

The costs of a lawyer whose office is outside the court seat

“Travel costs of the lawyer whose office is outside the court jurisdiction, before which the lawsuit has been initiated, are recognised only to the extent of costs that the party would have had if it had been represented by a lawyer whose office is within the court jurisdiction. Notwithstanding, these costs may be determined if they are, taking into account all the circumstances of the case, justified from the standpoint of the provisions of Paragraph 1 of Article 387 of the Law on Planning and Construction (Paragraph 1 of Article 120 of the Law on Planning and Construction of BD)”.

Rationale:

Specifically, although the Civil Procedure Laws, which are applied on the territory of Bosnia and Herzegovina, prescribe that the costs of a lawyer (attorney) are determined at the current lawyers' rates, the court can, when deciding which costs to charge the party that the lawyer represented during the proceedings, take into account which costs were necessary for the conduct of the lawsuit, by carefully appreciating all the circumstances of the case. Therefore, acting in a way to make this legal issue come down to a free choice of a lawyer and an acknowledgement of the party's costs as necessary (transport costs of lawyers, wages, nights...) should be abandoned, to proceed in the manner set out in this conclusion. The Human Rights Commission at the Constitutional Court of Bosnia and Herzegovina, in the Decisions on the admissibility and on the merits, Cases Nos. CH/02/12468 and CH/03/15129, took the view that the non-acknowledgement of these costs to the party in the proceedings is in direct discord with the provisions of the Tariff on the award and compensation of costs of the lawyer's work which prescribes the same, Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, because it hinders effective access to court, and Article I/4 of the Constitution of Bosnia and Herzegovina, given that this limits the possibility of the provision of services on the free market, but the Constitutional Court of Bosnia and Herzegovina, in the Decision No. Ap-2757/06, as of 14 October 2008, took the position that the right to free choice of a lawyer, determined by Paragraph 3-c) of Article 6 of the European Convention on the Protection of Human Rights and Fundamental Freedoms, is guaranteed only to persons in the process of determining criminal responsibility, and that the choice of a lawyer when deciding on civil rights and obligations before the court is a personal choice of the party, so that the party which chooses to be represented by the lawyer whose office is outside the court seat, as a rule, has the obligation to pay the costs of their proxy, incurred therefore. Thus, the party that loses the lawsuit is not required to bear the costs of the lawsuit, which are, in principle, not necessary (essential), with the exception when, within the court jurisdiction, at any given moment, the party could not hire a qualified attorney for representation (lawyer), which is acknowledged by taking into account both objective and subjective circumstances (e.g. when, within the court jurisdiction, there are no lawyers who carry out this independent professional activity, or when all are already engaged in the process on the opposite side, or when they refused to provide legal services etc.).