

Reimbursement of costs in case of partial success of the parties in the lawsuit

“When deciding on the costs of civil proceedings in the case of partial success of the party in the lawsuit, what should be taken into account, in principle, is both the prosecutor’s and the defendant’s success in the lawsuit, and the decision on which party will bear the obligation to reimburse the costs of the proceedings shall be brought through the application of the rule of procedural offsetting of the lawsuit costs.”

Rationale:

Provision of Paragraph 1 of Article 386 of the Law on Planning and Construction stipulates that “the loser pays”, so that the unsuccessful party must pay the costs of the successful party.

In case of partial success of the parties in the lawsuit, the provision of Paragraph 2 of Article 386 of the Law on Planning and Construction stipulates that each party shall bear its own costs, and that they should reimburse to one another a proportionate part of the costs.

The court uses the former method when deciding on costs if the parties to the dispute succeeded to approximately equal extent. If there is a significant difference in the success, the latter method is applied, referred to in Paragraph 2 of Article 386 of the Law on Planning and Construction.

In practice, courts in Bosnia and Herzegovina frequently make decisions based on which it would follow that only the prosecutor can have partial success in the dispute. These courts decide, in fact, only about the costs of the prosecutor, and oblige the defendant to reimburse costs in proportion to their success in the lawsuit, without taking into account the costs of the defendant and their success in the lawsuit. Such behaviour is illegal, because the success or failure of the prosecutor in a lawsuit is proportionate to the success or failure of the defendant in the lawsuit.

Therefore, when deciding on the costs of civil proceedings in the case of partial success of the party in the lawsuit, what should be taken into account, in principle, is both the prosecutor’s and the defendant’s success in the lawsuit, and the decision on which party will bear the obligation to reimburse the costs of the proceedings shall be brought through the application of the rule of procedural offsetting of the lawsuit costs. For example, if the prosecutor succeeded in a dispute with 70% of their claims, it also means that the defendant has failed in a dispute at a ratio of 30%, so that the prosecutor is entitled to reimbursement of 70% of their total costs, and defendant to the compensation of 30% of their total costs. Based on the court decision, the obtained sums are offset, and the party in whose favour there is a positive difference is entitled to the reimbursement of the difference by their opponent. The objective of this rule is to avoid unwarranted lawsuit or filing of exaggerated claims without consequences.

True, there is a weak point of this interpretation because, exceptionally, it can happen that the costs of the party that is less successful are significantly higher than the costs of their opponents. This party, although more successful, can be obliged to reimburse the amount of the difference, which may result in restriction of the right of access to court (see the judgement of the European Court of Human Rights in Strasbourg, Klauz against the Republic of Croatia, as of 18 July 2013).

This weakness can be eliminated by applying the rules on the qualitative success of the parties in the lawsuit.