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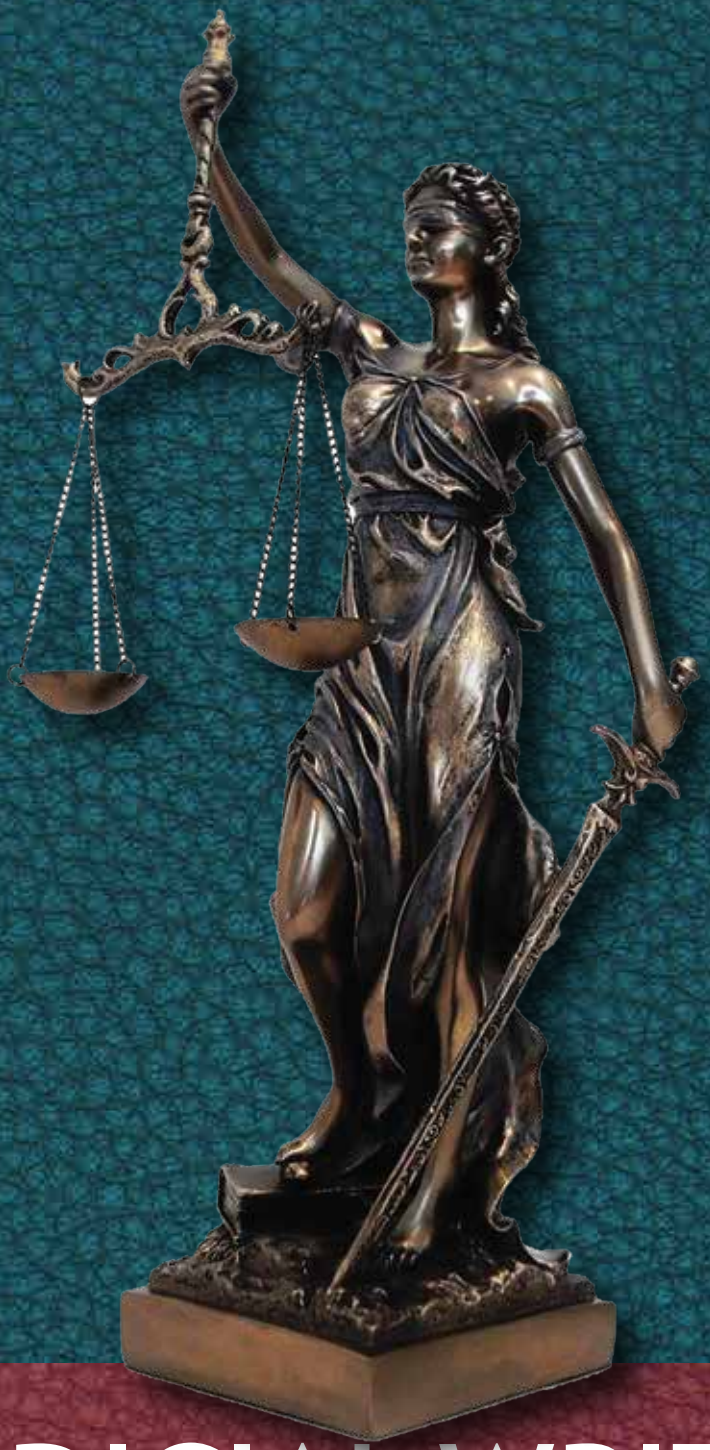
Високи судски и тужилачки савјет Босне и Херцеговине
High Judicial and Prosecutorial Council of Bosnia and Herzegovina



JUDICIAL WRITING MANUAL IN CIVIL CASES

IJQ

Visoko sudsko i tužilačko vijeće Bosne i Hercegovine
Visoko sudbeno i tužiteljsko vijeće Bosne i Hercegovine
Високи судски и тужилачки савјет Босне и Херцеговине
High Judicial and Prosecutorial Council of Bosnia and Herzegovina

Judicial Writing Manual in civil cases

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Foreword from the

President of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina

On behalf of the High Judicial and Prosecutorial Council of Bosnia and Herzegovina and on my own personal behalf, it is my pleasure to participate in the promotion of the Judicial Writing Manual and offer some reflections.

Relevant analyses, international and domestic alike, as well as public perception, have for years on end pointed to the problem with decisions that are incoherent, too broad, that lack reasoning or are missing mandatory elements, that use a poor methodology and are poorly structured.

We are convinced that court decisions should predominantly be drafted in a like manner regarding the presentation and elaboration of evidence that is assessed as well as the application of the law on established facts.

Of course, every judge is independent and autonomous in the assessment of evidence and the application of the law, however, when drafting their decisions, they must adhere to certain standards. Specifically, a certain degree of consistency in the methodology and approach to drafting court decisions is desired and implicit for the judiciary.

Guided by these ideas, in cooperation with our international donors from the Kingdom of Norway and our partners from the Netherlands, we hired renowned civil law experts, judges from the highest instance courts so that we may, for the first time, develop a manual for the judiciary that is based on the analysis of court decision quality.

The contents of the manual represent a convergence of theory and practice concerning key elements of civil decisions, with detailed practical examples – both affirmative and negative.

The manual, as drafted by eminent authors, attempts to have far-reaching effect for the judicial community by tackling such a complex topic as court decision drafting and by using practical language and offering a systemic analysis, all in one place.

Our intent is systemic by nature, and not just short-term, seeing as based on our cooperation with the JPTC's, we have included training for first instance judges involving the Judicial Writing Manual.

The detailed information that is presented in the manual itself, speaks of the scope of the project and the comprehensive efforts that yielded this valuable document which, in my opinion, is to the benefit of the entire professional community.

I take this opportunity to thank the authors for their dedicated work on the development of this document which, no doubt, will have significance for everyone, more so for less experienced judges but also for the overall academic community as well as our law students who will take our place one day.

Halil Lagumdžija

September 2021, Sarajevo.

Introductory remarks and review

Prof.dr. Ruth de Bock

1. Introduction

It is a great achievement that the Manual for writing judgments in civil litigation proceedings (Judicial Writing Handbook) has been completed. The Manual contains a large number of guidelines that must be observed when writing a good quality judgment. The development of these guidelines is based on a very extensive and detailed examination of a large number of judgments from different courts, which have been selected on a random basis. The undersigned have participated in the study as foreign experts. Because the Manual has been developed on the basis of the study of a large number of court decisions, it rests on a solid empirical basis. After all, it has been investigated which difficulties judges face when writing a judgment and, as a result, where things sometimes go wrong. By this method the guidelines included in the Manual are in line with legal practice, with the issues judges encounter in their daily work. This is also apparent from the many examples included in the Manual. In this contribution we will discuss a few points from the Manual that we believe are of particular importance. We have involved our own experiences, that we have gained by reading a sample of several dozen court decisions.

2. Background: the importance of a well-written, well-motivated and convincing court decision

A well-written, well-motivated and convincing court decision is essential for high-quality administration of justice. A well-motivated judgment is important because the parties must be able to deduce from the judicial decision *what* exactly the decision entails and *for wat reasons* the court has taken the decision. With regard to the latter aspect, for what reasons the court arrived at its decision, that is the motivation of the decision, there can be three elements be identified. Firstly, the factual basis of the decision has be clear: which facts did the court use as the basis of its decision. Secondly, it must be clear what the legal basis is for the decision, that is, which legal rules the court has applied and how have these legal rules been applied to the facts of the case. Thirdly, the decision must show how the court has weighed up the arguments the parties have put forward and what this means for the final decision. This includes both the (relevant) arguments relating to the facts and arguments relating to the legal reasons. The parties must be able to derive from the judgment that the judge has considered the statements and arguments they have made, and how the court has assessed those statements and arguments. This is a consequence of the requirements of art. 6 ECHR.

The importance of a well-motivated judgment – clarity about the factual basis, clarity about the legal basis and a discussion of the arguments put forward by the parties – lies not only in understanding the court's decision. It is at least equally important that a well-motivated judgment, a statement of reasons of high quality, also contributes to the *acceptability* and *legitimacy* of the judicial decision. Of course, it is always difficult for the party that loses the trial to accept the court's decision. A well-motivated decision cannot always fix this, we know from scientific research. But we also know that if it is unclear what the court's reasoning has been, if it is not clearly stated what facts have been established, if the legal reasoning is not valid or if important arguments have not been discussed at all, in any case there will be acceptance of the decision. However, the court decision is not only of significance for the parties. Third parties may also have an interest in the decision. This means that it must also be clear to them what exactly the court decision entails and for what reasons the court has arrived at that decision. These third parties include people who may have a derivative interest in the court decision, such as family members or a legal successor of one of the parties. A Court of Appeal or the Supreme Court are also 'third parties' to whom it has to be clear and understandable what the court decision entails and what exactly the line of reasoning is. The content of court decisions is also important for other judges and legal scientists, both the decision itself and the reasons for it. They must be able to deduce from the judgments how the law is interpreted

and applied, what the 'prevailing doctrine' is, or whether there are new developments in it. In this way it can be achieved that the law is interpreted and applied as consistently as possible. Scientists must have the opportunity to critically test the judgments and to make proposals for adjusting a particular legal interpretation.

There are also other third parties, such as journalists, politicians or random citizens, who may be interested in reading and *understanding* court decisions. After all, public access to justice is one of the foundations of the rule of law. Citizens must have the opportunity to control the judiciary and judicial decisions. Hence the importance of publication of court decisions. As a result, an easy legible and understandable court decision, providing a logical valid and convincing statement of reasons, is also in the public interest. Finally, there is another important argument for a well-written and convincing statement of reasons in a court decision. This is that a good reasoning is of great importance for the judge's own reflection process. If the judge properly writes out, firstly, the factual basis of the decision, secondly, the legal basis on which the decision is based and, thirdly, how he or she takes into account the arguments of the parties, this makes an important contribution to a proper analysis of the case and thus to a right decision. Writing down the facts, the applicable legal rules and the arguments put forward by the parties over and over again forces the judge to make a clear analysis of what the case is actually about. This gives the judge a grip on what ultimately is the essence of the dispute and how it should be decided. In this way, a well-written statement of reasons is indispensable for the reflection- and decision-making process of the judge.

3. The importance of the Manual for writing judgments

Guidelines for the writing a court decision, for how the decision has to be structured and which elements a court decision should contain, have an important function. The guidelines are not random chosen; they have a ratio. The guidelines are made because they contribute to the comprehensibility, acceptability and legitimacy of court decisions. This entails the perspective of parties and third parties, the perspective of the judge, and, ultimately, a good administration of justice.

As a consequence, the importance of the guidelines and instructions in the Manual should not be underestimated. The purpose of complying with the guidelines and following the instructions is to increase the substantive quality of the judicial decisions. The use of the guidelines in the Manual is therefore much greater than 'internal agreements'. The stakes are substantive and substantial: the guidelines contribute to the quality and legitimacy of court decisions. This also means that there is a great importance in complying with the guidelines. After all, every judge has a task in making a contribution to the quality of justice.

There are guidelines in the Manual whose substantive importance may not be immediately clear, for example the way in which parties should be identified in the introductory part of the decision. But also the importance of complying with these guidelines should not be taken lightly. In the first place, a large part of these guidelines is based on legal rules, which must obviously be complied with.

In the second place, there is much value in *uniformity*. Uniformity in the way in which a court decision is structured or in the way in which, for example, the course of the proceedings is presented, makes an important contribution to the legibility of the court decisions – and thus to the understanding thereof. The reader understands much faster the structure of the decision, where particular information can be found, what lies at the heart of the decision. This applies whether that reader is a party, another judge or any other person.

However, uniformity in the structure and design of court decisions is also important for the judge herself. With a uniform structure and design of the judicial decision, the judge will see much more quickly whether everything has been thought of and whether no mistakes have been made. In this way, too, compliance with the guidelines of the Manual contributes to the quality of judicial decisions.

Finally, an uniform working method in writing a court decision is also important because it emphasizes to the outside world that the individual decision is part of a larger whole, a 'body of law'. It is made clear that it is not about the preferences of an individual judge, but about a system. It shows that the court decision is in line with what has been accepted as 'best practices' in the larger whole of the judiciary.

From this perspective, there is much to say for using a standard *format* for writing court decisions, in which always the same lay-out, the same division into paragraphs and sections and the same headings above paragraphs are used. This helps to better read and understand the court decision, and also helps – as important – the judge to write a decision of good quality. The Manual offers numerous starting points for creating such a format. A next step could therefore be to draw up a format for the writing of a judgment on the basis of the guidelines from the Manual.

4. A clearly legible judgment: clarity about the issue of the dispute and about the judicial assessment

Perhaps the most important function of a clearly structured and an easy legible and understandable court decision is that the reader, after reading the decision, understands (i) what dispute divides the parties and (ii) how the judge assessed that dispute. That this must be known from the court decision may sound obvious. However, we noticed that not all court decisions meet these requirements. This is mainly due to the fact that the structure of the decision is sometimes hard to fathom.

Sometimes the court decision is a long pieces of continuous text, without any division in sections or paragraphs. In these cases it is rather unclear whether a piece of text concerns the representation of a party's point of view, or whether it concerns the judge's own judgment. It is also not clear what exactly the judge makes a decision about and what that decision entails. An example is a judgment in which a claim of a party has been rejected, without it being apparent from the judgment why that was the case. Another example is a judgment in which it only becomes clear after reading many pages of text what the dispute between the parties actually relates to, for example the annulment of a will. Although it is mandatory that the core of the dispute is stated in the Introductory Statement (see the Manual), in practice this is not always the case. We strongly support the guideline in the Manual that an Introductory Statement should always include a short description of the issue of the dispute.

Sometimes a court decision is poorly accessible because very long sentences are used, with many repetitions and a lot of legal jargon. An example is a judgment in which it concerns a dispute about parcels of land, and dozens of times in the judgment the full address and cadastral numbers of the parcels are written out. As a result, there is a lot of 'noise' in the text and is it very difficult to get a focus on the reasoning of the court. There are various 'tips & tricks' to increase the readability (accessibility) of a court decision. In the first place, we strongly recommended to work with a fixed format of the court decision, in which the writing of the decision is done according to a fixed sequence and a fixed structure. This also saves time for the judge, because there is no need to constantly think about how the judgment should be structured. In the second place, we strongly recommended to work with a division of paragraphs, which are provided with headings. Such a division of paragraphs, with headings, can be included in the format of the court decision. For example, a judgment may contain a paragraph 'procedure', 'the established facts', 'the claimant's position', 'defendant's defence', and 'the assessment'. Such a fixed structure makes a major contribution to the legibility of the court decision. Moreover, the judge is forced to make an analysis of what actually belongs in which paragraph and not to skip any steps (for example, by not mentioning the defendant's defense at all). As a result, the judge will also be more aware that it is necessary to write down what actually is the core of the dispute.

In addition, the judge should strive to write as clearly as possible. The Manual contains a large number of recommendations on this point. One of the recommendations is to avoid long sentences and superfluous language. Also it is recommended that the text should contain as few repetitions as possible. Instead, it is better to refer back to an earlier paragraph in the statement if necessary. At the beginning of the statement, a short indication of a person or an object can be introduced, so that it is not necessary to indicate with many words who or what exactly it is. As an example: in a judgment about an ownership issue, in the beginning of the decision can be mentioned: the plots of land located on ... with cadastral numbers ... , hereinafter referred to as: the parcels of land. In the remainder of the decision it is sufficient to mention: 'the parcels of land' (without mentioning the cadastral numbers or the exact location of the land). This makes a major contribution to the legibility of the court decision.

As said before, a proper use of punctuation and paragraphs can also make a positive contribution to the readability and comprehensibility of the statement.

Finally, we want to underline the importance of the guideline in the Manual to *avoid copying text* from the statements of the parties. Instead, the court should always include a *summary* of the parties' assertions, formulated by the court itself. A major advantage of this is that it prevents bad and unclear formulations of the parties' assertions from finding their way back into the court decision. The same applies to statements or assertions of the parties which are completely irrelevant for the judicial decision; they should be left out of the judgement. For example, by stating that 'anything put forward by party X about ... will be disregarded because it cannot contribute in any way to the decision of the dispute').

A summary of the statements of the parties in the judge's own words, in clear and concise language, makes the judgment much more readable and understandable, and prevents unnecessary length of texts. In addition, an important advantage of making a summary of the statements of the parties is that the judge is therefore forced to ask herself what is actually the core of the positions taken by a party. In the process of doing this, the judge makes an essential contribution to the analysis of the case, and thus to a judicial decision of high quality.

5. Clarity on the disputed and undisputed facts; clarity on the facts on which evidence may be provided

When it comes to the content of the court decision there has to be clarity about the factual basis of the judicial decision. That starts with the court establishing the facts the parties agree on. The judgment has to contain an overview of these undisputed facts. This is also stated in the Manual.

We would like to emphasize the importance of giving an overview of the undisputed facts. This provides a foundation for the judicial decision. If forms a basis for the judicial analysis of the dispute.

Clarity about which facts are undisputed, and which facts are disputed, is also crucial because evidence is only required for facts that are disputed. After all, in principle no evidence is required about facts on which the parties agree, as is clearly stated in the Manual. The court can and must in principle accept these facts as established. When reading a number of court decisions, we noticed that they do not always contain a clear overview of the undisputed facts, i.e. the facts on which the parties agree. This also means that it is not always clear on which facts the parties do not agree and which therefore possibly need providing of evidence by a party. Uncertainty about the factual basis also means that the judgment as a whole is difficult to follow, because it lacks a solid base.

It is essential that the judge determines at an early stage of the proceedings which facts the parties agree on and which facts are being disputed. As said, evidence is only necessary for the disputed facts; this is superfluous for established facts.

For this reason, it is crucial that the preparatory hearing is used for discussing with the parties on which facts they agree, and which facts are being disputed. Furthermore, the preparatory hearing has to be used to discuss on which facts a party wants to provide evidence, and which evidence can be actually provided by a party.

To this end, the judge must ensure that, prior to the preparatory hearing, he or she has – after reading the complaint and the statement of defence- identified which facts the parties agree on, which facts they do not agree on and for which facts it is unclear what the parties think about this. For the last category of facts, the judge has to use the preparatory hearing to obtain clarity of the parties: is a specific fact disputed or not disputed.

Providing evidence of disputed facts is, of course, only necessary if it concerns facts that are relevant to the judicial decision. It is the judge who has to decide which facts are relevant, not the parties. Evidence on irrelevant facts should be rejected, as is clearly stated in the Manual. This requires that the judge must also have insight into the legal basis of the dispute prior to the preparatory hearing; after all, which facts are relevant is determined on the basis of the applicable legal rules.

Furthermore, it is strongly recommended, as is stated in the Manual, that the judge should include in the invitation to the main hearing on which facts evidence is allowed. If a party wishes to hear a witness at the hearing, it must therefore be stated on which facts the proposed and accepted witness will be heard. In this way, the hearing can be used efficiently. In this way, parties, lawyers and the witness (and the judge) can prepare well for the hearing. Above this, it is prevented that parties object to the hearing of the witness afterwards, or that they want to have the witness heard again.

It is clear that an effective use of the preparatory hearing stands or falls with a timely and thorough preparation of the hearing by the judge. Only with a thorough preparation the judge will be able to ensure that the hearing is actually used for its intended purposes, resulting in clarity on the question which facts are disputed, which facts are relevant for the judicial decision and, as a consequence, clarity on the question which facts need evidence on the main hearing. No time is wasted on superfluous evidence.

If the judge has properly mapped out the undisputed facts (i.e. as much as possible *before* the preparatory hearing), it is recommended that the judge immediately writes down those facts in chronological order, point by point. Afterwards, the judge can use this overview of the established facts to prepare for the main hearing. Moreover, it is recommended that the court also includes these facts in the written decision, under the heading 'the undisputed facts'. With this method there can be no misunderstanding as to which facts the judge has based her decision. This is important for the parties, but also for other readers of the decision, such as the appeal judge (see above par. 2).

It has already been noted above that the court must clarify the question on which facts a party is allowed to provide evidence. To be admitted to evidence it is required (i) that the facts are disputed, (ii) that they are facts that are relevant for the final decision, and, to be added (see also the Manual), (iii) that it concerns facts that are not generally known. If the parties know to what facts the evidence should relate to, this contributes to an efficient hearing of the witnesses and prevents discussions from arising afterwards about hearing a witness. This contributes to an efficient course of legal proceedings.

6. Clarity in the evaluation of evidence

After evidence has been provided, the judge will have to evaluate the evidence in the court decision. Firstly, it has to be stated about which fact evidence has been provided. Secondly, there has to be a short summary of the evidence that is been put forward. Finally, in the judgment has to explained how the judge evaluated the evidence that has been put forward, and thus, ultimately, whether a party has succeeded in proving the fact.

We highly endorse the guideline stated in the Manual, that presenting a summary of the evidence, does not mean 'copy-past' in full a witness of party testimony. Instead, it is sufficient to simply mention that witnesses X and Y have made a testimony. Thereafter, in the judgment has to be discussed what the value, de probative force is of a specific testimony for the fact that is to be proven. If a testimony contained no relevant claims regarding a particular fact, the court can limit itself to a very short remark that 'the testimony of witness X will not be taken into consideration because it has no relevance to the fact that has to be proven' (see also the Manual).

Also it is important to observe that simply listing the testimony of witnesses, with a concluding statement that a party did or did not succeed in proving a specific fact, has no explanatory power at all. This does not meet the requirement of a well-written, well-motivated and convincing court decision.

Instead, the court decision has to explain for what reasons a party did or did not succeed in proving a specific fact. Of course, these reasons have to be connected to the evidence that has been presented, i.e. the testimonies of the witnesses. The reasons have to be an evaluation, an assessment, of the evidence. Writing such an evidence-evaluating reasoning deserves a lot of attention.

It is clear that the judge is free to assess the evidence. The decision on the assessment of evidence is never a simple sum of the number of witness statements (see also the Manual). What matters in the end

is whether the judge is *convinced*. It is the judge's job to write down in the decision why he or she is convinced by the evidence. As said, a summary of the evidence does not give any *reason* for the decision of evidence. That will not make clear to the parties – and anyone else who happens to read the judgment – on what grounds the judge has reached the decision on the evaluation of evidence.

It can be quite difficult to write out the reasoning for the evaluation of evidence. Points of departure may be the (a) degree of agreement of a witness statement with certain facts in the file or with other witness statements, i.e. consistency; (b) the explanatory power of the statements (does the testimony contain gaps or is it implausible on certain points?); (c) the way a witness has come to his knowledge (hear-say of his own observation). The court may also ask itself (d) to what extent a particular witness has an interest of his own in a particular outcome of the proceedings, for example because he is related to a party. As a rule of thumb: the more independent the witness, the more confidence the court can be given to the truth of the statement of a witness.

7. Concluding remarks

A well-written court decision reflects a well-thought-out judgment. A well-written court decision is therefore also a visible sign of the good administration of justice. For this reason, it is of great importance for judges to comply with the guidelines in the Manual. In the end, this contributes to the quality of justice.

Rune Høgberg

After first having been in contact with Vesna Pirija in the fall of 2019, I had the pleasure of visiting Sarajevo in November the same year. Together with the Dutch Supreme Court Judge; Professor Ruth de Bock, I was introduced to the Project team, and the participating judges from Bosnia and Herzegovina.

In Sarajevo the goal and methods of the Project was further discussed, and shortly thereafter the Project started by going through, analyzing, and commenting upon judgements from different courts of different levels in Bosnia and Herzegovina.

In my view the Project has done an impressive work after the start-up in 2019. The Manual which is now complete should serve as a valuable help in the day to day work of writing judgements in civil cases, and prepare the grounds for better understanding of the judgements by the many users of the different courts.

Even though the Manual is specifically meant for judges in Bosnia and Herzegovina, the principles and guidelines which are presented in the Manual in my view are valid for all judges of all levels. I therefore hope that the Manual will be frequently applied, and appreciated as a tool in the effort of doing an even better job.

Best of luck!

JUDICIAL WRITING MANUAL

1. The Improving Judicial Quality Project

1.1 Project intervention rationale

The methodology for writing court decisions varies from country to country, depending on the regional legal culture, however the universal standard is that the decisions must be clear, accurate, and understandable to the parties to the proceeding.

Court decisions should, to the greatest extent feasible, have a uniform and consistent structure as regards the presentation and assessment of evidence, and the application of the law to facts proved. They should be written in a manner comprehensible to the parties.

They should not be unnecessarily elaborate, yet must correctly address the issues, facts and legal principles fundamental to the outcome of the proceedings. Every judge has independence and autonomy in evaluating the evidence and in application of the law, but in writing the decision must adhere to certain standards. A certain degree of uniformity in the methodological approach to writing court decisions is indeed desirable and can be deemed to be a judicial obligation, in accordance with the letter and spirit of the legal culture of the region/country.

In the preliminary phase of starting work on this project activity, initial research was conducted and based on the feedback received from second-instance court judges and supreme court judges it was evident that greater emphasis needs to be placed on how judges should write up good quality decisions.

The main results and findings of the preliminary research were as follows:

- Decisions are not well-structured;
- Decisions are often excessively long;
- Judges use language that is unintelligible to lay-persons.

1.2 About the Project

Prompted by the aforementioned findings, The High Judicial and Prosecutorial Council of Bosnia and Herzegovina (hereinafter referred to as the HJPC BiH) decided to form a working body (expert team) consisting of distinguished and experienced judges from higher-instance courts, tasked with carrying out a comprehensive analysis of the quality of court decisions and drafting specialised material based on their findings.

At its session held on 18-19 April 2018, the HJPC BiH adopted the Improving Judicial Quality Project proposal. A result, on 15 December 2019 a grant agreement was signed between the HJPC BiH and the Ministry of Foreign Affairs of the Kingdom of Norway in reference to BHZ – 18/0008 the Improving Judicial Quality Project. Subsequently, in 2019 memorandums on cooperation were signed between the HJPC BiH, the Norwegian Courts Administration, and the Council for the Judiciary of the Netherlands with regard to implementation of this Project.

The Project Activity “Improving the quality of court decisions” is provided for in the above mentioned documents. Following the adoption of those documents, the HJPC BiH decided that the Activity should be carried out with assistance and support from Norwegian and Dutch experts. The project team prepared a Project Realisation Plan, and at meetings held on 10 and 16 September 2019, presented the Plan to the Standing Committee for Judicial Efficiency and Quality, which then approved the Plan and the proposed list of experts to be engaged in the implementation of the Project.

The Project activity for improving the quality of court decisions encompasses the following:

- Formation of an Expert Team that will be made up of judges of second and third-instance courts, and one Norwegian and one Dutch expert;
- Analysis of court decisions, selected at random, from different categories of civil law;
- Development of a Manual for writing court decisions, with court decision templates;
- Drafting of Guidelines for writing court decisions;
- Promotion of the Manual;
- Cooperation with the judicial and prosecutorial training centres on training for first instance court judges.

At the start of the realisation of the activity, an expert team was assembled, and is made up of the following members:

1. Goran Nezirović, judge of the Supreme Court of the Federation of Bosnia and Herzegovina (hereinafter referred to as: FBiH);
2. Senad Tica, judge of the Supreme Court of Republika Srpska (hereinafter: RS);
3. Fatima Mrdović, judge of the Supreme Court of FBiH;
4. Zvjezdana Antonović, judge of the Appellate Division of the Court of BiH (hereinafter: BiH);
5. Muhamed Cimirotić, judge of the Cantonal Court in Bihać;
6. Biljana Majkić Marinković, judge of the Banja Luka District Court;
7. Ruža Gligorević, judge of the Appellate Court of Brčko District (hereinafter: BD);
8. Ruth de Bock, judge of the Supreme Court of the Netherlands;
9. Rune Hogberg, judge of the Stavanger District Court, Norway.

Support and assistance to the expert team was provided by the following members of the "Improving Judicial Quality" project team:

1. Ana Bilić Andrijanić, Project Manager;
2. Kenan Ališah, Deputy Project Manager;
3. Vesna Pirija, Legal Adviser;
4. Benjamin Hasanović, Lawyer;
5. Demirel Delić, Legal Adviser.

1.3 Analysis of court decisions

From March to September 2020, the expert team, divide into three groups, analysed the quality of the selected sample of decisions rendered in civil (litigation) proceedings, according to predefined criteria and a predetermined method of evaluation. The analysis covered 101 court judgments rendered in civil litigation proceedings, on merits and with final effect (based on all various legal bases), as well as procedural decisions based on different legal principles, from 1 January 2015 to 30 November 2019, by the Court of BiH, and courts in FBiH, RS, and BD.

Upon obtaining data from the CMS, a sample was determined and stratified so as to encompass a proportionate number of cases:

- From the Court of BiH, and the courts in FBiH, RS and BD;
- Cases with different legal bases;
- Cases with different outcomes.

On the basis of the sample stratification, the Project team, using a random selection method, identified 101 cases, taking into account the fact that the sample must include as many larger courts as possible. Upon arriving at the final sample, the Project team, or more specifically the HJPC BiH, requested the courts to deliver the selected decisions and accompanying case files.

The analysis of the decisions also covered the technique and methodology of writing decisions with regard to application of the provision of the civil procedure codes that are in application in the courts in Bosnia and Herzegovina, without assessing the validity of the decision-making, that is, whether a decision was correct and grounded in law.

For the purpose of conducting a comprehensive analysis, the expert team (excluding the international experts whose analyses were based only on examination of the court decisions) examined the case files, specifically, the documents most relevant to first instance decisions: the complaint, the reply and statement of defence, records/minutes of all of the court sittings, expert witness reports and findings; and for second instance court decisions: the first-instance decision, the appeal, the response to appeal, records of the court sittings (if hearings were held before a second instance court) and the second-instance decision.

The decisions, as well as the parts of the case files that were subject to analysis, were made anonymous, and the decisions selected for analysis were assigned a reference code and given to the evaluators in anonymised form.

The chosen method of work was a peer review expert analysis of court decisions based on the criteria adopted by the expert team.

Upon completion of the analysis, evaluation forms[1] were filled in for each case, citing errors and omissions made in the drafting of the court decisions (hereinafter: judgements), specifically clearly stating what, according to the Civil Procedure Code, a judgment must contain, and what is unnecessary.

The Project team analysed the completed evaluation forms, with the data being statistically processed, and conclusions regarding the carried out analysis[2] were formed, which cover the following key parts of a judgment: the introductory part (the opening statement), the operative part of the judgment (the rulings), the claims of the parties, determination of the facts, the presentation and assessment of the evidence, the quality of the statement of reasons from the standpoint of legal analysis and analytical opinion, and the drafting/writing of judgments, which served as the basis for conceiving the draft of the Manual for writing decisions in civil (litigation) cases.

1.4 General observations and introductory remarks on the content of the Manual for writing court decisions

According to the methodological concept, which encompasses the key points of the analysed court decisions, depending on whether the decision was a substantive or procedural court decision, the Manual for writing court decisions in civil proceedings (hereinafter: the Manual) consists of (7) seven chapters, as follows:

1. Introductory part (opening statement),
2. Operative part,
3. Recital of the parties claims
4. Determination of facts,
5. Evidence and examination of evidence,
6. Quality of the statement of reasons from the standpoint of legal analyses and analytical opinion, and
7. Writing of the judgment.

The conducted analysis showed that in civil cases, courts in the entities and Brčko District apply the procedural law (the Civil Procedure Code), the provisions of which are equivalent in content (only the systematisation of the text is different), and adapted to the jurisdiction of the court (the Court of Bosnia and Herzegovina).[3]

[1] The evaluation forms were created as a group of questions to enable the detailed assessment of the quality of all of the parts of a court decision. Using the evaluation form, judges and legal associates are able to analyse in detail all of the mandatory elements of court decisions and the preferable practice in the methodological approach to drafting decisions and selecting the optimal style of writing. The evaluation forms are an integral part of this Manual and form an integral part of the Addendum to the Manual.

[2] The statistical findings and narrative report on the conducted analysis form an integral part of the the Addendum to the Manual. The material details the observations made by the expert team regarding the judgments that were analysed.

[3] In Bosnia and Herzegovina four legal systems are effectively in force, and as a result there are four procedural laws that govern civil procedure. The entity laws (RS and FBiH) arefor the most part consistent in content, and the differences in numeration are minimal. Hence, the principal text of the Manual will reference the content of the entity procedural laws, while in the footnotes the content of the laws of BDBiH and BiH will be provided. Any eventual discrepancy in numeration or content will also be indicated in the footnotes.

THE INTRODUCTORY STATEMENT

The manner of writing court decisions is governed by the provisions of Article 63 of the Rulebook on Internal Court Operations[4] (hereinafter: the Rulebook), which set forth what must first be stated:

"In the top left corner of a court decision the following must be indicated: the name of the state of BiH, the entity, the canton, and the name and seat of the court, the court case number, and finally the date the decision was rendered", while for decision of courts in Brčko District the following is prescribed: "the name of the state of BiH and the name of the court"[5].

Article 191 of the Civil Procedure Code of RS/FBiH[6] stipulates that: "The introductory (opening) statement of the judgment shall include: the name of the court; the full name of the judge; the full names and permanent and temporary addresses of residence of the parties to the proceeding, their representatives and agents; a short description of the matter of the dispute and the claim value; the date the main hearing ended; which parties, their legal representatives and agents were present at the hearing; and the date the judgment was rendered." In addition, Article 311 of the Civil Procedure Code of Brčko District requires "a statement that the judgment is delivered on behalf of Brčko District of Bosnia and Herzegovina."[7]

The significance of the introductory part of court decisions is to concisely and straightforwardly present the basic elements necessary to understand the subject matter of the decision: 1. Which court rendered the decision; 2. Which judge, or panel of judges (for second instance decisions), adjudicated the case; 3. Who the parties to the proceedings are (natural or legal persons); 4. Who represents them (legal representative, representative by law, or attorney); 5. What the issue of the dispute is; 6. What the value of the claim (dispute) is; 7. When was the main hearing concluded; 8. Who of the parties was present at the hearing; 9. Were the proceedings public (subjective and objective elements of the dispute); and 10. The date the judgment was entered.

The elements of the introductory part of a decision are determined by the word "contains", which "instructs" the court to include those elements in the introductory part of the judgment. The formulation is imperative, and does not allow any discretion by judges to decide which elements to include or not include in the introductory statement. The compulsory elements of the introductory statement of a decision leave judges with hardly any creative leeway in drafting a judgment.

The introductory statement is significant to the outcome of the enforcement of the final judgment, or decision (e.g.: dispute over disturbance of possession). In the enforcement procedure, the parties shall be stated in the motion for enforcement in the same manner as in the opening statement of the final judg-

[4] Rulebook on internal court operations, Official Gazette, 66/12, 40/14, 54/17, 60/17, 30/18. The Rulebook is in use in the Federation of Bosnia and Herzegovina and Brčko District of Bosnia and Herzegovina. In Republika Srpska the Rulebook on internal court operations of Republika Srpska is applied, Official Gazette of RS, 9/14, 39/16, 71/17, 67/18, and 6/19. In both Rulebooks, the provisions of Article 63 regulate the content of the opening statement of judgments.

[5] Article 63(7) a) of the Rulebook on internal court operations in FBiH and BDBiH, Official Gazette of BiH, 66/12, 40/14, 54/17, 60/17, and 30/18; Article 63(7) a) of the Rulebook on internal court operations in RS, Official Gazette of RS, 9/2014, 39/2016 – Constitutional Court decision, 71/2017, 67/2018, and 6/2019.

[6] Article 158 of the Civil Procedure Code of BiH, Article 191 of the CPC FBIH, Article 191 of the CPC RS, Article 311 of the CPC BDBiH

[7] Article 311 of the Civil Procedure Code of BD BiH reads as follows: The introduction of a judgment shall contain: a statement that the judgment is rendered on behalf of the Brčko District of Bosnia and Herzegovine, the name of the court, the first and last name of the Basic Court judge, or members of the Appelate Court panel of judges, adjudicating the matter, the first and last names and permanent or temporary addresses of the parties and their representatives and agents, a denotation of the subject matter of the dispute and its value, the date the main heraing ended on, a list of the parties, their representatives and attornies that were present at the hearing.

ment as regards their personal details and address (the information must be complete and correct in order for enforcement to be possible).

The names of courts are standardised by the provisions of the Law on Courts[8], where the official names of the existing courts are listed. In that regard, it is important to point out that in court practice the names of courts are often stated incorrectly. For example, the following is incorrect: *Municipal/Basic Court ...*(*name of town/city*). The name of the court must be as it is set forth in the Law on Courts, which is *Municipal/ Basic* ***Court in*** (*name of city/town*).[9]

The first name and surname of the judge, or the first name and surname of each panel member in the case of second instance decisions. It was observed that that in practice the surname of the judge is given first, followed by the first name. However, the Civil Procedure Code[10] is clear and stipulates that the first name of the judge should come first, followed by the surname. It is also common practice to 'link' judicial titles to the first name of the person, and not their surname (e.g. first name of judge, followed by surname), as is also the case with other professions (e.g. doctor *first name followed by surname* or professor *first name followed by surname*).[11] In practice, courts generally do the opposite, but that does not constitute an infringement of the procedure that would affect the substantive legality of the court decision. Nonetheless, considering the above, it is recommended to adhere to the letter of the law, for the purpose of substantive and formal legal accuracy.

In the introductory part of the judgment, when citing the first names and the surnames of the judge (or panel members) and parties the correct grammatical case must be used (genitive), although in practice it is often the case that the first and last names are given in the nominative case, which is grammatically incorrect.

The first name and surname, and address of permanent and/or temporary residence of the parties form the next element of the introductory statement.

Permanent residence is the municipality or District where a citizen establishes his/her habitual place of living with the intention of residing there permanently. **Temporary residence** is the municipality or District where a citizen establishes his/her habitual place of living with the intention of residing there temporarily.[12]

Although not explicitly set forth in the law, it is preferable to in addition to the first and last name of a party, also provide the name of his/her father, or parent whose surname he/she carries, and possibly even the moniker (nickname) of the party if stated in the complaint (or during the proceedings). It is desirable for that information to be included, as it facilitates identification of parties during service of documents. It is common knowledge that we know some people only by their moniker, without knowing their actual name, and that in some areas there are multiple persons that share identical first and last names. In court practice cases there have even been instances where persons have not only the same first and last name, but also the names of their parents are the same.

The permanent or temporary residence of a party also refers to their address.

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[8] The Law on courts in the Federation of Bosnia and Herzegovina, Official Gazette of FBiH, 38/05, 22/06, 63/10, 72/10, 7/13, 52/14; Law on courts of Republika Srpska, Official Gazette of RS, 37/12, 14/14, 44/15, 39/16, 100/17; Law on courts of BD BiH, Official Gazette of BD BiH, 18/20

[9] Articles 22 and 25 of the Law on courts of the Federation of Bosnia and Herzegovina, Official Gazette, 38/05, 22/06, 63/10, 72/10, 7/13, 52/14; Articles 26-29 of the Law on courts of Republika Srpska, Official Gazette of RS, 37/12, 14/14, 44/15, 39/16, 100/17. The above does not apply to the following exceptions to the general rule: in BDBiH the situation is specific, as there are two courts named as follows: the Basic Court of BDBiH and the Apellate Court of BDBiH, Article 2 of the Law on courts of BD BiH, Official Gazette of BD BiH, 18/20; also at the central level of government, there is – the Court of Bosnia and Herzegovina.

[10] Article 191(2) of the Civil Procedure Code of RS/FBiH (CPC RS/FBiH), Article 158(2) of the Civil Procedure Code before the Court of BiH (CPC BiH), Article 311 of the Civil Procedure Code of Brčko Dostrict BiH (CPC BD BiH).

[11] I.Šabić, *Funkcije ličnih imena u književnosti* (The Function of Personal Names in Literature), The Faculty of Phillosophy of the University in Tuzla, Tuzla, 2019., p. 2 : "Due to lack of precision with regard to surnames and nicknames, the following supplement is necessary: a personal name is required by law (which a nickname is not) and is a nonhereditary (which a surname is not) anthroponymic category, that is, an un-inherited individual anthroponym"; p.2 : "By legislating the name formula, the surname became its main element, and the personal name was given the supporting role, serving to differentiate between people of the same surname...Nevertheless, in the structure of the name formula, the personal name comes first and is thus anteposed to the surname and nickname as later anthroponymic categories"; p. 4:" Therefore, name + surname is one of the formulas for establishing identity.";- "The referential or identification function of a name in fact refers to the process of establishing a connection between the name as a linguistic symbol and reference and the named person in reality that transcends language, hence a personal name refers to a male or female person, and the surname to the family the person belongs to/is part of."

