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

BLUEPRINT

Tools and Products to Improve Efficiency and Quality of the Judiciary

developed within the

Improving Judicial Efficiency Project II (2015 - 2018) and
Improving Judicial Quality Project (2019 - 2021)

implemented in cooperation between

the Council for the Judiciary of the Netherlands/District Court in Amsterdam,
the Norwegian Courts Administation, the High Judicial and Prosecutorial
Council of Bosnia and Herzegovina and project target courts

CONTENT

ATTACHMENTS

1. INTRODUCTION

1.1.Background and purpose

The judiciary of Bosnia and Herzegovina (hereinafter: BiH) has faced many issues since the independence of BiH. The most important one was the lack of efficiency resulting in long duration times and large backlogs. This is why the High Judicial and Prosecutorial Council of BiH (hereinafter: the HJPC BiH) contacted the Council for the Judiciary of the Netherlands with a proposal for cooperation on the Improving Judicial Efficiency Project II (2015-2018) (hereinafter: the IJEP II Project) funded by the Norwegian Government. The trilateral cooperation was established by signing of the Memorandum of Understanding between Norway, Bosnia and Herzegovina and the Netherlands on 03 July 2015 and it included joint activities in improving court management and case management in selected target courts. The cooperation continued within the Improving Judicial Quality Project (2019 - 2021) (hereinafter: the IJQ Project)[1]. The project's primary purpose is strengthening BiH judiciary by improving the judges' efficiency, because only professional and functional judiciary can win the trust of society in its work.

The objectives of activities undertaken in the IJEP II were to:

- improve court efficiency;
- support the court presidents in leading the changes needed to bring about improvement
- strengthen the position of department heads within the courts;
- improve the quality of judges' performance;
- improve public trust in the work of the courts.

The IJQ Project activities endeavoured to achieve the same results, as they focused on improving capacity and litigation procedure efficiency and quality.

A Project Team was formed comprising a team from the District Court in Amsterdam (judges, support staff, a quality advisor and a management assistant) and an appeals court judge from Norway.

With the support from the HJPC BiH project staff, the Expert Team implemented a number of activities in 30 target courts, split into several phases:

The IJEP II Project:

I phase - with the Municipal and Cantonal Court in Sarajevo
II phase - cooperation with the Banja Luka Basic and District Court.

IJQ Project:

- I phase - cooperation with the Municipal and Cantonal Court in Tuzla, Basic and Appellate Court of the Brcko District and the Basic and District Court in Bijeljina;

[1] The Memorandum of Understanding was signed on 15 February 2019

- II phase - cooperation with the Municipal and Cantonal Court in Zenica,[2] the Municipal Court in Travnik and Cantonal Court in Novi Travnik[3] and Basic and District Court in Doboj and
- III phase - cooperation with Municipal and Cantonal Court in Mostar, Municipal and Cantonal Court in Siroki Brijeg[4] and Basic and District Court in Trebinje.

1.2. Approach: court management and case management

The project activities can be split into two components: court management and case management. In brief, court management focuses on training court presidents and heads of departments to manage a team, it includes methods that improve communication between team members and communication with other department heads and court employees. In that sense, personal leadership is an important topic and tools such as intervision and feedback were used. Case management is focused on how judges can, by working together, develop methods to improve their performance quality. The focus was on a more efficient and effective way of handling civil cases in order to reduce duration times and strengthen procedural discipline. Another important aspect is increasing the quality of decisions.

The litigation departments of the supreme courts of the Federation BiH and Republika Srpska and the Appellate Court of the Brcko District BiH were involved in these activities.

During the project implementation, the Project Team had many fruitful meetings with judges from BiH in which - mostly among the judges themselves - ideas have been shared, experiences and knowledge have been exchanged, and quality standards have been developed. It became clear that by cooperating in teams, with a collegial responsibility for the goals to be achieved, not only the quality of the performance of the judges improved, but also the position of the judges towards society was strengthened. In addition, this achieved that judges were taking more pleasure in their work and most importantly: it created ownership for the judges who feel responsible for their work and the improvements to be made. The basis is peer learning, learning from each other.

After years of struggling with the issue of lack of efficiency and reducing the number and duration of pending cases, the implemented project activities are simultaneously one of the first HJPC BiH activities that focused on quality of courts' performance.

1.3. Practical tools and products

As a concrete result of the above-mentioned meetings and trainings, a set of tools and products have been developed which can be used by the judges in their everyday work. Originally, the products were developed for the Municipal Court in Sarajevo, as the first target court, after which all target courts developed their own versions according to their own needs and adopted legal positions. A sample of the products from the Municipal Court in Sarajevo is herewith enclosed, however, they are of general nature and as such, can be applied in other courts and systems. Apart from that, the HJPC BiH has, on the basis of the Municipal Court in Sarajevo, adopted the procedure (guidelines) to appoint department heads, unified for all court and thus it was included in the Blueprint's Attachments. Finally, a brief, comparative overview of differences between certain

[2] Other Zenica-Doboj Canton second instance court included in the activities (municipal courts from Visoko, Kakanj, Tesanj, Zepce and Zavidovici)

[3] Other Central Bosnia Canton first instance court included in the activities (municipal courts from Kiseljak, Bugojno and Jajce)

[4] Municipal court in Ljubuski included in the activities

products between target project courts is attached to ensure insight into different rationalisations by courts on the same issues or phases of the proceedings.

1.4. Objective of the Blueprint

In summary, this Blueprint aims to give you an overview of the work that has been carried out, the tools and products that have been developed, and most importantly, how you can use them to your advantage as well.

1.5. Implementation methodology of project activities

To achieve the goals of the Project, the Project Team worked intensively with the judges from the litigation and civil departments of the target courts, court presidents and department heads. This cooperation was the most intense in the first phase of the IJEP II Project, since the cooperation with the Municipal Court and Cantonal Court in Sarajevo was a pilot phase for the entire judiciary.

The experience of implemented activities showed that time was required to change a work method. Attitude and approach can only change when there is fertile ground to do so. Openness and willingness to change working methods are an essential condition to achieve the goals of the Project. Merely reading through the developed tools and products will not suffice. A profound and thorough discussion within the teams about what is to be implemented and the reasons behind the implementation is necessary.

A commitment to using these products or standards as one's own will arise after a jointly expressed intention for change within the team. Subsequently, judges should urge each other to stick to those intentions or incite a discussion about the possible reasons to deviate. This way, judges strengthen their position towards society by demonstrating a more harmonised approach in processing cases and thus the expectations of the attorneys, parties to the proceedings and other stakeholders are put in the context of procedural discipline.

1.6. Basic work principles

The basic work principles that need to be applied in the implementation of these activities are:

- adopt of the peer-to-peer approach;
- create *ownership* of the process among the judges(*they are responsible*);
- do not deliver solutions but give support and exchange experiences;
- start with small steps;
- communication is of crucial importance;
- invest enough time;include all interest groups, levels of decision-making; first-instance court, second-instance court, Supreme Court, the HJPC BiH;
- include the Bar Association and other relevant levels or bodies of authority (municipality for example);
- make use of the contribution of judges who have been taking part in projects previously;
- consider which methods and tools are appropriate given the specific situation in the court;
- work together in a team i.e. develop collective responsibility;
- confidence in oneself and one's colleagues.

1.7. Concept of the document

The Blueprint has been divided into the following chapters:

Chapter 2 provides overview of the first component's activities and methods and tools used to improve courts' management capacity and strengthen the role of department heads;

Chapter 3 provides further insight into the second component i.e. case management, together with the products, an analysis of their content, and an explanation of how to use them;

Chapter 4 describes three methods of peer learning: moot court, coaching groups and bilateral intervision;

Chapter 5 summarises the conclusions of the Project;

the Attachments attached hereto contain the examples of all the tools and products that have been developed as part of the Project and a comparative analysis of the basic differences in target courts' most important products.

2. COURT MANAGEMENT

2.1. Introduction

Court president and heads of court departments are the cornerstones of any court administration. It is therefore crucial that they are aware of their role in efficiently managing the courts. By strengthening the role of court presidents, their position can proportionally gain significance through better understanding and complete implementation of the current regulations governing their powers. A court president must establish strong relations with all stakeholders and be able to, with the assistance of heads of departments, create a sense of collective responsibility and "*ownership*" among judges and other employees over the set and achieved objectives. In doing so, organisational culture, team work and interpersonal relations are crucial for the success of every work organisation and the managers are the ones who should continuously work on their improvement.

This chapter discusses the court management component of the Project. The first part provides insight into the reason for project interventions in this domain, followed by considerations of two important segments: team work and leadership and communication. The third part contains the tools that have been used to improve communication within teams. The fourth part provides overview of all the project activities that have been undertaken within this component. Finally, the last part reflects on the (desired) results of the project activities.

2.2. Issue

The initial analysis has shown that work processes within courts could be improved by rethinking of what should be a model of organisational culture that benefits efficiency, quality and good communication among peers. Are managerial roles exercised in a way they fit into a modern understanding of good governing of judiciary? Rather than sum of individual achievements/work results of judges, courts and court departments should be striving to function as a collective with the set objectives and results jointly planned and achieved.

A good manager can have a very positive impact on court results. What are the qualities of a good court manager? What tools can he/she use to ensure a high level of efficiency and quality? What are the most frequent barriers that the court presidents in BiH face? What can be done to achieve greater efficiency of court presidents? The focus of the project is to identify and develop management tools and practices to improve the judiciary.

Apart from that, the judicial function, in its nature, entails a judge processing cases from his/her portfolio individually. However, the principles of work independence and autonomy, if understood absolutely and exclusively, may lead to complete autocracy in the work of judges. As a consequence, there can be a lack of communication between the judges and the lack of communication and cooperation hinders the work and in the end can negatively affect the court work efficiency, but the consistency of case law as well.

2.3. Teamwork and leadership

How to work together (in teams) and achieve collective responsibility? This is about sharing ideas, exchanging experiences and knowledge, establishing common goals, quality standards and of adopting guidelines for proceedings. Problems can be discussed and a solution found through common work. Support to an individual judge from his colleagues helps him gain self-confidence. The proverb says that two heads are smarter than one or: 1 +1= 3.

What is needed to introduce teamwork?

First of all, it implies that department heads and judges are given time for new tasks that are for the benefit of the entire team. This change starts with a strengthened position of the department head. Their role becomes more significant and recognizable. They are crucial in stimulating and empowering colleagues to develop themselves and contribute to the team's performance. The profile of the department head has been created along key competencies that they should have, such as communication skills, cooperation and a proactive attitude. [5]

A competent head of department is the one who:

1. creates inspiring visions of future,
2. motivates and inspires judges to engage themselves in the realisation of that vision,
3. manages the process of vision realisation and
4. enables and directs the team towards vision realisation.

These criteria constitute another style of leadership than what was common practice prior to the start of the project activities. So the training has been developed which the Project Team held for court presidents and department heads. This training has since been handed over to the judicial and prosecutorial training centres of both entities and is of paramount importance. In this way the (future) heads of department learn how to communicate and improve team work.

However, not only the role of department head changes. Also, the position and attitude of the judges will be different. Judges meeting their individual quotas is, certainly, important for good performance, but also and even more important is to ask oneself what is the individual contribution to the team when it comes to the quality of joint work and team results? In other words, proactivity is required. Responsibility means room to take initiatives, but also accountability for what an individual did and did not do.

2.4. Communication

2.4.1. Preliminary observations

Individuals, teams and organisations can grow stronger by recognising, validating and relying on differences that exist between people. The effectiveness of communication and interaction is closely related to the degree to which discussion partners cooperate with each other. Insight into one's own behavioural style and that of the others helps one to increase effectiveness of the interaction. It is exactly differences between the people that which to a great extent helps strengthen cooperation and meet objectives.

[5] See section 2.8.3. and Attachment E. 'Guidelines for the appointment of court department heads)' - profile.

For good team cooperation, it is important to look at its composition. In that context, one needs to know oneself and one's team members. What are the strengths and what are the weaknesses of your team? What qualities are present in your team and in what way can you use them to meet your team's objectives? Which team members complement each other? Which team members are especially good in performing certain tasks? For which tasks are some other team members better? In which way do you communicate with the team? How do team members communicate with you and each other? How do you cooperate with each other?

2.4.2. Communication structure

To establish the concept of team work, it is necessary to establish a communication structure and communication plan on the level of court and teams (Attachment A. „How to make a work and communication plan in a team"). The text below has the list of the different types of meetings and the relevant topics covered in those meetings.

a. Team meetings of all judges and department heads:

- What is important are regular team meetings, which, in general, should be held once or twice a month;
- the department heads chair the meetings;
- discussion topics include: alternative policies on rendering decisions in certain case types, organisational issues (such as the hearings; schedule and court administration's plans), consultation with team members on all types of plans on the possibility to improve performance methods and quality. Problems should be discussed and solutions can be reached by joint work.

The new concept of teamwork emphasises the collective responsibility of a team. The influence of the group is important for judges. The feeling that one is supported by colleagues helps one gain self-confidence and makes processing of difficult cases easier. It is important that the judges have the feeling of responsibility of the joint work, which means that they are trying to find ways how to meet the team's objectives. The team will feel responsible if they are part of the decision-making processes.

b. Team meetings of court presidents and all department heads:

- What progress was made in team improvement? Discuss quality and workload together;
- share difficult moments and try to learn from each other;
- share information about policies from the court president, HJPC, new legislative;
- discuss organisational issues.

c. Individual meetings between department heads and a judge: performance analysis:

- the judge and the head of the department analyse the performance of the past year;
- they agree on objectives for the forthcoming year whilst taking into consideration all the elements of the judge's performance.

Nobody can affect decision-making in individual cases, not even the department head. Interference with the decision's content is not allowed, but what can be discussed is:

- how the judge communicates with the parties in the hearing;
- whether the judge needs additional training to improve his skills;
- what the duration of his cases is and how many cases he adjudicated in;
- whether there was a backlog;

- whether he receives feedback from his colleagues and whether he, too, gives feedback (for example, in decision writing);
- what is percentage of reversed decisions on appeal;
- what are the reasons for any unsatisfactory performance;
- how to solve such problems?

Independence does not mean the absence of responsibility.

The head of the department also must address the contribution of the judge to the institution. Does the judge contribute to implementation of a judicial policy? What is his relationship with colleagues and support staff like? Does he contribute to implementation of organisational objectives, meaning, does he participate in working groups? Does he attend joint meetings? Does he help his colleagues when it is necessary for them? These are just examples of topics that can be discussed with a judge which can lead to higher satisfaction in their work and an improvement in the quality of their work without interfering with the substance of their decisions.

d. Individual meetings between the court president and a department head

The court president in his conversations with department heads assesses the annual implementation of objectives as set in the team plans. The subject of such conversations can be any current topic, including but being limited to:

- competencies cited in the profile of a department head[6];
- steps to take in the sense of quality as to achieve improvement in teams (as set by the team plan);
- the form of teamwork and communication;
- results achieved regarding quantity and quota;
- contribution to the organisation and cooperation with other department heads and court president, as a segment of collective responsibility;
- discussions on performance results that the department heads have with the judges in their departments;
- personal development of the department head;

Additionally, the court president and a head of department can meet informally once or twice a year to discuss the performance and whether greater support is needed to achieve the set goals. In the end, an informal management style can be promoted (*Management by Walking Around - MBWA*) wherein the manager can initiate daily conversations (for example, ask the others how they are).

2.5. Instrument to improve the communication and the performance of the team

2.5.1. Group intervision

Perhaps the team members cannot always solve some complex situations easily and efficiently. In such situations the method of group intervision can provide significant support to team members (Attachment B. „Group intervision"). Group intervision contributes to personal growth. While discussing their actions, feedback and mutual support the participants go through the learning process that will strengthen their functioning.

[6] See Attachment E. 'Guidelines for the appointment of court department heads'.

The group intervision method was done within the training for group intervision leaders, held in the judicial and prosecutorial training centres in Sarajevo and Banja Luka.[7]

2.5.2. Bilateral intervision and giving and receiving feedback

Another form of mutual learning is bilateral intervision that includes feedback, meaning the opinions of work colleagues. Effective feedbacks help people in their personal development. People must have possibilities to ask for feedback. Therefore it is important to know how to give feedback in an effective and constructive way, without hurting the recipient. (Attachment C. „Effective feedback giving and accepting "). It is necessary to create an atmosphere in a team where it will be normal to give and receive feedback, doing so with respect. The team leader certainly has to be an example to other members of his team.

The group intervision method is a part of the training on the topic "Teamwork and Communication," which the Expert Team held and the judicial and prosecutorial training centres continue to hold.

2.5.3. Making good decisions by creating support

Good decisions result in a feeling of commitment and responsibility among team members. A decision is not good just because of its content/the decision rendering process is just as important. Accordingly, one must take into account persons who will work on the basis of a new rule system.

Participation in creating support means the willingness to adopt and commit to a new plan that a leader has in mind. Support in that event means acceptance of a new idea, an innovation, a different approach or even a fully new direction. Support for the decisions can be ensured through:

- continuous informing of the team members from the early phase onwards, providing them with a sufficient level of knowledge and insight into the process;
- including team members, giving them significant role in writing of plans or the decision-making process;
- help to understand what the change means to them and what it brings to them and

being open for feedback and criticism.

2.5.4. Effective meetings by preparing for conversations

Good preparation for conversations leads to good results. Good, well-prepared conversations have a start, a middle and an end. In a good conversation, people use open questions. Such conversations can be conducted according to these basic guidelines:

1. At the **START** it is important to give structure and create a pleasant atmosphere. Make the agenda, the time line and present clearly the purpose and topic of the conversation.
2. In the **CENTRAL** part you may lead the conversation by asking questions. When you ask OPEN questions, you can get a lot of information and you can steer the conversation (you lead the conversation).
    - **OPEN QUESTIONS** start with: What/How/When/Where/With whom?

      These questions may not always be productive; if a certain opinion is already given in a question or if it already has an answer in itself, then it can create a defensive attitude.

[7] See section 2.6.3. and Attachment F "The agenda for Team Work and Communication and Training the Group Intervision Leaders workshops."

3. At the **END** of the conversation, it is important to summarise by asking questions and checking if everything is understood in the same way. Check whether specific obligations have been accepted and agreements on what was discussed reached. This is very important, because only then can you make sure that you can continue with some other conversation in a clear and identical way.

2.5.2. Preconditions for effective and successful teamwork

Teamwork cannot be achieved overnight. Applying teamwork is a constant process in which department heads have a key role. Resistance to change is normal. The following preconditions can help affect the process in order to achieve efficient and successful teamwork:

1. make small steps;
2. use the talents of team colleagues among each other; we are all different;
3. ask people to participate, do not impose solutions;
4. connect with them before you try to convince them;
5. decide whether you will allow their resistance to influence your plans;
6. focus on the people who want to change, rely on their full involvement;
7. try to motivate the one who are still indecisive;
8. dare to experiment;
9. use the support from other department heads - together with them you are a team and
10. celebrate success.

Training of the department heads of the Municipal Court in Sarajevo and the Cantonal Court in Sarajevo (IJEP II)

2.6. Activities undertaken on the project

2.6.1. Sarajevo Municipal Court: The court president

The following activities have been taken to support the Sarajevo Municipal Court president in leading the changes needed to bring about improvement:

- consultative support provided to the court president (peer-to-peer with the Expert Team);
- exchange of experience in management and study visits to the Amsterdam District Court;
- training (specially designed program);
- strengthening cooperation with the HJPC BiH through analysing court performance success indicators and control mechanisms, and through the working bodies of the Project (Operational Team and Steering Board).

2.6.2. Sarajevo Municipal Court: Heads of court departments

The following activities have been taken to strengthen the role of heads of court departments in Sarajevo Municipal Court:

- defining the desired proactive role of the head of department versus current situation;
- drafting the profile and guidelines for the election of heads of court departments establishing a transparent selection and appointment procedure;
- re-electing the heads of court departments: internal call, submission of applications;
- seeking the opinion of judges about who the best candidate is by using an anonymous *online* poll;
- interviewing the most successful candidates by court president;

- selection of the most successful candidates (to a mandate of 4 years, with the probation period of 1 year);
- obtaining the approval of the HJPC to reduce the quota for heads of departments, depending on the size of the department, for the purpose of implementing project activities;
- preparing annual working plans for the departments;
- continued monitoring of the implementation and application of measures;
- training regarding management, team work and communication (continuously for 1 year);
- evaluation of training and knowledge acquired;
- study visit to the Amsterdam District Court to exchange the experiences regarding management and work methods;
- continued *peer to peer* cooperation with the Dutch and Norwegian judges;
- evaluating the performance of judges within departments and recommending annual performance evaluation;
- evaluating probation period of heads of court departments, which resulted in either confirming of the mandate or selection of a new head of court department.

Also, the judges, who in the future might want to apply for the position of a head of department, underwent training in order to develop their capacities in case of fluctuation of employees from these positions. Training was also organised for the heads of administrative/technical court departments.

The trainings were provided by Rosemarie Smit-Bertens, trainer of the Dutch Training Institute for the Judiciary and members of the Project Team.

At the end of the IJEP II, the said process were mapped, which ensures their easy understanding and implementation in other courts (Attachment D. "Mapping of the process Court Management"

2.6.3. Sustainability of activities in the BiH judiciary

To ensure sustainability of the pilot activities and transfer of knowledge onto the entire judicial community, the HJPC BiH has adopted the Guidelines for the appointment of court department heads which are applied from 2019 and which define both the appointment procedure and profile of court department heads and the selection of the most successful candidate. On the basis of the Guidelines, some courts carried out the selection and appointment process, which ensured that the most competent managers amongst the judges took the posts of court department heads. (Attachment E. "Guidelines for the appointment of court department heads".

Furthermore, the training of local trainers was carried out and a special training curriculum developed on team work and communication (within the IJEP II Project) and on group intervision (within the IJQ Project) (Attachment F. "The agenda for *Team Work and Communication* and *Training the Group Intervision Leaders* workshops). The trainings were included in the annual training programmes of the Centres for Training of Judges and Prosecutors in the entities.

Training the Group Intervision Leaders, JPTC of FBiH, 9 March 2020 (IJQ Project)

In addition, the IJQ Project continued with specialised training of target court presidents and a certain number of court department heads of those courts, provided by the Dutch Training Institute for Judges.

Investing in human capacities and changing the organisational culture are long-term processes that give results only with passing of time. The objective of activities undertaken is to contribute to establishment of a more efficient high and mid-level management in courts, development of team work in courts and proper understanding of the managerial role and concept of management responsibility. The implemented activities ensured a suitable starting point for further development and work in the court collective, given that taking *ownership* over this process is of crucial importance for its success.

3. CASES AND COURT PROCEEDINGS' MANAGEMENT

3.1. Introduction

This part of the document contains a compilation of materials drafted within the project support of the Project Team with the Municipal Court in Sarajevo and the Cantonal Court in Sarajevo during the implementation of project activities directed at improving case management and litigation procedure management. To understand the work process of material drafting and adoption, the chart presents mapping of the process. (Attachment G. "Mapping of the process - Case management at courts"

The document contains a comparative overview of the differences in the most important products (Guidelines for Managing Civil Litigation Proceedings and Memorandum of Cooperation) between different courts which participate in the project and summarised discussions (questions and answers) on the course and rules of the procedure, which took place within the IJQ project.

3.2. Introduction to the products

3.2.1. Why this compilation?

This compilation has been prepared for better understanding of the processes that resulted in enclosed products and their easier overview to be used in courts in BiH.

3.2.2. What does it contain?

In this section you will find the products themselves as well as a short introduction to each product with the following background information:

1. the issue that needed addressing, identified either during one of the Round Table conferences or later during the Project;
2. an analysis of what caused the specific issue to occur, and
3. the way in which the product can be of assistance in resolving the issue.

3.2.3. How to use it?

The products are all separate and can be consulted and applied independent from each other. The idea is to refer to a particular product if an issue that is described in any of the introductions arises.

The products as they stand are the result of a prolonged process of identifying issues, coming up with solutions, developing the product, and adapting it. As such they may, in whole or in part, be specific to the situation in the Sarajevo courts. Different courts may have different insights or practices. Users of the products in different courts should, for this reason, feel free to adapt the products accordingly.

Each of the products and methods can be used separately, but they also are interdependent. They reinforce each other, and the implementation of each product helps the application and effectiveness of the others. In the end, it turns out to be a circle or wheel that needs to turn. For instance, if the preliminary hearing has been properly prepared with the assistance of the Plan

for preliminary hearing, the issues that need to be reflected in the judgement according to the Judgement drafting manual will have come forward and the drafting of a clear and well-motivated judgement will be easier.

3.2.4. Where to find which product?

The products have been categorised as follows.

Section 4.3 sets out the products that relate to concrete matters that are to be addressed by the courts. We have ordered these products chronologically as to their place within legal proceedings under the Civil Procedure Code (CPC). The relevant products here are the Checklist according to Article 53 of the CPC of FBiH, the Preliminary Hearing Plan form, Guidelines and Civil Litigation Judgement Drafting Manual.

Section 4.4 describes the products of a more general nature. These are the Best Practices, a legal opinion on the death of a party, and the Memorandum of Cooperation between the courts of first and second instance, lectures by Professor Ruth de Bock and questions and answers from the discussion with the judges of the Municipal and Cantonal Court in Tuzla.

3.2.5. Drafting products: Round tables

Issue

Early in the implementation of IJEP II Project, it appeared that judges felt there was a lack of communication within the courts and between the courts of first and second instance. Judges were dealing with all kinds of decisions and issues on their own, and different judges and panels might come to different solutions and decisions on similar issues. Inconsistencies in decisions have been noticed. The same problems would come up again and again, and each judge or panel was wrestling with the issues in a lonely struggle with insufficient communication on possible solutions. A desire was expressed in holding a round table with judges of both courts, where common issues could be discussed.

Working method

The round table was focused on that judges of the first instance and second instance courts would be divided into mixed groups that each would discuss certain topics. Each group would participate in discussions on each of the topics. The discussions on each topic were led by a moderator. The moderators were judges in the Supreme Court or university professors.

Because of the success of the first round table meeting in Sarajevo, where fruitful discussions evolved, and results were achieved, further round table meetings were organised in both Sarajevo and Banja Luka. The topics discussed at round table meetings included:

1. case management, including examination of complaint and issues on preparing for and conducting the (preliminary) hearing, the active role of the judge;
2. evidence: establishing undisputed facts and selection of matters on which evidence is required, allocation of the burden of proof, the role of judges in selecting evidence (avoiding superfluous witness hearings) and analysis of evidence;
3. procedural dilemmas, in particular postponements and adjourning hearings;,
4. drafting and writing judgements: including establishing facts and the evaluation of evidence, and;
5. cooperation between the first and second instance courts: communication between (the judges) courts, publishing decisions, procedures for pilot cases.

At the end of the round tables, each of the working groups would present their findings in a general meeting, and short conclusions were noted on flip charts. In that meeting decisions were taken on the way the joint conclusions could be shared and applied in practice. Tasks were assigned to create products that could serve the judges as tools to improve their work and efficiency.

Results

The meetings incited judges to communicate and facilitated a forum to present issues they encountered in their work. Products were in fact developed after the round tables, as resolved in their conclusions. These are the products and tools that are described below in this document, including the guidelines, the checklists, best practices and the judgement writing manual.

3.3. Products relating to concrete issues

3.3.1. The Checklist in accordance with Article 53 of the CPC.

Issue

During the preparation of the IJEP II Project, meaning the analysis of the existing situation and establishing of facts, as well as in the first round table conference in Sarajevo, it became clear that one of the reasons for the deficit of procedural discipline and long duration of civil litigation proceedings was at the very beginning: a high number of submitted complaints is incomplete, deficient or incomprehensible.

Article 53 of the CPC of FBiH sets out the minimum requirements a claim should meet. However, it often happened that those requirements were not met, e.g. that the facts on which the plaintiff based his claim were not well described, or no evidence in support of such facts was attached to the claim nor clearly and specifically announced. It is a common understanding that in such cases the court need not deal with the claim and should, upon initial examination of the claim, return such complaint to the plaintiff for clarification and completion (articles 66 and 336 of the CPC). Furthermore, Article 69 of the CPC provides, that only a correct and complete complaint shall be delivered to the defendant for a response.

However, in many cases, such an incomplete and deficient claim was not returned to the plaintiff. Instead, it was submitted to the defendant for a response without examination. In many cases, the defendant could not determine precisely against which allegations and claims he had to defend himself, thus causing that the written defence did not meet the minimum requirements set out in article 71 and 334 of the CPC. As a result, in many cases, the nature of the dispute remained unclear until the beginning of the preliminary hearing or its preparation. Due to this, the judges could not determine which facts were relevant, disputed or needed further evidence. This, in turn, led to the judges not always being able to direct procedures correctly, to conduct hearings properly, to render proper decisions on the allowed evidence, and to make other decisions needed for efficient litigation. As a result, there were many alterations to claims and adjournments of proceedings.

Analysis

Much can be gained if a consistent use is made of the authority to return an incomplete and deficient statement of claim to the plaintiff. In doing so, the court only must hear matters which are clearly described and well-found. The problem, however, was that due to a lack of human resources, there was no initial examination of the statement of complaint in many cases before the preparation or even the start of the preliminary hearing. However, then it is too late to return the claim to be completed.

Product

A Checklist of the elements from Article 53 of the CPC has been prepared, which is attached to this document Attachment H. "Checklist for the preliminary examination of a complaint." This checklist enables the judge or even, from the perspective of strengthening court human capacities, a court clerk or other assistant, to examine the claim immediately upon submission and to decide whether a statement of claim is fit to be submitted to the defendant for a response quickly and easily. The form was designed in such a way that only when all fields confirmed that the projects boxes are ticked, the complaint is fit to be submitted to the defendant for a response.

3.3.2. The preparation form for the preliminary hearing

Issue

Another reason for the deficit of procedural discipline and the long duration of civil litigation procedures in the first stage of the litigation was that many judges seemed not to be adequately prepared when starting the preliminary hearing.

At the round table meetings, it appeared that the preliminary hearing is the heart of the whole proceedings more than the main hearing as far as efficiency is concerned and especially for the purpose of correct and timely directing of the course of proceedings. After all, at the preliminary hearing, decisions are made as to which evidence will be allowed to be presented at the main hearing, how many witnesses will be heard, whether there is a need for an expert witness to be heard and other decisions which strongly affect the further course of the proceedings. These decisions may lead to a far shorter duration of the proceedings. That is why the preliminary hearing should only be scheduled after proper preparation.

In preparing, the judge should filter the dispute and examine which facts are relevant given the substantive law and which are contested and which not. By doing so, the judge enables himself to decide which facts need no further proof and, as a result, decline evidence for such facts offered by the parties. The judge could also decide on limitations to the number of witnesses to be heard in case the evidence offered is abundant given the importance of the facts and the nature of the dispute. These decisions are crucial to avoid getting lost at the main hearing. Proper preparation may even lead to the conclusion that a preliminary hearing is not necessary at all (Article 76 of the CPC) and that it is possible to schedule the main hearing immediately. Furthermore, the preliminary hearing enables the parties to clarify anything which has remained unclear from the claim and response (Article 78 par. 2 of the CPC).

The judge should place himself in a position where he is in charge of the situation and will not be surprised or distracted by motions of a party that sometimes have no other purpose than to adjourn the hearing. This should be avoided as much as possible.

Analysis

Proper preparation could not take place because it was hardly possible on the basis of incomplete and deficient complaints or response to the complaint, which is why the aforementioned Checklist was developed pursuant to Article 53 of the CPC.

Another reason seemed to be that judges did not take enough time to study the case file and analyse the claim. This happened even though it was agreed at the round table meeting that every minute or hour the judge spends in preparing the preliminary hearing, will pay out double or three times during the rest of the proceedings. When in a later stage of the IJEP II Project we were working on judgement writing, it was acknowledged that proper preparation of the preliminary hearing

and conduct of it in an active and well-prepared way, hugely contributes to a quickly written and shorter judgement in the end.

Product

To help the judges to prepare the preliminary hearing adequately and in a less time-consuming way, a preparation form for the preliminary hearing was developed, which can be found in Attachment I. "Preliminary Hearing Plan." This form provides a structure by which, by filling out the various parts of the form according to the instructions accompanying it, the judge gets an overview of the claim and the facts which are needed to be established to justify the claim in view of the substantive law. Moreover, it will be clear what the grounds of the defence are, and which facts need to be established for a successful defence and which of the facts on either side are contested and which are not. By preparing the case with the help of the preparation form, the judge does not only obtain a useful survey of the case on paper, but also starts the hearing with a well-structured overview in his mind, enabling him to concentrate solely on what is relevant. This enables the judge to ask the right questions and to act as an active judge.

3.3.3. The guidelines

Issue

With the introduction of the CPC in 2003, the principle of material truth was abandoned and replaced by an adversarial concept. Since then the procedural truth is leading, and the boundaries of the dispute are established by the facts given by the parties. The court cannot introduce facts that are not introduced by the parties. However, for the legal analysis, the court is not bound to the analysis of the parties. Not only should judges be active in thinking and in structuring the debate, in linking proposed evidence to disputed facts and thus cutting off evidence for facts that are not contested or relevant, but they should also be more active throughout the proceedings to reduce the lead time of a case and to reduce his caseload and backlogs.

Although the CPC assumes that during a lawsuit two hearings may be held, in Sarajevo the average number of hearings was almost as twice as big, including those that were postponed or adjourned. The lead time of a civil case was over 700 days per case.[8] Sometimes judges did not know how to deal with requests of lawyers for postponement, and they did not know how their colleagues would decide or had decided in similar requests. The same goes for the way in which judges deal with presented evidence. Dealing with different kinds of representatives in different kinds of lawsuits gave similar issues. This way of working gives the lawyers room to apply pressure to the judge to decide in favour of their clients. With the result that many cases are unreasonably delayed.

Analysis

The judges in Sarajevo concluded that much could be gained if general opinions would be developed on procedural issues which may cause delay at any stage of the proceedings. While the CPC does not provide for generally shared and used opinions, it does not preclude it either. The law does not provide for shared opinions either, nor does it forbid it. Thus the Netherlands courts made rules on procedural issues, which are normally applied, unless particular circumstances justify a deviation, and over the last 20 years these rules have been used and accepted by the judges and by the lawyers.

[8] Data on 31 May 2015 with completed P-P cases where both the preliminary hearing and main hearing were held.

With this example in mind, the judges of the Municipal Court in Sarajevo started talking amongst each other and with judges of the Cantonal Court about the delaying factors which occur in their daily practice and about how to come to shared solutions for these issues. Gradually shared conclusions on different topics were reached.

Product

The judges of the Municipal Court decided to develop Guidelines for managing civil litigation proceedings in which their shared conclusions were written down. This documents can be found in Attachment J. "Guidelines on Managing Civil Litigation Proceedings in the Sarajevo Municipal Court." The Guidelines were presented to the Sarajevo Regional Bar Association in March 2017, published on the court's website and then most of the judges started to apply them. At the very beginning, there was some criticism aimed at the court regarding the adoption of the document, however, gradually most of the lawyers have gotten used to it and now behave accordingly. Almost a year later, all the judges of the civil department and judges from other departments use the guidelines in their daily practice.

The guidelines have been evaluated in April 2018 with the Bar. The judges of the Municipal Court consider the guidelines to be a *living* document and are continuously thinking and talking about how to customize and expand the guidelines.

In the following stages of the project all first instance courts drafted and published their own Guidelines. Attached is a comparative overview of differences in documents of different courts (Attachment K. "A Comparative Overview of the Guidelines on Managing Civil Litigation Proceedings.")

3.3.4. The judgement writing manual

Issue

The courts stressed the need for improvement of the substance of their decisions to minimize the amount of reversed judgements.

Analysis

The judgements were generally not written in a consistent and efficient manner. All judges write their judgments in a manner they are accustomed to, without following a set structure or logical order. By doing this, unnecessary information, e.g. inclusion and copying of all evidence, whether or not relevant for the decision, is being incorporated into the judgement which makes it difficult to read the judgement and to analyse the actual motivation of the judgement that is given. In addition, unnecessary mistakes are being made in the legal analysis of the judgement because the judgements do not start with identifying the applicable substantive law. Establishing applicable law is key for the entire reasoning and assessment of the required evidence. Similarly, often there is no clear establishment of the relevant undisputed facts, as a result of which the basis of the dispute is unclear, and it is unclear which disputed facts are relevant and require analysis of further evidence.

Product

The judges of the Municipal Court in Sarajevo in cooperation with the judges of the Cantonal Court of Sarajevo and Judge Marijana Omercausevic of the Supreme Court of the FBiH have produced a "Writing Manual for Civil Judgments" (Attachment L).

The main purpose of this manual is to assist the judges of the first instance court in drafting judgements more consistently and efficiently. The manual could also be a useful tool, for both the judges of the first instance court as well as the second instance court, to check that all steps that are required to be taken by the judge have been taken. By doing so, fewer judgements could be reversed and it could, therefore, save time for all judges involved.

The first instance court judges could use the manual not just when writing judgements, but it can serve as a useful tool in preparing the preliminary hearing. It can help the judge to structure and analyse the information which is required from parties during the hearing. This way the preliminary hearing can be dealt with more efficiently.

