

Polish Supreme Court resolution
dated 26 November 2003
Case No. III CZP 83/03

Summary by arbitraz.laszczuk.pl:

Under a public procurement procedure, a Polish public hospital, as the contracting authority, conducted an unlimited tender for blood analysis equipment. The contracting authority did not accept the bid by a Swiss company, D.H. AG, and denied its protest. The bidder appealed to the president of the Polish Public Procurement Office, where an arbitration panel denied the appeal. The bidder had appointed Polish counsel in the proceeding, but the award denying the appeal was served directly on the Swiss company, rather than its Polish counsel, and as a result the company missed the special 14-day deadline for filing an application for judicial review of the award.

The bidder filed an application with the Warsaw Regional Court for review of the award and also to reinstate the period for filing the application because the award was served on the company instead of counsel. The court submitted a certified question to the Polish Supreme Court to clarify which form of service was proper in the case of awards issued by arbitration panels in appeals from public procurement decisions.

The Public Procurement Law (1994) in effect at that time provided for appeals to the president of the Public Procurement Office to be heard by a panel of arbitrators. The executive regulation issued under the Public Procurement Law, as well as the arbitration law then in effect (Civil Procedure Code Art. 709), provided for awards to be served on the "parties." Civil Procedure Code Art. 133 §3 provides that if a party has appointed counsel or other agent for service, service should be made on the attorney or agent, but the practice at the Public Procurement Office was to serve awards by arbitration panels directly on the parties, even if they were represented by counsel.

The Supreme Court reasoned that while a panel of arbitrators ruling on public procurement appeals acts in many respects like an arbitral tribunal, it is a special creature of the Public Procurement Law and not an arbitral tribunal as such. The panel does not have

the same latitude as an arbitral tribunal to establish its own procedures, and thus it should have followed Civil Procedure Code Art. 133 §3 and served the award on counsel.

Excerpts from the text of the court's ruling:

1. An arbitration court is not bound by the civil procedure regulations, but may not avoid conducting a thorough examination of the circumstances necessary to decide the case. Thus it is stated in the literature that in a proceeding before an arbitration court the provisions of the Civil Procedure Code concerning appointment of attorneys do not apply, and more specifically it is possible to appoint as attorneys persons other than those referred to in Civil Procedure Code Art. 87, and moreover there is no specific form required for a power of attorney to appear before an arbitration court, and the scope, duration and effects of the appointment should be assessed pursuant to civil law.

2. In an arbitration clause the parties may exclude representation by an attorney and require participation in person before the arbitration court.

3. With respect to service, it is accepted ... that the arbitration court is not bound by the procedure or form for service provided in the Civil Procedure Code and may use the procedure for summoning parties, witnesses and experts that it deems proper and effective. This applies as well to service of an arbitration award under Civil Procedure Code Art. 709. While not bound by provisions of the Civil Procedure Code, the arbitration court must nonetheless insure procedural rules that afford the party an opportunity to present a defence.

4. In a public procurement procedure conducted under the Public Procurement Law dated 10 June 1994 (unified text at Journal of Laws Dz.U. 2002 No. 72 item 664, as amended), the award by a panel of arbitration shall be served on appointed counsel.