[12] Article 3(7) and (10) of the Law on permanent and temporary residence of citizens of BiH, Official Gazette of BiH, 32/01, 56/08, and 58/15.

A party to a proceedings may be any person that has receptive legal capacity (legal capacity is acquired by natural persons by birth, and by legal persons by registration in the relevant register) or active legal capacity, which is a precondition for litigation capacity (the ability to participate effectively in litigation proceedings). Just as receptive legal capacity (the ability to receive or inhere rights and obligations) is prerequisite for active legal capacity (the ability to actively exercise rights and obligations), the ability to be a party to litigation (litigant) is a precondition for litigation capacity.

If a person who lacks litigation capacity was party to a proceeding as a plaintiff or defendant, that is in non-compliance with the provisions of civil procedure (Article 209(2)8) of the Civil Procedure Code of RS/FBiH[13]), which the court (first and second instance) was *ex officio* required to be vigilant of (Article 221 of the Civil Procedure Code of RS/FBiH[14]), and therefore, such an infringement is reason for vacating a first instance judgment, and dismissing a complaint if at any stage of the proceedings the court determines that the plaintiff or defendant cannot be engaged in a procedural relationship.

If during the preliminary examination of the complaint, the court fails to detect the error return the complaint to the plaintiff to be amended/modified, and after the first instance proceedings have ended (this happens in practice) the complaint is rejected, the ensuing consequences are clear for the plaintiff that failed to correctly identify a person that has the capacity to be party to the proceedings (plaintiff or defendant).

In practice, it is often the case that a sole proprietorship (tradership)is identified as a party in the proceedings, despite the fact that it is not a legal person and can therefore not be a party in proceedings (lacks litigation capacity). Instead, the full name of the natural person must be cited, and then it should be further specified that the natural person is the owner of a sole proprietorship and the name of the proprietorship should then be stated.

INTRODUCTION	
Correct	Incorrect
The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ... "against the defendant full name (natural person), owner of the sole proprietorship ..." ... from ... (city, street name and number), for the purpose of seeking payment, with the claim value set at ..., following the main hearing held on ... in the presence of ..., delivered the following	The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ... "against the defendant the sole proprietorship ..., for the purpose of seeking payment, with the claim value set at ..., following the main hearing held on ... in the presence of ..., delivered the following

If the dispute involves multiple plaintiffs or defendants as co-litigants, in the introductory part of the judgment it is necessary to state their personal details (full name, address – street name and number), and it is incorrect to give only the details of the first co-litigant followed by the phrase "et al.". Specifying the personal information and addresses of all litigants is especially important with regard to the enforcement procedure, as well as litispendence (lis pendens – litigation is on-going), and *res judicata* (finality of judgment).

[13] Article 176 of the CPC BiH, Article 329(2) h) of the CPC BD BiH.
[14] Article 188 of the CPC BiH, Article 341 of the CPC BD BiH.

INTORODUCTION	
Correct	Incorrect
The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiffs **M.M., N.N.**, and P.P of ... (city, street name and number), represented by ..., an attorney practicing in ..., against the defendant ..., represented by ..., engaged by the defendant, for the purpose of seeking payment, with the claim value set at ..., following the main hearing held on ... in the presence of ..., delivered the following	The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiffs **M.M. et al.,** represented by ..., an attorney practicing in ..., against the defendant ..., represented by ..., engaged by the defendant, for the purpose of seeking payment, with the claim value set at ..., following the main hearing held on ... in the presence of ..., delivered the following

In practice it may occur that, even in the case of the procedural grouping of indispensable individual parties (e.g. the division of a property co-owned by multiple persons), that are in an indivisible legal relationship, not all of the co-owners are included in the complaint as the defendants, and during the proceedings the complaint is never expanded to include the omitted indispensable individual co-litigants, and in such instances the court will dismiss the complaint (there is no party to the proceedings, as the party can only be made up of all of the all co-litigants together). However, in practice in such situations, courts have also been known to deliver a judgment rejecting the claim.

When in civil proceedings a claim is ceded (cession), that is, transferred from the plaintiff as the creditor (the cedent) to a new creditor (the cessionary), the plaintiff files a motion for the cessionary to continue in the proceedings as the plaintiff, and the court examines whether the cession is lawful, if the claim is attached to an individual – in which case a transfer is not permitted, and whether the plaintiff (as the creditor) and the defendant (as the debtor) had an arrangement that the plaintiff may transfer the claim to someone else or may not do so without the defendant's consent. Accordingly, the court decides on the plaintiff's motion to allow the cessionary to replace the plaintiff as the defendant in the proceedings, with the debtor and value of the claim remaining unchanged.

In the event of cession of the claim that is the subject of a dispute, neither the first instance nor the second instance court may on their own accord administer the succession of parties in the dispute.

In disputes where the defendant files a counterclaim, in the introductory statement of the judgment (and the remainder of the judgment) the plaintiff should not be identified as the "counter-defendant", and the defendant should not be identified as the "counter-plaintiff". In fact, the status of the party at the time of the filing of the complaint remains unchanged until the end of the proceedings. Therefore, the parties should not be referred to as "plaintiff-counter defendant" or "defendant-counter plaintiff", but simply as plaintiff and defendant.

INTRODUCTION	
Correct	Incorrect
The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., of ..., against the defendant ..., of ..., for the purpose of seeking payment, with the claim value set at ..., following the main hearing held on ..., in the presence of ..., delivered the following	The Basic Court in ..., with judge ..., adjudicating in the action brought by the **plaintiff - counter-defendant** ..., of ..., against the **defendant - counter-plaintiff** ..., of ..., for the purpose of seeking payment, with the claim value set at ..., following the main hearing held on ..., in the presence of ..., delivered the following

In paternity cases the filing of a counterclaim is not permitted, since the court, *ex officio*, in accordance with the provision of the Family Law, in civil divorce proceedings rules on the legal and physical custody of the minor child, as well as the child support payments, and therefore the court will dismiss any counterclaims.

INTORODUCTION	
Correct	Incorrect
The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., of ..., against the defendant ..., of ..., for the purpose of seeking a divorce, following the main hearing held on ..., in the presence of ..., delivered the following	The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., of ..., against the defendant ..., of ..., for the purpose of seeking a divorce, and **deciding on the counterclaim filed by the defendant** for legal and physical custody of the minor child, with the value of the dispute set at ..., following the main hearing held on ..., in the presence of ..., delivered the following

There is a certain dilemma regarding whether it is mandatory to, adhering to the provisions of the law, first state the first name of a party, and then his/her surname. As mentioned earlier, according to the Civil Procedure Code parties should be identified as – "First name and surname of the party" (natural person), regardless of the fact that putting names in the opposite order (surname followed by first name) does not constitute a violation of the civil procedure that affects the substantive legality of a court decision.

If the legal person that is a party to the proceedings has filed for bankruptcy or is in liquidation, in the introductory statement of the judgment it is necessary to specify that fact next to the name of that legal person (e.g. plaintiff...- bankruptcy filer) and that the legal person is represented by a bankruptcy trustee. That is of particular significance if the matter of the dispute is a complaint in condemnation (order for payment), which cannot be made against a legal person in bankruptcy.

INTORODUCTION	
Correct	Incorrect
The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ... - bankruptcy filer (debtor), represented by bankruptcy trustee ..., against the defendant ..., seeking payment, with the claim value set at ..., following the main hearing held on ..., in the presence of ..., delivered the following	The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ... - **bankruptcy filer (debtor),** against the defendant..., seeking payment, with the claim value set at..., following the main hearing held on ..., in the presence of ..., delivered the following

In the introductory part of the judgment, the court shall state the name of the intervener, as a person that has a direct legal interest in the success of one of the parties in an ongoing litigation, and shall specify on the side of which party the intervener is joining the litigation, followed by his/her permanent or temporary address of residence.

First name and surname, and permanent or temporary address of residence of the legal representatives or agents of the parties

Parties can be represented by an authorised agent (attorney or an employee of the legal person), the representative-by-law of a natural person (parents, guardians), or representative appointed by law or by way of a legal person's general regulation.

Legal persons, that can be party to proceedings, are not represented by a legal representative, but by a representative appointed by a legal person's general regulation or by law, with the exception of bankruptcy trustees who as representatives-by-law represent legal persons that have filed for bankruptcy.

In the introductory part of the judgment it is necessary to state the representatives of the state, the entities, Brčko District BiH, the institutions of BiH and the entity institutions, using their names as set forth on the law.

A temporary representative represents a party whose place of residence is unknown, and who has no authorised agent.

In the introductory part it should not be stated that the legal person (business entity) is, in addition to the attorney, also represented by the director (chief executive) of the legal person, and instead only specify the attorney/lawyer as the authorised agent who is the addressee for the service of documents, or the employee of the legal person authorised to act in the proceedings within the limits of power of attorney.

It is incorrect to state in the introductory statement that the attorney as the authorised agent of the legal persons represents the legal person's representative-by-law (e.g. bankruptcy trustee) or the director (chief executive) of the legal person, because the attorney, as an authorised agent, represents the party to the proceeding.

INTRODUCTION	
Correct	Incorrect
The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., represented by ..., an attorney practicing in ..., against the defendant ..., for the purpose of seeking payment, with the claim value set at ..., following the main hearing held on ... in the presence of ..., delivered the following	The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., **represented by director ..., represented by** ..., an attorney practicing in ..., against the defendant ..., for the purpose of seeking payment, with the claim value set at ..., following the main hearing held on ... in the presence of ..., delivered the following

The liquidator is an attorney appointed by the relevant bar association, and only he/she, not the law firm, is the party's proxy.

In the course of civil proceedings it may happen that a party changes their authorised legal representation several times (this is most often the case in lengthy proceedings). In such cases, in the introductory statement the names of all of the representatives and the periods of representation should not be listed (e.g. *represented by... up to ..., and from ... represented by...*), and instead only the name of the agent that last represented the party, and who is authorised to receive service of documents, should be specified.

INTRODUCTION	
Correct	Incorrect
The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., of ..., represented by ..., an attorney practicing in ..., against the defendant ..., for the purpose of seeking payment, with the value of the claim set at ..., following the main hearing held on ... in the presence of ..., delivered the following	The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., of ..., **represented by ... until ..., and represented by... starting from ...,** against the defendant ..., for the purpose of seeking payment, with the value of the claim set at ..., following the main hearing held on ... in the presence of ..., delivered the following

The permanent or temporary residence of the legal representative and authorised agent includes the address of residence/law firm, which is required for the purpose of service of documents.

INTRODUCTION	
Correct	Incorrect
The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff, a minor, ... of ..., represented by her mother- as her litigation guardian ..., of ..., street..., No. ..., against the defendant ..., for the purpose of seeking payment of child support, with the value of the claim set at ..., following the main hearing held on ... in the presence of ..., delivered the following	The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff, a minor, ... of ..., **represented by her mother, as her litigation guardian** ..., against the defendant ..., for the purpose of seeking payment of child support, with the value of the claim set at ..., following the main hearing held on ... in the presence of ..., delivered the following

The subject matter of the dispute is a compulsory element of the complaint and the plaintiff is required by law to specify the issue of the dispute in the complaint. The matter of the dispute is correctly stated if in the event of multiple claims it is specified what each of the claims refer to (e.g. for the purpose of declaring a sale and purchase contract null and void and seeking payment).

INTRODUCTION	
Correct	Incorrect
The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., of ..., against the defendant ..., of ..., for the purpose of declaring a sale and purchase contract null and void, and seeking payment, with the value of the claim set at ..., following the main hearing held on ..., in the presence of ..., delivered the following	The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., of ..., against the defendant ..., of ..., for the purpose of declaring a sale and purchase contract null and void, **with the value of the claim set at** ..., following the main hearing held on ..., in the presence of ..., delivered the following

If the defendant has filed a counterclaim, in the introductory part of the judgment the subject matter of the counterclaim must also be specified.

INTRODUCTION	
Correct	Incorrect
The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., of ..., against the defendant ..., of ..., for the purpose of delivery of possession, and deciding on the counterclaim filed by the defendant seeking damages, with the value of the claim set at ..., following the main hearing held on ..., in the presence of ..., delivered the following	The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., of ..., against the defendant ..., of ..., for the purpose of delivery of possession, **with the value of the claim set at** ..., following the main hearing held on ..., in the presence of ..., delivered the following

In instances when the plaintiff fails to correctly identify the subject matter of the dispute in the claim, the court is authorised to denote the subject matter of the dispute with the appropriate legal terms, without affecting the substance of the dispute.

For example, if the plaintiff stated in the complaint that the subject matter of the dispute is the establishing of property rights to one-half interest in the property, the court shall specify the subject matter of the dispute as the establishing of the plaintiff's one-half interest in the property as a co-owner.

The same applies in cases where in the introductory part of the judgment it is stated that the subject matter of the dispute is alteration of the ruling "awarding" the child for legal and physical custody to one of the parents, instead of using the legally correct formulation and stating that the subject matter of the dispute is the alteration of the ruling on "entrusting" legal and physical custody of the child.

INTRODUCTION	
Correct	Incorrect
The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., of ..., against the defendant ..., of ..., seeking alteration of the decision on "entrusting" legal and physical custody, following the main hearing held on ..., in the presence of ..., delivered the following	The Basic Court in ..., with judge ..., adjudicating in the action brought by the plaintiff ..., of ..., against the defendant ..., of ..., **seeking alteration of the decision on "awarding" the child**, following the main hearing held on ..., in the presence of ..., delivered the following

The claim value refers to the value of the principal claim, while interest, contractual penalties and other ancillary claims are not taken into account when setting the value of the claim (dispute). The Civil Procedure Code[15] clearly sets forth how the value of the claim in cases involving objective accumulation of claims is determined, as well as in cases where the claim refers to future recurring payments (e.g. lease, rent).

This element of the Introductory Statement to the Judgment is of significance to the decision on the award of the costs of the proceedings, as well as the filing of a motion for the revision of a second instance decision. Setting the value of the claim is also important with regard to determining the type of procedure (e.g. small claims).

In payment claim disputes, the value of the claim is the amount determined (upon expert appraisal) in the proceedings and awarded to the plaintiff, and not the monetary value specified by the plaintiff in the complaint. In disputes involving non-monetary claims the claim value cannot be amended by any of the parties or the court once the preparatory hearing has been concluded and hearing of the primary statement of claim has commenced.

In cases that involve multiple plaintiffs, whose claims are founded on the same factual and legal basis (in work disputes, claims for damages), and who for the purpose of saving costs filed a single, joint complaint (ordinary co-litigants), if their claims are of differing monetary values, in the introductory statement of the judgment only one of the monetary values should be stated as the claim value, and it should be the one with the highest value, while their sum total should never be specified.

In practice it has been observed that in claims for damages, following expert appraisal, the plaintiff specifies a different claim value than he/she originally stated in the complaint, amending it to comply with the expert appraisal.

[15] Article 259 of the CPC BiH, Article 319 of the CPC RS/FBiH, Article 68 of the CPC BD BiH.

The Civil Procedure Code of RS/FBiH sets forth that: "In other cases, when the statement of claim is non-monetary, the value stated by the plaintiff in the claim shall be taken as the claim value". Furthermore, Article 53 of the CPC RS/FBiH stipulates the claim value as a compulsory element of the complaint (*inter alia*).

According to the above provisions, the plaintiff is required to specify the value of the claim in the complaint, and that the court must state the claim value in the opening statement of its decision even in cases concerning non-monetary claims, such as paternity or employment status disputes.

The date of the conclusion of the main hearing and the date that the judgment was rendered on do not have to coincide, and in most cases they do not, since starting from the day the main hearing is concluded, the court has 30 days to deliver a judgment (Article 184(1) of the CPC), and almost always renders the judgment on a different date to the one on which the main hearing ended. If it was to be considered that the judgment was rendered on the same day as the main hearing concluded (the date the judgment was rendered coincides with the date the main hearing was concluded), that would mean that the period of limitation for filing an appeal runs from the day the main hearing was concluded (that is, the following day - Article 185(3) of the CPC). However, the period of limitation for filing an appeal runs from the day the judgment was delivered (Article 185(3) of the CPC), and at the last sitting the court shall inform the parties when the judgment will be rendered, and that day is usually some other day and not the day that the main hearing was concluded. Essentially, the judgment is rendered following the conclusion of the main hearing, but is practically never rendered on the day the main hearing ended, since the judge needs time to analyse the case file, and render and write up the judgment. This is corroborated by Article 191(2) of the CPC which clearly sets forth that it is mandatory to specify, in the introductory part of the judgment, the "date of conclusion of the main hearing" and "the date of rendering the judgment", hence even the law differentiates between the two events (dates). Also important are articles 184(1) and185 of the CPC.

The date the main hearing was concluded on is stated in the introductory part of the judgment, as is which parties, their representatives and agents, were in attendance at that hearing. This is of particular significance if the court has ordered the hearing of the parties, expert witnesses, or presentation of other evidence at that hearing, since in practice it is often the case that a party that was not present at the hearing files an objection citing infringement of the right of access to court, claiming that they were not duly notifies of the hearing or properly cautioned of the consequences of failing to appear at the hearing. It is also important to state who was present at the hearing with regard to ruling on the award of the litigation costs.

The introductory part of the judgment also specifies the date on which the judgment was rendered (Article 311(2) of the Civil Procedure Code Brčko District does not specify the date the judgment was rendered as a mandatory element of the introductory statement).

The introductory part (opening statement) of a second instance judgment contains the name of the second-instance court, the full names of the members of the panel of judges, the full names and permanent/temporary addresses of residence of the parties and their representatives and agents, the subject matter of the dispute, the value of the claim, which party filed the appeal, the reference number and date of rendering the first instance judgment contested by the appeal, and the date of the panel session when the second instance decision was rendered.

If both parties (the plaintiff and the defendant) filed an appeal, this must be specified in the introductory part of the judgment.

With regard to the common elements (of the introductory part of first and second instance judgments), everything said in this text with reference to the introductory part of the first instance judgment also ap-

plies to the introductory part of the second instance judgment, except that in the introductory part of the second instance judgment the full addresses (street name and number) of the parties, their representatives and agents is not required, but only their place of permanent/temporary residence (the addresses are stated in the introductory part of the first instance judgment).

If the first instance court corrected its first instance judgment with a decision, it is necessary to include that information in the introductory part of the judgment, specifying the reference number of the decision correcting the judgment and the date the decision was rendered.

The heading "JUDGMENT or DECISION" must be inserted, in capital letters, beneath the opening statement and above the operative part of the judgment[16].

[16] Article 63(7) b) of the Rulebook on internal court operations of FBiH and BDBiH, Article 63(7) b) of the Rulebook on internal court operations of RS.

THE OPERATIVE PART OF THE JUDGMENT

Article 191(2) of the Civil Procedure Code of RS/FBiH[17] sets forth that:

"The operative part of the judgement shall contain the ruling of the court accepting or rejecting individual claims pertaining to the principal and ancillary claims, and the ruling on the existence or non-existence of a claim for the purpose of offsetting."

The operative part is the main part of the judgment, wherein the court grants or rejects the statement of claim within the framework of declaratory (determines the substance of an existing right or legal relationship, that is, the truthfulness or untruthfulness of documents/instruments), condemnatory/performance (an act/action) and constitutive protection (constitutes, alters or revokes a certain legal relationship –e.g. providing a necessary accessway – right of way, reducing the scope of or abolishing private rights of way).

It is therefore extremely important that the operative part of the judgment is concise, without any excess narrative, intelligible, clear and enforceable.

The operative part of a court decision can be in the form of a judgment or decision. The statement of claim is ruled on with a judgment, while procedural issues (the regularity of the claim, litigation capacity, jurisdiction of the court, *lis pendens, res judicata,* etc.) are always ruled on with a decision.

The basic rule in civil procedural law is that complaints should be dismissed by a decision, and statements of claim should be rejected by a judgment, it is unacceptable to state in the operative part of the judgment that "The statement of claim is dismissed".

Through the operative part of the judgment, the court grants or rejects, in entirety or in part, the principal claim, as well as the ancillary claims (default interest, contractual penalties, litigation costs).

If a claim for default interest and/or reimbursement of litigation costs has not been set, the court will take no decision on those matters, as those claims do not exist!

However, if those claims have been set, but incorrectly – for example, a claim for "interest due", or in the event of imprecise or indeterminate requests for reimbursement of the costs and expenses of the litigation, the court must decide on those claims, as they have been set, albeit improperly. If "interest due" is sought, the court cannot grant the claim because the party failed to prove what the "interest due" was exactly (default, contract,...,), hence such a claim must be rejected. The same applies to the costs of the proceedings – if a claim for reimbursement of the costs of the litigation is set, but is indeterminate, the claim as such (general) has no basis and must be rejected since it was not specified for which litigation acts or costs incurred reimbursement is sought (reimbursement of costs of filings, the costs of which and how many hearings, and similar).

Therefore, an incorrectly set or incomplete claim for "interest due" or a claim for indeterminate costs of proceedings is not reason for the court not to rule on them, but can only be reason for rejecting such claims.

[17] Article 158 of the CPC BiH, Article 311(3) of the CPC BD BiH.

OPERATIVE PART
Correct
The defendant is obliged to pay non-pecuniary damages to the plaintiff for: - emotional pain suffered due to decreased activity of daily living in the amount of BAM 12 000.00 (twelve thousand), - Emotional pain suffered due to disfigurement or impairment in the amount of BAM 3 000.00 (three thousand), which sums up to a total of BAM 15 000.00 (fifteen thousand), within 30 days.

In the operative part of the judgment the court always decides on the procedural objection –for offsetting (compensation) the claim, regardless of whether the defendant filed a counterclaim or raised an objection seeking offsetting.

When the court determines that the plaintiff's and defendant's claims are substantiated, it will rule as follows:

The court shall establish the existence of the plaintiff's claim; it shall establish the existence of the defendant's claim, and shall render a constitutive decision to offset the claims.

OPERATIVE PART
Correct
I It is determined that the plaintiff has a claim against the defendant on the basis of the bill of exchange serial No. ... in the amount of BAM ... (in words). II It is determined that the defendant has a claim against the plaintiff for the amount of BAM ... (in words). III The claims affirmed in the first and second section of the operative part shall be offset, hence the defendant is required to pay the plaintiff an amount of BAM ... (in words). IV The defendant is required to reimburse the plaintiff for costs of the proceedings in the amount of ... (in words), all within 30 days.

If the plaintiff's claim is higher than the defendants, the defendant shall be ordered to compensate the excess of the plaintiff's claim, and the offset part of the defendant's claim shall be rejected.

When the claims of the plaintiff and defendant are equal, the court shall reject the statement of claim, as the plaintiff's claim is setoff in whole by the defendant's claim.

When the defendant's claim is of a higher value than the plaintiff's, the court shall reject the statement of claim, but then cannot rule on the part of the defendant's claim that exceeds the plaintiff's claim, for the reason that an objection for offsetting had been filed, not a counterclaim seeking setoff (counterclaim for compensation).

The completeness and correctness of the operative part is of particular significance for the enforcement of the judgment with respect to all of the claims (the statement of claim, and counterclaim if one was filed) and all of the parties to the litigation.

The court cannot force anyone to admit/acknowledge something by way of a judgment, including ownership rights (a large number of judgments in land registry disputes contain the words: "and which the defendant is required to acknowledge", even though that is incorrect).

OPERATIVE PART	
Correct	Incorrect
It is established that the plaintiff is the owner of commercial premises with a floor area of ... located on the ground floor of a residential-commercial building in ... street ... No. ...	The defendant is required to acknowledge the plaintiff's right of ownership of the commercial premises, with a floor area of ..., located on the ground floor of a residential-commercial building in ... street ... No. ...

In the operative part of the judgment, where the statement of claim is identified, it must be clearly stated whether and which claim, or part of claim, was granted or rejected, as well as whose claim- the plaintiff's, or the defendant's (counterclaim).

It is incorrect to state either of the following in the operative part: "the remaining part of the statement of claim" is rejected, "with regard to the excess of the statement of claim".

OPERATIVE PART	
Correct	Incorrect
The defendant is required to pay the plaintiff: for physical pain suffered, the amount of ... for emotional trauma, the amount of ... for psychological pain suffered due to decreased activity of daily living, the amount of ..., which sums up to a total amount of ... with default interest running from ... and reimbursement of the costs of the proceedings in the amount of ..., all within 30 days. The remainder of the statement of claim, in the value of ... is rejected as unfounded.	The defendant is required to pay the plaintiff: for physical pain suffered, the amount of ... for emotional trauma, the amount of ... for psychological pain suffered due to decreased activity of daily living, the amount of ..., which sums up to a total amount of ... with default interest running from ... and reimbursement of the costs of the proceedings in the amount of ..., all within 30 days. The plaintiff is rejected with regard to the excess of his statement of claim.

In the operative part (as well as the statement of reasons) of the judgment, the parties must always be referred to by their first name and surname, or corporate name (legal persons), and not by enumeration (first-named plaintiff, second-named defendant and similar), in accordance with Article 63(4) of the Rulebook.

In the operative part it must also be clear which defendant and what amount needs to be paid to each of the plaintiffs individually, and how the court ruled on the plaintiff's statement of claim with respect to each of the defendants.

OPERATIVE PART	
Correct	Incorrect
The defendant M.M. is required to compensate the plaintiffs as follows: A.A. for physical pain, in the amount of ..., B.B. for emotional trauma, in the amount of ..., and C.C. for psychological suffering due to decreased activity of daily living, in the amount of .... The plaintiff's statement of claim against the defendant N.N. is rejected in whole.	The first-named defendant is required to compensate the plaintiffs for damages for … in the amount of ....

However, that does not mean that the court cannot reformulate the statement of claim by omitting excess narrative, substitute certain 'colloquialisms' with appropriate legal terminology, correct any grammatical errors, while retaining the substance of the statement of claim, and keeping the boundaries of the requested legal protection intact.

OPERATIVE PART	
Correct	Incorrect
The defendant is required to pay damages to the plaintiff in the amount of ... within 30 days	The defendant M.M. of ... is required to compensate the plaintiff N.N. of ... for pecuniary damages to the passenger motor vehicle, brand ... license plate number ... in the amount of ... within 30 days, under threat of compulsory enforcement.

In the event that the court determines that the plaintiff's statement of claim or the defendant's statement of counterclaim (if a counterclaim has been filed) is unfounded in its entirety, it will render a judgment rejecting the plaintiff's statement of claim, or the defendant's statement of counterclaim, the content of which must be cited in whole.

In the operative part, the court shall always take a decision on the defendant's statement of counterclaim.

The completeness of the statement of claim, or counterclaim, if granted, is of consequential importance for the enforcement procedure, while for *lis pendens* (litigation is ongoing) and *res judicata* (finality of judgment) it bears significance regardless of whether the statement of claim is granted or rejected.

OPERATIVE PART	
Correct	Incorrect
The defendant is required to pay the plaintiff an amount of … for construction work performed, within 30 days. The plaintiff is required to return possession of the motor vehicle, brand ..., license plate No.... to the plaintiff, within 30 days	The defendant is required to pay the plaintiff an amount of … for construction work performed, within 30 days.

In paternity disputes a counterclaim is not permitted due to the how courts adjudicate those disputes (*ex officio*), and therefore any such counterclaims must be dismissed.

In the operative part of the judgment it is incorrect to state: "The statement of claim is rejected in whole" (without specifying the content of the claim), as the judgment as such is unenforceable (only the operative part of the judgment is binding and enforceable), and in that case the completed civil proceedings and rendered judgment are made redundant (senseless).

Such an operative part makes it impossible to examine the merits of a *lis pendens* (litigation is ongoing) or *res judicata* (finality of judgment) complaint.

Therefore, if the statement of claim is not cited in its entirety in the operative part of the judgment, the operative part is incomplete, unintelligible and unenforceable.

The purpose of civil litigation proceedings is to procure a final and enforceable judgment, and only the operative part of the judgment has binding effect. It is therefore of great importance that the operative part is concise, free of excess narrative, intelligible, clear and enforceable.

Even if the statement of claim is rejected it is necessary to specify its content, as problems are encountered when issuing a finality clause with regard to such an operative part, also when deciding on the finality of judgment (*res judicata*), as well as *lis pendens* objections (litispendence), in particular when an appeal has been filed, considering the passage of time from the day the second instance court's decision on the appeal was rendered. The same applies if the statement of claim is rejected only in part.

OPERATIVE PART	
Correct	Incorrect
The statement of claim seeking that the defendant pays the plaintiff damages for emotional trauma suffered, in the amount of BAM ... is rejected.	The plaintiff's statement of claim is rejected in its entirety as unfounded.

If the matter of the dispute is a monetary claim, in the operative part of the judgment it is always necessary to state the monetary value of the claim in both numbers and words, and to specify when the default interest starts running, while the words: "upon finality of the judgment" should not be included in the operative part, as only a final judgment can be the subject of compulsory enforcement in the event that the debtor fails to voluntarily fulfil his/her obligations.

OPERATIVE PART	
Correct	Incorrect
The defendant is obliged to pay the plaintiff for material damages in the amount of BAM 5 200.00 (five thousand two hundred), with default interest running from ..., up to the date of payment, all within 30 days.	The defendant is obliged to pay the plaintiff for material damages in the amount of BAM 5 200.00 (five thousand two hundred), with default interest with default interest, within 30 days following finality of the judgment.

In the operative part it is incorrect to state: "The plaintiff is rejected with regard to his/her statement of claim", and instead should read: "The plaintiff's statement of claim is rejected".

In civil disputes, unlike administrative disputes, the complaint is never rejected, and instead the statement of claim is rejected.

OPERATIVE PART	
Correct	Incorrect
The statement of claim seeking that the defendant pay the amount of ... for rent due for the period from ... to ... for the commercial premises in ... (city, street name and number) is rejected.	The plaintiff's complaint against the defendant for damages is rejected, and the plaintiff is obliged to reimburse the defendant for costs of the proceedings in the amount of ... within 30 days.

The operative part of a judgment granting the statement of claim on two legal bases (it was established that right of ownership of the property was acquired by way of adverse possession and purchase), is unintelligible.

OPERATIVE PART
Incorrect
It is established that the plaintiff acquired right of ownership of lot No. ... registered in the Land Registry at street... cadastral municipality. ... on the grounds of adverse possession (continuous occupation, maintenance) and on the basis of a sales and purchase agreement entered into on the day ... , therefore the plaintiff should be entered in the land registry with full ownership of the lot.

If details regarding the commercial premises and movables that the defendant is required to hand over to the plaintiff is missing from the operative part, such an operative part is unclear and unenforceable. Records made by an authorised official may serve as evidence for the determination of facts relevant to the dispute, but cannot be an integral part of the judgment.

OPERATIVE PART	
Correct	Incorrect
The defendant is obliged to deliver to the plaintiff possession of the commercial premises, with a floor area of ..., located on the ground floor of the residential-commercial building in ... street ... No. ... and of the following movables: ... , all within 30 days.	The defendant is obliged to deliver to the plaintiff possession of the commercial premises and movables specified in the record made by an authorised official on ..., which is an integral part of this judgment.

When in the operative part of the judgment the monetary obligation is not set in an absolute amount, it is determinable if important elements are provided based on which the monetary value can be reliably calculated at the time of enforcement of the judgment.

In the event that a monetary obligation is specified in a foreign currency, an operative part is clear and understandable only if it states that the foreign currency will be converted on the basis of the middle rate applicable on the day of payment (the middle rate set by the Central Bank of BiH).

In ownership disputes involving common ownership of real-estate, it is incorrect to state that the court established that the plaintiff is the "owner" with one-half interest in the entire land lot ..., and instead should be stated: the court established that the plaintiff is the "co-owner", with one-half interest in the entire land lot.

In rule, in land registry disputes, the operative part of the judgment is unclear and unenforceable if the full details on the real-estate property are not provided, i.e. the lot (parcel of land) and land registry extract

and the number of the census sheet (if the disputed property was presented before the Council for Presentation of Data on Real-Estate and Establishment of Rights to Land for the purpose of establishing a single real-estate registry). In such disputes, particularly if the subject of the dispute is the division of real-estate, the establishing of right of way, and similar, in the operative part of the judgment, the court shall state that an integral part of the judgment is a sketch plan of the site made by a certified surveyor. Also unclear and unenforceable are operative parts that state the land area, shape and position of the section of the lot that the defendant is required to deliver into the possession of the plaintiff, but does not include a sketch plan of the site drawn up by a certified surveyor on which the disputed section of the lot is clearly marked, and fails to specify the time limit for the defendant to fulfil his/her obligations.

OPERATIVE PART	
Correct	Incorrect
It is established that the plaintiff is the owner of part of land lot No. ...., known as ..., entered in the Land Registry as street and No. ... Cadastral Municipality ... with a land area of ..., marked in red on the sketch plan of the land made by the certified surveyor on ..., which forms an integral part of the judgment, hence the defendant is required to deliver possession of this part of the lot to the plaintiff, within 30 days.	It is established that the plaintiff is the owner of part of land lot No. ...., known as ..., entered in the Land Registry as street and No. ... Cadastral Municipality ..., hence the defendant is required to deliver possession of this part of the lot to the plaintiff.

The plaintiff may in one complaint put forward multiple claims against the same defendant if all of the claims are linked by the same factual and legal basis, and if the court has subject-matter jurisdiction over all of the claims, and if the same type of procedure applies to all of the claims.

If the claims are not linked by the same factual and legal basis, the court may for reasons of cost-efficiency (but only if it has subject-matter jurisdiction over all of the claims and if the same type of procedure was set for all of the claims) permit all of the claims to be heard.

The merging of claims is possible in three forms: cumulative, contingent and alternate merger.

The merger is cumulative when the plaintiff seeks that the court grants all of the claims. In most cases the claims have a single common basis. For example, a complaint filed by a person injured in a traffic accident seeking damages for suffered physical pain, emotional trauma, loss of income, destroyed vehicle, etc.

In a cumulative merger of claims, the plaintiff asks the court to grant of all the claims, which together form the statement of claim and arise from the same basis (most commonly, a complaint filed by a person injured in a traffic accident).

However, the cumulative merging of claims is also possible if the claims have different grounds, provided that the court has subject-matter and territorial jurisdiction over all of the claims, and that the same type of procedure applies to all of the claims (civil litigation).

OPERATIVE PART
Correct
The defendant is required to compensate the plaintiff for non-pecuniary damages as follows: - for physical pain suffered, in the amount of BAM 5 000.00 (five thousand), - for suffered emotional trauma, in the amount of BAM 3 000.00 (three thousand), - for psychological pain suffered due to impairment and disfigurement, in the amount of BAM 2 000.00 (two thousand), which sums up to a total of BAM 10 000.00 (ten thousand). With default interest running from ... up to the day of payment, within 30 days.

In situations when in the complaint the plaintiff fails to specify some form of compensation for non-pecuniary damages, but does so during the proceedings, the court shall, following expert appraisal, state in the operative part of its judgment the type of non-pecuniary damages that the plaintiff seeks compensation for, and the amount of compensation for each individual type of damage.

OPERATIVE PART	
Correct	Incorrect
The defendant is required to compensate the plaintiff for non-pecuniary damages, to be specific, for physical pain, the amount of ..., for emotional trauma, the amount of ..., summing up to a total of ... within 30 days.	The defendant is required to compensate the plaintiff for non-pecuniary damages in the amount of ... within 30 days.

When claims are based on different legal grounds, merging is only allowed if the court has both subject-matter and territorial jurisdiction over each of the claims. This possibility is mostly used by plaintiffs when the merits of the claims are proven using the same evidence.

In cases of contingent merger of claims, if the court grants the primary (principal) statement of claim, in the operative part of its judgment it shall not rule on the secondary (contingent) statement of claim, but in the opposite case, when the court finds that the primary statement of claim is unfounded, and grants the secondary statement of claim as justified, in the operative part of its judgment it must state that the primary statement of claim is rejected as it reads.

Namely, the principal claim is paramount to the plaintiff, and if granted, the plaintiff's interest in the secondary statement of claim ceases (in that case the secondary claim becomes irrelevant to the plaintiff).

Rejection of the principal claim is a precondition for deciding on the secondary statement of claim.

Essentially, the secondary (contingent) statement of claim was put forward by the plaintiff to be considered only in the (contingent) event that the primary statement of claim is rejected.

OPERATIVE PART
Correct
I The primary statement of claim, which reads as below, is rejected: "It is established that the sale and purchase agreement with regard to the commercial premises, with a floor area of ..., on the ground floor of the residential-commercial building in ... street ... No. ..., which the plaintiff entered into with the predecessor, the defendant, on the day ... is legally valid, and that the plaintiff shall be registered as the owner", as unfounded. II The secondary statement of claim, which reads as follows, is granted: "The sale and purchase agreement that the plaintiff and the predecessor, the defendant, entered into on the day ... shall be terminated, and the defendant shall pay the plaintiff the value of the sales and purchase agreement in the amount of ... with default interest running from ..., up to the day of payment."

However, if the court grants the primary statement of claim, as in this case, in the operative part it does not take a decision on the secondary statement of claim. Court practice is consistent on the matter that if a court grants the primary statement of claim, it is not permitted to render a judgment on the merits and reject the secondary statement of claim.

OPERATIVE PART	
Correct	Incorrect
The primary statement of claim, which reads as follows, is granted: "It is established that the sale and purchase agreement with regard to the commercial premises, with a floor area of ..., on the ground floor of the residential-commercial building in ... street ... No. ..., which the plaintiff entered into with the predecessor, the defendant, on the day of ... is legally valid, and that the plaintiff shall be registered as the owner on the basis of that agreement."	I The primary (principal) statement of claim, which reads as follows, is granted: "It is established that the sale and purchase agreement with regard to the commercial premises, with a floor area of ..., on the ground floor of the residential-commercial building in ... street ... No. ..., which the plaintiff entered into with the predecessor, the defendant, on the day of ... is legally valid, and that the plaintiff shall be registered as the owner on the basis of that agreement." II The secondary statement of claim, which reads as follows, is rejected: "The sale and purchase agreement that the plaintiff and the predecessor, the defendant, entered into on the day ... shall be terminated, and the defendant shall pay the plaintiff the value of the sales and purchase agreement in the amount of ... with default interest running from ..., up to the day of payment.", as unfounded.

The situation is different when the statement of claim has multiple alternates. In terms of substantive law, there are not two statements of claim, but one whose subject-matter of obligation has an alternative. In that case, it is all the same to the plaintiff which one of the alternate claims the court grants. The court

shall, in the operative part of its judgment, decide only on the alternate claim that it determines has legal basis.

So, all alternates are "equal" and the court may grant the claim that it determines is legally grounded, without an obligation to rule on the other claims in the operative part of the judgment (e.g. the plaintiff seeks that the defendant pay the plaintiff the sale/purchase price of the sold vehicle or return the sold vehicle to the plaintiff). The plaintiff does not give priority to wither of the two claims, as he/she asks that the defendant fulfils one "or" the other request.

The voluntary compliance time limit (deadline for voluntary fulfilment of obligations, that is, the period of time within which compulsory enforcement of the judgment may not be sought), as part of the operative part of the judgment, may be shorter than the time limit for filing an appeal (and in practice that is most often the case), or the same as the appeal time limit, but never longer.

The court shall, in its judgment (or by way of a decision in proceedings concerning disturbance of possession) set an extended time limit for the voluntary fulfilment of obligations if the obligations are of a non-monetary nature, e.g. the removal of a fence, and similar.

The time limit for voluntary compliance "starting from the day the party is served with a copy of the judgment" is just one of the possible starting events of voluntary compliance time limits, as it can also start running from the day the judgment was rendered (which is the primary rule), while the voluntary compliance time limit starts running from the day the party is served with the judgment in accordance with the rules on the service of court documents.

- the voluntary compliance time limit does not run from the day the judgment becomes final (neither in first instance nor second instance proceedings, which is often incorrectly specified in judgments)
-in judgments of a second instance court, the voluntary compliance time limit runs from the day the obligated party is served with the judgment
-in default judgments, the voluntary compliance time limit runs from the day the defendant party is served with a copy of the judgment
When the obligation of the defendant is not an action (to do something), but is to endure/tolerate or miss out, the time limit for voluntary compliance is not set.

