



## Civil Litigation Costs

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**Abstract:** This paper will present to the reader and all other stakeholders all of the most important elements of civil litigation costs. Herewith, I answered the question of who is obligated with paying the procedure costs at the end of the procedure, who is relieved of these expenses, who is obligated to prepay for expenses, which is the competence of court during deciding upon expenses, which categories of persons are exempt from paying court fees for lawsuits etc. During this brief and substantive analysis, I have analyzed the provisions on civil litigation costs of the respective laws on the contested procedure of the states of Kosovo, Croatia, Serbia, Albania and Bosnia and Herzegovina. Especially, I have devoted a more detailed analysis of Kosovo legislation.

**Keywords:** civil procedure; civil litigation costs; contested procedure; lawsuits; legislation

### 1. Introduction

First of all, the costs of civil court proceedings are a very important and sensitive part of the contested procedure of each state. When the interested party addresses the court with a request to protect or restore its subjective right, it is obligated to make a payment for court services. This payment is paid into the state budget. Civil litigation costs are the costs incurred during the process and the costs associated with the contested procedure. Somebody has to pay these costs. Either the plaintiff, either the respondent party. The question of who should pay the costs at the end of the contested procedure is given a response from the “Culpa” principle and the “Causa” principle. More on these principles will be discussed below.

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## **2. The Notion of Civil Litigation Costs**

Courts during the exercise of the function of justice, defined by the Constitution and by law, in the concrete cases presented to them, make costs. These costs are funded by the state. For these expenditures, there is a separate budget line from the state budget. However, in cases when a natural person or a legal person files a lawsuit for the protection of his/her subjective civil rights then he/she has to pay the court tax for lawsuit. This tax is determined depending on the value of the dispute object. The obligation to pay the tax is of an administrative-financial nature, and derives from the provisions on court fees (Brestovci & Morina, 2017, p. 313). Regarding court fees, the Judicial Council of the Republic of Kosovo has issued a legal document, which is Administrative Instruction no. 01/2017 on Unification of Judicial Fees (hereinafter: AIUJF of Republic of Kosovo), adopted on 15 March 2017 and entered into force on 1 May 2017. The question arises, what do we understand with procedural costs? Civil litigation costs are the costs incurred during and in connection with the trial. The same definition of procedural costs is provided by Law no. 03/L-006 on Contested Procedure of the Republic of Kosovo (hereinafter: LCP of the Republic of Kosovo) in Article 449, par.1, where it is expressly stated that: "The procedural expenses consist of the costs incurred during and in connection with the judicial process". This law pays special attention to the costs of the procedure in Chapter XXV, Articles 449-473. Such are the costs of the authorized representative, of experts, of witnesses, costs for providing the proof, costs for judicial settlement which has been not reached between the parties, for inspection of the venue, costs occurred during the insurance procedure, costs occurred during the appeal procedure etc. One of the main goals for which the civil litigation costs exist is to eliminate and prevent the possibilities of filing lawsuits clearly unfounded and thus to protect the authority of courts so this authority won't be injured from parties, which for certain purposes, tend to put in front of the respondent position individuals without any base. The costs of translation based on modern laws of contested procedures are always a burden on the court budget. This case is regulated expressly by LCP of the Republic of Kosovo, in article 96, par. 5, Civil Procedure Act of the Republic of Croatia (thereafter: CPA of the Republic of Croatia) in article 105, par. 2, Civil Procedure Law of Republic of Serbia (thereafter: CPL of the Republic of Serbia) in article 99 etc. The tax on lawsuit is paid when the party files the lawsuit. After paying the court tax for lawsuit, the party should save carefully the receipt, as a proof of payment. The plaintiff should accompany the lawsuit with the verification of payment of the court tax (LCP of the

Republic of Kosovo, article 253, par. 4). But, if the plaintiff even after the courts remark don't pay the tax for lawsuit, which as we said it is paid based on the value of the object of dispute, it will be considered that the plaintiff withdrew the lawsuit (LCP of the Republic of Kosovo, article 253, par. 5 and AIUJF of the Republic of Kosovo, article 5, par. 5, subpar. 5.5.1). It can happen that the plaintiff files the lawsuit in the court of which he thinks it has competence to decide upon his case, he pays the court tax for lawsuit but later, during process, that court is declared incompetent. In these cases, the plaintiff's legal security cannot be violated and he cannot be obligated to pay for the second time in a row the court tax for lawsuit (AIUJF of the Republic of Kosovo, article 7, par. 4). Even when the lawsuit is approved, refused, withdrawn, rejected as not allowed etc., the court tax for lawsuit it can't be returned. If the party withdraws the submission after he paid the tax, he doesn't have the right to request the refund of the already paid court tax (AIUJF of the Republic of Kosovo, article 7, par.1). The sum total of the paid court fees it goes on to the state budget. It's a general rule that, the party which proposes the proof e.g. performing of expertise of a respective field, should deposit to the court the necessary amount of money for paying the costs. Whereas, when parties on the procedure, propose together, obtaining of a proof e.g. performing of expertise of a respective field, they jointly, will be obligated to deposit the equal amount of money for reimbursement of costs. The court will not obtain that proof if the necessary amount of money is not deposited within the deadline determined by the court (LCP of the Republic of Kosovo, article 451, par. 3). The costs for witnesses, experts and for inspection of items or inspection of venue should be prepaid from the party which requests them, in the amount that the court has determined. But, the court, taking into considerate the circumstances of the case, and the material status of the parties, can charge one or both parties to pay their costs, no matter which one of them has requested listening the witnesses, performing the expertise or inspection (Civil procedural code of the Republic of Albania, article 105, par.1). The witnesses, experts and translators have the right to get the expenses for their presenting, and a compensation for leaving their work place (Civil procedural code of the Republic of Albania, article 105/a).

