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# Public Interest in Arbitration

## 2023


**Editors**

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**Public Interest in Arbitration**

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# Contents

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# Case Law

Czech (& Central European) Yearbook of Arbitration®

# Poland

## Arbitration Case Law 2022

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***Key words:***

*public policy* | *liquidated damages* | *annulment proceedings* | *arbitral tribunal*

***States involved:***

**[POL]** – [Poland]

Decision of the Supreme Court of Poland of 8 July 2022, file ref. no II CSKP 349/22

***Laws Taken into Account in This Ruling:***

Kodeks postępowania cywilnego z dnia 17 listopada 1964 r. [Code of Civil Procedure of 17 November 1964] [k.p.c.] [POL], published in: Dziennik Ustaw [Journal of Laws] 1964, No. 43, item 296, as amended; Articles: 365(1),[1] 1206(2), 2.[2]

Kodeks cywilny z dnia 23 kwietnia 1964 [The Civil Code of 23 April 1964] [k.c.] [POL], published in: Dziennik Ustaw [Journal of Laws] 1964, No. 16, item 93, as amended; Articles: 471,[3] 483(1),[4] 484(2).[5]

Prawo zamówień publicznych z dnia 29 stycznia 2004 [Public Procurement Law of 29 January 2004] [p.z.p.] [POL], published

[1] A final judgment shall be binding not only on the parties and the court which rendered it, but also on other courts and other state authorities and public administration bodies, and in cases provided for by law, also on other persons.

[2] An arbitral award shall also be set aside if the court finds that: [...] the award of the arbitral tribunal is contrary to the fundamental principles of the legal order of the Republic of Poland (public policy clause).

[3] The debtor is obliged to compensate for damage resulting from non-performance or improper performance of an obligation, unless the non-performance or improper performance is due to circumstances for which the debtor is not responsible.

[4] It may be stipulated in the contract that compensation for damage resulting from non-performance or improper performance of a non-pecuniary obligation will be made by paying a specified sum (liquidated damages).

[5] If the obligation has been performed in a substantial part, the debtor may demand a reduction of the liquidated damages; the same applies if the liquidated damages are grossly excessive.

in: Dziennik Ustaw [Journal of Laws] 2004, No. 19, item 177, as amended: Article 132(1), 3.[6]

*[Rationes Decidendi]:*

**6.01.** Under Polish law, liquidated damages shaped by the parties do not have to perform the compensation function in contractual liability. If so, liquidated damages also do not have to implement the principle of the compensatory nature of compensation liability if, in a given contractual configuration, the parties have shaped the liquidated damages in such a way that they did not perform the compensation function or only compensatory function, but e.g. a repressive or preventive role. Consequently, awarding liquidated damages in such a case could not contradict the Polish public policy.

*[Description of the facts and legal issues]:*

**6.02.** The case stems from a long-term energy sale agreement ("the Agreement"). The Agreement provided for the sale by the Seller and the purchase by the Purchaser of all property rights arising from the production of electricity generated by the Seller.

**6.03.** After several years, the Purchaser filed a notice of termination of the Agreement. The Purchaser was convinced that the Agreement was null and void, as it was supposedly concluded in disregard of the procedures provided by the relevant public procurement legislation. The Seller disagreed and began to charge liquidated damages for failing to purchase the rights.

*[Decision of the arbitral tribunal]:*

**6.04.** Arbitration proceedings were initiated. The Parties have decided to bifurcate the proceedings into two phases. First, relating the validity of the Agreement itself. Second, relating to, in particular, the issue of liquidated damages.

**6.05.** In the first phase, the arbitral tribunal in the partial award found that, contrary to the Purchaser's position, the Parties validly and effectively concluded the Agreement. The partial award was effectively recognized during the post-arbitration proceedings.

**6.06.** After the decision of the arbitral tribunal, the Purchaser purchased all the rights that the Seller demanded to be bought.

