

COSTS OF CIVIL LITIGATION



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Costs of civil litigation

I. Introduction

As with any legal proceeding, civil litigation generates costs for the parties. Both the plaintiff and the defendant will be interested in how much a dispute is likely to cost, as this information is one of the aspects that will inform their decision whether to initiate or continue litigation.

As such, costs can certainly deter potential litigants from seeking redress before the courts, especially when the value of a claim is low (say, in a consumer dispute over a hairdryer worth 5,000 dinars) and the expected costs are disproportionately high (for instance, 50,000 dinars). Consequently, even when litigation is justified (in our example, the hairdryer may have stopped working after only being used twice and the store has denied the customer's warranty claim), many people will not go to court, unwilling to risk costs of 50,000 to recover the 5,000 they may have paid for an appliance.

Given their constraints on individuals' ability to seek judicial relief, this article will provide a helpful summary of the key rules that govern costs of litigation. Doing so will allow precise estimation of these costs, and may permit parties to minimise them or find ways of avoiding them altogether.

II. Concept of costs in civil litigation

Firstly, it is worth noting that costs of litigation comprise all expenses incurred in the course of or in connection with a proceeding (court fees, legal costs and fees, costs of expert testimony, and costs associated with presentation of other evidence).

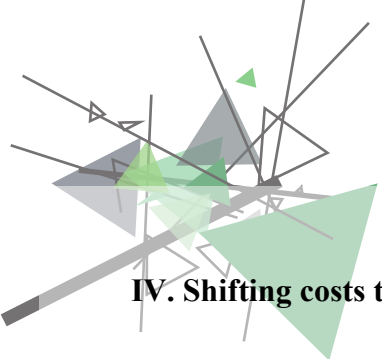
III. Each party is required to advance their costs until these can be shifted to the opposing party.

As a rule, each party must advance their costs. In effect, this means that, in the course of a proceeding, both the plaintiff and the defendant will be required to pay:

- their statutory court fees ordered to be paid by the court (e.g. the plaintiff will be required to pay a fee when making a claim, and the defendant will have to pay a fee for their counter-claim);
- costs and fees for their legal representation; and
- costs of expert testimony or presentation of other evidence if introduced by them (e.g. where the plaintiff introduces expert testimony, the plaintiff must pay the expert witness's costs).

That being said, the costs may be shifted to the opposing party after a proceeding ends. This requires the party to have won the case and requires an application with the court; some additional rules apply.





IV. Shifting costs to the opposing party

Even though each party is liable for its own costs in a proceeding, it is able, under law, to shift some or all of these costs to the opposing party if it has won the case outright or in part, as will be explained below. In effect, this means that the court will require the losing party to compensate the winning party for some or all costs.

V. Application for award of costs

i. Content of the application

The first precondition for the court to award costs is for the winning party to apply for this with the court. The application must clearly indicate the type and amount of the costs in question.

For instance, *40.000 dinars in costs incurred for expert testimony.*

ii. Time limit for applying

These applications must be made with the court before the main hearing ends.

If the court makes its ruling without holding a main hearing, the application should be made in the submission asking the court to make a ruling.

If a claim or appeal is withdrawn outside the main hearing, the application for award of costs must be made within 8 days of being notified of the withdrawal of the claim, or of being served a ruling made outside of the hearing.

VI. Award of costs based on success of the claim: basic rules

Once the proceedings is over, the court will rule on costs based on the parties' applications and with regard to the outcome of the case. The following scenarios are possible:

i. Each party pays its own costs. In this case, no costs will be shifted to any other party, meaning that no costs incurred by a party will be reimbursed by another party. However, no party will incur any additional expenses as it will not be required to reimburse any other party. This generally occurs when the outcome is favourable to both parties equally, with minimal differences

For instance, *Both the plaintiff and the defendant have won on 50% of their issues. Say the plaintiff had sought 1,000 dinars from the defendant, whilst the defendant contested the 1,000 debt. The court awarded 500 dinars to the plaintiff (meaning that the plaintiff won 50% of their case, relative to the 1,000 originally sought) but refused to grant the remaining 500 (meaning that the defendant successfully contested 50% of the 1,000). As such, each party will pay its own costs.*

ii. All costs are paid by one party that lost the case outright or won on a minimum of issues.

For instance, *If the plaintiff sought to recover a debt of 1,000 from the defendant, and the court awards the plaintiff the entire amount, the defendant has lost the case entirely; or, If the court awards the plaintiff 999 dinars and withholds 1 dinar, the defendant was only*



iii. Award of costs to both parties depending on their success in the case.