OPERATIVE PART	
Correct	Incorrect
It is established that the plaintiff is the co-owner with one-half interest in the entire land lot No. ... registered in the Land Registry, street and No. ... Cadastral Municipality ..., and therefore the plaintiff shall be entered in the Land Registry as the co-owner with one-half interest in the lot.	It is established that the plaintiff is the co-owner with one-half interest in the entire land lot No. ... registered in the Land Registry, street and No. ... Cadastral Municipality ..., and therefore the defendant is required to tolerate that the plaintiff shall be shall be entered in the Land Registry as the co-owner with one-half interest in the lot, within 30 days.

- in the operative part of the decision a ruling should be made on the claims of both parties for return of the costs of the proceedings (in practice, it is common for the court to only decide on the claim for costs of the proceedings of the winning party)

- if due to partial success in the litigation proceedings, both parties would be entitled to a partial return of the costs of the proceedings, in the operative part of the decision the justified reimbursement claims should be offset, and costs should be awarded to one of the parties (court practice has already taken a stand on the matter)

- in the operative part of the judgment there should be no decision on the obligation to pay court tax fees, as that obligation is decided by way of service of the payment order, decision, and similar.

THE OPERATIVE PART OF A SECOND INSTANCE JUDGMENT contains the ruling of the second instance court on the appeals filed by the parties to the proceedings.

Article 224 of the Civil Procedure Code of RS/FBiH[18] stipulates that:

The second instance court may, at the panel session or on the basis of a hearing:

1) dismiss the appeal as untimely, incomplete or inadmissible;

2) reject the appeal as unfounded and uphold the first instance judgment;

3) reverse the first instance judgment and remand the case to the first instance court for retrial;

4) reverse the first instance judgment and dismiss the complaint,

5) modify the first instance judgment.

(2) On appeal, the first instance judgment may be reversed and the case remanded to the first instance court for retrial only once, except in the case of judgments based on admission, judgments based on waiver, and default judgments.

The second instance court renders a judgment when upholding or modifying a first instance judgment, and a decision when reversing a first instance judgment.

In the event that the judgment rendered by a first instance court is upheld in one part, and reversed in another, the second instance court shall issue a judgment.

OPERATIVE PART
Examples
I The appeal filed by plaintiff A.A. contesting judgment ... No. ... of ... in the part under section I of the operative part (paragraph 3) is granted and the judgment in that part and in section III of the operative part of the judgment with regard to the decision awarding the costs of the proceedings is REVERSED, and the case, in that part, is remanded to the Court for retrial. II The appeal filed by plaintiff A.A. contesting judgment ... No. ... of ... in the part under section I of the operative part (paragraphs 1 and 2) and the part under section II of the operative part (which in part grants the counterclaim of the defendant and determines as void the provisions of Article 11(2) of the Contract on long-term business cooperation regarding the purchase of goods from the manufacturing and sales range of the plaintiff, of ...) is rejected as unfounded and the judgment in that part is UPHELD. III The defendant's request for return of costs of the response to the appeal is rejected.

In the operative part of a second instance judgment, if there is only one plaintiff and one defendant, their names are not stated (as they are already stated in the introductory part).

The plaintiff's appeal is granted in part, and therefore the first instance judgment is upheld in one part, and reversed in another part. The case is remanded to the first instance court for retrial with respect to the reversed part, as well as with respect to the part in which the decision on awarding the costs of the proceedings was taken (logical order).

In such cases, the second instance court rules with a judgment (if one part of the first instance judgment has been upheld, the court always issues a judgment).

Therefore, the first paragraph of the operative part of the judgment should contain the decision of the second instance court to uphold the first instance judgment in part, citing the part that is upheld, while

[18] Article 191 of the CPC BiH, Article 343 of the CPC BD BiH.

the second paragraph should contain the reversed part of the first instance judgment. In some cases this may not be possible, but in the operative part of this judgment paragraphs I and II need to 'switch' places.

OPERATIVE PART
Correct
Section three of the operative part, in such situations, is 'reserved' for the decision on the defendant's claim seeking reimbursement for the drafting of the response to the appeal, and this claim is decided by the second instance court, despite the fact that the first instance judgment was in part remanded to the first instance court for retrial.

In the operative part of the second instance judgment, the court shall always indicate whose appeal it is ruling on (the plaintiff's or defendant's or both appeals), the full name of the party that filed the appeal (if there are multiple co-litigants on either the plaintiff's or defendant's side) the decision rendered on the appeal (whether the appeal is rejected or granted), whether the first instance decision was corrected (the reference number of the decision and the date the decision on correction was rendered), whether the judgment rendered by the first instance court is upheld or modified or reversed, and whether it is reversed in whole or in part.

OPERATIVE PART
Examples
The appeal filed by plaintiff A.A. contesting the section one of the operative part in which the plaintiff's statement of claim is rejected and the part regarding the award of costs of proceedings, as well as the appeal filed by the defendant B.B. contesting the part of section one of the operative part regarding the award of costs of proceedings, are rejected and judgment ... No. ... of ... (date) in section one of the operative part is UPHELD. The appeal filed by the defendant B.B. contesting the part of section two of the operative part rejecting the counterclaim filed by the defendant, is rejected and judgment ... No. ... of ... is UPHELD in that part. The appeal filed by the defendant B.B. contesting the part of section two of the operative part regarding the award of costs of proceedings, is granted and the decision on the costs of the proceedings is REVERSED, and the case is remanded to the first instance court for retrial with respect to that part. In this example the first instance decision was upheld in all contested parts, except the decision on costs of proceedings, which was reversed. Such a ruling has no basis in law. Claims for reimbursement of costs of proceedings are decided by a court without discussion (Article 185(1) of the CPC). If the first instance court has made a ruling regarding the costs of proceedings, in the appeal proceedings the second instance court, instead of revoking the ruling, can and should rule on the award of the costs of the proceedings of the first instance proceedings on the basis of the case file and the relevant list of fees, by applying he substantive and procedural law.

If there is only one plaintiff and one defendant, their names should not be mentioned in the operative part of the second instance judgment, as they are already stated in the opening statement. It is superfluous, since it is already known who the plaintiff is, and who the defendant is. It is an altogether different situation if there are multiple plaintiffs or defendants, and in that case it is necessary to use their names in the operative part so that it is clear what applies to whom in the operative part of the second instance judgment.

If the first instance judgment is upheld (affirmed) in whole, then, if a request for return of costs of drafting the response to the appeal has been put forward, the second instance court shall decide on that request in section two of its operative part. In such situations, that means that the appeal was rejected and that the court also needs to make a ruling on the appellant's request for the return of costs of drafting the response to the appeal (provided such a request was put forward).

When a first instance judgment is modified, the second instance court shall make a ruling on the request for reimbursement of costs of proceedings in the operative part of its judgment.

In the operative part of a judgment reversing the first instance judgment, the court shall, depending on its decision, state whether the case is remanded to the first instance court for retrial[19] or if the complaint is dismissed[20]. There are instances when in the operative part of a second instance judgment the first instance judgment is reversed, without being remanded to the first instance court for retrial.

Essentially, there is no retrial/rehearing, as in the decision on correction, the first instance court altered its earlier decision regarding the award of costs of proceedings, which is not allowed, since it was not a technical error.

OPERATIVE PART
Examples
The defendant's appeal is granted, decision ... No. ... of ... correcting decision No. ... of ... is reversed. The plaintiff is required to reimburse the defendant for costs of the proceedings in the amount of BAM 170.00, within 15 days of being served with this decision.

Deciding on the appeal filed by the defendant, contesting the first instance judgment, the second instance court, acting *ex officio*, with regard to the defendant's appeal, reversed the contested part of the first instance judgment and dismissed the complaint in that part, because it was a request concerning a matter over which the court does not have subject-matter jurisdiction.

OPERATIVE PART
Examples
Ruling on the appeal filed by defendant A.A., judgment ... No. ... of ... is REVERSED with respect to section two of its operative part, where easement is established on the road and pedestrian path running through the city building plot, identified as cadastral plot No. 330/2 "Plac", a class 5 field, with a land area of 90 m2, registered under the address No. 850 of the temporary land registry for the cadastral municipality of Brčko 3, as the servient tenement, for the benefit of the dominant tenement, identified as cadastral plot No. 343 "Fehmija" residential building, with a floor area of 120 m2 and yard with an area of 445 m2, entered in the census sheet as No.1799, cadastral municipality Brčko 3, and registration of the easement is ordered, and a ruling is made on the award of costs of proceedings, and the complaint in that part is DISMISSED. Each party shall bear its own costs of the proceedings.

The ruling (operative part of the judgment) of the second instance court grants the appeals of the plaintiff and the defendant in part, upholds the first instance judgment in part, and reverses it in part and remains the case in that part to the first instance court t for retrial.

Even though the first instance judgment was reversed in part, the second instance court decided on the appeals with a judgment (correctly), since the first instance judgment was also upheld in part.

[19] Article 191(1) c) of the CPC BiH, Article 224(1) c) of the CPC RS/FBiH, Article 343(1) c) of the CPC BD BiH.
[20] Article 191(1) c) of the CPC BiH, Article 224(1) c) of the CPC RS/FBiH, Article 343(1) c) of the CPC BD BiH.

In such cases, the affirmed part of the first instance judgment should be dealt with in section one of the operative part of the second instance judgment, and the reversal should be in the second section.

In the operative part it is not necessary to state the names of the plaintiff and the defendant, since they are already contained in the introductory statement.

The following text in section two of the operative part: "starting from the day the judgment becomes final" and "under threat of compulsory enforcement" is redundant and should not be included in the operative part.

Monetary values should be stated in numbers and words.

OPERATIVE PART
Examples
The appeals filed by the plaintiff M.M. and the defendant N.N. are granted in part and judgment ... No. ... of ... (date), corrected by the decision of the same court of ... (date), is REVERSED with respect to section one (I) of the operative part, which requires the defendant to compensate the plaintiff for non-pecuniary damages for physical pain suffered, in the amount of BAM 3 620.00, and section (II) of the operative part, as well as section three (III) of the operative part (the decision on costs), and therefore the judgment is reversed in those parts, with respect to which the case is remanded to the first instance court for retrial. The remaining parts of the appeals of the parties are REJECTED, and judgment ... No. ... of ..., with respect to the part of section one (I) of the operative part, by which the defendant is required to compensate the plaintiff for non-pecuniary damages for emotional trauma suffered, in the amount of BAM 6 175.00 with default interest running from 30 August 2017 to the day of full payment, all within 30 days starting from the day the judgment becomes final, under threat of compulsory enforcement action, is UPHELD.

Rarely, although it does happen, the second instance court, in the operative part of its judgment reversing a first instance judgment, orders that the main hearing or preparatory hearing should be held before another judge([21]). Second instance courts usually do this when the judge adjudicating the case fails to comply with the instructions given by the second instance court in its decision revoking the judgment of the first instance court.

OPERATIVE PART
Examples
The appeal filed by the plaintiffs A.A., B.B. and C.C. is GRANTED, and judgement ... No. ... of ... and supplementary judgment ... No. ... of ... are REVERSED and the case is remanded to the same court for rehearing. A new main hearing shall be held before a different judge of the first instance court.

In the operative part of the second instance judgment the following should not have been stated: "the remainder of the judgement shall remain unchanged". Namely, it refers to the part of the first instance judgment that was not contested in the appeal, and naturally, the judgment in that part remains unchanged, but that should not be stated in the operative part of the second instance judgment, and instead, at the end of the statement of reasons of the second instance judgment it should be said that the first instance judgment was not challenged by the appeal in the part of section ... of the operative part, and therefore the first instance judgment remains unchanged in that part.

[21] Article 194(4) of the CPC BiH, Article 227(5) of the CPC RS/FBiH, Article 347(5) of the CPC BD BiH

In the operative part of second instance judgment the appeal filed by the defendant is granted in part and the first instance judgment is upheld in one part, and reversed in another part, with respect to which the case is remanded to the first instance court for rehearing.

The part of the ruling that upholds a part of the judgement, should, in rule, be contained in section one of the operative part of the second instance judgment, and the reversed part in section two of the operative part of the judgment.

It was unnecessary to cite the name of the defendant twice in the operative part, since there is only one defendant in the case, and his/her name is given in the introductory part of the judgment.

The explanation in the operative part that the appeal is rejected "as unfounded" is redundant.

However, the operative part is missing the ruling of the first instance judgment in the part that was upheld. It is incorrect to merely state "with respect to the remaining contested part".

OPERATIVE PART
Examples
I. The appeal filed by the defendant ... is GRANTED IN PART and judgment ... No. ... of ... is REVERSED -with respect to the part of section I of the operative part of the judgment requiring the defendant to pay the plaintiff the difference for unpaid retirement fund and health insurance contributions in the total amount of BAM 16 398.83 (sixteen thousand and three hundred ninety-eight and 83/100 convertible marks) for the period from 1 January 2010 to 31 December 2017. - in section II of the operative part containing the decision on the award of the litigation, and the case in that part is remanded to the Court for rehearing. II. The remainder of the defendant's appeal is REJECTED as unfounded and judgment ... No. ... of ... with respect to the remaining contested part of section I of the operative part is UPHELD.

OPERATIVE PART
Examples
The appeal filed by the defendant M.M. is granted and judgment ... No. ... of ... is REVERSED in sections one (I) and two (II) of the operative part, and the case, in its reversed part, is remanded to the first instance court for rehearing.

In the statement of reasons of the judgment, the court should briefly explain the intervention –an intervener joining the case – at what stage of the proceedings it occurred, whether there was any opposition to the intervention, the reasons why the court granted the request for intervention, what proposals were put forward by the intervener and how they were decided, and anything else that the court considers it needs to explain about the intervention (e.g. if any procedural steps undertaken by the parties and intervener were conflicting, the court shall give the reasons why it did not take the interveners actions into consideration, etc.).

The second instance court granted the plaintiff's appeal and modified the first instance judgment to grant the plaintiff's claim in part.

In section three of the operative part the following formulation is incorrect: "The plaintiff is rejected with respect to the excess of the statement of claim".

Instead it is correct to state: "the remainder of the statement of claim, in the amount of ..., is rejected as unfounded."

The names of the plaintiff and the defendant need not be mentioned in the operative part, as they are stated in the introductory part of the judgment, and in the particular case the action was brought by a single plaintiff against a single defendant.

Monetary values should be stated in numbers and words.

OPERATIVE PART
Examples
The appeal filed by the plaintiff M.M. is granted, and judgment ..., No. ... of ..., is MODIFIED so that the operative part of the judgment reads as: The defendant N.N. is required to compensate the plaintiff for material damages, in the amount of BAM 2 478.60, with default interest running from 27 July 2016, up to the day of payment, and to reimburse the plaintiff for costs of the proceedings in the amount of BAM 486.89, all within 30 days from the day of service of the judgment, under threat of compulsory enforcement. The plaintiff is rejected with respect to the excess of the statement of claim.

The second instance court, *ex officio*, decided on the defendant's appeal and reversed the first instance judgment in one part and dismissed those claims, upheld the first instance judgment in a second part, and modified it in a third part.

In this situation the second instance court should have cited the affirmed part of the first instance judgment in section one of the operative part of its judgment, in section two the modified part, and only then, in section three, the reversed part.

The names of the plaintiff and the defendant need not be mentioned in the operative part, as they are stated in the introductory part of the judgment, and in the particular case the action was brought by a single plaintiff against a single defendant.

The following should not be included in the operative part: "from the day of service of the judgment, under threat of compulsory enforcement."

In the operative part of the judgment, the court must set and specify from when the time limit for voluntary compliance will run. This needs to be done because the time limit may run from different events, for example from the day the judgment was rendered if the defendant collected the judgment at the court, or from the day the party is served with the judgment if the judgment was delivered by mail. Generally, the voluntary compliance time limit runs from the day the judgment was rendered (that is, from the following day- Article 179(3) of the CPC), but if the defendant was served with the judgment by postal mail, in the operative part it must be emphasised that the time limit for voluntary compliance runs from the day the party is served with the judgment. Therefore, the voluntary compliance time limit starts to run on the day that is considered the day the judgment was served upon the defendant – either by collection at the court or delivery by postal mail.

OPERATIVE PART
Examples
I On appeal filed by the defendant M.M., *ex officio*, judgment ... No. ... of ... is REVERSED with respect to the part of section I and the part of section II of the operative part requiring the defendant to, for the period from August 2015 to December 2015, pay the plaintiff N.N. the difference in wages in the amount of BAM 199.43 (one hundred and ninety-nine and 43/100 convertible marks) and to pay the difference in retirement fund and health insurance contributions, and therefore the plaintiff's complaint ... in that part is DISMISSED.

II The defendant's appeal is REJECTED as unfounded and judgment ... No. ... of ... in the remaining parts of sections I and II of the operative part is UPHELD.

III Judgment ... No. ... of ... is MODIFIED in section IV of the operative part as follows:

The defendant is OBLIGED to pay the plaintiff ... , instead of the amount of BAM 670.00 (six hundred and seventy convertible marks), the costs of the proceedings in the amount of BAM 565.00 (five hundred and sixty-five convertible marks) within 30 days from the day of service of the judgment, under threat of compulsory enforcement.

IV The plaintiff's claim ... for return of costs for drafting a response to the appeal is REJECTED.

In general, the voluntary compliance time limit runs from the day the judgment was rendered (that is, from the following day- Article 179(3) of the CPC), but if the defendant was served with judgment by postal mail, he/she must be notified that he/she must voluntarily fulfil his/her obligations within the time limit starting from the day he/she was served with the judgment (voluntary compliance time limit). Therefore, the voluntary compliance time limit runs from the moment it is considered that the judgment was served upon the defendant- either by collection at the court or delivery by postal mail. That is why it is necessary and useful, but also lawful, to specify in the operative part of the judgment the date as of which the voluntary compliance time limit starts to run.

It is correct not to include in the operative part: "under threat of compulsory enforcement".

In the operative part of the judgment it first must be stated which part of the first instance judgment was upheld, and in the section II of the operative part it needs to be specified what part of the first instance judgment was modified.

There is a singular plaintiff and singular defendant, hence in the operative part it was not necessary to state the name of the defendant four times, nor the name of the plaintiff.

In the operative part there is no need to state: "within 30 days from the day of service of the judgment, under threat of compulsory enforcement" (contained in the third paragraph of section one of the operative part of this particular judgment), nor that "the first instance judgment with respect to section III of its operative part shall remain unchanged", as it is stated in section three of the operative part of this second instance judgment.

The second instance court shall, at the end of the statement of reasons of the second instance judgment specify which part of the first instance judgment is uncontested by the appeal, and that it remains unchanged in that part. In the operative part it is unnecessary to include the text contained in section three of this second instance decision.

OPERATIVE PART
Examples
I The appeal filed by the defendant A.A. contesting the part of judgment ... No. ... of ... containing the decision on the damages for non-pecuniary loss due to emotional pain suffered as a result of disfigurement or impairment is GRANTED and the judgment with respect to that part of section I of the operative part and the part containing the award of the costs of the proceedings in section IV of the operative part is MODIFIED as follows: The claim for damages for emotional pain suffered due to disfigurement or impairment seeking that the defendant pay the plaintiff B.B. an amount of BAM 500.00 (five hundred convertible marks) with default interest is REJECTED as unfounded.

The defendant is BOUND to pay the plaintiff, instead of the amount of BAM 651.08 (six hundred and fifty-one and 8/100 convertible marks), the costs of the proceedings in the amount of BAM 436.87 (four hundred and thirty-six and 87/100 convertible marks) within 30 days of receiving this judgment, under threat of compulsory enforcement action.

II The remainder of the defendant's appeal is REJECTED as unfounded and judgment ... No. ... of ... in all other parts of section I and section II of the operative part of the judgment is UPHELD.

III Judgment ... No. ... of ... as regards section III of the operative part remains unchanged.

Deciding on the appeal filed by the defendant, the second instance court rendered a judgment upholding the first instance judgment in part, and modifying it in part.

Beneath the operative part of the decision, and before the beginning of the statement of reasons the title "Statement of reasons" is inserted, with the a first capital letter and without spaces (Article 63(7)c) of the Rulebook).

The significance of the statement of reasons of a court decision is also underlined in the provisions of Article 6 of the European Convention on Human Rights (the right to a fair trial) that guarantee the right to a reasoned court decision. The reputation and standing of the court as a judicial institution, inter alia, largely depends on whether the court's decisions are sufficiently clear to the general public, as the authority of the court, ultimately, rests on their confidence.

The statement of reasons of a court decision must be clear and intelligible, and the style of expression must be appropriate to the dignity of the court (Article 63(2) of the Rulebook).

The content of the statement of reasons of a court decision is stipulated by Article 311(4) of the Civil Procedure Code of Brčko District BiH, which reads as follows:

"In its statement of reasons the court shall state: the claims of the parties, the facts and evidence presented by the parties, which of the facts were determined by the court, why and how the court established those facts, and if it established them on the basis of evidence, what particular evidence was presented and how the court assessed that evidence."

In the first part of the statement of reasons of the judgment, the court shall state the claims of the parties.

THE STATEMENT OF CLAIM OF THE PARTIES

The claims of the parties define the subject matter of the dispute and essentially, are a proposal of the operative part of the judgment that the plaintiff, and the defendant (if a counterclaim was filed), seek. Therefore, the statement of claim, as well as the statement of counterclaim, must be specific both in qualitative and quantitative terms.

A complaint, or reply and defence statement, in which the statement of claim, or counterclaim, is not set in such terms, shall be returned by the court to the party for correction or amendment.

In interpreting the claims of the parties, the court shall cite the legally relevant facts, as a rule, linked to the parties' statements of fact, and may base its' decision (on the claim and counterclaim) only on the arguments presented by the parties, and if it fails to do so (if the court bases its decision on a different factual basis than the one put forward by the parties) it means that claims have been exceeded (the *non ultra petita principl*e).

Upon citing the plaintiff's statement of claim, and the legally relevant facts and evidence establishing those facts, the court shall state how the defendant contested the plaintiff's statement of claim, specifically, list all procedural objections raised (court jurisdiction, legal capacity, litispendence, *res judicata*, etc.), as well as any substantive objections (locus standi, statute of limitations), and shall state the counterclaim, if one was filed by the defendant.

The legally relevant facts are 'determined' by the subject matter of the dispute, depending on whether it is an issue of declaratory protection (the substance of the legal relationship is determined), condemnatory/performance protection (an act/action, to endure/tolerate or miss out is ordered) or constitutive protection (when a new legal relationship is formed or an existing one is modified or reversed).

The claims of the parties, which define the subject matter of the dispute, also determine the content of the statement of reasons of the judgment. The plaintiff shall state the legally relevant facts on which the statement of claim is based, and the defendant's relevant objections (procedural and substantive) contesting the plaintiff's statement of claim.

In the statement of reasons of the judgment it is necessary to always state final statement of claim.

FINDING OF FACTS / EVIDENCE

Adversarial and Inquisitorial Principle

The adversarial and inquisitorial principles, are principles of procedural law that, essentially, determine with whom lies the initiative for acquisition of procedural material (facts, evidence).

Up until a comprehensive reform of the civil procedural legislation was carried out, resulting in the new legislation now in effect and application[22], the Civil Procedure Code (Official Gazette of SFR Yugoslavia, 4/77, 36/80, 69/82, 58/84, 74/87, 27/90, and 35/91) was in effect. The fundamental principle in litigation, according to the provisions of that law, was the inquisitorial principle, which is primarily characterised by the duty of the court to establish facts and gather evidence, and, as such, dominated the court procedure. Its supremacy was to a small extent mitigated by elements of adversarial principle, which required parties to present all of the facts that their claims are based on and propose evidence to establish those facts.

The fundamental principle that is now prevalent in civil procedure is the adversarial principle (Article 7 of the Civil Procedure Code of RS/FBiH[23]). At its' core is the requirement that the party is obliged to provide the court with the procedural material necessary for reaching a decision on the claim, and stems from the disposition principle.

For judges that don't feel compelled to use Latin phrases in the statement of reasons of their judgments (which is absolutely unnecessary, except for the purpose of self-promotion), that would be analogous to the following sayings: "give me the facts and I'll give you the law" and "a judge must adjudicate on the basis of the arguments and evidence offered by the parties".

The adversarial principle was introduced with the aim of achieving cost-efficiency and efficacy of the proceedings, which due to deviations in the application of the procedural legislation was not achieved to the extent expected. The basic rule that a preparatory hearing should be conducted in one sitting and the main hearing in one sitting has in practice, practically become an exception. This resulted in the adoption of laws and regulations protecting the right to trial within a reasonable time, conditioned by the decisions of the European Court of Human Rights and the decisions of the Constitutional Court of Bosnia and Herzegovina on infringement of the right to a fair trial[24].

The right to trial within a reasonable time does not apply to all proceedings, as for it to apply it is necessary that the matter of the dispute is a civil right or obligation, and that the right or obligation at issue has basis in the national law, and is 'civil' by nature.

The right to trial within a reasonable time applies in a great number of proceedings[25].

[22] Civil Procedure Code (Official Gazette RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13), Civil Procedure Code (Official Gazette FBiH, 53/03, 73/05, 19/06 and 98/15), Civil Procedure Code (Official Gazette Brčko District BiH", 8/09, 52/10, and 28/18)

[23] Article 7(1) of the Civil Procedure Code: "Parties shall be required to present all of the facts on which they base their claims and present evidence proving those facts."

[24] Law on protection of the right to trial within a reasonable time (Official Gazette of RS, 99/20), Law on protection of the right to trial within a reasonable time (Official Gazette of Brčko District BiH, 2/21). In the Federation of BiH this Law currently exists in the form of a draft.

[25] Constitutional Court of Bosnia and Herzegovina, decisions AP 261/03 of 26.8.2004, AP 473/04 of 18.3.2005, AP 428/04 of 23.5.2005, AP 2706/06 of 14.10.2008, AP 434/04 of 18.1.2005, AP 128/03 of 21.9.2004, AP 71/02 of 28.4.2004, AP 1365/05 of 29.9.2006, AP 128/06 of 10.1.2008, AP 491/04 of 28.6.2005, AP 221/02 of 26.8.2004, AP 116/02 of 29.9.2004, AP 548/03 of 29.10.2004, U 32/02 of 24.10.2003, and U 66/03 of 21.7.2004. Reference: Guide – Trial within a Reasonable Time (Vodič – Suđenje u razumnom roku), Constitutional Court of Bosnia and Herzegovina, Sarajevo 2021.

Facts in the case

In accordance with the above regarding the principles applicable in civil proceedings, the parties are required to present the facts on which they base their claims and the Court's obligation is to consider and establish only the facts put forward by the parties. The presentation of facts is, according to the previously said, left to the discretion of the parties. They can, but do not have to do so, and the duty to present the facts constitutes the parties' obligation to substantiate their claims (the burden of proof).

Exceptionally, in certain cases, the court is authorised to take into consideration facts and evidence that were not presented by the parties (Article 7(3) of the Civil Procedure Code of RS/FBiH)[26].

Only when it comes to the application of coercive laws and regulations is the court authorised to, *ex officio*, determine facts concerning those dispositions.

Example
The subject-matter of the dispute is a claim for compliance with an real-estate sales contract concluded in 2015 - the court will, ex officio, examine the terms concerning the formal legal validity of this contract (whether the contract constitutes a notarised and certified written document).[27]

Example
In the case of a loan agreement between natural persons - if the contractual obligation of the borrower is to also pay interest, the court will not apply judicial safeguards to that provision if the contractual rate is in non-compliance with the applicable laws9

The court, alone, has the duty to establish the facts necessary for reaching the correct decision in a dispute between parties, regardless of the facts presented by the parties, and is bound by specific procedures (e.g. disputes concerning the legal and physical custody of minor children, expropriation), and is also conditioned by the fact that the relationships at issue are governed by imperative norms. In the proceedings on these disputes, the court is required to assess whether the state of facts is correctly and fully established, thus if it finds that the facts presented were insufficiently established by the parties for correct application of the substantive law, it shall order that they be established. However, this is an exception that confirms the general rule that in civil proceedings the party has an obligation to present (and prove) the facts on which it bases its claims, that is, disputes the claim of the opposing party.

Example
The procedure for determining compensation for expropriated property is conducted by the court, ex officio (Article 159(1) of the Law on non-contentious procedure). To that end it schedules a hearing at which it will allow the parties to state the form and extent, that is, amount of compensation, and specify evidence (also taking into consideration the evidence gathered in the administrative proceedings) on the value of the property, collected ex officio (Article 160(1) of the Law on non-contentious procedure). The Court shall, in accordance with Article 160(2) of the Law on non-contentious procedure, also hear other evidence proposed by the parties, which involves their active participation in the acquisition of evidence and establishing of relevant decisive facts.[28]

[26] "The court has the right to also take into consideration facts that were not presented by the parties and order the presentation of evidence that was not proposed by either party if the outcome of the proceedings and evidentiary hearing suggests that any of the parties intend to offer claims not at their disposal."

[27] Constitutional Court of Bosnia and Herzegovina, decisions AP 261/03 of 26.8.2004, AP 473/04 of 18.3.2005, AP 428/04 of 23.5.2005, AP 2706/06 of 14.10.2008, AP 434/04 of 18.1.2005, AP 128/03 of 21.9.2004, AP 71/02 of 28.4.2004, AP 1365/05 of 29.9.2006, AP 128/06 of 10.1.2008, AP 491/04 of 28.6.2005, AP 221/02 of 26.8.2004, AP 116/02 of 29.9.2004, AP 548/03 of 29.10.2004, U 32/02 of 24.10.2003, and U 66/03 of 21.7.2004. Reference: Guide – Trial within a Reasonable Time (Vodič – Suđenje u razumnom roku), Constitutional Court of Bosnia and Herzegovina, Sarajevo 2021.

[28] "The court has the right to also take into consideration facts that were not presented by the parties and order the presentation of evidence that was not proposed by either party if the outcome of the proceedings and evidentiary hearing suggests that any of the parties intend to offer claims not at their disposal."

The principle of material truth has been abandoned, as its application in practice resulted in court proceedings becoming lengthy and inefficient, impeding the right to trial within a reasonable time. The changes made to the civil procedure were expected to ensure swift, effective and cost-efficient proceedings. That was the main reason why the new procedural law contained the rule that the preparatory hearing should be conducted in one sitting and the main hearing in one sitting, and that deviation from that rule would be an exception that should be applied very rarely, and only under certain conditions of the law. The possible reasons for delaying and postponing[29] a hearing are exhaustively listed.

Example

From the case file it stems that the first instance court, on three occasions, breached the provisions of Article 112 of the Civil Procedure Code, as it, without basis in the law, granted the proposal of the plaintiff's attorney to postpone the hearing, despite the fact that the adverse party opposed the proposal and asked that the Court act in compliance with Article 97(3) of the Civil Procedure Code (...). By acting as it did, the first instance court committed a serious breach of the provisions of the procedural law to the detriment of the defendant, especially bearing in mind that according to Article 112(2) of the Civil Procedure Code a party may request an adjournment for the same reason only once. Therefore, even if there had been a legal basis for postponing the hearing upon the plaintiff's motion (but there was none), the court could have postponed the hearing only once, and not three times as the it did in this particular case. This non-compliance with the cited provisions of the Civil Procedure Code affected the rendering of a lawful and correct decision in this dispute, and therefore, the non-specific reasons given by the second instance court for its determination that by postponing the hearing the first instance court did not breach the provisions of civil procedure, cannot be accepted.[30]

Example

The Municipal Court in this particular case scheduled hearings that were continuously postponed for the reason that the procedural preconditions for the holding of the hearing were not met, as a result of incorrect addresses being given for the defendant and his successors... The Municipal Court failed to demonstrate adequate promptness in conducting non-contentious proceedings (postponing hearings indefinitely on multiple occasions, as well as not holding hearings on the scheduled dates), which, inter alia, resulted in the complete passivity of that court in certain periods of time, as well as the stalling and untimely taking of procedural actions (ordering the expert appraisal of evidence) up to the day the first instance decision was rendered... Such ineffective management of the proceedings, in fact, were the main reason why the proceedings before that court lasted so long (almost seven years).[31]

Courts commonly resort to granting motions for postponement, despite the fact that it is immediately obvious that the motion is baseless. That is especially apparent in cases that the judge considers legally complex or that "more time" is needed before that case should be "dealt with".

Example

E*xample from a particular case: In the claim for damages resulting from defamation, in the statement of defence the defendant proposed the presentation of evidence in the form of the hearing and examination of two witnesses. The statement of defence, together with the summons to the preparatory hearing, was served upon the plaintiff's legal representative. At the preparatory hearing the defendant once again proposed the hearing of these witnesses at the main hearing, stating the circumstances on which they need to be heard.*

[29] Articles 111 and 112 of the Law on non-litigation procedure (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)
[30] Articles 111 and 112 of the Law on non-litigation procedure (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)
[31] Articles 111 and 112 of the Law on non-litigation procedure (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)

The legal representative of the plaintiff filed a motion requesting postponement of the hearing, and will take a position with respect to the defendant's motion for the hearing of evidence when the hearing is resumed.

The legal representative of the defendant is opposed to postponement of the preparatory hearing.

The legal representative of the plaintiff stated that he insists on the motion to postpone the hearing, as he was not duly informed of the circumstances to which the witnesses of the defendant shall be heard, and needs to consult with the plaintiff.

The Court issues the following *DECISION*

The preparatory hearing is postponed for...

By analysing a large number of court decisions that reflect court practices, it can be concluded that the adversarial principle is generally understood as the 'absence' of the judge up until the conclusion of the main hearing, that is, that the application of the rule "give me the facts and I'll give you the law" assigned the judge a passive role in the proceedings, which certainly was not the intention of the legislator. Such conduct can sometimes legally complicate the case, which in the ordinary course of proceedings – had the judge been 'active' in the proceedings – would not have happened.

Example from a particular case

The party filed a claim for enforcement on the basis of a bill of exchange issued as security against a loan, which was admitted by the court. Following an objection raised by the judgment debtor, the proceedings continued as per the complaint. After the court opened the preparatory hearing, the plaintiff stated that he stands by the complaint in its entirety (motion for enforcement) and the statement of claim. He proposes as evidence to be presented at the main hearing, the reading of the loan agreement and annuity payment plan, and the appraisal of a financial expert witness. The plaintiff also amends the statement of claim by seeking that the defendant should pay the debt of BAM ... with default interest. He further explains that the parties are in a legal contractual relationship as they entered into a loan agreement, and the defendant, as the beneficiary, issued a bill of exchange for the purpose of securing repayment of the loan. The defendant objects that it is unclear whether the legal basis lies in the debt arising from the loan or the bill of exchange. Upon the closure of the preparatory hearing, the court rendered a decision and set the date for the main hearing and presentation of evidence submitted by the parties.

In the particular case, the subject-matter of the dispute was originally a bill of exchange, but later became the legal contractual relations of the parties. The party raised an objection of obsolescence of claim, so the already disputed issue of expiration of the limitation period on the claim for loan annuity repayment, which in court practice is not addressed in a consistent manner (the question of whether a general or a specific limitation period should apply), is further complicated here as it is necessary to determine whether or not the statement of claim was modified and amended and if and how that affected the limitation period (was the limitation period interrupted) and why.

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The current procedural law authorises courts to pose questions to witnesses, expert witnesses and the parties during the hearing[32], and thereby allows the court the possibility, but also sets an obligation for the court to have an important role in ensuring that the parties present all of the relevant facts.

It is crucial that both sides are given an equal procedural legal position in the proceedings, that is, equal access to the court in procedural and substantive terms, whereby ultimate success in the proceedings is solely a matter of their abilities, skills and knowledge to present all of the relevant facts (and, of course, prove them). Nonetheless, the court cannot be an 'observer' in the dispute, as it has to ensure that the proceedings are running efficiently and cost-effectively, and even though (as a rule) it cannot require a party to establish a particular fact, nor impose its establishment if it has no legal basis to do so, the court has to ensure that in the proceedings facts that are not relevant for taking a lawful and correct decision on the subject matter of the dispute are neither presented nor established.

Disputed facts

According to the adversarial principle, only the facts that are disputed by the parties need to be proved.

Undisputed, that is, admitted facts, are generally not subject to proof. However, the court may order for even such facts to be proved if a party, in admitting them, wants to dispose of claims that at not at their disposal according to the law.

It is also not required to prove facts the existence of which is presumed by the law. Instead of the fact, its basis is subject to proof if contested. In litigation proceedings, facts established by a final verdict of conviction of a criminal court cannot be disputed if they constitute the essential characteristics of the criminal offence for which the verdict was delivered.[33]

The law also provides for certain cases where the disputed facts do not need to be established. When it is necessary to determine the monetary value of the damages, and there is no evidence or it is excessively difficult to establish, the court is authorised to apply its discretion and assess and set the damage value.[34] This rule may be applied only in regard to the value of the damages, and not the plaintiff's right to compensation. The making of a free assessment of the monetary value of the damages does not relieve the court of its duty to establish all of the circumstances that affect the determination of that value (amount). Under the aforementioned conditions, the court is also authorised to freely assess the scope of obligations in other cases where the complaint is set in a monetary value or specific quantity of replaceables.

Facts that are a presumption of law do not need to be proved. When establishing the facts by applying legal presumptions to the party that invokes the presumptions, the burden of proof is that there is a basis for the presumption, and in such a situation, the burden of proof would be on the opposing party to prove that the presumed fact is untrue, although it has been established that there is a basis for the presumption (rebuttable presumption).

The husband of the child's mother shall be considered the father of the child born in the marriage or within 300 days after the termination of the marriage.

The person whose paternity was established by recognition or a final court judgement, shall be considered the father of a child born outside of marriage.

If the child was born in the mother's subsequent marriage, but before the expiry of the 270-day limitation period following the termination of her previous marriage, the mother's husband from the previous marriage shall be considered the father of the child, unless the mother's husband from her later marriage, with her consent, acknowledges the child as his own.[35]

Each of the spouses is entitled to one-half of their community property.

[32] Articles 144(2), 161 and 168 of the Civil Procedure Code of RS/FBiH (CPC RS/FBiH).
[33] Article 12(3) of the CPC RS/FBiH
[34] Article 127
[35] Article 109 paragraphs 2, 3 and 4 of the Family Law of Republika Srpska (Official Gazette of RS, 54/02, 41/08, and 63/14).

Either of the spouses may ask the court to assign him/her a larger portion than one-half of the community property, provided they prove that their contribution in acquiring the community property is manifestly greater than the contribution of the other spouse.[36]

The rule is that presumptions are relative, rebuttable, and that proving the opposite is allowed, unless conclusive (irrebuttable/irrefutable) presumptions are expressly provided by law.

Undisputed facts are the facts that both parties agree on.

Admission of facts is essentially the statement of one party that it is in agreement (admits) with the statement of the other party on the existence or non-existence of a fact on which the opposing party bases its claims.

Admission of facts is a one-sided procedural action that may be undertaken by either party in the proceedings. It must be taken before a civil court, as it bears no relevance and weight if it is done outside of the court, and even if it was taken in other proceedings it is generally against the interest of the party making the statement. It can be given explicitly or implicitly. The statement of admission must be given without fault and the party must be aware of the facts that it is admitting.

'Silence' in itself can also be taken as admission if the 'admission by silence' rule is applied.[37]

Considering that the admission of facts usually goes against the interests of the party making the statement, an admission made implicitly must be restrictively established, taking into account the presented evidence and established facts (in particular, the undisputed), as well as arguments presented by the party that is alleged to have implicitly admitted a certain fact.

Example
The plaintiff filed a complaint seeking recovery of a loan, but the defendant challenges the claim arguing that they were never in a contractual relationship. The plaintiff submits as evidence proof of payment made by the defendant to his bank account after the filing of the complaint, as proof of his claims. The purpose of payment is not cited on the submitted receipts, and the amount does not correspond to the instalments agreed in the contract.

A common oversight made by judges in the statement of reasons of a decision is to identify as admitted a fact submitted by one party, and not explicitly contested by the other, which is wrong.

Admission of facts may be made at any time during the proceedings, up to the conclusion of the main hearing before the first instance court, as well as in the appeal or response to the appeal, or at a hearing in proceedings before a second instance court.[38]

Uncertainty in respect of the determination of an admitted fact is can be resolved through questions to the parties.

