

On certain aspects of the structure and composition of the court costs in the Civil Court of first instance

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Abstract

This Article analyses the structure of the court expenditures at the civil judgement of the first instance court in the Republic of Albania from the perspective of the Civil Procedure Code in Albania, which being the main pillar of the civil procedural right in Albania, has treated also the composition of these expenditures, during the process of the definition and treatment of the court expenditures in general and especially their structure. Although it has been over 20 years since the entry into force of the Code of Civil Procedure, still the treatment by the judicial bodies of the first instance court and by the first instance administrative courts, represent the diversity on many aspects, especially in terms of composition of the court expenditures. This situation stems from the lack of detailed doctrinal treatment on the field. The court expenditures very often are equal to the research value of the trial's object, but even in cases when there's no approaching to the value of such researches, again the court expenditures pose a burden to be paid by the parties, being relatively considerable over the average country incomes. In this article there will be treated the fact that the Code of the Civil Procedure does not appear to have anticipated in detail all the aspects relating to the composition of the court expenditures. The court disposition on this aspect in contrast to the foundation of the judgment, can be appealed at the Appeal Court within a very short time, through a special appeal, which includes a 5 day period. This article brings its contribution especially in clarifying these delicate and important aspects at the first instance civil court.

Keywords: Civil Procedure Code, court expenditure, litigants, court tax, structure.

Introduction

The Court costs have their structure configured by the features which are expressly foreseen by the law, as well as by the features derived from the systematic interpretation of the law.

The Court costs consist of:

- 1- The acts' tax;
- 2- The Costs for the performed acts;
- 3- Other necessary expenses of the trial.

The composition of the court expenses is foreseen in accordance with Article 102 of the Code of Civil Procedure.

The acts' tax

This is the first element of the court costs with which the litigant is faced. In Article 156 of the Code of Civil Procedure it is provided that after the filing of the indictment in the court, there's paid the tax over the acts and the necessary expenses for the

announcements or other court services.

The Code of the Civil Procedure does not provide specific tax on acts. In Article 102 thereof, the code refers to a special law which determines the taxes in the Republic of Albania. The Court tax is a national tax. The special law that establishes the tax court is the same law that establishes the national taxes. In the Article 102 of the Civil Procedure Code, in the second paragraph thereof, according the way it is formulated, provides that the tax over the acts must be paid in those cases which are stipulated by law. This paragraph provides that the tax amount should be prescribed by law.

The Court taxes are divided into:

a-The fixed value court taxes;

b-The court taxes on the basis of the value of the indictment;

a. Historically, the fixed value court taxes have included and still include the largest number of civil cases. The indictments that are subject to this tax, are primarily those without the opposing party (or differently called requirements) as well as the indictments with opposing party, whose value does not exceed 100 000 leke around 800 Euro. Over this amount, the payment of the court tax is carried out on the basis of the payment of the amount of 1% of the indictment's value. It should be emphasized that the indictment's tax should be made in the official currency of the country, that is the Albanian Lek. Often, there are encountered cases where the court orders that the court tax should be paid in foreign currency, because it is requested so in the indictment's object. In this case, the court should require to the party which initiated the indictment to present the official rate of the exchange foreign currency in question at the day of indictment's submission, and on this basis it is estimated the indictment value in the official country currency.¹

b. The Court tax and the indictment's value. The Court tax is closely linked with the concept of the indictment's value. In Article 104 at the first paragraph of the Civil Procedure Code, it is provided that this tax is paid on the basis of the indictment's value. The concept of the indictment's value is dealt in the Chapter IV of Title III of the Civil Procedure Code, Articles 65-70 thereof. In this chapter are established the rules for the determination of the indictment's value, relevant to various types of judgment. The referring moment for the calculation of the indictment's value, is the moment of the indictment's filing in the court.² In the following paragraph, we will analyze the rules of determining the indictment's value regarding certain types of judgments provided by the law. In this theme, we will not expand in details, but only in ranking the cases which are regulated by the law and find adjustment according to the rule provided for each case.

These cases are:

1-The determination of the indictment's value in cases where is required by many people or against to many people the fulfillment of an obligation as a fee ; The Rule - the value of the indictment is determined by the obligation.

2- The determination of the indictment's value in cases where is required the existence,

¹ Article 3 of the Civil Procedure Code: *"The litigants' request for the starting of the court process is related to the fulfillment by their part of the obligations that derive from this process, according to the foreseen formats and deadlines of this Code"*.

² Article 154 of the Civil Procedure Code.

validity or resolution of a legal relationship of obligation; - The Rule - the value of the indictment is determined on the basis of that part of the report that is in dispute.

3- The determination of the indictment's value in cases where is required the payment of the real estate rent or there are disputes for the continuation of the rent; -The Rule - the value of the indictment is determined on the basis of the rent's amount that is required or by collecting the rents for the period in dispute.