[6] This Chapter [Sector procurement] shall apply to contracts awarded by the contracting authorities referred to in points (1) to (4) of Article 3(1) when the contract is awarded for the pursuit of one of the following activities: [...] the establishment of networks intended to provide a public service for the production, transmission or distribution of electricity, gas or heat or the provision of electricity, gas or heat to such networks or the management of such networks.

However, the Purchaser did not pay, and the Seller did not waive the liquidated damages imposed so far.

**6.07.** In the second phase, the arbitral tribunal awarded the liquidated damages to the Seller, however, it reduced them by 10% because the property rights were effectively bought.

**6.08.** The Purchaser filed a motion to set aside the arbitral award.

*[Decision of the Court of Appeals]:*

**6.09.** The Court of Appeal in Szczecin, in its decision of 10 October 2019, file ref. no I AGa 35/19 decided the motion to set aside. The arguments raised by the Purchaser in its motion can be summarized in four key points.

**6.10.** First, the award was made in violation of the public policy since the Seller was awarded liquidated damages reserved solely for the non-performance of an obligation, despite the Purchaser having performed that obligation in full. According to the Purchaser, this would contradict the fundamental principle of the Polish legal order, i.e., a debtor cannot be held contractually liable if there was no breach of contract.

**6.11.** Second, the Polish concept of contractual liability for damages excludes the situation in which both creditor's claim for performance in kind and claim for the payment of liquidated damages would be satisfied at the same time. The creditor was entitled to obtain either performance in kind or payment of liquidated damages for non-performance. The two could not have been granted at the same time since it would "double the compensation" of the creditor's interests and be contradictory to the Polish contractual liability regime.

**6.12.** Third, the reduction of liquidated damages by 10% did not consider that Purchaser has performed its obligations. Such a minor reduction was contrary to the principle of the compensatory nature of liability for damages.

**6.13.** Fourth, the arbitral award violated public policy since it awarded liquidated damages for non-performance based on an invalid Agreement. The Agreement was invalid since it contradicted public policy. The contradiction stemmed from the fact that it obligated the Purchaser to buy the property rights from a specific entity in 18 years, thus bypassing the application of the

procedures set out in the Public Procurement Law applicable to the transaction sector.

**6.14.** The Court of Appeal dismissed the motion to set aside the award in its entirety. The Court of Appeal addressed all of the arguments in the same order they were raised.

**6.15.** The Court of Appeal pointed out the principle of the compensatory nature of liability for damages, recognized by the Supreme Court.[7] This principle prohibits stipulating a monetary benefit in an amount detached from the extent of the damage as a sanction for breach of an obligation, as it could lead to the enrichment of the other party.

**6.16.** With the above considerations in mind, the Court of Appeal has found that the true aim of the Purchaser's motion to set aside was to review the merits of the case. In particular, the Court of Appeal did not find any arguments relating to how the effects of the award are contradictory to Polish public policy.

**6.17.** The Purchaser focused on the principle of the compensatory nature of liability for damages. The Court of Appeal indicated that when relying on such an argument, it must be shown that the claim accepted by the arbitral tribunal as compensatory does not seek to remedy the damage or is in a grossly inadequate relation to the damage for the remedy of which the respondent was held liable in the arbitral award.

**6.18.** The Court of Appeal pointed out that, in practice, liquidated damages may be shaped in a flexible manner. The parties can agree for the preventive or repressive function to constitute the predominant purpose of liquidated damages. The obligation to pay the liquidated damages may itself be valid, regardless of the existence and scope of the damage suffered by the second party.

**6.19.** The possible absence of damage may only constitute an argument when assessing the claim to reduce the liquidated damages. Thus, granting the claim for liquidated damages, even if the creditor would not suffer any damage, cannot in itself justify the claim that the arbitral tribunal violated the principle of the compensatory nature of liability for damages.

**6.20.** The Court of Appeal made an important note in stating that the adoption of one of the approaches to interpreting the law and, at the same time, approved by the arbitral tribunal in the practice of commercial transactions cannot be evidence of a breach of the fundamental principles of the legal order.