Only the fact for which the burden of proof rests on the opposing party can be admitted. The effect of admission is not ineradicable since a party may challenge the veracity of the adverse party's claim, which it had previously admitted as being true. The law does not set forth conditions under which an admission can be revoked with success, and stipulates that the court determines freely whether a specific fact should be taken as admitted or disputed.

In its presentation, a party can declare the existence of a fact that stands in favour of the opponent and that he/she has not yet submitted (anticipated admission). According to the burden sharing requirement based on the adversarial principle, such a statement has the effect of an admission only when the opposing party presents the fact, that is, when the opposing party cites or references that fact. If that does not

[36] Article 272(1) and Article 273(3) of the Family Law of Republika Srpska (Official Gazette of RS, 54/02, 41/08, and 63/14).
[37] Article 182 of the Civil Procedure Code (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)
[38] Article 217 of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)

happen, the court cannot take it as an admitted fact, and instead must decide on its existence applying the principle of free evaluation of evidence.

Well known (notorious) facts also do not need to be determined. A well-known known fact is a fact known by every ordinary person or a significant number of persons in the wider or narrow region (throughout the country or in a particular smaller locality). A well-known fact is also taken into account by the court even when the party does not state it. A fact that is known to the court through observations it made *ex officio* or from court files is also considered a notorious fact. It is allowed to prove that a fact is not notorious or does not exist.

Whether a particular fact should be considered well known is decided freely by the court.

Due to all of the above, it is extremely significant that the court takes a position on the undisputed facts with respect to the parties' presentation of arguments,[39] already at the preparatory hearing, and that, due to the principle of hearing of the parties', it informs the parties of its position.

Facts relevant to deciding on the claims of the parties

The higher premise, the major premise (premissae major) of judicial syllogism (conclusion), is shaped by the substantive legal norm corresponding to the state of facts of each particular argument presented by the parties, or established by the court on the basis of discussion. The court is tasked with identifying the appropriate norm. The parties are not obliged to give their legal assessment of the facts by referencing rules of law or legal norms. However, in practice, they do this regularly, but their interpretations have no bearing on the resolution of the dispute. The legal qualification provided by the court is decisive.[40]

The rules of substantive law are not subject to proof, with the court being able to reference foreign legislation in the proceedings whenever its application may be required, and obtains the legislation through the relevant competent authority and the parties.

The facts of the case as presented by the parties, or established in the proceedings, constitute the lower premise, the minor premise (premissae minor) of judicial syllogism, which the court places beneath the provisions of the law that apply to the disputed case. It may happen that the defendant does not dispute that the state of facts is as presented by the plaintiff, but he/she does not consider that such a state of facts should result in the legal consequence cited in the claim. If in such instances, the court is not required to establish a fact ex officio, the dispute comes down to the issue of law and is settled by the court by applying the relevant legal standards to the facts presented by the plaintiff.

It is important to point out that, according to the adversarial principle, the court is bound by the parties' allegations of fact upon which they base their claims, and is not authorised to request the parties to supplement the factual material in instances where the relevant substantive legal norm indicates its deficit, except in the event of unpermitted party disposition.

COMPLAINT / COUNTERCLAIM

The plaintiff is required to, immediately, in the complaint,[41] state the facts that form the basis for his/her statement of claim, and the same is required of the defendant, who in his/her reply and defence statement must make clear if he/she challenges the statement of claim, and must state the facts that his/her arguments are based on.[42]

In order to effectively prepare the defendant for debate on the statement of claim, and fulfil the purpose of the preparatory hearing, it is necessary for the complaint to contain all the facts on which the statement of claim is based.

[39] Article 5 of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)
[40] Article 2(3) of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)
[41] Article 53(1) 2) of the CPC RS/FBiH
[42] Article 71(2) of the CPC RS/FBiH

If in the complaint, the facts on which the statement of claim is based are not stated, the court is authorised to take action during the preliminary examination of the complaint or the filing of the complaint,[43] that is, if the submission is incomprehensible or does not contain all of the necessary elements, the court may return it to the plaintiff for correction or amendment, and set a time limit for the plaintiff to do that.[44]However, it is necessary to bear in mind that the complaint will not be considered incomplete unless it lacks the decisive facts relating to the merits of the claim.

There is no procedural restriction to prevent application of the same principle to the response to the complaint if it does not contain the facts on which defendant bases his/her arguments for contesting the statement of claim.

Although the term 'must' is used in the provisions of the previously referred to articles in relation to the above actions of the plaintiff and the defendant, due to the lack of a specific sanction for non-compliance, it does not have the procedural disciplinary weight that it was intended to have. The parties have the possibility to supplement the facts during the preparatory hearing,[45] and under certain conditions, at the main hearing.[46]

On the basis of the facts stated in the complaint and the response to the complaint, before the preparatory hearing it is necessary for the court to have a notion of whether the relevant facts have been stated, whether there are any undisputed facts, which facts are undisputed, and which are disputed. This facilitates the holding and management of the preparatory hearing and increase its efficiency, regardless of the fact that at the hearing the parties may alter or add to their statement of facts.

Already in the phase of preliminary examination of the complaint, the court must take a proactive role by determining if the complaint contains the necessary facts, and if it finds that it does not, it should issue a decision to remedy this deficiency before submitting the complaint for response. This provides the defendant with the opportunity become acquainted with the factual basis of the complaint in good time and to file a good-quality reply and defence statement, and allows the court the possibility to acquire an overview of the facts before holding the preparatory hearing.

THE PREPARATORY HEARING

The purpose of the preparatory hearing is to debate the facts on which the parties base their arguments regarding the (in)validity of the statement of claim, and it is very important that the court should not be passive at that stage of the proceedings, but that it plays an active role in discerning the disputed from the undisputed facts. The objective of the discussion at the preparatory hearing is to ultimately obtain an answer to the question of what will be discussed at the main hearing and, in this regard, to establish undisputed facts, disputed facts and facts that will not be discussed.

The triage of the opus of facts leads to what will constitute the object of proof. In the given example, the court does not have a difficult task, since all the relevant facts for the decision on the claim are not contested (the time of conclusion of the contract for both apartments purchased from the carrier of the tenancy right, as apartments that are a collective property).

Example from a particular case
The Attorney's Office, on the basis of its powers and authorities provided by the Law on Privatisation of State-Owned Housing, on 20 May 2011 files an action seeking that the contract on purchase of the apartment on which there was a tenancy right is declared null and void.

[43] Article 66 of the CPC RS/FBiH
[44] Article 336(1) of the CPC RS/FBiH
[45] Article 77 of the CPC RS/FBiH
[46] Article 102(2) of the CPC RS/FBiH

The contract was concluded in April 2003, and the owner of the tenancy right, in addition to the apartment that was the subject of the contract, purchased (by buyout) another apartment with respect to which he had co-tenancy rights on the basis of a matrimonial union with the bearer of the right of tenancy. The second contract was concluded in October 2003. In the filed action, the Attorney's Office invokes the amended Article 18 of the Law (amended in 2006), which gives the Attorney's Office the right to file the action without any time constraints, while before the amendment, a one-year time limit from the date of the conclusion of the contract was set. The defendant does not dispute the factual claims of the action and only cites the objection that it was untimely. The Attorney's Office claims, in the statement of facts of the action, that the first contract was on the purchase of an apartment owned by the city and the second was on the purchase of an apartment owned by a company, and that this is the reason why it filed the action after the expiration of the one-year time limit, but considers that as a result of the amendments to the provisions of the law, the time limit no longer exists, particularly as it seeks nullity of the contract and invokes Article 109 of the Law on Obligations (contractual relations) which sets forth that the right to claim nullity shall not expire.

The task of the court is to limit the facts by volume and content in accordance with the substantive law, with a view to applying the appropriate substantive norm.

For this reason, it is of utmost importance that the court complies with the part relating to the preliminary examination of the complaint to be able to, at the preparatory hearing, correctly determine which facts need to be proved, and separate them from the facts that have been admitted, the legal presumptions, the undisputed facts and the well known facts, since according to the letter of the law, those facts are not subject to proof.

The presentation of facts is restricted to the preparatory hearing, and only under specific conditions may be done at the main hearing, and equally applies to both the plaintiff and the defendant. Limiting the point up to which a party is free to present facts, and in relation to the passivity of the judge in preliminary examination of the complaint and conduct at the preparatory hearing, in practice causes first instance courts to deviate from the principle of efficiency and cost-effectiveness of the proceedings. Indeed, 'fearing' that by not allowing all of the proposed facts to be established (including the evidence related to them) it could provide the parties with grounds for an appeal that would challenge the legality of the decision, first instance courts, in the absence of an actual assessment of the legally relevant facts that are of decisive significance to the resolution of the dispute, allow the determining of all of the facts submitted by the parties, and in this regard allow all the proposed evidence to be presented. This seriously casts doubt on the possibility of achieving the standards of trial within a reasonable time, as this often leads to the preparatory and/or main hearing being held in two or even more sittings.

At seminars held within the framework of the RS/FBiH JPTCs, the aforementioned problem was particularly underlined by the commercial courts/departments, which pointed out that in practice the parties only present their full evidentiary material at the preparatory hearing and that the court is unable to assess all of the evidence at that one hearing, and therefore unselectively allows everything submitted by the parties. In the end, when writing the statement of reasons to their decisions they are faced with the problem of explaining why some of the evidence is irrelevant, and therefore resort to the general wording that the court "did not evaluate the other evidence as it was of no effect on the final decision on the claim". By doing so they, in fact, only "reinforce" the reason for appeal on the grounds of a lacking statement of reasons of the judgment.[47]

The determination of evidence falls under management of the proceedings and the decisions on which evidence will be presented are not binding, so as a 'way out' of this situation, the necessity is highlighted that the judge uses the time it has until the scheduled main hearing to review the case, and to, at the main hearing, if necessary, issue a procedural decision to abandon the taking of certain evidence. Of course, in the statement of reasons of the decision it is obliged to provide a clear justification for this.

[47] Article 191(4) of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)

Although it is exhaustively specified in the procedural laws what the decision scheduling the main hearing must contain[48], it is often the case that the court fails to clearly indicate in the decision what issues will be discussed at the main hearing, and merely lists the evidence proposed by the parties or just generally states that a hearing is scheduled.

Negative example from a particular case:

The Court issues the following decision:

The main hearing is scheduled to be held on 1 March 2019...

At the main hearing the following evidence submitted by the plaintiff's attorney shall be presented: hearing of the plaintiff as a party to the proceedings, reading of the judgment of the District Court in Banja Luka No. ... and the judgment of the Supreme Court of RS No. ..., reading of the claim for damages addressed to the Ministry of Justice of RS, motion for out-of-court settlement, testimony of the medical expert witness, neuropsychiatrist Dr ...

It has also been observed that in the decision, courts sometimes fail to specify which evidence will be presented at the main hearing.

Negative example from a particular case:

The Court issues the following decision

and schedules the main hearing on ...

The evidence submitted by the parties in the complaint, response to the complaint and at the preparatory hearing shall be presented at the hearing.

Very often it is encountered that in the minutes of the preparatory hearing, the court notes that a party proposed that, among other things, it be allowed to present evidence in the form of the hearing of a witness, specifying the clear facts on which the proposed witness will testify, but when the decision scheduling the main hearing is issued, that proposal simply 'evaporates'.

Negative example from a particular case:

The plaintiff's representative filed a motion proposing that the following evidence should be presented at the main hearing: the reading of ..., the hearing and examining of the witness D.R. of Čačak on all circumstances related to the occurrence of the traffic accident.

The defendant's representative filed a motion proposing that the following evidence should be presented at the main hearing: the reading of ..., the hearing and examining of the witness P.M. from the police station in Višegrad, who made the record of the onsite investigation and photo documentation on those circumstances of making the onsite investigation and photo documentation, the issuing of the misdemeanour order, and the location of traces on the road that appear to be fuel.

The court renders the following DECISION

The motion proposing evidence is accepted and all of the proposed evidence shall be presented at the main hearing.

Testimony of the transportation and mechanical engineering expert witness (the expert witness and subject of appraisal are specified) will be heard.

The main hearing is scheduled to be held on ... at ... hours, of which the attorneys of the parties are notified, and therefore, in accordance with Article 97 of the CPC will not be served with summons.

At the main hearing the basis and value of the statement of claim will be discussed and all of the submitted evidence will be presented,

Summons to the hearing shall be sent in writing to the witnesses and expert witnesses,

[48] Article 94(1) of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09 i 61/13)

In practice, when exercising legal remedies it is apparent that it is a relatively common occurrence for parties to attempt to use mistakes made by the court with regard to the content of the decision scheduling the main hearing as grounds for appeal (that the evidence to be presented at the main hearing was incorrectly specified, that it is unclear which facts were discussed). Unfortunately, it must be admitted that it is evident that even second instance courts, especially in cases that are of a complex legal nature or large in scope, take the path of least resistance and 'use' the omission of the lower court to grant the statement of appeal as justified, with the explanation that it affected the legality and correctness of the decision.

Another oversight made by first instance courts, which has almost become a rule, is the omission of the facts on which the proposed and accepted witness will testify. Consequently, the minutes of the hearing often contain objections that the witness had not been proposed to be heard on the fact that he/she was then asked, and subsequently the court must record the objection and decide whether to allow the witness to answer the question (the court's response is often "it is allowed" or "it is not allowed," and in the statement of reasons it is not explained why the court decided as it did, which is then used as a relevant grounds of appeal).

In order to avoid these unnecessary mistakes, the judge should, with the utmost diligence, prepare for the preparatory hearing (this involves reading the complaint, the response and statement of defence, familiarising himself/herself with the substantive legal relationship that is disputed, discern the facts at issue that have to be discussed, make a preliminary assessment of the significance of the evidence proposed). This will the judge to have insight into the conduct of the parties and their proposals throughout the hearing, and to accordingly, make a proper determination of the issues that should be discussed and the relevant evidence, and refuse to hear the evidence that is not relevant to the resolution of the dispute. The concentration of evidence allows for better cost-efficiency and efficacy of the proceedings, and makes it easier for the judge to explain the reasons for the decision.

A relatively common claim of appeal is that in its decision on the presentation of evidence the court did not order the presentation of all of the evidence proposed by the party. This is evident when, for example, in the complaint the plaintiff proposes certain evidence, and then at the hearing during the opening of the proceedings states that he/she "stands by his claim" and proposes the "following evidence" to be presented, and the court in its decision merely states that the "following evidence" will be presented, disregarding that the plaintiff, by standing by his/her claim, also stood by the evidence proposed in the complaint, regardless of the fact that he/she did not specially mention it together with the "following evidence" that was not listed in the complaint.

The Civil Procedure Code was purposefully designed to place great significance on the quality of the preparatory hearing since the previous procedural law allowed for the almost unlimited postponement of hearings, which resulted in court proceedings that lasted several years, and sometimes even decades. That is why Article 102(2) of the Civil Procedure Code, as an exception, provides the possibility for parties to present new facts and new evidence in the course of the main hearing only if they satisfy the court that, without their fault, they could not have presented them at the preparatory hearing.

Example
The plaintiff filed a complaint for damages, and following the preparatory hearing, in the time up to the main hearing, was served with a decision of the misdemeanour court finding the defendant guilty with regard to the damaging event.

CONCEPT OF PROOF

The process of proving a fact involves a series of actions taken by the court and the parties: the proposal (offering) of evidence, the submission of evidence by the parties and their acquisition by the court if required by law, the choice of means of proof, and the decision on which evidence is admitted for hearing (presentation), the presentation of evidence, and the evaluation of the evidence.

The word "evidence" is used in the Civil Procedure Code to refer to means of proof on the basis of which a determination of the disputed fact is made. The law sets forth the following as means of proof: the subjects of inquests, documents, witnesses, expert witnesses, and the parties.

Legal theory differentiates between several categorisations of evidence. We consider the following, for the purpose of practical application, to be relevant:

- Main evidence is the evidence from which the court derives a conclusion on the existence of the relevant fact;
- Counter-evidence is evidence proving that the results achieved by presenting the main evidence cannot be accepted as they do not allow for a reliable (definite) conclusion to be drawn as to the existence of the fact for which it was offered; this evidence is also successful when it proves the probability of the claim challenging the main evidence;
- Contrary evidence is evidence proving that there are no grounds for making a determination on the existence of the relevant fact on the basis of the rules on relative legal presumptions; even though the existence of a basis of presumption has been established, this evidence is the main evidence, and is therefore used to prove the disputed claim to a reasonable degree of certainty;
- Complete evidence is evidence that is appropriate to provide convincing proof of the provenance of a particular fact, without a doubt; this evidence leads to a certain finding on the particular fact;
- Incomplete evidence proves a certain fact only up to the degree of probability[49].

The presentation of evidence is the use of means of proof by the court for the purpose of making a finding. It is, therefore, the acceptance of someone else's sensory observations or opinions (the hearing of witnesses, parties, expert witnesses, the reading of documents), and the subjecting of the objects of inquests to the discernment of the judge.

The probative force of a single means of proof is its capacity to convince the court of the existence of the disputed fact, that is, the veracity of the factual claim made by a party. The probative force of evidence is generally not determined by abstract means (law, type of means of proof), but instead by specific means (assessment, the circumstances of the dispute).

The final step in the process of proof is the evaluation of the evidence. It consists of examining whether a proven fact should, according to evidentiary reasons, be taken to exist. The evidentiary reasons are all the circumstances on the basis of which the court should come to a conclusion on the matter. This term covers not only the result of the evidence presented at the proceedings, but also includes the overall discussion.

Offer and selection of evidence

Plaintiffs are required to, already in the complaint, submit evidence substantiating their claims. Defendants propose evidence to prove their factual claims used to challenge the statement of claim in their reply and defence statement. A claim or reply and defence statement in which evidence is not specified (proposed) are incomplete.

The parties may also propose evidence orally at the preparatory hearing. Following the closing of the preparatory hearing, the presentation of evidence, and the presentation of facts, is precluded, unless a party demonstrates that it could not have reasonably been able to offer certain evidence to the court before the conclusion of the preparatory hearing, through no fault of its own[50]. When written documents and certain objects of inquest/investigation have been proposed as evidence (photographs, audio and video recordings and similar), the parties are required to submit this evidence to the court by the end of the preparatory hearing.

If a document proposed as evidence is in the possession of a state authority or a person entrusted with the exercise of public duty, and the party proves (makes it probable) that it could not obtain the document, the

[49] Siniša Triva and Mihajlo Dika, Civil Litigation Procedural Law (Građansko parnično procesno pravo) Zagreb, 2004 .
[50] Articles 77 and 102(2) of the CPC RS/FBiH

court will acquire the document from that authority at the proposal of the party. In order to establish facts relating to claims of parties not at their disposal, the court shall also obtain evidence *ex officio*.

As concerns the absolute procedural presumptions to which the court has due regard ex officio, the court is authorised to obtain evidence *ex officio*.

Example
When a summons is returned during the proceedings indicating that a party has died, for the establishment of this fact relevant to party capacity, the court shall be authorised ex officio to obtain an excerpt from the death register. If the objection of lis pendens or the objection of finality of judgment is raised, the court will determine ex officio the acquisition of the death registry extract.

Having an active role and on the basis of its duties and authorities under the Civil Procedure Code, at the preparatory hearing the court discusses the procedural material of the case with the parties for the purpose of bringing it into order, which involves the clarification of any vague or contradictory factual claims[51], the separation of undisputed from disputed facts, the separation of legally relevant facts from those that are not, and the parties specifying what particular evidence they are offering to substantiate each particular claim[52].

Only after conducting a discussion with the parties on the facts they are presenting and the evidence they are offering to prove the merits of their claims, can the court make a clear and full decision on the taking and hearing of evidence[53]. The court is authorised to choose from the evidence offered, the appropriate means of proof for establishing a particular fact. In the decision on the presentation of evidence it shall be specified which fact is being proved and which evidence is being used to prove it.

Proposals for the presentation of evidence that is of no relevance to the decision (as regards evidence that in the court's determination had been offered for facts that are not legally relevant, admitted or notorious) shall be rejected, and the court is obliged to state on the record the reason for rejecting the proposed evidence. The court is not bound by this decision in the further course of the proceedings, which means that at the main hearing it can alter its decision if it has reasonable grounds to do so. The reasons for the decision must be explained.

In order to carry out the procedural actions referred to in Articles 78, 80 and 81 of the Civil Procedure Code, it is necessary to carry out a preliminary assessment of the facts presented by the parties and a preliminary evaluation of the evidence, all with the aim of guaranteeing the right of the parties to be heard and rendering a legally sound and fair judgment. The principles of efficacy, cost-efficiency and prohibition of abuse of procedural rights support the active role of the court with respect to bringing the procedural material to order during preparations for the main hearing.

Example
The plaintiff, the bank, in its statement of the facts of its complaint highlights facts relating to the conclusion and termination of the loan agreement by termination and that the defendants are the beneficiary and the guarantors of the loan, and also the fact that a bill of exchange was issued as security on the loan agreement and that the bill of exchange is contested as the defendants deny that they issued the bill, and guaranteed for the bill, and therefore offers evidence to establish the facts concerning the claims related to the contractual relationship and the bill of exchange. In the statement of claim the plaintiff seeks payment of the value of the bill of exchange, with interest running from the day the due date of the bill to the day of its payment. The defendants contest the statement of claim on the grounds of expiration of the limitation period (obsolescence of the claim).

[51] Article 78(2) of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)
[52] Article 80 of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09 i 61/13)
[53] Article 81 of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09 i 61/13)

At the preparatory hearing the Court will instruct the plaintiff of the contradictoriness of his factual claims with regard to the filed statement of claim, by identifying the factual claims relating to the legal contractual relationships on the basis of the loan agreement and he bill of exchange, and shall ask the plaintiff to state which claims form the basis of his complaint. This is necessary because different rules for establishing the relevant facts and evidence to prove those facts apply in disputes over bills of exchange and disputes over contractual relationships.

Example

The plaintiff, upon termination of probate proceedings, filed an action against the legal heirs and requested that it be established that he and his wife, who died in May 2015, during their marriage acquired community property in the form of real estate and money, and that 1/2 of the immovable and movable property belongs to him, and that this property does not fall under the deceased's probate property. The defendants, the legal heir, claim that the deceased, their aunt, who died in May 2015, was, at the time of her death, involved in appeal proceedings regarding her petition to divorce the plaintiff and that in September 2015 a second instance judgment was rendered rejecting the plaintiff's appeal and upholding the first instance judgment. They point out that the marriage ended at the time of divorce, and not the death of the deceased, and that the plaintiff is not their aunt's legal heir. For these factual claims, they submit and request the reading of the divorce case file and that it be attached to this case file. The court shall determine that: The claim put forward in the complaint is indeed a legal claim. It is indisputable that the deceased died in May 2015. The defendant dispute the plaintiff's right of inheritance with factual claims in their statement of response, which is irrelevant to the decision on the actual legal claim. Consequently, it shall adopt a decision rejecting the evidence proposed to establish the factual claims contained in the response to the complaint, and shall state its reasons.

When it is proposed as a means of poof to attach a certain case file and for the case file to be read (in the above case, a civil court case), before making a decision, the court has the duty to ask the party to state specifically which documents of the case file it wants to be read. This is because the law provides for the hearing of evidence by the reading of documents. A civil case file is not considered a document, so when determining the evidence, it must be specified which particular documents from that particular file should be read (all records of the hearings, only certain records, the decision or judgment, expert findings, etc.).

Presentation of evidence

At the main hearing the parties present evidence, however, the court also has obligations and important authorities that requires its active role in this hearing.

When a party does not have an attorney, it is first examined by the court [54] and is then required to testify on the facts it was determined he/she should be heard on, and which are relevant to deciding on the claim. The judge is authorised to pose questions to the parties, witnesses and experts at every stage of the hearing.[55] This authorization should be used by the court in the event of incomplete or indeterminate statements on the facts by witness or a party, and when contradictory claims are made by a witness or party in their testimony. When hearing witnesses or parties, the court shall always ask how he/she is aware of the facts on which he/she is testifying.[56]

The Court is obliged to ensure the completeness of the findings and opinions of an expert witness and does not require a motion to be filed, or the consent of the parties to issue the expert witness with an

[54] Article 104(2) of the CPC RS/FBiH
[55] Article 106 of the CPC RS/FBiH
[56] Article 144(2) and (3) of the CPC RS/FBiH

order to correct and supplement the findings and opinions.[57] In the event that the expert fails to comply with the court's order to correct and supplement the findings, the court, upon consulting the parties, is authorised to appoint a different expert witness.[58]

An inquest[59] is an action taken by the court in litigation proceedings, which consists of the direct observation and investigation of the characteristics of things or living beings, as objects of the inquest, for the purpose of establishing the veracity/authenticity of the objects subject to proof. Inquests are based on the principle of immediacy (immediate observation of the court), however it can also be carried out indirectly, through a requested court. When directly observing, the court (judge) may use the sense of sight, hearing, smell, feel, taste, depending on the object of the inquest and the fact that is being proven.

The inquest can also be carried out with the participation of experts (expert witnesses) if the presentation of evidence requires expertise that the court does not have. In that case, the expert provides the court with information necessary to better observe and understand the proven fact. The presence of experts has significance only in terms of providing professional assistance to the court, and the inquest is performed by the court, which is obliged to make a record of the inquest and state all immediate observations made by the judge regarding the object of the inquest.

The inquest, as a distinct action in litigation proceedings, may be carried out in court. In practice, it is common for it to be conducted at the main hearing (listening to audio recordings, reviewing video recordings, photographs, etc.), however, it can also be conducted outside of the main hearing, and outside the courthouse. In that case, the rules of the main hearing still apply (on-site examination). It is important to note that the parties must be notified of an inquest.

Example
In a complaint regarding disturbance of possession of servitude of the road, the court orders an inquest to establish the plaintiff's claim that there is a trodden and partially laid path of a particular length and width running through the defendant's immovable property, and that the defendant built a wire fence with concrete pillars along the entire length and in the centre of the path. The inquest shall be performed with the participation of a certified land surveyor - expert witness. The court is required to make a record of the inquest, so as to describe the situation at the site, indicating facts about the position, direction, and state of the path, the fence and its position and appearance. In doing so, the court will use information identifying the property and other information given by the expert (length and width measurements).

Documents are objects that contain information on facts in writing. The law provides that the content of a written document is established by its reading.[60] The obligation to read out written documents is set forth for the evidentiary procedure before a first instance court and is based on the consistent application of the principle of orality and is linked to the open court principle. In the appeals proceedings the second instance court is authorised to examine the content of a written document (that was read before the first instance court) by viewing it at a panel session.[61]

Evaluation of evidence

The court generally takes a final position on whether a contested fact should be taken as proven after all of the evidence has been presented, that is, after the conclusion of the main hearing. The series of actions that constitute the process of proof ends with the evaluation of the evidence. This is the assessment of the evidentiary reasons on the basis of which the court comes to a conclusion on the question of the existence of a fact. This conclusion is reached by the court "by free assessment, on the basis of conscien-

[57] Article 155(2) of the CPC RS/FBiH
[58] Article 155(3) of the CPC RS/FBiH
[59] Article 130 of the CPC RS/FBiH
[60] Article 99(1) and (2) of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)
[61] Article 229(2) of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)

tious and careful evaluation of each individual piece of evidence separately and all the evidence combined in its entirety".[62] In that lies the essence of the principle of free evaluation of evidence. According to the principle of free evaluation of evidence, the court takes a disputed fact as proven only if by assessing the evidence it becomes convinced the claim within which it was presented is true, or if the court is not convinced, and instead to a greater or lesser extent doubts its existence, the disputed fact is considered not proven. A dispute fact is taken as disproved if the court becomes convinced of its non-existence.

Facts on which decisions on the merits are based require that a determination on their probability is made. Probability is a lower level of proof, and generally is applied when proving certain procedural legal claims (that a party was unable to propose evidence before the closing of the preparatory hearing, that it could not obtain the document from the competent authority). Facts that are proven by counter-evidence, considering the purpose of this evidence (to challenge a determination of fact made based on the main evidence), needs to be proven to the degree of probability.

Exceptionally, in anti-discrimination complaints, if the plaintiff proves the factual claim that he/she was discriminated against to be probable, the burden of proving the fact that there was no discrimination is on the defendant. The defendant is required to prove probable the fact that there was no discrimination. In labour disputes, in cases of termination of employment by the employer, the employer is required to prove the existence of reasons for terminating the contract, and that he/she has settled any outstanding wages or other benefits owed to the employee.

In a system where the principle of free evaluation of evidence prevails, evidence is not ranked based on their probative force (for example, a private document is always more credible than a witness). Opposed to the principle of free evaluation are also the rules according to which certain facts cannot be proven by certain types of evidence. According to the free evaluation of evidence, any means of proof may be used to prove any fact. To the court, as a rule, the value demonstrated by the evidence in the course of the proceedings is relevant. Therefore, its assessment is not bound to the type of evidence, but is strictly specific.

Therefore, if the circumstances require, the court may decide to trust the witness or party instead of the private document. Circumstantial evidence may have greater probative force than direct evidence. Even the quantity of evidence presented is not a deciding factor. The belief that a disputed fact is true may be founded on the testimony of one witness, even if two or more other witnesses testified to the contrary. The probative force of the means of proof is not tied to the circumstances of each individual case, but depends on the content of the evidence and other facts that substantiate its veracity and probative force, which could stem from other evidence, and the case file in the particular dispute.

The court bases its determination of the existence of the disputed fact not only on the result of the evidence presented, but also the results of other evidence and the entire hearing.

Listing the content of witness or party testimony in full or paraphrasing them, as we have observed in practice, does not constitute an assessment of the evidence. The starting point when evaluating evidence is the fact that was the subject of proof and the court's position as to whether in the testimonies statements were made that confirm the existence of the fact and which exact claims were made to that effect. If the testimony contained no claims regarding the particular fact, the court shall indicate briefly what the witness or the party testified on and why they did not address the fact at issue.

Example
When, in a complaint for establishing the rights of ownership, several witnesses confirm that the plaintiff has been in possession of the immovable property for over twenty years, then the court may appreciate the testimony of those witnesses together, and state that witnesses A, B and C stated that the plaintiff farmed the land. Witness A stated that he was hired by the plaintiff, and it should be indicated from and up to when, to operate agricultural machinery.

[62] Article 8 of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)

Witnesses B and C claim that their immovable are next to the immovable of the plaintiff, that they use their immovable for agricultural manufacturing purposes and that they personally saw the plaintiff performing certain farming activities, indicate time and date.

When assessing witness testimony, the court shall take into consideration that the witness changed its statement during the hearing, that its statement agrees with or differs from the testimony of another witness on the same or other fact, that the witness presented immediate observations on the relevant fact, bearing in mind, depending on the subject-matter of the dispute, the age of the witness, level of education, and/or expert or special knowledge of the witness on the facts he/she testified on.

When assessing the testimony of the parties, the court shall give regard to the fact that the party claims not to remember the events in which it participated, that the testimony of the party is contrary to the factual claims on which it bases its claim. When evaluating the evidence of the parties, the court will compare the parties' statements regarding the relevant facts, as well as other facts presented by the parties, and will note that in the parent status dispute the party refused to undergo a medical examination, and similar.

The expert's finding is appreciated the same as any other evidence, based on the content of the expert's report and in relation to other evidence containing the circumstances in respect of which the expert assessment was determined. The court is authorised to accept the expert's findings and is allowed to not give confidence in the truth of the findings when they are contradicted by other evidence presented. The court may, depending on the subject-matter of the assessment, accept the expert's findings, but not his opinion.

Example

When the agricultural expert in the proceedings for determining compensation for the expropriation of property states his findings on the position, quality of land, its suitability for agricultural manufacturing and his opinion that the value of the land is BAM 20.00 per 1 square meter, the court is authorised to accept the expert's findings, but reject his opinion when on the basis of other evidence (court decision, court settlement) determines that with regard to land in the same locality with roughly the same characteristics, a lower amount of compensation was agreed or awarded.

Expert assessments are generally performed by only one expert witness. When the court permitted and heard the testimony of two expert witnesses with regard to establishing the same facts, it is obliged to examine both reports and take a clear position on whether the findings and opinions are in agreement or opposed, and whether there are any contradicting findings with regard to important facts, and state on which report/reports it based its decision.

Where it is proposed to read findings and opinions that were given in another case, that evidence is not considered expert witness evidence, but rather a written document freely assessed by the court. However, when in addition to that document, an expert assessment was proposed and carried out, the court must evaluate both the expert witness report and the content of the written document, and for each decide whether it accepts or rejects them.

The principle of free evaluation of evidence is limited by certain legal provisions according to which the court should not assess the probative force of a public document (when it is not disputed). The same applies to private documents of a substantive legal significance, the authenticity of which is not disputed.

The principle of free evaluation of evidence is guaranteed by the principle of immediacy that requires that an assessment be given on the basis of the immediate impression created by the process of proof. In addition to immediacy, the principle of orality also provides for the free evaluation of the evidence and

allows for the results of the process of proving facts to be supplemented and its value to be assessed. The principle of free evaluation of evidence is of a coercive legal nature. Its application cannot be remedied by the parties of their own free will, they can only apply for redress.

The principle of free evaluation of evidence requires that the court have an active role in the process of proof. The principle imposes a certain degree of responsibility on the court for the correctness of the judgment.

The Burden of Proof

The assessment of the evidence does not always produce a specific result. Such a situation occurs when, on the basis of the assessment of evidence, the court is not convinced that the disputed fact exists. In this situation, the court cannot refuse to decide the case on the merits. The right of both parties to legal protection obliges the court to render a judgment.[63] The application of the rules of burden of proof allows the court to fulfil this obligation. These rules answer the question which party bears the risk of failure to prove, in other words, to whose detriment the court will rule if it does not determine that the disputed fact existed.

The rules on subjective and objective burden of proof are contained in the provisions of the Civil Procedure Code.

Each party is required to prove the facts on which it bases its claim.[64] The cited provision contains a rule on the subjective burden of proof that applies throughout the proceedings. This is the real procedural burden on the party, which requires that through its own actions, a party ensures its evidence is accepted to establish the facts on which it bases its claim, in order to avoid losing the dispute.

If, on the basis of the assessment of the evidence presented, the court cannot establish a fact with certainty, it shall determine the existence of that fact by applying the rules of burden of proof.[65] This provision contains the rule on the objective burden of proof that is applied by courts at the end of the proceedings, and its primary element is uncertainty in the disputed, legally relevant fact, upon completion of the discussion and evidentiary process. By applying this rule, the court is authorised to conclude that the unsuccessful party in the dispute is the one that failed to prove the fact that bears the burden of the claim, that is, the fact that was in its favour under substantive law.

The above rules provided in the Civil Procedure Code are rules on the legal consequences of failure to prove the truthfulness of a particular factual claim, and fall within the scope of procedural law. Those consequences manifest themselves in the area of procedural law, however, the rules are inextricably tied to the provisions of substantive law relevant to the decision on the parties' claims.

With regard to burden of proof, it is necessary to point out that the opponent of the party on whom the burden of proof lies contests the veracity of the party's claim by putting forward a claim arguing the opposite, and evidence to substantiate his claim will also be presented. In practice, this makes it difficult to answer which fact is being proven and which of the parties bears the risk that the court will not be firmly convinced of that fact. It should be considered that the claim to the contrary put forward by the other party can only be qualified as a challenge, and the evidence to substantiate that claim is counter-evidence, and not the main evidence.

Provisions directly prescribing the burden of proof may be encountered in certain substantive legislation.

[63] Article 2(2) of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)
[64] Article 123(1) of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)
[65] Article 126 of the CPC (Official Gazette of RS, 58/03, 85/03, 74/05, 63/07, 49/09, and 61/13)

Example
Example: In the complaint regarding delivery of possession, the owner of the properties must prove his right of ownership, the identity of the properties, as well as the fact that the properties are in the fact in the possession of the defendant.[66] *When the plaintiff proves the requirements for subjective liability for damage (injurer, injured party, damage, harmful act and causal link between the harmful act and the damage), the defendant may be freed of liability if he proves that he is not guilty of causing the damage, as he is liable for damages only on the basis of presumed guilt.*[67] *In the event of the termination of an employment contract due to a serious breach of work obligation, the employer is obliged to prove that there is a reason for the termination of the employment contract.* [68]

In most substantive laws and regulations, there are no rules on the burden of proof, in which case the procedural rule on the burden of proof and the corresponding provision of substantive law apply.

Example
When it comes to the content of the contract, the essential components of the contract are proven by whoever derives protection from the contract, which is the plaintiff. With regard to other content it is difficult to set a common rule. When the defendant claims that the plaintiff has not fulfilled his contractual obligation, he is obliged to prove that fact to the plaintiff. When the defendant claims that he has fulfilled his contractual obligation, the burden to prove that fact rests on him. The defendant has to prove that a depository condition has been contracted if it claims this to be the case, and also, the defendant has to prove that a termination clause has been agreed, the right to withdraw from the contract or to keep possession of the item of property sold. The debtor proves the start of the limitation period, and the trustee proves admission of the debt or the fact that the limitation period was interrupted or suspended. *The burden of proving the fact that the exclusion of heirs is justified rests with the party that references the exclusion.* *In the complaint contesting the legal actions of the debtor, the plaintiff, who contests the claim at issue, is obliged to prove the contractor's malpractice (intentional or negligent) and that at the time of the conclusion of the contract the alienor and the alienee were not marital spouses or relatives.*[69]

The significance of the legal presumption consists in the fact that the presumed fact is not subject to proof, but it is permissible to prove otherwise when it comes to a rebuttable legal presumption. In that case, only that what is contrary to the legal presumption is the subject of proof. When a rebuttable legal presumption is challenged, the burden of proof rests on whoever is disputing the fact.

Example: The conscientiousness of the state is assumed[70]. The continuity of the state is not assumed.[71] Whoever claims that the possessor acted unconscientiously is obliged to prove that claim. Whoever claims

[66] Article 127 of the Law on property rights (Official Gazette of RS, 124/2008, 3/2009- correction, 58/2009, 95/2011, 60/2015, 18/2016 – Constitutional Court decision, 107/2019 and 1/2021- Constitutional Court decision)
[67] Article 127 of the Law on property rights (Official Gazette of RS, 124/2008, 3/2009- correction, 58/2009, 95/2011, 60/2015, 18/2016 – Constitutional Court decision, 107/2019 and 1/2021- Constitutional Court decision)
[68] Article 127 of the Law on property rights (Official Gazette of RS, 124/2008, 3/2009- correction, 58/2009, 95/2011, 60/2015, 18/2016 – Constitutional Court decision, 107/2019 and 1/2021- Constitutional Court decision)
[69] Article 127 of the Law on property rights (Official Gazette of RS, 124/2008, 3/2009- correction, 58/2009, 95/2011, 60/2015, 18/2016 – Constitutional Court decision, 107/2019 and 1/2021- Constitutional Court decision)
[70] Article 312(5) of the Law on property rights (Official Gazette of RS, 124/2008, 3/2009- correction, 58/2009, 95/2011, 60/2015, 18/2016 – Constitutional Court decision, 107/2019 and 1/2021- Constitutional Court decision)
[71] Article 322(6) of the Law on property rights (Official Gazette of RS, 124/2008, 3/2009- correction, 58/2009, 95/2011, 60/2015, 18/2016 – Constitutional Court decision, 107/2019 and 1/2021- Constitutional Court decision)

that possession has been interrupted is obliged to prove as much. In the case of a complaint contesting the legal actions of the debtor, if the ailienee is a relative or spouse of the alienor, his negligence is presumed.[72] In this case, the defendant would be obliged to prove his conscientiousness if he uses that claim to challenge the complaint.

It is necessary to distinguish rebuttable legal presumptions from irrebuttable presumptions (so-called presumptions of law), which may not be disproved.

Example
When the complaint contests a gratuitous disposal taken by the debtor, it is considered that the debtor was aware that the disposal undertaken would cause harm to the creditor.[73] Here, the alienor is considered negligent, and in relation to the alienee or negligence is not a relevant fact. Malpractice on the part of the debtor (the alienor) is provided for in this case as an irrefutable legal presumption, so no proof of otherwise may be offered.

According to the above, the application of the rule of burden of proof is complex, because it depends on the activities of the parties, the procedural burden of claim and proof, and the content of substantive law that the court is obliged to know and authorised to apply within its own discretion.