4- The determination of the indictment's value in cases where the property division is required; -The Rule - the value of the indictment is determined by the value of the division that is required.

5- The determination of the indictment's value in cases where is requested the periodic food pension when the title is disputed; -The Rule - the value of the indictment is determined based on the total amount that should be given for 2 years.

6- The determination of the indictment's value in cases related to permanent and temporary rents when the title is disputed; - The Rule - the value of the indictment is determined by the total of values for 20 years for permanent rents and for 10 years for the temporary rents.

7- The determination of the indictment's value in cases where a sum of money is requested or a movable property is requested; -The Rule - the value of the indictment is determined on the basis of the requested amount or based on the item's value stated by the accuser - on the contrary, in the absence of determination - under the jurisdiction of the court.

8- The determination of the indictment's value in cases where an immobile property is requested or where are requested real rights over it; -The Rule - the value of the indictment is determined by the market value of the property or rights that are required.

9- The determination of the indictment's value in cases where the forced execution is opposed by the debtor or a third person; - The Rule - the value of the Indictment is determined by the loan for which is processed or by the value of the items for which an objection is made by a third person.

The above cases are expressly regulated by the law, while the other cases are governed under the provisions of the general provisions of the Civil Procedure Code has made in connection with the court costs.

When the indictments have acceptable requests and the request's value is determined, there are no problems in setting the tax.

The problem is exacerbated when we are dealing with the following cases:

1- when there's not set the indictment's value.

2-when the value set has significant changes to the true value.

3- when at the time of the indictment's filing, it is difficult setting the value of the indictment.

Let's analyze step by step these cases:

The first case: - when there's not set the indictment's value, there are two subcases :

a- when the request is not appreciated;

b- when the request is appreciated but is not estimated by the accuser.

In cases where the request is not appreciated (e.g.the change of parental responsibility, ending of the cessation of ownership, recognition of the falsehood of a document etc.) the court proceeds with the cases of payment of a fixed fee, or

there's noted that this case is excluded from taxes.³

In cases where the request is appreciated but is not estimated by the accuser, it must be operated according the Article 154 paragraph 7 of the Civil Procedure Code, in connection with article 154 / a of this Code, to address the shortcomings of the indictment. There's left a deadline for completion of this shortcoming to the Accuser, i.e. for determining the value of the indictment when a request is appreciated, or is returned to the Accuser at the time of its submission or during the preparatory séance.

Second case: when the value set has significant changes to the true value, the law provides a helpful solution the formulation *–the court sets it according to the rules provided in this Code*. I think in this case, referring to Article 104, paragraph 3 seen in accordance with Article 103 of the Code of Civil Procedure, the court must decide at the end the final decision on how and to what extent the applicant must pay the filing fee .

Third Case: Where at the time of the indictment's filing ,it is difficult setting the value of the claim, the court operates according to the third paragraph of Article 104 of the Code of Civil Procedure. In this case the law provides that the tax on acts is determined by the court in an approximate value.

The rule foreseen in the Article 104 of the Code of Civil Procedure comes in harmony with the meaning of Article 68 of the Code, according to which in case of requesting a sum of money or a movable property, when this amount or value is not disclosed by the applicant, the setting value of the indictment is under the jurisdiction of the court.

In this moment there are two problems to be explained:

1-In what way should the court appoint an approximate value of the indictment's fee?
2- Does this approximate value of the indictment's fee generate the defendant's or the accuser's right to request the disqualification of a judge? The problem becomes more acute when the parties have diametrically opposite positions.

In this case, the judicial practice has shown that the setting of the indictment's value by the judge should be estimated to be carried out on the basis of his general knowledge, derived from the juridical practice or the life experiences. There aren't allowed the commitment of the expertise or specialized opinions at this stage of the judicial investigation.

Setting the indictment's value in an approximate way by the judge, is a legal obligation arising from the Article 104, paragraph 3 of the Civil Procedure Code and therefore this action can not be considered to prejudice the judge who considers the matter. Though the Court has appointed an approximate value, there is no obstacle to topple the claim, or to accept it. But the question is whether the measures designated by the judge as the approximate value has a big difference with the provisions of the litigants. In this case it is suggested that the judge should be careful in in his actions for the appoint of the indictment's value. In cases where the difficulty level is high, it is rightly estimated that the court to apply in advance a fixed amount of tax and in the final decision to make the necessary adjustments.

A typical example of the difficulty of determining the indictment's value is the case when there's an appeal in the court for claiming the compensation for pecuniary reimbursement derived from injury or loss of life in road accidents or in other cases.⁴ The accuser doesn't have special knowledge to determine the extent of the material and

³ Article 105/b first paragraph of the Civil Procedure Code.

