



Judicial Costs in Civil and Administrative Judicial Processes According to Albanian Legislation in Coherence with International Practices and Legislation

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Abstract: Judicial costs are a key component of civil and administrative court procedures and include all expenses related to legal proceedings. This study examines how Albanian courts handle these costs and their practices in determining procedural expenses. In Albanian judicial practice, there is often a lack of full reasoning for expenses, with many being determined only based on invoices and payments. Common problems include courts' negligence in accurately calculating costs and challenges faced by parties in covering them, including refusals to make advance payments for various types of evidence.

This study includes a detailed analysis of pre-trial and trial expenses, as well as lawyer fees and legal aid as per Albanian laws. Law No. 55/2018 on Advocacy and Law No. 111/2017 on Free Legal Aid have been reviewed in relation to the regulation and coverage of attorney fees and legal assistance for those unable to afford the costs. Most of the analysis focuses on the regulations regarding lawyer fees and procedures for free legal aid, as well as common practices in Albanian courts for determining judicial costs.

Furthermore, the material discusses international practices in managing judicial costs and the principle of equality of arms, which must be respected in every judicial system. In conclusion, it recommends the adoption of a new law on national taxes and improvements in legal aid to ensure greater clarity and transparency in handling judicial costs.

Key Points: Judicial costs include the expenses of civil and administrative procedures, with a focus on lawyer fees and free legal aid for those who cannot afford them. Albanian judicial practice often lacks reasoning for determining costs, relying on invoices and payments without full justification. The adoption of a new law and improvements in transparency regarding these costs are recommended.

Judicial Costs in Civil and Administrative Judicial Processes

Material Contents:

- Abstract
- 1. Understanding and Types of Judicial Costs
- 2. International Practices
- 3. Conclusions

Judicial costs are an essential part of any civil, administrative, or criminal trial. The court handles these costs through interim, non-final, and final decisions. Albanian judicial practice shows that courts often fail to provide full reasoning for procedural and judicial costs, whether in civil or administrative cases. These costs are not always clearly determined at the end of the trial or during the trial for specific procedural actions. In most cases, only those accompanied by invoices and corresponding payments are detailed by court clerks.

An analysis of several judicial decisions from different courts reveals a reasoning format like the following: "judicial costs remain as they were made," thus denying the winning party reimbursement for all trial expenses, while the losing party unjustly saves the amount it should have paid. In the cases studied, it is observed that some parties refuse to make advance payments for evidence gathering, such as expert opinions, witness testimonies, inspection of items, etc.

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1. Understanding and Types of Judicial Costs

Judicial costs are critical from the start of any civil and administrative trial and can impact the continuation of the process, including the suspension of the trial if they are not paid. According to Article 158/a of the Civil Procedure Code, the court must ensure that parties have paid judicial costs; otherwise, the trial is suspended and the party is given time to make the necessary payment. Judicial costs include all expenses for court services and other entities during and after the trial. These costs are divided into pre-trial (preliminary) and trial expenses, as well as expenses for court service and procedural actions.

Pre-Trial Expenses.

Pre-trial expenses are paid before the trial begins and include court fees, notarial fees for evidence, expenses for acts issued by state institutions, notifications, and consultations with a lawyer according to Law No. 55/2018 "On Advocacy," which regulates the legal profession in Albania. Law No. 9975/2008, as amended, considers these as service fees and not national taxes. Joint Instruction No. 18, dated 5.8.2020, from the Minister of Justice and the Minister of Finance, sets the rules and procedures for implementing service fees according to Law No. 9975/2008, as amended.

This instruction covers:

- **Categories of Services:** Specifies which services are subject to service fees and divides them into different categories.
- **Fee Amounts:** Determines the amount of the fee for each service offered by state institutions.
- **Payment Procedures:** Explains the procedures for paying fees, including payment methods and required documentation.
- **Implementation and Monitoring:** Sets mechanisms for monitoring fee implementation and ensuring services are provided according to set rules.
- **Exceptions and Reductions:** Includes special cases where fees may be exempted or reduced for certain groups or services.
- **Appeals Procedures:** Specifies procedures for disputes or complaints related to service fees.

Law No. 111/2017 "On Free Legal Aid."

This law provides free legal aid for those who cannot afford the cost of legal services. It sets out the criteria for eligibility and the procedures to apply for this aid. Article 1.2 of Law No. 111/2017 includes trial costs as part of free legal aid. This sub-article specifies that free legal aid covers not only legal services but also other expenses related to the judicial process.

Article 1.2 includes:

1. **Court Fees and Other Procedural Expenses:** Payments required to initiate and continue a lawsuit, including fees for filing the claim and other procedural actions.
2. **Attorney Fees and Expert Costs:** If free legal aid includes attorney and expert services, these costs are covered.

3. **Witness and Expert Fees:** Costs for witnesses or experts participating in the trial are also covered.
4. **Document and Other Materials:** Costs for copying, preparing, and submitting documents and other materials for the trial.

Trial Expenses

These are defined in Articles 102-106 of the Civil Procedure Code. According to Article 102, trial costs include: court fees, attorney fees, expert fees, witness and translation fees, as well as costs for documents and materials required for the trial.

