

**Horvath/Konrad/Power**

**Fachbuch Recht**

# **Costs in International Arbitration**

**A Central Eastern and Southern Eastern  
European Perspective**

**Linde**  
*international*

*2008*

## 6. Czech Republic

### General

*What are the applicable statutes governing arbitration proceedings conducted in your jurisdiction?*

The applicable statute governing arbitration in the Czech Republic is the Act No. 216/1994 Coll., on arbitration proceedings and enforcement of arbitration awards (*APA*), as amended, which became effective on 1 January 1995.

This Act enables the arbitration courts to decide all property related disputes, with the exception of disputes that arose in connection with enforcement of court decisions, or in connection with bankruptcy proceedings, unless the parties have expressly agreed on the applicability thereto.

*What is (are) the leading arbitration institution(s) in your jurisdiction?*

A leading arbitration institution in the Czech Republic is the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic with its seat in Prague (*ACECAC*).

The arbitration proceedings before ACECAC are usually conducted in accordance with its Rules (published in the Official Commercial Gazette), unless the parties to the dispute have agreed otherwise.

The ICC is represented in the Czech Republic by its National Committee, which closely cooperates with the Arbitration Court of the Czech Republic (Prague, Kladno).

Apart from ACECAC, there is the Arbitration Court attached to the Czech-Moravian Commodity Exchange Kladno (Prague), the Arbitration Court attached to the Stock Exchange in Prague and several other *ad hoc* arbitration institutions that operate in the Czech Republic, such as the Commercial Arbitration Court (Prague), Arbitration Court of the Czech Republic (Prague, Kladno) and the Czech-Moravian Arbitration Company (Vsetín).

*Is there any statistical data on how many international arbitrations are conducted in your jurisdiction per annum? What would you estimate to be the average length of the proceedings?*

According to ACECAC's statistical reports, the total number of arbitration proceedings in 2006 was 1,238, of which 1,159 were domestic and 79 international.

Our estimate of the average length of the arbitration proceedings would be two to three months.

### Costs

#### Security for Advance on Costs

*Are there any arbitration or statutory rules in your jurisdiction covering security for costs in arbitration proceedings? Under what circumstances will a security be required?*

*What are the consequences if a party fails to pay the security?*

Neither the ACECAC's rules nor the APA addresses security for costs in arbitration proceedings.

However, Civil Procedure Act (No. 99/1963) is to be used in cases which are regulated neither by an agreement of the parties nor by the APA. Concerning security for costs, the Civil Procedure Act stipulates that a request for provision of a security for costs related to a preliminary measure may be imposed on the party who proposed the measure. If the security is not provided, such proposal shall be refused by the court.

*Are there any arbitration or statutory rules in your jurisdiction covering advance on costs? If so, what are the consequences if a party fails to pay the advance?*

Under the ACECAC's rules, the costs of arbitration proceedings, which include the arbitration fee and administrative costs of the court, must be paid in advance. Both the arbitration fee and the administrative costs ensue from the court's tariff. The arbitration fee is calculated based on the amount in dispute. Administrative costs are overhead costs incurred by the court in connection with the trial of individual cases, and are calculated as a lump sum in relation to the amount claimed.

The arbitration fee has to be paid by the plaintiff when filing its statement of claim. Similarly, a defendant filing a counterclaim would be obliged to pay the fee. Administrative costs must be paid within a term set by the court's Secretary. This term may be prolonged, if necessary.

The arbitration proceedings will not commence until the arbitration fee(s) are paid. Failure to pay the administrative costs within the fixed term results in an order of discontinuance being taken.

The Civil Procedure Act stipulates a similar proceedings fee that is to be paid by the plaintiff together with submission of its action, the amount of which is related to the value of the subject-matter of the claim. However, this fee should not be considered as an advance on the costs of proceedings. An advance on costs may be required only in connection with arrangement of evidence, when the party which requested the arrangement of certain evidence to prove the claimed facts, or in favour of which the arrangement was ordered by the court, is obliged to provide the advance if requested by the court.

## **Party Costs**

*Do(es) the arbitration institution(s) in your jurisdiction have rules defining the costs to be borne by one party? Or which party is to bear which part of the costs?*

Under the ACECAC's rules, each party bears its own costs incurred in connection with defending its interests. As already mentioned, each party is also expected to pay the arbitration fee and administrative costs in relation to its claim.

*Do(es) the arbitration institution(s) in your jurisdiction have rules on the award on costs?*

Under the ACECAC's rules, generally, the losing party bears the costs including the arbitration fee and the administrative costs. If the claimant is only partially successful, the fee and the costs are split between the parties in a proportion corresponding to the awarded

and rejected portions of the relief sought. The afore-mentioned procedure applies unless the parties agree otherwise.

It is mandatory that the arbitration award contains a decision on fees and costs indicating the party(ies) to whom those are adjudicated.

