

**Polish Supreme Court order
dated 23 September 2009
Case No. I CSK 121/09**

Summary by arbitraz.laszczuk.pl:

The Polish State Treasury brought a claim before the arbitration court at the Polish Chamber of Commerce in Warsaw against a company in Warsaw seeking over USD 95 million. In a 2006 award, the arbitration court denied the claim, but in 2007 the regional court granted a petition by the State Treasury to set aside the award on the grounds that the claimant was denied an opportunity to defend its rights. Later that year the respondent was declared bankrupt, which under Bankruptcy Law Art. 142 meant that the arbitration clause lost force by operation of law and pending proceedings were subject to discontinuance. On appeal, the appellate court held that discontinuance under Art. 142 applied not only to pending proceedings before the arbitration court, but also post-arbitration proceedings pending before the state court, and thus it vacated the judgment by the regional court and discontinued the entire proceeding. Both parties filed cassation appeals with the Polish Supreme Court, which held that under Art. 142 only proceedings pending before the arbitration court were subject to discontinuance. The case was remanded to the appellate court for reconsideration.

Excerpts from the text of the court's ruling:

1. A proceeding upon petition to set aside an arbitration award may ... be conducted even in the event of the absence of an arbitration clause, or invalidity or ineffectiveness of such clause, or if the clause is no longer in force under applicable law (Civil Procedure Code Art. 1206 §1(1)). The parties may demand that an arbitration award be set aside for these reasons.

2. The issue of loss of force of an [arbitration] clause, as with the issue of the non-existence, invalidity, ineffectiveness or unenforceability of the clause, may be examined in a proceeding upon a petition to set aside an arbitration award only if the petitioner asserts the relevant allegation. The rule applicable in a proceeding before a state court is that the court is bound by the grounds of the petition and the limits of the motions made by the parties. Only grounds

indicated in Civil Procedure Code Art. 1206 §2 may be considered by the court on its own motion.