In addition, judges should use the manual as a checklist when reviewing the judgements of their colleagues. The manual has been divided into five main steps which are aligned with the five requirements of article 191 of the CPC. The steps can easily be followed, and clear instructions per step are set out in the manual itself, as well as an introduction on how best to use it.

3.4. Products relating to general matters

3.4.1. Legal opinion on the death of a party

Issue

During the meetings with the judges in Sarajevo often discussions arose on the influence of the death of a party on the proceedings. It appeared that the influence of the death of a party depends, among other things, at the moment when the court is informed about the deceased and when precisely the party died. That caused many issues to be raised, such as: do the heirs or successors need to be called in the proceedings or should the claim be rejected immediately or should the case be dismissed or suspended or otherwise.

Analysis

It often happens that when a party appears to have died a judge does not know how to deal with this issue. Much can be gained if general opinions will be developed on this issue since then judges do not have to find solutions in various matters on this issue themselves any more. This saves the judges' time. Keeping to an unambiguous position in comparable matters gives clarity to the parties. Lack of clarity or uncertainty may cause an undesirable and unnecessary delay of the proceedings.

Product

The judges of the Municipal Court in Sarajevo decided to delegate the dilemma regarding legal consequences in case of a death of a party to the Supreme Court of the Federation of BiH to solve a disputed legal issue, on the basis of which the Supreme Court of the Federation of BiH finally resolved the issue by its Decision number: 65 0 P 535313 16 Spp of 23 September 2016 which is in Attachment M. „Decision of the Supreme Court of the Federation of BiH on the death of a party ".[9]

[9] As per the decision of the Supreme Court of the Federation of BiH, if a death of the party occurs before a complaint is filed, then that is an unrecoverable procedural shortcoming, and the complaint filed against the deceased should be immediately rejected. The issue has been considered within the cooperation between the Basic Court and District Court in Banja Luka with the presence of the judges of the Supreme Court of the Republika Srpska, after which the Civil Department of the Supreme Court of the Republika Srpska took a position on this issue. The position of the Supreme Court of the Republika Srpska and the courts from Banja Luka differ from the aforesaid and therefore this circumstance should be considered a recoverable procedural shortcoming and the complaint should be returned to be completed.

3.4.2. Best practices – case management

Issue

Within the first round table in Sarajevo, the participants discussed many possibilities to improve the procedural discipline and to reduce the duration of civil law proceedings. These were partly caused by late or unfounded requests for adjournment or postponement made by attorneys, and for a number of issues, it appeared useful to establish the guidelines to harmonise the decisions made thereon.

However, there were also other situations for which it was not possible or appropriate to establish guidelines, but were nonetheless situations where judges acted differently in similar procedural situations and the same legal framework, as a result of which their behaviour was unpredictable to the parties, and there was inconsistency in court practices. Moreover, judges often were struggling hard to handle situations and solve problems for which other colleagues had already found practical solutions. This also resulted in unnecessary adjournments.

In particular, when it came to dealing with evidence, there were many frequently arising situations in which judges did not know how to decide or decided in different ways in similar circumstances. For example, issues like how to deal with abundant or superfluous evidence offered by the parties, or evidence on facts that are either not contested or not relevant given the applicable substantive law, or a party putting a huge pile of additional unannounced evidence on the table at a late stage, or similar procedural incidents. Are other solutions than just adjourning the hearing possible? It is also necessary to reflect on the issues such as the order and priority of evidence and issues such as: Whether summoning a witness should be allowed in situations when a (relevant and disputed) fact can be established on the basis of documents and when is it necessary to carry out on-the-spot investigations, which cases required opinions of expert witnesses or issues such as the consequences of witnesses failing to respond to the summons of one of the parties. Many other procedural incidents could be identified for which the CPC does not provide a direct, complete solution and judges act in different ways.

Analysis

The situations described above are all of a practical nature and have in common that within the same legal framework different solutions are possible, some of them being more efficient than others, whereas setting additional rules is not possible or appropriate. The main problem is the lack of sharing knowledge, know-how and experience. After all, if one puts a group of judges together to discuss a practical problem, several solutions will come up, each of these having its merits, and usually, one of them could be chosen as the most appropriate in most situations. One of the problems was that discussions like these were rarely held and the results were only known to the participants.

A part of the solution can be found in the part of the project that deals with court management: the court should be managed in such a way that team leaders are responsible and accountable for ensuring such discussions for sharing knowledge, know-how, and experience regularly happen. However, another aspect is to record the outcome of such discussions and make such information accessible also to those who did not participate, in particular to the less experienced judges.

Product

To cover also the latter aspect, the so-called Best Practices are developed. Attachment N "Best Practices." A best practice is meant for internal use only, within the court – unlike the guidelines which were shared with the Bar – and can best be defined as a written recommendation of what,

in most cases is the best/most practical/most efficient way to solve a certain problem. Mostly, it is about issues arising during a courtroom hearing for which an immediate solution is desirable.

Unlike a formal act, guideline or by-law, the Best Practice does not have a regulatory, article-by-article structure, but has a more narrative and descriptive character. However, it is not a legal manual; it is of a purely practical nature. It describes the usual pattern and deviations from it, based on proven methods. It is not binding, but represents recommendations and the means to exchange knowledge and experience. Looking at the document, it is clear that a great variety of matters can be the subject of best practices. Many more can be added and shared by all the courts in BiH if judges jointly develop their knowledge and experience and take the time to share it.

Best Practices:

1. Contain a description of a problem which arises regularly, summarising the legal provisions on the issue at hand very briefly. Then they may continue with a short description of the possible solutions and choices and, finally, state what is, in most situations, the most optimal, and why;
2. Can be developed by any group of judges sitting together reflecting on their work. This can be just 2 or 3 colleagues, but also within the framework of a team or a department or even the whole court;
3. Are laid down in a document which should be considered *living* or evolving. It can and should be amended and supplemented whenever there is the need or possibility.

As a result of these best practices being developed, the judges have quick solutions on the table for many frequently arising issues. Aside from this obvious upside, the value of the development process cannot be underestimated either. Sitting down together in groups and discussing these issues and especially their solutions is of great value.

3.4.3. Memorandum of cooperation between the courts of first and second instance

Issues

Very early on in the implementing IJEP II Project, it became clear that the second instance court needed to be involved to achieve optimal efficiency results in the first instance court. The same applies vice versa. Therefore, round table discussions were held in which matters concerning both courts were discussed by judges of both courts. In particular – but not exclusively - the following issues were identified:

1. Lack of case law harmonisation: the different panels of the second instance court would issue different decisions in similar cases. As a result, matters were reversed even if decisions were in line with prior decisions of (a panel of) the second instance court and the outcome of proceedings was unpredictable;
2. The lack of procedural discipline in both instances;
3. Appeals on procedural decisions would be treated with the same delay as cases subject to appeal. As a result, cases could be held up for an extended period pending appeal procedural decisions would be treated and would only return to the first instance court for continuation after the decision on the appeal. In some cases, the parties waited for years after the appeal was pronounced. The matter could therefore already be old before a first review of the subject matter itself would take place. This resulted in long protracted proceedings;
4. Judges in the first instance court felt that in decisions of the second instance court to reverse matters it was not sufficiently clarified in which stage of the proceedings the matter should be

resumed, so that it was not clear to the first instance court what was needed to be done in the reversed proceedings, and

5. First instance court judgements often lack sufficient reasoning in particular on analysis of evidence.

Analysis: Potential solutions

To solve these problems the following actions were taken:

Issue 1 was tackled by:

a. For big groups of cases with identical or similar factual and legal basis, the first instance court may designate certain cases with appeal filed as *pilot cases*. In processing these cases, the second instance court takes a position that is supported by all panels ruling in such case type, and such ruling can be taken into account in decisions by the first instance court on similar matters. The second instance court agrees to render decisions on such cases within a certain time frame and to publish its decision so that all judges and litigants can take it into account;
b. Publishing judgements in a bulletin or on the website of the second instance court;
c. Improving internal communication within each court (as is stimulated by the pilot cases), this being a concern for each court and is not explicitly covered by the Memorandum of Cooperation.

The adoption and application of the Guidelines is an important step to address *issue 2*.[10]

Issue 3 was tackled by case marking. It was agreed that files of matters subject to appeal on a procedural matter would be labeled with a colour code by the first instance court when forwarded to the second instance court.[11] The second instance court agreed to issue decisions on such labelled cases with priority. In this manner, an important speeding up of proceedings was achieved, and matters would not be unnecessarily delayed by an appeal on a (minor) procedural matter.

Issues 4 and 5 were tackled by:

a. providing courses on judgement writing (paragraph 2.2.4),
b. the development and application of the manual on judgement writing,[12]

Important: *none of the joint meetings saw individual cases and the content of individual rulings being discussed. The discussions only cover general methods of working and organisation.*

The content of the memorandum of cooperation

The two courts in Sarajevo decided to enter into a Memorandum of Cooperation, which can be found in Attachment O. „Memorandum of Cooperation between the Municipal and Cantonal Court in Sarajevo", in which they agreed on the following cooperation:

1. organise quarterly meetings of representatives to discuss matters of common interest such as new types of cases, expected large numbers of certain types of cases, inconsistent decisions on similar cases and similar;
2. publish decisions in a bulletin and on the website of the second instance court;

[10] See for further reference section 3.3.3. of this document and Attachment J. "The Guidelines."

[11] In specific cases by the use of yellow Post-it stickers on the file covering.

[12] See another section 3.3.4. of this document and Attachment L. "The judgement writing manual."

3. delegation of *pilot cases* by the first instance court to the second instance court on which the second instance court shall render a decision within an agreed time frame (90 days). Decisions in such cases ought to be published to enable the first instance court to take into account the pilot case decision in decisions on similar matters;
4. promoting procedural discipline in their decisions and working towards adoption thereof by litigants;
5. building respect for the authority of the courts and
6. aiming to achieve confidence from the public in the administration of justice through the quality and consistency of judgements.

In the upcoming project phases, all target courts made their own memorandums of cooperation. This documents contains a comparative overview of their basic differences (Attachment P. "Comparative Overview of Differences between Memorandums of Cooperation.")

3.4.4. Two lectures by Professor Ruth de Bock:[13] *'Evidence and facts'* and *'What makes a good judgement?'*

Issue

Over the course of the IJEP II Project it became clear that, in general, there was a lack of attention for the importance of the analysis of the relevant and disputed facts as put forward by the parties, especially in the phase of the preliminary hearing: which facts are relevant in view of the applicable substantive law? Which facts are disputed? Which facts need (no) further proof? How many and which witnesses will be heard? Is there a need for an expert witness?

Therefore, again in general, the main hearings were not as efficient as possible and afterwards the judgements often lack sufficient reasoning on the analysis of the facts and the evaluation of evidence.

Analysis, method of solution

It was decided to invite a leading and prominent expert, Professor Ruth de Bock, to give two lectures during the second round table conference in Sarajevo.

Her first lecture was on "Evidence and facts". In this lecture, Professor De Bock explains the process of analysing the facts as put forward by the parties, the importance of that process for an efficient civil procedure and the techniques of the ruling on evidence.

The second lecture was on "What makes a good judgement?" In this lecture professor De Bock explains that the quality of a judicial decision is expressed in three elements:

1. craftsmanship
2. fairness
3. effectiveness.

Professor De Bock explains the various aspects of the quality of a judicial decision extensively.

[13] A professor of private law at the Faculty of Law of the University in Amsterdam and Advocate General before the Supreme Court of the Netherlands.

Product

The text of the two lectures held by Professor De Bock during the round table conference, which can found in Attachment R "Evidence and Facts" and Attachment S "What makes a good judgement?"

3.4.5. The list of questions by the Municipal Court in Tuzla

The Blueprint also includes another result of the IJEP II Project. In the period when meetings were held between the judges of the Municipal and Cantonal Court in Tuzla and the Expert Team, the judges of the Municipal Court prepared a list of questions for the members of the Expert Team, to compare the rule and work methods of the Netherlands and BiH. The Dutch members of the Project Team offered their answers to those questions.

The answers and the differences between the two countries served as an inspiration for a discussion on the reasons for such actions in the meetings held in Tuzla and other cities as well.

The list of questions is included in this document (Attachment T "The List of Questions by the Municipal Court in Tuzla.") because a better understanding of the collocutor's background facilitates a discussion. In addition, the practices described can inspire though whether it is possible to apply them somehow.

Working on case management, Municipal and Cantonal Court in Sarajevo (IJEP II Project)

4. PEER LEARNING

4.1. Introduction

Several types of peer learning were used in the IJEP II project, to bring the participants closer to cooperation and newly written tools and products. The chapter describes three peer learning methods: Moot court, coaching groups and bilateral intervision.

4.2. Moot court establishing the new case management

4.2.1. Working method

A moot court is a practical exercise amongst judges, whereby a hearing at the court.is simulated. One or multiple cases, preferably real, anonymised cases, will be tried by the judge. Judges portraying the parties and their attorneys will play their respective roles.

There is a moderator who observes the proceedings. The moderator may stop the moot court to present observations, different options for how to act, and (how to) give feedback. This moderator could, for instance, be a judge of a higher court.

4.2.2. Why organise a moot court?

During one of the study visits in Amsterdam, it was discovered that a moot court could be a useful tool to show how to put all different products into practice and show how these products work together. A moot court can, for instance, be used to practice how to use the preparation form for the preliminary hearing. Furthermore, different skills can be practised by all participants, and different (best) practises can be exchanged at the moot court. Skills to practice could, for example, be how to ask the parties questions and how to give proper feedback to colleagues. Practices to elaborate on could be how a judge can take control over a hearing and the proceedings, how to address irrelevant subjects and how to decide on a variety of requests of the parties, such as deciding on a request for a postponement on the basis of a guideline.

4.2.3. What to achieve with a moot court?

The goal of a moot court is to gain insight that proper preparation and an effectively conducted hearing may lead to a substantiated decision and a more easily written and shorter judgement. All together this will lead to increased efficiency of the proceedings as a whole.

4.3. Coaching groups

4.3.1. Introduction

The Coaching Groups were initiated in the later stages of the IJEP II Project. It was recognised that it was one thing to develop the products in collaboration with the Sarajevo colleagues, but quite another to familiarise yourself with a new way of working. The objective of these coaching groups, therefore, was to support the judges in the process of translating the theory of the various products mentioned in this compilation to the practice of their daily work. The idea behind coaching

groups was for the judges to gather and interact and openly exchange experience about the new work method. The problem we have encountered in doing so has been that the Sarajevo Municipal Court judges had been used to working independently and having little or no experience in open exchange of ideas with the colleagues. It seems that there was a tendency to rather consult the laws or persons of authority for ideas on how to solve cases or write judgements. It was our aim to make the judges aware of their own discretionary powers and find their independence within their profession.

4.3.2. Working method

All the Sarajevo Municipal Court judges in teams that were part of the Project were divided into groups with a maximum of 10-12 persons each.

During visits of the Expert Team, the different groups held their meetings.

A minimum of two members of the Expert Team would be present to preside as moderators. The moderators would have prepared the subjects to be discussed. The choice of subjects was based on where the greatest urgency was felt within the project e.g., at times that it was relevant that the judges would keep remembering to apply the guidelines, the subject of a group meeting would be an aspect of the guidelines. After the adoption of the judgement writing manual, that manual had been selected as a subject.

In addition to the subject, the moderators would prepare concrete questions to be asked of every individual taking part in each coaching group. The challenge here is to prepare questions that would invite a team member's reflection on the chosen subject in the answers given. The theory behind this working method is that everyone gets to reflect on the chosen subject themselves and is forced to listen without interruption to their team-mates' reflections before a discussion on the topic gets started.

4.3.3. Results

It is difficult to quantify results when it comes to processes such as these. On the whole, though, the Expert Team members have been quite excited about the way communication among group members has developed. In the beginning, it was difficult to get people to talk at all and a lot of the answers to the questions would not be on the topic. The answers would be about general theory, not so much about one's own experience of working with the products. During the last few meetings of the coaching groups, we have found there has been more openness about that and more willingness to listen to one another. A few times we have seen the members of the coaching groups come up with concrete solutions to particular issues as a result of these discussions.

4.3.4. Prerequisites for success

For these coaching groups to work, it is essential that all judges attend, not just the ones already active in the Project. It is also essential to have time, both for the meetings themselves and to meet at least three times over a period of six months.

4.4. Bilateral intervision

4.4.1. Introduction

One of the main aims of IJEP II Project has been to encourage judges to work together more closely. The impressions at the beginning of project activities pointed out that there was very

little communication between the colleagues on how the judges conducted the hearings, wrote judgements and rendered decisions.

4.4.2. Working method

The idea is simple: a judge attends a hearing of another one or reads a judgement of another one and afterwards they share their opinions about it. The difficulty lies in the kind of feedback that is provided. Peer learning is emphatically not intended as one colleague telling another how to do their work. It is to encourage an open exchange of ideas on best practices. For this to be most effective, the feedback ideally contains factual observations. For example, a judge can give the other judge the feedback that he noticed during his colleague's hearing that this colleague did not ask a party any questions or that he/she allowed adjourning without a good enough reason. Instead of telling the colleague what should have been done instead, the person providing the feedback could ask if there was a reason for that. In a discussion that follows, the idea is that both parties have something to offer on how certain situations can be handled.

4.4.3. Results

Peer learning and professional analysis are still in their inception in courts in Sarajevo. However, during the implementation of the activity it has been observed that a certain number of colleagues do read judgements of their colleagues and attend their hearings. Also because of what was learned within other areas of this Project (court management), the Sarajevo judges are continually getting closer to offering each other non-judgemental feedback.

4.4.4. Prerequisites for success

The instrument of peer learning is ideally not started in the early stages of the Project. Success requires that judges have already familiarised themselves with the products and have learned a bit about how to give each other open, non-judgmental feedback. Important is that feedback is given in a neutral way, by observations on behaviour and not by judgments about the performance of the judge in question.

Furthermore, crucial is that the setting is confidential, which means that the required observations and feedback are not conveyed to the head of the department or the court president. This would be an impediment for an open mind and some kind of experimental change in behaviour. Attending the hearings should be vice-versa, and learning aspects are giving feedback as well as observing the style and approach of the other colleague.[14]

[14] See more in Attachment C. "Effective Giving and Receiving of Feedback."

5. CONCLUSIONS

This Blueprint offers the tools and products to improve efficiency and quality of the judiciary, that have been developed within the IJEP II Project by the judges of the Municipal Court and Cantonal Court in Sarajevo with the support of the judges of the Supreme Court of the Federation of BiH and the Project Team, that have been further modified according to the requirements of other target courts of the IJEP II and IJQ projects.

The Blueprint is meant to be used in other courts in BiH and enables the HJPC and court presidents to achieve the same results and tailor the products to their respective courts.

It is also of crucial importance to ensure achieved results can be developed further and made sustainable. It is up to all the participants in the Project who are currently applying the results and changed their way of working to realise this. They will expand on this new view on their professional performance and share it with other judges in the country.

And there are pitfalls. In our opinion, the main one is trying to be too fast and efficient. Thinking that professionals will automatically follow what has been put on paper is an illusion. They will not. Professionals have to be convinced or at least informed about changes and have to understand what the underlying reasons are. If possible, they need to have a say in the decision-making process and be able to discuss the choices to be made.

Getting commitment is a process and has everything to do with mentality. The process begins with the awareness of the position the judges have in society and the insight that every improvement starts with oneself. So always take the time to invest in people and try to connect with them. They are the capital of the judiciary.

Project Team

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ATTACHMENT A. "HOW TO MAKE A TEAM AND COMMUNICATION PLAN?"

1. Communication what, when, who and how?

Establish the topic to be discussed at the team meeting:

What

- integrity
- position of the judge in society
- quality
- behaviour in hearings
- duration
- working processes
- objectives regarding work on the cases
- cooperation with employees
- discussions with the judges regarding performance evaluation

When

- convening team and other meetings: how often?

Who

- team members at team meetings
- smaller groups
- bilateral
- employees
- court president

How

- in writing
- in person
- at special occasions
- meetings
- bilateral

Enter the text here

2. Indictment quality

Define objectives in relation to quality and efficiency that need to be achieved by the end (of the year)... Define (3) measures for improvement: What is necessary to improve quality:

Enter the text here

Define:

Which objectives need to be achieved by the end of (the year)…

Who will take the measures (potential department heads and other team members, the court president, other department heads)?

How (teamwork, less groups, in consultation with team members, working methods?). Build a sense of belonging with your team members: how to engage team members?

Enter the text here

3. Quantity

Define objective in relation to quantity and performance: Number of completed cases, backlog.

Enter the text here

ATTACHMENT B. "GROUP INTERVISION"

1. Starting points

- Intervision is a process of confidential cooperation between 6 people (8 maximum).
- Intervision creates the conditions for support amongst colleagues by the use of intervision methods.
- Intervision leads to reflection and to further professionalization.
-The purpose of intervision is to ensure professionalism to the greatest possible extent and enable empathy whilst performing tasks.

2. Objectives

After the intervision:

-The participants can approach solving of issues related to the work tasks from different perspectives;
- The participants can solve professional (and moral) dilemmas, issues and problematic situations at work in different ways;
- The participants can combine a rational and objective approach with intuitive and feeling approach;
- The participants can continue with the intervision on their own.

3. Means:

The most important intervision means is asking questions. This requires openness and respect for all participants, because there is no simpler problem than another person's problem. We make our opinions quickly, but the group intervision requires a person to leave their own interpretations and assumptions aside, so that they could start examining by joint forces.

In the intervision, somebody present the problem and other participants "ask questions" to that person regarding the problem. In that way, the person presenting the problem shares their thoughts and feelings about the problem with other participants.

The other participants continue asking questions, thus painting a picture of the problem.

Once the participants have sufficient information, a new situation is created:

- The participants have got the picture of the problem in a way that the person who experiences it is speaking about it, on the basis of the information they got and not on the basis of their own assumptions.
- By answering questions, the person speaking about the problem also gains insight into it. Answering questions and further development of the situation generate a different position towards the problem. For example, different views on one's own role or approach.

4. Working method

The working method recommended is case discussion. For a group that is getting acquainted with intervision this method is more effective and suitable.

Cases used during intervision need to comply with certain conditions:

- They are completed. Hypothetical cases do not work well in intervision; the effects of learning rest on the fact that we are close to reality.
- They are connected with the work.
- They happened recently. After something happened long time ago, usually the perception of the person speaking abut the problem has suffered certain changes, which aggravates the process of giving adequate answers.

Conversation procedure

- Each person mentions the problem they wish to discuss.
- The group selects the presented problems.
- The person presenting the problem gives a brief description of it and keeps their solutions (regardless whether they are included in practice or not) to themselves.
- The members of the group take notes.
- The group members ask questions for the sake of further clarification.
- The group or individual members make a joint or individual analysis of the situation.
- The group or individual members formulate a joint or individual vision on the situation.
- The person presenting the problem speaks about their approach.
- Discussion takes place.
- Conclusion and evaluation take place.

Evaluation and action plan

During the final phase the participants discuss what they have learned. It seems as though only the person presenting the problem has learned something, but everyone participating can learn something from this approach to problem solving. That is why everyone takes notes:

- What did I learn in this meeting? Was it enough/less than what I expected?
- What do I think and feel about this process? What was good and was not?

At the end of the meeting the participants agree upon certain things for the next intervision session!

ATTACHMENT C. "EFFECTIVE FEEDBACK GIVING AND ACCEPTING"

Effective feedback is feedback that is heard, understood and accepted. Develop your feedback skills by using these few rules and you'll soon find that you're much more effective.

1. Giving feedback

1.1. Prepare yourself well

Think about what you're going to say and how.

1.2. Choose a good moment and the right place

There are times when people are feeling open to feedback and times when they aren't. Be aware of the emotions and feelings of others. This will help you to pick a suitable moment. For example, an angry person won't want to accept feedback, even given skilfully. Wait until they've calmed down a bit.

1.3. Give feedback in an 'I'-message

Instead of saying: You have done this and that, say: I have noticed that...

1.4. Mention only behaviour that can be changed

The most important rule of feedback is to remember that you are making no comment on what type of person someone is, or what he or she believes or values. You are just commenting that person's behaviour, a behaviour that can be changed.

1.5. Be specific and concrete

Give examples. Think about specific occasions, and specific behaviour, and point to exactly what the person did, and exactly how it made you feel. The more specific - the better, as it is much easier to hear about a specific occasion than about something that 'happens all the time'.

1.6. Mention the effects of that person's behaviour (on you or the organisation)

Presenting feedback as your opinion makes it much easier for the recipient to hear and accept it, even if you are giving negative feedback. This approach blames nobody, which is therefore much more acceptable.

1.7. Feedback should be timely

It's no good telling someone about something that offended or pleased you six months later. Feedback needs to be timely, which means while everyone can still remember what happened. If you have feedback to give, then just get on and give it.

1.8. Give the other space to give his or her reaction or vision.

And listen carefully

1.9. Take care and be aware of non-verbal behaviour

End with a clear agreement (SMART)

SMART = **S**pecific - **M**easurable - **A**cceptable - **R**ealistic - **T**ime framed

2. Accepting feedback

It's also important to think about what skills you need to receive feedback, especially when it is something you don't want to hear, and not least because not everyone is skilled at giving feedback.

2.1. Take an open attitude and avoid defensive reactions

In order to hear feedback, you need to listen to it. Don't think about what you're going to say in reply. Listen. Notice the non-verbal communication as well. Listen as well to what your colleague is not saying.

2.2. Ask further when something is not clear

Ensure that you have fully understood all the nuances of what the other person is saying and avoid misunderstandings. Use different types of questions to clarify the situation and reflect back your understanding, including emotions.

For example, you might say:

"So when you said …, would it be fair to say that you meant … and felt …?"

"Have I understood correctly that when I did …, you felt …?"

Make sure that your reflection and questions focus on behaviour, and not on personality. Even if the feedback has been given at another level, you can always return the conversation to the behavioural level and help the person giving feedback to focus on that level.

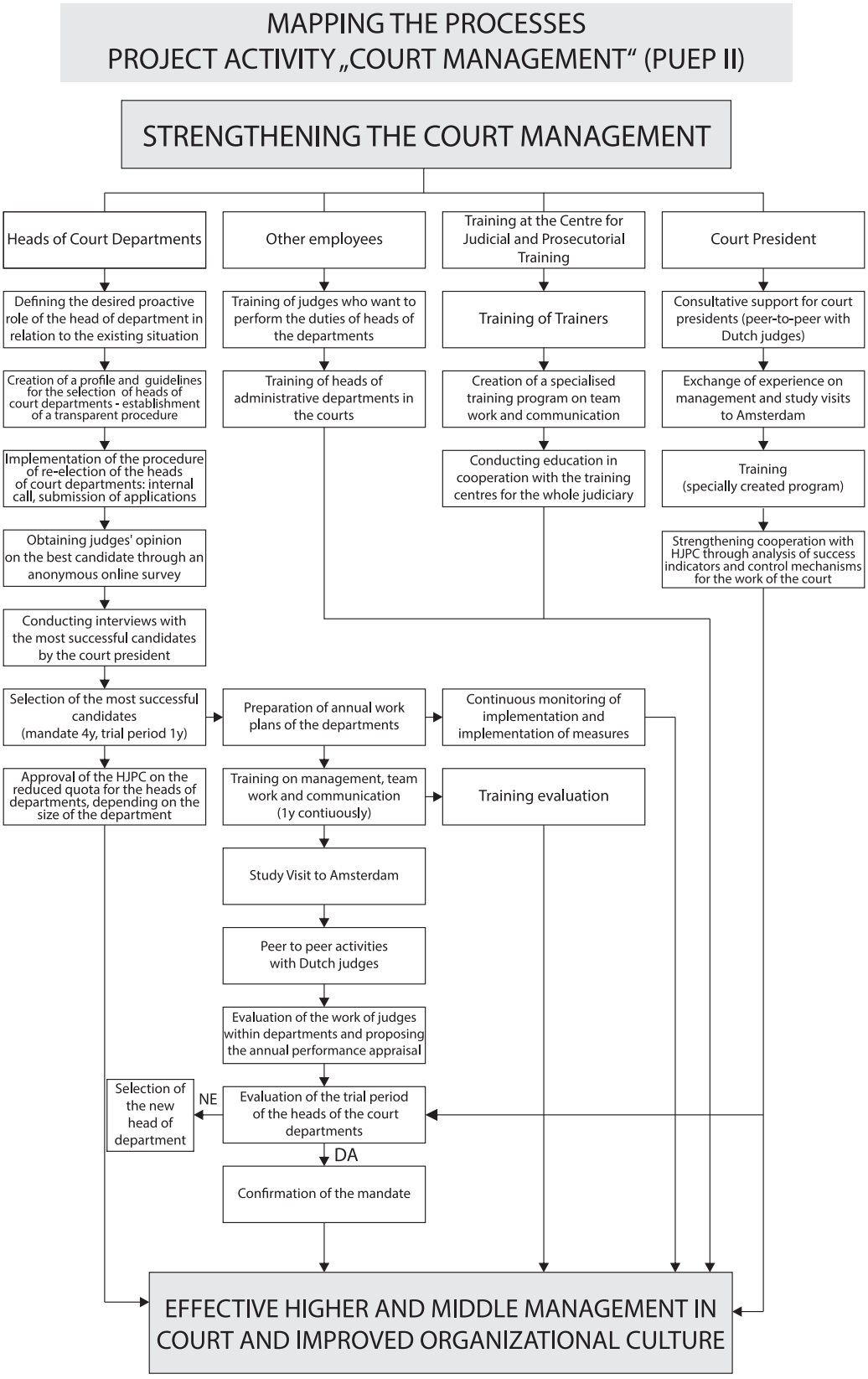
2.3. Be clear when you agree/or disagree

You need to be aware of your emotions (self-awareness) and also be able to manage them (self-control), so that even if the feedback causes an emotional response, you can control it.

2.4. Take an attitude to find solutions and cooperation; end up with a clear agreement

Thank the person who has given you the feedback. Consider the feedback, and decide how, if you wish to act upon it.

ATTACHMENT D. "MAPPING OF THE PROCESS - COURT MANAGEMENT"



ATTACHMENT E. "GUIDELINES FOR THE APPOINTMENT OF COURT DEPARTMENT HEADS"

Contents:

1. The purpose of adopting Guidelines

The Guidelines for Appointment of the Court Department Heads (hereinafter: the Guidelines) are a set of recommendations intended for the court presidents in Bosnia and Herzegovina, whose intention is the establishment of a clear, objective and transparent process of appointment of the court department heads and the definition of conditions and skills that a court department head should meet or have to properly meet the challenges and demands of this post.

The Guidelines are adopted for the following objectives to be met:

a) to ensure duties of the court department heads provided under Article 17 of the Book of Rules on Internal Court Operations[15] are met,

b) to strengthen the role and responsibilities of the court department heads, especially in the context of organising and managing the court department, as one of the evaluation elements for the court department heads, and as set by the Criteria for Performance Evaluation of court presidents and department heads in Bosnia and Herzegovina,

c) to remove the risk factor during the selection of department managers, which is highlighted in the integrity plans of the judicial institutions of Bosnia and Herzegovina and which is reflected in the absence of regulations that contain clear and objective criteria and procedures for the selection of department heads,

d to apply the results of the Improving Judicial Efficiency Project II, as implemented by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina (hereinafter: the Council), which are, among other things, seen in a more efficient court management through development and strengthening of a proactive engagement and the managerial role of the court department heads.

The Guidelines may be applied in all municipal, basic, cantonal, district and district commercial courts in Bosnia and Herzegovina, the High Commercial Court in Banja Luka, the Basic Court of the Brcko District of BiH and the Appellate Court of the Brcko District of BiH, the Supreme Court of the Federation of Bosnia and Herzegovina and the Supreme Court of the Republika Srpska, if court department have been established in them.

The grammar terminology used for male and female genders in these Guidelines include both genders.

2. The appointment procedure for the court department heads

2.1. Profile of the Head of a Court Department

The court department head should be a judge:

- who has at least three years of experience as a judge,
- whose last three performance evaluations, before he/she took up the post of a court department head, established that he/she was performing at their post successfully or exceptionally,
- to whom no disciplinary measures have been imposed in the last three years, before taking up the post of the court department head,
- who has the following skills: communication skills, readiness to cooperate, focus on results and innovations, managerial skills and a proactive attitude, as described in detail in Attachment 1 of the Guidelines.

[15] the Book of Rules on Internal Court Operations ("Official Gazette 66/12, 40/14, 54/17, 60/17 and 30/18) and the Book of Rules on Internal Court Operations (Official Gazette of the RS no. 09/08, 71/08 and 67/18).

2.2. Internal call and submission of an application

The court president sends an internal call to all the judges to apply for the post of a court department head in which he must state:

a. the conditions a court department head should meet as set out by the section 2.1. of the Guidelines,
b. the application method,
c. the deadline for applications,
d. the content of the applications, as set out in the next paragraph of this section.

Applications for the post of a court department head must contain:

a. the name of the court department that the candidate is applying for,
b. the proposal of the court department's work programme and proposal of objectives (team work vision, proposed improvements, the proposed work method of the court department, department objective during the mandate), as well as one's own vision of the role of a department head (expectations and obligations).

2.3. Opinions of the judges of the court department

To define potential candidates for the court department heads and improve the transparency of their appointment, the court president can carry out an anonymous survey amongst the judges of the court department.

The anonymous survey is carried out by a questionnaire given in Attachment 2 of the Guidelines. If he deems it purposeful, the court president may include other important questions in the questionnaire.

The opinion of the judges of the court department, generated by the anonymous survey, has a consultative character.

2.4. Conducting an interview and electing the most successful candidate

The court president shall conduct an interview with all the candidates who had submitted their completed applications in accordance with the section 2.2 of the Guidelines and who meet the conditions from the section 2.1. of the Guidelines.

The court president shall select the most successful candidate on the basis of:

a. interview results,
b. consultative opinion of the court department judges, obtained in accordance with the section 2.3. of the Guidelines and
c. the extent of the conditions prescribed by the section 2.1. the Guidelines being met.

As an exception, the court president may appoint a court department head without conducting an interview in the following cases:

a) if no application for the post of a court department head was received,
b) if only incomplete applications that were not sent on time were received,
c) if only applications of candidates who do not meet the conditions prescribed by the section 2.1. of the Guidelines were received.

The court president may obtain opinions of the judges of the court department in accordance with the section 2.3. of the Guidelines in case a court department head is selected without conducting an interview.

2.5 Appointing the head of the court department and mandate duration

The court department head is appointed for a mandate of one year.

Upon the expiration of the mandate of the court department head, the court president can extend his mandate without repeating the appointment procedure again, if it has been evaluated that the court department head was performing his function very successfully on the basis of the Performance evaluation Criteria for the court presidents and court department heads in Bosnia and Herzegovina.

The mandate extension without conducting a repeated appointment procedure, according to this paragraph, is recommended no more than three times in a row.

In any case, the court president is recommended to conduct the procedure for the appointment of the court department head at least once in four years.

Removal of the court department head from office before the mandate expires is possible in case of gross negligence by the court department head, imposition of disciplinary measures against him and at his personal request.

2.6. The quota of the Head of Court Department

The court department head shall meet the performance quota (quota in the basic department he works in) according to the Book of Rules on Performance Measures for the Judges and Legal Associates in Courts in Bosnia and Herzegovina[16].

Number: 12-08-5-3900-1/2018 President

Sarajevo, 20 Decembar 2018 Milan Tegeltija

[16] Official Gazette of BiH no. 2/14, 8/14, 2/16, 7/16, 56/16, 25/17)

3. Attachments

3.1. Attachment 1 - Skills of the court department head

Reference: Section 2.1. of the Guidelines ("Profile of the Court Department Head")

The court department head shall have the following skills:

1.	**Communication skills:**
	The court department head is capable to consistently convey adopted conclusions and information from the meetings with the court president, both orally and in writing; to clearly convey knowledge and reach an agreement with the judges of the department he manages, to implement conclusions, guidelines and positions and call them to account in relation to uniform application of adopted positions, behaviour with the parties, performance, cooperation with other courts and colleagues and similar. The head of a department: ✓ recognises the problems and positions of others concerning current issues and appropriately responds to their positions and opinions. ✓ demonstrates thoughtfulness, flexibility, authority, stability and adopts his reactions to the others ad if fair in cooperation with his colleagues.
2.	**Cooperation:**
	The head of a court department: ✓ pays attention to the others, notices the need for support and provides it; ✓ stimulates effective cooperation, invests in good relations, ensures that the objectives of the court i.e. the judiciary override personal interests, appreciates the contribution of his colleagues, asks questions and gives advice, regardless whether he was asked or not; ✓ improves the performance of the department he manages by stimulating the others to share knowledge, to develop relationship with other department judges, to help their colleagues and give their opinions; ✓ he is open to opinions and comments of the others. The court department head demonstrates willingness to work together with other department heads to achieve the court's objectives together and efficiently.
3.	**Focus on results and innovations:**
	The court department head demonstrates determination to introduce better solutions in the law implementation process and contributes to the implementation of the institution's objectives, results and innovations. The head of a court department: ✓ has the skills to develop new ideas and concepts and knows how to present the ideas in a convincing way; ✓ uses opportunities to improve or change the work processes; ✓ ensures support for implementation of better solutions and professionalization of advancement, processes and systems.