For instance, *The plaintiff and the defendant have incurred costs of 1,000 each. The outcome was 30% favourable for the plaintiff, meaning it was equally unfavourable for the defendant (an outcome favourable to one party is equally unfavourable to the other). Hence, the outcome was 70% favourable for the defendant and equally unfavourable for the plaintiff. As such, the court will award costs of 300 dinars to the plaintiff (30% of the 1,000 incurred in costs), and 700 dinars to the defendant (70% of 1,000). This means the plaintiff must pay the defendant 700 dinars, whilst the defendant must pay the plaintiff 300 dinars. Lastly, the court will offset these amounts against one another, so the only payment to be made is 400 dinars from the plaintiff to the defendant.*

VII. Adjustments to the basic rule

There are a number of additional adjustments to the basic rule that costs are awarded with regard to success in the case.

i. Necessary costs

A party is entitled to have the court recognise only costs that were necessary for it to pursue the case. The court enjoys discretion in assessing which costs were necessary.

For instance, *By invoking this rule, the court will generally refuse to recognise any costs incurred in preparing petitions to the court for undue delay.*

The merits of this view may be contested, as petitions for undue delay may not be necessary for success in a dispute, but they should certainly be seen as necessary for ensuring a trial is completed within a reasonable time.

ii. Costs caused by fault of a party or circumstances faced by a party

The court will also refuse to shift to the opposing party any costs incurred by a party due to its own fault or caused by circumstances faced by that party, regardless of that party's success in the case.

For instance, *If a party fails to submit documents required for expert testimony, resulting in postponement of a hearing, that party risks having to pay any costs associated with such delay.*

iii. Not giving cause for legal action whilst admitting the claim

Equally, where the defendant does not give cause for legal action and admits the claim before the main hearing, the plaintiff is required to indemnify the defendant for any costs incurred.

For instance, *The defendant was prepared to pay the debt in full voluntarily and notified the plaintiff of this fact, but the plaintiff nevertheless took legal action, whereupon the defendant admitted the debt in its entirety. This means the plaintiff is required to reimburse the defendant's costs.*

iv. Withdrawal of claim

If the plaintiff has withdrawn a claim, the plaintiff is required to reimburse the costs incurred by the defendant. The only exception to this rule is when a claim is withdrawn immediately after the defendant has performed the action required by the plaintiff's claim.

v. Withdrawal of appeal

Where an appeal has been withdrawn, the party that has done so is always required to reimburse the legal costs incurred by the other party in connection with the appeal.

For instance, A plaintiff that has withdrawn an appeal is required to reimburse the costs incurred by the defendant in responding to the appeal.

VII. Settlement

Throughout a proceeding, the parties have the option to end the dispute by entering into a court-arranged settlement. This has a bearing on both the amount of and the liability for the costs.

i. Amount of costs

Settlement entails lower costs, with the actual reduction depending on the time the settlement is entered into (the earlier this is done, the less the parties will have to pay). If the settlement is arranged as early as the first hearing, no court fees will be payable, and there will be no attorneys' retainers or costs of expert testimony or introduction of other evidence. If the settlement is agreed at a later point in the dispute, only one-half of the court fee must be paid, and other costs may also be avoided depending on the stage of the proceeding.

ii. Cost shifting

Each side has to pay its costs in a settlement, which means there will be no cost shifting unless the parties structure the settlement to allow it (they may, for instance, agree that one party is to bear all the costs).

VIII. Cost relief

In addition to the cost shifting arrangements described above, each party may apply for cost relief if it meets the statutory requirements. This issue will be covered in detail in a future article.





IX. Conclusion

Being familiar with cost rules is clearly important for making a properly informed decision about whether litigation is likely to be cost-effective and exercising options to reduce or completely eliminate some costs.

In particular, each litigant ought to bear in mind:

- the likely costs of the litigation; and
- when these costs will become payable.

