurance contracts and insurance brokers.

4) Another example is the Consumer Banking Arbitration at the Polish Banks Association (the Banking Arbitrator.) Its purpose is to resolve disputes between consumers (bank customers) and banks in the scope of monetary claims for non-performance or improper performance of the bank's banking

11 Journal of Laws [Dz.U.] No. 124, item 1153, as amended.

12 Journal of Laws [Dz.U.] No. 124, item 1152, as amended.

activities or other consumer-related activities. In accordance with the Arbitration Rules[13] the subject of proceedings before the Banking Arbitrator may only be the disputes between consumers and banks which are members of the Polish Banks Association, created after July 1, 2001 and where the amount in dispute is not more than 8000 PLN. In addition, the subject of the proceedings before the Banking Arbitrator may also be disputes between consumers and banks that are not members of the Polish Banks Association but made a statement that they submit to the Banking Arbitrator and to the execution of its judgments. Excluded from its jurisdiction are matters relating to the services of the Treasury, in particular the housing books and mortgages subsidized from the budget. It should be noted that, in accordance with the Regulation of the Minister of Finance issued on the basis of article 63g of the Act of August 29, 1997 – Banking Law,[14] arbitration is appropriate in situations where the parties have not drawn up an arbitration clause, and there is a request from an authorized person to cognize the case against the banks and intermediary institutions in the field of cross-border transfers, unless the defendant party objects to it no later than as a response to the lawsuit. Similar regulations are contained in article 69 of the Act of September 12, 2002 on electronic payment instruments[15] as to matters relating to the issuance and use of electronic payment instruments.

It is worth remembering that the Banking Arbitrator's status is not unambiguous, because, on the one hand, in accordance with the provisions of § 3. 2 of the Regulation, the proceedings before the Banking Arbitrator are not arbitration courts proceedings under the provisions of the Code of Civil Procedure. On the other hand, the powers of the arbitrator in these proceedings are the same as the powers of arbitration courts, because under the regulation of § 20, paragraph 1 of the Regulations, the Banking Arbitrator, after the cognizance of the issue in a closed session or after the hearing, issues a decision. Banking Arbitrator's rulings are final for the bank, and as a consequence, the bank is obliged to carry out the Banking Arbitrator's decision no later than within 14 days of receiving the ruling transcript. However, they are not definitive for the consumer, who can, in order to assert a claim, bring an action before court.

As indicated in the introduction, lying in another much broader category (ad. b)) are those permanent arbitration courts, or courts of professional liability,

13 *http://www.zbp.pl/photo/nor4/RegulaminBAK.doc.*

14 Consolidated text.*Journal of Laws* [Dz.U.] (No. 72, item 665, as amended, 2002)..

15 Journal of Laws [Dz.U.] No. 169, item 1385, as amended.

for which disputes involving the consumer within the meaning of article 22 of the Civil Code are only part of their judicial function. The following need to be distinguished in this group:

1) The Arbitration Court at the Financial Supervisory Commission which is a permanent court of arbitration competent to deal with disputes over property rights and non-pecuniary rights that may be the subject of a court settlement between financial market participants. In particular, its duties include hearing disputes arising from the contractual relationships between the parties subject to the supervision of the Financial Supervisory Commission and the recipients of services provided by these entities (including consumers). The appointment of this court is a consequence of article 4 of the Act of July 21, 2006 on the supervision of financial markets[16], according to which the tasks of the Financial Supervisory Commission also include providing opportunities for amicable and conciliatory settlement of disputes of this kind. In accordance with § 3 of the Rules of this Court,[17] it cognizes property rights disputes where the amount in dispute is at least 500 PLN, as well as non-pecuniary rights cases. The president of the arbitration court may decide to adjudicate, where the amount in dispute is less than 500 PLN, if the consumer is the plaintiff. In this case, the consumer is responsible for the justification of a specific nature of the dispute pointing to the eligibility of that case to be resolved by the arbitration court.