4.	**Management**
	The court department head is responsible for department management in the sense of the set objectives being achieved, as well as quality and quantity. The head of a court department: ✓ is capable of convincing the department he manages to keep abreast of changes and development, of motivating the department judges, stimulating and inspiring their enthusiasm; ✓ organises the decision-making process, so that every member of a court department can give his contribution; ✓ encourages mutual cooperation and creates open and safe atmosphere in a court department; ✓ creates team culture in which collegial responsibility, cooperation and trust are key values; ✓ stimulates court department judges to exchange knowledge; ✓ develops collective responsibility, encourages checks by colleagues and self-criticism in situation when judges do not act according to adopted positions and complaints about the work of judges, poor quality/quantity and similar.
	The court department head manages individual judges in the department in such a way that department objectives are met, but also their individual objectives as well. The head of a court department: ✓ expresses his expectations regarding the judges' work and the results they are supposed to achieve and achieves agreements with judges in that regard, taking account of the judges' independence; ✓ gives his opinion on the performance, achieved results and personal development of a judge; ✓ knows how to motivate a judge to take responsibility for their own development and impels and helps the judge with his advice; ✓ impels the others to learn from their colleagues' experience and enables them to learn from their colleagues' mistakes and their own; ✓ conducts activities prescribed by the Performance Criteria for court presidents and court department heads in Bosnia and Herzegovina required by the court president to evaluate judges' performance. ✓ with the department judges discusses their performance on a regular basis.
5.	**Attitude towards the environment and society:**
	The court department head demonstrates an interest in the events in the court's department and society. He recognises the needs and opportunities in the society and acts from the perspective of his department or the institution. The court department head represents the basic values of the court and policies of the court president. The court department head talks with the others, respects their ideas and positions and stimulates an open discussion on all the topics, especially about the basic values of the judiciary, such as independence, integrity, impartiality and trust of the public in the judiciary.

6.	Proactive attitude
	The court department head takes a proactive attitude in his musings and actions. The head of a court department: ✓ does not wait, but takes action immediately in order to improve the work of the court and takes initiative to propose conclusions and ideas in that direction; ✓ is able to recognise issues and obstacles in their early phase and act efficiently; ✓ recognises opportunities and possibilities; ✓ recognises alternative solutions to achieve objectives; ✓ takes upon himself implementation of ideas and decisions.

3.2. Attachment 2 - Questionnaire to conduct an anonymous survey

Reference: Section 2.3. of the Guidelines ("Opinion of the court department judges")

In order to have as honest and as open answers as possible, it is recommended for the survey to be conducted as an anonymous *online* survey, by uploading the survey below onto internet by adequate tools such as Google forms, which enable an automatic save of collected information, simple questionnaire completion and are accessible to users.

The questionnaire to conduct an anonymous survey.

• **Question no. 1a**

Name the person who you propose for the court department head.

**The first and last names of all the candidates, who have submitted complete applications for the post of a court department head and who meet the conditions from the section 2.1. have to be entered in the first column of the Guidelines.*

• **Question no. 1b**

Write the first and last names of the person you propose for the court department head.

**This question is asked only as an exception, as an alternative to the Question no. 1a and in cases described in the section 2.4., paragraphs 3 and 4 of the Guidelines.*

• **Question no. 2**

Which qualities does the person, whom you have proposed as the court department head, have (it is possible to choose several offered answers)?

Motivation to improve the work of the department	
Accountability	
Willingness to listen to and accept another's opinion	
Above average performance quality as a judge	
Communication skills	
The ability to enable conditions for both personal and professional development of colleagues	
Willingness to both compliment and criticise colleagues	
The ability to convey knowledge and experience	
Being open to consult the colleagues whilst processing cases	
Other:	

• **Question no. 3**

According to your own assessment, rank the areas in which you believe the court department head should work on (5 being the highest grade and 1 the lowest)

Management and work organisation of the court department	
Lawful and timely performance of tasks from the department's scope	
Scheduling and chairing department meetings	
Proposing the presiding judge, composition and schedule of the panel	
Monitoring and analysing the status of certain case categories and compiling reports on the number and type of incoming cases, pending cases, completed and uncompleted cases and the manner of case completion.	
Monitoring the implementation of the programme for processing of old cases.	
Monitoring the performance quality of the judges of the department.	
Monitoring the timeliness of the work of judges of the department, especially regarding adherence with deadlines.	
Keeping up with amendments to legislation and the case law from higher instances and sharing it with the judges.	
Monitoring for case law consistency between the judges and panels.	
Proposing measures for better, more efficient and timely work of the department	
Monitoring the application of laws and other regulations and proposing initiatives for their amendment to the court president	
Initiating the procurement of professional publications/literature	

Proposing topics for training of judges, legal associates and trainees	
Consulting colleagues while processing cases	
Harmonising the method for conducting court proceedings	
Conveying knowledge and experience	
Setting and achieving group work objectives for the department	
Improving interpersonal relations	
Presenting positions and interests of the department before the court administration in order to improve performance	
Team work development in the department	
Monitoring department's performance	
Discussions with the department colleagues as a contribution to proper annual performance of judges	

ATTACHMENT F. "THE AGENDA FOR THE WORKSHOPS TEAM WORK AND COMMUNICATION AND TRAINING FOR LEADERS OF THE GROUP INTERVISION"

Team Work and Communications

AGENDA

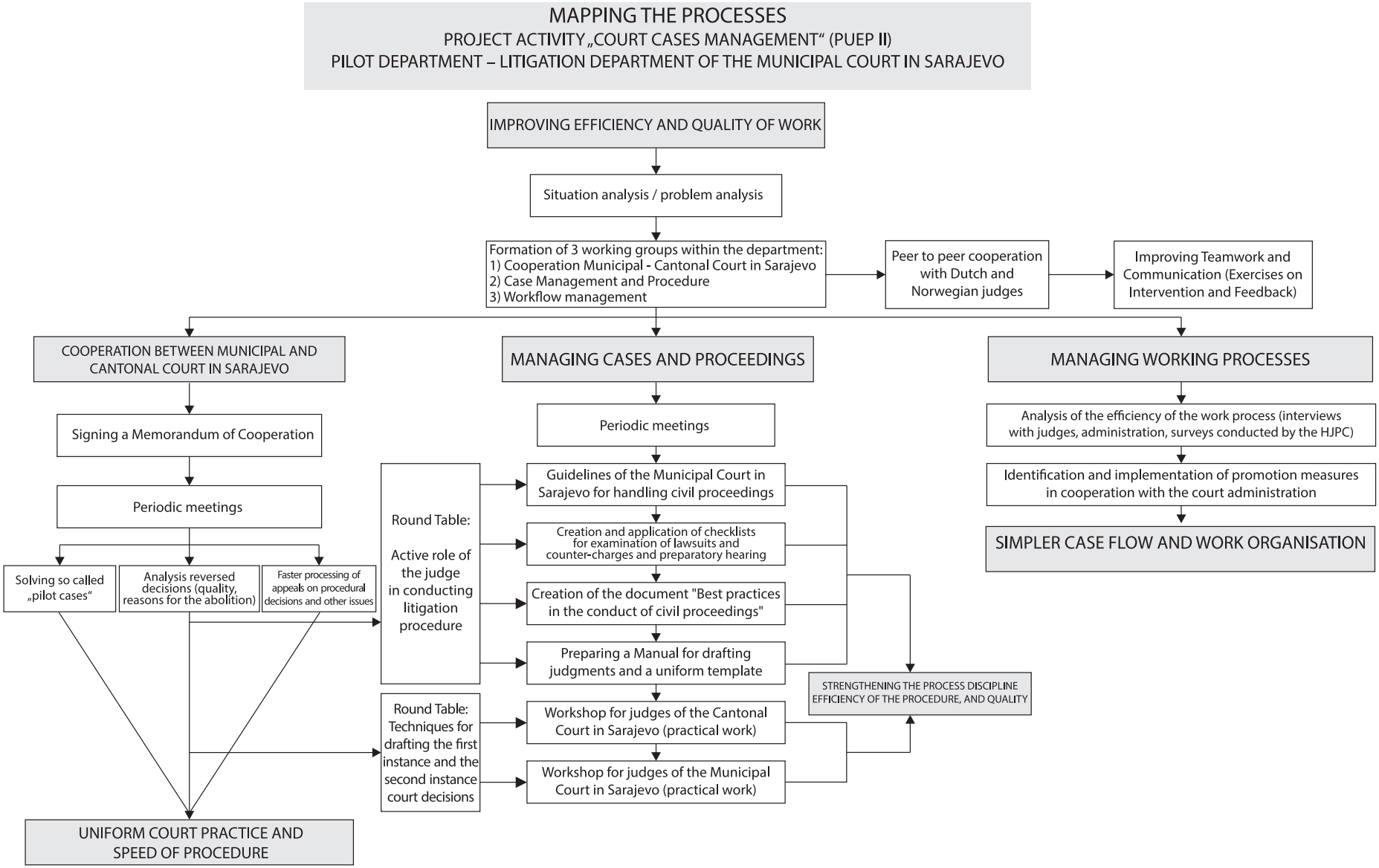
First Day	
09:30-10:00	Registration of attendees
10:00-11:00	Introduction by the trainer and workshop objectives
	Introduction of attendees
11:00-12:00	Personal effectiveness
	- Personal effectiveness and communication styles
	- Recognising one's own type of personality and communication style
12:00-12:30	Break
12:30-13:30	Communication
	- Active listening, perception, assertiveness, *feedback*
13:30-14:00	Break
14:00-15:30	Personal effectiveness and team effectiveness
	- Team effectiveness and one's own role in a team
	(The method of insight and personal affinity by Karl Gustav Jung)
	Team work
Second Day	
09:30-10:00	Registration of attendees
10:00-11:00	Team task: 10 most important characteristics in a team
11:00-12:00	Leadership, project and planning, decision-making process
12:00-12:30	Break
12:30-13:30	Efficiency, motivation and personal satisfaction
	Introduction to intervision
13:30-14:00	Break
14:00-15:30	What does my team look like (exercise)
	Evaluation

Training for the leaders of the group intervision

AGENDA

09:00-10:00	Introduction Presenting trainers and workshop attendees Introduction to workshop objectives
10:00 – 10:45	Effective feedback (giving and receiving feedback) • Transformation of organisational culture in courts - an example of the Municipal Court in Sarajevo • Test • Discussion: how, when and which feedback is successful and which not • What is effective feedback - presentation of basic principles
10:45 – 11:00	Coffee break
11:00 – 11:30	Intervision method - how to solve a problem • Explanation of the intervision method and preconditions for an open and safe intervision environment • Intervision procedure: Step by step
11:30 – 12:45	Exercise 1: Intervision • Attendees work in two groups and select a problem • Roles: one attendee is the intervision leader, another is an observer and the others are intervision participants • Exercise • Exercise evaluation
12:45 – 13:45	Lunch
13:45 – 15:00	Exercise 2: Intervision
15:00 – 15:30	Evaluation and activity plan • Workshop evaluation • The plan to hold intervision in one's own work environment

ATTACHMENT G. "MAPPING OF THE PROCESS - CASE MANAGEMENT AT COURTS"



ATTACHMENT H. "CHECKLIST FOR THE PRELIMINARY EXAMINATION OF A COMPLAINT"

PRELIMINARY EXAMINATION OF A COMPLAINT	CONCLUSION	NOTES	ARTICLE OF THE LAW
1. Reasons to remove – disqualify a judge	YES NO		357 of the CPC
2. Court jurisdiction - absolute - subject matter jurisdiction - territorial - immunity	YES NO		15 - 48 of the CPC 53 of the CPC
2.1. Cause a conflict of jurisdiction	YES NO		21 of the CPC
2.2. Seek compulsory or expedient delegation (of jurisdiction)	YES NO		48 - 49 of the CPC
3. Comprehensibility and completeness of a complaint - name of the court - name and family name/title of the party - domicile/residence/seat of the parties, their legal representatives and proxies - signature of the complainant - the number of the copies of the complaint documents supporting the complaint	YES NO		334 of the CPC
3.1. A specific claim regarding the subject matter and subsidiary claims - value of dispute	YES NO		53 of the CPC
3.2. The facts on which the statement of claim is based	YES NO		53 of the CPC
3.3. Evidence proposed in support of all relevant facts on which the plaintiff based his/her claim	YES NO		53 of the CPC
3.4. In case of multiple claims in a lawsuit, were the legal conditions met for the objective cumulation of claims	YES NO		55 of the CPC
3.5. Is there a motion for prejudgement attachment	YES NO		268 -290 of the CPC
4. Litigation capacity	YES NO		293 of the CPC 294 of the CPC
5. Litigation capacity	YES NO		293 of the CPC
6. Correct and proper representation	YES NO		293 of the CPC 294 of the CPC
7. Legal interest in filing complaint for determination	YES NO		54 of the CPC
8. Time limits for filing a complaint	YES NO		67 of the CPC 227 of the CPC
9. Whether or not the preliminary proceedings were conducted as required by law	YES NO		227 of the CPC

PRELIMINARY EXAMINATION OF A COMPLAINT	CONCLUSION	NOTES	ARTICLE OF THE LAW
10. Litispendence	YES NO		60 of the CPC
11. Res judicata	YES NO		67, 79, 98 and 196 of the CPC
12. Court settlement	YES NO		93 of the CPC
13. Motion for default judgment	YES NO		182 of the CPC
14. If a complaint is returned to the plaintiff for correction or supplementation, whether or not the corrected or supplemented complaint is submitted to the court within the specified time limit	YES NO		66 of the CPC 336 of the CPC
15. A complete complaint delivered to the defendant with the instruction in the sense of Article 70 of the CPC (the deadline, contents, consequences, failure to submit a response)	YES NO		70 of the CPC

EXAMINATION OF RESPONSE TO A COMPLAINT	CONCLUSION	NOTES	ARTICLE OF THE LAW
1. Duly service of a complaint on a defendant for his /her response - whether or not the defendant is duly served - whether the defendant is informed about the deadline for submitting a response to the complaint, the content of the response and consequences of failure to respond to the complaint	YES NO		69, 70, 347 and 348 of the CPC
2. Response to the complaint submitted	YES NO		70 of the CPC
3. Timely response to the complaint	YES NO		Art 70 Par 1 CPC
4. Whether or not a response to the complaint contains all information that every pleading must contain	YES NO		336 of the CPC 71 of the CPC
5. Whether the defendant in his/her response to the complaint accepts or contests the claim	ACCEPTS CONTESTS		71 of the CPC
6. Whether procedural objections are stated in the response to the complaint	YES NO		71 of the CPC
7. Whether the reasons for contesting the claim are stated in the response to the complaint	YES NO		71 of the CPC
8. Whether the facts on which the defendant's claims are based are stated in the response to the complaint	YES NO		71 of the CPC

EXAMINATION OF RESPONSE TO A COMPLAINT	CONCLUSION	NOTES	ARTICLE OF THE LAW
9. Whether the response to the complaint contains evidence corroborating the above facts	YES NO		71 of the CPC
10. Whether a counter claim is filed in the response to the complaint	YES NO		74 of the CPC
11. If a response to the complaint is returned to the defendant for correction or supplementation, whether or not the response is submitted to the court within the specified time limit	YES NO		73 of the CPC 336 of the CPC
12. If a response to the complaint is due and timely, is it necessary to schedule a preliminary hearing	YES NO		76 of the CPC

ATTACHMENT I. "PRELIMINARY HEARING PLAN"

<table>
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ATTACHMENT J "GUIDELINES ON MANAGING CIVIL LITIGATION PROCEEDINGS IN THE SARAJEVO MUNICIPAL COURT"

GUIDELINES ON MANAGING CIVIL LITIGATION PROCEEDINGS IN THE MUNICIPAL COURT IN SARAJEVO

Pursuant to Article IV.C.1.3 of the Constitution of the Federation of BiH, the Municipal Court in Sarajevo hereby passes these Guidelines with the aim of achieving consistency in the application of case law as well as to improve process efficiency. The Guidelines are based on the case law and positions previously taken by the Litigation Department of the Municipal Court in Sarajevo and the Civil Department of the Cantonal Court in Sarajevo, they are of instructive nature for the use by the judges of the Municipal Court in Sarajevo and all participants in civil proceedings before this Court.

THE ROLE OF A JUDGE

Article 1

Throughout the entire litigation process, a judge shall actively manage procedures within his/her procedural powers as prescribed by the law, encouraging the parties to clarify and complete their statements and requests while at the same time not exceeding the boundaries of any statement of claim made in the process.

PRELIMINARY EXAMINATION OF A COMPLAINT AND OF A RESPONSE TO A COMPLAINT

Article 2

If, in the course of proceedings, the court learns that the plaintiff or the defendant was deceased at the time of filing the complaint, the judge shall issue a decision dismissing the complaint and all actions taken until then shall be declared null and void.

Article 3

In case when it is alleged in the complaint that the defendant's address is unknown and motion is made for appointment of a special guardian for the defendant or that a delivery be made by publication in daily newspapers, the complaint should contain the last known address of the temporary or permanent residence of the defendant as registered with the authority in charge of maintaining records on temporary and permanent places of residence of citizens.

If the defendant is not registered with the relevant authority, the plaintiff should be required to submit the proof of that.

Article 4

If the complaint is substantiated with the decision of the Welfare Services appointing a special guardian for the defendant, the court shall return such complaint for modification with an instruction to the plaintiff to submit the evidence of the last known address of the defendant as registered with the authority in charge of maintaining records on permanent or temporary places of residence for citizens, or evidence that the defendant is not registered with such authority.

Article 5

If the court finds that the complaint does not substantiate every claim or that the evidence listed does not correspond to the statements on which the claim is based, the court shall return the complaint to the plaintiff for modification.

In order to ensure the economy of the proceedings, the plaintiff should enclose with the complaint all documents proposed as evidence. The court shall accept the complaint as orderly even if the documents proposed in the complaint are not enclosed with it.

Paragraphs 1 and 2 above shall also apply to the response to the complaint.

PRELIMINARY HEARING

Article 6

The court shall always require the parties to relate each proposed piece of evidence to the relevant statements in their claims.

Article 7

In case parties propose a large number of witnesses to prove one fact, the court shall decide on such proposal bearing in mind the economy of the proceedings.

In the event that the court deems it unnecessary to hear all of the witnesses motioned pertaining to certain circumstances, the court shall ask the parties to select which witnesses to hear, whereas in the event that a party does not do so, the court shall make the selection based on the deliberation.

Article 8

If, at the preliminary hearing, a large amount of material evidence is being proposed, and the court is unable to decide which of the proposed evidence is relevant and which is not relevant, the court shall admit all the proposed evidence and set the date for the main hearing.

At the main hearing, the court shall issue a decision dismissing the evidence it decided was irrelevant to its decision-making, and provide brief reasoning for such decision.

Article 9

In the decision on the expert evaluation the court shall warn the expert witness that he will be fined unless he submits his findings and opinion within the given deadline or if he does not come the hearing to which he has been summoned on time and fails to justify his absence.

Article 10

When a complaint is modified in the subjective sense in the preliminary hearing or at the main hearing from which the defendant is absent, the court shall adjourn the hearing, deliver the minutes of the hearing to the original defendant and the person who is to participate in the litigation instead of the original defendant and leave them a deadline to state their position on the modified complaint.

When the claim is modified with regard to the subject of dispute (objective modification), at the preliminary hearing not attended by the defendant, the court shall adjourn the preliminary hearing.

When the claim is modified in the objective sense, at the main hearing not attended by the defendant, the court shall, if it finds that the terms of Article 57, paragraph 2 of the CPC are fulfilled, adjourn the hearing and deliver to the defendant a copy of the hearing minutes together with a set deadline to respond to the modified complaint.

COURT SETTLEMENT

Article 11

Throughout the course of the proceedings, the court shall try and encourage the parties to reach a court settlement. All attempts to settle the case shall be reflected in the record of the hearing, also specifying the proposed elements of the settlement, the parties that refuse to settle as well as the reasons for refusal.

MAIN HEARING

Article 12

When the main hearing is scheduled without holding a preliminary hearing in simple cases and the parties propose new facts and new evidence, not mentioned previously in the complaint or in response to the complaint, and if those new facts and pieces of evidence are relevant to the case, the court shall allow their presentation at the main hearing.

If such evidence cannot be presented during one hearing, or the opposing party is unable to respond to the evidence, the court shall adjourn the main hearing and if necessary set a deadline for the opposing party to respond.

POSTPONING AND ADJOURNING HEARINGS

Article 13

Notice

In the event that a party files a motion to postpone or adjourn or files any other notice in such regard, they shall at the same time also forward a copy of the motion or notice to the opposing party.

Article 14

Postponement in the event that the date was set without consultation with the parties

In the event that the date and time of the hearing was set without the consultation with the parties, the parties may request that the date of the hearing be changed within 8 days of receiving notice of the hearing.

Upon the elapsing of 8 days, the court shall not grant a request to postpone a hearing except in the event of legitimate reasons or force majeure.

Article 15

Postponement in the event that the date was set upon consultation with the parties

In the event that the date and time of the hearing was set upon consultation with the parties, a motion to postpone shall only be granted in the event of legitimate reasons or a force majeure.

Article 16

Postponement in the event of legitimate reasons or force majeure

An elaborated party motion to postpone due to the existence of legitimate reasons or a force majeure must be submitted by the end of the working day when such reasons or a force majeure occurred.

Opposing party may respond to the motion within two working days of its filing or the delivery of a copy of the motion.

The court shall consider the motion as soon as possible after the elapsing of two days from the day the motion was submitted. In the event that the court receives a response from the opposing party before the elapsing of the deadline, the motion shall be considered as soon as possible upon receiving the response.

Article 17

Legitimate reasons and force majeure

The following circumstances shall not be considered as justified reasons or force majeure:

Attending a trial in a different case before the same or a different court, if scheduled or planned after this hearing had been scheduled;

Medical reasons that are not supported with the relevant medical findings dated immediately prior to the date of the set hearing;

Urgent or serious family matters, if the motion is not supported with proof or relevant documentation stating that the family matters are of an urgent or serious nature;

Annual leave or business trips by an attorney;

In the event that the attorney revokes power of attorney to represent the party in a short time prior to the set hearing, while the new attorney hired by the party did not have enough time to properly prepare for the case;

In the event that the attorney terminates the power of attorney contrary to the provisions of the Law on the Attorney's Profession.

Adjournment of a hearing

Article 18

The court shall not grant the motion of a party to adjourn the preliminary hearing so that the party can respond to the documents proposed by the opposing party as evidence in the complaint or the response to complaint, that were actually submitted only at the preliminary hearing.

Article 19

The court shall not grant a motion to postpone a hearing in situations when the lawyer's intern not admitted to the Bar attends a preliminary hearing instead of the hired lawyer, and the intern is unable to represent the party in proceedings in which the value of dispute exceeds 50,000.00 KM. Therefore, in situations where the defendant is thus represented, the court shall rule as if the defendant failed to appear for the hearing and the hearing shall continue without the defendant. In situations where the plaintiff is represented by such a proxy, the court shall rule as if the complaint was withdrawn.

However, in exceptional cases where the dispute value increases and exceeds 50,000.00 KM during the actual preliminary hearing attended by the defendant's lawyer's intern not admitted to the Bar, the court will grant the motion to postpone the hearing.

Article 20

If a party or his/her legal representative is a lay person or unable to clearly and specifically argue the case, the court may postpone the hearing to allow the party to hire an attorney.

Article 21

The court may depart from the provisions of the Chapter if warranted due to the circumstances of the case.

REPRESENTATION

Article 22

If the hearings for claim of damages exceeding 50,000 KM are attended by an employee of a legal entity or an attorney's intern as a legal entity's representative, the first instance court will request to be shown the certificate of admission to the Bar. If such representatives do not have the certificate of the admission to the Bar or have not been admitted to the Bar, the court shall proceed as if they failed to attend at the hearing.

Article 23

The person authorised to receive writs for a natural person does not have to be the agent referred to in Article 301 of the CPC. of the CPC.

Article 24

In the event that a party has authorised two or more legal representatives, the court shall invite the party to state to which representative writs shall be delivered.

Article 25

Service in accordance with Article 337b of the Civil Procedure Code i.e. depositing writs in specific mailboxes located on court premises is also possible for second instance decisions and decisions of the court of revision.

RECORDING HEARINGS

Article 26

Parties shall not be allowed to conduct the audio or video recording of a hearing through the use of their own devices.

ATTACHMENT K. "GUIDELINES ON MANAGING CIVIL LITIGATION PROCEEDINGS AT THE MUNICIPAL COURT IN SARAJEVO."

A comparative overview of the texts of the Guidelines on Managing Civil Litigation Proceedings issued by the IJQ Project target courts[17]

The Preamble	
Sarajevo Municipal Court	*Pursuant to Article IV.C.1.3 of the Constitution of the Federation of BiH, the Municipal Court in Sarajevo hereby passes these Guidelines with the aim of achieving consistency in the application of case law as well as to improve process efficiency. The Guidelines are based on the case law and positions previously taken by the Litigation Department of the Municipal Court in Sarajevo and the Civil Department of the Cantonal Court in Sarajevo, they are of instructive nature for the use by the judges of the Municipal Court in Sarajevo and all participants in civil proceedings before this Court.*
Banja Luka Basic Court	*Pursuant to Article 6 of the Law on Courts of Republika Srpska (Official Gazette of Republika Srpska no: 37/12, 44/15 and 100/17), the Basic Court in Banja Luka hereby issues the guidelines with a view to ensuring equal treatment in equal situations, legal certainty and equality of citizens before the law, proportionality in the exercise of rights and greater efficiency principle of efficiency and economy grounded in the provision of Article 10 of the Civil Procedure Code (Official Gazette of Republika Srpska, number 58/03, 85/03, 74/05, 63/07, 49/09 and 61/13, hereinafter: the CPC).* *The guidelines are issued in accordance with the case law of the Basic Court in Banja Luka and the civil Department of the District Court in Banja Luka in line with the Improving Judicial Efficiency II Project and are of instructive character.*
Tuzla Municipal Court	Identical provision as in the Guidelines of the Municipal Court in Sarajevo.
Basic and District Court in Bijeljina	Identical provision as in the Guidelines of the Basic Court in Banja Luka.

[17] The Guidelines for Managing Civil Litigation Proceedings have been written by all the project target courts in mutual cooperation between first-instance and second-instance courts. The basic and district courts in Trebinje adopted Recommendations on Managing Civil Litigation Proceedings. Formally, they usually are an instructive document of the target first-instance courts with the exception of the Guidelines of the Basic and District Court in Bijeljina, as that is a joint document of the first-instance and second-instance court and the Guidelines of the Cantonal Court in Zenica, where that court saw the potential to harmonise the case law on the level of all canton first-instance courts and decided to take the lead in passing the document. It should be noted that at the moment of this overview, the Guidelines of the Cantonal Court in Zenica and Municipal Court in Travnik were in the stage of a proposal with the intention for the last version to be uniformly adopted for the Central Bosnia Canton area. For easier recognition the BiH Federation courts have been marked red and the Republika Srpska courts blue, whilst the Guidelines of the Basic Court in Brcko District are white.

Basic Court of the Brcko District BiH	*Pursuant to Article 3 of the Law on Court of the Brcko District of Bosnia and Herzegovina (Official Gazette of the Brcko District of BiH number: 19/07, 20/07, 39/09 and 31/11), the Basic Court of the Brcko District of Bosnia and Herzegovina, after adopting the Law on Litigation Proceedings of the Brcko District of Bosnia and Herzegovina (Official Gazette of the Brcko District of Bosnia and Herzegovina no.: 28/18) issues the guidelines with the aim of harmonising the case law and improving efficiency in practice. The guidelines are based on the case law and positions previously taken by the Civil-Commercial-Administrative Department of the Brcko Basic Court, they are of instructive nature for the use by the judges of the Brcko Basic Court and all participants in civil proceedings before this court,*
Cantonal Court in Zenica	*Pursuant to Article IV.C.1.3 of the Constitution of BiH Federation, with a view to harmonising case law and ensuring efficient and fair proceedings in civil mattecrs, the Working Group of the Zenica Cantonal Court is proposing the following Guidelines, which are referential for both judges and the parties:*
Basic Court in Doboj	*Pursuant to Article 6 of the Law on Courts of Republika Srpska (Official Gazette of Republika Srpska no: 37/12, 44/15 and 100/17), the Doboj Basic Court hereby issues the guidelines with a view to ensuring equal treatment in equal situations, legal certainty and equality of citizens before the law, proportionality in the exercise of rights and greater efficiency and taking other legally prescribed measures to ensure the presence of litigants, witnesses and experts and to prevent abuse of procedural rights by the parties and other participants in procedure, compliance with statutory deadlines in scheduling and continuation of hearings, all in the light of Article 10 of the Civil Procedure Code (RS Official Gazette No. 58/03, 85/03, 74/05, 63/07, 49 / 09 and 61/13, hereinafter referred to as the CPC).* *These Guidelines are based on the case law of the Doboj Basic Court and of the Civil Law Department of the Doboj District Court, in agreement with the "Improving Judicial Efficiency Project II" and they are referential in nature.*
Municipal Court in Travnik	Identical provision as in the Guidelines of the Municipal Court in Sarajevo
Municipal and Cantonal Court in Siroki Brijeg	*Pursuant to Article IV.C.1.3. of the Constitution of the Federation of Bosnia and Herzegovina (Official Gazette of the FBiH, 1/94, 13/97, 16/02, 22/02, 52/02, 63/03, 9/04, 20/04, 33/04, 71/05, 72/05 and 88/08) and Article 5 of the Law on Courts in the Federation of BiH (Official Gazette of the FBiH, 38/05, 22/06, 63/10, 72/10, 7/13 and 52/14) with the aim of harmonising case law and improving efficiency and fair treatment in the litigation process, in accordance with the provisions of the Civil Procedure Code in the Federation of BiH (Official Gazette of the FBiH, 53/03, 73/05, 19/06 and 98/15), the Municipal Court in Široki Brijeg, and the Cantonal Court in Široki Brijeg, under the project Improving Judicial Quality, implemented by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, the Norwegian Courts Administration and the Council for the Judiciary of Netherlands adopted the Guidelines on 28 October 2020 for litigation proceedings which are instructive for judges and participants in the proceedings.*

Basic and District court in Trebinje	*In accordance with the project Improving Judicial Efficiency II, with the aim of improving the principles of efficiency and economy of proceedings, ensuring the implementation of the principle of equal treatment in equal situations, ensuring legal certainty and equality of citizens before the law, ensuring proportionality in exercising rights and fully implementing Article 10 of the Civil Procedure Code of the Republika Srpska (Official Gazette of the RS, 58/03, 85/03, 74/05, 63/07, 49/09 and 61/13- hereinafter the CPC), the District Court in Trebinje and the Basic Court in Trebinje, and pursuant to the provision of Article 9 of the Book of Rules on Internal Court Operations (Official Gazette of the RS, 9/14, 71/17 and 67/18), at a joint meeting of the civil departments of the District Court in Trebinje and the Basic Court in Trebinje held on 15 December 2020, adopted the following Recommendations.*
Municipal and Cantonal Court in Mostar	*Pursuant to Article IV.C.1.3. of the Constitution of the Federation of Bosnia and Herzegovina (Official Gazette of the FBiH, 1/94, 13/97, 16/02, 22/02, 52/02, 63/03, 9/04, 20/04, 33/04, 71/05, 72/05 and 88/08) and Article 5 of the Law on Courts in the Federation of BiH (Official Gazette of the FBiH, 38/05, 22/06, 63/10, 72/10, 71/13 and 52/14) with the aim of harmonising case law and improving efficiency and fair treatment in the litigation process, pursuant to the provisions of the Civil Procedure Code in the Federation of BiH (hereinafter: CPC FBiH) (Official Gazette of the FBiH, 53/03, 73/05, 19/06 and 98/15), the Municipal Court in Mostar, and the Cantonal Court in Mostar, under the project Improving Judicial Quality, implemented by the High Judicial and Prosecutorial Council of Bosnia and Herzegovina, the Norwegian Courts Administration and the Council for the Judiciary of Netherlands adopted the Guidelines for civil litigation proceedings on 28 October 2020, which are instructive for judges and participants in the proceedings and represent the current practices and understanding of procedural provisions for the majority of judges, who retain the autonomous right as judges to, in accordance with the legal and factual situation of a given case, apply the law in accordance with their own professional convictions.*
The role of a judge	
Municipal Court in Sarajevo	*Throughout the entire litigation process, a judge shall actively manage procedures within his/her procedural powers as prescribed by the law, encouraging the parties to clarify and complete their statements and motions while at the same time not exceeding the boundaries of any statement of claim made in the process.*
Basic Court in Banja Luka	Identical provision as in the Guidelines of the Municipal Court in Sarajevo.
Municipal Court in Tuzla	*Throughout the entire litigation process, a judge shall actively manage procedures within his/her procedural powers as prescribed by the law, encouraging the parties to clarify and complete their statements and motions while at the same time not exceeding the boundaries of any statement of claim made in the process (identical part as in the Guidelines of the Municipal Court in Sarajevo)* ***especially paying attention not to violate the right of the parties to a fair trial from Article 6 by actions of the court and all participants to the proceedings. The European Convention on Human Rights*** ***Throughout the entire litigation process, the judge shall seek to facilitate an amicable resolution of a dispute among the parties by proposing court settlement.***
Basic and District Court in Bijeljina	Identical provision as in the Guidelines of the Municipal Court in Sarajevo.
Basic Court of the Brcko District BiH	Identical provision as in the Guidelines of the Municipal Court in Sarajevo.

Cantonal Court in Zenica	Identical provision as in the Guidelines of the Municipal Court in Tuzla
Basic Court in Doboj	Identical provision as in the Guidelines of the Municipal Court in Sarajevo.
Municipal Court in Travnik	Identical provision as in the Guidelines of the Municipal and Cantonal Court in Tuzla
Municipal and Cantonal Court in Siroki Brijeg	Identical provision as in the Guidelines of the Municipal Court in Tuzla
Basic and the District Court in Trebinje	Identical provision as in the Guidelines of the Municipal Court in Sarajevo.
Municipal and Cantonal Court in Mostar	*Throughout the entire litigation process, the judge shall actively manage the proceedings within his/her procedural powers as prescribed by law, take account of efficiency and economy of the proceedings, requires the parties to clarify and complete their statements and motions, and ensuring, in particular, that no violation of the right to a fair trial under Article 6 of the European Convention on Human Rights is committed by any of the parties or by the court at any phase of the process pursuant to Article 6 of the European Convention on Human Rights.* *The judge will throughout the proceedings endeavour to resolve the dispute amicably.*
	Preliminary examination of a complaint and of a response to a complaint
Municipal Court in Sarajevo	*If, in the course of proceedings, the court learns that the plaintiff or the defendant was deceased at the time of filing the complaint, the judge shall issue a decision dismissing the complaint and all actions taken until then shall be declared null and void.* *In case when it is alleged in the complaint that the defendant's address is unknown and motion is made for appointment of a special guardian for the defendant or that a delivery be made by publication in daily newspapers, the complaint should contain the last known address of the temporary or permanent residence of the defendant as registered with the authority in charge of maintaining records on temporary and permanent places of residence of citizens.* *If the defendant is not registered with the relevant authority, the plaintiff should be required to submit the proof of that.* *If the complaint is substantiated with the decision of the Welfare Services appointing a special guardian for the defendant, the court shall return such complaint for modification with an instruction to the plaintiff to submit the evidence of the last known address of the defendant as registered with the authority in charge of maintaining records on permanent or temporary places of residence for citizens, or evidence that the defendant is not registered with such authority.* *If the court finds that the complaint does not substantiate every claim or that the evidence listed does not correspond to the statements on which the claim is based, the court shall return the complaint to the plaintiff for modification.* *In order to ensure the economy of the proceedings, the plaintiff should enclose with the complaint all documents proposed as evidence. The court shall accept the complaint as orderly even if the documents proposed in the complaint are not enclosed with it.* *Paragraphs 1 and 2 above shall also apply to the response to the complaint.*

Basic Court in Banja Luka	*If, in the course of proceedings, the court finds that the defendant was deceased at the time of filing the complaint, the judge will issue a decision ordering plaintiff to modify the complaint and name the defendant's legal successors.* *If the complaint is accompanied by the decision of the Social Work Centre appointing a special guardian for the defendant, the court shall return such complaint for modification with an instruction to the plaintiff to submit the evidence of the last known address of the defendant as registered with the authority in charge of maintaining records on permanent or temporary places of residence for citizens, or evidence that the defendant is not registered with such authority.* *As a rule, in the exercise of their right to a trial within reasonable time (Article 10 CPC), when submitting the complaint, the plaintiff shall also enclose documents proposed in the complaint as evidence. The court shall accept the complaint as orderly even if the documents proposed in the complaint are not enclosed with the complaint.* *During the course of the proceedings, the court shall issue a decision requesting the plaintiff to submit documents if the facts of the claim suggest that it is a claim that cannot be disposed of (Article 2, paragraph 2 of the CPC), and to eliminate the deficiencies concerning the capacity of the plaintiff or of the defendant to be parties in civil litigation proceedings, or deficiencies relating to the authorisation of representatives to initiate a civil case when such authorisation is required (Article 66 CPC).* *(These provisions) refer to the response to the complaint.* *The conditions to render a default judgement are met (besides the conditions prescribed by Article 182 of the CPC) in a situation when a plaintiff, after a complaint is filed, makes an objective modification of a complaint by a filing, if the plaintiff proposed a default judgement to be rendered in that filing and delivered it to the defendant for a response.*
Municipal Court in Tuzla	*In the preliminary examination of a complaint, the judge shall determine whether the complaint is understandable, whether it contains all the elements provided for by Article 53 of the CPC, whether there are any procedural deficiencies listed in Article 66 of the CPC and whether there are grounds for disqualification or recusal. In case the judge finds that the reasons for his/her disqualification/ recusal exist, he/she shall file the request for his/her disqualification/ recusal with the court president who shall decide on it.* *The judge shall determine whether he/she has jurisdiction to hear the case, and if not, he/she will then declare himself/herself not competent and refer the case to the competent court or dismiss the case in the event of the court's lack of absolute jurisdiction.* The remaining part of the provision is identical to the contents of the provisions prescribed in the Guidelines of the Municipal Court in Sarajevo.
Basic and District Court in Bijeljina	Identical provision as in the Guidelines of the Basic Court in Banja Luka.