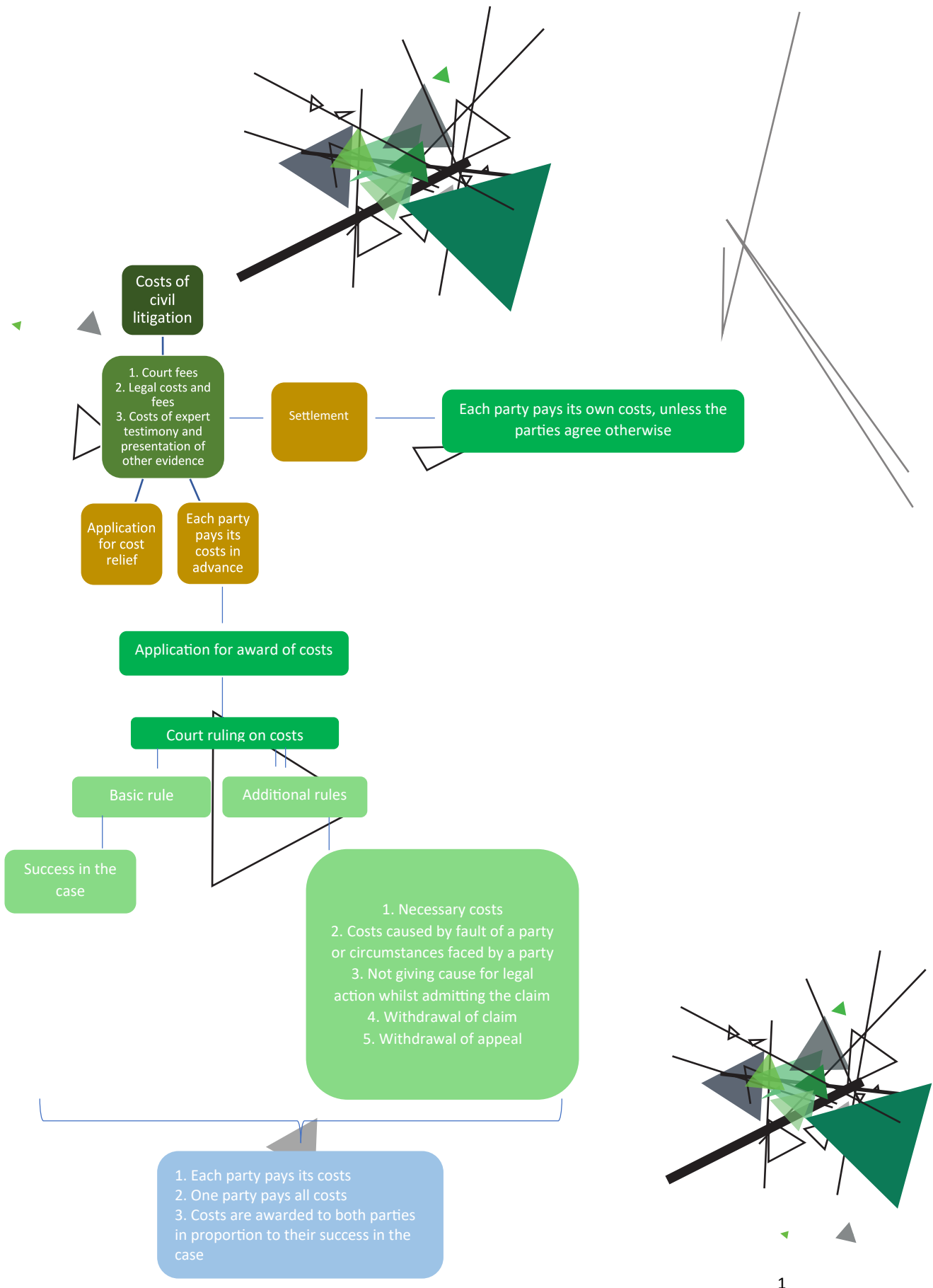
Parties are not required to pay all of their liabilities related to the court case at once; rather, they can do it piecemeal. In effect, costs are paid as they are incurred (for instance, a party will pay their lawyer a fee to prepare the initial complaint once it is filed; then they will pay the court filing fee; and later they may pay a fee for expert testimony when the court so orders, and the like). Properly forecasting the amounts and the points in time when they will become payable is likely to gain in importance if amendments to the Civil Procedure Code are adopted that will require court fees to be paid on time for litigants to be able to access the courts at all.

Another important consideration for the plaintiff is that, even if they win the case, this does not automatically mean that the opposing party will voluntarily perform the action ordered by the court. Successful plaintiffs are often required to engage in enforcement to compel the defendants to comply with court rulings. Enforcement, obviously, entails significant additional costs. The duration of the enforcement procedure, its costs, and the ability to recover these expenses from the defendant, all ought to be taken into account at the time the decision is made to litigate.

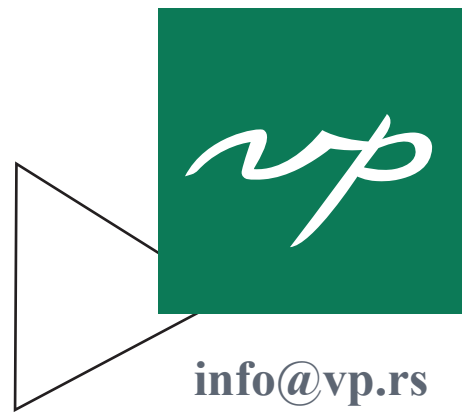
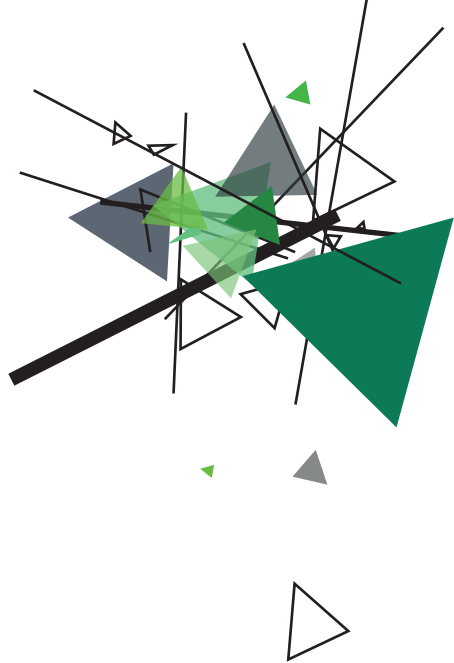
Below is an illustrative schematic of the costs of litigation.



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