

**Polish Supreme Court order
dated 20 May 2011
Case No. IV CZ 18/11**

Summary by arbitraz.laszczuk.pl:

A German company, G. AG, obtained an arbitration award in 2006 before the Court of Arbitration at the Polish Chamber of Commerce in 2006 against two Polish individuals, Piotr K. and Krzysztof T. The creditor then applied to the district court for enforcement of the award and issuance of an enforcement clause. (This was apparently denied by the district court.) An interlocutory appeal to the regional court followed. The interlocutory appeal was denied.

The Ombudsman sought to file a cassation appeal to the Polish Supreme Court for review of the order of the regional court denying the interlocutory appeal. In 2010, the regional court dismissed the cassation appeal on the grounds that no cassation appeal will lie from a final order of the court of second instance in a case seeking recognition or enforcement of an arbitration award issued in Poland.

The Ombudsman filed an interlocutory appeal with the Supreme Court against the order of the regional court dismissing the cassation appeal as impermissible. The Supreme Court agreed with the regional court that no cassation appeal will lie from a final order of the court of second instance in a case seeking recognition or enforcement of an arbitration award issued in Poland. The court denied the interlocutory appeal accordingly.

Excerpts from the text of the court's ruling:

1. Final refusal to issue an order enforcing an arbitration award definitively eliminates the possibility of treating the award as equivalent to a state court judgment, and thus eliminates the result of the proceeding up to that point before the arbitration court.

2. Without doubt, the debtor has standing to file a petition to set aside an arbitration award. The creditor is deprived of such possibility, however.

A party satisfied with the resolution may only commence a proceeding provided for in Civil Procedure Code Art. 1212 §2. In the situation of the creditor, the proceeding for recognition or enforcement of the award is the only procedure available to such entity for review of the propriety and legality of the determination by a domestic arbitration court.

3. The Civil Procedure Code provides for two forms of review of the rulings of the arbitration court. Alongside the proceeding for enforcement of the arbitration award is the petition to set aside the arbitration award. ... These are independent proceedings, based on independent grounds. ... From the point of view of the proceeding before the state court, the case is definitively ended only by the proceeding on the petition to set aside the arbitration award.

4. An order on recognition or enforcement of an arbitration award issued abroad—unlike an order on recognition or enforcement of a domestic arbitration award—is analogous to rulings issued in the main proceedings on the merits of the case.

5. A cassation appeal on recognition or enforcement of a domestic arbitration award is impermissible.