Basic Court of the Brcko District BiH	The contents of the provisions that standardise preliminary examination of a complaint and response to a complaint are identical to the contents of the Guidelines of the Municipal Court in Sarajevo, however the lexis and chronology of the standardisation is changed to read: *If, in the course of proceedings, the court learns that the plaintiff or the defendant was deceased at the time of filing the complaint, the judge shall issue a decision dismissing the complaint and all actions taken until then shall be declared null and void.* *In case when it is alleged in the complaint that the defendant's address is unknown and motion is made for appointment of a special guardian for the defendant, the complaint should contain the last known address of the temporary or permanent residence of the defendant as registered with the administrative authority in charge of maintaining records on temporary and permanent places of residence of citizens.* *If the address of the defendant is not registered with the relevant authority, the plaintiff shall be required to submit the proof of that.* *If the complaint is substantiated with the decision of the guardian authority appointing a special guardian for the defendant, the court shall return such complaint for modification with an instruction to the plaintiff to submit the evidence of the last known address of the defendant as registered with the administrative authority in charge of maintaining records on permanent or temporary places of residence for citizens, or evidence that the defendant is not registered with such authority.* *If the court finds that the complaint does not contain a sufficient factual basis, or that it does not substantiate every claim or that the evidence listed does not correspond to the statements on which the claim is based, the court shall return the complaint to the plaintiff for modification. In order to ensure the economy of the proceedings, the plaintiff must enclose with the complaint all documents proposed as evidence.* *Paragraphs 1 and 2 above shall also apply to the response to the complaint.*
Cantonal Court in Zenica	Identical provisions as in the Guidelines of the Municipal Court in Tuzla.
Basic Court in Doboj	Identical provisions as in the Guidelines of the Basic Court in Banja Luka.

Municipal Court in Travnik	*In the preliminary examination of a complaint, a judge determines whether the complaint is comprehensible and contains all the elements provided under provision of Article 53, paragraph 2 of the Civil Procedure Code. The complaint is incomprehensible if the facts stated in it are not in accordance with the set statement of complaint and if the complaint and statement of a complaint fail to establish a claim.* *A judge examines whether there are procedural shortcomings prescribed by the provision of Article 66 of the Civil Procedure Code and whether there are reasons for a recusal or disqualification. Should he determine the reasons for recusal or disqualification, the judge shall immediately request to the court president to decide on his recusal or disqualification.* *The judge examines whether the court has the competency to act and should he determine that it is not, it will render a decision declaring the court lacking competence and cede the case to a court that has competence or reject the complaint in case of the court having absolutely no competence for it.* *Should the judge determine that a plaintiff or a defendant was deceased at the time the complaint was filed, he will render a decision rejecting the complaint and rendering all actions taken ineffective.* ***In situations when the plaintiff states that the defendant's address is unknown and proposes a temporary representative be assigned to the defendant or the service to be done by publishing in daily newspapers, the court will return the complaint to be completed and order the plaintiff to write in the completed complaint the defendant's last known address of residence which is registered with the relevant authority or a piece of evidence that the defendant is not registered with the relevant authority.*** ***The court shall act in identical manner if a decision of the Social Work Centre on appointment of a special custodian to the defendant is attached to the complaint.*** ***If the complaint does not state all the data prescribed by the provision of Article 334, paragraph 2 of the Civil Procedure Code the court shall return the complaint to the plaintiff to be completed. In case the complaint could not be serviced to the plaintiff to respond due to defendant's incorrect personal data or the existence of several persons with the same first and last names, the court will return the complaint to be completed and order the plaintiff to submit the data on the defendant's parents' names (names of the father and mother). If the plaintiff fails to act as ordered by the court, the court shall reject the complaint as incomplete.*** ***The conditions for rendering a default judgement are met even in situations when the plaintiff, after filing a complaint, makes an objective modification of a complaint and in the filing proposes rendering of a default judgement and the filing has been delivered to the plaintiff to respond to it.*** ***The court shall not render a judgement on the basis of admission after an expert witness submitted his findings and opinion to the parties, before allowing the plaintiff to determine the statement of claim according to the expert's findings and opinion.*** ***The court shall render a decision to merge lawsuits in relation to the provision of Article 83, paragraph 1 of the Civil Procedure Code only in situations when the lawsuits are in the same stage of the proceedings.*** ***The plaintiff shall be required to propose evidence that substantiates the decisive facts, as well as the evidence on which the claim is based so as to enable the defendant to respond in full and to challenge or admit a claim.*** ***In order to ensure the economy of the proceedings the plaintiff shall attach with the complaint all documents proposed as evidence. Failure to attach all documents with the complaint shall not render the complaint incomplete.*** ***The same shall apply for the response to the complaint.***[18]

[18] Provisions specific for the normative framework of the Guidelines of the Municipal Court in Travnik are in bold type.

Municipal and Cantonal Court in Siroki Brijeg	*In the process of the preliminary examination of a complaint, the judge determines whether the complaint is comprehensible and whether it contains all the elements provided by the provision of Article 53, paragraph 2 of the CPC. A complaint is incomprehensible if the facts stated in the complaint are not in accordance with the filed statement of complaint and if it is not possible to determine from the complaint and the statement of complaint what is sought thereby.* *The judge examines whether there are procedural deficiencies prescribed by the provision of Article 66 of the CPC, and whether there are grounds for disqualification or recusal. If he/she determines the existence of grounds for disqualification or recusal, the judge shall immediately submit a request to the president of the court to decide on his/her disqualification or recusal.* *The judge shall determine whether the court has jurisdiction to hear the case, and if not, he/she will then declare the court not competent and refer the case to the competent court or dismiss the case in the event of the court's lack of absolute jurisdiction.* ***If the judge finds that the plaintiff or defendant was not alive at the time the complaint was filed, he/she will issue a decision returning the complaint to be completed as to indicate the legal successor after the deceased.*** *In case when it is alleged in the complaint that the defendant's address is unknown and motion is made for appointment of a special guardian for the defendant or that a service be made by publication in daily newspapers, the complaint should be returned to the plaintiff for modification and order the plaintiff to specify the last known address of the temporary or permanent residence of the defendant as registered with the authority in charge of maintaining records on temporary and permanent places of residence of citizens, and if the defendant is not registered with the competent authority, the court shall order the plaintiff to furnish evidence for that.* *The court will act in the same way if the lawsuit is accompanied by a decision of the Centre for Social Work on the appointment of a special guardian to the defendant.* *If the complaint does not contain all the information prescribed by the provision of Article 334, paragraph 2 of the CPC, the court shall return the complaint to the plaintiff for completion. In case the complaint could not be submitted to the defendant for response due to incorrect personal information about the defendant or the existence of several persons with the same name and surname, the court will return the complaint and order the plaintiff to provide information about the defendant's parents (father and mother). If the plaintiff does not act upon the court's order, the court will dismiss the complaint as incomplete.* *The conditions for rendering a default judgement are also met in the case when the plaintiff, after filing a complaint, in a submission makes an objective modification of the complaint and proposes a default judgement to be rendered, and the submission is submitted to the defendant for response. The court will not render a judgement on admission after the delivery of the expert's findings and opinion to the litigants before it has enabled the plaintiff to set out the claim based the expert's findings and opinion.* *The court shall issue a decision on merging litigation in the sense of the provision of Article 83, paragraph 1 of the CPC only in the case when the litigation is at the same stage of the proceedings.* *The plaintiff shall be required to propose evidence that substantiates the decisive facts in the complaint, as well as the evidence on which the claim is based as to enable the defendant to respond in full and to challenge or admit such a claim.* *In order to ensure the economy of the proceedings, the plaintiff must enclose with the complaint all documents proposed as evidence. Failure to enclose all documents to the complaint does not make the complaint incomplete.* *The same applies to the response to the complaint.*

Basic and District Court in Trebinje	*If the plaintiff did not indicate the value of the dispute in the complaint or incorrectly assessed the value of the dispute, except in the cases where the value of dispute cannot be expressed in the monetary amount, the court shall return the complaint to the plaintiff for completion, i.e. to indicate the value of the dispute in the monetary amount (Article 316 of the CPC).* *If the plaintiff in the lawsuit did not indicate the exact address of the litigants who are natural persons, but only the address of their agents, the court shall return the complaint to the plaintiff for completion by indicating the exact address of the litigants within set deadline (Article 334, paragraph 2 and Article 336 of the CPC).* *As a rule, in exercising the right to a trial within a reasonable time (Article 10 of the CPC), the plaintiff submits the written documents proposed in the complaint as evidence. The court shall accept the complaint as orderly even if the documents proposed in the complaint are not enclosed with the complaint.* *During the course of the proceedings, the court shall issue a decision requesting the plaintiff to submit documents if the facts of the claim suggest that it is a claim that the party cannot dispose of (Article 2, paragraph 2 of the CPC), and to eliminate the deficiencies concerning the capacity of the plaintiff or of the defendant to be parties in civil litigation proceedings, or deficiencies relating to the authorisation of representatives to initiate a civil case when such an authorisation is required (Article 66 of the CPC).* *Paragraphs 1 and 2 above shall also apply to the response to the complaint.* *The conditions for entering a default judgment shall be deemed to have been met (in addition to the requirements stipulated by Article 182 of the CPC) if the plaintiff files a motion to modify previously submitted complaint with regard to the subject of dispute (objective modification), if in such motion the plaintiff moved for a default judgment and if the motion had been served to the defendant for response.*
Municipal and Cantonal Court in Mostar	*The judge first examines whether there are grounds for disqualification or recusal. If he/she determines the existence of grounds for disqualification or recusal, the judge shall immediately submit a request to the Court President to decide on that matter.* *The court shall determine whether it has jurisdiction to hear the case, and if not, it shall then declare the court not competent and refer the case to the competent court or dismiss the case in the event of the court's lack of absolute jurisdiction.* *The court examines whether there are procedural deficiencies under Article 66 of the CPC FBiH.* *If the court finds that the plaintiff or the defendant died before filing the complaint, it will issue a decision dismissing the complaint and declaring null and void all actions taken.* *If the court finds that there are deficiencies regarding the representation of the party, it will invite the party to eliminate the deficiencies within a certain period of time, with a warning that otherwise the actions taken by a person not duly authorised will be without effect.* *If the court finds that the complaint does not contain all the elements provided for in the provision of Article 53, paragraph 2 of the CPC FBiH or that it is incomprehensible, it will return it to the plaintiff for completion.* *A complaint is incomprehensible if the facts stated in the complaint are not in accordance with the filed statement of complaint and if it is not possible to determine from the complaint and the statement of complaint what is sought thereby.*

	As a rule, in exercising the right to a trial within a reasonable time (Article 10 of the CPC FBiH), with the complaint the plaintiff submits the written documents proposed as evidence in the complaint, which he/she is able to submit. The complaint will not be considered incomplete even if these documents are not enclosed to the complaint. *The complaint shall contain the full addresses of all parties. In case when it is alleged in the complaint that the defendant's address is unknown and motion is made for appointment of a special guardian for the defendant or that a delivery be made by publication in daily newspapers, the complaint should contain the last known address of the temporary or permanent residence of the defendant as registered with the authority in charge of maintaining records on temporary and permanent places of residence of citizens. If the defendant is not registered with the relevant authority, the plaintiff shall be required to submit the proof of that.* *If the plaintiff does not advance the costs of publishing the appointment of a special guardian in the Official Gazette of the FBiH and of the Herzegovina-Neretva Canton, or the costs of publishing the service of the complaint in a daily newspaper, the complaint shall be dismissed.* *The conditions for entering a default judgement shall be deemed to have been met (in addition to the requirements stipulated by Article 182 of the CPC FBiH) if the plaintiff files a motion to modify previously submitted complaint with regard to the subject of dispute (objective modification), if in such motion the plaintiff moved for a default judgement and if the motion had been served to the defendant for response.* *Paragraphs 5, 6, 7 and 8 above shall also apply to the response to the complaint, as well as to the counterclaim and response to the counterclaim.*
Preliminary hearing	
Municipal Court in Sarajevo	*The court shall always require the parties to relate each proposed piece of evidence to the relevant statements in their claims.* *In case parties propose a large number of witnesses to prove one fact, the court shall decide on such proposal bearing in mind the economy of the proceedings.* *In the event that the court deems it unnecessary to hear all of the witnesses motioned pertaining to certain circumstances, the court shall ask the parties to select which witnesses to hear, whereas in the event that a party does not do so, the court shall make the selection based on the deliberation.* *If, at the preliminary hearing, a large amount of material evidence is being proposed, and the court is unable to decide which of the proposed evidence is relevant and which is not relevant, the court shall admit all the proposed evidence and set the date for the main hearing.* *At the main hearing, the court shall issue a decision dismissing the evidence it decided was irrelevant to its decision-making, and provide brief reasoning for such decision.* *In the decision on the expert evaluation the court shall warn the expert witness that he will be fined unless he submits his findings and opinion within the given deadline or if he does not come the hearing to which he has been summoned on time and fails to justify his absence.* *When a complaint is modified in the subjective sense in the preliminary hearing or at the main hearing from which the defendant is absent, the court shall adjourn the hearing, deliver the minutes of the hearing to the original defendant and the person who is to participate in the litigation instead of the original defendant and leave them a deadline to state their position on the modified complaint.* *When the claim is modified with regard to the subject of dispute (objective modification), at the preliminary hearing not attended by the defendant, the court shall adjourn the preliminary hearing.* *When the claim is modified with regard to the subject of dispute (objective modification), at the main hearing not attended by the defendant, the court shall, if it finds that the terms of Article 57, paragraph 2 of the CPC are fulfilled, adjourn the hearing and deliver to the defendant a copy of the hearing minutes together with a set deadline to respond to the modified complaint.*

Basic Court in Banja Luka	Identical provision as in the Guidelines of the Municipal Court in Sarajevo, but the following provisions have been added: *After examining the complaint and the response to complaint, the court shall make an assessment whether the case involves simple factual and legal allegations, and consider whether to apply the provision pursuant to which the preliminary hearing is not mandatory.* *Also, the court may subsequently (before opening the main hearing) issue a procedural decision and revoke its earlier decision made at the preliminary hearing and cancel the presentation of evidence that is irrelevant to its decision-making.* *If the duly summoned defendant fails to attend the preliminary hearing, in its decision on evidence to be adduced at the main hearing, the court shall include the evidence proposed by the defendant in the response to complaint or in any filing submitted to the court before the preliminary hearing. In doing so, the court shall issue a decision and refuse any evidence that the court deems irrelevant for its decision on the subject matter.*
Municipal Court in Tuzla	Identical provision as in the Guidelines of the Municipal Court in Sarajevo, but the following provisions have been added: *At the preliminary hearing and after the plaintiff and defendant have clarified their statements, for every single proposed piece of evidence the court shall request the parties to state which facts they wish to prove with that piece of evidence.* *If in the preliminary hearing and due to the complexity of the dispute subject* ***and the quantity and type of proposed evidence*** *the court is unable to determine with certainty which evidence are relevant for essential facts to be determined and which are not,* ***while scheduling the main hearing*** *the court shall adopt all the proposed evidence.* ***The court shall also rule on the evidence proposed in the complaint, in the response to the complaint and in the writs, despite the fact that no such evidence was proposed by the party at the preliminary hearing (if necessary, the party shall be asked whether he/she stick with the motion). Along with an order to furnish a document to be issued by a governmental or legal entity, a party shall furnish a proof of not being able to obtain the document to be furnished or presented.***
Basic and District Court in Bijeljina	Identical provisions as in the Guidelines of the Basic Court in Banja Luka.
Basic Court of the Brcko District BiH	Identical provisions as in the Guidelines of the Municipal Court in Sarajevo
Cantonal Court in Zenica	It is the obligation of the court to summon witnesses by serving a writ of summons upon them, and the parties may not replace the court in this, and thus the court may not order the party to ensure the presence of a particular witness at the main hearing. The remaining provisions are identical as in the Guidelines of the Municipal Court in Tuzla
Basic Court in Doboj	Identical provisions as in the Guidelines of the Basic Court in Banja Luka.
Municipal Court in Travnik	Identical provisions as in the Guidelines of the Municipal Court in Tuzla, with one provision added: *Should a party propose to the court to obtain a certain document from a relevant authority, it is required to attach proof that it contacted that authority before and was unable to obtain that document.*

Municipal and Cantonal Court in Siroki Brijeg	*The court shall always require the litigants to relate each proposed piece of evidence to the relevant statements in their claims.* *If, at the preliminary hearing, a large amount of material evidence is being proposed, and the court is unable to decide which of the proposed evidence is relevant and which is not relevant, the court shall admit all the proposed evidence and set the date for the main hearing.* *At the main hearing, the court may refuse to present evidence admitted at a preliminary hearing that it considers not relevant to the decision.* *If a litigant proposes the hearing of a number of witnesses with respect to the same circumstances, the court shall take an active role and ask the litigant to make a statement about that and make a selection from among the proposed witnesses, failing which, the selection of the proposed witnesses shall be made by the court based on the outcome of the hearing.* *The court summons witnesses by delivering a written summons. The court may not order a litigant to ensure the presence of a particular witness at the main hearing.* *If the preliminary hearing is held in the absence of a duly notified plaintiff or defendant, the court will decide on the litigants' motions for evidence set out in the complaint and the response to the complaint and submitted with them, and will deliver the minutes from the preliminary hearing to the absent litigant.* *If a litigant proposes to the court to obtain a certain document from the competent authority, he/she is required to enclose proof that he/she has previously addressed a request to that authority and that he/she could not obtain that document.* *When the claim is modified with regard to the litigants (subjective modification), at the preliminary hearing or at the main hearing not attended by the defendant, the court shall adjourn the hearing, provide the defendant and the person replacing the initial defendant in the complaint with a copy of the hearing minutes, and set a deadline for their response to the modifications of the claim.* *In any case, the court shall adjourn the hearing (be it the preliminary or the main hearing) if the claim has been modified (subjectively or objectively) and the defendant is not present at the hearing, provided that the conditions of Article 57 of the CPC are satisfied in order to allow pleading on such a modified complaint.* *If a litigant or its legal representative is lay and unable to make a clear and definite statement on the subject matter of the hearing, the court will instruct them that they can hire an attorney, which may be a reason to adjourn the hearing.*

Basic and District Court in Trebinje	*After examining the complaint and the response to the complaint, the court shall make an assessment whether the case involves simple factual and legal allegations, and consider whether to apply the provision pursuant to which the preliminary hearing is not mandatory.* *The court shall always require the parties to relate each proposed piece of evidence to the relevant statements in their claims.* *In case parties propose a large number of witnesses to prove one fact, the court shall decide on such proposal bearing in mind the economy of the proceedings.* *In the event that the court deems it unnecessary to hear all of the witnesses motioned pertaining to certain circumstances, the court shall ask the parties to select which witnesses to hear, whereas in the event that a party does not do so, the court shall make the selection based on the deliberation.* *If a large amount of substantive evidence is being proposed at the preliminary hearing, and the court is unable to decide which evidence is relevant and which is not relevant, the court shall admit all the proposed evidence and set the date for the main hearing.* *In addition, the court may subsequently (before opening the main hearing) issue a procedural decision, revoke its earlier decision made at the preliminary hearing, and cancel the presentation of evidence that is irrelevant to its decision-making.* *In specifying the subject matter and scope of expert evaluation, the court shall ask questions to eliminate any dilemmas stemming from the proposal of parities with regard to the proposed subject matter and scope of expert evaluation.* *If a litigant who proposed expert evaluation (by expert of a certain profession) fails to make a payment for the costs of expert evaluation the amount of which was determined by the Court at the preliminary hearing and deadline for its payment set and the party fails to request that such deadline be extended within the set deadline, the Court shall give up on evidence to be adduced through expert evaluation, because the amount necessary for covering its costs has not been deposited within the deadline specified by the Court.* *If the duly summoned defendant fails to attend the preliminary hearing, in its decision on evidence to be adduced at the main hearing, the court shall include the evidence proposed by the defendant in the response to complaint or in any filing submitted to the court before the preliminary hearing. In doing so, the court shall issue a decision and refuse any evidence that the court deems irrelevant for its decision on the subject matter.*

Municipal and Cantonal Court in Mostar	*The court shall always require the parties to relate each proposed piece of evidence to the relevant statements in their claims. If the motion to testify on the circumstances of the complaint or the response to the complaint is not considered specific, the court will invite the party to further clarify.* *If a litigant proposes to the court to obtain a certain document from the competent authority, he/she is required to enclose proof that he/she has previously addressed a request to that authority and that he/she could not obtain that document.* *The court shall summon witnesses by serving them with a written summons and this obligation of the court cannot be assumed by the party.* *In a witness summons, the court shall warn the witness of the sanctions for a failure of a duly summoned witness to appear at the main hearing and a failure to justify his/her absence.* *When the court decides that the parties shall be heard at the main hearing, the party who is not present at the preliminary hearing shall be summoned by the court through its proxy.* *If the parties propose that only one litigant be heard, the court shall order that the other party be heard, unless it cannot be aware of the circumstances for which the hearing was proposed.* *Bearing in mind the economy of the proceedings, parties, witnesses and expert-witnesses may be summoned to attend at different time intervals during the same day of the main hearing or during different days.* *When the complaint is modified for objective reasons (modification with respect to subject matter of the complaint) at a preliminary hearing where the defendant is not present, the court will adjourn the preliminary hearing and provide the defendant with a transcript of the minutes of that hearing, to allow the defendant time to prepare to discuss the new claim and obtain new evidence. The court shall act in the same way if the defendant is present at the preliminary hearing, at which, for the same reasons, he/she requests its adjournment.* *When the complaint is modified at the preliminary hearing, in any form of subjective modification of the complaint, i.e. that the plaintiff sues another person instead of the original defendant (Article 58 of the CPC FBiH), or that a person who in the course of the dispute acquired the object or right which is the subject of the litigation replaces one of the parties (Article 61 of the CPC FBiH), or by changing the parties by extending the complaint to a new defendant in addition to the existing one (Article 362, paragraph 2 of the CPC FBiH), at which preliminary hearing the defendant is not present, the court will adjourn the preliminary hearing, deliver a transcript of the minutes from that hearing to the original defendant and the person who should enter the litigation instead of the original defendant, i.e. to whom the complaint is extended, and summon them to state within a certain period of time whether they agree to the modification, taking account of the time required for the requested statement and a possible statement on the modified complaint when scheduling the new hearing.* *The plaintiff may withdraw the complaint in accordance with Article 59 of CPC FBiH. The statement of withdrawal of the complaint is irrevocable.* *If the duly summoned defendant or the plaintiff does not come to the preliminary hearing, and there are no conditions for making a decision that the complaint is considered withdrawn (due to the defendant's objection), the court shall include the evidence submitted to the court prior to the preliminary hearing in the decision determining the evidence to be presented at the main hearing. In doing so, the court shall issue a decision and refuse any evidence that the court deems irrelevant for its decision on the subject matter.* *When the defendant does not appear at the preliminary hearing, it cannot order that the main hearing be held immediately.* *The consent of the parties is not required to hold the main hearing after the preliminary hearing.*
Expert witness evaluation	
Municipal Court in Sarajevo	The subject matter has not been regulated

Basic Court in Banja Luka	*In specifying the subject-matter and scope of expert evaluation, the court shall ask questions to eliminate any dilemmas stemming from the proposal of parties with regard to the proposed subject-matter and scope of expert evaluation.* *Should a litigation party, which proposes presentation of evidence by expert evaluation (expert of a suitable profession) "does not pay the expenses of expert evaluation, the amount of which the court has set at the preliminary hearing, as well as the deadline for their payment and the party within the set deadline does not request it to be extended, the court shall reject the application for presentation of evidence - expert evaluation, because the amount necessary to cover the expenses has not been deposited within the deadline set by the court."*
Municipal Court in Tuzla	*In the decision on the expert evaluation the court shall warn the expert witness that he will be fined unless he submits his findings and opinion within the given deadline or if he does not come the hearing to which he has been summoned on time and fails to justify his absence.*
Basic and District Court in Bijeljina	Identical provisions as in the Guidelines of the Basic Court in Banja Luka, with a provision added: *The court cannot base its decision on the expert's findings and opinion attached with the complaint or a response to the complaint, because the findings and opinion of an expert who was not designated by the court in its decision, are not evidence that that have the evidential value of findings and opinions pursuant to the provision of Articles 148, 150 and 151, paragraph 3 of the CPC, unless both parties accept that evidence.*
Basic Court of the Brcko District BiH	Identical provision as the one in the Guidelines of the Municipal Court in Tuzla.
Cantonal Court in Zenica	*A litigant who has proposed evaluation by an expert witness and who fails to comply with the expert witness request or the court order to provide the documentation required for the expert's report, due to which the expert is unable to draw findings or to complete all the tasks given by the court, may not request the supplement to the expert findings or to the opinion or request another expert witness.* *The expert witness evaluation, its scope and the person who will conduct the expert evaluation shall be determined by a court decision, which shall be provided to the expert witness with all the relevant notes and obligations of an expert witness as provided for in the CPC.* *The expert witness shall be required to immediately upon receiving the court decision on expert witness evaluation inform the court about any obstacles that would prevent him from complying with the court order and, if possible, to provide proof of such obstacles.* *In each particular case, the court shall decide what the justifiable reasons to refuse the expert witness evaluation are, or to disqualify an expert witness.* *The fact that an expert witness is already hired for evaluation in other cases shall not be taken as a valid reason for refusing evaluation, unless the expert witness is able to prove that his/she is doing evaluation in a number of cases at the same time, which affects the efficiency of the proceedings and could cause postponements of hearings, which shall be determined in each case individually.*
Basic Court in Doboj	*In specifying the subject-matter and scope of expert evaluation, the court shall ask questions to eliminate any dilemmas stemming from the proposal of parties with regard to the proposed subject-matter and scope of expert evaluation.* *In the decision ordering expert evaluation, the court shall include a caution to the expert witness that any failure to comply with the deadline set for delivery of the findings and opinion or to attend a hearing upon being duly summoned without valid justification shall result in a fine. (The provision is identical to the contents of the provision of the Guidelines of the Municipal and Cantonal Court in Tuzla)* *If a litigant who proposed expert evaluation (by expert of a certain profession), fails to make a payment for the costs of expert evaluation, the amount of which was determined by the Court at the preliminary hearing and deadline for its payment set and the party fails to request that such deadline be extended within the set deadline, the Court shall give up on evidence to be adduced through expert evaluation, because the amount necessary for covering its costs has not been deposited within the deadline specified by the Court.*

Municipal Court in Travnik	*The expert evaluation, scope and person to carry it out shall be designated by the court in a decision that is to be delivered to the expert with all the remarks and expert's obligations as provided under the Civil Procedure Code.* *The parties are required to explain their objections about the person of an expert and give specific reasons and evidence as to why they oppose the proposed expert. The court shall not accept arbitrary objections to the person of an expert.* *The expert witness shall be required to immediately upon receiving the court decision on expert witness evaluation inform the court about any obstacles that would prevent him from complying with the court order and, if possible, to provide proof of such obstacles.* *In each particular case, the court shall decide what the justifiable reasons to refuse the expert witness evaluation are or to disqualify an expert witness.* *The engagement of an expert witness in other cases is not considered a justifiable reason to refuse the expert witness evaluation, except in situation when an expert witness proves that he is performing expert evaluation in several cases at the same time, which would affect the economy of the proceedings.* *Should the court establish that the reason to refuse expert evaluation is justifiable, it shall order the parties to submit their proposals of a new expert within the given deadline and should the parties fail to reach an agreement, the court shall decide about it.* *While deciding on additional expert evaluation or expert evaluation by another expert witness, the court shall take into consideration whether the expert has acted fully as ordered by the court and answered the parties' questions and objections to the expert evaluation at the main hearing.* *In the decision on the expert evaluation the court shall warn the expert witness that he will be fined unless he submits his findings and opinion within the given deadline or if he does not come the hearing to which he has been summoned on time and fails to justify his absence.*
Municipal and Cantonal Court in Siroki Brijeg	Identical provision as in the Guidelines of the courts in Central Bosnia Canton.
Basic and District Court in Trebinje	The Recommendations lack provisions on expert witness evaluation.

Municipal and Cantonal Court in Mostar	*In specifying the subject matter and scope of expert evaluation, the court shall ask questions to eliminate any dilemmas stemming from the proposal of parties with regard to the proposed subject matter and scope of expert evaluation.* *If a party proposes an expert of the wrong profession (e.g. graphology instead of grafoscopy), the court shall warn the party. If the party files the motion to conduct an expert witness evaluation of circumstances that do not require expertise (e.g. financial expertise to add up the amounts in a large number of accounts), the court shall reject the motion to conduct an expert witness evaluation and immediately explain the reason for rejection.* *The litigants are required to explain their objection to the choice of the expert witness and give specific reasons and evidence why they oppose the proposed expert. The court shall not accept the arbitrary objections to the choice of expert witness and may appoint the proposed witness.* *If the parties agree, the court may appoint an expert who is not on the list of appointed expert witnesses.* *If the litigant who filed motion to conduct the expert witness evaluation within the set deadline does not pay the costs of the evaluation, and does not request a justified extension of the deadline, the court shall withdraw the evaluation by a decision to be delivered to the parties immediately after expiry of the deadline for advance payment of costs.* *A litigant who has proposed evaluation by an expert witness and who fails to comply with the expert witness request or the court order to provide the documentation required for the expert's report, due to which the expert is unable to draw findings or to complete all the tasks given by the court, may not request the supplement to the expert findings or to the opinion or request another expert witness.* *The expert witness evaluation, its scope and person who will conduct the evaluation are proposed by the party, and the court decides on it by a decision in which it determines the deadline within which the expert is required to submit the finding and opinion, with notes and warnings prescribed by the CPC FBiH. The decision is delivered to the expert witness and the parties.* *The finding and opinion of an expert witness that was not made in the litigation in which it is proposed as evidence may be accepted as such only with the consent of the opposing party, with the obligatory hearing of the expert witness. Otherwise, such a finding and opinion has the force of a private document, and the possible hearing of the person who made the finding shall be conducted as a hearing of a witness, not an expert witness.*
Court settlement	
Municipal Court in Sarajevo	*Throughout the course of the proceedings, the court shall try and encourage the parties to reach a court settlement. All attempts to settle the case shall be reflected in the record of the hearing, also specifying the proposed elements of the settlement, the parties that refuse to settle as well as the reasons for refusal.*
Basic Court in Banja Luka	The subject matter has not been regulated
Municipal Court in Tuzla	*Throughout the course of the proceedings, the court shall try and encourage the parties to reach a court settlement. All attempts to settle the case shall be reflected in the record of the hearing, also specifying the proposed elements of the settlement and the position of the adversary party.*
Basic and District Court in Bijeljina	The subject matter has not been regulated
Basic Court of the Brcko District BiH	*Throughout the course of the proceedings, the court shall try and encourage the parties to reach a court settlement. In order to ensure the basis for verification of the regularity and legality of a decision not allowing the parties to settle, the proposal for a settlement must be recorded in the minutes.*
Cantonal Court in Zenica	Identical provision as in the Guidelines of the Municipal Court in Sarajevo.
Basic Court in Doboj	Identical provision as in the Guidelines of the Municipal Court in Sarajevo.

Municipal Court in Travnik	*Throughout the course of the proceedings, the court shall try and encourage the parties to reach a court settlement.*
Municipal and Cantonal Court in Siroki Brijeg	There is no regulation of this issue in the Guidelines.
Basic and District Court in Trebinje	The Recommendations lack provisions on court settlement.
Municipal and Cantonal Court in Mostar	*Throughout the proceedings, the judge will endeavour to resolve the dispute amicably and the parties conclude a court settlement, suggesting to the parties the direction of the settlement, but without specifying the elements of the settlement. All attempts to settle the case shall be reflected in the record of the hearing, also specifying the proposed elements of the settlement, the parties that refuse to settle as well as the reasons for refusal.*
The main hearing	
Municipal Court in Sarajevo	*When the main hearing is scheduled without holding a preliminary hearing in simple cases and the parties propose new facts and new evidence, not mentioned previously in the complaint or in response to the complaint, and if those new facts and pieces of evidence are relevant to the case, the court shall allow their presentation at the main hearing.* *If such evidence cannot be presented during one hearing, or the opposing party is unable to respond to the evidence, the court shall adjourn the main hearing and if necessary set a deadline for the opposing party to respond.*
Basic Court in Banja Luka	Identical provision as in the Guidelines of the Municipal Court in Sarajevo. And the following provision are added: *Order of the main hearing shall follow the prescribed legal norm. Any deviation from the order of the main hearing shall only be an exception.* *Bearing in mind the economy of the proceedings, parties, witnesses and expert-witnesses may be summoned to attend at different time intervals during the same day of the main hearing or during different days.*
Municipal Court in Tuzla	Identical provisions as in the Guidelines of the Basic Court in Banja Luka
Basic and District Court in Bijeljina	*Identical provision as in the Guidelines of the Municipal Court in Sarajevo. And the following provision are added:* *The order in which the main hearing is conducted is prescribed by the provision of Article 99 of the CPC, given that changing the order in which the main hearing is conducted is allowed only in exceptional situation, when circumstances of a specific case justify it.* *Bearing in mind the economy of the proceedings, parties, witnesses and expert-witnesses may be summoned to attend at different time intervals during the same day of the main hearing or during different days.*[19] *Hearing the parties i.e. the plaintiff and defendant is considered a single piece of evidence and it is presented at the same time. In the event of unjustifiable failure of a duly summoned party to appear at the hearing for scheduled testimony, only the present party shall be heard, and the presentation of evidence by way of testimony of the parties shall thus be concluded.* *In a witness summons, the court shall warn the witness of the sanctions for a failure of a dully summoned witness to appear at the main hearing and a failure to justify his/her absence.*

[19] Incorporated in the Guidelines of the Municipal Court in Tuzla, modelled after the Guidelines of the Banja Luka Basic Court.