Article 105 specifies:

1. **Responsibility for Trial Costs:** Parties involved in the process are responsible for covering court costs and other related expenses.
2. **Amount of Costs:** Determined by the court and related to services and procedures used during the case.
3. **Free Legal Aid:** In cases where parties benefit from free legal aid, they are not required to cover trial costs, unless the free legal aid does not cover all trial expenses.

Article 106 regulates:

1. **Request for Assistance with Trial Expenses:** Parties who cannot afford to pay trial costs may request assistance from the court to cover these costs.
- **Evaluation of Request for Assistance:** The court evaluates the request and documentation to determine if assistance will be granted.
 - **Determination of Amount:** If the request for assistance is approved, the court specifies the amount to be covered and how these costs will be paid.

These articles regulate the coverage of costs during a judicial process and provide an opportunity for assistance for those who cannot afford these expenses.

Judicial and Procedural Costs

Judicial and procedural costs include all expenses related to preparing a lawsuit by the attorney to initiate a court process and its procedures until the case is concluded. According to the Albanian Civil Code, agreements for attorney payments are specifically regulated by the Law on Advocacy (Law No. 55/2018) and are also connected to common legal and contractual practices.

Agreements:

Regulated by the Albanian Civil Code, covering various aspects of civil agreements (negotiated between the parties) and specific principles:

- **Article 1: Freedom of Agreement**
"Parties are free to decide on the contents of the agreement, in accordance with the law, public order, and customary morals."
- **Article 2: Form of the Agreement**
"Agreements made by the parties, unless otherwise specified by law, do not require a special form and are valid regardless of their form."
- **Article 3: Effect of the Agreement**
"Agreements create the effects that the parties have"

envisioned and those necessary to achieve the goals of the agreement."

European Convention on Human Rights (ECHR)

Article 6 - Right to a Fair Trial

Article 6 guarantees the right to a fair and public hearing within a reasonable time by an independent and impartial tribunal. This article has implications for legal and attorney fees, as a fair trial includes equal access to legal representation.

Article 14 - Prohibition of Discrimination

Article 14 ensures that the rights guaranteed by the ECHR are protected without discrimination. This means that, even in the context of judicial and legal fees, there should be no discrimination.

Statute of the International Court of Justice (ICJ)

The Statute of the ICJ and its rules contain provisions related to the allocation of costs in international cases.

Convention on the Settlement of Investment Disputes (ICSID)

Article 61 - Costs

Article 61 of the ICSID Convention regulates the allocation of costs in international arbitration proceedings, including legal fees and expert costs.

European Court of Human Rights (ECtHR) Practices

The ECtHR has developed a rich case law regarding judicial and attorney fees. The Court has emphasized the importance of ensuring access to justice and ruled that costs must be reasonable and proportional.

Various Practices of the European Court of Human Rights (ECtHR)

- Case: Airey v. Ireland (1979)**
 - Issue:** Access to justice and free legal aid.
 - Decision:** The ECtHR ruled that the denial of legal aid could constitute a violation of Article 6 (right to a fair trial) and Article 8 (respect for private and family life).
 - Reference:** Airey v. Ireland, Application No. 6289/73, Judgment of 9 October 1979.
- Case: Steel and Morris v. the United Kingdom (2005)**
 - Issue:** Attorney fees in civil cases.
 - Decision:** The ECtHR ruled that the lack of legal aid in a complex civil case could violate Article 6.
 - Reference:** Steel and Morris v. the United Kingdom, Application No. 68416/01, Judgment of 15 February 2005.
- Case: Granger v. the United Kingdom (1990)**
 - Issue:** Judicial costs and access to justice.
 - Decision:** The ECtHR found that high judicial costs that prevent access to the court could violate Article 6.
 - Reference:** Granger v. the United Kingdom, Application No. 11932/86, Judgment of 28 March 1990.

International Court of Justice (ICJ)

Nicaragua v. United States (1986)

- Issue:** Costs in international court cases.
- Decision:** The ICJ addressed costs and their allocation in the final judgment.
- Reference:** Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment of 27 June 1986.

ICSID Convention

- Amco Asia Corporation v. Republic of Indonesia (1984)**
 - Issue:** Arbitration costs and their allocation.
 - Decision:** ICSID tribunals have frequently addressed cost allocation in their decisions.
 - Reference:** Amco Asia Corporation and others v. Republic of Indonesia (ICSID Case No. ARB/81/1), Award of 20 November 1984.

Inter-American Court of Human Rights (IACHR)

Baena Ricardo et al. v. Panama (2001)

- Issue:** Judicial costs and access to justice.
- Decision:** The IACHR addressed judicial costs and legal aid in the context of a human rights case.
- Reference:** Baena Ricardo et al. v. Panama, Judgment of 2 February 2001, Inter-American Court of Human Rights (Series C No. 72).

These cases provide examples of how international courts have addressed issues of judicial and attorney fees.

