

Who must compensate the costs if the action is brought by a minority shareholder? 1/9/25



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In the cases specified in the Commercial Law, a minority shareholder has the right to file a lawsuit in court against the founders, the board or council members, or an auditor in order to protect the company and its interests.

The minority shareholders who had filed a lawsuit against the above-mentioned persons in court essentially exercise all of the plaintiff's procedural rights and obligations. At the same time, it has been recognised in case law that the company itself is nevertheless to be regarded as the plaintiff in such cases.

This finding was creatively utilised by the defendants when the court upheld the minority shareholder's claim and ruled on the reimbursement of costs. The defendants argued that the judgement, insofar as the defendants were ordered to pay the costs in favour of the minority shareholder, was incorrect because in an action brought by minority shareholders, the company itself is the plaintiff and the minority shareholder in the present case was only participating as a representative, whereas the Civil Procedure Law does not provide for the reimbursement of the costs of the plaintiff's representative.

The Senate rejected this argument and stated:

1. The minority shareholders were in fact the initiator of the respective proceedings, the creditor of the asserted claim and the one who drives the examination of the case. Minority shareholders must, among other things, pay the stamp duty. In addition, when representing the company before court, minority shareholders have the right to consult an attorney at law in order to obtain qualified legal assistance, which is also linked to the costs of assistance.
2. The case law of the Senate has ruled that even if an action against members of the Board for compensation for damages incurred by the company is brought by the minority shareholders of the company, only the minority shareholders bringing the action is entitled to make decisions on the progress of the action brought and, consequently, on the exercise of procedural rights in the proceedings in question.
3. The minority shareholders who requested and brought the company's action are legally comparable to the plaintiff, not only in terms of the progress of the action brought and the exercise of procedural rights, but also in terms of bearing (covering) the costs of the proceedings, so that it is just that they are the litigation costs are compensated to them.

For more details see Supreme Court judgment of 4 February 2025 in Case No. SKC - 128/2025 (ECLI:LV:AT:2025:0204.C68430018.20.S).