**6.21.** As to the fourth argument raised by the Purchaser, that is, the validity of the Agreement, the Court of Appeal has raised that

[7] The Appellate Court invoked the Decisions of the Supreme Court of: 11 April 2002, file ref. no III CKN 492/01, 11 June 2008, file ref. no V CSK 8/08 and 11 October 2008, file ref. no I CSK 697/12.

the partial award rendered in the first phase of the arbitration proceedings - which already decided on the case of the validity of the Agreement - was found to be in accordance with the Polish public policy. Consequently, the judgement recognizing the partial award rendered by an arbitral tribunal in the first phase of the arbitral proceedings between the same parties shall (as a final judgment) have an effect between the parties to the proceedings under Article 365 of the Code of Civil Procedure and shall also bind the Court of Appeals. Regardless of that, the Court of Appeal independently found that the public procurement legislation did not apply to the case at hand. The Agreement was valid.

**6.22.** The Purchaser filed a cassation appeal against the judgment of the Court of Appeal, challenging this decision in its entirety.

*[Decision of the Supreme Court]:*

**6.23.** As an introductory remark, The Supreme Court emphasized that when assessing the breach of public policy, the Courts must assess the award from the perspective of the effects that it produces. The prohibition of substantive review of such a decision is related to the essence of applying the public policy clause. Indeed, when applying it, the question is not whether the award under review complies with all the mandatory rules of law at issue but whether it has had an effect contrary to the fundamental principles of the Polish legal order.

**6.24.** In its action, the applicant invoked a violation of two principles.

**6.25.** First is the contractual liability for damages principle, which precludes payment by the debtor of liquidated damages in the absence of a breach of contract for which the liquidated damages were reserved.

**6.26.** Second, the principle of the compensatory nature of liability for damages, which precludes satisfying the same interest of the creditor twice, thus leading to overcompensation.

**6.27.** The Supreme Court explained that the violation of the public policy clause means issuing a decision that is unacceptable from the point of view of the rule of law and which was based on a manifest violation of procedural or substantive law.

**6.28.** In the award under consideration, this was not the case. The Purchaser, while invoking a violation of substantive law, failed to show that such a violation had occurred. Let alone that it was "manifest".

**6.29.** The Supreme Court underlined the relatively broad freedom in regulating liquidated damages under Polish contract law. In the default model, unless the parties otherwise regulate

this issue, the liquidated damages play a compensatory role of the compensation surrogate. However, the Supreme Court confirmed that the liquidated damages might (when the parties so decide) be independent of any damages suffered by the creditor. Consequently, lack of damage due to the non-performance or improper performance of an obligation does not preclude the right to claim liquidated damages.

**6.30.** The liquidated damages shaped by the parties do not have to fulfil the compensatory function in the case of contractual liability. The Supreme Court noted that under Polish law, the liquidated damages could be shaped so that the liability will be based on the principle of strict liability or even absolute liability. The liquidated damages act both as a substitute for damages and as a repressive measure. In particular, the liquidated damages can be shaped as a civil law sanction for a party's act or omission.

**6.31.** The Supreme Court then moved towards the last issue, i.e. the reduction of liquidated damages. Once again, the Supreme Court has decided that there was no violation of public policy. A violation stemming from the manner of the reduction could be the result of an arbitrary reduction of the liquidated damages in a manner completely detached from the statutory prerequisites for such a reduction. Therefore, it would be made in an arbitrary and indefensible manner. Supreme Court has decided that since the reduction was carried out by indicating the precise criteria on account of which it was performed in the account indicated, there was no violation of public policy.

***Key words:***

*sports arbitration* | *arbitrability* | *arbitral tribunal*

***States involved:***

**[POL]** – [Poland]

Decision of the Supreme Court of Poland of 3 March 2022, file ref. no II CSKP 28/22

***Laws Taken into Account in this Ruling:***

Kodeks postępowania cywilnego z dnia 17 listopada 1964 r. [Code of Civil Procedure of 17 November 1964] [k.p.c.] [POL], published in: Dziennik Ustaw [Journal of Laws] 1964, No. 43, item 296, as amended; Articles: 1157,[8] 1161.[9]

