

Polish Supreme Court judgment
dated 6 March 2008
Case No. I CSK 445/07

Summary by arbitraz.laszczuk.pl:

In 1997 Telekomunikacja Polska SA entered into a contract with construction company PIA Piasecki SA under which PIA Piasecki was to build an office building for TP SA. In 2002, in a dispute involving delays in construction and delays in payment, the investor drew on a performance bond and then renounced the contract. (PIA Piasecki was declared bankrupt on 30 June 2003.) PIA Piasecki (or the trustee in bankruptcy) filed a claim before the Court of Arbitration at the Polish Chamber of Commerce seeking about PLN 110 million for improperly drawing on the performance bond and other claims. TP SA filed various counterclaims (or setoff as a defence) for PLN 145 million. The arbitration court issued an award for the trustee for about PLN 19 million for improperly drawing on the performance bond and dismissed the counterclaims, which, it held, had to be asserted as a claim in the bankruptcy proceeding, and disallowed the defence of setoff as impermissible under the rules of the arbitration court.

TP SA's petition to set aside the award was denied by the regional court, and the appellate court affirmed. A cassation appeal to the Supreme Court followed, based *inter alia* on an allegation of denial of the respondent's right to present its case because of the arbitration court's dismissal of its counterclaims. The cassation appeal was denied *inter alia* on grounds that the alleged defects in the arbitration proceeding did not rise to the level of a violation of public policy.

Excerpts from the text of the court's ruling:

1. An allegation under Civil Procedure Code Art. 712 §1(2) refers to deprivation of a party's right to a defence only before the arbitration court, and thus it could not serve in this respect as independent and effective grounds for a cassation appeal, which may involve a challenge to the correctness of the proceeding before the state appellate court, but not in an arbitration proceeding.

2. There is a consensus that the authority to review [a ruling of an arbitration court by a state court] does not involve the issue of the correctness of the ruling in terms of its compliance with substantive law, or compliance with procedural regulations. The basis for such review may only be an aggravated violation of particular importance and weight—of the sort that also constitutes a violation of the rule of law. By no means may such review turn into a form of appellate review of the merits.

3. A petition to set aside an arbitration award is in ... the nature of an extraordinary legal instrument based on very narrowly defined grounds, which do not include undue explanation of the circumstances necessary to resolve the matter. Thus it must be concluded that violation of Civil Procedure Code Art. 705 §2, third sentence, may also provide grounds for a petition under Civil Procedure Code Art. 712 §1(4) only when it is of an extreme nature, and thus when it takes the form of complete omission of an explanation of the circumstances of the case or ignoring the evidence as a whole.

4. An arbitration court may not take into consideration facts not cited by the parties, or presume that the claimant's allegations are true if the claimant fails to appear at the hearing, or assume facts to be true if they are not denied.