

Polish Supreme Court judgment
dated 11 June 2008
Case No. V CSK 8/08

Summary by arbitraz.laszczuk.pl:

Companies "B" (debtor) and "I" (creditor) entered into a preliminary agreement under which I was to take up newly issued shares in B, in a debt-to-equity conversion of I's claims against B. B was in arrangement proceedings, and the arrangement covered I's claim. B then offered the shares to I at a higher price than originally agreed, and I refused to take up the shares. B filed a claim for arbitration with the Court of Arbitration at the Polish Chamber of Commerce, and I filed a counterclaim for consequential damages (lost opportunity) because of B's failure to offer it the shares. I received an award on the counterclaim, but (as the court later found) for failure to perform the final agreement rather than failure to perform the preliminary agreement. B filed a petition to set aside the award with respect to the ruling on the counterclaim. The regional court denied the petition, but the appellate court reversed and set aside the award. The appellate court held that the award effectively called for setoff of a debt covered by an arrangement, which is unlawful and against public policy. I filed a cassation appeal. The Supreme Court affirmed the ruling by the appellate court and denied the cassation appeal.

Excerpts from the text of the court's ruling:

1. Review of the merits of an arbitration award by the state court is limited to a determination of whether the award violates public policy. The phrase used by the Parliament, "fundamental principles of the legal order" (Civil Procedure Code Art. 1206 §2(2)), clearly demonstrates that this has to do with violation of provisions of substantive law that would infringe on the principles of the rule of law, and the arbitration award infringes the guiding legal principles in force in Poland, conflicts with the legal order in force, i.e. violates the principles of the political and socioeconomic system.

2. Redress of injury should be regarded as a fundamental principle of the legal order. Damages should clearly correspond to the injury.

3. Carrying out a legal act intended to circumvent the statutory prohibition on setoff of claims covered by an arrangement violates public policy.