### **3. Who Covers the Civil Litigation Costs**

As far as the question is concerned, there are two principles. Based on the first principle "Causae" the costs of the procedure are covered from the party which has lost

the contest, because it is reasonable that her costs and the costs of the other party to be covered from the party which has been the initiator of contest, whereas if the lawsuit is founded, it means that the respondent party is the initiator of the contest (Musa & Musa, 2015, p. 232). Based on this principle, he which with his conduct gives reason for court's proceedings should cover his procedure costs and should pay the costs of the opposing party (Brestovci, Qehaja & Morina, 2017, p. 316). In order to avoid injustice, this basic principle is corrected by the principle of guilt of party or the case which happened to her - principle "Culpa". Responsibility, based on the "Culpa" principle, we have e.g. when the party with her guilt causes the postponement of the session or extension of the court deadline, restoring the previous situation or filing with delay of facts and proofs, then, when breaking the order in the courtroom causes procedure costs etc. (Brestovci, Qehaja & Morina, 2017, p. 317). Even the law itself regulates this case like this: "Every party preliminarily covers his/her costs which he/her caused with their own procedural actions" and "The party has for obligation that, regardless of the fact that which one won the contest, to reimburse the costs of the opposing party, that the opposing party had, with her/his fault or with the event that happened to her" (LCP of the Republic of Kosovo, article 450 and 454, par. 1). The same provision also contains Article 156, par. 1 of CPA of the Republic of Croatia, Article 151, par. 1 of CPL of the Republic of Serbia, Article 388 of Civil Procedural Code of Republic of Bosnia and Hercegovina (thereafter: CPC of the Republic of Bosnia and Hercegovina) etc. The party, based on "Culpa" principle, can request the covering of expenses as soon as the expenses are caused, even before the time when the final decision for the main issue should be issued, because this it does not depend from the success of contested procedure (Brestovci, Qehaja & Morina, 2017, p. 317). It is a rule of law that the party that loses the trial not only carries the expenses it incurred in its actions but has the duty to pay all the expenses to the opposing party (Brestovci, 2006, p. 275). We encounter this also in article 452, par. 1 of LCP of the Republic of Kosovo, article 154 of CPA of the Republic of Croatia, article 149 of CPL of the Republic of Serbia, article 386 of CPC of the Republic of Bosnia and Hercegovina etc. With the term "the party that loses the trial" it is understood the plaintiff when his lawsuit is a refused one when his lawsuit is laid down as unallowed with ruling or in the case of the defendant party he loses when the lawsuit of the plaintiff is approved as founded. When the court decides on costs, it takes into account only the costs that were necessary for the normal and regular development of the case in the court. Unnecessary and unreasonable expenses are not recognized by the court. When it comes to lawyers expenses, then, these expenses are calculated based on