Basic Court of the Brcko District BiH	Identical provision as in the Guidelines of the Municipal Court in Sarajevo.
Cantonal Court in Zenica	Identical provision as in the Guidelines of the Municipal Court in Sarajevo.
Basic Court in Doboj	Identical provisions as in the Guidelines of the Basic Court in Banja Luka
Municipal Court in Travnik	Identical provision as in the Guidelines of the Municipal Court in Sarajevo.
Municipal and Cantonal Court in Siroki Brijeg	Identical provision as in the Guidelines of the Municipal Court in Sarajevo.
Basic and District Court in Trebinje	Identical provision as in the Guidelines of the Basic Court in Banja Luka.
Municipal and Cantonal Court in Mostar	Identical provision as in the Guidelines of the Municipal Court in Sarajevo, and the provisions have been added: *The parties should present evidence in the order prescribed in the CPC FBiH. Deviation from this order shall be allowed only exceptionally for justified reasons. The court should take care that witnesses are not heard before the party.* *The court may not present substantive evidence instead of the absent party..* *The testimonies of the parties, i.e. of the plaintiff and the defendant shall be considered as one piece of evidence, and as such they shall be heard concurrently. In the event of unjustifiable failure of a duly summoned party to appear at the hearing for scheduled testimony, only the present party shall be heard, and the presentation of evidence by way of testimony of the parties shall thus be concluded..* *The court may ask questions to the parties and witnesses only related to the circumstances to which the hearing is proposed.* *Spot inspection is evidence that is most often conducted outside the court building. Evidence is presented at the main hearing, so the spot inspection is part of the main hearing. As a rule, the parties and witnesses are not heard at the spot inspection, except when the court in each specific case determines that it is absolutely necessary for a full and proper establishing of the facts.* *When concluding the main hearing, the court is always required to set the date of the judgement (decision).* *As a rule, the judgement is served in the court registry, and by mail only on a party' reasoned motion. The court may not decide upon its own motion that the decision will be rendered within the legal deadline and served to the parties by mail, and that the expiry of the period for bringing an appeal begins to run from the date of service.*
Postponing and adjourning hearings	

Municipal Court in Sarajevo	***Notice*** *In the event that a party files a motion to postpone or adjourn or files any other notice in such regard, they shall at the same time also forward a copy of the motion or notice to the opposing party.* ***Postponement in the event that the date was set without consultation with the parties*** *In the event that the date and time of the hearing was set without the consultation with the parties, the parties may request that the date of the hearing be changed within 8 days of receiving notice of the hearing.* *Upon the elapsing of 8 days, the court shall not grant a request to postpone a hearing except in the event of legitimate reasons or force majeure.* ***Postponement in the event that the date was set upon consultation with the parties*** *In the event that the date and time of the hearing was set upon consultation with the parties, a motion to postpone shall only be granted in the event of legitimate reasons or a force majeure.* ***Postponement in the event of legitimate reasons or force majeure*** *An elaborated party motion to postpone due to the existence of legitimate reasons or a force majeure must be submitted by the end of the working day when such reasons or a force majeure occurred.* *Opposing party may respond to the motion within two working days of its filing or the delivery of a copy of the motion.* *The court shall consider the motion as soon as possible after the elapsing of two days from the day the motion was submitted. In the event that the court receives a response from the opposing party before the elapsing of the deadline, the motion shall be considered as soon as possible upon receiving the response.* ***Legitimate reasons and force majeure*** *The following circumstances shall not be considered as justified reasons or force majeure:* - *Attending a trial in a different case before the same or a different court, if scheduled or planned after this hearing had been scheduled;* - *Medical reasons that are not supported with the relevant medical findings dated immediately prior to the date of the set hearing;* - *Urgent or serious family matters, if the motion is not supported with proof or relevant documentation stating that the family matters are of an urgent or serious nature;* - *Annual leave or business trips by an attorney;* - *In the event that the attorney revokes power of attorney to represent the party in a short time prior to the set hearing, while the new attorney hired by the party did not have enough time to properly prepare for the case;* - *In the event that the attorney terminates the power of attorney contrary to the provisions of the Law on the Attorney's Profession.* ***Adjournment of a hearing*** *The court shall not grant the motion of a party to adjourn the preliminary hearing so that the party can respond to the documents proposed by the opposing party as evidence in the complaint or the response to complaint, that were actually submitted only at the preliminary hearing.* *The court shall not grant a motion to postpone a hearing in situations when the lawyer's intern not admitted to the Bar attends a preliminary hearing instead of the hired lawyer, and the intern is unable to represent the party in proceedings in which the value of dispute exceeds 50,000.00 KM. Therefore, in situations where the defendant is thus represented, the court shall rule as if the defendant failed to appear for the hearing and the hearing shall continue without the defendant. In situations where the plaintiff is represented by such a proxy, the court shall rule as if the complaint was withdrawn.*

	However, in exceptional cases where the dispute value increases and exceeds 50,000.00 KM during the actual preliminary hearing attended by the defendant's lawyer's intern not admitted to the Bar, the court will grant the motion to postpone the hearing. *If a party or his/her legal representative is a lay person or unable to clearly and specifically argue the case, the court may postpone the hearing to allow the party to hire an attorney.* *The court may depart from the provisions of the Chapter if warranted due to the circumstances of the case.*
Basic Court in Banja Luka	***Notice*** *In the event that a party files a motion to postpone or adjourn or files any other notice in this regard, the opposing party shall also be furnished with a copy of such a motion or notice.* (Identical provision as in the Guidelines of the Municipal Court in Sarajevo) *Motion for postponement must be submitted as soon as the party learns about legal grounds for postponement, and no later than 8 days before the scheduled date of the hearing sought to be postponed. Parties are required to corroborate their motions to postpone with the proof of validity of reasons for postponement. The court shall decide whether the motions are justified on a case-by-case basis. The court shall send its decision denying motion to the requesting party, and the decision granting motion together with the order on new hearing date to all parties.* *The following circumstances shall not be considered as justified reasons or force majeure:* - *Attending a trial in a different case before the same or a different court, if scheduled or planned after this hearing had been scheduled;* - *Medical reasons that are not supported with the relevant medical findings dated immediately prior to the date of the set hearing;* - *Urgent or serious family matters, if the motion is not supported with proof or relevant documentation stating that the family matters are of an urgent or serious nature,* - *Annual leave or business trips by an attorney;* - *In the event that the attorney terminates the power of attorney to represent the party in a short time prior to the set hearing, while the new attorney hired by the party did not have enough time to properly prepare for the case;* - *In the event that the attorney terminates the power of attorney which is contrary to the provisions of the Law on Attorney Profession (identical reasons which are not considered justifiable prescribed by the Guidelines of the Municipal Court in Sarajevo).* ***Adjournment of a hearing*** *The court shall evaluate on a case- by-case basis whether to adjourn a preliminary hearing, requested so that the party can respond to the documents proposed by the opposing party as evidence in the complaint or the response to complaint, but actually submitted only at the preliminary hearing. The court shall look to see if there are justified reasons to adjourn a hearing and allow the opposing party to respond to the enclosed and proposed evidence.* *If the court decides not to accept the reasons for adjourning a preliminary hearing referred to in paragraph 1 above, at the main hearing the court shall consider whether reasons exist to apply Article 102, para 2 CPC.* *If a party or his/her legal representative is a lay person or unable to clearly and specifically argue the case, the court may adjourn the hearing to allow the party to hire an attorney (Article 78a CPC).*

Municipal Court in Tuzla	Identical provisions as in the Guidelines of the Municipal Court in Sarajevo, with specific provisions added: *No later than eight days before the hearing day, the court is required to check whether the legal preconditions were met for it to be held and whether it is possible for the evidence that will be presented to be obtained before the hearing.* *If, while checking, it is determined that the legal preconditions to hold a hearing have not been met or that the evidence set to be presented cannot be obtained before the hearing, the court may immediately render a decision to postpone the hearing, in which case a new date of the hearing will be determined in the decision and delivered to all the parties summoned to the hearing that is being postponed.* *The legal preconditions to hold a hearing primarily concern the issue of the hearing summons being delivered to the parties or their proxies on time, while the issue of the possibility to obtain evidence before the hearing primarily concerns the writing of the expert evaluation.*[20] ***Postponement of a hearing upon the request of a party i.e. party's authorised agent*** *Before a hearing is held, the party or its authorised agent can request postponement due to justifiable reasons, in which case it is required to submit an explanation for the postponement request and the relevant evidence that justify its request.* *Considering the delivery time of the hearing postponement request, should a court assess that the decision on that request cannot be delivered to the parties until the date of the scheduled hearing, the court shall decide on the said request at the hearing whose postponement is requested.*
Basic and District Court in Bijeljina	Identical provisions as in the guidelines of the Basic Court in Banja Luka
Basic Court of the Brcko District BiH	Identical provisions as in the Guidelines of the Municipal Court in Sarajevo
Cantonal Court in Zenica	Identical provisions as in the guidelines of the Municipal Court in Tuzla
Basic Court in Doboj	Identical provisions as in the guidelines of the Basic Court in Banja Luka
Municipal Court in Travnik	Identical provisions as in the guidelines of the Municipal Court in Tuzla

[20] The provision has been incorporated by the Municipal Court in Tuzla and its significance is in the court proactively endeavouring to make the proceedings efficient and economic. Therefore, the burden of proactively endeavouring in holding meaningful hearings and checking the procedural preconditions on time to hold hearings and the possibility to have the expert findings is on the court

Municipal and Cantonal Court in Siroki Brijeg	***Postponement in the event that the date was set without consultation with the litigants*** *In the event that the date and time of the hearing was set without the consultation with the litigants, the litigants may request that the date of the hearing be changed within 8 days of receiving notice of the hearing. The court shall consider the reasons for the postponement of the hearing in each individual case.* ***Postponement in the event that the date was set upon consultation with the litigants*** *In the event that the date and time of the hearing was set upon consultation with the litigants, a motion to postpone shall only be granted in the event of legitimate reasons or a force majeure or reasons from Article 111 of the CPC.* ***Postponement in the event of legitimate reasons or force majeure*** *An elaborated litigant's motion to postpone the hearing due to the existence of legitimate reasons or a force majeure must be submitted by the end of the working day when such reasons or a force majeure occurred.* *The adverse litigant may respond to the motion to postpone within two working days after receiving the motion, and the court shall decide on the request without delay.* ***Legitimate reasons and a force majeure*** *The following circumstances are not considered legitimate reasons or force majeure:* • *Attending a trial in a different case before the same or a different court, if scheduled or planned after this hearing had been scheduled;* • *Medical reasons that are not supported with the relevant medical findings dated immediately prior to the date of the set hearing;* • *Urgent or serious family matters, if the motion is not supported with proof or relevant documentation stating that the family matters are of an urgent or serious nature,* • *Annual leave or business trips by lawyers;* • *In the event that the attorney revokes power of attorney to represent the litigant in a short time prior to the set hearing, while the new attorney hired by the adverse litigant did not have enough time to properly prepare for the case;* • *In the event that the attorney terminates the power of attorney contrary to the provisions of the Law on the Attorney's Profession.* ***Adjournment of a hearing*** *If one of the litigants has proposed multiple pieces of evidence to which the adverse litigant cannot immediately plead and thus asks for the adjournment of the preliminary hearing, the court shall in that case adjourn the preliminary hearing for a shorter period of time.* *In order to prevent indefinite adjournments on the aforementioned grounds, the court shall order the adverse litigant to, if he/she finds it appropriate, furnish its evidence within the time allowed, which the court shall forward to the other litigant 8 days before the continuation of the preliminary hearing.* *The court shall warn the litigants that it shall not allow further adjournment of the preliminary hearing on the aforementioned grounds.* *If at the preliminary hearing there is an increase in the value of claim as to exceed the amount of BAM 50,000.00, even in the case of modification of the complaint, and the hearing was attended by a proxy who has not passed the bar exam, the court shall adjourn the hearing to eliminate lack of proper representation.* *The court shall consider the grounds for the postponement and adjournment of the hearing in each case individually, while at the same time being mindful of the potential abuse of procedural rights.*

Basic and District Court in Trebinje	*Motion for postponement must be submitted as soon as the party learns about legal grounds for postponement, and no later than eight days before the scheduled date of the hearing sought to be postponed. Parties are required to corroborate their motions to postpone with the proof of validity of reasons for postponement. The court shall decide whether the motions are justified on a case-by-case basis. The court shall send its decision denying motion to the requesting party, and the decision granting motion together with the order on new hearing date to all parties.* *The following circumstances shall not be considered legitimate reasons or a force majeure:* • *attending a hearing in a different case before the same or a different court, if scheduled or planned after this hearing had been scheduled,* • *medical reasons that are not supported with the relevant medical findings dated immediately to the date of the set hearing,* • *urgent or serious family matters, if the motion is not supported with proof or relevant documentation stating that the family matters are of an urgent or serious nature,* • *attending a hearing in a different case before the Court of Bosnia and Herzegovina, except in criminal cases before that court.* *The court shall evaluate on a case-by-case basis whether to adjourn a preliminary hearing, requested so that the party can respond to the documents proposed by the opposing party as evidence in the complaint or the response to the complaint, but actually submitted only at the preliminary hearing. The court shall look to see if there are justified reasons to adjourn the hearing and allow the opposing party to respond to the enclosed and proposed evidence.* *If the court decides not to accept the reasons for adjourning the preliminary hearing referred to in paragraph 1 of this Article, the court shall consider at the main hearing whether reasons exist to apply Article 102, paragraph 2 of the CPC.* *If a party or his/her legal representative is a layperson or unable to clearly and specifically argue the case, the court may adjourn the hearing to allow the party to hire an agent (Article 78 of the CPC).*

Municipal and Cantonal Court in Mostar	*If a party files a motion to adjourn or postpone a hearing for reasons of efficiency, it is necessary for the party to simultaneously provide the adverse party with a copy of the motion or notice.* *In general, the following circumstances shall not be considered as justified reasons or force majeure:* *1) attending a trial in a different case before the same or a different court, if scheduled or planned after this hearing had been scheduled;* *2) medical reasons that are not supported with the relevant medical findings dated immediately prior to the date of the set hearing;* *3) in the event that the attorney terminates the power of attorney contrary to the provisions of the Law on the Attorney's Profession and the Civil Procedure Code.* *The court shall review the justifiability of these and other circumstances in each case individually.* *Before holding a scheduled hearing, the party or its proxy may request the postponement of that hearing for justified reasons, in which case it is required to file a reasoned motion for postponement, and relevant evidence that justifies the motion.* *If the court, considering the time when the motion for postponement of the hearing is filed, assesses that the decision on that motion cannot be served to the parties by the date of the scheduled hearing, the court shall decide on the said motion at the hearing whose postponement is requested.* *The judge and the party should review the evidence before the main hearing and at the main hearing the court may consider the reasoned and justified remarks of the party who did not have the opportunity to review the documents, and revoke the decision ordering presentation of certain evidence (e.g. because the document is not relevant, not legible, not translated into the native language, etc.).* *The court shall not grant the motion of a party to adjourn the preliminary hearing so that the party can respond to the documents proposed by the opposing party as evidence in the complaint or the response to complaint, that were actually submitted only at the preliminary hearing.* *If a party or his/her legal representative is a lay person or unable to clearly and specifically argue the case, the court may adjourn the hearing to allow the party to hire an attorney (Article 78 (a) of the CPC FBiH).* *The judge is required to ask for the file no later than 8 days before the hearing and determine whether there are procedural obstacles to the hearing, if there are any, eliminate them if possible, or else postpone the hearing, and immediately inform all summoned about the time of the new hearing.*
Representation	
Municipal Court in Sarajevo	*If the hearings for claim of damages exceeding 50,000 KM are attended by an employee of a legal entity or an attorney's intern as a legal entity's representative, the first instance court will request to be shown the certificate of admission to the Bar. If such representatives do not have the certificate of the admission to the Bar or have not been admitted to the Bar, the court shall proceed as if they failed to attend at the hearing.* *The person authorised to receive writs for a natural person does not have to be the agent referred to in Article 301 of the CPC.* *In the event that a party has authorised two or more legal representatives, the court shall invite the party to state to which representative writs shall be delivered.* *The possibility of delivery in accordance with the provision of Article 337b of the Civil Procedure Code i.e. depositing writs in specific mailboxes located on court premises is also possible for second instance decisions and decisions of the court of revision.*

Basic Court in Banja Luka	*It is an ex officio duty of the court to make sure that in property-related disputes, in which dispute value exceeds 50,000 KM, legal entities may only be represented by persons admitted to the Bar.* *Attorney's interns may not, in this type of disputes, deputize for an attorney even if the grantor has given such authorisation, because they are not members of the Bar.* *If such an attorney represented the plaintiff, it is not a reason to proceed as if the complaint had been withdrawn, because the Plaintiff did attend the hearing, even if represented by an attorney who does not meet all the statutory requirements to represent, which is a procedural error that may be rectified.* *The person authorised to receive writs for a natural person does not have to be the agent referred to in Article 301 of the CPC.* *The possibility of delivery in accordance with the provision of Article 337b of the Civil Procedure Code i.e. depositing writs in specific mailboxes located on court premises is also possible for second instance decisions and decisions of the court of revision.*
Municipal Court in Tuzla	*In claims of damages exceeding 50,000 KM and in which one of the parties is a legal entity, in the decision on scheduling a preliminary hearing, the court shall, amongst other things, warn the party that its authorised agent, if employed by that legal entity, may be only a person who has been admitted to the Bar and that that circumstance must be noted in the submitted power of attorney.* *Attorney's interns may not, in this type of disputes, deputize for an attorney even if the grantor has given such authorised, because they are not members of the Bar.* *Should in this type of dispute the party, which is a legal entity, be represented by its employee at the hearing as an authorised agent without a note in the power of attorney that he/she has been admitted to the Bar or be represented by an attorney's intern who has been given power of attorney for legal representation, there are no conditions, in case the legal entity is a plaintiff, to consider the complaint withdrawn, nor the conditions, in case the legal entity is a defendant, to hold the hearing in their absence, but it is to be considered that the plaintiff or the defendant has attended the hearing, because the said circumstances are a procedural defect that can be removed and in such case the hearing shall be postponed at the expense of the party that caused the postponement.*
Basic and District Court in Bijeljina	*The contents of the provision are identical to that of the provision in the Guidelines of the Basic and District Court in Banja Luka*
Basic Court of the Brcko District BiH	*In cases involving damage claim exceeding 50,000 KM, where the legal person is represented at the hearing by an authorised agent, the first-instance court shall request that the proof of passed bar exam be furnished.* *In the event that the authorised agent does not have the proof of the passed bar exam, the court shall instruct him/her to furnish it in due time, failing which he/she shall be considered as not appearing at the hearing.*

Cantonal Court in Zenica	*When taking the first action in the case, the legal representative shall be required to furnish a power of attorney, and in case when a claim is exceeding BAM 50,000.00 and the legal entity is represented by an employee as the legal entity's legal representative, the legal representative shall be required to present the proof of passed bar exam, where the court may, within the meaning of Article 309 CPC, allow the legal representative to take action in the proceedings and order him/her to furnish the power of attorney or the proof of passed bar exam within a subsequent deadline.* *In case of non-compliance, the court shall declare all legal actions taken by that legal representative null and void.* *The person authorised to receive writs for a natural person does not have to be the agent referred to in Article 301 of the CPC.* *In the event that a party has authorised two or more legal representatives, the court shall invite the party to state to which representative writs shall be delivered.* *When the plaintiff enclosed with the complaint the power of attorney in which the defendant authorised the other person as an authorised agent to represent the matter, the court shall proceed as if no power of attorney was furnished and send the complaint to the defendant for his/her response.*
Basic Court in Doboj	*It is an ex officio duty of the court to make sure that in property-related disputes, in which dispute value exceeds 50,000 KM, legal entities may only be represented by persons admitted to the Bar.* *Attorney's interns may not, in this type of disputes, deputize for an attorney even if the grantor has given such authorisation, because they are not members of the Bar.* *If such an attorney represented the plaintiff, it is not a reason to proceed as if the complaint had been withdrawn, because the Plaintiff did attend the hearing, even if represented by an attorney who does not meet all the statutory requirements to represent, which is a procedural error that may be rectified.* *The person authorised to receive writs for a natural person does not have to be the agent referred to in Article 301 of the CPC.* *The possibility of delivery in accordance with the provision of Article 337b the Civil Procedure Code i.e. depositing writs in specific mailboxes located on court premises is also possible for second instance decisions and decisions of the revision court.*
Municipal Court in Travnik	*While taking first actions in the proceedings, the party's authorised agent is required to furnish a power of attorney or evidence on passed Bar exam. The court may allow the authorised agent to take actions in the proceedings and at the same time instruct him to deliver the power of attorney or evidence on the passed Bar exam within the given deadline.* *Should the authorised agent fail to follow the instruction of the court in the given deadline, the court shall order the party to issue an approval for all the action taken in the proceedings and should the party fail to deliver it, the court shall render all legal actions taken by the authorised agent as ineffective.* *In the event that a party has authorised two or more legal representatives, the court shall invite the party to state to which representative writs shall be delivered.*
Municipal and Cantonal Court in Siroki Brijeg	*Identical provision as in the Guidelines of the courts in Central Bosnia Canton. (last paragraph left out: In the event that a litigant has authorised two or more agents, the court shall invite the litigant to state to which agent writs shall be delivered.)*

Basic and District Court in Trebinje	*It is an ex officio duty of the court to make sure that in property-related disputes in which dispute value exceeds BAM 50,000, legal entities may only be represented by persons admitted to the Bar.* *Attorney's interns may not in this type of disputes, deputize for an attorney even if the grantor has given such authorisation, because they are not members of the Bar.* *If such an agent represented the plaintiff, it is not a reason to proceed as if the complaint had been withdrawn, because the plaintiff did attend the hearing even if represented by an agent who does not meet all the statutory requirements to represent, which is a procedural error that may be rectified.* *The person authorised for receiving the service of documents on behalf of a natural person does not have to be the agent referred to in Article 301 of the CPC.* *During the preliminary examination of the complaint, the court shall check whether the plaintiff or his/her representative located abroad who do not have an agent in Bosnia and Herzegovina have appointed an agent for receiving the service of documents in Bosnia and Herzegovina. If they have failed to do so, the court shall direct them to appoint an agent for receiving the service of documents within a specified time limit. The court shall advise the persons to whom the direction is addressed that if they fail to act in accordance with the direction, the court shall dismiss the complaint (Article 353, paragraph 1 of the CPC).* *On the initial service of a document on the defendant or his/her representative who are located abroad and do not have an agent in Bosnia and Herzegovina, the court shall direct them to appoint an agent for receiving the service of documents in Bosnia and Herzegovina. In that direction the court shall advise the persons to whom the direction is addressed, that if they fail to act in accordance with the direction, the court shall appoint a representative for receiving the service of documents at his/her expense and through this representative inform thereof the defendant or his/her representative (Article 353, paragraph 2 of the CPC), and all for the economy of proceedings.* *Service in accordance with the provisions of Article 337 b. of the CPC, i.e. depositing writs in specific mailboxes located on court premises is also possible for second instance decisions and decisions of the court of third instance.*
Municipal and Cantonal Court in Mostar	*When the value of restitution claim exceeds the amount of BAM 50,000.00, in which one of the parties is a legal entity, in its decision scheduling a preliminary hearing, the court shall, among other things, warn that party that its proxy, if an employee of that legal entity, can only be a person who is member of the Bar, and that this must be indicated in the submitted power of attorney.* *If in this type of dispute for the party, which is a legal entity, his employee appeared at the hearing as a proxy, and for whom the power of attorney does not indicate that he has passed the bar exam, the court will immediately ask the proxy if he/she has passed the bar exam. If he/she declares that he/she has not, a decision will be made that the complaint is considered withdrawn. If he/she declares that he/she has passed the bar exam, the court will hold a hearing, and order him/her to submit proof of that within a certain period of time, with a warning that otherwise the action he/she took at that hearing shall be without legal effect, i.e. that the complaint shall be considered withdrawn.* *The court shall issue a decision by which the complaint is considered withdrawn if the trainee lawyer has attended the hearing for claim of which value exceeds the amount of BAM 50,000.00.* *If the party has authorised the spouse or common-law marital partner, blood relatives in the direct line up to any degree, and in the lateral line up to and including the third degree, or in-laws up to and including the second degree to represent them, such a proxy is required to enclose with the power of attorney an evidence (excerpt from the register of marriages, births, etc.) which confirms this relationship.* *If this proxy does not submit the evidence proving this kinship with the power of attorney, the court shall order to submit them within a reasonable time, otherwise representation shall be denied to that agent.* *If the party has authorised two or more agents, the writ shall be deemed duly served if it has been served only to one of them, if the party has not previously stated to which of the agents to serve writs.*

Recording hearings	
Municipal Court in Sarajevo	*Parties shall not be allowed to conduct the audio or video recording of a hearing through the use of their own devices.*
Basic Court in Banja Luka	Identical provision as in the Guidelines of the Municipal Court in Sarajevo
Municipal Court in Tuzla	*Parties shall not be allowed to conduct the audio or video recording of a hearing through the use of their own devices and should a party attempt to do so, in that case, the court shall apply the CPC provision on the contempt of the court.* *Audio recording of the court hearings may be conducted and the court shall decide on it autonomously in a decision or at the motion of a party.* *Should a court order an audio recording of a hearing, in that case, after a hearing is held, it shall deliver the hearing's audio recording to the parties.*
Basic and District Court in Bijeljina	Identical provisions as in the Guidelines of the Municipal Court in Sarajevo and the following provision has been added: *Once the Civil Department of the District Court in Bijeljina takes stance on some of the disputed procedural or substantive matters, it shall be shared with the heads of litigation departments of lower-instance courts under its jurisdiction with a view to harmonising case law.*
Basic and Appellate Court of the Brcko District of BiH	Identical provision as in the Guidelines of the Municipal Court in Sarajevo
Municipal and Cantonal Court in Zenica	Identical provision as in the Guidelines of the Municipal Court in Sarajevo
Basic Court in Doboj	Identical provision as in the Guidelines of the Municipal Court in Sarajevo
Municipal Court in Travnik	Identical provision as in the Guidelines of the Municipal Court in Sarajevo
Municipal and Cantonal Court in Siroki Brijeg	Identical provision as in the Guidelines of the Municipal Court in Sarajevo
Basic and District Court in Trebinje	Identical provision as in the Guidelines of the Municipal Court in Sarajevo
Municipal and Cantonal Court in Mostar	*Litigants shall not be allowed to conduct the audio or video recording of a hearing through the use of their own devices and in case the party tries to do so, the court shall apply the provisions of the CPC FBiH on contempt of court.* *The court may, by a decision, allow the audio recording of the hearing.*

ATTACHMENT L "WRITING MANUAL FOR CIVIL JUDGEMENTS"

WRITING MANUAL FOR CIVIL JUDGEMENTS

Introduction

This Manual has been prepared by the judges of the Civil Litigation Department of the Municipal Court in Sarajevo in cooperation with the judges of the Cantonal Court in Sarajevo. The judge Marijana Omercausevic of the Supreme Court has also given her contribution (see below). The main purpose of this Manual is to help the judges of the Municipal Court in writing judgements in a more consistent and efficient way in order to reduce the number of reversed judgements by the Cantonal Court. That would also save time to all the judges involved. The Manual is a very useful tool to avoid unnecessary mistakes too. It can be used as a useful tool to check whether all the necessary steps have been taken. Therefore, besides as the Writing Manual for Civil Judgements, the judges of the Municipal Court and Cantonal Court, can use it as a checklist.

The manual has been structured as a step plan and is divided into five main steps which are aligned with the five requirements of Article 191 of the Civil Procedure Code. Step 3 (Reasoning) has been divided into separate smaller steps. Practical steps for writing judgements are on the left side of the Manual. On the right side are additional clarifications, warnings and special remarks that need to be taken into consideration every time a specific step is taken.

The key message is that at any moment you have to start establishing applicable substantive law, because that will define further analysis and scope of the facts, statements, requests and evaluation of evidence that are relevant to your judgement. After the workshop, held by the judge Marijana Omercausevic from the Supreme Court on judgement writing, it is possible to deduce five key focal points on the basis of an analysis of reversed judgements:

1. Be very clear in the application of substantive law. That is the starting point for the overall reasoning and evaluation of the necessary evidence.
2. Write and recap only those motions, statements and evidence that are necessary for your decision. Do not copy and paste from the documents submitted by the parties, make your own assessment. The same goes for description of the witnesses' statements.
3. Evaluate the evidence properly, referring only to the evidence relevant for judgement rendering. The substantive law will determine who has the burden of proof.
4. Use the available case law and article regarding the present dispute. You do not have to research everything from the beginning every time.
5. Ensure that the structure, wording and distribution of the text in the judgement are clear, tidy and consistent.

All the said key points are included in this Manual.

Since this is the first edition, the Manual will be subject to amendments. When the judges start applying the Manual, it is possible that they will encounter practical issues or notice room for improvement, which will lead to amendments. To be sure that you have the latest version of the Manual, please contact the Civil Litigation Department of the Municipal Court in Sarajevo.

Step 1 - Introduction		
	Action to be taken	**Remarks**
1)	Judgment to include the following 4 paragraphs: (1)Introduction (2)Operative Part (3)Reasoning (4)Instructions right to legal remedy	No need to include headings indicating their content, but it is allowed, could also be useful for drafting purposes only and can be deleted when finalising the judgement.
2)	Check if the personal details from the main hearing are available and correct. [NB. Is the standard form used during/after each main hearing including all the details below]	
3)	The following data need to be written in the first paragraph - Introduction: - Name court - Full name and surname judge - Full name and surname parties, plus permanent or temporary place of residence - Names of representatives and agents - Short note on the main matter - Value of the dispute - Date of main hearing - Identification of parties, representatives and agents attending the hearing - Date decision is rendered	Also specify identity of the parties in case of a counterclaim.
Step 2 - Operative Part		
1)	Include a decision on all the claims and counterclaims	**It is recommended that the Step 2 is taken only after the Step 3 is fully completed.**
2)	Include a completely clear and specific decision on each of the claims and counterclaims listed above.	Don't include reference to court fees.
3)	Include a deadline for voluntary compliance.	
4)	Check consistency with contents of the Step 3, double check whether all the above items are included in complete and written clear language.	

Step 3 - Reasoning		
Marking the statements and motions form the complaint		
1)	Write the summary of plaintiff's statements that they presented in the complaint and during the proceedings, separating the factual reasons from the legal ones and the motions from the complaint with a clear and precise description. - A summary of all the facts relevant for rendering of a proper decision. - Motions put forward.	Those facts which produce certain consequences regarding the motion of the parties in accordance with the provisions of the substantive law are relevant. Thus, it is important to fist establish substantive law. The plaintiff's legal position is not binding. If the statements and motions changed during the proceedings, it is necessary to write just the latest version. All the motions need to be described precisely and clearly, so that their justification can be checked in accordance with the substantive law without any difficulty. If it is necessary to ensure clarity of the statement of complaint and the operative part, it is allowed to modify the statement of complaint **provided that** doing so would not change its meaning and essence. Therefore, do not just copy the wording that the plaintiff used.
Defendant's statements		
2)	Quote the statements, which the defendant presented in his response to the complaint and during the proceedings. State the summary of the response by the following order: - Procedural objections and factual statements on which the objections are based - Objections on the basis of substantive law and factual statements on which the objections are based - Factual statements regarding the merits of the statement of complaint, separating them into facts that the defendant does not dispute, disputed facts and the new facts presented by the defendant - Legal position of the defendant - Other defence means of the defendant - State a clear proposal of the defendant regarding the decision on the statement of complaint	If the statements changed during the proceedings it is necessary just to state the latest version. Make your own analysis and summary, do not copy the wording used by the defendant. All the formal/procedural statements have to be written before the facts concerning the merits of the statement of complaint. The defendant's legal position is not binding.
2a.	Should it be necessary, write a summary of the plaintiff's opinion on the objections and new factual statements of the defendant.	Only if that opinion cannot be written in the complaint summary due to its illogical nature (under 1).

Marking statements and motions from the counter-claim		
3)	Write the summary of statements that the defendant presented in the counter-claim and counter-claim motions (in the same way as the complaint).	Those facts which produce certain consequences regarding the motion of the parties in accordance with the provisions of the substantive law are relevant. The defendant's legal position is not binding. If the statements and motions changed during the proceedings, it is necessary to write just the latest version. All the motions need to be described precisely and clearly, so that their justification can be checked in accordance with the substantive law without any difficulty. If it is necessary to ensure clarity of the counter-claim motion, as well as the judgement's operative part, it is allowed to rephrase the counter-claim motion **provided that** that does not change its meaning and essence. Therefore, do not just copy the wording that the plaintiff used.
Decision on procedural objections		
4)	Explain the decision on the absence of justification for procedural objections - should the litigation parties raise them (for example, the objection of court's lack of competence, objection on incomplete complaint, litispendence objection, *res iudicata* objection, etc.)	It is necessary to clearly explain the decision why the court rejected procedural objections referring to material regulations (Sometimes to render such a decision it is also necessary to present evidence and in such case this decision may be explained after stating which evidence have been presented).

Stating undisputed facts		
5)	State all the relevant facts, presented by either party, **which are undisputed between them.**	The facts that cause certain consequences concerning the request in accordance with the provisions of the substantive law are relevant. Undisputed are the facts that are relevant for rendering of proper decision and do not have to be proved. State them in chronological order. In this way the decision becomes comprehensible to the reader and it is clear what the judge decided and why. Only after all the relevant, undisputed facts have been identified, the disputed facts that either party stated which are relevant for the decision, should be identified. Those facts are stated in the reasoning in the following position. It will only be necessary to decide for those facts whether additional evidence are required before a decision is rendered.

Stating the disputed facts and legal positions of the plaintiff and defendant		
6)	State all the relevant facts which either party presented, **which are disputed between them.**	Those facts which cause certain consequences regarding the request of the parties in accordance with the provisions of the substantive law are relevant. The parties' legal positions are not binding for the court. Should the parties dispute the application of substantive law, there is no need to state the legal positions of the plaintiff and defendant. The application of substantive law is the court's exclusive discretion and decision.
Identify and evaluate the evidence on disputed and relevant facts.		
7)	Count all the pieces of evidence that the parties presented in the main hearing to establish legally relevant disputed facts. [State which evidential proposals are rejected and explain why **[NB, has this been already done in step 8?]**	
8)	Conscientiously and meticulously assess all the evidence and their significance. State a specific and clear position on: - why the court believed certain pieces of evidence; - which facts were established by them; - which evidence it did not believe and for what reason; and - which facts were not proved due to that.	Assess each individual piece of evidence separately and all the evidence in their entirety in accordance with Article 8 of the CPC. It is necessary to just assess the evidence that are relevant for a correct decision. The applicable substantive law that provides for the rules on which party has the burden of proof. It is unacceptable to use general wording. The court must explain specific reasons because of which it made certain conclusions. For example, if several pieces of evidence confirm the same decisive fact, the court may address them together, but must specify why it believed all those pieces of evidence together. Witness evidence and expert findings must be evaluated against the facts that stem from the documents included in the file. Any circumstances that are being identified during the actual witness statement also need to be taken into account. Justify the findings by specific, objective and logical reasons that allow for a test as to whether the contents of the case file provide a factual and legal basis for the views expressed in the reasoning. It is not allowed to solely refer to an expert's opinion, its findings. You must also assess the specific concerns raised by the parties and point to the facts that either support or not support such objections. Check whether the evidence that has been used/ quoted in the reasoning is actually required for the decision to be taken. Don't copy full witness statements.

	Legal reasoning of the judgement	
Decision on substantive and legal objections		
9)	Decide on objections on the point of substantive law.	The judge will clearly and properly decide on all the objections raised by the defendant during the hearing. In particular those pertaining to: - Time bar on the claim - Lack of capacity to sue and to be sued If the judge decides on the matter on the basis of the furthest reaching objection of the defendant, it is not necessary to decide on the other objections of the defendant. For example, if the objection on the basis of the statutory limitation period is valid, there is no need to decide on any of the other objections.
Decision on the merits of the claim		
10)	Specify the provisions of the substantive law applied on the decision on the claim, by referring to all legal provisions that recognise the rights which are the subject matter of the claim in the following order: - Legal provisions that are most convincing in confirming the right - All the other applicable legal provisions - Case law	Make proper and full reference to all the laws and regulations that are applied, indicating the reference number and year of publication. Make use of available case law and articles for similar subject matters. Elaborate on why the legal requirements were met of the legal provision that is most convincing in the specific case. For the other applicable legal provisions a brief remark is sufficient. In relation to applicable case law, details and sources should be included.
11)	Include a clear and specifically reasoned decision on default interest rates and costs of proceedings and any other costs.	Explain why certain costs, default interest have been granted or not. Include the total amount of such costs. ***[NB, and court fees?]***

Decision on the motions filed by parties during the proceedings and the decisions related to proceedings management		
12)	State clearly and precisely, and elaborate all decisions on motions that the parties filed during the proceedings, as well as all decisions made during the proceedings which the court issued in order to manage the proceedings.	The judge will clearly elaborate all decisions made during the proceedings, making reference to the substantive regulations, such as: - decision granting request for return of the case to status quo ante, - decision on the value of dispute, - decision not allowing arguments on counterclaim, etc.
Step 4 - Instruction on the right to legal remedy		
1)	Include correct and clear instruction on the possibility of a legal remedy, the available venues and time periods.	Please carefully check the instruction, because if the court issues a wrong instruction on the deadline for filing an appeal, the party could not suffer the detrimental consequences thereof and any such appeal should be accepted as if filed in time. The Supreme Court of FBiH took an opposite position, and it was recently provided to the Cantonal Court, no. **Rev 627128/17**

Step 5 - Check language of the judgement		
1)	Check whether the wording is clear, concise, meaningful and in accordance with the applicable spelling rules.	Legal terminology should be used, avoid use of foreign words or words that are not commonly used in regular court proceedings. Language must be adequate for the reputation of the court. Sentences should be clear, unambiguous and complete. Too long sentences should be avoided. One sentence should only contain one thought. The legal language should be adjusted to the average person, to ensure that parties follow the reasoning and they understand complex arguments as well. You may include explanation of certain legal terms in a separate sentence. Please include a legal term used for the first time in italics to stress the importance of the word.
2)	Decision must be clear and comprehensible.	
3)	The text should allow easy reference. For example, use separate paragraphs for any particular subject matter. Preferably preceded by a heading indicating the subject matter of the paragraph. Avoid paragraphs that are long and deal with several subjects.	Each paragraph should contain a small discussion with an introduction, development and conclusion. Should be limited to one subject only. Do not include two or more different subjects in the same paragraph. If paragraphs are longer than [8] lines consider whether it can be shortened or divided into separate paragraphs.
4)	Judgement should only contain complete thoughts leaving the reader with nothing to infer, assume or speculate upon.	
5)	Check whether parties have been properly identified in accordance with their gender.	
6)	Final careful check/reading of the judgement to ensure it is well written critically, re-examine the arguments used, correct any vague or ambiguous wording, spelling, typos or other technical errors.	NB. other than the parties, over a longer period of time, judgements are read by other people in different situations: for example, to retrieve the decision which the party attached as evidence of a particular allegation in the court proceedings. Also, court interns, legal officers and inexperienced judges read our judgements to practice the art of writing judicial decisions, which is why the judgements should indeed be exemplary in every respect.

