

**Wrocław Appellate Court judgment**  
**dated 8 February 2012**  
**Case No. I ACa 26/12**

**Summary by arbitraz.laszczuk.pl:**

In a contract from 2004 based on FIDIC standards, a local commune in Poland hired a construction company to build local water and sewer works, at a contract price of EUR 3.8 million, of which EUR 2.5 million was covered by EU funding. The contract provided that the price for certain work was based on estimated quantities and would be adjusted if the actual quantities varied by more than 25% from the estimate. The contract included a clause calling for arbitration before the Court of Arbitration at the Polish Chamber of Commerce. When the commune refused to accept certain work done by the contractor or to pay for certain price adjustments based on actual quantities more than 25% greater than provided for in the contract, the contractor brought a claim in arbitration against the commune seeking about EUR 350,000 in fees due under the contract. The commune asserted a setoff in defence. In 2011, the arbitration court issued an award in favour of the contractor for about EUR 96,000 and denied the commune's alleged setoff.

The commune filed a petition with the Jelenia Góra Regional Court to set aside the award as contrary to public policy, based on a number of different legal theories. regional court denied the petition, rejecting each allegation in turn.

The commune appealed to the Wrocław Appellate Court, asserting violations of substantive law involving the arbitration court's alleged unequal treatment of the parties. As the commune did not allege that the lower court had made erroneous findings, the appellate court adopted the findings by the regional court. The appellate court found that the arbitration court had ruled within the bounds of its discretion and not arbitrarily. The court did not find that any of the alleged violations of substantive law had occurred, and even if they had the court did not believe they would rise to the level of a violation of public policy justifying setting aside the award. The court stressed that in choosing arbitration, the parties accept both its virtues (including faster resolution) and its drawbacks (including the inability to seek review of the award on the merits). The court denied the appeal accordingly.

Excerpts from the text of the court's ruling:

**1. An arbitration award may be said to be contrary to the fundamental principles of the legal order ... only with respect to constitutional principles of the socio-economic system or the leading principles governing specific fields substantive law.**

**2. The defectiveness of an arbitration award consisting of violation of fundamental principles of the legal order must appear from the wording of the ruling as such, and not from violation of the regulations for procedure before the arbitration court.**

**3. The fundamental principles of the legal order, constituting the basis for assessment of an arbitration award, should be understood to include not only constitutional norms, but also the leading norms in specific fields of law.**

**4. Consideration of a petition [to set aside an arbitration award] generally does not include a review of the consistency of the arbitration award with substantive law, a review of whether the award is supported by the facts cited in the justification for the award, or whether such facts were properly established, although of course a ruling based on a selective, unreliable assessment of the evidence does violate the rule of law.**