

**Polish Supreme Court judgment**  
**dated 11 March 2011**  
**II CSK 385/10**

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

Andreas S. hired Jerzy M., an advocate, to enforce a judgment in his favour from the state court in Karlsruhe, Germany, against R.S.P.K. in a bankruptcy proceeding in Poland. The parties agreed in writing that the advocate would receive a fee with two components: one based on the time worked on the case and the other equal to 6% of the amount executed against the debtor with the advocate's involvement. The agreement provided that any additional fee required an annex to the agreement. The agreement included an *ad hoc* arbitration clause.

The parties subsequently exchanged emails concerning the advocate's representation of the client in a cassation appeal before the Supreme Court of Poland against an order of the Łódź Court of Appeal on enforcement of the judgment from the German court. The exchange of emails, which was confirmed only by the advocate, provided that the advocate would receive an additional fee of EUR 25,000 for the successful hearing before the Supreme Court. The exchange of emails did not include an arbitration clause.

Meanwhile, in the bankruptcy proceeding, the client's claims were allowed in the amount of PLN 9.5m in category 3 and PLN 2.8m in category 4, and the bankruptcy trustee assured the advocate that both allowed claims would be paid in full. Thereafter the agreement was terminated.

The advocate obtained an arbitration award against the former client for over PLN 800,000 in fees for pursuit of the claims in the bankruptcy and for the case before the Supreme Court. The arbitration court held that the exchange of emails concerning the Supreme Court case constituted an annex to the existing legal services agreement and that the claim was also subject to arbitration.

The former client moved to set aside the award as contrary to public policy. The regional court denied the application and the Poznań Court of Appeal denied the former client's appeal.

On cassation appeal, the Supreme Court of Poland held that the exchange of emails did constitute an annex to the existing legal services agreement, but because the annex did not contain an arbitration clause the claim for payment of the fee of EUR 25,000 for representation of the client before the Supreme Court was not subject to arbitration.

The Supreme Court further held that the award of fees as a percentage of the amount of the claims allowed in the bankruptcy proceeding clearly did not meet the conditions for payment of the percentage fee set forth in the agreement ("after conclusion of execution") and thus clearly violated fundamental principles of contract law under Civil Code Art. 56 and 353<sup>1</sup>. This also violated the former client's constitutionally protected property rights and violated public policy. The court set aside the judgment of the court of appeal accordingly and remanded the case to the court of appeal for reconsideration.

**Excerpts from the text of the court's ruling:**

**1. Under Civil Procedure Code Art. 1162, the fact that a party to an arbitration clause has the status of a consumer is irrelevant.**

**2. An arbitration clause is subject to interpretation. Notwithstanding the essentially procedural nature of an arbitration clause, it should be interpreted in accordance with Civil Code Art. 65, applied by analogy, and thus, *inter alia*, in accordance with the directives requiring consideration of the intent of the parties to the agreement concerning the arbitration clause and its purpose.**

**3. Violation of the substantive law applicable to assessment of the relationship being resolved may lead to setting aside of an arbitration award only when the effects of the award, as determined by the content of the ruling, are contrary to the fundamental principles of the legal order.**

**4. The fundamental principles of the legal order of the Republic of Poland ... include the constitutional principle of protection of property rights (Polish Constitution Art. 64(2)). By granting protection to one party to an agreement at the cost of the other, by awarding high consideration against the latter in favour of the other contracting party despite a clear lack of grounds therefore, the arbitration court violated this constitutional principle.**