ATTACHMENT M. "DECISION OF THE SUPREME COURT OF THE FEDERATION OF BIH - DEATH OF A PARTY"

Bosnia and Herzegovina
FEDERATION OF BOSNIA AND HERZEGOVINA
SUPREME COURT
FEDERATION OF BOSNIA AND HERZEGOVINA
Number: 65 0 P 535313 16 550, Fax:
Sarajevo, 23 September 2016

The Supreme Court of the Federation of Bosnia and Herzegovina, deciding on the request of the Municipal Court in Sarajevo number 65 0 P 535313 15 P of 1 July 2016 to solve the disputed legal issue pursuant to provisions of Article 61c and Article 61d of the Civil Procedure Code (CPC)[21] and provisions of Article 18 Of the Book of Rules on Court Operations of the Federation of Bosnia and Herzegovina and the Brcko District[22], at the session of the Civil Department of the Supreme Court of the Federation of BiH held on 23 September 2016 rendered the following:

D E C I S I O N

The request of the Municipal Court in Sarajevo for solving of disputed legal issues is adopted and therefore the Civil Department of the Supreme Court of the Federation of BiH expresses the following:

I

LEGAL POSITION

"The death of the party prior to the filing of the complaint represents an oversight that cannot be addressed and that the complaint as such should be dismissed without calling for it to be completed",

That in the event of the presence of co-litigants, the death of one of the parties on such side prior to the filing of the complaint leads to the whole complaint being deemed incomplete and as such should be dismissed in its entirety."

II

The requests of the Municipal Court in Sarajevo for solving of disputed legal issues set as proposed in the case of that court number 65 0 P 535313 15 P are rejected

"Can a complaint be considered complete if it does not contain the defendant's domicile/ residential address as a natural person, meaning his/her last known residential address"

[21] Official Gazette of the BIH Federation number: 53/03, 73/05, 19/06 and 98/15,

[22]

and the request

Does a court solely in all specific litigation proceedings give a final assessment whether a party is of unknown residence and that it should be assigned a temporary representative meaning that a procedure to appoint a special custodian should be initiated with the relevant authority for custody"

Reasoning

The Municipal Court in Sarajevo submitted to the Supreme Court of the Federation of BiH a request to solve a high number of disputed legal issues generated by the cases concerning the litigation capacity of the parties and their correct address for writ serving. With the submitted request, the court's case number: 65 0 535313 15 P has been delivered, which contains the complaint of the plaintiff S. Z. from V. filed against the defendants 1. H. M 2. S. A. 3. S H., 4. H. D. 5. K.S., all from 1 to 5 from I.-M., of unknown address and residence, 6. S. J. from I., Street M. bb, 7 S. A. from Ilijas, Street M. bb, 8 H. A. from I, Street H. S. no, XX, 9. H. I. from S., Street S. no XX, 10. H.M. From I, Street H. S. no, XX, 11. H. Dz. from S., Street O.r.b. number XX, 12. K. I. from I, Street M. no.XX, 13. H. S. from S., Street O. no. XX, 14. S. T. from V., Street D. J. no. XX., 15. Z. V. from O., Street B. bb. and 16 G. F. from V, Street D. V. bb, to establish the right of ownership by usucaption on real estate entered into the land registry books entry no. XX KO XX, cadastral item XXXX, in which the defendants are entered as co-owners with appropriate co-ownership parts.

The Municipal Court in Sarajevo, by its decision of 9 November 2015, after returning the complaint to be corrected and completed so that the correct address would be written for the defendants from 1 to 5 (unknown residence) and conducting checks and after establishing that the defendant H. née S. D, died on 19 July 2008 and K. née H. S. died during 2009, before the complaint was filed, suspended the proceedings until the court rendered a decision on the filed request for resolving of disputed legal issues.

The request stated that the court had received a high number of complaints for the acquisition of the right of ownership on the real estate in which the defendants were the co-owners of the real estate according to the data from the land-registry books, wherein the plaintiff failed to check the data on litigation capacity of those persons and their correct addresses for writ servicing and that different adjudications occurred in such situations in court operations.

These are the cases in which the following legal issues arise as disputable:

1. Can a complaint be considered complete if it does not contain the defendant's residential address in case of a natural person, meaning his/her last known residential address
2. Does a court solely in all specific litigation proceedings give a final assessment whether a party is of unknown residence and that it should be assigned a temporary representative meaning that a procedure to appoint a special custodian should be initiated with the relevant authority for custody
3. Is the death of a party before the filing of a complaint an oversight that can be removed or not
4. Does the death of one of the parties in essential co-litigants on the same side cause the entire complaint to be incomplete.

The first-instance court gave its own interpretation of the disputed legal issues, stating the position that the complaint was incomplete if it lacked the defendant's domicile or residential address or the last known domicile or residential address and that "defendant of unknown address" could not be included in it and that the court was the one assessing whether it was necessary to assign a temporary representative to the party of unknown residence and also a special custodian

through the relevant custody authority, so that that authority could not act without the court's request (especially because it frequently happens to this authority to assign a custodian to a deceased person or a person who has a known domicile/residential address, as is the case in this given situation) and that the death of a party before a complaint is filed is an objective that cannot be removed and that a complaint in such a situation should be rejected without being referred to completion, that in case of essential co-litigants the death of one party on the same side and before a complaint is filed causes the entire complaint to be incomplete and should be rejected in entirety.

The Supreme Court of the Federation of BiH believes that these are disputed legal issues of prejudicial significance for deciding on the proceedings' subject in a high number of cases, which justifies consideration of the request and giving of a legal opinion concerning the provision of Article 61 a-e of the CPC. Legal opinions are given to ensure consistent application of law and equality of all in its application.

The disputed legal issue if the death of a party before filing of a complaint is a defect which, referring to the provision of Article 295, paragraph 1 of the CPC, can be removed or is it a defect that cannot be removed?

The provision of Article 291 of the CPC prescribes that a party to proceedings may be any natural or legal person.

Article 293, paragraph 3 of the CPC prescribes that throughout the procedure the court will, *ex officio*, be mindful whether a person appearing as a party to proceedings can be a party to proceedings, whether they have litigation capacity, whether a legal representative is representing a party that lacks litigation capacity and whether a legal representative has special powers if required.

The said legal provision provides that in order for someone to be a party to proceedings i.e. a plaintiff or defendant, they must have litigation capacity. All natural persons possess this capacity, as they acquire it with birth and it lasts throughout their lives. Therefore, in the event that a party was not a victim at the time proceedings were initiated before the court, or if found that the person died prior to the initiation of proceedings, such person cannot be a party to proceedings. Accordingly, when the court finds that a party has died prior to the initiation of proceedings, based on the opinion of this court as well, that represents an irrevocable procedural error since civil proceedings cannot be initiated against someone who is not alive, and so the court will revoke all procedural actions of the parties and dismiss the complaint.

The answer to the disputed legal issue of whether in the event of the existence of compulsory co-litigants, the death of one of the parties on such side prior to the filing of the complaint gives rise to the complaint being incomplete and whether it should be dismissed in its entirely.

Pursuant to the provision of Article 366 of the CPC joint co-litigants exist in a situation when a dispute can be resolved in equal manner towards all the parties that may appear as parties to proceedings and in situations when a court establishes that the complaint failed to include some of those persons either as a plaintiff or as a defendant, referring to the provision of Article 295, paragraph 1 in relation to Article 291 and Article 293 of the CPC, the court shall summon the plaintiff to make the necessary corrections in the claim, because the joint co-litigants are to be considered as one litigant, and if in the given deadline they fail to act as ordered by the court and include in the complaint all the subjects who are participants of a certain legal relation, the court shall reject such a claim.

However, if the court finds that one of the compulsory co-litigants listed as a party to proceedings was not alive prior to proceedings being initiated, such person could not have been a party to proceedings and since it is a matter of compulsory co-litigants and that due to its nature

the dispute can only be resolved equally towards all co-litigants who only together form one party, thus the complaint should be dismissed considering that it represents an irrevocable procedural error.

Due to the reasons cited and applying the provision of Article 61d of the CPC, the Civil Department of the Supreme Court of the Federation of BiH decided as in paragraph I of this decision.

Contrary to the aforesaid, this court rejected the request of the Municipal Court in Sarajevo as inadmissible and decided as in the paragraph II of the operative part due to the reason that the preconditions to solve the issues raised have not been met. The issues whether a complaint may be considered completed if it lacked the defendant's domicile/residential address in case of natural persons meaning their last known domicile/residential address and whether in all concrete litigation proceedings the court was to solely make a final decision that a party was of unknown residence, are not disputed legal issue referring to the provision of Article 61 a, paragraph 1 of the CPC, and thus it was decided as in the paragraph II of the operative part of this decision by applying the provision of Article 61c, paragraph 1 of the CPC.

The president of the Civil Department

ATTACHMENT N. "BEST PRACTICES"

Sadržaj:

1. PRELIMINARY EXAMINATION OF A COMPLAINT

Civil proceedings are initiated by filing a complaint with the court, while civil litigation starts with the delivery of the complaint to the defendant. A complaint that is sent to the defendant must be complete in accordance with the provisions of Article 53 of the Civil Procedure Code of FBiH (hereinafter: CPC FBiH), which the court establishes through careful consideration.

Article 53, paragraph 2 of the CPC FBiH prescribes the mandatory elements of a complaint i.e.: a specific claim regarding the main matter of dispute and subsidiary claims (statement of claim), the facts on which the plaintiff bases the claim, the evidence corroborating the facts, the value of the dispute and other data that must be contained in each written filing pursuant to the provision of Article 334 of the CPC FBiH. In line with more recent case law, one of the ways to establish whether a complaint is complete is to go through a "preliminary examination of a complaint" checklist and by doing so the court would determine whether the complaint, as filed, has any flaws requiring it to be returned and corrected or amended or whether it can be sent to the defendant for response.

Careful analysis of the complaint is required in order to uphold the principle of economy and efficiency of process – so as to avoid civil litigation proceedings continuing with an incomplete complaint, as well as the adversarial principle whereby opposing party may respond to legally relevant facts and evidence.

1.1. Court jurisdiction

1.1.1 Absolute

Upon receiving a complaint, the court primarily establishes whether it has jurisdiction to proceed. In the event that it doesn't, the court will find absolutely no jurisdiction on its part, revoke any actions that were taken and dismiss the complaint.

In case no: 65 0 P 529045 15 P dated 21 January 2016, the court declared absolutely no jurisdiction on its part referring to the Law on Land Surveying and the Real Estate Cadastre.

In the case of the Municipal Court in Bugojno no: 46 0 P 036337 12 P, in which the court declared absolutely no jurisdiction on its part, revoked all actions that were taken and dismissed the complaint seeing as the provision of Article 61 of the Law on Construction Land of FBiH prescribes that for construction land in state ownership for which there are no construction rights, and on which a building was built and for which building permit can be issued subsequently pursuant to the provisions of the Law on urban planning, the municipal council will establish the ownership rights in favour of the constructor or their legal successor, with the obligation to pay fee for the allocated construction land for use and for the landscaping. Before establishing ownership rights in accordance with the said provision, the relevant municipal authority will, in line with the provision of paragraph 2 of the said Article, discuss property rights issues. Therefore, the determination of ownership rights in favour of the plaintiff, being the constructor, falls under the jurisdiction of the municipal council.

Furthermore, in case no: 65 0 P 468293 14 P, the Cantonal Court in Sarajevo stated that the first instance court properly applied the provision of Article 7 of the Law on Pension and Disability Insurance (Official Gazette of the FBiH, 29/98 to 4/09), which came into effect on 31 July 1998, and which prescribes that rights stemming from pension and disability insurance are exercised in administrative proceedings and that plaintiffs may, based on the said provisions of the Law, seek their rights be met by the defendant in administrative proceedings and ask that an administrative ruling is rendered. It was also stated that the provision of Article 101 of the said Law prescribes the protection of rights of an insured person and a beneficiary of the defendant, while after the rendering of a final administrative ruling also court

protection in an administrative dispute. In the specific case, the Law on Pension and Disability Insurance prescribes that rights stemming from pension and disability insurance are addressed through regulations on administrative procedure meaning that the court does not have jurisdiction to decide on the motion of the plaintiff in civil proceedings, while the first instance court, in accordance with Article 16 of the CPC FBiH correctly declared no jurisdiction on its part to preside over the dispute in question. Also, the specific case is not about damage claims to which the appeal refers without grounds, for which the Municipal Court in Sarajevo has jurisdiction, rather the motion was to declare the administrative ruling null and void and thus also the rights stemming from pension and disability insurance, which represents an administrative dispute. The appeal incorrectly cites the provision of Article 20 of the CPC FBiH which does not explicitly stipulate that the operational part must state the relevant authority for action.

1.1.2. Subject matter

Apart from absolute jurisdiction of a court, we also need to determine the existence of subject matter jurisdiction of a court.

In case no: 65 0 P 562809 16 P, dated 30 March 2016, Article 27 of the Law on Courts of FBiH (Official Gazette of the FBiH, 38/05, 22/06 & 63/10, 72/10, 7/13, 52/14) prescribes subject matter jurisdiction for municipal courts, whereby in civil cases municipal courts have jurisdiction in the first instance to decide on all civil disputes as well as in non-litigation proceedings. In the specific case, the conclusion was that the matter of the legal case at hand was the legality of an administrative ruling based on which the defendant facilitates a third person to independently, on their own behalf, initiate a procedure to register ownership rights and that it is a matter of a document dealing with disposition rights of the defendant. Considering that an administrative ruling is an authority decision that creates an immediate legal effect on the rights and duties of physical and legal persons and that in the specific case the features of an administrative ruling were fulfilled (authority, unilateralism, concreteness and directness) it is therefore clear that the Decision of the defendant no: 453/2016 dated 18 February 2016, represents a document on disposition of the highest entity authority of executive power as based on the authorities from Article 115 of the Law on the Organisation of Administrative Bodies in FBiH (Official Gazette of the FBiH, 35/05) and that it is an administrative dispute for which the cantonal court has subject matter jurisdiction.

In case no: 46 0 P 061706 15 P of the Municipal Court in Bugojno, the court declared itself without jurisdiction for the legal matter and decided that upon the ruling becoming final, the case file would be sent to the Municipal Court in Travnik - Commercial Department, being the court with subject matter jurisdiction, seeing as the legal matter deals with a dispute between a legal person and a physical person who in the capacity of an independent entrepreneur or other capacity, performs a commercial or other registered activity as a primary or secondary profession, thus this court does not have subject matter jurisdiction to take action upon receiving the complaint seeing as the Commercial Department of the Municipal Court in Travnik has jurisdiction. The court, therefore, rendered a decision as visible in the enacting clause, based on Article 67, paragraph 2, item 2 of the CPC FBiH.

1.1.3. Territorial

When discussing territorial jurisdiction, the court may declare that it does not have ex officio territorial jurisdiction only when the explicit territorial jurisdiction of another court exists, and at latest by the time responses to complaints are submitted (jurisdiction for disputes on real estate, disputes in enforcement and bankruptcy proceedings).

Apart from that, the court may declare that it does not have territorial jurisdiction for objections by defendants presented at latest in the response to the complaint.

In case no: 65 0 P 043738 08 P, the Municipal Court in Sarajevo declared itself not to have territorial jurisdiction and decided that upon the ruling becoming legally binding, the case would be handed over to the Municipal Court in Kiseljak, being the court with territorial jurisdiction, for future processing

since it established that the defendant resides in Kiseljak while the matter of dispute does not establish exclusive territorial jurisdiction. Based on the aforesaid, and pursuant to the provisions of Article 28, paragraph 1, and in connection with Article 29 of the CPC FBiH, the decision was made accordingly.

1.1.4 Conflict of jurisdiction

In the event that the court finds no jurisdiction on its part to take action in a case that was forwarded to it by another court for reasons of jurisdiction, it shall call for a conflict of jurisdiction in accordance with the provision of Article 21 of the CPC FBiH.

In case no: 65 0 P 330668 13 R dated 2/4/2013, a conflict of jurisdiction was called for and so the Supreme Court of FBiH clarified that according to the provision of Article 19, paragraph 1, of the CPC[23], a court may, subject to an objection by the defendant, declare itself not to have jurisdiction if the objection was filed at latest with the response to the complaint, that paragraph 2 of the said provision prescribes that a court may ex officio declare itself not to have territorial jurisdiction only in instances involving exclusive territorial jurisdiction of another court, though at least up to the filing of the response to the complaint. The specific legal matter does not deal with a dispute for which the law prescribes exclusive territorial jurisdiction (Articles 42 – 45 CPC), while the content of the case file shows that the defendants did not file an objection regarding territorial jurisdiction of the Municipal Court in Siroki Brijeg and therefore the said court did not have any legal basis to declare itself without territorial jurisdiction based on the objection filed by the plaintiff. This because the right to express these types of objections, pursuant to the provision of Article 19, paragraph 1 of the CPC FBiH, lies exclusively with the defendant. Since, by filing the complaint, the plaintiff chose the territorial jurisdiction of the court, thus the Municipal Court in Siroki Brijeg could not declare no territorial jurisdiction on its part to try the case.

1.2. Transfer of jurisdiction

In certain cases, a competent court may decide that another court with subject matter jurisdiction process a case if it is obvious that proceedings can be completed easier or if there are other justified reasons. In practice, we have seen how a judge of a competent court has been identified as a party to proceedings which is why the court approached the Supreme Court in writing for the delegation of another court with subject matter jurisdiction.

In case no: 65 0 P 604484 16 P, through filing no: 65 0 P 604484 16 P, in the plaintiff's case against the defendant – a judge of the Municipal Court in Sarajevo, the Municipal Court in Sarajevo motioned the Supreme Court of FBiH to determine another court with subject matter jurisdiction in another canton of the FBIH, which represents a justified reason whereby the court from another canton would try the case. In its decision on delegation, the Supreme Court of FBiH stated that according to the provision of Article 50, paragraph 2 of the CPC FBiH, the Supreme Court of FBiH may, on the motion of a party or the competent court, decide that in certain cases action is taken by a court with subject matter jurisdiction from another canton if it is obvious that the proceedings will be carried out easier or if there are other justified reasons. The circumstances stated by the Municipal Court in Sarajevo in the motion, as assessed by the court, are justified pursuant to the said provision of Article 50, paragraph 2 of the CPC FBiH for the delegation of another court. The fact that the defendant is a judge of the Municipal Court in Sarajevo represents an important reason that justifies the delegation of another court seeing as this would avoid any, even unfounded doubts, as to the impartiality of the judges of the said court. This is why, based on the provision of Article 50, paragraph 2 of the CPC FBiH, it was decided that the said case be processed by the Municipal Court in Gorazde.

[23] Civil Procedure Code of FBiH, Official Gazette of the Federation of BiH, 53/03, 73/05, 19/06 & 98/15

1.3. Comprehensibility and completeness of a complaint

A complaint, a response to a complaint and other filings must be comprehensible and contain everything necessary so that it may be processed. Thus, a complaint must contain: designation of the court, the name and surname, the commercial name of the legal person, the temporary and permanent place of residence and the seat of the parties, their legal representatives and proxies if available, the matter of the dispute, the statement and signature of the petitioner. In the event that the complaint does not contain the aforesaid, it shall be sent back to be completed with notice that otherwise it will be dismissed as incomplete and considered as withdrawn.

In case no: 65 0 P 445012 14 P, the Cantonal Court in Sarajevo denied the appeal as unfounded and upheld the decision of the first instance court that dismissed the complaint as incomplete. Contrary to the statements of the plaintiff in the appeal, the Cantonal Court in Sarajevo elaborated that the first instance court properly concluded that the plaintiff did not act in accordance with the decision of the court from 3/7/2014 i.e. to correct and complete the complaint, to submit the sought after evidence with the complaint and thus dismissed the complaint as incomplete through the application of the provision of Article 67, paragraph 1, item 8 of the CPC FBiH in connection with the provisions of articles 336, 66, items 2 & 4 & 53, paragraph 2 of the said law, with even the appeal not providing any doubts on this.

In case no: 65 0 P 186941 12 Gz, the Cantonal Court in Sarajevo reversed the first instance decision and sent the case back for retrial because the court did not, upon receiving the complaint, send it back to be completed even though the status found in the land books differed to the content of the complaint, meaning the names of the defendants were stated differently in the complaint to the names in the land books which is why the court should have initially fixed this, considering that the mistakes can be corrected after which civil proceedings would continue. In the case, the Cantonal Court in Sarajevo clarified that the first instance court should have corrected the mistakes regarding the precise designation of the parties to the dispute which is as found in the land registry, this in connection with the land registry excerpt provided with the complaint, all in accordance with Articles 53 and 66 of the CPC FBiH. Apart from that, when examining the complaint, again in accordance with Article 66 of the CPC FBiH, considering that the complaint sought the establishment of the right of co-ownership of the relevant part, the first instance court was required to send back the complaint to be completed, also in line with Article 366 of the said law, so that the complaint lists all co-owners of the relevant real estate as defendants. This because it is a matter of a single legal community in which the dispute can only be resolved in equal terms for all, as common and compulsory co-litigants. The said rule also refers to the legal matter of the division of co-owned property (Records on the division to which the complaints refers) and the legal matter for the determination of ownership rights to the real estate through adverse possession, a legal grounds to which the complaint also refers.

1.4. Litigation capacity

The provision of Article 291 of the CPC FBiH prescribes that a party to proceedings may be any physical or legal person. Article 293, paragraph 3 of the CPC FBiH prescribes that throughout the procedure the court will, ex officio, take care whether a person who is a party to proceedings can be a party to proceedings, whether they have litigation capacity, whether a legal representative is representing a party that lacks litigation capacity and whether a legal representative has special powers if required. The said legal provision provides that in order for someone to be a party to proceedings i.e. a plaintiff or defendant, they must have litigation capacity. All physical persons possess this capacity as they acquire it with birth and it lasts throughout their lives. Therefore, in the event that a party was not a victim at the time proceedings were initiated before the court, or if found that the person died prior to the initiation of proceedings, such person cannot be a party to proceedings. Accordingly, when

the court finds that a party has died prior to the initiation of proceedings, based on the opinion of this court as well, such represents an irrevocable procedural error since civil proceedings cannot be initiated against someone who is not alive, and so the court will revoke all procedural actions of the parties and dismiss the complaint.

The answer to the disputed legal issue of whether in the event of the existence of compulsory co-litigants, the death of one of the parties on such side prior to the filing of the complaint gives rise to the complaint being incomplete and whether it should be dismissed in its entirety.

According to the provision of Article 366 of the CPC FBiH, compulsory (common) co-litigants exist in the event that a dispute can be resolved in the same way for all persons who may show up as parties to the dispute. Therefore when the court finds that the complaint does not include all such persons, whether it be as plaintiffs or defendants, the court shall, pursuant to the provision of Article 295, paragraph 1and in connection with Article 291 and Article 293 of the CPC FBiH, call for the complaint to be completed since co-litigants are deemed to be considered as one party to the case and so if they do not comply with the court order within the given deadline and include all entities in the complaint who are participants to the specific case, such complaint will be dismissed.

However, if the court finds that one of the compulsory co-litigants listed as a party to the proceedings was not alive prior to proceedings being initiated, such person could not have been a party to proceedings and since it is a matter of compulsory co-litigants and that due to its nature the dispute can only be resolved equally towards all co-litigants who only together form one party, thus the complaint should be dismissed considering that it represents an irrevocable procedural error.

Based on the aforesaid reasons, the Civil Department of the Supreme Court of the Federation of BiH in applying the provision of Article 61d, paragraph 1 of the CPC FBiH, at its session held on 23 September 2016, in case no: 65 0 P 535313 16 Spp, took the legal view that:

1. "The death of the party prior to the filing of the complaint represents an oversight that cannot be addressed and that the complaint as such should be dismissed without calling for it to be completed",
2. "That in the event of the presence of co-litigants, the death of one of the parties on such side prior to the filing of the complaint leads to the whole complaint being deemed incomplete and as such should be dismissed in its entirety".

When dealing with compulsory co-litigants, all persons that are part of the legal community stemming from the case must be listed as parties to the proceedings (e.g. co-owners of real estate entered in the land book).

In case no: 65 0 P 134633 12 Gz, the Cantonal Court in Sarajevo reversed the first instance decision since the complaint wasn't sent back to be completed to state all compulsory co-litigants – co-owners to the relevant real estate, reminding that throughout the duration of proceedings the court ex officio pays attention to the litigation capacity pursuant to Article 293, paragraph 3 of the CPC FBiH, and in this case the matter of lacking the capacity to be sued is a substantive law objection in connection with the provision of Article 15, paragraph 1 of the Law on Property Rights (co-ownership exists when an undivided item belongs to two or more individuals whereby each part is proportionate to the whole – ideal part). Due to this, the court should have addressed the errors of the plaintiff in the complaint and the defendant in the counterclaim, and eradicate them since they are fixable errors by calling on them to, within a given deadline, properly list the defendants, in accordance with Article 295 of the CPC FBiH.

In a legal situation when multiple persons are listed as defendants and it is not a matter of compulsory co-litigants, the court shall, in the event that errors regarding one of the defendants are not fixed, dismiss the complaint only concerning that defendant, while proceedings shall continue regarding the other defendants since this is not a question of compulsory co-litigants and the complaint is complete and can be processed.

In case no: 65 0 P 468807 14 P, the court stayed proceedings for the first defendant until the proceedings were assumed by the successor to the first defendant i.e. when on the motion of opposing party the court calls on them to do so; while regarding the second defendant the court decided that proceedings continued, and for the third defendant the court acknowledged the withdrawal of the complaint. Since the specific case deals with joint debtors who are common (simple) co-litigants and each one is an independent party to civil proceedings and in the event of the death of any party proceedings can be stayed concerning the deceased only and not for the others, the court decided that the motion of the legal representative of the second defendant to stay proceedings for all co-litigants was unfounded. Specifically, regarding joint and several debtors, a creditor may of their own choosing seek fulfilment of the obligations in full or in part by all debtors or any given debtor (Article 414/1 Law on Obligations), meaning that the dispute need not be resolved equally for all. Due to the legal nature of the relationship between joint and several debtors, the court finds that they are common material co-litigants in civil proceedings.

1.5. Correct and proper representation

A legal representative can be an attorney, an attorney practice or an employee of a free legal aid service, as well as for a legal person an employee of such legal person, while for physical persons a spouse or common law spouse of a party or a blood relative of a party in a direct line to any degree and in a lateral line up to and including the forth degree, in-laws up to and including the second degree. If the court determines that the legal representative who is an attorney is not executing his/her duties in accordance with the Law on the Attorney Profession, the court shall inform the relevant bar association, and if possible, the party the attorney represents.

If in civil suits dealing with property claims the value of the dispute exceeds 50,000 KM, the legal representatives of the legal persons can only be persons who have passed the bar.

The court ex officio takes care regarding the regularity of representation and if a complaint was sent without power of attorney, the court is required to immediately call the relevant attorney to submit their power of attorney for legal representation in the complaint. A legal representative is required to submit their power of attorney as part of their first action in court proceedings. The court may allow for certain actions in proceedings on behalf of a party to be performed temporarily by a person who has not submitted a power of attorney, however it shall at the same time order the person to subsequently within a given deadline, submit their power of attorney or approval from the party to represent in civil proceedings.

In the event that the court mistakenly undertook certain procedural actions in proceedings, while in the meantime the legal representative failed to submit their power of attorney, the court shall declare the said actions to be null and void.

1.6. Legal interest in bringing proceedings

One of the procedural assumptions for conducting civil proceedings and establishing a complaint is whether the plaintiff has legal interest to bring civil proceedings. The existence of legal interest should be visible in the content of the complaint. In the event that the plaintiff does not have legal interest to file a complaint, the court shall dismiss the complaint in accordance with the provision of Article 67, paragraph 7 of the CPC FBiH, in order to prevent any abuse of rights.

1.7. Timeliness of a complaint

Certain laws (e.g. Law on Real Rights of FBiH and the CPC FBiH regarding a trespassing complaint, the Law on Protection against Defamation, etc.) prescribe a specific deadline for filing a complaint. The expiry of the deadline leads to the preclusion of the specific case.

In case no: 65 0 P 051136 11 Gž 2, the decision of the Municipal Court in Sarajevo was upheld regarding the dismissal of a complaint for trespassing due to untimeliness. In the explanation to the decision, the Cantonal Court in Sarajevo stated that the provision of Article 82 of the Law on Property Rights prescribes that an owner has the right to seek court protection from trespassing within 30 days of acquiring knowledge of the trespassing and of the trespasser and that the court is required to ex officio primarily assess the timeliness of the complaint against trespassing since after the elapsing of the said 30 day deadline the owner forfeits the rights to seek court protection. It states that case law provides for solutions where a complaint for the protection of property due to untimeliness is dismissed also after proceedings are conducted as well as there being solutions whereby such statements of claim are denied due to untimeliness. Considering the diversity of case law, an appeal stating that the first instance court erred by dismissing the complaint is unfounded, since even if the statement of claim had been denied due to untimeliness of the complaint, the consequences for the party would be the same and so the said decision does not influence the legality or regularity of the first instance decision.

In case no: 65 0 P 295499 12 P, the court partially upheld the statement of claim while in the remaining part the complaint was dismissed as late. The Municipal Court in Sarajevo clarified that the provision of Article 12, paragraph 1 of the Law on Protection from Slander of FBiH prescribes that the deadline for filing a claim for damages, pursuant to the law, is three months from the day the injured party either acquired or should have acquired knowledge of the untrue statements being made as well as the identity of the injurer and that such deadline cannot be extended after the elapsing of one year from the day when such statements were made to a third party. Regarding the deadline for filing a claim for damages due to defamation, the FBiH Law on Protection against Defamation is lex specialis compared to all other laws. Considering that in the specific case, the plaintiff amended the complaint with a subsequent filing, while after the elapsing of the three month period from the day the stories were disclosed for which the plaintiff had knowledge also earlier, the court rendered a decision whereby dismissing that part of the statement of claim due to it being late. Specifically, the court did not consider the statements of the legal representative of the plaintiff to be justified where he/she called on the objective deadline of one year since the plaintiff in their statement underlined continued slander by the defendants which he followed every Thursday and so the court found it unclear why they didn't adhere to the subjective deadline set with Article 12, paragraph 1 of the FBiH Law on Protection against Defamation.

1.8. Litispendence

The court renders a decision dismissing a complaint, also, even if it determines that civil proceedings are already ongoing regarding the same complaint. Therefore, when during proceedings a defendant objects on grounds of litispendence, the court shall immediately examine the grounds for the objection and make a decision accordingly.

In case no: 65 0 P 420257 14 P, the Municipal Court in Sarajevo dismissed the complaint seeing as it found justification in the objection on litispendence and decided accordingly by applying Article 67, paragraph 1, item 3 of the CPC FBiH. This because in cases – 65 0 P 420257 14 P & 65 0 P 195702 11 P, the identity of the parties, the identity of the statement of claim and the identity of the factual grounds to which the claims refers were without doubt in existence.

In case no: 65 0 Rs 409058 14 Rs, in her response to the complaint, the defendant informed the court that in case no: 65 0 Rs 407900 14 Rs before this court, civil proceedings were already underway for the same legal matter between the same parties and that accordingly she motioned that the complaint be dismissed. After the court examined case file no: 65 0 Rs 407900 14 Rs it determined justification of the objection on litispendence and dismissed the complaint through the application of Article 67, paragraph 1, item 3 of the CPC FBiH.

1.9, Claim preclusion *(res judicata)*

The court renders a decision dismissing a complaint also if the matter has already been tried with finality. Therefore, if during proceedings a defendant objects on the grounds of res judicata, the court shall immediately examine the grounds for the objection and decide accordingly.

In case no: 65 0 P 157243 16 P 2, the Municipal Court in Sarajevo dismissed the complaint since it must ex officio pay attention as to whether the matter has been decided on with finality and examined case file no: 65 0 P 213060 11 P, and subsequently determined that on 17/10/2011, the plaintiff filed a complaint with this court against the defendants and that on 27/12/2011, the court rendered a default judgment. In examining the plaintiffs complaint dated 17/10/2011, from case file no: 65 0 P 213060 11 P, and in comparing it with the complaint received by this court on 24/08/2010 and registered under the aforesaid number, it determined that both complaints were filed by the same plaintiffs against the same defendants and that the factual and legal grounds of the statements of claim were identical as was the evidence submitted by the plaintiffs in support of their statements. Since it was therefore established that they are identical statements of claim, with the same factual and legal grounds, the same evidence in support of the facts, dealing with the same parties to the proceedings and that this was a legal matter that had already been completed with legal finality through the rendering of a default judgment on 27/12/2011, thus in accordance with Article 67, paragraph 1, item 4 of the CPC FBiH, the court dismissed the complaint.

1.10. Court settlement

Among other reasons, the court renders a decision dismissing a complaint when it finds that a court settlement has been reached in a case. Therefore, when during proceedings the defendant files an objection stating that a court settlement has been reached, the court shall immediately examine the grounds of the objection and decide accordingly.

1.11. Motion for default judgment

When examining whether a complaint is complete, the court will determine whether a motion was filed to render a default judgment, and then in the event that the defendant does not deliver their response to the complaint the court will render a default judgment upholding the statement of claim unless the statement of claim is clearly unfounded.

1.12. Returning the complaint for corrections

Submissions must be clear and contain everything that is necessary to act upon them. In particular, they need to contain essential elements prescribed by Article 53 of the CPC FBiH, the name of the court, name and last name or the name of the legal person, address or the registered seat of the parties, their

legal representatives and attorneys, if any, subject-matter of the dispute, contents of the statement and signature of the applicant.

If the submission is unclear or does not contain everything that is necessary to act upon it, the court will return such submission to the applicant for amendments and indicate as to what needs to be amended. The court will also specify the deadline for amending the submission, which may not be longer than eight days. If the submission is amended and filed with the court within the deadline given for amendments, it will be deemed as filed on the day when it was first filed. The submission will be deemed as withdrawn if it has not been returned to the court within the set deadline, and if it is returned without any amendments it shall be dismissed. If submissions or their attachments are not filed in the sufficient number of copies, the court will leave a deadline to the applicant to provide them. If the applicant fails to do as instructed, the Court will dismiss the submission.

For example in the case number 65 0 P 445012 14 Gž, the Cantonal Court in Sarajevo dismissed an appeal as ungrounded and upheld the first-instance judgment which dismissed a complaint as incomplete. In its reasoning, the Court stated that the first instance court established that the plaintiff failed to act in accordance with the instructions of the court, i.e. the plaintiff failed to complete the complaint in terms of Article 53 of the CPC FBiH and to provide to the Court all the pieces of evidence in two copies and the plaintiff was not properly using his/her procedural rights. By application of Article 67(1)(8) of the CPC FBiH, as read with Article 336, 66(2)(4) and Article 53(2) of the same Law, the Court issued a decision dismissing the complaint as incomplete. It clearly follows from the contents of the case file that in its decision dated 03 July 2014, following the preliminary review of the complaint, the Municipal Court returned the complaint to the plaintiff dated 30 June 2014 for amendments pursuant to Article 53, as read with Articles 334 and 336 of the CPC FBiH, for the following reasons: the complaint did not contain 1. specific request in terms of main and subsidiary claims (the statement of claim) more specifically it did not specify the amount of the main claim and the subsidiary claims that are sought by the complaint, as well as the period for which the main debt is claimed and subsidiary claims and voluntary compliance deadline and 2. evidence in sufficient number of copies for the court and the opposing party as proposed by the plaintiff in his/her complaint. The Court included a warning that if the plaintiff failed to act as requested within the set deadline, the court will regard the complaint as withdrawn, and if the complaint is returned to the Court without the amendments, the complaint will be dismissed. (Article 336 (1-4 CPC FBiH). On 15/07/2014, the Plaintiff filed a submission titled "Amended Complaint" and attached to it one copy of each of the pieces of evidence, namely copy of the decision of Municipal Commission for Spatial Planning, Property Legal Affairs and the Cadastre of the Novo Sarajevo Municipality, number 06-364-1868/82, dated 10 June 1983 – Urban Permit for the location of a family residential building, decision/permit for planning and the approval for construction of the family residential building, the sketch of the southern facade of the plaintiff's family house which shows three floors, letter before action to Water Supply and Sewerage Company dated 06 June 2014 and a design for interior gas installations for the residential facility of Mr Nail Bunjo. The submission also included the party's position that all the other pieces of evidence for court were provided along with the first complaint. Contrary to the allegations from the plaintiff's appeal, the first instance court properly concluded that the plaintiff had failed to comply with the decision of the Court dated 03/07/2014, i.e. the plaintiff failed to complete and amend the complaint and to furnish the requested pieces of evidence along with the complaint; therefore the Court dismissed the complaint as incomplete by application of Article 67(1) (8) of the CPC FBiH, as read with Article 336, 66(2)(4) and 53(2) of the same Law. This was not even contested on appeal.

