

Polish Supreme Court judgment
dated 30 September 2010
(Case No. I CSK 342/10)

Summary by arbitraz.laszczuk.pl:

In 1991 the Polish State Treasury entered into a restructuring agreement with E. SA, a state-owned company which had been involved in foreign trading, in preparation for privatization of the company. As amended in 1993, the restructuring agreement provided for setoff of certain claims, with some amounts still to be paid by E. SA under the restructuring agreement. The restructuring agreement included an arbitration clause.

In 2005 the State Treasury filed a claim against E. SA before the Court of Arbitration at the Polish Chamber of Commerce for over USD 95 million still owed under the restructuring agreement. The arbitration court refused to admit evidence concerning the intent of the parties or the purpose of the restructuring agreement, but issued an award denying the claim, upholding the respondent's position that the restructuring agreement was a gift agreement, which was invalid because it was not made in the form of a notary deed.

In 2007 the regional court set aside the award, holding that the arbitration court had denied the claimant the right to present its case by refusing to admit its proffered evidence and by failing to justify the award adequately.

After a round of appeals to the Supreme Court related to the effect of E. SA's subsequently entering bankruptcy (Case No. I CSK 121/09), in 2009 the case was remanded to the appellate court for reconsideration. The court denied the appeal by E. SA, holding that while it was doubtful whether the claimant's right to present its case had been denied, the judgment by the regional court was correct and award must be set aside. The award violated public policy, specifically the principle of freedom of contract, because the arbitration court reclassified the restructuring agreement without considering the mutual intent of the parties or the purpose of the agreement.

The Supreme Court affirmed, and denied the cassation appeal by E. SA.

Excerpts from the text of the court's ruling:

1. In a petition to set aside an arbitration award, review of the merits of the case decided by the arbitration court is excluded.

2. Fundamental principles of the legal order should be understood to mean not only fundamental principles of the social and political system, reflected in constitutional principles, but also the overriding principles governing specific fields of law. ... Examples that have been held to be violations of the fundamental principles of the legal order within the meaning of Civil Procedure Code Art. 1206 §2(2) include violation of the principle of the autonomy of civil-law entities and the principle of economic liberty, awarding damages where no injury has been suffered, or accepting the effectiveness of setoff under conditions in which specific regulations exclude such possibility.