⁴ Articles 608, 625, 640 of the Civil Code.

the non-pecuniary damage in the form of biological damage, moral and existential. In such situation is found also the judge. The determination of these values is done only by the experts licensed by the Financial Supervision Agency (FSA) in the Ministry of Finance. The methodologies of determining the value of the pecuniary and non-pecuniary damage vary from case to case and the judge can not predict even in an approximate way the value of the claim, thus the claimant requested value. The accuser has stated in his indictment that he requires the full value of the damage in two forms. While the defendant revokes that doesn't belong to passive legitimacy or that the accuser himself is responsible for the damage. In these circumstances, the reference of the fixed amount of tax would be a fair solution of the situation.

As discussed above, if the value of the indictment comes with a great value compared to the certain value fixed by the court, the final decision and the obligation of the accuser is determined to pay this additional amount. The accuser's obligation to pay the additional tax value of the indictment, must be clearly defined in the text of the decision because this part of the decision will be a binding subject for execution. The difficulty lies in the case when the court orders that the part of the indictment fee that has been overpaid to be returned to the accuser.

In this case the court must be careful in the formulation of its order, because a verdict which is not well-formulated will lead to lack of debtor in the enforcement office, which will make possible the return of the overpaid amount.

Expenses for the acts

In the circle of the court expenses, there are foreseen by the law the expenses incurred for the acts. Of course these costs are of different types and listing them all would be difficult. In such expense there are initially mentioned the notifications. Expenditures for posts must be prepaid by the party that requests them. Their subscription begins with the filing of the indictment, when the party that initiated the judicial process is required to prepay the cost for informing the parties that are called in the trial. But the notifications should be done also for subjects which although are not a party to the trial, it is necessary to be informed about the trial at the very beginning. Here we can mention the notification to the state attorney, the prosecutor in the case of removing the ability to act or for a declaration of a missing person or in other cases provided by law. In this case, since the first contact with the accuser for filing the indictment is conducted by the judicial administration, it is necessary the full training of personnel assigned by the administration to accept the indictment.

In the costs for acts are calculated also the expenses incurred by the parties for obtaining the copies of the documents held in the archives of court for the act their representation, for notarial acts to be submitted as evidence by the parties, etc., and generally all the expenses for the acts that are needed to the parties and the court in the context of a judicial investigation complete and versatile.

Other necessary expenses of the trial

In other necessary expenses of the trial are included those expenses that are related to the payment of costs arising from the court procedural actions during the judicial investigation of the case. These actions may be performing expertise with expert or

group of experts, conducting the expertise by the court to ensure the existence of a fact, the performance of different insights in the country or documents, questioning of witnesses, etc.

The cost of conducting these operations shall be paid by the party that has requested the commission of action, via the subscription or final calculation performed by the court. According to the article 105 of Code of Civil Procedure, the court may order the payment of court costs from one party or both parties together. In this case, the court takes into the account the specific circumstances of the case. The law provides the criteria formulated by the law "on the property status of the parties". I think the merits of the court in the property situation of the parties, are relevant to cases where such a thing is evident to the court and that was evidenced during the judicial investigation. In any case, the court can not conduct an investigation regarding the property status of the parties when it is not connected with the subject of the trial. In the latter case, will take priority the principle of paying the expenses of the party which has requested them.⁵

Expenses for witnesses, experts and translators

Obtaining evidence by witnesses and the commission of the act by an expert or group of experts, as well as translation, they are processes facing in most civil trials. Taking these evidences is followed by an appropriate cost accompanying their appearance in court and compensation for the work performed, in the case of expertise and translation.

The Civil Procedure Code provides in Article 105 / a few rules for the expenditure of this nature. In the third paragraph of this article, it is provided that the amount of costs and rewards, belonging to witnesses and experts, is appointed by the Council of Ministers.

By the end of the year 2012, such a legal act was not issued by the Council of Ministers, although they had spent about 11 years by adding the article 105 / in 2001.

However the courts even in the absence of this regulation by law, were referred to general rules or other provisions outside the Civil Procedure Code regarding the determination of these expenses.

In connection with court costs to the witnesses, experts or interpreters in the period between the year 2001 to the end of 2012, was implemented the rule that the certain value for them will be the same as the loss of revenue caused by their appearance in the court. Article 105 / of the Civil Procedure Code provides that this amount includes expenses that have made their appearance, as well as a reward for their removal from the workplace.

Expenses for their appearance include their travel expenses and any necessary expenses related to their appearance. Should be noted that the travel expenses should be calculated on spending limits necessary therefore to public transport fees and no extra charges to travel in. These fees are calculated for travel experts, translators or the party himself.

