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Formal requirements for witness testimony in arbitration proceedings in Switzerland

Georg von Segesser (von Segesser Law Offices) · Friday, August 12th, 2011

The High Court of the Canton of Zurich had to examine in a recent case whether the allegedly false testimony of a witness in arbitration proceedings was punishable under the Article 307 of the Swiss Criminal Code as perjury.

Up to now, it was disputed by scholars whether the requirements for witness testimony in state court proceedings also applied in arbitration.

The Court referred to the Swiss Federal Supreme Court's case law according to which the validity of a witness testimony is governed by the applicable procedural laws. In the absence of specific provisions, it is not required that the transcripts/minutes be read to the witness after his testimony and that the witness signs the transcripts, both of which are requirements for witness testimony before state courts.

The following conclusions can be drawn from the decision:

- (i) The witness must be reminded of his/her duty to tell the truth;
- (ii) The witness must be made aware of any privileges and of his/her possible right to refuse testimony;
- (iii) The witness must be informed of the criminal consequences of perjury.

It is therefore recommended to clearly indicate in a procedural order that witness and expert testimonies or statements by translators and interpreters shall be recorded by court reporters and that the transcripts will be submitted to the parties, but that the transcripts will not be read to nor signed by the witnesses, etc.

(Decision of the Zurich High Court published in ZR 110 (2011) Nr. 27, p. 78 – 84)

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