

Polish Supreme Court judgment
dated 20 June 2007
Case No. V CSK 126/07

Summary by arbitraz.laszczuk.pl:

In 1998, "T. P." Sp. z o.o. entered into a construction contract with "P." Sp. z o.o. The contract included a provision that disputes would be decided "in accordance with the Rules of the Court of Arbitration at the Polish Chamber of Commerce."

In December 2004, "P." Sp. z o.o. filed a claim with the Court of Arbitration at the Polish Chamber of Commerce against "T.P." Sp. z o.o. seeking about PLN 300,000 as a fee for construction work. In April 2005 the arbitration court issued an award rejecting the statement of claim, holding that the arbitration court did not have jurisdiction because the parties had not effectively appointed the Court of Arbitration at the Polish Chamber of Commerce to decide disputes, but only required that the dispute be resolved in accordance with the rules of that court.

"P." Sp. z o.o. filed a petition with the Wrocław Regional Court to set aside the award. In March 2006 the court denied the motion, holding that it could not review the merits of the award except insofar as it violated public policy, which it did not because, the court agreed, the arbitration clause could be interpreted only as requiring use of the rules of the Court of Arbitration at the Polish Chamber of Commerce without necessarily appointing that arbitration court to decide disputes.

The Wrocław Appellate Court denied an appeal, finding that the arbitration clause in question was vague, but in any event it would be invalid as an arbitration clause because the person signing the contract for the respondent, "T.P." Sp. z o.o., did not hold a special power of attorney authorizing him to enter into an arbitration agreement.

The claimant filed a cassation appeal with the Polish Supreme Court, alleging among other grounds that the respondent was precluded from asserting later in the proceedings that the arbitration clause was invalid because the signatory did not hold the proper type of power of attorney. The claimant argued that the preclusion rules for commercial cases in the

Civil Procedure Code applied in the arbitration proceeding, and thus this defence had to be presented at the latest in the response to the statement of claim in the arbitration, or else was waived. The court held that civil procedure rules did not apply within the arbitration, and denied the cassation appeal.

Excerpts from the text of the court's ruling:

1. Under Art. 2 of the amending act [i.e. the Act dated 28 July 2005 Amending the Civil Procedure Code, Journal of Laws Dz.U. No. 178 item 1478], proceedings before arbitration courts and proceedings before courts for recognition or enforcement of an arbitration award, as well as a petition to set aside an arbitration award, commenced prior to the effective date of the act, are conducted in accordance with the prior regulations.

2. The view of the petitioner cannot be upheld under which [the other party], pursuant to Civil Procedure Code Art. 479¹ §2, was required to assert the defence of the lack of the required power of attorney in the response to the petition filed with the arbitration court, at the latest. Under Civil Procedure Code Art. 705, in a proceeding before an arbitration court, the parties themselves could, up until commencement of the proceeding, establish the procedure that should be applied in consideration of the case, and if they failed to do so, the arbitration court applied the procedure that it saw fit and was not bound in this respect by civil procedure regulations.