Quality of the statement of reasons from the standpoint of legal analyses and analytical opinion

"Any judge, one might suppose, would find it easy to describe the process which he had followed a thousand times and more. Nothing could be farther from the truth "[74]

Legal reasoning is a form of expert reasoning that is "nothing more than the refinement of everyday thinking."[75]

The specificity of legal analysis is the application of legal rules to a particular case. In doing so, the rules are not only a framework for decision-making, they are an essential part of the process. Therefore, any court decision must be the result of a high-quality legal discussion on the relevant rules, and the quality of its statement of reasons directly corresponds to the quality of legal analysis and the ability to state analytical opinions and legal conclusions. The legal conclusions reached by the court through analysis of the established facts is presented in the judgment, along with its interpretation and application of the general rules (legal norms) in the specific case. The conclusions of the court refer to the legal consequences that occur as a result of certain behaviour or actions. For that reason legal conclusions (conclusions of law) always rely on the conclusions on the existence of certain facts (findings of fact), which the court determines by evaluating the presented evidence. The following needs to be distinctly evident in the legal analysis of the dispute that the court presents in its decision:

1) Subject - what specifically is being discussed;

2) Rule- which legal rule affects the subject matter of the dispute;

3) Facts - what facts are considered relevant, according to that rule;

4) Analysis –application of the rule to the facts, and

5) Conclusion- the results of applying the rule to the facts.

[72] Article 281(2) of the Law on obligations (Official Gazette of SFRY, 29/1978, 39/1985, 45/1989 – decision of the Constitutional Court of Yugoslavia, and 57/1989; and Offical Gazette of RS, 17/1993, 3/1996, 37/2001 – other law, 39/2003 and 74/2004)
[73] Article 281(2) of the Law on obligations (Official Gazette of SFRY, 29/1978, 39/1985, 45/1989 – decision of the Constitutional Court of Yugoslavia, and 57/1989; and Offical Gazette of RS, 17/1993, 3/1996, 37/2001 – other law, 39/2003 and 74/2004)
[74] Benjamin Cardozo (1870-1938), judge of the Supreme Court of the United States, in *The Nature of the Judicial Process* (1921)
[75] Albert Einstein

Subject-matter of the dispute

The starting point of the legal analysis in any civil law dispute is determining exactly what its subject is. The court will come to that determination on the basis of the facts put forward in the complaint, on which the plaintiff's application for the protection of a particular subjective right is based. Based on the content of the complaint and the response to the complaint, as well as the statements made by the parties at the preparatory hearing, the court will define the subject matter of discussion, according to which it will also determine the legal norm that applies to the dispute.

In more complex cases, where there are multiple claims that are not linked by the same fact and legal basis, or in which multiple substantive objections were raised, the court shall determine that a number of rules will apply in the case.

Also, in cases with an overseas/foreign element different rules will apply than in cases without such a distinction.

Therefore, it is very important to first determine the subject of the dispute, that is, to establish the legal classification of the dispute, and to state it in the statement of reasons of the judgment. (e.g. damages, property protection, divorce..)

Example 1
The subject of the dispute is the plaintiff's claim for non-pecuniary damages for emotional pain suffered due to decreased activity of daily living, and suffered physical pain and trauma, as a consequence of the traffic accident that was caused by the defendant driving a motor vehicle on 12 December 2012

Example 2
The subject of the dispute is the defendant's claim, as the minor daughter of the defendant, for increasing the child support payments awarded by an earlier final judgment, on the grounds that the defendant's circumstances on the basis of which the earlier judgment was rendered have changed.

Example 3
The subject of the dispute is the plaintiff's claim in which he seeks that the court finds that the defendant infringed his right to equal treatment (that he was discriminated against), and therefore, the plaintiff also seeks cancellation of the decision of the Police Board of the Canton Sarajevo Government of April 29, 2010, cancellation of the List police officers promoted to the rank of "inspector" on the basis of the internal vacancy advertisement of 19 February 2010, and asks that he be allowed to participate in the new procedure under the same conditions as the other candidates, and also requests damages in the amount of BAM 10 000.00.

The subject matter of the dispute must be stated in the beginning of the legal part of the statement of reasons of the judgment, since without a defined subject there can be no legal analysis. That means that in the statement of reasons of a first instance judgment, immediately after stating the claims and requests of the parties, it must be clearly stated what the subject of the dispute is, that is, what were the subjects of discussion at the main hearing (disputed legal issues, substantive and procedural objections).

Rule

The second stage of legal analysis is linking the facts presented in the complaint and in the course of the proceedings, to the legal norms that apply to the particular legal relationships (personal and family relations, work relations, property and other civil law relations of natural and legal persons).

Thereby, the court determines the legal norm(s) that it will apply to resolve the dispute, that is, on the basis of which it will make a decision. The legal basis of the statement of claim, if stated by the plaintiff in the complaint, is not binding on the court, which determines the legal qualification of the dispute and applies the law freely[76].

Accordingly, the statement of reasons of a court decision should also contain the reasons why the court applied a particular legal norm, specifically, the court has the duty to explain how it determined that the particular norm it applied is relevant to the resolution of the dispute. That part of the statement of reasons is always based on facts that the court determined as decisive, and the results of discussion, and in it the court answers the question why it applied certain legal rules in that particular case. However, that does not mean that it is sufficient to merely state that the court applied a particular rule, and instead it is necessary to also explain the process of applying the rule to the established facts, which is the essence of the legal analysis of a dispute.

Example 1
If the complaint states that the vehicle stolen from the plaintiff was the subject of a Casco insurance policy concluded with defendant (the insurance company), and requests payment of the agreed sum due to the occurrence of the insured event, it is an action for the fulfilment of the insurance contract, and therefore the provisions of the Law on Obligations (contractual relations) that apply to that contract shall apply.

In this case, it will not be a claim for damages (even if the plaintiff states that as the subject of the dispute), but an action for seeking the fulfilment of a contractual obligation, regardless of the fact that payment of the agreed sum to the plaintiff mitigates the damage suffered as a consequence of the theft of the vehicle (insured case).

It would be considered a claim for damages if the claim for payment was directed against the person that had stolen the vehicle (injurer), and the legal provisions governing the compensation of damages would apply in the proceedings.

Example 2
Plaintiff A.A. filed an action for establishing property rights acquired by law, on the basis of adverse possession, against the defendants B.B and C.C. In the complaint, she stated that she acquired the property by purchasing it from a person who was not registered in the land register as the owner (B.B), but who concluded a legally valid contract with the registered owner of the property (C.C).

On the basis of those facts it follows that the complaint is an action filed for establishing the existence of the plaintiff's right of ownership on the property (property rights), and therefore, for the purposes of resolving the dispute, the relevant provisions of the law governing the acquiring of property rights (the Law on Property Rights in the Federation of BiH of 2013) shall apply.

Example 2
The plaintiff X.X. filed a claim for non-pecuniary damages that occurred as the result of a workplace injury, against his employer Y.Y. He claims that he suffered a severe life-threatening head injury, as a result of which his activity of daily living significantly decreased, and due to which he suffers psychological pain, and also suffered physical pain and trauma of varied intensity over a one year period.

Seeing as it is a complaint filed by an employee against his employer, the starting point of legal analysis are the provisions of the Labour Law according to which the employer is obliged to compensate an employee

[76] Article 2(3) of the Civil Procedure Code

for any damages suffered at the workplace or in connection to work in accordance with the general regulations of contract law, and therefore, the court shall settle the dispute by applying the relevant provisions of the Law on Obligations (contractual relations).

3. Facts

In the part of the statement of reasons of a judgment containing the legal analysis, the court also addresses the facts, as it is on facts that the analysis is based. First of all, it is necessary to clearly state which of the facts of the case, in the court's assessment, are of significance to the application of substantive law, and specify the reasons why the court reached that conclusion. Thus, it is necessary to determine the facts that are of importance for the decision of the court (decisive facts). The decisive facts may be undisputed or disputed by the parties, and the court will determine that on the basis of their statements on the issue made in submissions and at the preparatory hearing. Therefore, based on the results of discussion at the preparatory hearing, the court will decide what will be discussed and what evidence will be presented at the main hearing, with the aim of proving the disputed facts. Hence, the decision taken by the court on the preparatory hearing, in accordance with Article 81(1) of the CPC RS/FBiH, constitutes the foundation of the legal analysis, which defines the substance of the particular dispute, and on which the statement of reasons of the court decision is based. This decision is taken by the court upon determining the relevant substantive law norms that it will apply to resolve the dispute, that is, after linking it to the results of the discussion at the preparatory hearing, in each particular case, and before the presentation of the evidence and determination of the state of facts through free evaluation of the evidence. The evaluation of the presented evidence on the basis of which the court established the disputed facts is followed by the court's conclusion on the provenance of those facts (the factual conclusions of the court), after which the legal analysis is given.

Example 3
It is not disputed by either party that the plaintiff, as the defendant's employee, which is evident on the basis of Contract of Employment of 1 February 2012, Form M-2 (insurance – registration and deregistration) and the Work Accident Report of 31 July 2014; the Notification of the occurrence of a workplace accident of 12 March 2014 in the German language with the translation into the Bosnian language by a certified court interpreter of 24 July 2014, that on 12 March 2014 around 08.20 hours, was injured at his workplace in Germany, when during assembly works the stage was hit by the mobile robot and was turned over, and the workers fell to the floor from a height of 5m. It is also undisputed that the plaintiff's contract was terminated on the grounds that the employer was unable to reassign the plaintiff to another duty, as his working ability classification was changed (II category II disability), as a result of the workplace accident, which is apparent from the Decision on the ending of the employment contract between the plaintiff and the defendant No: 01-38/17 of 31 October 2017; the Deregistration of the plaintiff from the retirement and health insurance fund of 1 February 2010; Decision No.: 91-AKM/17 of 17 November 2017; and Decision FZ PIO/MIO KAS Zenica of 31 July 2017. However, the jurisdiction of the court is disputed, as well as whether the limitation period for the plaintiff's claim has expired, the legal capacity of the defendant and the defendant's liability for the damages, as well as the claim basis and value.[77]

4. Analysis

The legal analysis shall link the facts established by the court by the assessment of the evidence, as well as facts which are not disputed but are relevant to the decision, to the particular rule that was applied by the court to resolve the dispute. If the court, on the basis of evaluation of the presented evidence is unable to establish a fact with certainty, the rule of burden of proof contained in Article 126 of the CPC shall apply. That means that the court will first determine which party has the obligation to prove or disprove the disputed decisive fact, and in the event that it cannot establish that fact with certainty, the burden

[77] Article 2(3) of the Civil Procedure Code

rests on the party that was unable to prove the fact. In order for a judge to be able to determine which party the burden of proof rests on, he/she must know the content of the legal norm that is the basis of the obligation of a party to prove a certain fact. The content may be explicit and clear, as is the case in Article 154 of the Law on Obligations, which sets forth that the injurer must compensate the injured party for damages, unless he/she proves that the damage occurred through no fault of his/her own, or Article 102 of the Labour Law, according to which in disputes over the termination of a work contract, the burden of proof relative to the justification of reasons for the termination rests on the employer, or Article 15(1) of the Law prohibiting discrimination, according to which in cases when a person or group of persons, on the basis of evidence they submit, prove that it is probable that discrimination did occur, the burden of proving that there was no discrimination rests on the adverse party. However, the legal provisions on the burden of proof are often unclear, and in that case the application of that rule is linked to the application of the provisions of Article 7 of the CPC of RS/FBiH, which stipulates that the parties are required to present all facts on which they base their claims and present evidence proving those facts. This means that when one of the parties provides valid evidence for the existence of a particular fact on which its claim is based and the other party disputes that evidence, the latter shall be obliged to prove that challenge with evidence. Accordingly, a court that takes a decision with the application of that rule, in the statement of reasons of its decision it must also provide the reasons why it applied it in that particular manner, as that decision can also be contested by appeal, if a party considers that it was applied to his/her detriment (misapplication of the substantive law).

Example 3

The plaintiff in the proceedings argues that the margin is the fixed invariable part of the interest rate, while the defendant claims that both elements that form the interest rate are variable. Since the parties interpret the interest rate provisions differently, those particular terms of the contract should be interpreted within the meaning of articles 99 and 100 of the Law on Obligations. Article 99 of the Law on Obligations sets forth that the provisions of a contract should apply as they read, while in paragraph 2 of that Article it is laid down that in interpreting controversial provisions one should not follow the literal meaning of the terms employed, but inquire instead as to the common intention of the contracting parties, so that the provision should be understood so as to be in accordance with principles of this law. Therefore, in accordance with the above provisions, clear contractual provisions are applied and enforced as they read, and only the disputed provisions should be interpreted and enforced in accordance with the actual intentions of the parties in accordance with the principles of mandatory law. Article 100 of the Law on Obligations provides that where a contract is printed in advance or when the contract has otherwise been prepared and proposed by one contracting party, unclear provisions will be interpreted so as to benefit of the other party. In the particular case, it is a standard contract of the defendant whose contents were printed in advance, which the plaintiff did not have the opportunity to influence or to change certain provisions of the contract, so they should be interpreted in the best interest of the other party. Since the contract does not set the height of the interest margins or that it is the variable part of the interest rate, it means that there are no clear contractual provisions relating to the margin. Hence, the court appreciates that the contracting of variable margins was not the mutual intention of the contracting parties. Even if a variable margin had been agreed, it would not depend on objective elements, but would depend on the decision of one contracting party (the bank), and the subject of obligation in terms of interest would also be indeterminate on those grounds. If the bank were allowed to change the interest rate on the basis of changes to the interest margin, it would not have any operating risks and would cover any losses it incurs due to mismanagement and the over-exposing of approved loans to the risk of default, at the expense of the borrowers with whom it already has concluded loan agreements, and would have a monopoly position in dictating the price of capital on the market, which is contrary to Article 14 of the Law on Obligations. (58 0 P 129227 13 P, 11 January 2016)

In that particular contract, the parameters for changing the interest rate and the method for calculating the parameters was not specified, and instead the interest rate is determined unilaterally by the bank, on the basis of its decisions, and therefore, the obligations of the plaintiff as the borrower are set unilaterally, and the plaintiff had no say in the matter nor was he aware of the parameters on the basis of which the bank's decision on the interest rates was taken, and before taking those decisions the bank did not consult with the plaintiff.

The contract in question was drawn up by the defendant, who, as the economically superior party, also specified the terms and conditions of the contract for the borrower, which were therefore non-negotiable, so the plaintiff could only accept or reject the conditions as a whole, while the defendant dictated its terms and conditions by referring to the general acts that protect the interests of the defendant, hence the plaintiff, who is not a financial expert, suffers consequences he was unable to foresee. The plaintiff signed the contract without being able to influence or change any of its significant elements.

Even though the contract, within the meaning of the provisions of Article 1066 of the Law on Obligations, was concluded in the correct legal form, it contains vague provisions relating to the interest rate. Accordingly, the terms of the contract that make the change to the agreed interest dependent solely on the bank's decisions, without precisely defined parameters on which the change depends, contravene the principle of equality of the parties to the contractual relationship within the meaning of Article 11 of the Law on Obligations, as the bank, as the creditor, unilaterally determines the obligations of the plaintiff, as the debtor, to his detriment. The contractual provision on interest is contrary to the principle of conscientiousness and honesty within the meaning of Article 12 of the Law on Obligations which sets forth that in entering into obligation (contractual) relations and realising the rights and obligations stemming from those relationships, the parties are obliged to adhere to the principle of good faith. (58 0 P 129227 13 P, 11 January 2016)

Article 173 of the Law on Obligations sets forth that any injury or loss occurring in relation to a hazardous object or activity, shall be considered to originate from that object or activity, unless it is proven that they were not the cause of the damage. With regard to damage caused by a hazardous object or activity, liability is not based on guilt, but on created, maintained or controlled risk. It is, therefore, objective. In order for the injured party to be entitled to compensation, it is sufficient to prove that he has suffered damage and that it originates from a hazardous object or hazardous activity. The injured party does not even need to prove that the damage was caused by a hazardous object or hazardous activity, if they were materially involved in the harmful event. Here there is a legal presumption that damage caused in connection to a hazardous object, or hazardous activity, originates from that object, or activity. This presumption is relative, because it may be refuted by evidence. Damage does not originate from a dangerous object if it was caused by force majeure or the actions of the injured party or a third party.

In this particular case, the setting of heating pipes at a height of 5m falls under the notion of hazardous activity, and therefore the defendant, as the plaintiff's employer, is accountable for the damage caused as a result of the hazardous activity on that basis of the causality principle and not by fault. Accordingly, to determine the accountability of the defendant it is enough that the damage was the consequence of a hazardous activity performed within duties of work, while engaged by the defendant, as the employer. Article 177 of the Law on Obligations sets forth the instances in which a person performing a hazardous activity can be exempted from liability, specifically, if he/she proves that the damage was the consequence of outside factors, whose effect could not be foreseen, avoided or removed, or if he/she proves that the damage was caused solely as a result of the actions of the damaged party or a third person.

- The court evaluated the presented evidence in accordance with the rules stipulated in Article 8 in conjunction with Article 123 of the CPC and the criteria for the distribution of the burden of proof among the parties, set forth in articles 7, 77 and 102 of the CPC, considering that the subject-matter of the dispute is the plaintiff's request for repayment of the loan by the defendant, as the guarantor of the loan. (39 0 P 048358 17 P of 30 November 2018)
- This particular dispute is a dispute with an international dimension, since the plaintiff is a business entity with headquarters in the Republic of Slovenia, while the headquarters of the defendant are in

BiH. Specifically, it is a dispute stemming from a legal contractual relationship based on a sale and purchase agreement concluded between the plaintiff, as the seller based in Slovenia, and the defendant, as the buyer based in BiH. From the statement of the legal representative of the plaintiff, which the court admitted in its entirety as accurate and credible, since he/she addressed the court convincingly, it can be concluded that the litigants were in a long-standing business relationship based on the sale and purchase of goods from the plaintiff's sales range (soya). The litigants did not specify which relevant substantive law should be applied in the resolution of this dispute, and therefore for the purposes of resolving this dispute, the United Nations Convention on Contracts for the International Sale of Goods of 1980 (ratified and published in the Official Gazette of SFRY, International treaties, 10/84, hereinafter: the Vienna Convention) shall apply.

Seeing that in this specific case, the matter involves the international sale of goods, the Vienna Convention shall apply, in accordance with its' Article 1, as the contract on the sale of goods was concluded between parties that have their places of business in different states, both of which are signatories of the Vienna Convention, and the application of which was not expressly excluded by either party. (The Municipal Court in Zenica, 43 0 Ps 140747 16 Ps, 3 November 2017)

- Article 173 of the Law on Obligations sets forth that any injury or loss occurring in relation to a hazardous object or activity, shall be considered to originate from that object or activity, unless it is proven that they were not the cause of the damage. With regard to damage caused by a hazardous object or activity, liability is not based on guilt, but on created, maintained or controlled risk. It is, therefore, objective. In order for the injured party to be entitled to compensation, it is sufficient to prove that he has suffered damage and that it originates from a hazardous object or hazardous activity. The injured party does not even need to prove that the damage was caused by a hazardous object or hazardous activity, if they were materially involved in the harmful event. Here there is a legal presumption that damage caused in connection to a hazardous object, or hazardous activity, originates from that object, or activity. This presumption is relative, because it may be refuted by evidence. Damage does not originate from a dangerous object if it was caused by force majeure or the actions of the injured party or a third party.

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5. Conclusion

Once it has assessed that all decisive facts, on which the claims of the parties are based have been fully determined, the court will continue with the legal analysis, and by linking the established facts to the relevant legal standards it will draw legal conclusions.

In its legal conclusion, the court states its assessment as to what legal consequences occurred as a result of a particular situation or the behaviour of the parties. The legal conclusion is the result of the application of a particular rule to a fact the existence of which was established on the basis of the evaluation of evidence.

The statement of the court that the statement of claim is unfounded is not a legal conclusion. It is a legally unsubstantiated conclusion. This is a legally unsubstantiated conclusion. Before putting forward such a conclusion, the court must present a legal discussion based on an analysis of the facts and the relevant legal norms that bind specific facts to specific legal consequences.

Example

- *Although in the loan agreement it is not stated that it is a contract with a currency clause, since the loan is placed in the currency of BAM, and that the payment of the loan instalment is made in the national currency, which arises from the internal order-placement of the loan, and the standing order, it is concluded that it is a loan with a currency clause, not a foreign currency loan. Based on the provisions of Article 395 of the Law on Obligations it can be concluded that the contracting of loans with a currency clause was not prohibited at the time of the conclusion of the contract in question* (58 0 P 129227 13 P, 11.1.2016.)

- *As regards the grounds for the defendant's accountability for the damages suffered by the plaintiff, the court established that the basis is set out in Article 154(2) and 174(1) of the Law on Obligations, specifically, that in the particular legal matter the defendant was accountable on the basis of engaging in a hazardous activity. According to case-law, a hazardous activity is any activity where human health or property may be at risk in its ordinary course of performance, in its technical nature and manner of performance, and such endangerment requires increased caution to be exercised by the persons engaging in the activity. Namely, in the opinion of this court, construction activities are an increased source of danger to human health and property, especially when the activity is carried out at a height, which indicates that the construction activity performed by the defendant is a hazardous activity. The defendant failed to prove, with any of the evidence he presented, that the particular activity performed by the plaintiff, that is, the business activity of the defendant, is not a hazardous activity, and therefore is liable for all of the damage caused by the hazardous activity, within the meaning of Article 174(1) of the Law on Obligations. According to Article 173 of the Law on Obligations, there is a legal presumption of causality, that is, that damage caused in connection to a hazardous object or hazardous activity is considered to originate from that object or activity, except if it is proven that they are not the cause of the damage.* (42 0 Rs 042867 18 Rs, 20.03.2019)

- *Taking into consideration all of the above, in the rehearing of the case, the Court determined that the plaintiff and first-named defendant entered into a valid legal contractual relationship, in accordance with Article 600 of the Law on Obligations, by entering into a Service Agreement starting on 1 August 2003 and ending on 31 December 2003, and that the possible fact that the contract was not registered with the Tax Administration bears no significance on the validity of the contract and the duty to duly fulfil the contractual obligations.*

Following the above determination of the validity of the contract and the fact that the contracting parties were obliged to adhere to what was agreed, the court further determined that the second, third, and fourth named defendants validly committed to participate in the settlement of any debt or deficit established by a court, and by doing so, in the opinion of this court, they validly became a personal means of security on the concluded agreement, as guarantors, in accordance with Article 997 of the Law on Obligations. The aforementioned article sets out that through a guaranty contract the guarantor assumes the obligation to the creditor to fulfil a valid and due obligation of the debtor, if the latter fails to do so, and the guarantee contract is valid if the statement and guaranty were made in writing. Guaranty is not conditioned by the law so as to require that a guarantor must be employed and that the statement of guarantee must be attested or certified by his/her employer, seeing as a guarantor pledges his entire assets, and not only any employment wages he may have. What is important is that the statement of guaranty was given voluntarily, without coercion, in writing, and that the guarantor has full working ability, and all of those conditions are fulfilled in the statements of the second, third and fourth-named defendants, which were submitted and heard as evidence, and which the defendant's do not dispute that they signed, while it is of no effect that they allegedly believed that they only formally guaranteed for the first-named defendant, as the law knows of no such guaranty, nor is the guaranty restricted to a specific monetary amount in the statements of guaranty.

All of the above is also confirmed by the bill of exchange that was also signed by all of the defendants, and with regard to which it was not proved that any of the defendants did not sign it or that any of their signatures were forged, and it is noted that the bill of exchange is as an instrument of security is independent of the legal contract that it guarantees, and therefore is an independent basis of commitment that is appreciated in accordance with the Law on Bills of Exchange (Official Gazette of the Federation of BiH, 32/00 and 28/03). In accordance with the above, the court finds that all of the defendants are required to settle any possible existing debts to the plaintiff on the basis of the Service Agreement of 1 August 2003.

Here the court states that the limitation period for the claim has not expired, as the complaint was filed on 19 December 2006, and the defendant's debt arises from a Service Agreement signed in the second half of 2003, and in the court's opinion, in that particular case it is necessary to apply the general limitation period of 5 years, in compliance with Article 371 of the Law on Obligations, as it is a debt caused by breach of contractual obligations. The claim would not be obsolete even if the three-year limitation period for compensation of damages was applied, seeing as the contract at issue ceased to have effect on 31 December 2003 when it expired, and that the complaint (action) was filed on 19 December 2006. (The Municipal Court in Sarajevo, 65 0 P 049751 13 P 2, 2.4.2014).

- *Article 78 of the Vienna Convention sets forth that if a party fails to pay the price or any other sum that is in arrears, the other party is entitled to interest on it, without prejudice to any claim for damages recoverable under article 74. On the basis of the presented evidence it was determined that, and this is not contested by the parties, they were in a contractual relationship on the basis of a contract on the sale and purchase of goods in the plaintiff's sales range (soya), and the goods were delivered by the plaintiff to the defendant and as proof of which the plaintiff has submitted the following invoices, specified in detail in the Specification of default interest calculation No.7024 of 30 July 2013, No.9556 of 31 December 2013 and No. 9770 of 20 August 2014. It is also an undisputed fact that the defendant was late in settling those invoices, which is why the plaintiff seeks payment of due default interest in the amount of BAM 39 177.23, and counter value of EUR 20 031.00.*

The defendant raised an objection on the grounds of expiration of the claim. The issue of expiration of the limitation period on claims for payment in agreements on the international sale of goods is not addressed by the Vienna Convention, and therefore, in relation to objections regarding the expiration of limitation periods it is necessary to apply the rules of the Convention on the Limitation Period in the International Sale of Goods (Official Gazette of SFR Yugoslavia – International treaties, 5/1978, hereinafter: Convention on the Limitation Period), which is applicable in Slovenia and BiH, on the basis of the notification of succession, specifically the provisions of Article 34 of the Vienna Convention on Succession of States in respect of Treaties, which set forth that in cases of separation of parts of a State, any treaty in force at the date of the succession of States in respect of the entire territory of the predecessor State continues in force in respect of each successor State so formed.

According to Article 3 of the Convention on the Limitation Period, this Convention shall apply only if, at the time of the conclusion of the contract, the places of business of the parties to a contract of international sale of goods are in Contracting States, and according to paragraph 2 of the aforementioned Article, unless otherwise provided by the Convention, it shall apply irrespective of the law which would otherwise be applicable by virtue of the rules of private international law.

According to Article 8 of the Convention on the Limitation Period the limitation period shall be 4 years, and Article 9 stipulates that notwithstanding the provisions of articles 10, 11 and 12 of the Convention, the limitation period shall commence on the date [on] which the claim accrues. Article 13 of the Convention on the Limitation Period sets forth that the limitation period shall cease to run when the creditor performs any act which, under the law of the court where the proceedings are instituted, is recognized as commencing judicial proceedings against the debtor or as asserting his claim in such proceedings already instituted against the debtor, for the purpose of obtaining satisfaction or recognition of his claim.

Article 27 of the Convention on the Limitation Period sets forth that the expiration of the limitation period with respect to a principal debt shall have the same effect with respect to an obligation to pay interest on that debt. According to the above cited provisions of Article 27 of the Convention, default interest legally shares the same fate as the principal claim, so when the limitation period on the principal debt expires, within the meaning of Article 27 of the Convention, the claim to interest also expires.

In this particular case, the complaint was filed on 18 November 2016, and therefore, in accordance with Article 13 Convention on the Limitation Period, the limitation period ceased to run as of that day. Hence, the limitation period of the claim for payment due on 18 November 2012, has expired, according to Article 8 of the Convention on the Limitation Period. From the above statement of facts and evidence presented, in particular, the Specification of calculated interest No. 7024 of 14 August 2013, it follows that the invoices were due for payment prior to 18 November 2012, and according to Article 27 of the Convention the limitation period also expired with regard to the claim for payment of interest on the basis of those invoices, which summed up to the total amount of EUR 7 120.97, which the court determined using the simple mathematical operation of adding up the interest accrued on the specified invoices, and therefore it was necessary to reject the statement of claim with respect to that amount.

In his statement of claim, the plaintiff also stated an ancillary claim seeking that the defendant pays the plaintiff, in addition to the principal debt, default interest running from 20 September 2016. The plaintiff is entitled to default interest on the accrued interest for the days payment of the principal debt was late, starting from 18 November 2016 as the day of filing the complaint, in accordance with the provisions of Article 382 of the Code of Obligations of the Republic of Slovenia (Official Gazette of the Republic of Slovenia, 83/01) according to which (over)due interest may be requested on unpaid interest only from the day the request for their payment was filed with the court, and therefore the remainder of the claim for payment of default interest running from 20 September 2016 to 18 November 2016, is rejected as unfounded. Namely, the Vienna Convention does not address so-called court interest, and as the Vienna Convention in instances when certain issues are not addressed by the Convention, instructs that the rules of international private law should apply, the issue at hand must be resolved by application of the Law on Resolving Conflicts of Law with the Legislation of Other Countries in certain cases (Official Gazette of SFR Yugoslavia, 43/82). It is undisputed that the plaintiff and defendant were in a legal contractual relationship on the basis of the contract on sales and purchase of movables, and that at the time the contract was signed the headquarters of the seller were based in the Republic of Slovenia, and therefore, in accordance with Article 20(1)1) of the above referred to law, as the relevant law with respect to court interest, the actual place of business of the seller determines the applicable law, and in this particular matter that is the law of the Republic of Slovenia. (Municipal Court in Zenica, 43 0 Ps 140747 16 Ps of 3.11.2017.)

Consistency of argumentation, logic and intelligibility

Starting with the expectation that the will of the court, expressed in a specific decision, should coincide with the will of the legislator set forth in a general rule, the statement of reasons of a judgment rendered in civil proceedings must fulfil that expectation, and in fact act as a safeguard against judicial arbitrariness in the application of an abstract legal standard to the facts in the specific case. Not only must it be apparent in the reasoning of the judgment that the court considered and evaluated all the relevant statements and proposals made by the parties, and that it addressed all issues relevant to the parties, a clear and consistent statement of reasons enables the parties to successfully exercise the right to an effective (legal) remedy. Consequently, the parties are able to understand and accept the decision, and the reasons and legal conclusions on which a specific court decision is based can be correctly examined only if the court that rendered the decision also provided an intelligible, full and logical legal explanation. Every court decision must therefore also satisfy that criterion of a reasoned court decision. The skill of writing a statement of reason of a judgment, and in particular, the legal analysis of a dispute, is perfected through work and ex-

perience, and improves over time, but the appropriate training of newly-appointed judges is also essential. In addition, it is extremely important to provide judges with access to the database of court decisions, or expert compilations of Supreme Court decisions, since learning by example has always proved to be successful. However, it is necessary to strike the right balance and incorporate the use of other decisions, so as to ensure that decisions, and in particular their legal justifications are not merely 'copied', and are instead used as good examples, in order to develop the capacity of critical thinking, adaptability, use of analogies, and to encourage the development of legal thought and court practice.

Referencing court practice (case-law)

In certain decisions, courts make reference to national court practice or the interpretations of the Supreme Court, or cite the case-law of the ECHR and other international courts. This part of the legal analysis requires that the judge has good knowledge of the case-law, that is, that case-law is easily accessible to judges. That is why it is necessary to work on, first the development, and then the utilisation of a database of Supreme Court decisions, which will be accessible to all judges, and also to facilitate access to the decisions of the European Court of Human Rights, as well as those of other courts, and to work on further educating judges and promote the exchange of useful information among courts. However, when invoking case-law, in the statement of reasons it is not sufficient to simply cite or refer to a decision. Court practice (case-law) is not a source of law in the legal system of Bosnia and Herzegovina, however, as a constantly developing process it has continuity, and can therefore considerably influence the predictability of court proceedings and legal certainty, as elements of the rule of law. The development of court practice during a transitional period, which has been inappropriately drawn-out and problematic in the case of Bosnia and Herzegovina, is often characterised by frequent amendments to a large number of laws, and consequently, the need for internal alignment or harmonisation of law across the entire legal system. In the process legal gaps become evident, and must be dealt with through practice, which is why it is extremely important that court decisions are available to judges, so that inconsistent case-law does not give rise to legal uncertainty. When referencing case-law, it is necessary to correctly present the stance and position of the court that rendered the decision, and explain how it is consistent with the stance and position adopted by case-law. If there is no case-law on the application of certain rules, then it is of particular importance that the court's position is the result of a thorough legal review of the dispute, specifically, that the court answers all and any disputed points of law. The purpose of referencing court practices is to strengthen the legal arguments made, that is, to affirm the correctness of the legal reasoning of the court in the particular decision, meaning that it cannot replace the obligation of the court to state its legal analysis and arguments. The decisions of the Constitutional Court of Bosnia and Herzegovina and the European Court of Human Rights serve as good examples for this part of the statement of reasons, as these courts first state their own legal interpretation of the particular case, which they then corroborate with references to legal understandings expressed in other decisions rendered in cases with the same or similar matters at issue. If the court directly applies any provision of the Convention for the Protection of Human Rights and Fundamental Freedoms, it is necessary to invoke ECHR case-law on the application of that provision. Referencing case-law not only broadens and deepens judges' knowledge, but brings it to light, and allows parties to better understand the decision, as well as the legal standards at its basis.

Example 2
Contrary to the plaintiff's statements of appeal, the first instance court correctly decided on the costs of proceedings and application of Article 387(1) of the Civil Procedure Code, determining that the plaintiff is not entitled to the return of costs in the amount of BAM 2 560.98, consisting of costs of absence from the office in the total amount of BAM 1 440.00 and private transportation costs in the amount of BAM 1 120.98, and in accordance with the legal understandings adopted at the Panel for the consistency of court practice in civil law, attended by representatives of the Court of Bosnia and Herzegovina, the Supreme Court of the Federation of BiH, the Supreme Court of Republika Srpska, and the Appellate Court of Brčko District BiH, held in Sarajevo on 30 January 2014.

Also, in the opinion of this court, in this particular case, and taking into consideration the type and complexity of the dispute, the claim value, the hiring of an attorney whose offices are outside the territory of the court, cannot be regarded as indispensable to the conduct of these proceedings, and therefore the costs incurred as a result cannot be considered as necessary expenses, which is why the plaintiff is not entitled to the return of the transportation costs and absence form office expenses incurred by his legal representative on those grounds and in the amount claimed. Accordingly, the plaintiff's reference to court practice in similar cases is irrelevant in this matter. In applying Article 387(1) of the Civil Procedure Code, the Court determines which expenses were necessary for the conduct of the proceedings, giving careful consideration to all of the circumstances. The plaintiff, except for the circumstance that the attorney's law firm is registered in Tuzla, fails to cite any other circumstances that could justify the award of those costs. The plaintiff's invoking of the second paragraph of the aforementioned Article is unjustified, as the Article stipulates that attorney fees shall be determined according to the tariff for remuneration, but that does not mean that just because the tariff provides for the fee that it must be awarded, particularly in situations when the court makes the determination which expenses were necessary for the conduct of the proceedings. (The Cantonal Court in Zenica, No. 43 0 Rs 153969 19 Rsž, 3 April 2019)

Statement of reasons of second instance decisions

Second instance decisions also have to have a particular structure, and their content depends on the content of the appeal and the response to the appeal, as well as the second instance court's assessment of the decisive statements of appeal and legal analysis of the dispute, which examines the first instance judgment within the limits it is contested by the appeal and *ex officio*, in accordance with Article 221 of the CPC.

In some second instance decisions, the court fails to provide the first instance court with clear instructions, or even omits to clearly state the reasons for revoking the first instance decision. Without these two elements, the statement of reasons of the decision reversing the first instance judgment cannot be considered complete and clear.

When modifying a judgment, the second instance court must state its own application of the substantive law, but also explain why the one applied by the first instance court was incorrect. It is also necessary to examine the statements of appeal alleging misapplication of the substantive law, if they are of decisive significance.

Also, when rejecting an appeal it is important that the court states all of the claims made in the appeal that are of decisive significance, and explains why it rejected them as unfounded, instead of merely stating that the first instance judgment was correct and invoking reference to that decision's statement of reasons. And in the event of a rejection of an appeal, it is important that the court evaluates the appeal allegations that are of decisive importance, and explains why it rejected them as unfounded, not just not only noting that the instance first judgment was correct, and invoke its reasoning.

A second instance court decision must include the expressed legal understanding of that court, and the reasons why that came to a particular legal understanding and took a particular decision. Without stating its own critical opinion and assessing all of the decisive claims made by the parties, and a clear and full legal statement of reasons, the second instance decision does not satisfy the criteria of a reasoned court decision according to Article 6 of the European Convention on Human Rights.

Example 2

- *In the appeal the defendant cites without justification that the contested judgment does not contain a correct assessment of the presented evidence and that as a result the first instance court could not have concluded that the defendant was accountable for the harmful event. This court finds that*

he first instance court correctly assessed all of the presented evidence, and above all the testimony of the heard witnesses and parties and the material evidence presented, and on the basis of such correct assessment of the evidence of the case determined that the plaintiff's statement of claim is justified in part. The defendant's allegation put forward in the appeal that the first instance court failed to adequately evaluate the testimony of witness S.E and explain its evaluation, does not correspond to the file of the case and the contested decision. To the contrary of those claims, the first instance court, acting on the plaintiff's statement of claim, assessed all of the presented evidence that was of decisive bearing, individually and as a whole. The free assessment of the evidence by the first instance court cannot be contested with reason by the plaintiff in the manner set forth in the appeal, as the plaintiff ignores facts and allegations presented by the adverse party in the proceedings, which the first instance court had to compare against the statements made by the defendant, which it specified in its statement of reasons of the first instance judgment. In making its decision, the first instance court fully and correctly established all of the facts relevant to the statement of claim, which are the result of an evaluation of the presented evidence, assessed in accordance with articles 8 and 123(2) of the Civil Procedure Code, and this court accepts those reasons as correct.

The first instance court provided exhaustive that this court takes to be correct, as to why it could not admit as true the claim the witness E.S "Allija and I were the only ones on the platform. We misjudged the height. It's just how things turned out". The conclusion of the first instance court to not place faith in the testimony of this witness u in the above cited part was not arbitrary, and was preceded by an assessment of all of the presented evidence, and above all, the plaintiff's statement given as a party to the proceedings and the statement of the witness E.S, who were the only participants of the harmful event. When the plaintiff stated that "E.S pulled out the platform and they continued to work. We again rose to a height of 5 – 6 meters, I couldn't tell you exactly...and E.S. who was operating the platform at that particular time ... assessed that we did not need to go any higher", and when the witness's claims were not substantiated by the other material or subjective evidence, nor the work safety expert witness's report, the first instance court was correct not to accept the testimony of this witness that they "misjudged the height". Article 137 of the Civil Procedure Code regulates the presentation of evidence, and places the hearing of witnesses in the same class as the other means of proof, as witnesses are in most cases the main participants of the proceedings and best informed of the subject-matter of the dispute, aware of all of the decisive facts and their description of the event at issue is the most complete. However, due to their subjective relation to the dispute and justified interest in the success of the complaint, and in this particular case the witness was the defendant's employee and in the particular instance was operating the platform, the witness statement is of suspect value and as such is an unreliable source of information for the court, and in this particular case the appellant failed to corroborate the witness's statement with any other piece of evidence. (The Cantonal Court in Zenica, No. 43 0 Rs 153969 19 Rsž, 3 April 2019)

- *Contrary to the allegations of the appeal, the correct conclusion was presented in the contested judgment that in the particular case with regard to the adverse consequences of the plaintiff's injury sustained at the workplace on12 March 2014, the defendant does have liability in accordance with articles 173 and 174 of the Law on Obligations (Official Gazette of SFR Yugoslavia, 29/78 to 75/89, Official Gazette of RBiH, 2/92, 13/93 and 13/04, and Official Gazette of the Federation of BiH, 29/03 and 42/11). In the opinion of this court, working on a platform at a height of five meters has the characteristics of a hazardous activity. This is also substantiated by the testimony of the plaintiff and the witness E.S., and by a report on the accident in which section 17 provides a detailed description of the accident. Therefore, the state of facts contained in the case file justifies the first instance court's decision that in the particular case the defendant was objectively accountable, as the damages suffered by the plaintiff were the consequence of the defendant's business activities, which in the specific case involved the installing of heating pipes from a platform at a height of 5m. (The Cantonal Court in Zenica, No. 43 0 Rs 153969 19 Rsž, 3 April 2019)*

- *The claim made in the appeal that the limitation period for compensation for damages has expired is unfounded, taking into consideration that the harmful event occurred on 12 March 2014 and the complaint was filed on 28 November 2017. The appellant persists in his claim that on 22 October 2014 the neurological medical treatment ended and it was stated that the patient felt better and was conscious, and that from that date to the filing of the complaint the time limit set forth in Article 376 of the Law on Obligations had expired.*

The first instance court presents a valid explanation on page 10 in relation to that allegation of the appeal, hence the appellant is instructed to refer to that part of the statement of reasons of the contested decision.