Key Considerations for Decisions Regarding Judicial Costs and Fees in Legal Proceedings should be based on the following:

- Transparency and Clarity:** The setting of fees should be transparent and clear from the beginning of the professional relationship.
- Judicial Decision on Costs:** The court must determine the judicial costs in the final judgment, and the parties must prove their expenses. Reimbursable costs are only those that are necessary and essential.

International Practices Regarding Judicial and Attorney Fees

- Principle of Equality of Arms:** All parties in a legal process should have equal opportunities to present their cases.
- Access to Justice:** Limiting attorney fees should not hinder a party's access to effective legal protection.
- ECtHR Jurisprudence:** The ECtHR has emphasized the importance of a fair and balanced legal process.
- Principle of Proportionality:** Limiting attorney fees should be proportional to the legitimate objectives being pursued.

These elements summarize the determination and management of fees for attorney services, including international practices and principles that help ensure justice and fairness in legal procedures.

Based on practices from various European and global jurisdictions: In contractual relationships between a lawyer and client, international practice often supports the autonomy of the

parties, emphasizing the agreements they reach. However, certain aspects may justify judicial intervention in specific cases:

1. Principle of Contractual Autonomy

- **International Practice:** In most jurisdictions, parties are free to reach agreements on service terms, including attorney fees. This principle is supported by the Vienna Convention on International Sales Contracts, as well as many civil codes in various countries.
- **Exception:** However, if the terms of the agreement are unfair, unequal, or abusive, the court may intervene to protect the weaker party, such as clients who may lack sufficient legal knowledge.

2. Contracts as Executory Titles:

- **Law:** In many jurisdictions, an agreement between a lawyer and client regarding fees is a contract that may be considered an executory title, granting the lawyer the right to seek enforcement of payment if the client fails to fulfill their obligation.
- **Practice:** Courts often accept that, if the contract is clear and fair, the payment should be made in accordance with its terms. This is common in many countries, including the United States, where agreements for payment based on the outcome of a case are recognized.

3. Ethical and Professional Rules

- **Standards:** Many jurisdictions have clear ethical rules regulating the relationships between lawyers and clients. These rules often require lawyers to act in their clients' best interests and ensure transparency regarding fees and payments.
- **Limitations:** In some cases, the court may limit the fees for lawyers if they are deemed excessive or outside the usual norms for legal services, thus protecting the interests of clients.

4. Success-Based Fees:

- **Winning the Case:** In the case of winning a lawsuit, legal assistance provided by the lawyer is usually compensated according to the agreement. However, if there are doubts regarding the fairness of the fee allocation (e.g., if the payment is disproportionate to the value of the service), the court may intervene.
- **Ensuring Justice:** Such intervention would be to ensure that clients are not exploited and that they receive a fair service for the fees they pay.

5. Third-Party Relationships

- **Court Intervention:** In cases where a client has obligations to third parties due to the proceedings, the court may regulate how those obligations are paid, helping to balance the interests of all parties involved.

Conclusion: Judicial intervention in contractual relationships between lawyers and clients may have significant implications for the principle of impartiality, especially when the parties are on equal footing. Here are key aspects to consider:

1. Principle of Impartiality:

- **Definition:** Judicial impartiality means that the court must act fairly and impartially, without favoring any party.

- **Implications:** If the court intervenes in the agreement between a lawyer and client, it must be clear that the action is justified and does not undermine impartiality, especially if the parties are in equal positions.

2. Differentiating Payments:

- **Payment Issues:** It is well known that experienced and well-reputed lawyers may charge higher fees. This is common practice in most jurisdictions and is justified by the quality of service they offer.
- **Comparison with Judges and Prosecutors:** If experienced judges and prosecutors receive higher salaries, this supports the argument that lawyers should also be able to set fees that reflect their professional level.

3. Limiting Unfair Agreements:

- **Ethical Rules:** The court has the responsibility to intervene if the terms of the agreement are unfair or abusive. This helps protect clients who may be in disadvantaged positions or who lack sufficient knowledge to understand the consequences of their agreements.
- **Role of the Court:** If an agreement between a lawyer and client is clear and fair, the court may have less reason to intervene, even if the fee is higher.

4. Equality in Relationships:

- **Equality of Parties:** If the parties are equal and have negotiated with mutual understanding, court intervention may be perceived as an unnecessary interference with the autonomy of the parties.
- **Risks of Intervention:** If the court intervenes in agreements due to differences in fees, this could create precedents that undermine the parties' trust in the judicial system and the autonomy of contracts.

5. Court's Conclusion:

- **Court's Stance:** If the court decides not to intervene in agreements reached between lawyers and clients, considering them fair and reasonable, it will reinforce the principle of impartiality and encourage fair negotiations between the

Legislation and International Practice

- **Civil Code of the Republic of Albania, amended 2017**
- **Articles 102-106 of the Civil Procedure Code, amended**
- **Law No. 55/2018 "On the Profession of Lawyer in the Republic of Albania"**
- **Law No. 111/2017 "On Free Legal Aid"**
- **Joint Instruction No. 18, dated 5.8.2020**
- **Decision No. 7/2013 of the Constitutional Court of the Republic of Albania**
- **European Convention on Human Rights (ECHR)**
- **Statute of the International Court of Justice (ICJ)**
- **Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID)**
- **Website**