2) District committees of professional inspection operating under the Act of July 18, 1950 on the professional responsibility of health professionals[18]. In accordance with article 7 of the Act, district committees, with the written consent of the parties, may take to resolve, as an arbitration court, disputes between health care professionals, and also disputes between health care professionals and people who use their services - arising out of the exercising of the practice (occupation). In these cases, regional commissions apply appropriately the Code of Civil Procedure's provisions on arbitration courts.

3) District veterinary medicine courts, acting on the basis of the Act of December 21, 1990 on veterinary doctors and medical-veterinary guilds[19]. In

16 Journal of Laws [Dz.U.] No. 157, item 1119, as amended.

17 *http://www.knf.gov.pl/Images/Regulamin%20Sadu%20Polubownego_tcm75-9718.pdf.*

18 Journal of Laws [Dz.U.] No. 26, item 332, as amended.

19 Consolidated text.Journal of Laws [Dz.U.] (No. 93, item 767, 2009)..

accordance with Article 63 of that Act, the district court of veterinary medicine with the written consent of the parties, may cognize as a court of arbitration, disputes between veterinary doctors and between veterinary doctors and other veterinary staff of the institution as well as between veterinarians and other persons or institutions, where the disputes relate to the exercising of the veterinary profession. In these cases, veterinary medicine courts apply the Code of Civil Procedure's provisions on arbitration courts.

4) District pharmacists chambers, under article 63 of the Act of April 19, 1991 on the chambers of pharmacists,[20] according to which district courts of the pharmacy with the written consent of the parties, may cognize as arbitration courts disputes between pharmacists and between pharmacists and other health care professionals as well as between pharmacists and other persons or institutions, where such disputes relate to the carrying out of the pharmacist profession. In these cases, the pharmacy courts apply appropriately the Code of Civil Procedure's provisions on arbitration courts.

5) District disciplinary courts, acting on the basis of the Act of December 15, 2000 on the professional associations of architects, construction engineers and urban planners.[21] The provision of article 57 of the Act provides that district disciplinary courts, at the request of a member of the chamber and with the written consent of all parties, may cognize disputes as arbitration courts between the members of the chambers and between members of the chambers and other entities, if these disputes involve the exercise of independent technical functions in construction or of the urban planner profession. In the event of such disputes, the provisions of the Code of Civil Procedure on arbitration courts are applied.

6) Disciplinary courts established in accordance with the provisions of the Act of 27 July 2001 on laboratory diagnostics.[22] In accordance with article 69 of the Act, the disciplinary court, in disputes relating to the exercising of the laboratory diagnostics profession, with the written consent of the parties, may cognize disputes as arbitration courts between laboratory diagnosticians and between laboratory diagnosticians and other health care professionals and other individuals and institutions of health care, if such disputes relate to the exercising

20 Consolidated text.Journal of Laws [Dz.U.] (No. 136, item 856, as amended, 2008).

21 Journal of Laws [Dz.U.] (No. 5, item 42, as amended, 2001).

22 Consolidated text, Journal of Laws [Dz.U.] (No. 144, item 1529, as amended, 2004).

of the profession of a laboratory diagnostician. In these cases, the disciplinary court shall apply appropriately the provisions of the Code of Civil Procedure.

By comparing the existing arbitration courts in the above directory, a conclusion may be reached that the Polish legislator shapes arbitration in consumer matters in a chaotic manner, with no deliberate scheme and whose aim would be the practical mapping of a previously established model of such kind of jurisdiction. This legal and factual state allows for the further considerations relating to possible model or system solutions.

IV. Consumer Arbitration Courts as an Effective Model of Consumer Dispute Resolution

The described arbitration courts are the type of arbitration courts in most cases established by law and based on rules implementing the law. The result is that the provisions made on the basis of a specific act establishing the court and the record on a particular dispute are only complementary to the obligations arising from the provisions of the applicable law.

These courts, despite their peculiarly hybrid legal nature, are characterized by a full set of features that are essential for the proper functioning of arbitration. By building a catalogue of selected attributes of these courts, a starting point for discussion on the development of this institution is created and the institution is undoubtedly significant in a palette of instruments for consumer claims resolution.