Kodeks cywilny z dnia 23 kwietnia 1964 [The Civil Code of 23 April 1964] [k.c.] [POL], published in: Dziennik Ustaw [Journal of Laws] 1964, No. 16, item 93, as amended; Articles: 103(1).[10]

Ustawa o sporcie z dnia 25 czerwca 2010 [Sports Act of 26 June 2010] [The Sports Act 2010] [POL], published in: Dziennik Ustaw [Journal of Laws] 2010, No. 127, item 857; Articles: 45a(1),[11] 45a(3).[12]

*[Rationes Decidendi]:*

**6.32.** A party who has entered into a substantive dispute before an arbitral tribunal without raising that said arbitral tribunal lacks jurisdiction (e.g. from the ineffectiveness of an arbitration agreement) loses this plea in proceedings for recognition and enforcement of an arbitral award before a national court. The correct interpretation of the New York Convention prevents

[8] Unless a specific provision provides otherwise, the parties may submit to arbitration: 1) disputes over economic rights, with the exception of cases of alimony; 2) disputes over non-economic rights, if they can be the subject of a court settlement. Version in force from 8 September 2019. Previously: Unless a specific provision provides otherwise, the parties may submit to arbitration: disputes over economic or disputes over non-economic rights – if they can be the subject of a court settlement, with the exception of cases of alimony.

[9] Submission of a dispute to arbitration requires an agreement between the parties, in which the subject matter of the dispute or the legal relationship out of which the dispute has arisen or may arise must be indicated (arbitration clause).

[10] If the person entering into the contract as an authorized representative lacks authority or exceeds its scope, the validity of the contract depends on its confirmation by the person in whose name the contract was concluded.

[11] The Court of Arbitration for Sport, hereinafter referred to as the "The Court", is established at the Polish Olympic Committee. Version in force from 22 September 2019.

[12] The Court shall also decide on disputes arising from appeals against final disciplinary decisions of Polish sports associations. Version in force from 22 September 2019.

actions that are disloyal to the other parties and the arbitral tribunal, causing unnecessary costs and wasting time.

*[Description of the Facts and Legal Issues]:*

**6.33.** The case concerned a Polish Athlete who was required to undergo regular anti-doping controls. One of these controls showed that the Athlete had used doping. For this reason, the Athlete was disqualified for two years. The Athlete disagreed with said decision. He brought his case before the Court of Arbitration for Sport in Lausanne ("CAS"). CAS was indicated in the disqualification decision as the proper forum to resolve the appeals.

**6.34.** The Athlete also filed his appeal to the Court of Arbitration for Sport at the Polish Olympic Committee ("PKOl Court"). However, the appeal was not heard as the Athlete failed to pay the fee.

**6.35.** CAS' Order of Procedure was signed by the Athlete's attorney. The Athlete himself refused to sign this document. The Athlete did not justify his refusal, in particular, by raising a formal plea for lack of CAS' jurisdiction. The Athlete did not appoint his arbitrator, did not file a response, and did not participate in the hearing either. However, the Athlete set out his views on the principles applicable in the case when deciding to impose the disqualification penalty under the relevant sports association's regulations. The appeal was partially granted. The two-year disqualification sentence was changed to a 10-month suspension. CAS also decided on the costs of the proceedings. The award was not contested in Switzerland, but it was challenged in Poland during the enforcement proceedings.

*[Decision of the Court of Appeals]:*

**6.36.** The Athlete argued CAS lacked jurisdiction since he was not an "international athlete" to which the sports association's regulation would apply.

**6.37.** The Court of Appeal did not find this argument persuasive. It held that the sports association's regulations do not exclude the possibility for the CAS to hear appeals concerning non-international athletes if the parties choose CAS as their dispute resolution forum. Thus, even assuming that the Athlete was not an "international athlete" during the relevant period, it did not preclude the Parties from entering into an arbitration agreement.