The Instruction of the Council of Ministers no. 4 dated 12.12.2012 entitled "measures for the allocation of costs and payments for experts and witnesses during the trial," created the situation where the amount of expenses and payment of expert and

⁵ Article 105 first paragraph of the Civil Procedure Code.

witnesses at a trial is determined by the rules of this Directive.

In practice we encounter cases where the court allows the party that has requested an expert to solve the problem between their remuneration arrangements of this last. There are cases even when the court only administers an assertion that the party has liquidated the reward for his expert, without showing the relevant amount. It must be said that such a practice is illegal and creates the premises for the biased and non-objective attitude of the expert. The court must order the decision on the compensation of the expert and payments have to pass through the bank being administered by a banking document relevant in the trial, which is needed not only in order to recognize this expense but also to avoid any tax evasion possible.⁶

Expenses for representation by a lawyer at trial

An important part of court costs is the expense that is carried out by a litigant to its representation by a lawyer during the trial. Representation by a lawyer is a right of a party not its obligation. But a lawyer's representation brings the growth of the court costs. In this case, the party represented by a lawyer should afford to pay the lawyer. The Code of the Civil Procedure recognizes as an expense only the payment for a lawyer and not for more. This rule finds its reflection in Article 106, first paragraph of the Civil Procedure Code.

As a rule, the party and the lawyer deal with each other. This agreement includes some aspects of the representation and the terms of payment for the services offered between them. In cases where a litigant is represented by a lawyer, this concludes a written agreement, this agreement is administered by the court and serves to perform the calculation of court fees for this item. If between the parties and the lawyer doesn't exist a written agreement, the court must apply the tariffs set in the Order of the Minister of Justice and the National Chamber of Advocates, no. 1284/3 dated 03.16.2005 published in the Official Gazette no. 2007 extra 26 the publication on the date 27.12.2007.

In the last point of this order based on Article 11/1 / a of law no. 9109 dated 17.07.2003 "On the profession of lawyer in the Republic of Albania ", it is provided that the fees under this order shall apply when there is no agreement between the party and the lawyer.

If between the litigant and the lawyer there's an agreement for the payment , remains to be discussed the problem of calculating the amount of the lawyer's remuneration, when this amount is too high and does not correspond to the importance of the case. The Law no. nr. 9109 dated 17.07.2003 "For the profession of the lawyer in the Republic of Albania " as mentioned above, it is expressly provided in Article 11 that *"The award of attorney to perform the assigned work in done in one of the following ways:*

a) the agreement between him and the party protected or represented by him; ... "

In the way this rule is established ,there's created an opinion that any kind of amount decided by the part to this Agreement shall be binding for the court to calculate. But in this case, the court can not accept a priori any amount decided by the parties in their agreement. The court must make a systematic and functional interpretation not only of the provisions of this order , but firstly in connection with the provisions of

⁶ Article 105 first paragraph of the Civil Procedure Code.

Law no. 9109 dated 17.07.2003 and Articles 102-110 of the Civil Procedure Code. These fees should be seen case after case connected with the importance of the difficulty of the case, and the duration of the trial. We should never allow to be abused by the freedom of the parties to decide the amount of compensation to a lawyer in the context that this value will have its impact on the total amount of court costs.

The problem that arises in this case is that the court must act as if the amount faces a reward that exceeds the bounds of reasonable values for representation. Of course in this case the court must refer to certain fees by the order of the Minister of Justice and the National Chamber of Advocates, no. 1284/3 dated 16.03.2005. Referring to these orders does not mean that the court should apply rigidly these fees, but given the level of these fees, the court will be able to apply measures for fair and reasonable remuneration for a lawyer in the calculation of the total court fees. Personally I think that the maximum value of the compensation of an attorney in case of the existence of the agreement, should not exceed the double amount of the corresponding fee referred in Order no. 1284/3 dated 16.03.2005.

The performing expenses for a representation by a lawyer, must be proved by the party that claims such a thing. In the concrete case, the evidence proving itself, is the agreement concluded between the party and the lawyer, which of course is to be administered by the court during the trial, without ending the judicial investigation. Also being part of the taxable activity, it must be accompanied by appropriate tax deed to be issued in such cases. Acts that prove the performance of this expenditure, as well as other litigation expenses, are proof itself, which of course should be administered by the court without ending the judicial investigation.

Conclusions

As treated above, related to the manner on how the Civil Procedure Code foresees the composition of the court expenditures, the following results were achieved:

First, the Civil Procedure Code foresees in general the composition of the court expenditures.

Second, although in Articles 102 and following of the Civil Procedure Code some categories of the court expenditures are mentioned, these provisions do not wholly foresee the type of these expenditures.

Third, the procedural law should establish a clear situation for the litigants before their entry in the trial process, through the legal provisions which provide to the litigants to have an approximate value of the court expenditures that they will face in a civil judgment.

References

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