

Tribunal costs in domestic arbitration not manifestly excessive despite irregularities in time entries (Swiss Supreme Court)

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In *Decision 4A_49/2019*, the Swiss Supreme Court rejected a challenge to a domestic award, which claimed that the tribunal's costs were excessive. It held that overall the costs were not obviously excessive, despite acknowledging that the arbitrators and the tribunal secretary had devoted an exaggerated amount of time to certain activities. It also confirmed that it does not review the tribunal's allocation of costs.

In a recently published French-language decision, the Swiss Supreme Court rejected an application to set aside a domestic award, holding that the argument that the tribunal's costs were manifestly excessive was unfounded. Whilst the Supreme Court identified certain irregularities in the time entries of the arbitrators and the tribunal secretary, it held that overall the costs were acceptable. It also noted that it cannot review the tribunal's allocation of costs.

The underlying dispute arose from a trust agreement. The tribunal requested that the parties make an advance on costs. Neither party paid its share. Consequently, the tribunal closed the proceedings and ordered the parties to pay the costs in equal shares.

The claimant challenged the award requesting that the Supreme Court reduce the costs. The respondent requested that the entirety of the costs be borne by claimant.

The Supreme Court first recalled that, with regard to domestic arbitrations, it can only reduce costs that are "manifestly excessive". However, arguments pertaining to the allocation of costs are inadmissible.

The claimant argued that the tribunal secretary's time should not have been charged to the parties. The court dismissed this argument on the basis that the parties had agreed to remunerate the arbitrators on a time-spent basis. The court considered that the appellant had to assume that the tribunal secretary's work would be charged in a similar manner.

The Supreme Court also reviewed the tribunal's costs in detail. It noted that the time spent by the chairman studying short letters seemed exaggerated. Moreover, the court identified some instances of overbilling, for example, when the chairman spent as much time reviewing draft letters prepared by the tribunal secretary as it took the tribunal secretary to prepare the drafts. However, the Supreme Court refrained from reducing the arbitral tribunal's costs, holding that these few irregularities were insignificant in the broader context and that the total amount of fees was not manifestly excessive.

This decision is a reminder that, unlike in international arbitration, in domestic arbitration, the court can reduce the tribunal's costs and that, for this purpose, the Supreme Court will examine the details of the account of time spent. Another noteworthy finding is that cost allocation is not subject to review. Therefore, only an allocation running counter to procedural public policy, which is a high threshold, can be challenged in domestic and international arbitration.

Case: *Decision 4A 49/2019 (15#July 2019) (Swiss Supreme Court)*

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