**6.38.** The Court of Appeal held that the disputed part of the disciplinary decision in which CAS was chosen as a forum to hear the

disputes must be regarded as an offer to conclude an arbitration agreement. This offer was then accepted by the conduct of the Athlete. The Athlete's conduct during the proceedings before CAS was tantamount to undertaking a defense on the merits. If a party in the arbitration does not contest jurisdiction of the arbitral tribunal, it cannot successfully argue the non-existence or invalidity of the arbitration agreement, in the proceedings for recognition and enforcement of the arbitral award.

**6.39.** The Court of Appeal also noted that during the examined time, the Athlete could bring his appeal to both the CAS and PKOl Court.

*[Decision of the Supreme Court]:*

**6.40.** The Athlete raised two groups of arguments in its' cassation appeal.

**6.41.** First, there was no valid arbitration agreement since informing about the manner of dispute resolution in the disciplinary decision does not constitute an offer to enter into an arbitration agreement. Second, that cases of a disciplinary nature are not arbitrable under Polish law.

**6.42.** As to the first argument, the Supreme Court referred to the international understanding of the New York Convention. In the words of the Supreme Court itself, "it is accepted that the attitude of the parties in the proceedings before the arbitral tribunal may lead to the loss of the possibility to raise certain objections falling within the grounds for refusal of recognition and enforcement of an arbitral award". In particular, a party who was aware of certain deficiencies occurring in the arbitration proceedings and failed to raise them promptly forfeits the right to rely on them in those proceedings and in post-arbitration proceedings. In the Supreme Court's view, although this principle is not explicitly expressed in the text of the New York Convention, its validity is unquestionable.

**6.43.** The Supreme Court pointed out two conditions that must be met for a party to lose its right to raise pleas in the post-arbitration proceedings. First, the party involved in the arbitration proceedings before the arbitrators knew or could have obtained knowledge of the circumstance in question. Second, the entity did not take appropriate steps to disclose its objection. In the opinion of the Supreme Court, the plea of lack of arbitrability is not subject to preclusion.

**6.44.** The Supreme Court likewise pointed out two groups of pleas that may be time-barred due to parties' actions during the arbitration proceedings. First, concerning the arbitral tribunals

composition and formation. Second, concerning the conduct of the proceedings and sentencing.

**6.45.** With this in mind, the Supreme Court agreed with the Court of Appeal that the presentation of a position on the merits of the dispute, the failure to challenge the award in Switzerland, and the partial enforcement of the judgment deprived the Athlete of a right to raise a plea of lack of jurisdiction. The first argument was dismissed.

**6.46.** As to the second argument, the Athlete raised that the disputes within the realm of sports disciplinary liability are not arbitrable. The lack of arbitrability was supposed to stem from the fact that disciplinary disputes are not "civil cases" within the meaning of the Code of Civil Procedure, since the parties to these disputes are unequal. Inequality materialized in that the sports associations have the power to make authoritative decisions on the disciplinary liability of the athletes.

**6.47.** The Supreme Court has agreed with the Athlete in that only the civil cases susceptible to be resolved by the state courts can be arbitrable under Polish law. Irrespective of the supposedly unequal footing of the parties within the disputes between the sports associations and the athletes, the Supreme Court found no reason to exclude such cases from being heard by the state courts. Consequently, it also found no basis for such cases not being arbitrable.

**6.48.** The Supreme Court found that disciplinary cases should be treated as civil cases from the subject matter point of view.

**6.49.** During the disciplinary procedure, there is no "dispute" between the athlete and the sports association. When the disciplinary liability is challenged before a state court or arbitral tribunal, a dispute based on the principle of equivalence arises. The dispute is rooted in a private legal relationship between that association and the athlete subject to its organizational and corporate authority, stemming from the principle of freedom to join and participate in a sports association. Therefore, the Supreme Court assumed that disciplinary cases fulfill all of the requirements of a civil case.

**6.50.** The Supreme Court also provided the parties with a bird's-eye view of the sports arbitration system in Poland.

**6.51.** Based on the Professional Sports Act of 2005[13] the PKOl Court had jurisdiction in all cases concerning appeals from disciplinary and statutory cases of polish sports associations. It is crucial that

[13] Ustawa z dnia 29 lipca 2005 r. o sporcie kwalifikowanym [Professional Sports Act of 29 July 2005] [Professional Sports Act of 2005] [POL], published in: Dziennik Ustaw [Journal of Laws] 2005, No. 155, item 1298.