The essential qualities attributed to arbitration courts are: (i) independence, (ii) transparency, (iii) voluntariness, (iv)adversarial representation, (v) promptness (also understood as a condition of effectiveness), and (vi) the effectiveness of the procedure. It should be noted that this list of essential qualities does not exhaust all the characteristics attributed to both the arbitration courts in general and the courts that hear consumer cases as their category.

The above-mentioned basic features of consumer jurisdiction build its positive image, which in fact, is close to the real achievements and advantages of this system of consumer dispute resolution outside the courts of law. However, like other institutions of law, these arbitration courts too are not the ideal solution. Certainly though, the benefits found in their construction and operating principles largely outweigh the relatively few imperfections. Consideration is

needed however, over the latter in order to further enhance the effectiveness of the ruling in such courts.

In the case of consumer issues a general assumption should be made that in the process, in principle we are dealing with an individual who is not only unaware of their rights and remedies they are entitled to as a consumer, but also is often helpless, with low levels of general knowledge. In this context, the first problem appears to be faced more and more frequently by arbitration courts dealing with consumer cases is the problem of legal aid.

The activity of these courts should be diagnosed in the subject of legal aid – (a) at the pre-trial stage, and (b) at the stage of the proceedings. Consumers very often, in the course of the proceedings, feel lost, have problems with the presentation of claims which are important for the outcome of the case (especially when the proceedings are the result of many months of battling with a trader, filled by the exchange of correspondence, statements, interviews, and other factors), and also have problems with the formulation of the evidence motion serving to maximize their chances of winning the case. This situation, even if it does not affect the final result, the content of the resolution of the consumer court, it causes in the consumer a state, undesirable especially in the case of arbitration, of uncertainty or lack of confidence in the procedures. This can when combined with a court loss due to unjustified claims, can cause the consumer and some people who he will talk about his experience to never turn to arbitration courts for legal protection.

Therefore, one should think about building the system of extended legal aid for the needs of consumer disputes. Under this system, people with low incomes, showing helplessness in the proceedings, or dealing with a case which is complex or precedent in nature, would be able to take advantage of the assigned public legal representative. The representative would not only support them in the course of the proceedings, but also would provide legal information in the conduct of proceedings in a wider scope than the Chairman of the Bench is able to do within the current proceedings.

V. Conclusion

The problem of the organization of arbitration in consumer matters remains an open question. There is no single idea or solution that would *a priori* be

considered valid and fully effective. In the present state one cannot speak of a complete and coherent consumer jurisdiction system or model. Undoubtedly, the most prominent and positive aspect in this regard is the activity of permanent consumer arbitration courts at the Trade Inspection. As is evident from the analyses, they do not cover all eligible consumer claims, and also the awareness of their existence still reaches very few consumers. Other arbitration courts referred to in this work either treat consumer affairs as the margin of their judicial activity (this applies primarily to arbitration courts working with professional corporations) or were created incidentally, without a broader concept of the implementation of the judicial system specializing in various types of consumer affairs. It is evidenced by the variety of legal and organizational solutions which were mentioned above, used by the legislator, and the leaving to arbitration of the fields without a broader regulation.

One can discuss the different models of specialized consumer arbitration courts are: (a) centralized (similar to the Swedish model, within which the National Board for Consumer Complaints functions - since 1968 - dealing with, among others, the resolution of disputes between consumers and traders)[23] and (b) distributed (the example of which is the arbitration jurisdiction of the Netherlands)[24]. It seems that it would be advisable to create a model whose axis would be made of permanent general consumer courts dealing with disputes relating to consumer sales claims (and therefore consumer disputes in the narrow sense of the word - for everyday transactions). A complementary addition to the system could be specialized courts of arbitration set up in a uniform manner, acting in the same way and dealing with consumer affairs requiring special preparation and greater work and time-load from the arbitraries (for example, in the field of insurance and banking services, medical services, telecommunications and energy markets). Thus, in the face of the consistency and completeness of the system formed in such a way, not only would its effectiveness increase (expressed in, for instance, the number of resolved cases) but most of all, the consumer would have a clear picture of the existing possibilities in the use of the alternative dispute resolution.

