

**Polish Supreme Court judgment**  
**dated 3 September 2009**  
**Case No. I CSK 53/09**

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

The claimant and the respondent entered into an agreement under which the respondent was to lease fibre-optic cable to the claimant. Delivery was to be made after technical acceptance and entering into an annex, but technical acceptance did not occur because of prolonged disputes with owners of land through which the cable was to run. The claimant filed a claim with the arbitration court at the Polish Chamber of Commerce in Warsaw for PLN 190 million in damages and declaratory and injunctive relief. The arbitration court found that the contractual conditions were not met and the agreement did not provide specific enough terms to order the parties to enter into the anticipated annex, and thus the respondent's obligation to deliver the cable did not arise, and issued an award denying the claim. The claimant filed a petition with the regional court to set aside the award as contrary to public policy. The regional court granted the petition on the grounds that the award implied that the parties' agreement imposed no obligations on the respondent, and the award failed to address the claim for injunctive relief. On appeal, the appellate court reversed and dismissed the petition, ruling that the regional court had exceeded the limits of permissible review of the award. On a cassation appeal, the Supreme Court affirmed, holding that the arbitration award did not violate the Civil Code provisions relied on by the respondent, and thus the award could not have been in violation of the public policy clause.

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

**1. The task of the state court considering a petition to set aside an arbitration award is to examine whether there is a basis for setting aside the award as set forth in the act. This generally does not extend to a review of the arbitration award's compliance with substantive law, or a review of whether it is supported by the facts cited in the justification for the award or whether such facts were correctly established.**

**2. Civil Procedure Code Art. 1206 sets forth an exhaustive list of the grounds for setting aside an arbitration award. As a rule, the court considering the petition is bound by the grounds alleged by the petitioner, and thus may set aside an arbitration award because of the existence of one of the grounds listed in Art. 1206 only if it was asserted in the petition. Only two of the grounds listed in Art. 1206 for setting aside an arbitration may be considered on the court's own motion, whether or not asserted in the petition: if the dispute is non-arbitrable pursuant to statute (Art. 1206 §2(1)) or if the arbitration award is contrary to the principles of the legal order of the Republic of Poland (Art. 1206 §2(2)).**

**3. Under the public policy clause set forth in Civil Procedure Code Art. 1206 §2(2), an arbitration award is subject to being set aside if the effects determined by the wording of the award are incompatible with a specific norm that is held to be a fundamental principle of public policy.**

**4. Application by the arbitration court of the proper substantive law for resolution of a dispute, which it is generally required to do under Civil Procedure Code Art. 1194 §1, is thus subject to review by the state court considering a petition to set aside an arbitration award only insofar as application of such law is required by the public policy clause, which is considered by the court on its own motion.**