the applicable rule on tariffs of lawyers, approved by the Chamber of Lawyers of Republic of Kosovo. For the work done outside the residency of the lawyer's office, it belongs to the lawyer the compensation for travel expenses, the compensation because the absence in the office and daily pay (Rule on Tariffs of Lawyers of the Republic of Kosovo, article 5, par. 1). For the work that the lawyer should do beyond the defined working hours of the body before which the case is being processed or on weekends and holidays, the foreseen compensation with this fee increases by 25% (Rule on Tariffs of Lawyers of the Republic of Kosovo, article 11). It may happen that the defendant has not given rise to the initiation of the contested procedure, so as soon as the lawsuit is submitted to him, he informs the court with a special submission that he accepts the lawsuit. In these cases, the plaintiff should compensate the procedural expenses of the respondent party. In this line is also, the norm of article 455 of LCP of the Republic of Kosovo, article 152 of CPL of the Republic of Serbia, article 157 of CPA of the Republic of Croatia etj. It may happen that the lawsuit by the claimant is withdrawn. When this case occurs in practice, then the plaintiff is obliged to compensate the defendant's expenses unless the defendant withdrew the claim immediately after the defendant had fulfilled the obligation. The civil dispute between the plaintiff and the defendant may also be terminated by judicial agreement. In that judicial agreement, the procedural parties can agree even for the issue of costs. When they disagree, indirectly it is understood that they do not request the costs from each other, so, they leave this case to be decided by the court. It is worth mentioning that even the costs for attempting to reach the court settlement are part of the civil litigation costs. Unlike LCP of the Republic of Kosovo, CPA of the Republic of Croatia and CPC of the Republic of Bosnia and Hercegovina, the CPL of the Republic of Serbia in article 154 expressly states that: "Each party shall bear its own costs if the case is concluded with a court settlement, or settlement following mediation, unless the parties agree otherwise. The costs of litigation shall include the costs of an attempted settlement (Article 326) that failed, as well as the costs of an attempted mediation (article 148) that failed". Thus, it recognizes under the cover of procedural costs, even the costs incurred in the mediation procedure to reach a common solution between the parties to the dispute. When a state prosecutor and an Ombudsman participates in the proceedings as a party, he or she has the right to repayment of costs according to the provisions of this Act, but does not have the right to a fee. This is like this because for the work done by state prosecutor and by Ombudsman they receive salaries within the institution where they operate. The provisions upon procedural costs apply also for the parties represented by the

public representative. In such cases, the costs of the procedure also include the amount to be recognized by the party in the name of the remuneration for the lawyer as a representative (LCP of the Republic of Kosovo, article 461). The same norm is also contained in CPL of the Republic of Serbia in article 158, CPA of the Republic of Croatia in article 163 and CPC of the Republic of Bosnia and Hercegovina in article 395. The expenses for witnesses, experts and for inspection of items or inspection in the venue are prepaid by the party which requested, in the amount determined by the court with a ruling (Vokshi, 2015, p. 631). When the request for obtaining proof is proposed jointly by the parties, then the court decides that the sum needed for compensation of costs, should be deposited (prepaid) by the parties in equal parts (Vokshi, 2015, p. 631). When the plaintiff thinks that the court has not correctly calculated the costs, he can address this case to the higher court (Court of Appeal) with a special appeal.

#### **4. The Decision on the Civil Litigation Costs**

The court shall decide for reimbursement of costs in the judgment or ruling, which concludes the proceedings before that court. The Court recognizes the costs to the parties only when they refer to it with a specific request, by which they provide in detail the expenses they are seeking, by submitting evidence of the costs incurred if the evidence does not exist such as in the case file. This implies that the court never judges the costs of the procedure according to official duty (*ex officio*). The request for procedural costs must be based on relevant evidence like e.g. invoices, receipts, transport tickets, proof of loss of salary etc. (Morina & Nikçi, 2012, p. 782). When deciding on expenses, the court does not hold any verbal examination. Decision on procedural costs has the form of a ruling even though it is often an integral part of the verdict (Musa & Musa, 2015, p. 233). This is stated exclusively in the provision of Article 142, par. 6 of LCP of the Republic of Kosovo. The party should file the request for reimbursement of the costs by the end of the hearing which precedes the issuance of the decision on costs, and if the decision is issued without prior hearing, then the party has the duty to file the request for reimbursement of expenses in the proposal upon which the court should decide (LCP of the Republic of Kosovo, article 463, par.3). When the party does not file a specific request related to expenses, the court principally, depending on the circumstances of the case, decides that every party should bear their own expenses. The ruling upon costs contained in the final verdict can be attacked only with the appeal against the

ruling, if at the same time the verdict on the main issue is not affected (LCP of the Republic of Kosovo, article 466, par. 1).

### **5. Exemption from Tax Payment and Submissions for which no Tax is Paid**

Some categories of people are released from obligation to pay court taxes. E.g. individuals with a difficult material position, which with the tax payment could be subjected to a high risk of their existence and their family, or for persons who are dependent on them. The court releases the party from the payment of civil litigation costs, which from his/her general position of affairs, is unable to afford those expenses without risking and harming the indispensable nutrition of its own self and of its own family (Vokshi, 2008, p. 752). When filing a lawsuit, the following categories of persons are not obliged to pay court fees for lawsuits. The following categories of persons are exempt from paying the tax: a) The person who submits the request that deals with the employment relationship, except for cash claims, b) A person with a difficult economic condition, if the payment of the tax directly affects the risk of his existence, respectively of his family members or of other persons who depend on him, c) The families of the despicers of the Kosovo Liberation Army (hereinafter: UCK) and the missing in the war d) Invalids of UCK and e) Families of civilian victims of war (AIUJF of the Republic of Kosovo, article 8, par.1). Also, state institutions, respectively local and central institutions under Article 8, par. 2 of the AIUJF of the Republic of Kosovo, are not obligated to pay court fees. Of course, to be exempt from the payment of court fees, the persons above must present evidence that they meet the relevant conditions set out in the normative acts in force. A foreign citizen shall be exempt from paying litigation costs only under the condition of reciprocity. Information on whether we have reciprocity with the other country can be obtained from the Department for International Legal Co-operation at the Ministry of Justice. For some submissions, the parties are not obligated to pay taxes whenever they submit them. E.g. when the address is changed, when a witness is proposed or an expert of a specific field is proposed, when the lawsuit is modified, when you refer to the court with an urgency to accelerate the case etc. Submissions filed by parties such as the following, are exempt from the payment of a court tax: a) Correction, precision or fulfillment of the lawsuit, b) Providing (sending) the correct address, c) Emergency for speeding up the subject, d) Request for continuation of the interrupted