PKOl Court's jurisdiction arises from the Professional Sports Act itself. There is no need for a separate arbitration agreement. The jurisdiction of PKOl Court's was, therefore "forced". Such an approach was criticized by the doctrine.

**6.52.** On the basis of the 2010's Sports Act, Polish lawmakers temporarily resigned from the concept of the "forced" jurisdiction. However, not for long, as it was brought back in 2015's amendment to the Polish Sports Act. What stems from that for the analyzed case is that both the doping control and the CAS case took place when no forced jurisdiction of PKOl existed (i.e. 2013 - 2014). During that time, the sports associations were free to decide on a forum where disciplinary cases would be heard.

**6.53.** Nowadays, the approach shifted, and the disciplinary cases again fall under PKOl Court's jurisdiction. Regardless of other consequences on this shift, it clearly indicates the arbitrability of said cases. As the Polish lawmakers have decided that the disciplinary cases have to be decided in arbitration, they consequently decided that they can be decided in arbitration – i.e. they are arbitrable.

***Key words:***

*statute of limitation |arbitral tribunal | post-arbitration proceedings | taking of evidence*

***States involved:***

**[POL]** – [Poland]

Decision of the Supreme Court of Poland of 15 June 2021, file ref. no III CSKP 102/21

***Laws Taken into Account in this Ruling:***

Kodeks postępowania cywilnego z dnia 17 listopada 1964 r. [Code of Civil Procedure of 17 November 1964] [k.p.c.] [POL], published in: Dziennik Ustaw [Journal of Laws] 1964, No. 43, item 296, as amended; Articles: 1204(2),[14] 1206(2), 2.

Kodeks cywilny z dnia 23 kwietnia 1964 r. [The Civil Code of 23 April 1964] [k.c.] [POL], published in: Dziennik Ustaw [Journal of Laws] 1964, No. 16, item 93, as amended; Articles: 65(1).[15]

*[Rationes Decidendi]:*

**6.54.** In post-arbitration proceedings, the state courts are not entitled to assess whether the claim is time-barred if the arbitral tribunal already assessed it. Errors in how the arbitral tribunal calculated the statute of limitations could not constitute a violation of public policy. Likewise, a mere review of the arbitral tribunal's interpretations, in the case of a properly conducted evidentiary procedure, cannot be reviewed during the annulment proceedings.

**6.55.** Taking evidence from the arbitration case file is not always necessary to properly review the award during the annulment proceedings. When considering an action to set aside an arbitral award, the state court is not obliged to carry out an evidentiary hearing ex officio.

*[Description of the facts and legal issues]:*

**6.56.** The Court of Arbitration at the Polish Chamber of Commerce issued an award that was challenged by the two companies ("Applicants") before the Court of Appeal in Cracow. The companies raised a number of objections, which mostly sought to establish that the claims in the case were time-barred and

[14] Permanent arbitral tribunals may keep the arbitrations case files in their own archives and should then make them available to the court and other authorized bodies upon request.

[15] A declaration of will shall be interpreted in such a way as the circumstances under which it was made, the rules of social co-existence and established custom require.

that the interest had been calculated retroactively. This was to result in a violation of public policy.

*[Decision of the Court of Appeals]:*

**6.57.** The Court of Appeal in Cracow decided the case in its decision of 24 April 2019, file ref. no I AGa 329/18. The Court of Appeals focused particularly on the issues that fall outside its discretion.

**6.58.** The first of the arguments related to the incorrect application of the statute of limitations. The arbitral tribunal supposedly did not consider the fact that the claims were time-barred. The Court of Appeal held that the arbitral tribunal directly addressed this issue and explained why it did not apply the statute of limitation. What is, however, more important is that the Polish public policy does not cover how the statute of limitation is calculated. It only covers the most blatant violations of public policy principles and not simple misinterpretations. Courts of Appeal during the post-arbitration proceedings are not empowered to analyze the interpretation applied by the arbitral tribunal.