*Which party is to bear which costs under the applicable statutory provisions?*

The Civil Procedure Act stipulates that each party bears its own costs incurred within the arbitration proceedings as well as costs for its representation. Joint costs are borne in proportion to participation in the respective part of the matter, or if such cannot be determined, the parties bear the costs equally.

Apart from that, the plaintiff is supposed to pay the proceedings fee, the amount of which is related to the value of the subject-matter of the claim.

The party having full success in the case is awarded a reimbursement of the costs necessary for adequate enforcement or defence against the party who had no success. In the case of partial success, the reimbursement is either divided proportionally, or none of the parties may be awarded a reimbursement. In a similar manner, reimbursement of the costs for arrangement of evidence is awarded to the respective party.

### **Institutional Costs**

*Do(es) the arbitration institution(s) in your jurisdiction have a tariff for administrative/institutional costs incurred or a fixed structure? In contrast to arbitration, how are court costs in litigation proceedings calculated in your jurisdiction?*

The arbitration fee as well as the administrative costs of ACECAC are fixed on the basis of the amount in dispute and are calculated in accordance with ACECAC's Tariff on Costs of Arbitration Proceedings.

There are two types of tariffs – one for domestic disputes and one for international disputes. Both of these tariffs provide a scale of incremental amounts up to which a certain fee and a certain cap is fixed.

The arbitration fee is increased by 30% in respect of any further participant in the proceedings exceeding the standard two parties.

A reduction of 30% of the arbitration fee is applied if the case is heard by a single arbitrator. A reduction of 20% of the arbitration fee is applied if the arbitration award is rendered, upon application of the parties, without giving reasons for the award. In case of simplified proceedings, when there is no oral hearing and the proceedings are based only on written documents, a reduction of 30% of the arbitration fee is applied. The maximum overall reduction, in case of multiple grounds for the reduction, is 50% of the arbitration fee. If the arbitration proceedings are prematurely terminated, *i.e.* withdrawal of the statement of claim or dispute settlement before the first day of the hearing, 50% of the arbitration fee paid is returned to the party(ies).

The administrative costs are reduced by 20% if the case is heard by a single arbitrator, or in the case of simplified proceedings. The maximum overall reduction should not exceed 30%. However, if the arbitration proceedings are prematurely terminated, 50% of the administrative costs are returned.

Court fees are calculated in accordance with Act No. 549/1991 Coll., on Court Fees, as amended. The fees are divided into a proceedings fee and fees for individual acts carried out by the court (e.g. arrangement of evidence). The corresponding tariff contains the respective amounts for individual acts, whereas the proceedings fee is calculated based on the amount in dispute.

The proceedings fee is due upon initiation of the proceedings, i.e. when filing the claim, the appeal, etc. Fees for individual acts are due upon submission of application for execution of the act.

### **Arbitrator Costs**

*Do(es) the arbitration institution(s) in your jurisdiction have a tariff for costs incurred by the arbitrator(s) or a fixed structure? Or can arbitrators determine their own costs?*

Remuneration of arbitrators is derived from the arbitration fee, which is a mandatory payment before the commencement of proceedings. The arbitration fee is fixed on the basis of the amount in dispute as indicated in the ACECAC's tariff.

Arbitrators are not permitted to determine their own costs or to unilaterally make any deviating fee arrangements under ACECAC's tariff. Any deviating fee arrangements would require the consent of all the parties.

*Do(es) the arbitration institution(s) take into account additional factors (difficulty of the case, length of the proceedings, etc.) when determining the fees of the arbitrator(s)?*

The arbitration fee is increased by 30% in respect of any further participant in the proceedings exceeding the standard two parties.

A reduction of 30% of the arbitration fee is applied if the case is heard by a single arbitrator.

A reduction of 20% of the arbitration fee is applied if the arbitration award is rendered, upon application of the parties, without giving reasons for the award.

In case of simplified proceedings, when there is no oral hearing and the proceedings are based only on written documents, a reduction of 30% of the arbitration fee is applied.

The maximum overall reduction, in case of multiple grounds for the reduction, is 50% of the arbitration fee.

*In ad hoc proceedings are there any regulations or can the arbitrators determine their own fees? Is there a noteworthy difference to institutional arbitration proceedings?*

*Ad hoc* arbitrators are usually integrated in associations which serve as guarantors of the professional skills of their members and ensure transparency by publishing proceedings rules and a tariff on fees (similar to institutional arbitration), which is binding for every member of the association. However, such associations, as well as individual *ad hoc* arbitrators, may determine their fees without limitation. The only limitation would be to keep the fees lower than in ordinary civil proceedings, as costs savings are one of the claimed advantages of arbitration proceedings.

A substantial difference between institutional and *ad hoc* arbitration proceedings is that arbitration institutions (so-called permanent institutions) may only be established

under a law and as such are subject to certain regulations, e.g. mandatory publication of their statutes, rules and tariffs in the Czech Commercial Gazette. On the other hand, *ad hoc* arbitrators are not obliged to adhere to any rules apart from those which they voluntarily undertake to observe.