An objection regarding the expiration of the time limit for filing a claim for damages may be correctly resolved only if it is first correctly established when exactly the damage occurred.

According to Article 376(1) of the Law on Obligations, a claim for damages shall expire three years after the party sustaining the damage became aware of the injury and loss caused by the damage. The concept of becoming aware of the damage means knowledge of its existence and extent or scope. Namely, damage occurs and lasts continuously while the cause is continuously active, and its scope is not determined by parts and time periods, so the injured cannot be entitled to successive compensation for the damage. The law does not provide for the possibility of claiming compensation for future damages of this kind, and therefore the expiry of the period of limitations cannot be an issue as long as the adverse consequences are still in effect and their final extent and scope is not yet apparent. Only when further damage ceases to occur can the time limits set out in Article 376 of the Law on Obligations start to run.

Therefore, in the case of claims for compensation for this particular form of non-pecuniary damage, it is considered that the limitation periods of claims within the meaning of Article 376(1) of the Law on Obligations are calculated from the day on which the treatment for the consequences of the adverse event ended, that is, from the day the injured party learned about the damage and of its full scale, as it is only then that an injured party can be aware that the consequences are of a nature on the basis of which he/she has the right to compensation. The concept that the injured party has learned or become aware of the damage involves not only knowledge of the existence of the damage itself, but also its extent, that is, the elements determining the scope of the damage. In the common forms of non-pecuniary damage caused by harm, this knowledge usually coincides with the completion of intensive or continued medical treatment and the stabilisation of the injured party's state of health, that is, when the injured party learned of the lasting consequence of the injuries sustained and became aware that the treatment did not contribute to the mitigation of the permanent adverse consequences of the injury. The end of treatment and stabilization of the injured party's state of health can be taken as the moment he/she became aware of the damage, that is, the completion of treatment and the certainty that any further consequences cannot be eliminated or significantly reduced with respect to the non-pecuniary damages.

Based on the fact that it was established that the neurosurgical treatment of the plaintiff ended on 22 October 2014, and was continued in January 2017 in terms of treatment for the consequences of the earlier injury, as the plaintiff was then diagnosed with epilepsy, as a direct result of the damage suffered, and that therefore it was then that the plaintiff finally learned of the permanent consequences of his injury and the fact that no further treatment can contribute to reducing those consequences, the first instance court correctly determined that the statute of limitations on the claim had not expired seeing as the limitation period in this case did not start running from the day of the accident, but from the day the plaintiff became aware of the full consequences of the injury (extent of damage). (The Cantonal Court in Zenica, No. 43 0 Rs 153969 19 Rsž, 3 April 2019)

Writing the judgment

A judgment is an extremely significant legal act that sublimates the entire proceedings and the conclusions reached in those proceedings. Everything that was done up to that point will be rendered meaningless if what is written in the judgment is insufficient or unworthy of the previously completed activities.

The task of the court is to reach a conclusion on how the disputed legal relationship between the parties should be resolved on the basis of the facts established in the court proceedings and by applying the appropriate substantive legal norms.

The judgment must be of high quality because it first and foremost represents the pinnacle of the whole proceedings and it must clearly, precisely and logically present the conclusions reached by the court at the end of the proceedings. Therefore, it must be correct both in material and formal terms.

Writing a good quality judgment requires numerous skills and multifaceted knowledge, but above all knowledge of the language and rules of grammar and logic. The quality of the judgment is influenced by how convincing it is on the basis of knowledge and expertise.

The quality of the judgment will be better, the simpler the manner the court uses to state its conclusions, assessments and understandings.

Legal terminology must be used carefully for the reason that its misuse can make the judgment unclear and unconvincing

The judgment must, above all else, be clear and convincing to the non-expert (ordinary) parties, to the legal representative filing an appeal, and to the higher court examining its regularity and legality, and in some cases even to a court in a foreign country that will enforce that judgment, as well as to the general public, which will on the basis of the judgment form an opinion on the work of the judge and the judiciary as a whole.

Structure and writing skills

It is not enough for judgment to be legally correct, it must also be semantically and grammatically correct, easily legible and understandable. What the court says and the way it says it is just as important as what it decides. For a quality judgment, combining writing skills and legal knowledge is essential.

Good preparation of the draft the judgment immediately after the end of the proceedings, while impressions are still fresh, can be very useful.

To correctly write the statement of reasons of a judgment it is necessary to adhere to the rule that the source of the inspiration for writing should only be the relevant facts and the substantive law. Anything beyond that is completely redundant and can lead judges to deviate away from their intended direction.

Writing the statement of reasons of a judgment

The statement of reasons must provide clear and convincing arguments for each section of the operative part of the judgment. The content of the statement of reasons should be such that it can explain and convince any reader of the court's reasons. This is significant because the statement of reasons is the basis for controlling the work of the court and the judgment itself, and on its basis the party will evaluate whether it will apply for legal remedy.

The Civil Procedure Code of FBiH (Article 191(4)), the Civil Procedure Code of Republika Srpska (191(4)), the Civil Procedure Code before the Court of BiH (158(4)), and the Civil Procedure Code of Brčko District BiH (Article 268(4)) set forth what a statement of reasons of a judgment rendered in a civil matter must contain:

-the claims of the parties, the facts put forward by the parties and the evidence they presented, the facts that the court established, why and how it established them, and if it established them by proving, which evidence was presented and how it was assessed by the court. It shall separately be stated which provisions of substantive law the court applied in deciding on the parties' claims. The court shall also present the parties' views on the legal basis of the dispute, and their proposals and objections in respect of which it did not provide reasons in the decisions it took during the proceedings.

In the statement of reasons, on the basis of free evaluation of evidence, the court decides which facts in a particular civil law dispute it will take as established. In order to avoid judicial arbitrariness, the court must set out in the statement of reasons its reasons for the particular conviction of the court and the rules it applied. – Example of arbitrary conduct

The right to a reasoned court decision is a component of the right to a fair trial.

Courts have discretion to decide which arguments and evidence they will accept in a particular case. At the same time, they have an obligation to explain their decision and state clear and justified reasons on which they based the decision.

The right to a reasoned court decision is based on the same principle that the European Convention on Basic Human Rights (ECHR) itself is based, which is to protect all individuals from arbitrary judgment. A written judgment primarily necessitates a completely clear and understandable operative part, which must be in agreement with statement of reasons.

In addition to a properly formulated operative part, a correct judgment needs to contain a full, specific and clearly written statement of reasons. The existence of a statement of reasons is the result of the principle of free evaluation of evidence that is applied by judges within their own discretion.

The specificity of the reasons, within the meaning of the Civil Procedure Code, necessitates more than just merely stating the content of the statement of claim, response to the claim, the testimony of witnesses and expert witnesses, and the material evidence presented, but also requires statement of the facts established by the court, the means of proof used to do that, the assessment of the evidence, and the reasons why the court accepts certain facts as established, and rejects others.

The questions that need to be answered by means of proof depend on the substantive legal basis at issue in the dispute, and the decisive facts that have been established should be presented in a clear and rational manner.

Second instance decisions

In the statement of reasons, second instance courts must present its conclusions with regard to the statements of appeal in order for the valid reasons for its decisions on the appeal to be evident.

Therefore, it is necessary to address the complaints of the appeal that were of decisive significance. The appellant's factual statements and arguments must be considered, and the reasons for the decisive facts that served as the actual and legal basis for the contested decision must be given. One of the integral components of the right to a fair trial is the right to a reasoned court decision. This places an obligation on the court to state the clear, sufficient and understandable reasons on which it based its decision, and to respond to all claims made in the appeal that are of decisive importance, thereby guaranteeing the party that the court has considered its claims and the evidence it submitted in the proceedings, and that such a decision is subject to legal redress.

When the second instance court grants the appeal and modifies the first instance court's judgment, it is also obliged to explain the factual and legal aspects of its decision, to the extent necessary for understanding the decision and accepting the reasons for the different determination of facts and different application of the substantive law by that court. If it reveres a decision, it is obliged to provide the first instance court with instructions on how to act in the rehearing of the case in order to remedy the observed irregularities and by correct application of the substantive law, take a correct decision.

In the event of the reversal of a first instance judgment, the appellate court must clearly indicate which provisions of the civil procedure were breached (article of the specific law), how they were breached and how that affects the legality of the first instance judgment, and why it must reversed.

What to avoid in writing the statement of reasons of a judgment

- Insignificant details- In order to properly review all of the decisive facts, judges face an extremely difficult task. On the one hand, providing excess details may affect the clarity of the court decision and create confusion. On the other hand, brevity and simplicity are of secondary significance in relation to the primary principle of full presentation of the relevant facts. In the judgment it is therefore important to provide sufficient details to justify the court's opinion, at the same time avoiding excessive details that can often take the reader in the wrong direction, away from the immediacy of the judgment.
- Insignificant facts and comments – This is not easy to avoid, especially because when reading their own writing, authors tend to read what they intended to write and not what they actually wrote.
- Unnecessary words or repetition – it is always good to use simple, short sentences, free of unnecessary words. Long and complicated sentences should be avoided, as the length of the sentence is usually in inverse proportion to its intelligibility. A short sentence renders a thought clearer to readers and maintains their attention.
- Copying submissions- the submissions of the parties are often burdened with circumstances that are of no relevance to correctly deciding on the claim. The court should summarise the parties' claims and not literally copy or enter into the statement of reasons the entire content of their litigation actions.
- Pleonasms and superfluous language ("it is sad, it is claimed" and similar) - the language used must be clear and as simple as possible, and words must be used in their usual meaning in combination with legal terminology. Colloquialisms, Latin terms and phrases and unnecessary expert and technical terms should be avoided, unless their use is inevitable. Foreign words are used only if there is no corresponding translation for them in our language.
- Imprecise (vague) words or phrases should be avoided, although it is difficult to avoid them when we want to highlight a statement (e.g. in particular, especially) or when they have become routine in practice (to give faith to the witness - to accept the witness/expert witness testimony - the findings and opinions of the expert witness).
- Conjecture (hypothesis)- It is often observed in judgments that the judge, for example, states and explains the situation based on a different factual basis ("even if", "even if the facts were different" etc.). The reason for that is usually the need to compare a particular case with a possible different situation or to emphasise the correctness of the judge's opinion. This should be avoided, since there is no room for hypothesis in a judgment, and it can only diminish its value and distance the reader from the actual situation. The judgment must be limited to the specific case, and not to "what would happen if..."
- Incorrect order of the conclusion- the judgment should not be structured in such a way that an alternative presumption is put first, and that the primary substance and conclusion are stated thereafter.
- Incorrect ranking of objections- the court should be able to assess the legal significance of an objection, by firstly presenting its conclusions in the statement of reasons the judgment on those objections whose merits alone lead to the decision on the statement of claim, that is, the complaint. This applies to both substantive and procedural objections.

  For example, if an objection on the grounds of expiration of the limitation period is justified, and the statement of claim is rejected on those grounds, that would be the most feasible objection, so it is enough to state that the objection relating to the breach of contract is not relevant to the court's decision in the particular case.
- Citing the content of laws – the full content of a legal provision is quoted only if the judge deems it extremely important, e.g. to emphasise how the provision is applied.
- Advocacy or refutation of arguments- justification of the decision requires an explanation of the reasons for which one argument is accepted and the other, opposing argument is rejected. When pre-

senting the main arguments made by the losing party, the court's decision should explain why its arguments were not accepted, which should not be done with a negative undertone. The judge should explain his position, not refute the arguments.

- Metaphors- stylistic devices with which we express a meaning figuratively. Metaphors usually give a dramatic effect to a particular statement, and such theatrics in court decisions are unnecessary.
- Euphemisms- are used to embellish or lighten a meaning, for various reasons (etiquette, religion). The phrase 'the witness did not tell the truth' is often used instead of 'the witness lied'.
- "Reckoning" with different opinions- a judge's opinion must not be an attack on the attorney's knowledge, nor should judges be excessively critical of opinions that differ from their own. This diminishes a judge's authority, constitutes unprofessionalism and "personal reckonings", and puts the reasons of the judgment in second place.
- use of different fonts and styles or the bolding of individual words- this should not be used to emphasise certain conclusions. The statement of reasons should be clearly written, and separated into individual paragraphs that deal with one issue each.
- Emotions- a judge must set his personal feelings aside and avoid using adjectives, unless they transmit information significant to the decision. A court decision is not a means of expressing emotions, negativity or sympathy. Any of that could give rise to its objectivity being questioned.
- Legal localisms- terms inherent or specific to a particular region should be avoided, for the purpose of general understanding and exclusion of possible ambiguity.

The structure of the statement of reasons

The statement of reasons should be clearly structured and divided into individual paragraphs.

The most common error that occurs in the writing of the statement of reasons is the overuse of the 'copy-paste' method, specifically, the transcribing of parts of the record of the hearing, which makes the statement of reasons confusing, without substance, unsystematic and hefty.

It must not be made into a report in which the evidence presented in the proceedings is just listed in chronological order. It is often the case that instead of providing an assessment and analysis of the evidence, the operative part of the judgment is merely copied into the statement of reasons and it is stated that "the facts of the case are established as stated in the operative part".

In many cases, all of the evidence presented at the proceedings is merely reproduced in the statements of reasons – not just the evidence significant to the judgment, but all the other evidence as well. Consequently, many judgments are excessively massive, while containing only a few paragraphs that address the substance of the matter, and are full of technical errors arising from the indiscriminate listing of evidence. The most common reason why a judgment is reversed is in fact, on the basis of formal defects.

At the beginning of the statement of reasons the court should briefly summarise the statement of claim, and only state the principal claim so as to not create confusion. In this part of the judgment all of the statements of claim of the litigants must be stated accurately and in full. However, it is necessary to ensure this is done in a concise and brief way, so as not to burden the judgment with unnecessary and overly broad explanations, as well as irrelevant statements made by parties. It is not desirable to transcribe the entire content of the complaint, or cite the content of individual submissions, and instead their content should be summarised and only the relevant statements should be included. In this part of the judgment it is unnecessary to emphasise whether a party presented facts and arguments directly or through an attorney, as the effect is the same.

During the proceedings the plaintiff may partially waive the claim or withdraw the statement of claim in part or in respect of a particular claim. If that happens it is necessary to mention it in this part of the statement of reasons in order to convey an accurate picture of the course of the proceedings. In addition, it is easier to explain court decisions that involve a partial waiver or withdrawal of the statement of claim.

Example

"In the complaint and in the proceedings the plaintiff stated that he was employed as a construction worker on a construction site – a house in Sarajevo at Zmaja od Bosne, by the defendant, as his employer. On 25 October 2012 he was performing work on the roof of the house, and while climbing down from the roof over the terrace with the help of a ladder, the cuff of his track suit trousers got caught on the anchors, and he lost his balance and fell off a height of 7-8 meters, and was seriously injured. In the statement of claim the plaintiff seeks that the defendant pay non-pecuniary damages in the requested form and specified amounts, as well as material damages for lost earnings. He submitted the following evidence. He requested return of costs of the proceedings."

How should those facts be stated?

It is very often the case that in the statement of reasons of a judgment, the statements made by parties or witnesses are transcribed (in whole or in part), but this does not contribute to the clarity of judicial determination.

In the statement of reasons judges should, correctly and succinctly convey what is relevant, and in what manner they present the testimony of the parties should depend on their assessment of which facts are relevant and what in the statements is important for the resolution of the dispute.

The copying/transcribing of the statements of the parties and witnesses is not a substitute for analysis and evaluation of their probative force.

This is often also encountered in the assessment of the findings and opinion of an expert witness. The judge evaluates the evidence and establishes legally decisive facts, while the report of an expert witness is an evidentiary instrument that enables a conclusion on the decisive facts in situations when the court lacks the necessary expertise. Therefore, the opinion of an expert witness should be tested against the critical reasoning of the judge, seeing as the probative force of the evidence depends solely on the judge's opinion and assessment. An expert witness may not, cannot, and is not authorised to evaluate evidence instead of the judge.

Judges sometimes even transcribe the content of submissions filed by the parties' attorneys, which can be particularly risky if they have a tendency to use excessive generalisation in an attempt to mask the lack of basis for a party's claims. A lawyer's wording of the arguments of a party should not make the judge feel compelled to address it in the judgment. Instead of following the dictates of their claims, judges should be able to single out what is crucial and evaluate the legal issue in the best possible legal and logical manner (insist on the strength of the argument, not on the argument of strength).

Legal basis

Before presenting the conclusion, which will become the operative part of the judgment, the court has the duty to establish the content of the legal norm that should be applied to the established facts of the case. The choice of legal norm is a complex intellectual task that requires creativity on the part of the judge, especially if the legal norm is incomplete, unclear, generalised or if none apply to the specific case. Substantive law is at the core of every decision and it is necessary to demonstrate that the court's conclusion is founded on prudence and logic, the reader must be convinced of the correctness of the outcome by the strength of the reasoning, arguments and authority.

The court sets the legal nature of the dispute, and the legal classification of the matter of the dispute is of crucial importance to ensuring a correct outcome in civil proceedings. The court applies substantive law upon its own discretion and is not bound by the claims of the parties with regard to the application of the substantive law. The court is obliged to cite the specific provision of the substantive law, and not just make a general reference.

In explaining his/her decision, the judge must also give consideration to the ancillary part of the claim (e.g. payment of default interest) and in the statement of reasons explain why it decided on that part of the claims the way it did, and state the particular provision of the substantive law applied.

After presenting the plaintiff's statement of claim, a summary of the defendant's statement of reply should follow. It should be stated whether the defendant challenges the statement of claim in whole or in part. If the defendant challenges only part of the claim and certain facts, it needs to be made clear exactly which claims and facts are being contested and why.

Example
"The defendant contested the claim in whole. He raised an objection on the grounds of lack of standing to be sued, as the plaintiff had hired a third person, a certain XY, to work on the construction site, and not him – the defendant. At the time of the incident, when the plaintiff fell and was injured, he was not in the employment of the defendant, and the injury was solely the result of negligence and fault of the plaintiff. The defendant asked for the statement of claim to be rejected. Evidence was submitted. Recovery of costs was requested."

If the defendant has raised any objections, they must be cited in this part of the statement of reasons. They can be procedural objections related to lis pendens or res judicata, or objections to subject-matter or territorial jurisdiction, or objections of a substantive legal nature- on the grounds of the statute of limitations expiring.

In this part of the judgment, the court does not evaluate the objections, and just states them in order to paint a clear picture of what the plaintiff has put forward to substantiate his claims, and what the defendant is refuting.

The court shall rule on the raised objections in the part of the decision where the legal assessment is made. That this part of the statement of reasons is written in a clear and concise manner, facilitates further work on the legal assessment, as the statement of reasons of the judgment can be checked by rereading this part, as well as whether all of the objection presented by the parties have been addressed.

The court should be able to assess the legal significance of an objection by first presenting in the statement of reasons its conclusions on the objections whose validity, alone, could serve as the basis for a decision on the statement of claim, that is, the complaint. This applies for both substantive and procedural objections.

Example
In the situation when a defendant was justified in raising an objection on the grounds of expiration of the limitation period, in the statement of reasons of the judgment the court shall first explain why it came to such a conclusion, as the validity of the objection precludes the validity of the claim. In the event the admissibility of the complaint is tied to certain actions, and the defendant successfully contested the existence of those actions with a valid argument, the court shall issue a decision to end any discussion and decision on such a statement of claim, and shall dismiss the complaint, without additional explanation of the facts and claims of the parties insignificant to the decision.

Certainly, in this part (with regard to the claims of the plaintiff, as well as the defendant) it should be clearly stated whether they requested the return of costs of the litigation proceedings.

Following this, it should be specified which facts are undisputed, what is disputed, and the legal issues that need to be discussed in that specific case. This part comes immediately before the content of the evidence is presented. The separation of disputed from undisputed facts, facilitates not only the course of the proceedings, but also the manner in which the judgment shall be drafted. Before stating the evidence, in a new paragraph, the court should state what is undisputed and what is disputed by the parties.

Example
"It is not disputed by either party that the plaintiff, as an unskilled worker, worked at the construction site – a house at street XX in YYYY, investor XY, and contractor, the defendant AB. It is undisputed that on 25 October 2012 the plaintiff fell off the roof from a height of 7 to 8 meters and was severely injured. *It is disputed whether the defendant is liable for the plaintiff's injury, and therefore the requested forms of compensation and amount of compensation are also disputed, as is the fact whether the plaintiff contributed in any way to the occurrence of the damage."*

Following that, the court lists the evidence that was presented before the court, in chronological order: names of witnesses heard, documents reviewed (ref.no. of document, issue date, issuing authority), expert appraisals conducted, inquests carried out....It is necessary to state all of the evidence, both written and oral, that was presented in the proceedings.

In the statement of reasons of the judgement it is not necessary to specify the content of the evidence relating to the facts that have been established as undisputed either at the preparatory hearing or in any later phase of the proceedings, or even at a later sitting of the court, for the reason that undisputed facts are not subject to proof.

It is important to take particular care to ensure that the content of the record (minutes) of the hearing, containing the statements of the litigants or witnesses, is not copied in its entirety into the statement of reasons of the judgment.

Example: Judgment of the Court of BiH No.: S1 3 Mal 033699 19 Mal of 7 July 2020 attached

As regards the order in which the content of the evidence is stated, it is common practice to first state the content of the written evidence, and as a rule, follow it with the testimonies of the litigants, and finally state the content of the testimony given by witnesses and experts.

With regard to written evidence, it would be desirable to indicate their content in a particular logical order, or in accordance with the chronology of their occurrence, thereby ensuring the clarity and legibility of the statement of reasons of the judgment.

Testimonies of the parties and witnesses – the statements of the parties should come first, followed by those made by the witnesses. The order of the presented evidence is less important, what matters is that the statement of reasons, as well as the entire judgment, is clear to both the parties and the appellate court.

The statements of the parties, witnesses and expert witnesses are cited in the statement of reasons in the third person, unlike in the minutes of the hearings where they are recorded in the first person. Therefore, caution should be applied if and when copying the minutes of the hearing into the statement of reasons. As regards the opening statement when presenting witness or party testimony is stated, there are two possible options. One way is to state: "Witness XY testified (stated) that…", and then cite only the significant content of the testimony. The other option is: "on the basis of testimony given by XY it was established that…". On the basis of the latter it can be concluded that the court accepted the testimony of the witness or party as truthful in whole. When using this wording it should be ensured that it is used only in reference to the statements made by the parties to the proceeding and witnesses that the court, in whole or in the part specified, considers and accepts as true. Otherwise, if the presentation of the testimony of witnesses or parties were to begin in this way, and their content, specifically their statement on the relevant facts, were in complete contradiction with one another, the judgment would be incomprehensible and this would give reason for it to be reversed. It would not be clear what the court established, given that two or more witnesses testified differently on the same facts.

The findings and opinions of expert witnesses and their testimony given in court should not be entered into the statement of reasons of the judgment in their entirety if no objections were made with respect

to them. It is sufficient to present the facts that the expert witness established and give reasons why the expert witness findings and opinion were accepted (expertise, objectivity). If there objections have been made regarding the expert's findings and opinions, and if in some parts the court certified expert made a separate and supplementary statement, it would be advisable to state them in a larger scope. This is necessary in order for the court to, when evaluating the findings and opinions of an expert witness, be able to explain why it accepted the findings and opinions, that is, why, in the court's assessment, further explanation and objections to the findings and opinion were necessary, and whether they were addressed in full.

Given that the assessment of evidence is a creative and complex intellectual activity performed by the court, and on the correctness of which depends the correctness of the determination of the decisive facts – it is the court's obligation to state a clear position and reasons why it believed the testimony of a witness. In doing so, consideration should be given to the totality of the evidence presented and the need to assess all of that evidence. It is also superfluous and encumbering for a written explanation to include comments on every detail of the statement; on the contrary, it is sufficient to state only that which is relevant to the dispute.

Also, if the court refused the presentation of any of the evidence submitted, it is required to elaborate that procedural decision (when taking it, and at the latest in the Statement of Reasons of the judgment).

The process of proof must be verifiable, and that involves consistently stating the sources of findings on particular circumstances.

Application of legal standards to the established facts of the case

In the appropriate part of the legal analysis, the court must specify the laws and regulations on which it based its decision, that is, the particular legal norm that it applied in rendering the judgment, which is often omitted in judgments.

Costs award

A judgment must also include the court's reasons for its decision on award of the costs of the proceedings, and it must be specified for which particular litigation acts and in what amount the costs are awarded, and should include a separate explanation on the offsetting (set-off) of costs in the event both parties achieved partial success in the litigation.

In the instructions on the right to legal redress (hereinafter: legal remedy) the first instance court decision must correctly set the start of the time limit for filing an appeal (Article 203 of the CPC). The time limit for the appeal shall start running:

- from the day the judgment is rendered, in the event that the parties collect the judgment at the courthouse,
- from the day of service of the transcript of the judgment, if the judgment is served upon the parties in accordance with the provisions of the Civil Procedure Code on the service of court documents.
- if the judgment is not served upon the parties in the same manner, (collection at the courthouse or delivery by mail), then in the legal instructions it is necessary to inform the parties of both of the prescribed starting days of the time limit – "from the day the judgment was rendered or the date of service of the transcript of the judgment." (as the appeals time limit starts running on different days for the parties)
- if the court informed the parties of the date the judgment was rendered and instructed them to collect the judgment at the courthouse, but a party later asks the court to deliver the judgment by mail, the time limit for the appeal runs from the day the judgment was rendered, and not the day it was served upon the party
- if at the last hearing, the court instructed the parties to collect the judgment at the courthouse, but subsequently the court (intentionally or by mistake) served the parties with the judgment by mail, the time limit for the appeal runs from the day the judgment was rendered as that was what the parties were informed at the last hearing.

Attachment 1.

TABULAR PRESENTATION OF CONCLUSIONS OF DOMESTIC MEMBERS OF THE EXPERT TEAM FOR QUALITY ASSESSMENT OF COURT DECISIONS

The total number of judgements assessed is 79 by the level of:

- Bosnia and Herzegovina- 11
- Federation of Bosnia and Herzegovina- 37
- Republika Srpska-21
- Brcko District- 10

THE COURT RENDERING THE DECISION	TOTAL	%
Municipal/Basic Court	53	67
Cantonal/District Court	10	12.6
Appellate Court BD	5	6.3
The Court of BiH	7	8.8
Appellate Department of the Court of BiH	4	5

DECISION INSTANCE	TOTAL	%
First-instance decision	60	75.9
Second-instance decision (appealed decision)	19	24

I - DECISION INTRODUCTION

I.1 Decision introduction contains complete data on parties, their representatives or agents					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	10/11[1]	35/37	20/21	10/10	75/79
% of judgements	90.9	94.5	95.2	100	94.9

I.2 The decision introduction contains a complete and correct code of the matter of the dispute					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	32/37	8/21	10/10	61/79
% of judgements	100	86.4	38	100	77.2

I.3 The decision introduction contains the exact value of the dispute					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	8/11	22/36	15/21	5/10	50/78
% of judgements	72.7	61.1	71.2	50	64.1

I.4 Additional observation - use of the incorrect term "legal representative" for the representatives of legal entities					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	0	5	1	2	8

II - OPERATIVE PART OF THE DECISION

II.1 The operative part of the judgement is clear, specific and enforceable					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	10/10	30/36	12/19	10/10	62/75
% of judgements	100	83.3	63.1	100	82.6

II.2 A decision has been made on all motions and legal remedies					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	37/37	18/20	9/10	75/78
% of judgements	100	100	90	90	96.1

II.3 The judgements, in which the statements of claim have not been adopted in entirety, included the content of the denied or partially denied statement of claim					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	6/8	28/36	10/16	7/8	51/68
% of judgements	75	77.7	62.5	87.5	75

II.4 The operative part contains a decision on the partial denial of secondary claims, where the reasoning indicates that the claims were not upheld in full					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	4/7	5/30	3/14	0/8	12/59
% of judgements	57.1	16.6	21.4	0	20.3

II.5 The voluntary time limit to comply with the court's decision is correctly determined in the operative part					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	6/8	11/28	6/18	4/9	27/63
% of judgements	75	39.2	33.3	44.4	42.8

III.1 - MOTIONS OF THE PARTIES

III.1.1 The final motions of the parties have been clearly and fully explained					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	8/11	32/37	8/21	9/10	57/79
% of judgements	72.7	86.4	38	90	72.1

III.1.2 The statements made by the parties as to (relevant) facts on which they base their claims are properly and completely presented					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	29/35	15/21	10/10	65/77
% of judgements	100	86.4	71.2	100	84.4

III.2 - FACTS ESTABLISHMENT

III.2.1. The facts are fully established					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	30/31	6/20	8/8	55/70
% of judgements	100	96.7	30	100	78.5

III.2.2. The facts are properly established					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	31/32	7/20	8/8	57/71
% of judgements	100	96.8	35.4	100	80.2

III.2.4. The facts irrelevant to decision making have not been explained					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	24/34	9/20	8/9	52/74
% of judgements	100	70.5	45	88.8	70.2

III.3 - EVIDENCE AND EVALUATION OF EVIDENCE

III.3.1 All the evidence that had been presented to the court have been evaluated					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	6/6	23/29	4/20	7/7	40/62
% of judgements	100	79.3	20	100	64.5

III.3.2 In determining the evidence to be presented at the main hearing, the court has considered the relevance, concentration and rationality (economy) of the evidence					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	7/7	18/29	10/20	2/3	37/59
% of judgements	100	62	50	66,,6	62.7

III.3.3. The court did not allow evidence to be presented for undisputed facts					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/6	18/28	10/20	6/6	39/60
% of judgements	83.3	64.2	50	100	68

III.3.4. The subject and scope of the findings of the expert witness, where they were required, were sufficiently clear and properly set out. The court asked relevant questions and there was no need for evidence to be supplemented.					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	8/8	12/30	15/20	7/8	42/66
% of judgements	100	40	75	87.5	63.6

III.3.9. Was there no explanation on why certain evidence was not assessed					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	7/7	25/29	9/20	8/8	49/64
% of judgements	100	86.2	45	100	76.5

III.3.10. The reasoning provides an explanation as to why and how the court came to a specific factual conclusion					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/7	14/29	11/20	7/8	37/64
% of judgements	71.4	48.2	55	87.5	57.8

III.3.11. The court rendered its decision applying the burden of proof rule					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	2/7	7/25	7/18	3/6	19/56
% of judgements	28.5	28	38.8	50	33.9

III.3.12. The court's ability to properly evaluate evidence has met the criteria					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	8/8	21/29	7/20	7/7	43/64
% of judgements	100	72.4	35	100	67.1

III.4 - QUALITY OF REASONING FROM THE POINT OF LEGAL ANALYSIS AND ANALYTICAL OPINION

III.4.1. The reasoning of the court decision addresses all facts and legal issues of the dispute					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	31/37	9/21	9/9	60/78
% of judgements	100	83.7	42.8	100	76.9

III.4.2. The court has clearly and sufficiently cited the relevant legal standards and correctly interpreted them					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	32/37	8/21	8/10	59/79
% of judgements	100	86.4	38	80	74.6

III.4.4. The court has taken into account equally the arguments of both parties					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	27/36	9/21	8/9	55/79
% of judgements	100	75	42.8	88.8	69.6

III.4.5. The court has not cited domestic case law, the case law of the European Court of Human Rights and other international courts					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	10/11	30/37	19/21	9/10	68/79
% of judgements	90.9	81	90	90	86

III.4.6. The second-instance decision contains a response to all the arguments of the appeal that were of decisive importance					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	4/4	5/11	1/3	4/4	14/22
% of judgements	100	45.4	33.3	100	63.6

III.4.7. The reasoning of the decision that reversed a first-instance decision contains clear instructions for the lower instance court					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	3/3	3/8	0/0	1/1	7/12
% of judgements	100	37.5	0	100	58.3

III.4.8. The quality of the reasoning of the court decision from the point of legal analysis and analytical opinion has met the criteria					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	33/37	9/21	10/10	63/79
% of judgements	100	89.1	42.8	100	79.7

III.4.9. The quality of consistency of the argumentation, its logic and intelligibility has met the criteria					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	33/37	7/21	10/10	61/79
% of judgements	100	89.1	33.3	100	77.2

III.4.10. The quality of the analysis of the applicability of a legal standard to established facts has met the criteria					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	32/36	7/21	7/10	57/78
% of judgements	100	88.8	33.3	70	73

III.4.11. The claims (if any) of violations to the European Convention on Human Rights and Fundamental Freedoms have not been pointed out					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	31/35	18/18	8/10	68/74
% of judgements	100	88.5	100	80	91.8

III.5 - DRAFTING A JUDGEMENT

III.5.1. The reasoning has been written legibly, divided into paragraphs that cover issues separate to others					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	36/37	17/21	10/10	64/78
% of judgements	100	97.2	80.9	100	82

III.5.2. The reasoning of the decision contains an organized and structured presentation of the issues and arguments					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	35/37	12/21	10/10	68/79
% of judgements	100	94.5	57.1	100	86

III.5.3. The reasoning has been written clearly and concisely, it is clear for laymen, not just lawyers					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	33/37	11/21	10/10	65/79
% of judgements	100	89.1	52.3	100	82.2

III.5.4. Short and clear sentences have been used in common words, while using legal terminology and avoiding the use of long sentences because of the risk of losing meaning and coherence in thought					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	34/37	13/21	9/10	67/79
% of judgements	100	91.8	61.9	90	84.8

III.5.5. The reasoning is grammatically correct together with spelling and the way it is written corresponds to the reputation of the court					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	37/37	18/21	10/10	76/79
% of judgements	100	100	85.7	100	96.2

III.5.6. The reasoning does not unnecessarily repeat the same claims and conclusions					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	34/36	18/20	10/10	73/77
% of judgements	100	94.4	90	100	94.8

IV - GENERAL ASSESSMENT OF THE QUALITY OF THE DECISION

Evaluation forms that contain the general assessment					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	11/11	30/37	21/21	10/10	72/79
% of judgements	100	81	100	100	91.1

Evaluation forms that contain the general assessment				
Decisions	**Below average**	**Average**	**Above average**	**Total**
	17/79	54/79	1/79	
% decisions	21.5	68.3	1.2	

General assessment (number of decisions)				
Level	**Below average**	**Average**	**Above average**	**Total**
Municipal FBiH	2/22	20/22	0	22/22
Cantonal FBiH	1/8	7/8	0	8/8
Basic RS	12/19	6/19	1/19	19/19
District RS	1/2	½	0	2/2
Basic BD	0	5/5	0	5/5
Appellate BD	2/5	3/5	0	5/5
The Court of BiH	0	7/7	0	7/7
Appellate Department of the Court of BiH	0	4/4	0	4/4

General assessment (% decisions)				
Level	**Below average**	**Average**	**Above average**	**Total**
Municipal FBiH	9	90.9	0	100
Cantonal FBiH	12.5	87.5	0	100
Basic RS	63.1	31.5	5.2	100
District RS	50	50	0	1001
Basic BD	0	100	0	100
Appellate BD	40	60	0	100
The Court of BiH	0	100	0	100
Appellate Department of the Court of BiH	0	100	0	100

Attachment 2.