For example in the case number 65 0 P 540808 15 P the Municipal Court in Sarajevo issued a decision ordering the plaintiff to complete the complaint within eight days and to state the facts and provide the evidence, specify the statement of claim, the amount of the dispute and other elements prescribed by Article 53 of the CPC FBiH. Having inspected the case file, the court found that the plaintiff

failed to comply with court's order within the set deadline therefore pursuant to Article 67(1) (8), as read with Article 66 of the CPC FBiH, the Court dismissed the complaint as incomplete.

1.13. Appointment of representative/attorney to receive writs

Plaintiff or his/her representative who are residing abroad, and have no attorney in Bosnia and Herzegovina, have a duty to appoint an attorney who can receive writs on their behalf as soon as they file their complaint. Should they fail to do so, the court will instruct them to appoint an attorney who can receive writs, within a certain deadline, including a warning that on the contrary the court will dismiss the claim. The Court will instruct the defendant or his/her representative who are residing abroad, and have no attorney in Bosnia and Herzegovina, when serving the first writ on such defendant, to appoint an attorney in Bosnia and Herzegovina who can receive writs on their behalf, within an appropriate deadline, with a warning that should they fail to do so, the court will appoint an attorney for the defendant at his/her expense, who will be receiving writs and use that attorney to inform the defendant, or his/her representative about such appointment.

For example, in the case number 65 0 P 502501 15 P the Municipal Court in Sarajevo applied this Law provision.

1.14. Delivery of complete complaint to defendant for mandatory response with an instruction (deadline, contents, consequences, failure to respond)

After the Court has reviewed the complaint and found it to be complete, in accordance with the CPC FBiH, the Court will forward the complaint to the defendant for his/her mandatory response with instructions in terms of what the response to complaint should contain.

2. EVIDENCE

The Civil Procedure Code, Articles 123 through Article 173, provide for presentation of evidence and methods of taking evidence, which apply to most civil proceedings in which decisions are taken upon deliberation. From the aspect of procedural discipline, presentation of evidence is a part of the Guidelines on Managing Civil Litigation Proceedings in the Municipal Court Sarajevo (the provisions on preliminary examination of the complaint and the response to the complaint and the provisions on preliminary hearing). In civil cases in which decisions are taken upon deliberation, the hearings are conducted in a more-less the same way, which contributes to consistency of court practices in accordance with the law and the principle of equality of arms in civil proceedings. The usual method of conducting the hearing still allows every judge to apply some of his/her own proven methods, which is a certain deviation from the usual pattern.

The usual pattern and deviations from it, based on proven methods, are considered to be best practices that are useful, well thought out, flexible, but yet not binding. Best practices include those experiences that individual judges gain and share with others, leaving the possibility for such experiences to be complemented by others and that new solutions be constantly devised in that context. Accordingly, best practices are a living matter and as such subject to change.

2.1. Documentary evidence

The CPC FBiH prescribes required elements of a complaint, which, among other things, include evidence corroborating facts on which the statement of claim is based, evidence to be furnished along with the complaint, where furnishing of evidence is addressed in the Guidelines in the part dealing with the examination of the completeness of the complaint.

This is a model that is applied in all civil cases. This particularly refers to complaints concerning ownership rights based on adverse possession. Best practice shows that in these cases it is useful that the plaintiff, along with the complaint, provides the land registry extract as this data very often refers to the capacity to be sued and litigation capacity of the defendants.

Where there is a large number of documentary pieces of evidence submitted at the preliminary hearing in insufficient number of copies, it would be rational to order the parties to, no later than eight days before the next hearing, provide the adverse party with all pieces of evidence so as to enable it to respond to them at the hearing.

Good practice would be to give the parties in the procedural decision a deadline for submitting evidence directly to the other party, while giving the other party a deadline for submission of counter evidence directly to the other party and to the court. Failure to comply with such a decision results in rejection of such evidence.

The benefits of this practice are economy and efficiency, and an exception to this practice is the submission of a complaint to which specific provisions of the CPC FBiH apply.

This practice cannot be applied in a situation where the counter claim is filed at the hearing and the adverse party must be allowed to respond to it, or where counterclaimant needs to be given deadline for filing an orderly counterclaim together with any corroborating evidence furnished in sufficient number of copies, both for the court and the adverse party.

2.2. On-site inspection

In addition, in this type of complaints concerning real estate, if, after a preliminary examination, it is found that the complaint is orderly, and when, in the course of the proceedings, the litigants, in proposing evidence, fail to propose the identification of the property in question or an on-site inspection to determine the condition of the real estate through direct observation of the court, the best practice proved to be the practice where the court, in accordance with CPC BiH, orders the parties to furnish lacking evidence that is relevant for decision-making in order for the court to determine disposition rights of the parties, within the meaning of Article 124, paragraph 1 of the CPC FBiH.

In case of court actions as explained above, (ordering the party to comply with the court order and furnish certain evidence in accordance with Art. 124, paragraph 1.), and if the party fails to comply with the court order, as the court does not have sufficient funds to cover the costs of obtaining certain evidence (e.g. expert evaluation or on-site inspection), the court will take that into consideration when making decision.

2.3. Obtaining evidence ex officio

Also, it often happens that the parties at the hearing ask from the court to ex officio request furnishing of certain evidence from various authorities or institutions, with no evidence whatsoever that the parties already have tried to obtain such evidence, the court should in this situation reject such a request of the parties, except when it concerns information for which it is generally known that the

parties cannot get (the law prohibits the parties from seeking certain personal information, for example data concerning pension and disability rights or health-related data, etc.).

The best practice would be to, in each specific case, assess whether the party needs to be given additional time to submit the proof of addressing the competent authority, i.e. to furnish the proposed evidence, where the court should order the presentation of evidence, have the parties present evidence, and revoke the presentation of evidence at the main hearing in the event that the party failed to submit the proof of addressing the competent authority, or failed to furnish the proposed evidence. The benefits of this are efficiency and economy of proceedings, without the need to adjourn the hearing.

2.4. Witnesses

A usual way to prove certain facts is the hearing of witnesses that the parties have nominated, and they specify the circumstances in respect of which the witnesses are to be heard. When hearing the witnesses it is important that they be asked questions that are relevant to the circumstances proposed by the parties. Practice shows that proxies and the parties' lawyers, in questioning the witness, tend to avoid questions concerning the merits of the case and therefore witness testimonies, which in some circumstances could help determine decisive facts, do not serve the purpose of proving these facts. In that case it would be justified for the court to use its powers and ask witness appropriate questions through which it is possible to determine decisive facts.

Hearings in civil proceedings are usually public, so apart from proxies and the parties there may also be other persons present in the courtroom. It is, therefore, appropriate before opening the hearing to determine whether some of those present would be proposed as witnesses in further course of the proceedings as in that case they should not be allowed to attend the hearing, or that excludes the possibility of them being proposed as witnesses.

It often happens that the proposed witness fails to respond to court summons without justifying his/her absence, while the party that proposed the witness insists on his/her questioning. This situation is sometimes favourable to one of the litigants, so it has proved to be justified that the court, immediately following the first unexcused absence of the witnesses, and when issuing new summons, applies the provisions on contempt of court. This prevents the parties from improper use of the possibilities of proposing and conducting evidentiary proceedings, since they themselves propose witnesses, and practice shows that with such an approach taken by the court, parties often give up the proposed evidence through examination of witnesses, which is an indication of relevance of the proposed evidence for a particular legal matter. If the witness has since died, the party should be allowed to nominate another witness that is to present new evidence.

Advantages: Efficiency and economy of proceedings

2.5. Expert witnesses

When proposing several expert witnesses for certain areas and certain types of cases (usually damage claims), the best practice would be to accept expert evaluation by a single expert witness, where the court, with the consent of the parties, state in the record that expert evaluation is to be done by a single expert witness on all proposed circumstances, i.e. for all areas or types of damage. The advantage of this practice is faster obtaining of findings, and ultimately faster completion of proceedings.

3. SERVICE

In this part, it has been taken into account that there is already a good practice in place regarding the service of writs, which has been published and made available to all judges. The problems that have been addressed here are related to service of writs in civil proceedings where there is no best practice which could help judicial office holders in their handling of cases.

Second-instance judgments and decisions of the Supreme Court are served in accordance with Article 337b. of the CPC FBiH, that is by depositing them into designated mail boxes, in one of the courthouse premises.

Since each delivery slip for court documents delivered through mail boxes needs to indicate the date when the document is deposited into the mailbox of the person served in this way, the best practice would be that the date stamp placed on the delivery slip in the court registry be considered as dispatch date.

If the writ is not taken from the mail box within eight days, as prescribed by Article 337b, paragraph 3 and 4 of the CPC FBiH, the service will be made by placing the writ on the court's notice board. Therefore, best practice would be to return the writ to the judge who will issue an order for the writ to be placed on the notice board.

If the service is done by mail, and delivery slip does not contain a seal of the post office, it is best to seek the intervention of a postmaster who should check whether the service has been made orderly.

If the judge finds that the postman failed to comply with the provisions of the CPC pertaining to service of writs, the best practice would be to ask the postmaster to intervene.

If the document is delivered outside the Sarajevo Canton, the best practice would be to initially ask the intervention of a postmaster. However, if the service is not done in compliance with the CPC, the judge will ask for legal assistance of the competent court as everyone in the BiH Federation is required to provide legal assistance to all courts in Bosnia and Herzegovina for the purposes of legal proceedings.

If the judge finds that person to be served could jeopardize the safety of the postman, the best practice would be to request the intervention of the competent judicial police authority and assistance in serving the writ.

If the first instance court finds that the revision is impermissible, meaning that the motion for revision is not filed by a proxy pursuant to Article 301b. of the CPC FBiH, if it is filed by a person not authorised to file a motion for revision or a person who has subsequently withdrawn the motion or a person not having legal interest for filing a motion for revision or if the motion has been filed for revision of judgement which may not be subject to revision, the best practice is that the first-instance court should not call upon the party to rectify deficiencies, it should instead be submitted to the revision court.

MEMORANDUM OF COOPERATION
BETWEEN
MUNICIPAL COURT IN SARAJEVO
AND
CANTONAL COURT IN SARAJEVO

- November 2016 -

INTRODUCTION

In July 2015, the High Judicial and Prosecutorial Council (hereinafter: HJPC), the District Court Amsterdam and the Municipal Court in Sarajevo signed an Agreement on Cooperation to improve the governance and efficiency of the judiciary.

The Municipal Court in Sarajevo has been selected as a pilot court.

With the overall aim to improve the efficiency of the Municipal Court in Sarajevo the cooperation has five main objectives:

1. Improve the efficiency of the Court;
2. Improve a proactive role of the Court president through the support of the HJPC;
3. Strengthen the position of the heads of department within the Court.
4. Improve the quality of performance of judges;
5. Improve public trust in the work of the Court.

In connection with the mentioned Agreement, and during the course of the project, a general conclusion has emerged that in order to improve the efficiency of the first instance court, the second instance court that is the Cantonal Court in Sarajevo needs to be involved in implementation of project activities, where months-long joint cooperation has resulted in the signing of a Memorandum of Cooperation between the Municipal Court in Sarajevo and the Cantonal Court in Sarajevo (hereinafter referred to as: signatories to the Memorandum).

Considering that the three basic postulates of a successful judiciary are legality, legal certainty and efficiency

The signatories to the Memorandum have agreed as follows:

I

The signatories to the Memorandum agree that the general objectives of cooperation shall be greater efficiency and effectiveness in exercising the rights of the parties before the first instance and the second instance court, shortening the overall duration of the proceedings, reducing the number of cases and raising the level of public confidence in the judiciary, especially through the quality of judicial decisions and timely provision of sought judicial intervention.

II

The signatories to the Memorandum hereby agree that the specific objectives of cooperation shall be the harmonisation of case law, reinforcing the authority of the court and procedural discipline and improving the performance of judges in both courts, with maximum preservation of the independence of each of the courts and judges individually.

III

The signatories to the Memorandum agree that the cooperation shall be exercised in the following, but also in any other suitable way:

1. quarterly meetings of the representatives of the courts,
2. publication of decisions, legal opinions and interpretations of the second instance court in the professional bulletin or on the website,
3. delegation of "pilot cases",
4. organisation of joint targeting training or roundtables, when and where possible.

IV

At peer meetings and as required, the signatories to the Memorandum agree to present and work on issues of mutual interest, such as: the incidence of new case types, the incidence of a significant number of similar cases, the incidence of differing decisions involving the same issues at both courts, familiarising with available positions taken by other courts, and that immediately after such meetings the judges of the respective departments shall be informed of the results.

V

The signatories to the Memorandum agree that both courts shall harmonise their court practices through publication of decisions, legal opinions and positions of the second instance court in the bulletin of case law and on the website of the second instance court, so to make them available to judges of both courts and litigants. This will facilitate follow-up of case law and its availability.

VI

The signatories to the Memorandum agree that, in order to harmonise court practices and achieve greater legal certainty in a number of same or similar cases, the first instance court shall delegate to the second instance court a "pilot case", of which the second instance court shall be duly notified and obliged to resolve it within a reasonable time, as a general rule no later than 90 days after the case has been dully referred to the court of second instance. The undersigned agree that the decision rendered in the "pilot case" shall be made available to all the judges of both courts.

VII

The signatories to the Memorandum agree that the procedural discipline is one of the cornerstones of efficiency in civil litigation, and they commit to, insofar as possible, and in accordance with the provisions of the Civil Procedure Code, promote it through their decisions, and continuously work towards making litigants adopt such a model of behaviour in court.

VIII

The signatories to the Memorandum agree that it is of the utmost importance to work on building respect for the authority of the court, and they undertake to promote this goal through their actions, thus raising the awareness of it among litigants.

IX

The signatories to the Memorandum agree that it is of mutual interest to achieve the maximum possible public confidence in the administration of justice, and commit towards achieving a satisfactory level of public confidence through established cooperation, especially through the quality and consistency of decisions.

X

The signatories to the Memorandum agree to further develop and strengthen established cooperation, and commit to continuous action in this regard, in particular to organise joint training and round tables on significant issues, as and when possible.

XI

This Memorandum shall come into effect on the day of its signing by the authorised representatives of the signatories to the Memorandum and shall be concluded for an indefinite period of time. The Memorandum shall be signed in 4 (four) identical copies, with 2 (two) copies for each Signatory.

For the Municipal Court in Sarajevo	For the Cantonal Court in Sarajevo
Janja Jovanovic, President	Jasmin Jahjaefendic, President

ATTACHMENT P. "COMPARATIVE OVERVIEW OF THE MEMORANDA OF COOPERATION"

Comparative overview of the memoranda of cooperation concluded between the target courts of the IJQ Project[24]

Preamble and cooperation objectives	
The Municipal Court and the Cantonal Court in Sarajevo	*Considering that the three basic postulates of a successful judiciary are legality, legal certainty and efficiency...* *The undersigned agree that the general objectives of cooperation shall be greater efficiency and effectiveness in exercising the rights of the parties before the first instance and the second instance court, shortening the overall duration of proceedings, reducing the number of cases and raising the level of public confidence in the judiciary, especially through the quality of judicial decisions and the timely provision of sought judicial intervention. The undersigned agree that the specific objectives of cooperation shall be the harmonisation of case law, strengthening the authority of the court and procedural discipline and improving the performance of judges in both courts, with maximum preservation of the independence of each of the courts and judges individually.*
The Basic Court and the District Court in Banja Luka	*With a view to fulfilling its obligations and responsibilities stemming from Article 121 of the RS Constitution and Article 6 of the Law on Courts of Republika Srpska, the Basic Court in Banja Luka and the District Court in Banja Luka hereby conclude the following Memorandum of Cooperation, which shall be of an informal nature.*
The Municipal Court and the Cantonal Court in Tuzla	*The basic postulates of a successful judiciary are legality, legal certainty and efficiency together with the independence of every court within its jurisdiction as well as the independence of the individual judges, thus in order to achieve these principles, the Parties to the Memorandum have agreed on the following:*
The Basic Court and the District Court in Bijeljina	*With a view to fulfilling its obligations and responsibilities stemming from Article 121 of the RS Constitution and Article 6 the Law on Courts of Republika Srpska, the Basic Court in Banja Luka and the District Court in Banja Luka hereby conclude the following Memorandum of Cooperation, which is of an instructional nature.*

24 The target courts of the IJEP and IJQ project concluded memoranda of cooperation (first instance courts and relevant second instance court) thus establishing a permanent mechanism for cooperation and professional dialogue. The courts of the Brcko District BiH regulated issues on mutual cooperation with a written conclusion reached at a joint meeting. The courts in Trebinje regulated their mutual cooperation with Recommendations on Cooperation. The courts of the Zenica-Doboj Canton, the Central Bosnia Canton and the West Herzegovina Canton drafted memoranda to officially establish cooperation between the courts in their respective cantons. The comparative overview shows the differences in the documents according to the topics covered as well as the order in which the target courts joined the projects. For easier viewing, the courts in the Federation of BiH are shaded yellow, the courts in Republika Srpska in blue, while the conclusions of the courts of the Brcko District BiH are in white.

The Basic Court and the Appellate Court of the Brcko District BiH	*The Basic Court of the Brcko District of Bosnia and Herzegovina and the Appellate Court of the Brcko District of Bosnia and Herzegovina have agreed that, in order to fulfil their obligations and responsibilities and, above all, to achieve the highest level of protection of human rights and fundamental freedoms in court proceedings, there is a need for continued cooperation, and with the aim of its realisation, pursuant to Article 66 of the Statute of the Brcko District of Bosnia and Herzegovina, Article 3 and Article 16 paragraph 1 of the Law on Courts of the Brcko District of Bosnia and Herzegovina, the civil, administrative and commercial departments of these courts issue the following...*
The Municipal Court and the Cantonal Court in Zenica	*With a view to achieving efficiency in the work of both courts and harmonising case law, the Municipal Court in Zenica and the Cantonal Court in Zenica hereby agree to enter into this Memorandum of Cooperation as follows:*
The Basic Court and the District Court in Doboj	*With a view to fulfilling their obligations and responsibilities stemming from Article 121 of the Constitution of Republika Srpska and articles 6 & 16 of the Law on Courts of Republika Srpska, the Basic Court in Doboj and the District Court in Doboj enter into this Memorandum of Cooperation, which has the character of an informal act and represents an expression of goodwill and taking mutual action in order to improve performance and the principles of efficiency and economy.*
The Municipal Court in Travnik and the Cantonal Court in Novi Travnik	*With a view to achieving and exercising timeliness and efficiency in the actions of the courts in accordance with Article 5 of the Law on Courts of the Federation of BiH (Official Gazette of the FBiH 38/2005) as well as achieving the principles of efficiency and economy pursuant to the provisions of the Civil Procedure Code of the Federation of BiH (Official Gazette of the FBiH, 53/03, 73/05, 19/06, 19/06 and 98/15), the Municipal Court in Travnik and the Cantonal Court in Novi Travnik, concluded...*
The Municipal Court and the Cantonal Court in Mostar	Identical provision as in the Guidelines of the Municipal Court in Travnik and the Cantonal Court in Novi Travnik.
The Municipal Court and the Cantonal Court in Siroki Brijeg	Identical provision as in the Guidelines of the Municipal Court in Travnik and the Cantonal Court in Novi Travnik.
The Basic Court and the District Court in Trebinje	*With the aim to fulfil the obligations and responsibilities prescribed under the Constitution of Republika Srpska, the Law on Courts of Republika Srpska and the Book of Rules on Internal Operations and for the purpose of cooperation and improving efficiency and other matters that are significant for legal and proper functioning of the courts, the District Court in Trebinje and Basic Court in Trebinje agreed to pass together*
Types of Cooperation	
The Municipal Court and the Cantonal Court Sarajevo	The undersigned agree that the cooperation shall be exercised as follows, as well as in any other suitable way: 1. Holding quarterly meetings of the court representatives; 2. The publication of decisions, legal opinions and interpretations of the second instance court in the professional bulletin or on the website, 3. The delegation of "pilot cases", 4. As appropriate, by organising joint predetermined training sessions or round tables

The Basic Court and the District Court in Banja Luka	1. *strengthen the role of the Head of Department in terms of following case law in accordance with Article 17, paragraph 1, item i) of the Book of Rules on Internal Court Operations ("Official Gazette of Republika Srpska" no: 9/14 & 71/17);* 2. *strengthen the role of the Department in terms of the harmonisation of case law in accordance with Article 18, paragraph 2 of the Book of Rules on Internal Court Operations and the Rules of Procedure of the Department;* 3. *publish court decisions on the website sorted according to fields of law and legal provisions;* 4. *request for the harmonisation of case law; where in cases with an identical factual and legal basis, in its decisions, the second instance court has taken different legal positions and the first instance cases have been decided differently on appeal. The request for the harmonisation of case law shall be submitted to court management (Court President and the Head of Department). The request shall be presented at the departmental meeting of the second instance court and the first instance court shall be notified of the conclusion (the position taken);* 5. *delegate "pilot cases" by the first instance court to the second instance court, which shall be required to process these cases within the agreed time limit (not longer than 90 days). Decisions rendered in these cases shall be published so that the first instance court can take them into consideration when deciding on similar legal matters;* 6. *the organisation of "round tables" through the Judicial and Prosecutorial Training Centre of Republika Srpska, for the purpose of discussing legal matters pertaining to procedural and substantive law. Round tables shall be organised on the initiative of the first instance or second instance court on pre-identified issues, where the other party shall have the obligation to accept the initiative for a round table.* 7. *ensure the consistent application of the Civil Procedure Code in relation to appeals as follows: removing procedural deficiencies before submitting the file for decision on appeal (proper representation, an orderly appeal, passing a supplementary decision on the motion made in the appeal), drafting the second instance decision reversing the first instance decision in accordance with Article 227, paragraph 6 of the CPC, the actions of the first instance court in a retrial in accordance with Article 228 of the CPC in terms of the obligation to conduct all actions and discuss disputed issues that the second instance court underlined in its decision;* 8. *with respect to the completeness of the case file, undertake activities in accordance with Article 42, paragraph 2 and paragraph 3, Article 44, Article 45. and Article 46, of the Book of Rules on Internal Court Operations.* 9. *strengthening procedural discipline and improving the quality of court decisions using the Civil Procedure Guidelines and the Judgement Drafting Manual, that were developed and agreed within the framework of the project for mutual cooperation between the courts;* 10. *holding meetings (as needed) between court representatives to address issues of mutual interest concerning the improvement of organisation and work of the courts.*
The Municipal Court and the Cantonal Court in Tuzla	*The undersigned to the Memorandum agree that the cooperation shall be exercised as follows, as well as in any other suitable way, while at the same time respectful of each other's positions: holding quarterly meetings of the court representatives as determined by the court presidents and civil department heads; the publication of decisions, legal opinions and positions of the second instance court in the professional bulletin or on the website; the delegation of "pilot cases"; as appropriate, organising joint predetermined training sessions or round tables; the harmonisation of case law concerning cases with an identical factual and legal basis, in which the second instance court rendered its decisions by taking different legal positions and where the first instance cases have been decided differently on appeal.*

The Basic Court and the District Court in Bijeljina	*In order to implement the Memorandum, the Parties to the Memorandum hereby agree to the following:* 1. *strengthen the role of the Department in terms of the harmonisation of case law in accordance with Article 18, paragraph 2, of the Book of Rules on Internal Court Operations and the Rules of Procedure of the Department;* 2. *establishing coordination between the courts regarding the disclosure of decisions and case law;* 3. *filing a request for the harmonisation of case law, where in cases with an identical factual and legal basis, the second instance court has taken differing legal positions in its decisions, meaning that the first instance cases were decided differently on appeal. A request for the harmonisation of case law shall be submitted by the head of the court department of the first instance court, subsequent to a conclusion of the court department, and through the court management of the first instance court, with the request then submitted to the court management of the District Court in Bijeljina (court president and head of civil department) who shall present the request at the session of the department of the second instance court;* 4. *the delegation of so-called "pilot cases" by the first instance court to the second instance court, whereby the first instance court shall submit an elaborated request with the second instance court on why they consider a case as a "pilot case", while the second instance court shall, upon approving the request at the department session, process such cases as soon as possible (an agreed deadline). Decisions rendered in these cases shall be published so that the first instance court can take them into consideration when deciding in similar legal matters;* 5. *continue with the practice of organising round tables through the Judicial and Prosecutorial Training Centre of Republika Srpska, for the purpose of discussing legal matters pertaining to procedural and substantive law. Round tables shall be organised on the initiative of the first instance or second instance court on pre-identified issues, where the other party shall have the obligation to accept the initiative for the round table.*
The Basic Court and the Appellate Court of the Brcko District BiH	*The courts agree that cooperation be achieved through the following: holding professional meetings as needed, and at least twice a year, which may be initiated by the civil, commercial and administrative departments of the courts; uploading the legal opinions, views and decisions of the Appellate Court on the websites of both courts; delegating "pilot cases" to the second instance court by the first instance court, to resolve them within 90 days (or another deadline) and then upload the decision on the website of the Appellate Court; organising joint and targeted trainings on the initiative of the civil, administrative and commercial departments of either the Basic Court or the Appellate Court, as required,*
The Municipal Court and the Cantonal Court in Zenica	*The undersigned agree that the cooperation shall be exercised in the following way: Holding meetings between the representatives of both courts, the Cantonal Court in Zenica shall publish on its web site decisions, legal positions and views that it deems relevant to the work of the Municipal Court in Zenica , the delegation of the so-called "pilot cases".*
The Basic Court and the District Court in Doboj	*The undersigned agree that the cooperation shall be exercised in the following way:* 1. *through meetings of representatives of both courts every three months;* 2. *by publishing on its web site decisions, legal opinions and positions of the second instance court by the person tasked with the selection and distribution of case law, or in another convenient way through the exchange of case law, electronically and physically;* 3. *by delegating pilot cases and organising joint targeted trainings or roundtables;* 4. *by tasking court staff whose job description entails the security of persons and court property, to pay utmost attention to and responsibly and professionally deal with receiving parties and other visitors and their movements, as well as to enable safe and unhindered work in the Basic and District Courts in Doboj in cooperation with the court police.*

The Municipal Court in Travnik and the Cantonal Court in Novi Travnik	*The undersigned to the Memorandum agree that the cooperation shall be exercised as efficiently as possible, while respectful of their mutual positions, and as follows:* 1. *By holding quarterly meetings between the representatives of the courts as determined by the court presidents and civil department heads;* 2. *The publication of decisions, legal views and positions of the Cantonal Court in Novi Travnik on its website; which it deems relevant to the work of the Municipal Court in Novi Travnik;* 3. *The delegation of so called "pilot cases";* 4. *Strengthening the role of the department heads in terms of following case law in accordance with articles 17, paragraph 1, items i) and j) and 18 of the Book of Rules on Internal Court Operations (Official Gazette of Bosnia and Herzegovina, no. 66/12, 40/14;* 5. *Strengthening the role of the departments in terms of the harmonisation of case law in accordance with Article 18, paragraph 2 of the Book of Rules on Internal Court Operations);* 6. *The harmonisation of case law involving cases with identical factual and legal bases, where the second instance court has taken differing legal positions in its decisions, meaning that the first instance cases were decided differently on appeal.*
The Municipal Court and the Cantonal Court in Mostar	*The signatories to the Memorandum agree that the cooperation shall be exercised as efficiently as possible, while respectful of their mutual positions, and as follows:* *1. By holding quarterly meetings between the heads of civil departments or other departments dealing with civil cases (litigation, commercial, non-litigation) or a representative determined by the Court President, and meetings between Court Presidents as needed, at least twice a year.* *2. The publication of decisions, legal views and positions of the Cantonal Court in Mostar on its website - which it deems relevant to the work of the municipal courts;* *3. Processing one of the cases that are considered same type of cases as a priority by the first instance court, and issuing a decision on appeal by the second instance court as a priority (in the current or next quarter), as well as in cases that will be defined in the Guidelines for Managing Civil Litigation Proceedings and development of tools for more efficient proceedings in connection with the appeals against procedural decisions which do not end the proceedings.* *4. Strengthening the role of the heads of department in terms of following case law in accordance with articles 17, paragraph 1, items i) and j) and 18 of the Book of Rules on Internal Court Operations (Official Gazette of BiH, 66/12, 40/14;* *5. Strengthening the role of the departments in terms of the harmonisation of case law in accordance with Article 18, paragraph 2 of the Book of Rules on Internal Court Operations);* *6. The harmonisation of case law involving cases with identical factual and legal bases, where the second instance court has taken differing legal positions in its decisions, meaning that the first instance cases were decided differently on appeal.*
The Municipal Court and the Cantonal Court in Siroki Brijeg	Identical types of cooperation as in the Memorandum of Cooperation between the Municipal Court in Travnik and the Cantonal Court in Novi Travnik

The Basic Court and the District Court in Trebinje	*The cooperation shall be implemented by:* - *holding meetings between the presidents of the two courts and the department heads of the courts, and as required the chairs of the second instance panels at least twice a year, while meeting topics shall include the application of new regulations, the incidence of new case types, the incidence of a significant number of type-related cases, consideration of current legal positions and their application in concrete cases, familiarising with the positions taken by other courts, the exchange of observations regarding the performance of both courts as well as other issues as delegated, while the judges of both departments shall be informed of the outcomes of the meetings;* - *department heads alerting each other to differing actions and decisions passed in same or similar cases, so that the departments may form common positions, of which the head of the relevant department shall inform the department head of the other court who shall, in turn, inform the judges of their department,* - *the delegation of so-called "pilot" cases to the second instance court - by the first instance court - when there are multiple complaints with same or similar statements of claim or when it can reasonably be expected that a significant number of such complaints will be filed; this in order to ensure consistency in processing and achieve greater legal certainty, and in such situations, the head of the department of the first instance court shall send the president of the second instance court and the head of the department of the second instance court an elaborated request for priority action in processing the delegated case, and if there is justification for the request, the second instance court shall process the delegated case within a reasonable time not longer than 90 days,* - *organising targeted training sessions and round-tables - as required, in cooperation with the Judicial and Prosecutorial Training Centre of the Federation of Bosnia and Herzegovina as well as the faculties of law in order to hire trainers and professors for selected topics - that would be attended by judges and legal associates of both courts,* - *the exchange of legal positions taken by the departments of both courts and the exchange of information considered essential for processing cases,* - *other available means.*
Concrete types of cooperation: 1 - Meetings of the court representatives	
The Municipal Court and the Cantonal Court in Sarajevo	*The Parties to the Memorandum agree that at the quarterly meetings of the court representatives they will present and work on issues of mutual interest, such as: the incidence of new case types, the incidence of a significant number of like cases, the incidence of differing decisions involving the same issues at both courts, and the prevention of such occurrences, familiarising with available positions taken by other courts, and that immediately after such meetings the judges of the respective departments shall be informed of the results.*

The Basic Court and the District Court in Banja Luka	*...holding meetings as required and at least twice a year, which can be initiated by the civil, commercial or administrative departments of the courts. The courts are in agreement that the joint meetings are held on the initiative of either court whether the civil, commercial or administrative department of the Basic Court of the Brcko District of Bosnia and Herzegovina or the Appellate Court of the Brcko District of Bosnia and Herzegovina, and as required, they are informed of issues of joint interest, and especially: - to be informed of larger numbers of incoming type-related cases - to be informed of incoming new case types - to be informed of the occurrence of different decisions rendered involving the same legal issues - to be introduced to the practices and positions of other courts concerning various legal issues;*
The Municipal Court and the Cantonal Court in Tuzla	*- holding meetings between the presidents of the two courts and the department heads of the courts, and as required the chairs of the second instance panels **at least twice a year**, while meeting topics shall include the application of new regulations, the incidence of new case types, the incidence of a significant number of type-related cases, consideration of current legal positions and their application in concrete cases, familiarising with the positions taken by other courts, the exchange of observations regarding the performance of both courts as well as other issues as delegated, while the judges of both departments shall be informed of the outcomes of the meetings;*
The Basic Court and the District Court in Bijeljina	*At peer meetings and **as required**, the Parties to the Memorandum agree to present and work on issues of mutual interest, such as: the incidence of new case types, the incidence of a significant number of type-related cases, the incidence of differing decisions involving the same issues at both courts, familiarising with available positions taken by other courts, and that immediately after such meetings the judges of the respective departments are informed of the results.*
The Basic Court and the Appellate Court of the Brcko District BiH	*...holding peer meetings as needed, and **at least twice a year,** which may be initiated by the civil, commercial and administrative departments of the courts. The courts are in agreement that the joint meetings are held on the initiative of either court whether the civil, commercial or administrative department of the Basic Court of the Brcko District of Bosnia and Herzegovina or the Appellate Court of the Brcko District of Bosnia and Herzegovina, and as required, they are informed of issues of joint interest, and especially: To be informed of any major influx of type-related cases - to be informed of any incoming new case types - to be informed of different decisions rendered involving the same legal issues - to be informed of the practices and positions of other courts on various legal issues.*
The Municipal Court and the Cantonal Court in Zenica	*The representatives of the two courts shall meet **twice a year** (or more frequently if necessary), in the first and second half of the year. The meetings shall be preceded by questions promptly addressed by the Municipal Court in Zenica concerning any controversial legal issues, procedural or substantive. Representatives of the courts shall exchange information on new types of cases, different decisions of both courts regarding the same issues in order to prevent such occurrences, as well as any other problems in dealing with individual cases. The minutes of the meetings shall be kept and the heads of departments of both courts shall inform the judges about the meetings.*
The Basic Court and the District Court in Doboj	*...through the meetings of representatives of both courts **every three months;** At the meetings, court representatives will work on issues of mutual interest such as the emergence of new types of cases, the emergence of a significant number of type-related cases, the emergence of different decisions involving the same issues in both courts, and the prevention of such occurrences, learning about the available positions of other courts. The judges of all departments are informed of the results.*

The Municipal Court in Travnik and the Cantonal Court in Novi Travnik	*…by holding **quarterly** meetings between the representatives of the courts as determined by the court presidents and civil department heads. The Parties to the Memorandum agree that at the meetings pursuant to Article 2, paragraph 1 of the Memorandum, the court representatives shall be informed of and work on issues of mutual interest, the emergence of a significant number of type-related cases, of different decisions involving the same issues in both courts, and the prevention of such occurrences, as well as learning about the available positions of other courts. The meetings shall be preceded by questions promptly addressed by the Municipal Court in Travnik concerning controversial legal issues, procedural or substantive. After the meetings, minutes shall be drafted to inform the department heads of both courts and all judges.*
The Municipal Court the Cantonal Court in Mostar	*The signatories to the Memorandum agree that at the meetings from Article 2, paragraph 1 of the Memorandum, the representatives of the courts are informed of and work on issues of mutual interest such as the occurrence of larger numbers of type-related cases, different decisions made by the courts involving the same issues, and preventing such occurrences as well as being informed of the positions taken by other courts. Issues nominated by the municipal courts concerning disputed legal issues of both procedural and substantive nature shall be promptly delivered prior to the meetings. The representatives of the courts shall be made aware of the occurrence of new case types, of different decisions made by both courts concerning the same issues in order to prevent such occurrences, as well as other problems related to case processing. After the meetings, minutes shall be drafted and delivered to the department heads and to all judges.*
The Municipal Court and the Cantonal Court in Siroki Brijeg	Identical provision as in the Guidelines of the Municipal Court in Travnik and the Cantonal Court in Novi Travnik.
The Basic Court and the District Court in Trebinje	Identical provision as in the Guidelines of the Municipal Court and the Cantonal Court in Tuzla.
2 - Delegation of "pilot cases"[25]	
The Municipal Court and the Cantonal Court in Sarajevo	*The undersigned agree that, in order to harmonise court practices and achieve greater legal certainty in a number of same or similar cases, the first instance court shall delegate to the second instance court a "pilot case", of which the second instance court shall be duly notified and obliged to resolve it within a reasonable time, as a general rule no later than 90 days after the case has been duly referred to the court of second instance. The undersigned agree that the decision rendered in the "pilot case" shall be made available to all the judges of both courts.*
The Basic Court and the District Court in Banja Luka	*...delegate "pilot cases" by the first instance court to the second instance court, which shall be required to process these cases within the agreed time limit (not longer than 90 days). Decisions rendered in these cases shall be published so that the first instance court can take them into consideration when deciding in similar legal matters;*
The Municipal Court and the Cantonal Court in Tuzla	*... the delegation of so-called "pilot" cases to the second instance court - by the first instance court - when there are multiple complaints with same or similar statements of claim or when it can reasonably be expected that a significant number of such complaints will be filed; this in order to ensure consistency in processing and achieve greater legal certainty, and in such situations, the head of the department of the first instance court shall send the president of the second instance court and the head of the department of the second instance court an elaborated request for priority action in processing the delegated case, and if there is justification for the request, the second instance court shall process the delegated case within a reasonable time not longer than 90 days,*

