

**Polish Supreme Court order
dated 29 November 2007
Case No. III CSK 176/07**

Summary by arbitraz.laszczuk.pl:

In 2006, a sole proprietor obtained an award from the Internet Domains Arbitration Court at the Polish Chamber of Information Technology and Telecommunications against partners of a partnership for registration and use of the domain names "kardiomed.pl" and "kardiomed.com.pl," in violation of unfair competition regulations and intellectual property law.

The partners sought to set aside the award in the regional court, alleging that the arbitration court had failed to serve on them one of the pleadings in the case (a reply to their response to the statement of claim, including a supplement to the statement of claim), in violation of Civil Procedure Art. 1189 §3 (service of pleadings on the parties), which they claimed to be mandatorily applicable even in arbitration, as well as Art. 1206 §1(4) (violation of fundamental rules of procedure) and §2(2) (public policy clause), and Art. 1183 (equal treatment of the parties, right to present a defence).

The regional court denied the petition, holding that Art. 1189 §3 was not mandatorily applicable in arbitration, and in any event the respondents were familiar with the allegations in the pleading and the alleged violation did not have a material impact on the result in the case. The appellate court affirmed, and the Supreme Court denied the cassation appeal.

Excerpts from the text of the court's ruling:

1. Arbitration is a procedure for resolving civil disputes by a decision-making body that is not a state court, but its jurisdiction is based on an agreement of the parties. For this reason, Art. 45 of the Polish Constitution, which refers to state bodies of the justice system identified in Constitution Art. 175(1), does not apply directly to arbitration.

2. When considering a case, an arbitration court is not bound by general regulations of procedural law applicable in a judicial proceeding, if the parties or the arbitration court have not otherwise provided for the procedure.

3. The indication in the second sentence of Civil Procedure Code Art. 1184 §2 that an arbitration court is not bound by judicial procedure regulations does not refer to mandatorily applicable provisions of the Civil Procedure Code governing procedure before the arbitration court. ... Unless otherwise agreed by the parties, the arbitration court may conduct the proceeding as it deems fit, but subject to the provisions of the act. The rule of the priority of the intent of the parties in establishing the arbitration procedure, under Civil Procedure Code Art. 1184 §1, is subject to a limitation in that their selected manner of proceeding before the arbitration court may not be contrary to provisions of the law of the state which they selected that are in force in such a proceeding. The wording of Art. 1184 §1 ("if not otherwise provided by the act") means that the parties may not, by their intent, change or exclude such provisions, and thus they are regulations of mandatory applicability [*juris cogentis*].

4. A state court considering a case upon a petition to set aside an arbitration award does not decide the dispute between the parties, and thus does not assess whether the arbitration court decided the case correctly in factual or legal terms, but only examines it from the point of view of grounds to set aside the award set forth in Civil Procedure Code Art. 1206.

5. Violation by the arbitration court of rules and regulations of the Civil Procedure Code binding on it governing arbitration procedure may provide grounds for a petition to set aside the arbitration award on the basis of failure to comply with fundamental rules of procedure before such court, arising under the act referred to in Civil Procedure Code Art. 1206 §1(4).