TABULAR PRESENTATION OF CONCLUSIONS OF INTERNATIONAL MEMBERS OF THE EXPERT TEAM FOR QUALITY ASSESSMENT OF COURT DECISIONS

The total number of judgements assessed is 21 by the level of:

- Bosnia and Herzegovina- 5
- Federation of Bosnia and Herzegovina- 7
- Republika Srpska- 9
- Brcko District- 0

THE COURT RENDERING THE DECISION	TOTAL	%
Municipal/Basic Court	12	57.1
Cantonal/District Court	4	19
Appellate Court BD	0	0
The Court of BiH/Appellate Department of the Court of BiH	5	23,.8

DECISION INSTANCE	TOTAL	%
First-instance decision	14	66.6
Second-instance decision (appealed decision)	7	33.3

I - DECISION INTRODUCTION

I.1 Decision introduction contains complete data on parties, their representatives or agents					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	7/7	8/8	0/0	20/20
% of judgements	100	100	100	0	100

I.2 The decision introduction contains a complete and correct code of the matter of the dispute					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	0/5	1/7	1/8	0/0	2/20
% of judgements	0	14.2	12.5	0	10

I.3 The decision introduction contains the exact value of the dispute					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	3/6	6/9	0/0	14/20
% of judgements	100	50	66.6	0	70

I.4 Additional observation - use of the incorrect term "legal representative" for the representatives of legal entities					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	0	0	0	0	0

II - OPERATIVE PART OF THE DECISION

II.1 The operative part of the judgement is clear, specific and enforceable					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	6/7	8/9	0/0	19/21
% of judgements	100	84.7	88.8	0	90.4

II.2 A decision has been made on all motions and legal remedies					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	5/5	7/8	0/0	17/18
% of judgements	100	100	87.5	0	94.4

II.3 The judgements, in which the statements of claim have not been adopted in entirety, included the content of the denied or partially denied statement of claim					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	7/7	8/8	0/0	20/20
% of judgements	100	100	100	0	100

II.4 The operative part contains a decision on the partial denial of secondary claims, where the reasoning indicates that the claims were not upheld in full					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	2/5	4/4	0/6	0/0	6/15
% of judgements	40	100	0	0	40

II.5 The voluntary time limit to comply with the court's decision is correctly determined in the operative part					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	7/7	5/9	0/0	17/21
% of judgements	100	100	55.5	0	80.9

III.1 - MOTIONS OF THE PARTIES

III.1.1 The final motions of the parties have been clearly and fully explained					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	7/7	6/6	0/0	18/18
% of judgements	100	100	100	0	100

III.1.2 The statements made by the parties as to (relevant) facts on which they base their claims are properly and completely presented					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	7/7	6/6	0/0	18/18
% of judgements	100	100	100	0	100

III.2 - FACTS ESTABLISHMENT

III.2.1. III.2.1. The facts are fully established					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	5/5	6/7	0/0	16/17
% of judgements	100	100	85.7	0	94.1

III.2.2. The facts have been properly established					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	4/4	4/5	0/0	13/14
% of judgements	100	100	80	0	92.8

III.2.4. The facts irrelevant to decision making have not been explained					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	5/7	1/4	0/0	11/16
% of judgements	100	71.4	25	0	68.7

III.3 - EVIDENCE AND EVALUATION OF EVIDENCE

III.3.1 All the evidence that had been presented to the court have been evaluated					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	0/0	3/6	4/5	0/0	7/11
% of judgements	0	50	80	0	63.6

III.3.2 In determining the evidence to be presented at the main hearing, the court has considered the relevance, concentration and rationality (economy) of the evidence					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	0/0	3/5	2/3	0/0	5/8
% of judgements	0	60	66.6	0	62.5

III.3.3. The court did not allow evidence to be presented for undisputed facts					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	0/0	2/4	0/1	0/0	2/5
% of judgements	0	50	0	0	40

III.3.4. The subject and scope of the findings of the expert witness, where they were required, were sufficiently clear and properly set out. The court asked relevant questions and there was no need for evidence to be supplemented.					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	3/5	2/7	3/8	0/0	8/20
% of judgements	60	28.5	37.5	0	40

III.3.9. Was there no explanation on why certain evidence was not assessed					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	0/1	2/2	2/4	0/0	4/7
% of judgements	0	100	50	0	57.1

III.3.10. The reasoning provides an explanation as to why and how the court came to a specific factual conclusion					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	3/5	2/2	5/6	0/0	10/13
% of judgements	60	100	83.3	0	76.9

III.3.11. The court rendered its decision applying the burden of proof rule					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	2/2	3/3	2/2	0/0	7/7
% of judgements	100	100	100	0	100

III.3.12. The court's ability to properly evaluate evidence has met the criteria					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	2/2	5/6	0/0	12/13
% of judgements	100	100	83.3	0	92.3

III.4 - QUALITY OF REASONING FROM THE POINT OF LEGAL ANALYSIS AND ANALYTICAL OPINION

III.4.1. The reasoning of the court decision addresses all facts and legal issues of the dispute					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	5/7	7/7	0/0	17/19
% of judgements	100	71.4	100	0	89.4

III.4.2. The court has clearly and sufficiently cited the relevant legal standards and correctly interpreted them					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	3/3	6/7	4/4	0/0	13/14
% of judgements	100	85.7	100	0	92.8

III.4.4. The court has taken into account equally the arguments of both parties					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	5/6	5/5	0/0	15/16
% of judgements	100	83.3	100	0	93.7

III.4.5. The court has not cited domestic case law, the case law of the European Court of Human Rights and other international courts					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	4/5	4/6	6/6	0/0	14/17
% of judgements	80	66.6	100	0	82.3

III.4.6. The second-instance decision contains a response to all the arguments of the appeal that were of decisive importance					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	2/2	0/0	2/2	0/0	4/4
% of judgements	1000	0	100	0	100

III.4.7. III.4.7. The reasoning of the decision that reversed a first-instance decision contains clear instructions for the lower instance court					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	0/2	0/0	2/2	0/0	2/4
% of judgements	0	0	100	0	50

III.4.8. The quality of the reasoning of the court decision from the point of legal analysis and analytical opinion has met the criteria					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	4/5	6/8	0/0	15/18
% of judgements	100	**80**	75	0	**83.3**

III.4.9. The quality of consistency of the argumentation, its logic and intelligibility has met the criteria					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	5/6	5/7	0/0	15/18
% of judgements	100	83.3	71.4	0	83.3

III.4.10. The quality of the analysis of the applicability of a legal standard to established facts has met the criteria					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	5/6	5/7	0/0	15/18
% of judgements	100	83.3	71.4	0	83.3

III.4.11. The claims (if any) of violations to the European Convention on Human Rights and Fundamental Freedoms have not been pointed out					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	2/3	0/0	6/6	0/0	8/9
% of judgements	66.6	0	100	0	**88.8**

III.5 - DRAFTING A JUDGEMENT

III.5.1. The reasoning has been written legibly, divided into paragraphs that cover issues separate to others					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	6/7	6/8	0/0	17/20
% of judgements	100	85.7	75	0	85

III.5.2. The reasoning of the decision contains an organized and structured presentation of the issues and arguments					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	6/7	7/8	0/0	17/20
% of judgements	100	85.7	87.5	0	85

III.5.3. The reasoning has been written clearly and concisely, it is clear for laymen, not just lawyers					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	6/7	6/9	0/0	17/21
% of judgements	100	85.7	66.6	0	80.9

III.5.4. Short and clear sentences have been used in common words, while using legal terminology and avoiding the use of long sentences because of the risk of losing meaning and coherence in thought					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	3/7	4/9	0/0	12/21
% of judgements	100	42.8	44.4	0	57.1

III.5.5. The reasoning is grammatically correct together with spelling and the way it is written corresponds to the reputation of the court					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	2/2	7/7	2/2	0/0	11/11
% of judgements	100	100	100	0	100

III.5.6. The reasoning does not unnecessarily repeat the same claims and conclusions					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	5/7	7/8	0/0	17/20
% of judgements	100	71.4	87.5	0	85

IV - GENERAL ASSESSMENT OF THE QUALITY OF THE DECISION

Evaluation forms that contain the general assessment					
Level	**BiH**	**FBiH**	**RS**	**BD**	**Total**
Number of judgements	5/5	7/7	8/9	0/0	20/21
% of judgements	100	100	88.8	0	95.2

General assessment (number of decisions)				
Level	**Above average**	**Average**	**Below average**	**Total**
evaluation	2/20	12/20	6/20	20/20
% of judgements	10	60	30	100

General assessment (% decisions)				
Level	**Below average**	**Average**	**Above average**	**Total**
Municipal FBiH	3/6	3/6	0/6	6/6
Cantonal FBiH	0/1	1/1	0/1	1/1
Basic RS	3/6	3/6	0/6	6/6
District RS	0/20	2/2	0/2	2/2
Basic BD	0/0	0/0	0/0	0/0

Appellate BD	0/0	0/0	0/0	0/0
The Court of BiH	0/2	½	1/2	2/2
Appellate Department of the Court of BiH	0/3	2/3	1/3	3/3

General assessment (% decisions)				
Level	**Below average**	**Average**	**Above average**	**Total**
Municipal FBiH	50	50	0	100
Cantonal FBiH	0	100	0	100
Basic RS	50	50	0	100
District RS	0	100	0	100
Basic BD	0	0	0	0
Appellate BD	0	0	0	0
The Court of BiH	0	50	50	100
Appellate Department of the Court of BiH	0	66.6	33.3	100

Attachment 3.

TEXTUAL PRESENTATION OF CONCLUSIONS OF DOMESTIC MEMBERS OF THE EXPERT TEAM FOR QUALITY ASSESSMENT OF COURT DECISIONS

This review contains the conclusions of domestic members of the expert team for quality assessment of court decisions in civil proceedings. The conclusions have been classified according to the evaluation form sections, with the distinction made between joint conclusions (assertions confirmed in> 90% of decisions), majority conclusions (assertions confirmed in> 50% of decisions) and distinct conclusions (assertions confirmed in <50% of assessed decisions).

INTRODUCTORY PART OF A DECISION

Joint conclusions:

- decisions contain complete information about the parties, their representatives or agents,

Majority conclusions:

- the code of the matter of dispute is correctly cited in the introductory part,
- the value of the dispute is correctly cited in the introductory part,

Distinct conclusions:

- use of abbreviations instead of legal terminology,
- the term “legal representative” used for the representative of a legally incapacitated person,
- use of the term “legal representative” for a legal entity’s agent.

OPERATIVE PART

Joint conclusions:

- all claims or all remedies have been decided,

Majority conclusions:

- the operative part is clear, specific and enforceable,
- in judgements in which the claims were not granted in full, the content of the denied or partially denied claims was stated,

Distinct conclusions:

- operative parts contain a decision on the partial denial of secondary claims where the reasoning indicates that the claims were not upheld in full,
- incorrectly determined voluntary time limit to comply with the court’s decision, with the time limit starting from the day of receipt.

MOTIONS OF THE PARTIES

Majority conclusions:

- the final motions of the parties as well as the allegations of the parties regarding the facts on which they base their claims are set out clearly and completely,

Distinct conclusions:

- in a number of decisions, the content of the complaint and of the response to the complaint is copy/pasted in full in the reasoning or the entire content of the closing arguments is given, and this is particularly the case in the RS courts,

FACTS ESTABLISHMENT

Majority conclusions:

- fully and properly established state of facts, except in the RS where in a large number of judgements the state of facts was not established properly and completely,
- the facts irrelevant for decision-making were not elaborated.

EVIDENCE AND EVALUATION OF EVIDENCE

Majority conclusions:

- all pieces of evidence presented before the court were evaluated in decisions rendered by the courts in BiH, FBiH and BD, while in the RS there is a large number of decisions in which not all pieces of evidence were evaluated, either individually or in relation to other evidence,
- in determining the evidence to be presented at the main hearing, the court considered the relevance, concentration and rationality (economy) of evidence, although in FBiH, RS and BD there is a large number of decisions where this was not the case,
- the courts of BiH and BD did not allow the presentation of evidence related to undisputed facts, while the courts of FBiH and RS to a greater extent allowed the presentation of evidence related to undisputed facts,
- the subject and scope of the findings of the expert witness, where they were required, were sufficiently clear and properly set out. The court and the parties asked relevant questions and there was no need for evidence to be supplemented, although this was not the case in a number of decisions in FBiH,
- Where relevant, there was explanation given as to why certain pieces of evidence were not evaluated, but in the RS there is a large number of decisions where this was not the case,
- the reasoning provides an explanation as to why and how the court came to a specific factual conclusion, but in the RS and FBiH there is a large number of decisions where this was not the case,
- decisions of the Court of BiH, FBiH and BD met the criteria regarding the court's ability to properly evaluate evidence, while there is a large number of decisions in the RS that did not meet these criteria,

Distinct conclusions:

- the court rendered its decision applying the burden of proof rule.

QUALITY OF REASONING FROM THE POINT OF LEGAL ANALYSIS AND ANALYTICAL OPINION

Joint conclusions:

- the claims of violations of the European Convention on Human Rights and Fundamental Freedoms have not been pointed out,

Majority conclusions:

- the reasoning of court decisions at the level of BiH, FBiH and BD addresses all facts and legal issues, which is not the case in the RS where there is a number of decisions that do not address all facts and legal issues,
- the courts of BiH, FBiH and BD sufficiently refer to relevant legal norms and interpret them correctly, while this is not the case with a large number of decisions of the RS courts;
- the courts of BiH, FBiH and BD took into account equally the arguments of both parties,
- the courts generally do not cite the case law of domestic courts, or of the ECtHR or other international courts;
- second- instance decisions of the courts at the level of BiH and BD provide a detailed answer to all points of appeal that are decisive for decision-making, while this is not the case with the decisions of the courts in FBiH and the RS,
- second instance decisions of the courts at the level of BiH and BD reversing the first instance decisions contain clear instructions for first instance courts, while this is not the case with court decisions in FBiH. This information is not available for courts in the RS;
- adequate quality of reasoning of court decisions at the level of BiH, FBiH and the BD from the point of view of legal analysis and analytical opinion, while in the RS there is a large number of court decisions with inadequate quality of reasoning. The same applies to the consistency, logic, comprehensibility and the quality of the analysis of the application of the legal norm to the established facts.

JUDGEMENT DRAFTING

Joint conclusions:

- the reasoning is grammatically correct together with spelling and the way it is written corresponds to the reputation of the court, although a certain number of judgements from the RS shows otherwise,
- the reasoning does not unnecessarily repeat the same claims and conclusions,

Majority conclusions:

- the reasoning has been written legibly, divided into paragraphs that cover issues separate to others, while in the RS there is a large number of decisions that do not meet these standards,
- the reasoning of the decision contains an organised and structured presentation of the issues and arguments,
- the reasoning has been written clearly and concisely, it is clear for laymen, not just lawyers, while the judgements of the RS courts show a lesser degree of conformity to these standards.
- the sentences are short and clear with common words and legal terminology used without excessively long sentences thus avoiding the risk of losing the meaning and coherence of a line of thought, but the judgements of the RS courts are rated significantly lower here.

GENERAL ASSESSMENT OF DECISION QUALITY

- Most of the decisions assessed are rated as average (68.3), 21.5% below average, the largest number of which are the decisions of the RS basic courts, while only 1 decision in the sample is rated as above average (also a decision from a RS basic court).

THE TOTAL NUMBER OF JUDGMENTS ASSESSED: 79

ABOVE AVERAGE	AVERAGE	BELOW AVERAGE
1	54	17
1.2%	68.3%	21.5%

Attachment 4.

TEXTUAL PRESENTATION OF CONCLUSIONS OF INTERNATIONAL MEMBERS OF THE EXPERT TEAM FOR QUALITY ASSESSMENT OF COURT DECISIONS

This review contains the conclusions of international members of the expert team for quality assessment of court decisions in civil proceedings. The conclusions have been classified according to the evaluation form sections, with the distinction made between joint conclusions (assertions confirmed in> 90% of decisions), majority conclusions (assertions confirmed in> 50% of decisions) and distinct conclusions (assertions confirmed in <50% of assessed decisions).

INTRODUCTORY PART OF A DECISION

Joint conclusions:

- contains complete information about the parties, their representatives or agents,

Majority conclusions:

- the value of the dispute is in most cases correctly cited in the introductory part,

Distinct conclusions:

- the code of the matter of dispute is correctly cited in the introductory part.

OPERATIVE PART

Joint conclusions:

- the operative part of the judgement is clear, specific and enforceable,
- all motions and legal remedies are decided,
- in judgements in which the claims were not granted in full, the content of the denied or partially denied claims was stated,

Majority conclusions:

- the voluntary time limit is determined correctly,

Distinct conclusions:

- Operative parts contain a decision on the partial denial of secondary claims, where the reasoning indicates that the claims were not upheld in full.

MOTIONS OF THE PARTIES

Joint conclusions:

- the final motions of the parties are set out clearly and completely in the decisions,
- the allegations of the parties on which they base their claims clearly and completely set out in the decisions,

FACTS ESTABLISHMENT

Joint conclusions:

- fully and properly established state of facts,

Majority conclusions:

- the facts irrelevant for decision-making were not elaborated.

EVIDENCE AND EVALUATION OF EVIDENCE

Joint conclusions:

- the court rendered its decision applying the burden of proof rule,
- the court's ability to properly evaluate evidence has met the criteria.

Majority conclusions:

- all pieces of evidence presented before the court were evaluated,
- in determining the evidence to be presented at the main hearing, the court considered the relevance, concentration and rationality (economy) of evidence,
- where relevant, there was explanation given as to why certain pieces of evidence were not evaluated,
- the reasoning provides an explanation as to why and how the court came to a specific factual conclusion,

Distinct conclusions:

- the court did not allow evidence to be presented for undisputed facts,
- the subject and scope of the findings of the expert witness, where they were required, were sufficiently clear and properly set out. The court asked relevant questions and there was no need for evidence to be supplemented.

QUALITY OF REASONING FROM THE POINT OF LEGAL ANALYSIS AND ANALYTICAL OPINION

Joint conclusions:

- the court has clearly and sufficiently cited the relevant legal norms and correctly interpreted them,
- the court took into account equally the arguments of both parties,
- the second-instance decision addresses all the arguments of the appeal that were of decisive importance,

Majority conclusions:

- the reasoning of court decisions addresses all facts and legal issues,
- in general, the courts have not cited domestic case law, the case law of the European Court of Human Rights or other international courts,
- the reasoning of the decision that reversed a first-instance decision contains clear instructions for the lower instance court,
- the quality of the reasoning of the court decision from the point of legal analysis and analytical opinion has met the criteria,
- the quality of consistency of the argumentation, its logic and intelligibility has met the criteria
- the quality of the analysis of the applicability of a legal standard to established facts has met the criteria,
- the claims (if any) of violations of the European Convention on Human Rights and Fundamental Freedoms have not been pointed out.

JUDGEMENT DRAFTING

Joint conclusions:

- The reasoning is grammatically correct together with spelling and the way it is written corresponds to the reputation of the court,

Majority conclusions:

- The reasoning has been written legibly, divided into paragraphs that cover issues separate to others,
- the reasoning contains an organised and structured presentation of the issues and arguments,
- the reasoning is written clearly and concisely, it is clear for laymen, not just lawyers,
- the sentences are short and clear with common words and legal terminology used without excessively long sentences thus avoiding the risk of losing the meaning and coherence of a line of thought (just over half of the decisions),
- the reasoning does not unnecessarily repeat the same claims and conclusions.

THE TOTAL NUMBER OF JUDGMENTS ASSESSED IS 21

NUMBER OF JUDGMENTS CONTAINING A GENERAL ASSESSMENT IS 20

General assessment of decision quality				
Rating scale	**Above average**	**Average**	**Below average**	**Total**
	2/20	**12/20**	**6/20**	**20/21**
% of judgements	**9.5**	**57.1**	**30**	**95.2**

Attachment 5.

Example of good practice

BOSNIA AND HERZEGOVINA
XXX
XXX
Number: XXX
Brcko, 11 July 2019

IN THE NAME OF XXX!

XXX Court XXX, sitting in a panel comprising judge S1, a presiding judge, and S2 and S3, members of the panel, adjudicating in the legal matter brought in this court by plaintiff D.Z. from B., represented by attorney D.B., a lawyer from B1, against defendant Z.f., B1, represented by M.V., the employee of the defendant, requesting the payment of compensation for damage in the value of the matter in dispute of BAM 13,109.70, deciding the appeal filed by the plaintiff against the judgment of the Basic Court XXX, number XXX of 07 December 2018, reached in the panel session, held on 11 July 2019, the following

JUDGMENT

I

The appeal filed by the plaintiff D.Z. from B. is PARTLY ACCEPTED and the judgment of the Basic Court XXX, number XXX of 07 December 2018 is REVERSED in paragraph one (1), paragraph two (2) and paragraph five (5) of the operative part as follows:

The defendant, Z.f., from B1, is ORDERED TO pay the plaintiff D.Z. from B. in non-material damages as follows:

- for mental distress suffered as a result of reduced major life activity, the amount of BAM 7,500.00 (seven thousand five hundred and 00/100 convertible marks),

- for physical pain suffered, the amount of BAM 1,300.00 (one thousand three hundred and 00/100 convertible marks),

- for fear suffered, the amount of BAM 880.00 (eight hundred eighty and 00/100 convertible marks),

- for mental distress suffered as a result of disfigurement, the amount of BAM 1,500.00 (one thousand five hundred and 00/100 convertible marks),

with a statutory default interest on all amounts awarded, calculated from the date of the judgment, 07 December 2018, to the date of final payment, payable within 30 days from the date of receipt of this judgment on penalty of enforcement action.

The defendant, Z.f. from B1 is ORDERED TO compensate the plaintiff D.Z. from B for the costs of civil proceedings in the amount of BAM 1,448.48 (one thousand four hundred

forty-eight and 48/100 convertible marks) within 30 days from the date of receipt of this judgement under penalty of enforcement action.

II

The rest of the appeal filed by plaintiff D.Z. from B, is DISMISSED as unfounded and the judgment of the Basic Court XXX, number XXX, of 07 December 2018, in the challenged part of paragraph four (4) of the operative part, is AFFIRMED.

III

The judgment of the Basic Court XXX, number XXX of 07 December 2018, in paragraph three (3) of its operative part and in one part of paragraph four (4) of the operative part dismissing the plaintiff's claim for compensation of costs of transportation by car for purposes of medical treatment in the amount of BAM 250,05, remains unmodified.

Reasoning

The Basic Court XXX ruled in its judgment number XXX of 07 December 2018 (hereinafter: the first instance judgment) as follows:

"1.The defendant is ORDERED to pay the plaintiff for non-material damage attributable to a harmful event that took place on 05 February 2017, the amount of BAM 4,474.00 as follows: for mental distress suffered as a result of reduced major life activity, the amount of BAM 3,000.00, for physical pain suffered, the amount of BAM 520.00, for fear suffered, the amount of BAM 354.00 and for mental distress suffered as a result of disfigurement, the amount of BAM 600.00, all amounts being awarded with a legal default interest calculated from 07 December 2018 to the date of final payment, payable within 30 days from the date of receipt of the judgment on penalty of enforcement action.

2. The amounts claimed by the plaintiff in compensation for non-material damage attributable to the harmful event on 05 February 2017 in excess of the awarded compensatory amounts are DISMISSED as unfounded.

3. The plaintiff's claim for default interest on awarded amounts for the period between 05 February 2017 and 07 December 2018 is DISMISSED as unfounded.

4. The plaintiff's claim for compensation for material damage (costs of medical treatment in the amount of BAM 829.65, costs of home care in the amount of BAM 800,00 and costs of transportation by car for purposes of medical treatment in the amount of BAM 250,05) attributable to the harmful event that took place on 05 February 2017, with statutory default interest from 05 February 2017 to the final payment, is DISMISSED as unfounded.

5. The defendant is ORDERED to compensate the plaintiff for costs of civil proceedings in the amount of BAM 505.60 within 30 days from the date of receipt of the judgment under penalty of enforcement action."

Although she stated in the introduction that she challenged the first instance judgment in whole, plaintiff D.Z. from B (hereinafter: the plaintiff), as it arises from the content of the appeal, challenged a part of the first-instance judgment in paragraph one (1), paragraph two (2), paragraph four (4) and paragraph five (5) (of the operative part) on grounds of "significant" violations of the civil procedure provisions, improper and incomplete establishment of facts and improper application of substantive law, proposing that this court uphold the appeal and reverse the first instance judgment "by awarding a correctly determined amount of non-material and material damages in favour of the plaintiff and to order the defendant to compensate the plaintiff for costs of the first-instance civil proceedings, correctly calculated, under the list

of expenses in the court file, together with the default interest beginning from the date of judgment to the final payment as well as to order the defendant to compensate the plaintiff for the costs of making this appeal in the amount of BAM 1,053.00, including the appeal fee."

The defendant Z.f., B1. (hereinafter: the defendant) did not respond to the plaintiff's appeal.

Having reviewed the first instance judgment under the provision of Article 330 of the Civil Procedure Law XXX ("Official Gazette XXX", 8/09, 52/10 and 27/14, hereinafter: the Civil Procedure Law), this court has assessed that the plaintiff's appeal is partly founded and ruled as stated in the operative part of this judgment on the following grounds:

The subject-matter of deliberation and decision making in this civil proceeding is the finally determined claim filed by the plaintiff seeking, in addition to the amount of BAM 11,673.97 paid in an out-of-court proceedings, that the remaining amount of damages be compensated to her, as follows: for mental distress suffered as a result of reduced major life activity, the amount of BAM 7,500.00, for physical pain suffered, the amount of BAM 1,300.00, for fear suffered, the amount of BAM 880.00 and for mental distress suffered as a result of disfigurement, the amount of BAM 1,500.00, for costs of medical treatment, the amount of BAM 829.65, for home care, the amount of BAM 800.00 and for costs of transportation by car for purposes of medical treatment, the amount of BAM 250.05, seeking also that a statutory default interest be awarded from the date of the harmful event and an award of costs of proceedings.

The plaintiff based her claim on serious, life threatening injuries she had sustained on 05 February 2017, around 20.20 hours in B., at B.S. street, in a traffic accident caused by J.P. who had operated a motor vehicle without insurance coverage.

The defendant did not deny that the plaintiff had sustained serious and life threatening injuries in a traffic accident caused by J.P. who had operated a vehicle without insurance coverage or that he had paid her a total amount of BAM 11,673.97 in an out-of-court settlement but denied the claim by saying that by paying the amount of BAM 11,673.97 in an out-of-court settlement he had compensated her for the damage caused since the plaintiff's contribution to the damage done was 50%, and denied also the claim for compensation for material damage by alleging that the claim was not proven.

In deciding the claim, starting from the factual allegations on which the plaintiff based her claims and factual allegations and arguments by which the defendant denied her claims and calling upon the findings of deliberation (the evidence that should confirm or deny their claims and allegations):

that on 05 February 2017 in B., in B.S. street, a traffic accident involved J.P. from B. as a driver of the passenger motor vehicle "Passat", license plates XXX (registration and insurance of the passenger motor vehicle expired on 02 November 2016), and the plaintiff as a pedestrian,

that the driver of the above-said vehicle, J.P., was found guilty by a judgment of the Basic Court XXX, number XXX of 09 February 2018, for a serious criminal offence against road safety,

that the plaintiff sustained in the traffic accident serious bodily injuries that manifested in a lacerated and contused injury on the right side of her thorax, rib rupture on the right side, rupture of the right lateral extension of the left thoracic vertebrae, rapture of the right blade bone, rapture of the outer end portion of the right blade bone, rapture of nose bones, rapture of the right half of upper jawbone, injuries to soft tissue structures in the area of right eye and right cheek, with multiple raptures of the bones of the right eye socket and abrasion and cuts of eyelids and the skin of the face,

that the plaintiff (via an attorney) submitted on 22 June 2017 to the defendant a claim for damages to be decided out-of-court,

that the defendant obtained an opinion from doctor J.Z. (medical doctor for an insurance company) who established that: the plaintiff has reduced major life activity by 30%, due to injuries sustained, the plaintiff suffered from high pain intensity during seven (7) days, moderate pain intensity during thirty (30) days and low pain intensity during ninety (90) days, that due to injuries sustained the plaintiff suffered from high fear intensity during seven (7) days, moderate fear intensity during thirty (30) days and low fear intensity during ninety (90) days, the plaintiff sustained moderate disfigurement, the plaintiff needed home care in the course of three (3) months (of which she spent two months in hospital so her entitlement to home care services could be approved for one month) and that the costs of medical treatment in the amount of BAM 777.94 as claimed by the plaintiff could also be approved,

that the defendant obtained an opinion in the out-of-court liquidation of damages from S.Z., a transportation engineer, who found the injured party's (plaintiff's) improper and unlawful conduct during the harmful event as she had walked along the right edge of the road, not on the sidewalk along the right-hand side of the road,

that the defendant in an out-of-court proceeding (on the basis of the opinion by a medical doctor from an insurance company dated 02 July 2017 and 10 August 2017) assessed that the plaintiff, in accordance with orientational criteria XXX of the court XXX, was entitled to compensation for material and non-material damage in the total amount of BAM 23,347.94 as follows: for mental distress attributable to reduced major life activity, in the amount of BAM 15,000.00, for physical pain suffered, in the amount of BAM 2,600.00, for fear suffered, in the amount of BAM 1,770.00, for mental distress attributable to disfigurement, in the amount of BAM 3,000.00, for costs of medical treatment, in the amount of BAM 777.00, and for home care services, in the amount of BAM 200.00 and that the plaintiff contributed to the harmful event and ensuing damage by 50%,

that the defendant (in an out-of-court proceeding, prior to the initiation of a civil proceeding), having concluded that the plaintiff contributed to the harmful event and ensuing damage by 50%, paid the plaintiff "for an undisputed portion of damage" the amount of BAM 11,673.97 (on 26 July 2017 the amount of BAM 7,288.97 and on 15 August 2017 the amount of BAM 4,385.00),

that the plaintiff, dissatisfied with an outcome of the out-of-court proceeding (she does not accept her own contribution to the harmful event), filed this complaint by which she requests the payment of compensation for non-material and material damage in the amount of the remaining amount of BAM 11,673.97 which she increased, for the portion referring to material damage, by a new pleading filed on 26 December 2017, requesting the amount of BAM 829.65 for costs of medical treatment and the amount of 800 KM for home care services and included in the same pleading of 26 December 2017 the costs of transportation by her car for purposes of medical treatment in the amount of BAM 250.05,

since this dispute was launched "solely" for the purpose of clarifying whether "the plaintiff contributed to the harmful event (as claimed by the defendant since the injured party crossed the road in a prohibited location) or not (as claimed by the plaintiff) and if she was, what the degree of her contribution was", the first instance court focused the proceeding in that direction,

and, since "civil liability is broader than criminal liability and since it is possible in this civil proceedings to establish other facts which were not adjudicated in the earlier criminal proceedings (so long as those facts are not in contradiction with the operative part of the criminal judgment of guilty)",

the first instance court found that "the plaintiff's contribution to the occurrence of the damage exists indeed, since having crossed the road, she continued walking in the same (right) direction as driver J.P. (although she should have walked along the left edge of the road in the direction of movement, wearing a reflective safety vest) or along the sidewalk, and this was when the accident happened" and that she was 30% at fault for the accident,

as the plaintiff requests the payment of the remaining amounts of non-material damages all the above forms of which "under the court's opinion as explained above, she is entitled to, although in smaller amounts than requested (because the court found that the plaintiff's contribution to the damage was not 50% but 30% and by reason of the payment of the undisputed portion of the compensation)", the first instance court, taking all that into account, i.e. the plaintiff's 30% responsibility for the accident, the amounts paid in an out-of-court settlement, the intensity and length of physical pain and fear, the degree of reduction of major life activity, the degree of disfigurement, and that under Article 277 of the Law of Obligations, she is not entitled to default interest on awarded amounts of non-material damages from the date of the harmful event, but from the date of judgment, the first instance court decided as in paragraphs one (1), two (2) and three (3) of the operative part of the first instance judgment,

and, as "the first instance court could not determine accurately from the bill for the medication bought (nor does it have professional knowledge to make such determination) that the medication was required and generally adequate for treatment from the consequences of the traffic accident at issue" and as "it does not consider the claimed cost of home care services in the amount of BAM 800.00 to have been proved either in terms of entitlement or the amount, when the existence of such cost does not arise from the plaintiff's statement or any physical evidence" and as "the plaintiff has not proved that presented fuel bills could be linked directly to the damage caused or the harmful event (the court attempted to clarify in hearings the facts and establish the existence and amount of material damages, but the plaintiff explicitly rejected to propose adequate evidence to prove it)", the first instance court had no basis for awarding such forms of damages requested in the claim, and "by applying the rules governing the burden of proof by reason of incomplete factual basis / no fact, no entitlement", it decided as in paragraph four (4) of the operative part of the first instance judgment,

while the first instance court decided the costs of civil proceedings by applying the provisions of XXX of the relevant Republika Srpska Tariff Rates for Attorney Services from 2000, and the rules governing the procedural offsetting of costs in proportion to the success of parties to the civil proceeding in individual phases of the proceeding.

These are in essence the reasons for which the first instance court decided as in the operative part of its judgment.

Dissatisfied with the first instance judgment, the plaintiff claims in her appeal, through all three grounds for appeal, that the first instance court, by reason of its erroneous assessment of evidence, drew erroneous conclusions about well-foundedness of the claim, while it should have found, through proper assessment of evidence, that she did not contribute to the harmful event and ensuing damage, and by applying properly the provision of Article 192 (shared responsibility), the provision of Article 185 (pecuniary compensation for material damage) and provision of Article 200 (pecuniary compensation for non-material damage) of the Law of Obligations taken over from the former SFR YU, should have awarded her the remaining amount of non-material damages as well as material damages in view of the fact that "the defendant admitted in the out-of-court proceedings her entitlement to the compensation for material damage attributable to home care services in the amount of BAM 200.00 and her entitlement to costs of medical treatment in the amount of BAM 777.00 (and paid her in the out-of-court proceedings those amounts reduced by 50%)".

This court has found that the first instance decision dismissing the plaintiff's claim for the payment of compensation for material damage attributable to home care services and costs of medical treatment is correct, while the finding of the first instance court that the plaintiff contributed to the harmful event and damage and thereby the first instance court decision which, by taking into account her contribution to the accident of 30%, ordered the defendant to compensate her for non-material damage in the total amount of BAM 4,474.00, are not correct and the plaintiff has challenged, on good grounds, the correctness and legality of the first instance judgment in that part.

The reason is that regarding the plaintiff's allegation in the appeal against the first instance judgment that "she was paid in the out-of-court proceeding 50% in material damages for home care services and costs of medical treatment" which is why she believes that the first instance court should have awarded her the remaining amount, increased by the amount claimed in the pleading of 26 December 2017, this court (like the first instance court) has found that the presented evidence provided no grounds for the court to award those forms of material damages.

Namely, compensation for damage in the form of monetary rent from the provision of Article 195 of the Law of Obligations includes (among other) compensation for costs of home care services and costs of medical treatment. The right to monetary rent on this basis is given to the persons for whom a medical expert witness established the need for home care and the determining factors for establishing this right are the seriousness of an injury and in relation to it also seriousness of the health condition of an injured person, the injured person's mobility and ability to take care of themselves.

It is true that the defendant admitted in the out-of-court proceedings the plaintiff's right to "compensation on the basis of the presented bills in the amount of BAM 777.94" and the right to "compensation for home care services for one month in the amount of BAM 200.00" and that he paid her 50% of the above-said amounts. However, in a situation in which he clearly denied the plaintiff's claims in these civil proceedings, the plaintiff had a duty to propose and present evidence to prove the real need and amount of those forms of material damages (for example, by hiring an expert witness of relevant profession or an orthopaedic surgery expert witness to provide an opinion, etc.).

Accordingly, when a party to proceedings claims something, he or she must prove it, which means that he or she has to propose to the court adequate evidence to prove an allegation and to present that evidence in court, while the court assesses whether an allegation is relevant from the aspect of deciding the claim and whether formal requirements for presentation of proposed evidence have been met. As the plaintiff failed to do that (she did not present adequate evidence to prove grounds and amounts of those forms of damages) and as the facts from the reasoning of the first instance judgment, established on the basis of evidence (not) presented to the court, do not provide arguments which could be used to assess the grounds and amount of the claim requesting compensation for home care services and costs of medical treatment, the plaintiff's insistence that these forms of material damages be awarded is unfounded.

Also, the plaintiff's allegations made in the appeal challenging the decision on the costs of proceedings, when she claims that the first instance court, when deciding the costs of proceedings, should have applied the Republika Srpska Tariff of Fees and Recovery of Disbursements to Attorneys ("Official Gazette of the Republika Srpska" 68/05), that her legal representative – attorney- is entitled to compensation for travel costs between B1.-B.-B1., and the right to recovery of 25% of the lump-sum fee, for being absent from the office during the hearings in these civil proceedings, and for costs of drafting the claim and an objection in out-of-court proceedings.

First of all, the plaintiff's claim in the appeal that the first instance court, when deciding the costs of proceedings, should have applied the Republika Srpska Tariff of Fees and Recovery of Disbursements to Attorneys ("Official Gazette of the Republika Srpska" 68/05) because the first instance court calculated the costs of a fee to the lawyer (the plaintiff's legal representative) for procedural actions under XXX relevant Tariff of Fees and Recovery of Disbursements to Attorneys in the Republika Srpska ("Official Gazette of the Republika Srpska" 45/00 – hereinafter AT RS) applied by courts XXX on the basis of the XXX Order of 15 July 2003 (the correctness of such actions of courts in XXX was confirmed also by the Constitutional Court of Bosnia and Herzegovina in its rulings, e.g. the ruling number XXX of 29 September 2006).

The plaintiff's allegations made in the appeal that the first instance court should have approved her claim requesting compensation for travel costs of her attorney incurred by traveling between B1.-B.-B1. in his own car and a fee to the attorney for being absent from the office. Namely, the plaintiff could have hired an equally qualified legal representative (lawyer) from the area of XXX in which case she would have avoided the above-mentioned travel costs incurred by the use of a private vehicle, since travel costs of a lawyer whose seat is outside the area of the court in which a civil proceeding is conducted is entitled only to the recovery of the portion of the costs which the party to proceedings would have incurred if the party had been represented by the lawyer whose seat was in the place of the court, unless such costs are justified in terms of the provision of Article 120, paragraph 1 of the Law on Civil Procedure, which is not the case in the current proceedings (the correctness of such treatment of attorney's fees by the courts was confirmed and a harmonised legal interpretation approved at the Civil Case Law Harmonisation Panel involving representatives of the Court of Bosnia and Herzegovina, the Supreme Court of the Federation of Bosnia and Herzegovina, the Supreme Court of the Republika Srpska and the Court of Appeals of the Brcko District of Bosnia and Herzegovina, held in Sarajevo on 30 January 2014, and also by the Constitutional Court of Bosnia and Herzegovina in its ruling XXX of 11 January 2017). Also, the first instance court rightfully dismissed the claim seeking compensation to the legal representative – lawyer for his absence from the office since the above-mentioned hearings held in the first instance court, at which the plaintiff's lawyer was present, did not last more than an hour each.

The plaintiff's allegation made in the appeal that "it is not clear whether the court calculated a 25% lump sum fee as part of the awarded costs that a lawyer is entitled to under Tariff number 12" is also unfounded because a lawyer, under the provision of Article 2 of Tariff number 12 of AT RS is entitled to the lump sum fee only for ancillary legal activities undertaken during the proceedings which they clearly state (specify) and as no ancillary legal activity was clearly stated (specified) in the list of expenses for which a lump-sum fee is sought nor was it proven that such costs were incurred, she is not entitled to compensation for such costs.

Equally unfounded is the allegation made in the plaintiff's appeal that "the court, when deciding the costs of proceedings, did not award costs in favour of the plaintiff for making the claim (out-of-court claim) seeking damages or costs for writing an objection to the decision on the claim" because the expenses of the plaintiff in the proceeding attempting to reach a settlement with an insurance company incurred by a lawyer are not costs in terms of the provision of paragraph 1, Article 116 of the Law on Civil Procedure and are not part of the costs of civil proceedings on the part of the plaintiff as it was not about an attempt to reach a court settlement nor are they costs related to the proceedings.

Since the plaintiff failed to prove, that is, failed to propose and present adequate evidence to the court to prove that an award of claimed amounts of material damages for home care services and medical treatment would be well-founded and as the plaintiff's allegations about the aforementioned claimed costs of civil proceedings are unfounded, that part of the plaintiff's appeal is dismissed as unfounded and the challenged part of paragraph four (4) of

the operative part of the first instance judgment is affirmed under the provision of Article 335 of the Law on Civil Procedure XXX.

However, this court has found the plaintiff's allegations made in the appeal against the first instance judgment, denying the first instance court's finding of her contribution to the harmful event and damage well-founded.

In this regard, we should start from the provision of Article 192 of the Law of Obligations prescribing that the injured party who contributed to the occurrence of damage or to the higher level of damage than it would have been otherwise, is entitled only to a proportionately reduced compensation (paragraph 1) and when it is not possible to establish the portion of the damage caused by the injured party's action, the court awards damages taking into consideration the circumstances of the case.

Under this provision of the obligatory law, it is necessary to assess in every concrete case whether an injured party contributed with their actions to the occurrence of the damage, which is the reason why shared responsibility exists only if an injured party had a share in the occurrence of the damage or contributed to a higher level of damage, which means, if there is a causal link between the injured party's action or inaction and a certain portion of the damage suffered.

The contribution of the plaintiff (injured party) to the traffic accident is found by the first instance court in "the plaintiff continuing to walk in the same (right) direction, having crossed the road, like driver J., (although she should have moved along the left edge of the road in the direction of movement, wearing a reflective safety vest or along the sidewalk)".

This court has assessed such legal position of the first instance court as erroneous.

The reason is that in a situation in which the driver of the private motor vehicle "Passat", licence plates XXX, J.P., was declared guilty by the judgment of the Basic Court XXX, number XXX of 09 February 2018 for a serious criminal offence against road safety "because by driving from the direction of settlement G. towards settlement I, being aware that he was driving under the influence and that he acted against traffic rules and that by doing so, he put road traffic and human lives …. in jeopardy, operating that motor vehicles while heavily under the influence of alcohol, with blood alcohol content of 2.42 g/kg, obviously unable to operate the vehicle safely, he failed to notice pedestrian D.Z. on time while she was walking along the road in the same direction, which was the reason why the right front corner of the "VW Passat" vehicle hit the pedestrian in an upright body position, turned towards the vehicle with the right back outer part of her body, with the left foot stepping onto the sidewalk, and then hitting against the front windshield with the right side of head and face, when she was thrown onto the ground…., causing her life threatening bodily injuries…" and since the provision of Article 12, paragraph 3 of the Law on Civil Procedure prescribes that in a civil proceeding, regarding the existence of a criminal offence and criminal liability of the perpetrator, the court is bound by a final judgment of a criminal court declaring the defendant guilty, this court has found that the plaintiff, with the allegations made in the appeal, calls into question the finding of the first instance court in the part referring to her responsibility for the road accident and damage.

For, the findings from the operative part of the final and binding criminal judgment of guilty by the Basic Court XXX, number XXX of 09 February 2018, are to be considered as formal legal truth by the civil court which is bound by positive findings from the criminal judgment of guilty which represent elements of a criminal offence and criminal liability of the person convicted, that is, the civil court is bound by the factual description of the criminal offence established in the final criminal judgment.

As the findings from the above-said criminal judgment indicate that "the plaintiff walked along the road in the same direction as the passenger motor vehicle "VW Passat", with her left

foot stepping onto the sidewalk", it follows that it is an erroneous conclusion of the first instance court that the plaintiff contributed to the traffic accident by "continuing" to walk in the same, right direction as driver J. after she had crossed the road.

That such a conclusion of the first instance court (that the plaintiff, having crossed the road, continued to walk in the same direction) is erroneous, is indicated also by some bodily injuries which the plaintiff (as an injured party) sustained in the traffic accident (all raptures and injuries are on the right side of her body). For that reason and bearing in mind the positive findings from the criminal judgment of guilty as well as the statement which the plaintiff gave in the civil proceedings (in which the first instance court placed trust in general, although not in the part of the statement referring to the purchase of medication, fuel and home care services by reason of vagueness and implausibility), this court has found that at the critical moment, the plaintiff, indeed, having paid attention to what was happening on the road (she looked left and right), started crossing the road at the part of the road where there was no crosswalk marked within 100 meters, walking in a straight line (which was a correct way to cross the road), not diagonally (crossing the road diagonally is not correct and takes longer to cross the road), otherwise, (if she had walked diagonally, not in a straight line), she would have sustained injuries on the left side of her body, and that the way she acted was in accordance with the provision of Article 108 of the Law on the Bases of Road Traffic in Bosnia and Herzegovina ("Official Gazette of Bosnia and Herzegovina, 6/06, 75/06, 44/07, 84/09, 48/10, 18/13 and 8/17 – hereinafter ZOOBS). Under this provision, pedestrians shall cross the road and bike paths carefully, taking the shortest route, after they have made sure before they start to cross that they cross the road safely on a marked zebra crossing or through a specially built pedestrian crossing or pedestrian tunnel, and pedestrians must cross the road on such crossings or tunnels if they are not away from them more than 100 m.