### Costs of Representation

*In your jurisdiction are there binding tariffs, which determine legal fees for representation in arbitration proceedings?*

There are no such tariffs.

*If not, how are legal fees generally calculated? (i.e. based on the value of the dispute or time incurred or otherwise?)*

Legal fees are governed by the Ministerial Decree on the Remuneration of Lawyers (Lawyer's Fees) and the Ethical Codex of the Czech Bar Association. The Ministerial Decree on the Remuneration of Lawyers, for the purpose of decisions on costs compensation in civil proceedings, is applicable at the close of proceedings when the respective court decides on the proceedings costs compensation due to the winning party.

Pursuant to these regulations, legal fees are calculated based on the amount in dispute, degree of complexity, nature of the subject matter (fulfilment, determination, personal matters), stage of the proceedings, time spent, etc. An individual agreement on remuneration concluded between the lawyer and the client is, however, not excluded and is quite common in practice. The agreed remuneration has no impact on the costs compensation, which is determined solely on the basis of the applicable decree.

*In your jurisdiction are contingency and/or success fees for lawyers permissible?*

In the Czech Republic, it is possible to agree that the lawyer's remuneration is to be determined as a share of the outcome of the lawsuit, however, provided that such remuneration is reasonable, i.e. is not clearly in disproportion to the complexity or the value of the subject matter of the case. A share which is higher than 25% of the outcome is generally considered not reasonable.

The lawyer's remuneration may be subject to disciplinary proceedings by the Czech Bar Association.

*Do(es) the arbitration institution(s) collect value added tax as part of the advance on costs or is that done separately by the arbitrator(s)?*

Administrative costs as well as the arbitration fee include the value added tax. When an advance on costs is required, a corresponding part of it is the value added tax.

### Out-of-pocket Expenses

*Do(es) the arbitration institution(s) in your jurisdiction provide for reimbursement of out-of-pocket expenses for arbitrators? If so, are there provisions on a per diem or on an actual cost basis?*

Remuneration of arbitrators is covered by the arbitration fee. As regards their other expenses, in particular travel and accommodation expenses, these are included in the administrative costs. The administrative costs are determined as a lump sum in relation to the amount in dispute. The claimant is obliged to pay the administrative costs together with the arbitration fee within the term given by the Secretary of the arbitration court.

Should the amount in dispute increase in the course of the proceedings, the administrative costs must be increased proportionally.

The claimant may be awarded reimbursement of the administrative costs and the arbitration fee by the other party, in full or in part, depending on the claimant's success in the case.

The parties may agree on a different division of payment of the fees and costs related to the arbitration proceedings.

*Can a party obtain reimbursement of its own costs, e.g. in-house counsel, party experts, claim surveyors, consultants?*

Generally, each party to the arbitration proceedings carries its own costs, however, the arbitration award may contain a reimbursement of these costs when justifiable.

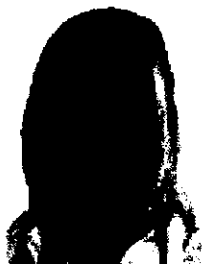
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## Croatia



As a member of Porobija & Porobija legal counselling team, **Ivana Sverak** has provided legal advice in respect of financing of several major infrastructure projects. She has participated in dealings with Croatian and Foreign Investors to assess the bankability of the investments. She developed knowledge of project development, financing and related security arrangements. She is also involved in litigations, both independently and supervised, focusing mainly on commercial, labor and civil law, including bankruptcy and real estate law.

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**Josef Vejmelka** graduated from the Charles University in Prague, Faculty of Law (Dr. iur.) in 1978. He was admitted to the Bar in 1991, member to IBA. He has been a speaker at several international seminars and conferences. He is fluent in Czech, Slovak, English, German and Russian. He is co-author of the Czechoslovakian Business Law publication, author of various legal articles about, among others, foreign investments including incentives programmes in the Czech Republic, competition issues related to merger notification regime, copyrights and insurance contracts. His present specializations are: corporate law, M&A, competition law, real estate law. In 2002, he took over with Petr Wünsch the Prague office of Freshfields Bruckhaus Deringer and had established the unlimited partnership of attorneys at law Vejmelka & Wünsch, v. o. s.

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**Carri Ginter**, partner, joined the firm in January 2005. He is the head of dispute resolution team in Tallinn. Mr. Ginter has extensive experience in litigation, which is illustrated by several decisions of the Estonian National Court (highest instance of the national judiciary) favourable to the clients and representing a client in the so far largest successful individual damages claim against Estonia. Mr. Ginter has been appointed as *avocat conseil* of the French embassy in Estonia. His works regarding Estonian and European law have been published by international law journals such as *European Competition Law Review* and the *European Law Review*. He is an acknowledged speaker in various seminars and conferences. He teaches European Law at the Institute of Law of the University of Tartu. Mr. Ginter is The Legal 500 recommended practitioner.

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