As T. Ereciński and K. Weitz rightly point out, the idea of arbitration is to conduct informal, usually one-instance proceedings, flexible and tailored to

23 More in: J. Beck-Friis, How consumer disputes are dealt with in Sweden: The Swedish National Board for Consumer Complaints, 13.4*Journal of Consumer Policy* 477, (1990).

24 More in: *http://ec.europa.eu/consumers/reports/nat_folder/rappnl_en.pdf.*

the needs of the parties and the nature of the disputed legal relationship while at the same time ensuring the parties of equal treatment and the right to be heard, and reducing unnecessary costs.[25] However, according to A. Torbus, the advantages of arbitration do not preclude the relevance of the note that in any particular case it does not provide equal legal protection in the event of a real advantage of one of the parties to the proceedings. For obvious reasons, in relation to the trader, the consumer is, by definition, the weaker party.[26] Therefore, any new solutions that support the consumer in vindicating his claims both in the difficult legal course and as a rule the easier out of court one, should be regarded as highly desirable.

This should be served by, among others, the introduction of a unified, coherent system which in its plan of consumer arbitration would allow for the implementation of appropriate standards of pro-consumer policy, which still lacks a complementary approach. This complementarily should result from a simple principle, it is impossible to obtain an adequate level of effectiveness of the substantive law without creating effective design procedures, which on the basis of coercion (in the case of arbitration - voluntariness) will clarify the doubts of interpretation and enforce legitimate consumer claims.

In terms of information and promotion policy on the functioning of arbitration for consumers there is still much to be done. The survey conducted in 2007 by the TNS CPOR[27] on behalf of the OCCP revealed that as much as 76 per cent of Poles have never heard of consumer arbitration courts. The negative findings are confirmed by the experience of the Trade Inspection, the *ex lege* institution that ensures the arbitration of consumer disputes. Of those who have heard about consumer arbitration courts only 4 per cent admit seeking support from the institution. At the same time however, these courts enjoy a good reputation among the aware consumers. The vast majority, 72 per cent of Poles, think it reflects well on the trader if he voluntarily agrees to arbitration by such a court. Moreover, assuming that the price and quality are comparable, more than half of consumers were willing to buy a product or service from a trader who

25 T. Ereciński, K. Weitz, op. cit., p. 13

26 A. Torbus, Ochronakonsumentajakostronyzapisunazagranicznysądpolubowny, ADR. Arbitrażimediacja 93 (No. 2/2009).

27 TNS CPOP – Centre for Public Opinion Research Ltd in Warsaw.

voluntarily agreed to an amicable settlement.[28] In this way, we return to the discussion on how to encourage businesses to engage in amicable settlements, mainly by pointing out that arbitration courts are there not only for consumers but also for them as equal parties to the dispute.

Despite all the identified problems and weaknesses of arbitration in the Polish legal system, its prospects for development in consumer issues are interesting and even uplifting, more so with the first seeds (in the form of permanent arbitration consumer courts at the Trade Inspection) working in a very promising way. Moreover, the consumers' attitudes themselves favour the development of an institution of such type. As emphasized by A. Krajewska, the Poles favour the settling of the dispute by "achieving mutual consent on such a basis that everyone gives up a little of their claims" (from 82.8 to 93.6% of respondents) over "full satisfaction of the request of one party, even if the other was left dissatisfied" (from 3.8 to 14% of the subjects).[29] The Poles prefer, therefore, an amicable settlement of the dispute, and institutions such as arbitration courts, beyond any doubt,favour this.

28 http://www.egospodarka.pl/26149,Polubowne-sady-konsumenckie-malo-popularne,2,39,1.html.

29 A. Krajewska, Sporykonsumenckieiichrozwiązywanie, Warsaw 262-263 (2009).