Under such circumstances and bearing in mind the findings from the above-said criminal judgment that driver J.P. operated private motor vehicle "VW Passat" under the influence (blood alcohol content of 2.42 g/kg), heavily under the influence of alcohol, obviously unable to operate the vehicle safely, and that he did not notice pedestrian D.Z. (the plaintiff in this case) on time, and the fact that J.P. did not adjust speed of the private motor vehicle "VW Passat", that he did not operate the vehicle with particular attention and without counting that pedestrians could appear suddenly, in other words, he did not drive carefully in order to be able to stop the engine and allow the pedestrian to cross the road as it was the section of the road in front of a shop where pedestrians are expected to appear suddenly and where there is no marked crossing within 100 meters and the fact that there was no sidewalk along the right side of the road (where the shop is located), i.e. that the sidewalk is along the right side of the road (that the plaintiff tried to reach), this court has found that there is no contribution by the plaintiff (as a pedestrian) to the harmful event, on the contrary, that the driver who operated the private motor vehicle "VW Passat", J.P., was solely responsible for the harmful event.

Accordingly, the plaintiff's appeal in that part is partly accepted under the provision of Article 338 of the Law on Civil Procedure XXX and reverse the first instance judgment in paragraph one (I) and decide as in the operative part of this judgment.

Since the provision of Article 130 of the Law on Civil Procedure XXX prescribes that the court of appeals, if it reverses the appealed decision, will determine the costs of the whole proceedings, and as the first instance judgment is partly reversed, the decision on the costs of the entire proceedings from paragraph five (5) of the operative part is also reversed and the defendant is ordered, under the provision of Article 129, paragraph 2 of the Law on Civil Procedure, to compensate the plaintiff for the costs of proceedings in the amount of BAM 1,488.48.

As regards the value of the dispute in the amount of BAM 11,668.97 (which the plaintiff specified in her claim), under the provision of Article 2, Tariff number 2 of AT RS, the plaintiff

is entitled to the cost of the lawyer's fee for making a claim in the amount of BAM 200.00, increased by VAT in the amount of BAM 34.00, since the plaintiff's legal representative D.B. submitted a proof that he is a VAT payer (a VAT certificate), and under Tariff number 1, item 1 of the Law on Court Fees and Tariff number 1, item 1 ("Official Gazette XXX", 5/01, 12/02 and 23/03 – hereinafter the Law on Court Fees), the plaintiff is also entitled to compensation for the cost of fee for filing a complaint in the amount of BAM 200.00.

As regards the procedural activities undertaken after she increased the claim in her pleading of 26 December 2018 to BAM 13,059.70, the plaintiff is entitled, under the provision of Article 2, Tariff number 2 of AT RS, to compensation for costs of lawyer's fee for his appearance at a preliminary hearing held on 17 January 2018 in the amount of BAM 200,00, increased by VAT in the amount of BAM 34.00, for his appearance at the main hearings held on 01 June 2018 and 06 December 2018 in the amount of BAM 200.00 for each appearance at the hearing, increased by VAT in the amount of BAM 34.00 and under Tariff number 2, paragraph 1 of the Law on Court Fees, the plaintiff is also entitled to compensation for the cost of judgment fee in the amount of BAM 200.00. As the plaintiff's success in this phase of proceedings relative to the value of the dispute in the amount of BAM 13,059.70 is 85.60% since the defendant is ordered by this judgment to pay her the amount of BAM 11,180.00, the plaintiff is entitled, for the above items, to BAM 772.11 (or 85.60% of the amount of compensation for legal representation in the preliminary hearing and the main hearings and judgment fees) while, bearing in mind her success in the appellate proceedings (BAM 6,706.00), she is entitled to compensation for the cost of lawyer's fee for making an appeal, increased by VAT in the amount of BAM 282,37 (80.45% of BAM 351.00).

Therefore, the plaintiff is awarded compensation for the costs of civil proceedings in a total amount of BAM 1,488.48.

On the basis of above, it has been decided as in the operative part hereinabove.

PRESIDING JUDGE

S1

Attachment 6.

Example of bad practice

BOSNIA AND HERZEGOVINA
XXX
BASIC COURT XXX
No: XXX
B., 09 September 2015

IN THE NAME OF XXX!

The Basic Court of XXX, sitting with judge S1, adjudicating in the legal matter of the plaintiffs Đ.C, daughter of D., personal identity number: XXX, L. bb., B., J. A., son of D., personal identity number: XXX, B., Street Lj. K. No XXX., J. D., son of D., personal identity number: XXX B., Street Lj. K. No XXX. and S. Lj., daughter of D., personal identity number: XXX, all represented by an authorized representative P.B., attorney from B., against the defendant J.P., son of R., personal identity number: XXX, G. bb., B., represented by an authorized representative P.B., attorney from B., requesting determination of the value of the matter in dispute of BAM 20,000.00, following the oral, public and main hearing, held on 09 September 2015, made the following

JUDGMENT

The plaintiffs' claim reading as follows:

"IT IS ESTABLISHED that the inheritance claim of defendant J.P., son of R. is settled in terms of the inheritance share after the death of the deceased J.R., son of P. by means of a deed of gift for real property designated as cadastral unit No XXX, field, class 5 'B.1' with an area of 16,612 sqm registered in the Cadastral Register under No: XXX, cadastral municipality S. and real property designated as cadastral unit No XXX consisting of a residential building 1 with an area of 72 sqm, a business building with an area of 75 sqm, an outbuilding 3 with an area of 17 sqm and a yard with an area of 232 sqm, with the total area of 386 sqm and cadastral unit No. XXX with an area of 2 sqm, registered in the Land Register No. XXX, cadastral municipality B.2.

IT IS ESTABLISHED THAT plaintiffs Đ.C. daughter of D., J.A., son of D., J.D., son of D. and S.Lj., daughter of D. have a right to ownership 1/4 each of the real property registered in the Cadastral Register as No. XXX, cadastral municipality S., on the basis of legal inheritance of the estate remaining after the deceased J.R., and the defendant has an obligation to acknowledge and accept that the plaintiffs may register their title to the above specified real property in the shares of 1/4 each,

all within 30 days after the judgment becomes final and binding, under penalty of enforcement action" IS HEREBY DISMISSED.

The plaintiffs are hereby ordered to compensate the defendant for the costs of the proceedings to the amount of BAM 2,100.00, within 30 days after the judgment becomes final and binding, under penalty of enforcement measures.

Reasoning

With a complaint filed with this Court on 7 April 2011, elaborated by the pleading of 20 June 2012, the plaintiffs requested that it should be established that the defendant's claim to his inheritance share

after the death of J.R., son of P. was settled by means of real property donated as a gift designated as cadastral unit No. XXX, field, class 5 'B.1' with an area of 16,612 sqm registered in the Cadastral Register under No. XXX, cadastral municipality S. and real property designated as cadastral unit No. XXX consisting of a residential building 1 with an area of 72 sqm, a business building with an area of 75 sqm, an outbuilding 3 with an area of 17 sqm and a yard with an area of 232 sqm, with the total area of 386 sqm and cadastral unit No. XXX with an area of 2 sqm, registered in the Land Register No. XXX, cadastral municipality B.2., that it should be established that the plaintiffs have ownership rights to 1/4 each of real property registered in the Cadastral Register as No. XXX, cadastral municipality S., on the basis of legally inherited shares after the deceased J.R., and the defendant has an obligation to acknowledge and accept that the plaintiffs may register their title to and possession of the above specified real property in the share of 1/4 each, all within 30 days after the judgment becomes final and binding, under penalty of enforcement action.

The plaintiffs' attorney emphasized in the complaint and in the course of the proceedings that the parties to the proceedings were legal heirs of the deceased J.R., son of P., after whose death inheritance proceedings were conducted before the Basic Court of XXX under No. XXX, which were terminated under the Decision dated 03 March 2011 and the plaintiffs were instructed to file a lawsuit against the defendant. He emphasized that the plaintiffs were the children from the first marriage of the deceased J.R., while the defendant was the son from the second marriage; that the inheritance of the deceased consisted of real property registered in the Cadastral Register No XXX, cadastral municipality of S. with a total area of 16,811 sqm, that the defendant was donated, during J.R.'s life, real property in the cadastral municipality of S. and this property is registered to the defendant in the Cadastral Register under No XXX, cadastral municipality of S with an area of 16,612 sqm with a 1/1 share; that apart from the real property in the cadastral municipality of S. the defendant was also donated by his father the real property located in B., where the defendant now lives; that apart from the real property which was donated to him by his father J.R., the defendant now wishes to participate in the division of the inheritance of the deceased registered in the Cadastral Register under XXX, cadastral municipality of S. He pointed out that the plaintiffs' view was that the defendant was compensated to the amount of his legal share by the gifts donated to him during the life of the decedent in accordance with Article 49 of the Law on Inheritance of the SR of BiH, for which reason they disputed the defendant's right to inheritance of the deceased and the real property registered to the name of the deceased at the time of his death.

He proposed that the specified claim be accepted in full and that the defendant should compensate the plaintiffs for the costs of the civil proceedings in accordance with the value of the matter in dispute, related to representation in seven hearings, making the complaint and claim, costs of three expert witnesses and costs of stamp-tax for the complaint and the judgment.

The defendant's attorney, in his response to the complaint, denied in full the validity of the claim, pointing out that the plaintiffs indicated in their claim that the defendant had received from J.R., during his life, a gift of real property located in the cadastral municipality of S, that this real property is now registered to the name of the defendant in the Cadastral Register under No XXX in the cadastral municipality of S. with a total area of 16,612 sqm with a 1/1 share, that this was not disputed, and the fact that, apart from the real property in the cadastral municipality of S. the defendant also received a gift of real property located in B., where the defendant lived now. Further on, he pointed out that he deemed that the plaintiffs were unworthy of their claim considering their conduct and behaviour towards their common father, that the plaintiffs did not attend the funeral of their father, that they did not visit him while he was alive nor had any contact with him, that they did not share the expenses for the funeral and other religious ceremonies after the funeral and for the installation of the gravestones. He further stated that the defendant's mother, apart from J.R. also took part in the development and maintenance of the real property currently used and lived in by the defendant, located in B., whose contribution also helped in the creation of marital property, that the defendant himself was employed and that, in the previous twenty years, he worked as a carpenter and earned profit and invested this profit into the property in which he currently lives and which he uses, which was previously donated to him as a gift from his father, that the real property at the time of being donated, did not even have an

approximate value- not even half of the current value because the defendant increased the value of the real property he uses with his personal labour and personal investment.

He proposed that the claim be dismissed as unfounded and that the plaintiffs compensate the defendant for the costs of proceedings related to his response to the complaint 100 points x BAM 2.00 = BAM 200.00 and for the appearance at all hearings 100 points x BAM 2.00 = BAM 200.00.

During the proceedings, evidence was presented and documents in evidence read and filed: Decision of the Basic Court of XXX, No. XXX dated 02 March 2010, transcript of the Cadastral Register No. XXX, cadastral municipality of S. dated 16 December 2010, transcript of the Cadastral Register No. XXX, cadastral municipality of S. dated 01 November 2010, evaluation of the market value of the real property from the fiscal register No. XXX dated 11 August 2015 for the cadastral municipality of S. XXX dated 11 August 2015 for the cadastral municipality of S. XXX, site inspection and expert evaluation by the geodetic expert witness M.P. and reading the expert's opinion dated 25 November 2014, expert evaluation by an agricultural expert witness O.G. and reading the expert witness's opinion dated 15 December 2014, expert evaluation by the construction expert witness N.G. and reading the expert witness's opinion dated 06 February 2015, hearing witnesses J.N., J.M. and S.P. and hearing the first plaintiff Đ.C. and the defendant J.P. in their capacities of the parties to the proceedings.

On the basis of the factual situation established in this manner, presented pieces of evidence and their evaluation, both individually and in relation to one another in terms of the provisions of Article 8 of the Law on Civil Procedure of XXX ('Official Gazette of XXX', 8/09), this Court has made the above-specified judgment for the following reasons:

Under the Decision of the Basic Court of XXX No XXX dated 02 March 2010, the inheritance proceedings were terminated and J.P. was referred to litigation against the legal heirs J.A. J.D., Đ.C. and S.Lj. for the purpose of challenging the scope of the estate, and J.A., J.D., Đ.C. and S.Lj. were referred to litigation against the legal heir J.P. because they held a view that J.P.'s claim to his share of the inheritance was settled by means of deeds of gift presented to him by the decedent during his life.

The defendant did not dispute the fact that the plaintiffs were J.R.'s children, and the Decision of Inheritance Proceedings shows that the legal heirs were referred to litigation, and, therefore, they have standing to be sued in this dispute.

Following site inspections and the expert evaluation of the geodetic expert witness M.P., whose opinion was accepted by the court as professional and objective, it was established that the real property in dispute in the cadastral municipality of S. was designated as a cadastral plot No XXX 'O' orchard, class 3, with an area of 1,538 sqm, cadastral plot XXX 'M' forest, class 4, with an area of 5,376 sqm, cadastral plot No XXX 'B.5' forest, class 3, with an area of 4,031 sqm, cadastral plot No XXX 'B.4' orchard, class 3, with an area of 4,031 sqm, cadastral plot No XXX 'B.4' orchard, class 3, with an area of 5,506 sqm, that the overall area of this real property amounted to 16,811 sqm, that the real property in question was registered in the Cadastral Register, No. XXX of the cadastral municipality of S. as of 10 January 1991 and also registered in 'B' list of the same folio as ownership of J.P.R. with 1/1 share from G., that there is no encumbrance or other limitations on the real property in question, that there exists the real property which is in dispute in the cadastral municipality of S and it was designated as cadastral plot XXX 'B.6' field, class 5, with an area of 16,612 sqm, that this property was registered as of 10 January 1991 in the Cadastral Register No. XXX of the cadastral municipality of S. and registered in 'B' list of the same folio as property of J.P.R. with 1/1 share from G., that the amended records show that the property in question was registered in the new Cadastral Register No. XXX to the name of J.R.P. from G. bb on the basis of a deed of gift, certification No. XXX, that the amended records No. XXX and XXX in 'C' list show that there is encumbrance to the name of MKD 'M' d.o.o. B.7. Further on, it was determined that there was also the real property which was the matter of dispute in the cadastral municipality of B.2 and it is designated as cadastral plot No. XXX yard with an area of 232 sqm, a residential building No. 1 with an area of 72 sqm, a business building No. 2 with an area of 75 sqm and an outbuilding No 3 with an area of 17 sqm and cadastral plot No XXX other non-cultivated

land with an area of 02 sqm, that the real property in question was registered in 'A' list of the land registry folio No XXX of the interim register for the cadastral municipality of B.2, that in 'B' list ownership was registered to J.R.P. from B., that the above-specified cadastral plots, before the aero-photogrammetric survey in 1987, were designated as cadastral plot XXX and it belonged to the cadastral municipality of G, that the cadastral plot No. XXX 'U' was a forest, class 4, with an area of 380 sqm, that the relevant plot was registered in Pl. No XXX to the name of J.P.R from G., that the relevant plot has been registered to the above named individual since 1985, that the cadastral file had no other records. On 11 February 2016, the expert witness submitted an addition to his opinion – Report on a modification of land records, submitted by J.P. on 27 August 1998 to the Republic Administration for Geodetic and Property Affairs PJ B. with the Deed of Gift dated 12 August 1998 on the basis of which the title to property was transferred from J.R to J.P.

Following an expert evaluation by the agricultural expert witness O.G., whose opinion was accepted by the court as professional and objective, it was established that the relevant land, designated as cadastral plot XXX 'O' orchard, class 3, with an area of 1,538 sqm, cadastral plot No. XXX 'B.8' orchard, class 3, with an area of 5,506 sqm, cadastral plot 376/1 'B.9' field, class 5, with an area of 16,612 sqm, was located in the eastern parts of B., at a distance of 8-9 km from the town, that it was linked with an asphalt and dirt roads B.-T.-S., that the cadastral plot XXX and cadastral plot XXX registered as orchards indicated a change in crops –i.e. the orchard was removed and the land was turned into an arable field, that the cadastral plot XXX was totally degraded from a field into a degraded wooded area, that all the indicated areas had a change of crops, which diminished their market value, that the land was located in the zone of urban – construction land, that the land had a limited useful value (small area, irregular shape, low Ph. value). He pointed out that the value of the agricultural land on cadastral plot XXX and cadastral plot XXX orchard amounted to BAM 21,132.00, and cadastral plot XXX field, class 5, BAM 16,612.00, in total BAM 37,744.00.

Further on, following an expert evaluation of the construction expert witness N.G., whose opinion was accepted by the court as professional and objective, it was established that the value of the family residential building No. XXX was BAM 99,986.00, of the business building No XXX carpenter workshop XXX BAM 55,548.00, of the residential outbuilding No. XXX XXX BAM 23,608.90, of the cultivated land designated as cadastral plot XXX and XXX cadastral municipality of B. BAM 27,960.00 – the total value amounted to BAM 187,102.30.

The first plaintiff Đ.C. stated in her statement that they were referred to litigation in the inheritance proceedings because they wanted the defendant not to participate in the inheritance proceedings with regard to the remaining property because his claim was settled in the share belonging to him by receiving 16,000 sqm of land as a gift and this compensation was adequate, that he was her father who, actually, was not indeed in contact with them, that he said once that they should never forget that he had left them 4 dunams of land each, that he gave to our brother 1,000.00 schillings in 1996 as a loan until our mother sent this money to repay the debt and that the defendant told her mother that his father had given a loan of 1,000 schillings and unless repaid somebody would get killed and they were now before the court because of this 1,000 schillings, that the defendant was awarded an adequate portion and the remaining estate should be divided between them, that the father wanted it this way and that if he had had a different will they would have complied with it, that they did not allow him to participate with 1/5 in the division of the remaining property, that the real property was not purchased but was inheritance from their father, that their mother took the four of them from J and very rarely contacted their father, that she did not know who had given the 1,000 schillings, that she was proposing giving this money to the relative, whose mother had given her father her share of her property.

The court accepted the statement of the plaintiff as true, except for the part in which she claimed that her father's will was such that the gift was not to be counted as inheritance for the defendant and if things had been different they would have complied with it because there was no evidence corroborating such claims of the plaintiff.

The defendant J.P. stated in his statement that he was not in contact with the plaintiffs even though he would have like that, that only A. maintained contact, that the plaintiffs had not been in contact with

their father, that they were forced by their mother to initiate the lawsuit because they wanted to give the real property as a gift to N.D., that he was not disputing the area of the real property, that some real property had been inherited from his father's decedent and some real property was purchased from his brother, and that he did not remember when the land was purchased, that he excavated a well in one piece of the real property increasing its value, that he was not disputing the plaintiffs' rights with regard to the Cadastral Register XXX, cadastral municipality of S. if they said they had had a father in the past 40-50 years, that he thought his father had been in contact with them but he was not certain, that he informed them of their father's death and called them to attend the funeral, that he paid for the funeral expenses and they did not come even though they had been informed, that he installed the gravestones and did not invite them to participate in this as they had not attended the funeral, that he thought they were not worthy of the inheritance and they should compensate him for the expenses of the investments – excavation of the well, removing fruit trees, that he thought his claim was not settled with this gift, that he was not disputing that this was his father's plot given to him, that he was not disputing that he was their father, that an old orchard used to be on that plot, and he planted a new orchard and used it, and that they could have done the same, that he excavated a well with his father and mother in 1983, that a plot was sold in 1985 or 1986 that had been inherited from the grandfather, that the plot B. originally belonged to his father and then was given to him as a gift.

The Court accepted the defendant's statement, except in the part referring to the plaintiffs' unworthiness to inherit their father's property.

Witness J.N. stated that he was aware of the existence of this real property, that there was land in S. and a house in B.10., but he did not know who wanted what from whom, that as far as the real property was concerned he had inherited something from his father in S.R., and the deceased R. had purchased from his father 12 dunams of land (grandfather's property on the father's side), that as far as the real property in B.10. was concerned, the house was built after R. divorced D., that he built the house with his second wife M., and this was now the house of the defendant P. He pointed out that as far as he was aware the plaintiffs avoided R. as their father, they denied his being their father, they avoided contacts with him, they did not visit him, that only A. maintained contacts with the deceased R. He also pointed out that A. did not dare come to the funeral because of his mother and sisters as he depended financially on his mother, but he maintained contacts with his father secretly, that R. lived to the end of his life in the same household with the defendant, that R. had a pension which was relatively small, that he was ill but was not disabled, he was in need of another person's care, he needed help with dressing, food, he was not disabled, he was senile due to old age, so that he needed help of the defendant and his wife. He further stated that M. died in 2002, that P. paid for all the funeral costs and he also installed the gravestone, and that the plaintiffs did not take part in that, they did not attend the funeral, that he did not know whether the defendant had called them to come to the funeral. He pointed out that R. worked in 'P.1', he had a carpenter's shop but it was built and later developed by P., that D. and R. divorced in the 70s, that after the divorce the children lived with their mother, grandmother and grandfather and R. worked in N., that R. paid child support and took care of them and after the divorce the children stayed in the house for a certain period of time and later left for A.

Witness J.M. stated that he was not aware of real property in S., because he moved from S. in 1959, that he only knew that this was real property of their late grandfather, that according to his grandfather's talk some of this real property belonged to his uncle R., that he knew that the real property in S.1. was built by his late uncle R. and the mother of P.M., that he knew that some of the real property was purchased by R. from his father, that 10 – 15 years ago, his uncle R. said he had registered this property to the name of his son – the defendant P., that the plaintiffs, apart from A., did not want to communicate with the family J., probably due to the divorce of their parents, that when D. and R. divorced the plaintiffs were children and after the divorce the children lived with their mother D., that he had pretty good relations with R. and he knew that R. had been saying he had been supporting the children, that he was a carpenter, and had begun with the carpenter work after he had returned from N., and he also worked in 'P.2', that he was a good carpenter and had been working as a carpenter until a short time before his death, that R. lived with his wife M. and son P. and his family, he supposed they lived in a common household as they lived in the same house. He pointed out that

the funeral costs, as he had heard from P., and his neighbours, had been borne by P., that he had attended P.'s father's funeral, that the plaintiffs had not attended the funeral and the defendant had told him that he had called the plaintiffs to come to the funeral. He also pointed out that R. had told him that he had registered the house to P.'s name and that he trusted P. so much and there was no reason that he should not do that because he thought P. would continue supporting and respecting him. He also said that P., too, was engaged in carpentry, that R. was doing all kinds of work, that P. worked together with R. in the carpenter's shop, that he had also added to the house after they had built it and they had also built ancillary buildings.

Witness S.P. pointed out that, as far as the real property in S. was concerned, he did not know anything, and as far as the real property in G. was concerned, he had knowledge of that, because he was the defendant's neighbour, that J.P. and J.R. as well as the late M. (the defendant's mother) lived in a common household, that J.R. was not in communication with the plaintiffs in the period when he lived in G., that the defendant had asked him to go and call his half-brother and his sister Đ.C. to come to the funeral, who had lived in the same house in B.2., that he had gone there and found A. at the gate, that he had expressed his condolences saying that P. was inviting him to come to the funeral of his father and he had answered that they could not go, after which he went back to P. and passed the message that they could not come, that he had not seen C. that day, only A. had come out and he had not invited the other plaintiffs because they did not live in B, they lived in A. He pointed out that he had lived in the defendant's neighbourhood since his childhood up to 2008, when he moved to the town, that he did not know anything about the funeral expenses and installation of the gravestones but he supposed that P. had borne those expenses considering that the plaintiffs had not come to the funeral, that everything took place in the defendant's house, that he had taken care of everything, and when P. had started a family, when he married and had children, he continued living in a common household with his father and mother, that R. was able-bodied, that he was not in need of another person's care, that he knew that he was working in 'P.2' as a security officer, that he supposed he had a pension later on, that he worked in a carpenter's shop and as he was able-bodied he had most probably worked in the carpenter's shop until he died, that he knew P. was helping him, that they actually worked in the shop together, that investment was made into the property, that the house was repaired and the workshop was not re-built, only expanded, that J.A. lived in an apartment where a four-year primary school was located, that R. had not been visiting the children and he did not know whether he had been paying alimony, that the workshop was expanded at the time when R. was alive, that there was a new workshop now where a band saw had been purchased and planks were cut, that after he moved in 2008 he had visited the family house where he had seen the defendant.

The court accepted the testimonies of the heard witnesses as true as there was no reason to suspect the testimonies of these witnesses and it was established from their testimonies that the defendant had lived in a common household with his father R. and mother M., that his father had drawn up a deed of gift giving him the relevant real property, that a house, carpenter's workshop and outbuildings were built on the plot in B., that these were invested into by the father of the disputing parties and by the defendant and his mother, that the defendant carried out carpentry work and expanded the carpentry workshop, that they renovated the house and invested into everything together, that the defendant's father was saying he had given him this gift as he trusted him, and that he would continue supporting and respecting him, which the defendant, according to the testimonies of these witnesses, was doing until his father's death as needed, that he had borne the expenses of the funeral, religious ceremonies and installed the gravestones without participation of the plaintiffs.

In the first part of the claim, the plaintiffs request that it should be established that the defendant J.P.'s claim for his share of the inheritance was settled with the deed of gift for the real property on the cadastral plot XXX cadastral municipality of S. and the real property XXX and XXX cadastral municipality of B.2. In the second part of the claim, they request that it should be established that they have a right each to ¼ of the real property registered in the Cadastral Register XXX, cadastral municipality of S., on the basis of statutory inheritance shares after the death of J.R.

The plaintiffs hold that the defendant should not participate in the division of property in the inheritance proceedings for the real property registered in the Cadastral Register XXX, cadastral municipality of S., because his share of the inheritance claim is settled by the gift he received from his father J.R.

The defendant does not dispute that the plaintiffs are legal heirs as the children of J.R., who was also their father, which arises from the Decision of the Basic Court of XXX No. XXX dated 02 March 2010, with which the plaintiffs were referred to a lawsuit against the defendant as the legal heir, after which they filed a lawsuit.

The provisions of Article 49 of the Law on Inheritance ('Official Gazette of the RS BiH', 7/80 and 15/80) specify that everything a person receives in any manner from the decedent as a gift shall be counted as the person's inheritance share (paragraph 1), and that a gift will not be counted as inheritance if the decedent stated at the time of presenting the gift or subsequently or in his or her will that the gift will not be counted as inheritance or it can be concluded from the circumstances that this was the will of the decedent, while the provisions of statutory inheritance remain in force.

In this specific case, after expert witness testimony by the geodetic expert witness, it was established that the matter of the dispute are the cadastral plots XXX, XXX, XXX and XXX, registered in the Cadastral Register No. XXX, which remained after the death of the decedent J.R. and are registered to his name in the Cadastral Register No. XXX, cadastral municipality of S. with 1/1 share. The total area of these plots amounts to 16,811 sqm.

The matter of dispute are also the plots XXX with the area of 16,612 sqm registered in the Cadastral Register No. XXX, cadastral municipality of S. to the name of the defendant J.P., which was a matter of a deed of gift, certification number XXX dated 12 August 1998, then the cadastral plot XXX, yard, with an area of 232 sqm, a residential building No 1, with an area of 72 sqm, a business building No. XXX, with an area of 75 sqm and an outbuilding No. XXX, with an area of 17 sqm and cadastral plot No. XXX, registered in the land registry folio No. XXX of the interim register for the cadastral municipality of B.2 to the name of the defendant J.P. with a 1/1 share, which plots were also the matter of the above-specified deed of gift.

It was established through the expert witness testimony of the geodetic expert witness that the defendant obtained the title to the relevant property on the basis of the Deed of Gift dated 12 August 1998, concluded with J.R. as the donor, and a modification of the registration in land books was made accordingly. Under this Deed, the real property was donated without any compensation as stated in Article 1 of this Deed.

It was established through the expert witness testimony of the agricultural expert witness O.G. that the value of the cadastral plot XXX and cadastral plot XXX was 3.00 BAM/sqm, or for the whole area of these plots of 7,044 sqm – BAM 21,132.00, and the evaluation of the market value of real property carried out by the Finance Directorate of XXX, Tax Administration, dated 11 August 2015 was as follows: value of the plot XXX, with an area of 5,736 sqm, forest – BAM 13,450.60, value of the plot XXX, with an area of 4,031 sqm, forest – BAM 11,404.04. Therefore, the total value of the real property registered in the Cadastre Register of XXX is BAM 45,986.64. The value of the cadastral plot XXX, field, class 5, with an area of 16,612 sqm is 1.00 BAM/sqm, or the total of BAM 16,612.

Further on, it was established through expert witness testimony of the construction expert witness that the value of the real property in the cadastral municipality of B.2, i.e. the family residential building No. XXX., ground floor + attic BAM 99,986.40, the business building No. XXX – carpenter workshop, ground floor + 0 , BAM 55,548.00, residential outbuilding No. XXX ground floor + 0, BAM 23,607.90 and land on the cadastral plot of XXX and XXX, cadastral municipality B.02 with cultivation BAM 7,960.00 KM, or in total BAM 187,102.30, where the expert witness evaluated the current condition of the buildings and land, in accordance with their market value.

According to the provisions of Article 55 of the Law on Inheritance, when a gift is counted as an heir's inheritance share, the value of the gift determined at the time of the decedent's death and in accordance with its condition at the time of being presented as a gift is taken into consideration. In this specific case, the father of the parties to the proceedings J.R. died on 27 September 2009, and the deed of gift for the relevant real property was drawn up on 12 August 1998, and the plaintiffs had an obligation to prove the condition and the value of the gift at the time of being donated and its value after the decedent's

death. The plaintiffs failed to prove in any way the condition of the real property at the time when it was donated, nor did they propose any evidence of such circumstances. Contrary to this, the deed of gift itself as well as the testimonies of heard witnesses show that the defendant, together with the decedent and his mother, made investments into the relevant property XXX and XXX by regularly renovating the house, by building ancillary premises, expanding the carpenter's workshop, i.e. from 1998 onwards they invested a great deal into these buildings and land, and the defendant also excavated a well on one of the plots and planted a new orchard, which the plaintiffs did not dispute.

It transpires from the testimonies of the heard witnesses that the intention or the will of the decedent was not to count the gift as the inheritance share because he had lived in a common household with the defendant, who had been helping him in a way as they had worked together on carpentry jobs, which the defendant continued doing, he had constructed buildings together with his father and mother and lived with the decedent, took care of him when needed, until the end of the decedent's life.

Therefore, it can be concluded from the circumstances of the whole case that the will of the decedent was that the donated real property should not be counted as the heir's inheritance share, and the plaintiffs failed to prove otherwise, i.e. they failed to present any evidence of such circumstances. Admittedly, the parties' predecessor in his capacity as the donor stated in the deed of gift that he was donating the real property without any compensation and it was not stated expressly that the property should not be counted as inheritance, however, it transpired from the testimonies of the heard witnesses and the defendant, whose testimony was accepted by the court as true, that it was the decedent's will and intention to build the buildings and increase the value of the property together with the defendant, in particular taking into account that they lived in a common household, where the defendant's mother and wife also participated in the acquisition of the property. Besides, the plaintiffs failed to present a single piece of evidence proving the condition of the gift at the time of the donation in 1998, nor did they prove the value of the property at the time of the decedent's death. They requested evaluation of the property by experts in various professions and by the Tax Administration, however, they failed to prove the condition of the property at the time of the donation and, accordingly, its value at the time of the decedent's death in 2009, and even assuming that this value did not change considerably, as the degree of development and the value of the construction of the property, which was also donated, in the cadastral municipality of B. changed, and there were newly constructed buildings on these plots, the value of this property, amounts of each heir's shares and the fact whether the defendant's claim to his share of the property was settled cannot be evaluated properly.

The construction expert witness stated that the value had not changed in the last 10 years if the degree of the construction had not changed, and in this case, what was important was the condition of buildings and real property at the time of donation and the value at the time of the decedent's death, which the plaintiffs did not prove.

Moreover, it was this court's assessment that it was clear from the circumstances of this case that it was the will of the decedent to donate the relevant real property to the defendant out of gratefulness towards him because his conduct was appropriate, he lived in a common household with him and his wife, he expanded the property increasing its value, he helped him at any time when needed, he trusted him to do it at the time when he needed help the most and that he would always respect him, as the witnesses confirmed, while, on the other, the plaintiffs did not communicate with their father and, in the defendant's words, they did not wish to indicate that they were J.R.'s children.

It is surely not possible to determine and compel the plaintiffs by these proceedings to pay for the funeral, religious ceremonies and installation of gravestones as the defendant had not made such requests, but it is clear from the witnesses' and defendant's testimonies that the plaintiffs did not participate in the payment of these expenses.

Similarly, it is not the matter of these proceedings to determine whether the plaintiffs were worthy of the inheritance in terms of the provisions of Article 129 of the Law on Inheritance, considering that the

defendant had not made such a claim, and, besides, in these proceedings, no evidence shows that the conditions were met in terms of the provisions of Article 129 for determination of the worthiness of inheritance on the part of the plaintiffs, i.e. whether one of the plaintiffs had tried to take the decedent's life, compelled the decedent by force or threat or deceit to draw up or revoke a will or a provision of a will or prevented him from doing so, destroyed or concealed a will with an intention to prevent the execution of the will or forged a will, or severely abused the obligation of supporting the decedent or failed to provide required basic assistance to the decedent or fled the country to avoid conviction for a serious felony. The fact that the plaintiffs did not communicate with the parties' predecessor does not mean they are unworthy of the inheritance and it is not a matter for this court- this court adjudicates solely within the bounds of the claim presented by the plaintiffs.

In this court's assessment, it is clear from the circumstances of the case that it was the will of the decedent that the gift donated to the defendant should not be counted as his share of the inheritance and that the plaintiffs failed to prove the facts related to the relevant property, different will of the decedent and value of the property according to its condition at the time of the donation, and the value at the time of the decedent's death, the court has ruled that the second part of the claim requesting determination of the existence of the ownership rights with ¼ share each to the property in the Cadastral Register of XXX, as legal heirs of J.R. is unfounded.

It is the assessment of this court that the gift should not be counted as the defendant's inheritance and the inheritance proceedings will determine, after all heirs present their inheritance statements, who the heirs of J.R.'s property are and in what shares, and, thus, they will obtain ownership rights and registration of their title in land books on the basis of inheritance, in accordance with the provisions of Articles 151-234 of the Law on Inheritance in relation to Articles 22 and 34 of the Law on Ownership and Other Property Rights of XXX ('Official Gazette of XXX', No 11/01, 8/03, 4/04).

It should be pointed out that, as stated before, this does not limit the rights of the plaintiffs as statutory heirs to request reduction of use or return of the gift due to a violation of statutory inheritance, in which case the gift should be returned if necessary to settle statutory claims of each heir, which amounts to 1/2 of the statutory inheritance share in accordance with the provisions of Articles 28 and 29 of the Law on Inheritance. The statutory inheritance share is violated when the total value of the gift exceeds the available share and in this case when the gift value is evaluated the relevant value is the value at the time of the decedent's death, in accordance with its condition at the time when the gift was given.

According to the provisions of Article 31 of the Law on Inheritance, a calculation of the statutory and available shares of inheritance is made in such a way that an inventory and evaluation is made of all the goods remaining after the decedent at the time of his death, including everything he had at his disposal, his will and all the claims he had, including against his heirs, then the evaluated value is decreased by the amount of the decedent's funeral expenses, inventory and evaluation costs and decedent's debts, and then this value is increased by the value of all gifts the decedent had given in any way to a legal heir, including those given to the heirs who had renounced their inheritance and gifts he had ordered not to be counted as an heir's inheritance share and gifts the decedent had given in the final year of his life to other persons who were not legal heirs.

With this lawsuit, the plaintiffs did not seek establishment of a violation of the statutory inheritance share and its settlement by means of reducing the use of the relevant real property and the court could not adjudicate on this matter, although even in cases in which gifts are not counted as heirs' shares the provisions on statutory inheritance shares are applicable for the heir, i.e. this non-counting, even if the decedent specified so in the Deed of Gift, would not produce any effect, according to the provisions of Article 49, paragraph 3 of the Law on Inheritance and the heir could keep the gift but within the limits of the available share, in accordance with the provisions of Article 52 of the Law on Inheritance.

Besides, in accordance with Article 35 of the Law on Inheritance, the decedent's descendants who lived in a common household with the decedent and helped him in his endeavours with their work, earn-

ings or in another way, have a right to seek exclusion from the estate of the share corresponding to their contribution in the enlargement of the decedent's estate and such excluded share is not counted as the inheritance estate and is not taken into consideration in the calculation of the statutory inheritance shares, nor is counted as an heir's share of inheritance.

In this specific case, it was established without any doubt that the defendant lived in a common household with his father R. and mother M., that they made a joint contribution with their work and earnings, as corroborated by the witnesses, which shows that the defendant was presented with the gift of the real property for that reason – living with the defendant in a common household, respect and care which the defendant accorded to the donor – his father, trusting the defendant to always respect him and support him in need, which he did, in particular in a situation when he did not communicate with the plaintiffs – his children from the first marriage, and any other conclusion would be illogical.

It is judicial practice that regardless of the value of the gift it will not be counted as an heir's share if the decedent specified so explicitly or implicitly, and in such a way that it can be concluded that this was his intention, as determined in this specific case. Such will of the decedent must be respected as long as the non-inclusion of the gift does not limit the rights of statutory inheritance of other legal heirs.

The statement of non-inclusion of the gift in the estate may be made not only in writing, but also verbally and in any other way (informally) allowing for determination of the decedent's will (paragraph VSXXX No. XXX dated 07 December 1978 – overview of judicial practice VSXXX No 15, Decision 65).

This statement of will may be determined in civil proceedings (Supreme Court of XXX Rev-XXX – collection of court judgments of the Supreme Court of XXX in the area of civil law 1973 – 1986, page 155, Decision 756).

In this specific case it can be concluded from all the circumstance established during the proceedings that it was the will of the decedent – predecessor of the parties that the real property given as a gift should not be counted as the defendant's inheritance share and the plaintiffs failed to prove in the course of the proceedings the condition of the real property at the time when it was given as a gift and its value, calculating the value of the investments made by the decedent so that appropriate evaluation of the estate could not be made, i.e. the value of each heir's share.

On account of the above the decision was made as in the operative part.

The decision on the costs of the proceedings is based on the provisions of Article 119, paragraph 1 of the Law on Civil Procedure of the Brcko District of BiH, considering the success of the parties to the dispute. The expenses refer to the drafting of the answer to the complaint amounting to BAM 200.00, representation at the hearings held on 21 June 2012, 16 October 2012, 30 August 2013, 11 February 2015, 10 March 2015, 09 June 2015 and 09 September 2015 amounting to BAM 200.00 for each hearing, (value of the matter in dispute BAM 10.000,00 = 100 points x BAM 2.00), representation on deferred hearings on 12 November 2013, 04 February 2014, 21 May 2014., 06 November 2014 and 27 November 2014 amounting to BAM 100.00 for each hearing, which amounts to the total of BAM 2,100.00 (as per Tariff for Fees and Compensation of Costs for Attorneys in the RS dated 18 December 1999).

JUDGE

S1

A NOTE ON LEGAL REMEDY:
This Judgment may be appealed to XXX by means
of this Court within 30 days from the day of
receiving a transcript thereof.

Visoko sudsko i tužilačko vijeće Bosne i Hercegovine
Visoko sudbeno i tužiteljsko vijeće Bosne i Hercegovine
Високи судски и тужилачки савјет Босне и Херцеговине
High Judicial and Prosecutorial Council of Bosnia and Herzegovina

VSTV BiH,
Kraljice Jelene 88,
71000 Sarajevo, BiH
Tel: +387 33 707 500,
Fax: +387 33 707 550

E-mail: vstvbih@pravosudje.ba
Web: https://vstv.pravosudje.ba