

Polish Supreme Court judgment
dated 13 December 1999
Case No. III CKN 478/98

Summary by arbitraz.laszczuk.pl:

In a public procurement procedure for construction of a residential building, a state-operated social services centre rejected a joint bid by G. sp. z o.o. and Jan K., a sole trader operating a construction business. The bidders had entered into a cooperation agreement in December 1996 under which they would jointly construct the building which was the subject of the public procurement procedure. Under the Public Procurement Act of 1994, the contracting authority rejected the bid as having been filed by an unauthorized entity. In January 1997 a panel of arbitrators at the Public Procurement Office denied the bidders' challenge, holding that joint bids were not authorized by the Public Procurement Act.

The award was served on the bidders on 8 February 1997, and the one-month period to file a petition to set aside the award expired on 9 March 1997. The bidders filed the petition on 6 March 1997 with the district court, which was not the proper court. The district court forwarded the petition to the province court, which was the proper court, on 3 June 1997 (after the deadline for filing the petition).

The province court denied the bidders' petition to set aside the award, holding that joint bids were impermissible under the Public Procurement Act.

On appeal, the appellate court held that the Public Procurement Act did not expressly prohibit joint bids, which should therefore be recognized as permissible under principles of economic liberty. Thus there was no bar to a joint bid by two businesses acting under a cooperation agreement. Consequently, the award violated public policy, and the court set aside the award.

For the contracting authority, the State Treasury filed a cassation appeal on procedural and substantive grounds.

On procedural grounds, the Supreme Court held that while the deadline to file an appeal is met only if the appeal is received on time by the proper court, a petition to set

aside an arbitration award is not an appeal and therefore the deadline was met even though it was filed with the improper court and not received by the proper court until after the deadline for filing the petition.

On substantive grounds, the Supreme Court interpreted the Public Procurement Act of 1994 as referring to the qualifications of each bidder only in the singular, and thus joint bids were impermissible. The Supreme Court amended the ruling below accordingly to deny the bidders' appeal from denial of their petition to set aside the award.

Excerpts from the text of the court's ruling:

1. A petition to set aside an arbitration award cannot be regarded as an avenue of appeal. A petition to set aside an arbitration award and the proceeding initiated by filing the petition is of a specific nature. It combines features of an extraordinary avenue of appeal and an independent claim, understood in a specific manner, seeking to establish a right or a legal relationship. This is because the petition is intended to change the legal situation governed by the ruling by the arbitration court, and seeks to set aside the legally final award of the arbitration court.

2. The deadline of one month to file a petition to set aside an arbitration award (Civil Procedure Code Art. 713 §1) is also met if by that time the petition is filed with a court other than the one that would have been competent to decide the dispute if the parties had not made an arbitration clause (Civil Procedure Code Art. 696 §1).