**6.59.** The second argument - the admission of the debt - was dismissed for similar reasons. The tribunal explained why it did not find that the admission of the claim took place. In any case, this issue does not fall within the public policy clause as it is once again a matter of substantive law interpretation.

**6.60.** The third argument was that the arbitral tribunal applied interest retroactively, thus contradicting the lex retro non agit principle. The arbitral tribunal applied interest on the basis of a law that came into force after the agreement at dispute was concluded. According to the Court of Appeals, applying new law to old facts does not constitute a breach of public policy. If anything, it would be an error in applying intertemporal norms, which is also not subject to state court review.

**6.61.** Importantly method of calculating interest was not a subject of the arbitral tribunal's analysis, as the Applicants did not raise objections in this respect before the arbitral tribunal. Raising them only in the context of an action to set aside an arbitral award constituted a form of procedural disloyalty.

**6.62.** The Applicants also raised arguments about the substantive scope of the agreement in dispute, the issue of liability, and its scope. The Court of Appeal held that a review of the award in the manner requested by the Applicants would lead to the

substantive review of the case, which is also outside of the state court's powers during the post-arbitration proceedings.

**6.63.** The Applicants brought a cassation appeal against the Court of Appeal's judgement.

*[Decision of the Supreme Court]:*

**6.64.** The Applicants alleged that the Court of Appeal did not consider all their arguments in the reasons of the judgement, that it did not perceive a breach of public policy in the actions of the arbitral tribunal, and that it had abandoned its request to provide the arbitration case file at the request of the Applicants. Neither of said arguments persuaded the Supreme Court.

**6.65.** First, the Supreme Court resolved the problem of reasons for the Court of Appeal's judgement. Objections to the reasons of judgement can only be considered successful if the deficiencies in the grounds are so significant that a review of the judgement is impossible. Such a situation did not arise in the given case. The Supreme Court held that the reasons were properly drafted, and the fact that the Applicants did not share the arguments presented therein did not constitute grounds for reversing the judgment of the Court of Appeal.

**6.66.** Second, the mere misapplication of the substantive law does not lead to the violation of public policy. The issue of the statute of limitations was analyzed by the arbitral tribunal, which simply did not consider the validity of this plea. The arbitral tribunal interpreted and applied the statute of limitations, including the provisions on the interruption of the limitation period.

**6.67.** The need to stabilize long-lasting legal relations is an element of public policy. However, the application of said need in specific situations relates to the parties' individual interests. Any failures in this respect are, as a rule, interpretation errors that the state court cannot review. A wrong interpretation of the statute of limitations provisions does not lead to an arbitral award contrary to Polish public policy.

**6.68.** The Supreme Court likewise shared the Court of Appeal's decision on interest. In particular, it pointed out that there could be no violation of public policy by applying an act of the new law to facts before it entered into force if it is justified by the circumstances of the case. Besides that, the mere question of the amount of interest due cannot lead to a violation of public policy.

**6.69.** The Supreme Court lastly delt with the plea raised by the Applicants regarding the Court of Appeal's alleged failure to obtain the arbitration case files in order to review the arbitration

proceedings. Applicants held that the courts of appeal are not obliged to obtain the arbitration files to assess the case during the annulment proceedings properly. It is their right to do so, not an obligation. To overturn the judgment of the Court of Appeal based on such a possible violation, Applicants would have to show how the failure to obtain arbitration files affected the judgment, which they did not do. In the Supreme Court's view, the request (made one day before the hearing) was, apart from anything else, belated and aimed at prolonging the proceedings.

**6.70.** The Supreme Court also highlighted that the Applicants had access to the arbitration case file after all. If they considered that any part of said case file was important for the outcome of the case, they could have just produced it during the proceedings. From this, the Supreme Court derived the general principle that "a plea that the court failed to obtain evidence that a party to the proceedings itself could have submitted cannot be regarded as well-founded. When considering an action to set aside an arbitral award, the ordinary court is not obliged to carry out an evidentiary hearing ex officio".