procedure, e) Notice of Attorney's Appointment or replacement, f) Submissions with names of witnesses or experts, g) Waiving the lawsuit and revoking the lawsuit, h) Submissions for the subjective change of the lawsuit, i) The request of the party to obtain the additional court judgment (AIUJF of the Republic of Kosovo, article 9).

## **6. Civil Litigation Costs according to Legal Remedies**

The same principles that are applied for the expenses that occur in the procedure of the first instance apply also to the expenses that occur in the procedure of the second instance. Thus, the party which submits the legal remedy, it causes costs the opposing party (e.g for paying the lawyer to do the response on the appeal, for paying the court fee for response on the appeal or for insuring any submission etj.), the court, based on the request of the opposing party, with the verdict to dismiss the remedy or refuse it as ungrounded, must decide also on the costs of the proceedings caused by the filing of that remedy (Morina & Nikçi, 2012, p. 784). When the court of first instance dismisses the legal remedy, respectively the appeal as untimely (late), incomplete or inadmissible, it must decide by a ruling also on the costs of the proceedings. Also, even when the Court of Appeal rejects, changes the attacked decision or annuls the attacked decision and dismisses the lawsuit as inadmissible, it has the responsibility and the duty to decide on the costs of the proceedings. In case of annulment of the decision of the first instance court and returning the case for retrial, it will be decided that for expenses during the appeal procedure, to decide the first instance court with a definitive decision (Morina & Nikçi, 2012, p. 784). It can happen in practice that the party who filed the legal remedy, later to withdraw it. So, in these type of cases, who bares the expenses? The party who filed the legal remedy, has responsibility and duty to reimburse the expenses that the opposing party had concerning with the legal remedy. Also, this case is regulated by the article 456, par. 2 of LCP of the Republic of Kosovo, article 158, par. 2 of CPA of the Republic of Croatia, article 153, par. 2 of CPL of the Republic of Serbia etc.



## 7. Conclusion

From all that was discussed previously, it can be easily concluded that civil litigation costs are a very important part of the civil procedure. Fortunately and especially in Republic of Kosovo and generally in Republic of Croatia, Albania, Serbia and Bosnia and Herzegovina, the quality of the provisions of the Laws on Contested Procedure is high, the provisions are concise, clear and leave no room for doubt. The only thing left is that these provisions be strictly enforced by the civil courts. From my analysis and research to the laws of the above-mentioned states, I came to the conclusion that there are no major differences. All these states, except Albania, derived from the former Yugoslavia, therefore inherited the same legal tradition. Each state mentioned above in its laws regulates that: Civil litigation costs are costs incurred during and related to the judicial process. These costs shall also include remuneration for the work of lawyers or the other persons which have the right to represent parties before civil courts. Each party shall cover, in advance, the costs he or she incurred as a result of his or her actions. All the states mentioned, in their laws, have accepted two principles for solving the issue of civil procedure costs: principle "Causae" and "Culpa". Based on the principle "Causae", he who, with his conduct gives reason for court proceedings, should cover his proceedings and pay the costs of the opposing party. This principle is corrected by another principle which is called principle "Culpa". Principle "Culpa" means that the party is obliged, regardless of the outcome of the litigation, to reimburse the costs to the opposing party, which are incurred by its own fault or by the events this party sustained. The court may rule that the legal representative or an attorney of the party shall reimburse the costs incurred by their own fault to the opposing party. I conclude that the courts decide on the reimbursement of costs upon specific request of parties, without conducting verbal hearings. The court does not decide upon civil litigation costs "ex officio". Moreover, the court may exempt from payment of litigation costs, a party, who in terms of his or her financial situation is unable to pay those costs without harm to the vital support of him or herself and his or her family. To enforce this right the party shall attach to the request a certificate on its state of property issued by the competent organ. And finally, but not of importance the same principles that are applied for the expenses that occur in the procedure of the first instance apply, also, to the expenses that occur in the procedure of the second instance.

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