[25] all courts have agreed to cooperate on pilot cases involving various specific elements for the realisation of such cooperation

The Basic Court and the District Court in Bijeljina	*...the delegation of so-called "pilot cases" by the first instance court to the second instance court, whereby the first instance court shall submit an elaborated request with the second instance court on why they consider a case as a "pilot case", while the second instance court shall, upon approving the request at the department session, process such cases as soon as possible (an agreed deadline). Decisions rendered in such cases shall be made available so that the first instance court can consider them when rendering decisions involving similar legal matters.*
The Basic Court and the Appellate Court of the Brcko District BiH	*...the delegation of "pilot cases" by the first instance court for the second instance court to process within 90 days (or other deadline) and publish the decision they render on the website of the Appellate Court.*
The Municipal Court and the Cantonal Court in Zenica	*The undersigned agree that in the event of a large number of cases with the same or similar factual and legal basis, the Municipal Court in Zenica shall delegate a "pilot case" to the Cantonal Court in Zenica to be decided within the statutory deadline and returned to the first instance court. The aim of such cooperation is to harmonise the practices of both courts and to achieve greater legal certainty.*
The Basic Court and the District Court in Doboj	*In the event of a larger number of same or similar cases, and in order to harmonise procedures and achieve greater legal certainty, the first instance court shall delegate a "pilot case" to the second instance court in order to promptly inform the second instance court so they may resolve it within a reasonable time, generally not longer than 90 days. Judges from both courts are informed on the decision in the "pilot case".*
The Municipal Court in Travnik and the Cantonal Court in Novi Travnik	*The undersigned agree that in the event of a large number of cases with the same or similar factual and legal basis, and in order to achieve processing consistency and greater legal certainty, the Municipal Court in Travnik shall delegate a so-called "pilot case" to the Cantonal Court in Novi Travnik to be decided on by the Cantonal Court as soon as possible and then returned to the Municipal Court in Travnik. Judges from both courts shall be informed on the decision rendered by the Cantonal Court in Novi Travnik in the "pilot case".*
The Municipal Court and the Cantonal Court in Mostar	*The signatories to the Memorandum agree that in the event of a large number of cases with the same or similar factual and legal basis, and in order to achieve processing consistency and greater legal certainty, the municipal court shall process one of the cases that are considered type-related cases as a priority, and after decision is issued and appeal lodged, forward it to the Cantonal Court in Mostar which as the second instance court shall issue decision in accordance with item II 3 of this Memorandum and return it to the first instance court. The aim of such cooperation is to harmonise the practices of both courts and to achieve greater legal certainty.*
The Municipal Court and the Cantonal Court in Siroki Brijeg	*The signatories agree that in the event of a large number of cases with the same or similar factual and legal basis, and in order to achieve processing consistency and greater legal certainty, the municipal court shall delegate a so-called "pilot case" to the Cantonal Court in Siroki Brijeg to be decided on by the Cantonal Court in Siroki Brijeg as soon as possible and then returned to the municipal court. All the court judges shall be familiarised with the decision of the Cantonal Court in Siroki Brijeg.*
The Basic Court and the District Court in Trebinje	Identical provision as in the Guidelines of the Municipal Court and the Cantonal Court in Tuzla.
3 - Request for the harmonisation of case law	

The Municipal Court and the Cantonal Court in Sarajevo	**this has not been established as a specific form of cooperation**, however other cooperation forms are used to point out inconsistent case law: *At quarterly peer meetings and as required, the Parties to the Memorandum agree to present and work on issues of mutual interest, such as: The incidence of different decisions rendered involving the same issue in both courts and the prevention of such occurrences, and that after the meetings, the judges of the respective departments are informed of the outcome.*
The Basic Court and the District Court in Banja Luka	*a request for the harmonisation of case law where in cases with identical factual and legal bases, in its decisions, the second instance court has taken different legal positions and the first instance cases have been decided differently on appeal. A request for the harmonisation of case law shall be submitted to court management (Court President and the Head of Department). The request shall be presented at the departmental meeting of the second instance court and the first instance court shall be notified of the conclusion (the position taken);*
The Municipal Court and the Cantonal Court in Tuzla	*...department heads alerting to differing actions and decisions passed in same or similar cases, so that the departments may form common positions, of which the head of the relevant department shall inform the department head of the other court who shall, in turn, inform the judges of their department,*
The Basic Court and the District Court in Bijeljina	*...filing a request for the harmonisation of case law, where in cases with identical factual and legal bases, the second instance court has taken differing legal positions in its decisions, meaning that the first instance cases were decided differently on appeal. A request for the harmonisation of case law shall be submitted by the head of the court department of the first instance court subsequent to a conclusion of the court department, through the court management of the first instance court, with the request submitted to the court management of the District Court in Bijeljina (court president and head of civil department) who shall present the request at the session of the department of the second instance court;*
The Basic Court and the Appellate Court of the Brcko District BiH	**this has not been established as a specific form of cooperation**, however other cooperation forms are used to point out inconsistent case law: *The courts are in agreement that joint meetings are held on the initiative of either court whether the civil, commercial or administrative department of the Basic Court of the Brcko District of Bosnia and Herzegovina or the Appellate Court of the Brcko District of Bosnia and Herzegovina, and as required, in order to be informed of issues of joint interest, and especially to be informed of the presence of different decisions rendered involving the same legal issues:*
The Municipal Court and the Cantonal Court in Zenica	**this has not been established as a specific form of cooperation**, however other cooperation forms are used to point out inconsistent case law: *The representatives of the two courts shall meet twice a year (or more frequently if necessary) in the first and second half of the year. The meetings shall be preceded by questions promptly addressed by the Municipal Court in Zenica concerning controversial legal issues, procedural or substantive. Representatives of the courts shall exchange information on the incidence of new types of cases, on different decisions by both courts involving the same issues in order to prevent such occurrences, as well as on other problems in dealing with individual cases. The minutes of the meetings shall be kept and the heads of departments of both courts shall inform the judges on the meetings.*
The Basic Court and the District Court in Doboj	*...in the event that, with respect to cases with the same or very similar factual bases, the second instance court rendered decisions expressing different legal positions, and the appealed first instance cases were decided on differently, the head of the department of the first instance court may submit a proposal to the president of the court and the head of department of the second instance court to harmonise the case law. The proposal must be presented at the session of the department of the second instance court and the first instance court must be informed of the position taken;*

The Municipal Court in Travnik and the Cantonal Court in Novi Travnik	*The Parties to the Memorandum agree that in the event the Municipal Court in Travnik establishes that the Cantonal Court in Novi Travnik rendered different decisions in cases involving the same or similar factual and legal bases, the Municipal Court in Travnik shall inform the Cantonal Court in Novi Travnik subsequent to a meeting of the civil department of the court and inform the Court President on the conclusions from the department meeting, while the Court President shall inform the Cantonal Court in Novi Travnik accordingly, and after the Cantonal Court in Novi Travnik establishes its position on the matter, they shall inform the Municipal Court in Travnik of their decision. This serves to establish consistent case processing and the harmonisation of case law involving identical cases in order to achieve legal certainty.*
The Municipal Court and the Cantonal Court in Mostar	Identical provision as in the Guidelines of the Municipal Court in Travnik and the Cantonal Court in Novi Travnik.
The Municipal Court and the Cantonal Court in Siroki Brijeg	Identical provision as in the Guidelines of the Municipal Court in Travnik and the Cantonal Court in Novi Travnik.
The Basic Court and the District Court in Trebinje	Identical provision as in the Guidelines of the Municipal Court and the Cantonal Court in Tuzla.
4 - Case law harmonisation through publication of decisions	
The Municipal Court and the Cantonal Court in Sarajevo	*The signatories to the Memorandum agree that both courts shall harmonise their court practices through publication of decisions, legal views and positions of the second instance court in the bulletin of case law and on the website of the second instance court, so to make them available to judges of both courts and litigants. This will facilitate follow-up of case law and its availability.*
The Basic Court and the District Court in Banja Luka	*… publish court decisions on the website sorted by fields of law and legal provisions.*
The Municipal Court and the Cantonal Court in Tuzla	*The Memorandum of the Municipal Court and the Cantonal Court in Tuzla does not envisage classical cooperation in terms of publishing decisions on the courts' websites, but provides for a specific mechanism for getting familiar with the courts' actions: - the exchange of legal positions taken by the departments of both courts and the exchange of information considered essential for processing cases*
The Basic Court and the District Court in Bijeljina	*... establishing cooperation between the courts regarding the disclosure of decisions and for case law.*
The Basic Court and the Appellate Court of the Brcko District BiH	*... publication of legal views, positions and decisions of the Appellate Court of the BDBiH on the website of both courts.*
The Municipal Court and the Cantonal Court in Zenica	*The Cantonal Court in Zenica shall publish on its web site decisions, legal positions and views that it deems relevant to the work of the Municipal Court in Zenica, including decisions rendered in the cases of other courts in the Zenica-Doboj Canton, to which the Municipal Court in Zenica has no access through the CMS system. This will enable prompt and effective familiarisation with the decisions, legal positions and views of the second instance court by both judges and litigants.*

The Basic Court and the District Court in Doboj	*Publication of decisions, legal views and positions of the second instance court through a legal expert in charge of selection and distribution of case law, or in another convenient way through the exchange of case law in electronic and hard copies. Exchange, as well as making available second instance court decisions, legal views and positions will facilitate the follow-up of case law and its applicability to judges of both courts and litigants. For this purpose the representatives of both courts will hold joint meetings (at least quarterly, and more often if necessary) to determine current case law and priorities for its distribution.*
The Municipal Court in Travnik and the Cantonal Court in Novi Travnik	*Publication of decisions, legal views and positions of the Cantonal Court in Novi Travnik (on its website) which it deems relevant to the work of the Municipal Court in Novi Travnik. The signatories to the Memorandum agree that both courts shall harmonise their court practices through publication of decisions, legal views and positions of the second instance court, so to make them available to judges of both courts and litigants. These decisions and positions will be published on the website of the Cantonal Court in Novi Travnik, all with the aim of easier follow-up of case law and its availability.*
The Municipal Court and the Cantonal Court in Mostar	*The Cantonal Court in Mostar shall publish on its website decisions, legal positions and views that it deems relevant to the work of the Municipal Court in Mostar, including decisions rendered in the cases of other courts in the Herzegovina-Neretva Canton, to which the Municipal Court in Mostar has no access through the CMS system. This will enable prompt and effective familiarisation with the decisions, legal positions and views of the second instance court by both judges and litigants.*
The Municipal Court and the Cantonal Court in Siroki Brijeg	Identical provision as in the Guidelines of the Municipal Court in Travnik and the Cantonal Court in Novi Travnik.
The Basic Court and the District Court in Trebinje	Identical provision as in the Guidelines of the Municipal Court and the Cantonal Court Tuzla.
5 - Joint round tables and trainings	
The Municipal Court and the Cantonal Court in Sarajevo	*… organising, according to possibilities, joint targeted trainings or round tables. The signatories to the Memorandum agree to further develop and strengthen established cooperation, and commit to continuous action in this regard, in particular to organise joint trainings and round tables on significant issues, as and when possible.*
The Basic Court and the District Court in Banja Luka	*... the organisation of round tables through the Judicial and Prosecutorial Training Centre of Republika Srpska, for the purpose of discussing legal matters pertaining to procedural and substantive law. Round table shall be organised on the initiative of the first instance or second instance court on pre-identified issues, where the other party shall have the obligation to accept the initiative for a round table.*
The Municipal Court and the Cantonal Court in Tuzla	*... organising targeted training sessions and round tables - as required, in cooperation with the Judicial and Prosecutorial Training Centre of the Federation of Bosnia and Herzegovina as well as the faculties of law in order to hire trainers and professors for selected topics - that would be attended by judges and legal associates of both courts.*
The Basic Court and the District Court in Bijeljina	*Continue with the practice of organising roundtables through the Judicial and Prosecutorial Training Centre of Republika Srpska to discuss legal matters pertaining to procedural and substantive law, as initiated by the first or second instance Judge and with issues delegated in advance, while the court that did not initiate the round table shall be required to accept such initiative.*
The Basic Court and the Appellate Court of the Brcko District BiH	*... as needed, and at the initiative of the Civil-Commercial-Administrative Department of either the Basic Court or the Appellate Court, organise joint and targeted trainings.*
The Municipal Court and the Cantonal Court in Zenica	**It has not been established as a specific type of cooperation**

The Basic Court and the District Court in Doboj	*… organising round tables through the RS JPTC on the initiative of the court of first instance or court of second instance with legal issues to be discussed.*
The Municipal Court in Travnik and the Cantonal Court in Novi Travnik	**It has not been established as a specific type of cooperation**
The Municipal Court and the Cantonal Court in Mostar	**It has not been established as a specific type of cooperation**
The Municipal Court and the Cantonal Court in Siroki Brijeg	**It has not been established as a specific type of cooperation**
The Basic Court and the District Court in Trebinje	**It has not been established as a specific type of cooperation**
6 - Joint development of court authority and public confidence in the judiciary	
The Municipal Court and the Cantonal Court in Sarajevo	*The signatories to the Memorandum agree that it is of the utmost importance to work on building respect for the authority of the court, and they undertake to promote this goal through their actions, thus raising the awareness of it among litigants.*
The Basic Court and the District Court in Banja Luka	*With a view to building respect for the authority of the court, the courts shall seek to promote procedural discipline through their decisions and work, as well as to introduce such a model of conduct for the parties before the court that will help build public trust in the judiciary through quality and consistency of court decisions. The courts shall undertake the activities with a view to strengthening procedural discipline and improving the quality of court decisions using the Civil Procedure Guidelines and the Judgement Drafting Manual, as agreed within the framework of the project of mutual cooperation between the courts; holding meetings (as needed) between court representatives to address the issues of mutual interest concerning the improvement of organisation and work of the courts.*
The Municipal Court and the Cantonal Court in Tuzla	*For reasons of respect and the further reinforcement of the authority of the court, the Parties to the Memorandum shall improve the organisation of work processes in the courts and continuously work on promoting procedural discipline, improving the quality of court decisions and establishing public confidence in the performance of the judiciary.*
The Basic Court and the District Court in Bijeljina	*With a view to building respect for the authority of the court, the courts shall promote procedural discipline through their decisions and work, as well as look to introduce such a model of conduct for parties before the court, aimed at gaining public confidence in the judiciary.*
The Basic Court and the Appellate Court of the Brcko District BiH	**It has not been established as a specific type of cooperation**
The Municipal Court and the Cantonal Court in Zenica	*The signatories to the Memorandum agree that they will in their future actions continue to respect procedural discipline in accordance with the Civil Procedure Code and the Guidelines, strengthen the quality and consistency of court decisions, with the aim of strengthening public confidence in the justice system.*
The Basic Court and the District Court in Doboj	*It is of utmost importance to work on building respect for the authority of the court. Therefore, it is obligatory to do so during the proceedings in order to raise litigants' awareness of the court's authority. It is also a common interest to strengthen public confidence in the justice system, so it is an obligation to strive to increase public confidence in the justice system through established cooperation, and in particular through the quality and consistency of decisions. This will be achieved through the use of the Civil Procedure Guidelines and the so far adopted judgement drafting manuals, which have been adopted in earlier projects during the professional development of judges through the RS Judicial and Prosecutorial Training Centre.*

The Municipal Court in Travnik and the Cantonal Court in Novi Travnik	*The signatories to the Memorandum agree that it is of mutual interest to achieve the maximum possible public confidence in the administration of justice, through established cooperation, especially through the quality and consistency of decisions and resolving cases within a reasonable period of time.*
The Municipal Court and the Cantonal Court in Mostar	Identical provision as in the Guidelines of the Municipal Court in Travnik and the Cantonal Court in Novi Travnik.
The Municipal Court and the Cantonal Court in Siroki Brijeg	Identical provision as in the Guidelines of the Municipal Court in Travnik and the Cantonal Court in Novi Travnik.
The Basic Court and the District Court in Trebinje	Identical provision as in the Guidelines of the Municipal Court and the Cantonal Court in Tuzla.
7 - Jointly affirming the procedural discipline in civil litigation through decisions and actions in specific proceedings, with the aim of improving efficiency and economy of the process	
The Municipal Court and the Cantonal Court in Sarajevo	*The signatories to the Memorandum agree that the procedural discipline is one of the cornerstones of efficiency in civil litigation, and they commit to, insofar as possible, and in accordance with the provisions of the Civil Procedure Code, promote it through their decisions, and continuously work towards making litigants adopt such a model of behaviour in court.*
The Basic Court and the District Court in Banja Luka	*With a view to building respect for the authority of the court, the courts shall seek to promote procedural discipline through their decisions and work, as well as to introduce such a model of conduct for the parties before the court that will help build public trust in the judiciary through quality and consistency of court decisions. The courts shall undertake the activities with a view to strengthening procedural discipline and improving the quality of court decisions using the Civil Procedure Guidelines and the Judgement Drafting Manual, as agreed within the framework of the project of mutual cooperation between the courts; holding meetings (as needed) between court representatives to address the issues of mutual interest concerning the improvement of organisation and work of the courts.*
The Municipal Court and the Cantonal Court in Tuzla	*In order to fulfil the objectives, the signatories to the Memorandum shall, through the work of their departments, endeavour to affirm the principles of efficiency and economy of process as well as a more active role for judges in their departments, in order to eliminate any deficiencies that delay procedures before the first and second instance courts that involve issues of completeness in the delivery of writs to parties, legitimate legal representation, deciding on party requests, the completeness of appeals and the like.*
The Basic Court and the District Court in Bijeljina	*With a view to building respect for the authority of the court, the courts shall affirm procedural discipline through their decisions and work, as well as look to introduce such a model of conduct for parties before the court, aimed at gaining public confidence in the judiciary.*
The Basic Court and the Appellate Court of the Brcko District BiH	*… to have the parties exercise their rights more efficiently in proceedings before the Courts of BDBiH by shortening the proceedings through strictly applying the provisions of the procedural law, which is applied in civil litigation proceedings.*
The Municipal Court and the Cantonal Court in Zenica	It has not been established as a specific type of cooperation, but the introductory provisions laid down this objective. *The signatories to the Memorandum agree that the aim of cooperation is to harmonise case law, strengthen the authority of the court, ensure faster and more efficient case processing with the ultimate goal of legal certainty, while preserving the independence of both courts and judges to the maximum extent possible.*

The Basic Court and the District Court in Doboj	*Procedural discipline is one of the cornerstones of litigation efficiency. Pursuant to the provisions of the Civil Procedure Code, the courts are required to ensure through their decisions that litigants adopt such a model of behaviour before the courts. – ensure consistent application of provisions concerning the handling of case files, particularly completing of the case files and handling the incomplete ones such as: elimination of all procedural shortcomings before deciding on appeal, whether the party was duly represented by a proxy, whether the appeal was complete, whether an supplementary decision was made on the motion on appeal, and the like.*
The Municipal Court in Travnik and the Cantonal Court in Novi Travnik	*The signatories to the Memorandum agree that procedural discipline is one of the bases for the efficiency of civil litigation proceedings, which judges must pay special attention to in dealing with each case, pursuant to the provisions of the FBiH Civil Procedure Code. The signatories to the Memorandum agree that in terms of affirmation of the principles of efficiency and economy of the procedure in accordance with the relevant provisions of the CPC FBiH, all actions be taken regarding the completeness of a case file pursuant to Article 42, paragraphs 2 and 3, Articles 44, 45 and 46 of the Book of Rules on Internal Court Operations. The signatories to the Memorandum agree that the established cooperation should be further developed and improved and commit to continuous action through strengthening procedural discipline using the Civil Procedure Guidelines and the Judgement Drafting Manual, as agreed within the framework of the project of mutual cooperation between the courts.*
The Municipal Court and the Cantonal Court in Mostar	*The signatories to the Memorandum agree that procedural discipline is one of the bases for the efficiency of civil litigation proceedings, which judges must pay special attention to in dealing with each case, pursuant to the provisions of the FBiH Civil Procedure Code.*
The Municipal Court and the Cantonal Court in Siroki Brijeg	Identical provision as in the Guidelines of the Municipal Court and the Cantonal Court in Mostar.
The Basic Court and the District Court in Trebinje	Identical provision as in the Guidelines of the Municipal Court and the Cantonal Court in Tuzla.
8 - Other specific forms of cooperation laid down in specific Memoranda	
The Basic Court and the District Court in Banja Luka	*… ensure consistent application of the Civil Procedure Code in relation to appeal as follows: removing procedural deficiencies before submitting the file for decision on appeal (proper representation, an orderly appeal, making a supplementary decision on the motion made in appeal), drafting the second instance decision revoking the first instance decision pursuant to Article 227, paragraph 6 of the CPC, the actions of the first instance court in a retrial pursuant to Article 228 of the CPC in terms of obligation to conduct all actions and discuss controversial issues that the second instance court underlined in its decision; in terms of completeness of the case file take action pursuant to the provisions of Article 42, paragraph 2 and paragraph 3, Article 44, Article 45 and Article 46 of the Book of Rules on Internal Court Operations.*
The Basic Court and the District Court in Bijeljina	*… strengthening the role of the departments in terms of the harmonisation of case law in accordance with Article 18, paragraph 2 of the Book of Rules on Internal Court Operations and the Rules of Procedure of the Department;*

The Basic Court and the District Court in Doboj	- *… through court staff whose job description is to secure persons and court property, tasking them to pay utmost attention to and responsibly and professionally handle the reception and movement of parties and other visitors, as well as to enable safe and unhindered work in the Basic and District Courts in cooperation with court police.* - *strengthen the role of the heads of departments in terms of following-up and studying case law pursuant to Article 17, paragraph 1, item i) of the RS Book of Rules on Internal Court Operations* - *strengthening the role of the departments in terms of the harmonisation of case law in accordance with Article 18, paragraph 2 of the RS Book of Rules on Internal Court Operations and the relevant provisions of the Rules of Procedure of the court Department* - *obligatory action of the first instance court in the retrial in accordance with the obligation to conduct all litigation actions and discuss all disputable issues the second instance court underlined in its decision - the content of the second instance decisions revoking the first instance decision must be strictly in line with the relevant provisions of the CPC, i.e. which provisions were violated and what the violations consist of, in order to make it clear to the court of first instance which violations and shortcomings should be eliminated and how…*
The Municipal Court in Travnik and the Cantonal Court in Novi Travnik	*The signatories to the Memorandum agree that before delegating a disputed legal issue to the Supreme Court of the Federation of BiH, the Municipal Court in Travnik will request information from the Cantonal Court in Novi Travnik, whether it has already taken a position on other disputes in other courts in the Central Bosnia Canton. The signatories to the Memorandum also agree that the provisions of the FBiH Civil Procedure Code relating to the appeals are consistently applied, as follows: elimination of procedural shortcomings before submitting the case file in order to make a decision on the appeal (proper representation, proper appeal, examine the timeliness of the appeal, making a supplementary decision on the proposal set out in the appeal), drafting second instance decisions pursuant to Article 227 paragraph 6 of the CPC FBiH which decisions revoke the first instance decisions, with a clear and complete instruction to the first instance court to act in retrial, pursuant to the provisions of Article 228 of the CPC FBiH in terms of the obligation to conduct all civil actions and discuss disputed issues raised by the second instance court in its decision.*
The Municipal Court and the Cantonal Court in Mostar	*The signatories to the Memorandum agree that in terms of affirmation of the principles of efficiency and economy of the procedure in accordance with the relevant provisions of the FBiH Civil Procedure Code, all actions be taken regarding the completeness of a case file pursuant to Article 42, paragraphs 2 and 3, Articles 44, 45 and 46 of the Book of Rules on Internal Court Operations, and in order to avoid the application of Article 48 of the Book of Rules.* *The signatories to the Memorandum agree that in terms of affirmation of the principles of efficiency and economy of the procedure, as well as the application of Article 47, paragraph 2 of the Book of Rules on Internal Court Operations, in addition to priority cases, the cases in which procedural decision were rendered that do not end the case and which are decided on the appeal - are also considered priority and due to the fact there is no option to mark priority in the CMS, they are marked as priority in an appropriate manner on the cover of the casefile when sending the case to the Cantonal Court in Mostar to decide on the appeal.*
The Basic Court and the District Court in Trebinje	*-the exchange of legal positions taken by the departments of both courts and the exchange of information considered essential for processing cases,*

ATTACHMENT R. 'EVIDENCE AND FACTS'

1 FACTS

A judicial decision is the outcome of applying the substantive law on the established facts. A judge applies the universal, abstractly phrased rules of law to the facts of the specific case.

A judicial decision, when it is written, has the form of a syllogism. In logic, a syllogism is a method of reasoning comprising three propositions: the *maior*, the *minor,* and the *conclusio*.

A textbook example of a syllogism is the following reasoning:

All men are mortal (*maior*)
Socrates is a man (*minor*)
Socrates is mortal (*conclusio*)

A judicial decision has this form of a syllogism.

In a judicial decision, the legal rule is the maior, e.g.:

A legal act performed under duress is subject to nullification.

The minor is the established fact in the specific instance, e.g.:

The old man has made his will under duress.

The conclusio is:

The will is null and void.

Of the two ingredients comprising the judicial decision – the law and the facts – the legal rules attract the most attention: which rules are applicable; how are these to be interpreted; what line is adopted in the case law? This is something one learns at law school and one can look up in textbooks.

In the case files lawyers also typically pay close attention to the legal aspects of the case. This is odd, if you think of it, since facts are just as important to the outcome of a case as the law.

Unlike rules of law, which are set and can always be looked up in law books and literature, there are no sources for the facts. You cannot look them up; they must be discovered and established for each individual case. The exact facts are often crucial for the outcome of a case. The facts make or break the case.

Let's take the example of the old man: it must be established whether the old man made his will under duress. To arrive at this conclusion, all events leading up to the signing of the will must be examined: when did he write his will; who witnessed the signing of the will; what preceded the writing of the will; what was the old man's mental state; does anyone have a substantial interest in the will? These are all facts that must be discovered and established if they were put forward by one party and was contested by the other party.

At the same time, this example makes it clear that establishing the facts cannot be separated from the applicable legal rules. We need the legal rules to establish the facts.

The legal rules comprise the judicial concepts of legal act and duress. These are legal terms that have acquired a certain connotation and significance. To establish whether the old man

acted under duress, we must first find out what 'duress' means in law. In other words, the facts are established on the basis of the applicable legal rules.

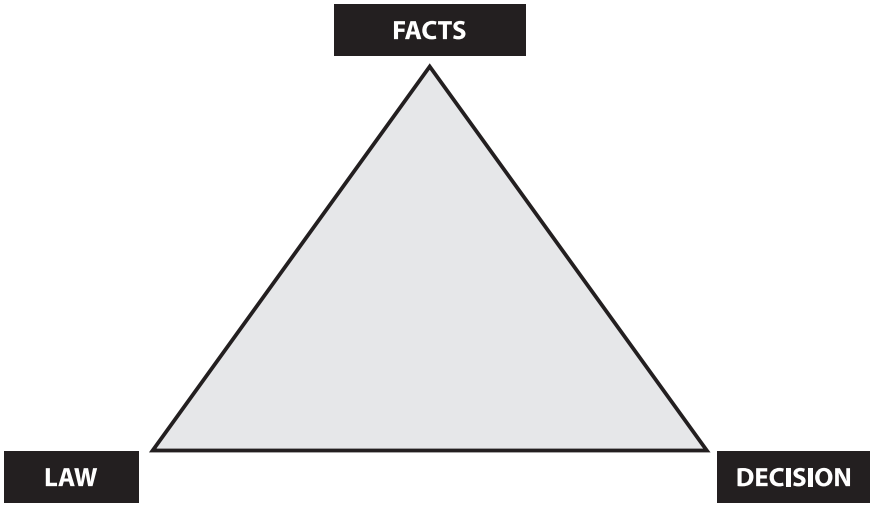
So we can see a judicial decision is not the result of a linear process. The judge does not start by determining the applicable rules, then adds the facts, and finally comes to a conclusion. To know which legal rules apply, the judge must already have some idea of the facts. If not, it would be impossible to determine the applicable rules. Neither can he start with establishing the facts of the case. He must have some idea of the legal rules that can be relevant.

Furthermore, the judge must also have some idea of the outcome he wants to arrive at: what would the decision be if the facts are such or such? Do I have sufficient information?

The judge is involved in an on-going process of starting out, adjusting, focusing, reconsidering and deciding. This is the process of judicial decision making.

This may be visualised in the following triangle:

The three sides of the triangle are: Facts - Law - Decision.



These are interconnected. In the process of decision making the judges moves from one corner to the other, back and forth.

2. ESTABLISHING THE FACTS

Let's zoom in on one of the three corners of the triangle: the facts.

It is material for all judicial decisions to properly establish the facts.

A clear distinction must be made between *facts* and *law*. As we noticed earlier on, the law has universal scope. The facts are restricted to the case at hand; they only have a bearing on that case.

In virtually all systems of law the judge starts out by establishing the facts of the specific case in the judgment. This fact-finding is consequently distinct from enumerating the applicable legal rules. So in nearly all judicial systems you will find in the judgment a separate paragraph with an overview or summary about the events that are relevant for the judge's decision.

In the Netherlands this is done point-by-point, in chronological order. In British or American judgments, on the other hand, the facts are often presented in the form of a narrative.

What can we say about the demands for an overview or summary of the facts, in a judicial decision with good quality? What demands may be made of a proper fact-finding?

1. The facts must as much as possible be accurately established.
2. The facts must as much as possible be fully established.

Thus, there are 2 aspects: accuracy and completeness. In practice, it is of course impossible to always accurately and fully establish all facts because there is no end to facts. However, this is not necessary. A major prerequisite is that the judge will only have to consider the *relevant facts*.

The judge only needs to properly and fully establish those facts that are relevant for his or her assessment of the case.

Relevant facts

This brings me to the next question: what are "the relevant facts"? Relevance is a concept that is relative: something is not relevant in an absolute sense, but only in relation to *something* else.

In a judicial decision, this means that the relevant facts are those facts that are useful or material for judging the dispute. Which facts are useful or important depends on the applicable rules of law, while the applicable rules of law are determined on the basis of the plaintiff's claim and the defendant's defence.

For instance, if a seller demands a certain purchase price as payment for a shipment of goods and the buyer claims that the parties had agreed a lower price, the fact to be established is the purchase price the parties had agreed on. After all, the law provides that the buyer must pay the agreed purchase price.

If, however, if the buyer claims that the delivered goods do not comply with the agreement, for instance because they are damaged, other facts become relevant, namely whether or not the goods were damaged. So, which facts are relevant differs from case to case.

Which precise facts are relevant may be hard to decide. It is not uncommon that the parties assert many more facts than the judge will find relevant for his assessment. It is very important, for the sake of his analysis, that the judge knows exactly which relevant facts are involved, given the basis of the claim and the defence put forward against it. The judge should not get distracted by facts that, although they might be of interest because they give some colour and understanding on the case, are not ultimately decisive for the judgment. Again, relevance is flexible. Sometimes facts that initially seemed less significant, gain importance during the case. Perhaps it was initially not thought relevant for the decision to nullify the old man's will that his wife had died and that he had fallen down the stairs the previous day, while this may prove significant later on, when deciding whether the will was made under duress because his wife's death and his fall might have made him more vulnerable and easier to manipulate.

When establishing the relevant facts, the judge passes through three phases.

First phase: establishing the facts on which the parties agree

When establishing the relevant facts the judge first distils those facts on which the parties agree from the plaintiff's and defendant's arguments. These facts you can find in a separate paragraph in the judgment.

At any event, this is what a judge in the Netherlands is taught during his training. The judge first sums up all facts on which the parties agree. In the Netherlands this is always done in chronological order. A chronological representation of the established facts will facilitate writing the judicial decision at a later stage.

Establishing the facts on which the parties agree means giving a rather straight-forward, itemised summary of the essential elements of the case.

Example:

Mister X is a horse breeder and horse trader. The name of his company is Happy Horse; it is established in Amsterdam.

Mister Y is a non-commercial party who came to Happy Horse because he is interested in buying a show jumping horse. On 3 December 2016 Y visited Happy Horse for this purpose.

X showed Y various horses; Y rode one of the horses, Nightmare, for a little while. Thereupon, Y stated to X that he wished to buy the horse.

This summary of the bare facts on which the parties agree provides a straightforward introduction of the dispute. It is limited to the facts parties agree on. This is very useful for the judge himself but it is also highly convenient for the court of appeal if the court of first instance gets this right straight away. This means that the court of appeal will not have to reconsider and set out all details of the case once more. The facts established in the judgment in first instance may be taken over. Only if a party disagrees with this summing up of the facts will the court of appeal have another look at them. However, if the court of first instance has done this properly, there will be no need to do so. If the judge wants to be sure that these facts solely include the facts on which the parties agree, it can ask the parties to confirm this at the hearing. It may verify for instance if Y did indeed visit Happy Horse on 3 December, and did indeed ride the horse Nightmare.

The preliminary hearing, as it presently takes place, would be a perfect opportunity to establish on which facts the parties do and on which facts they don't agree.

If the judge handles this well, it is often found that the parties agree on about 90% of the facts. The background of and the causes leading to the dispute is usually not a point of discussion.

Therefore, the facts on which the parties agree often make the case already pretty clear and provide a structure. It makes it possible to give more focus on the real issues. If the judge does this well the structure of the debate between the parties will also strongly benefit.

Of further note is that there is no need to provide evidence for those facts on which the parties agree. Evidence only has to be produced if one of the parties disputes a fact. If it does not, there is no need for the judge to further examine that fact. If it is admitted that Y stated that he wanted to buy the horse, there is no need to hear the stable lad as a witness. The fact is established and must be included in the undisputed facts.

This brings me to the second phase of the fact-finding.

<u>Second phase: improper (quasi) ruling on evidence</u>

In the second phase of the process of fact-finding the judge considers the facts on which the parties disagree.

We all know that some lawyers make baseless assertions. They put forward anything that may help their client's case in any way.

Does the judge have to take every argument seriously? Of course, the judge must listen closely and pay attention to everything that is put forward. However, that does not mean that the judge should give equal weight to every argument. The judge should at all times bear in mind what the dispute is really about – the heart of the debate.

In my view, contesting everything put forward by the other party is an old-fashioned form of litigating. This approach causes the judge to lose an enormous amount of time to matters that are not really relevant, or that cannot be taken seriously. Thus, the judge must guard against going along which this too much.

The judge should always try and separate the important matters from the unimportant ones and determine whether a party's argument or contestation is *serious.*

The judge does this by determining whether the argument or contestation has been clarified to some extent and is supported, if possible, by evidence. The judge may demand a party to offer a minimum in clarification and provide a minimum of supporting evidence.

For instance, if X argues that a purchase agreement had been concluded with Mr Y, under which Mr Y bought a horse, X may be expected to state (clarify) when and where the agreement was concluded; whether it was concluded orally or in writing; the name of horse; and the agreed price. In other words, the clarification provides *details*, while sometimes it may also offer an explanation that is needed for a proper understanding of the facts.

If it is argued that the agreement was concluded in writing, an instruction may be given to produce the text of the agreement. This is providing *supporting evidence*.

If a party is unable to take this minimum hurdle – he cannot produce crucial, essential documents, or give an explanation or clarification – a Dutch judge will rule that the arguments are insufficiently substantiated and are consequently rejected. Whether this is the case will naturally depend to a large degree on what the other party puts forward in its defence.

If the opposite party readily admits that he bought the horse for a specific price, the fact that the purchase agreement has not been produced is less important.

The defendant may likewise be expected to cross a minimum hurdle. If the defendant argues that the horse has defects, he may be required to clarify this. At the very least, he may be expected to state *which defects*. And if the defendant disputes that he bought the horse, even though the file contains an email in which he states that he wants to buy the horse, he may at the very least be expected to clarify that email. For instance by stating that he only expressed a willingness but not a promise to buy the horse, or that the email was not even sent by him. Since the existence of the email cannot be denied we can and may expect some defence on this point.

If there is not even a minimum of clarification or support for an argument, the Dutch judge tends to reject the argument as unfounded. What this means in fact is that the judge will reject a factual argument or defence if it lacks quality.

Not only will the argument then not be included in the established facts, but – and this is crucial – the judge will not allow or instruct the providing of evidence either. The judge rules on the basis of the file.

The rule that is applied here is: Evidence must be earned.

What this means is that evidence by hearing witnesses may only be provided if the argument is to a minimum degree clarified and supported. What this minimum degree is in practice depends on what the parties argue. If there is a wealth of email messages that make something clear, the other party cannot confine himself to a bare denial and will have to come up with something to counter them. If he fails to do so, the judge will not accept his contestation, but will regard what the other party has argued as the truth. In that event the judge will find that the fact has been insufficiently disputed and must therefore be considered an established fact. A quasi-ruling on evidence. *Quasi*, because the judge has not formally instructed or ordered to provide evidence, but has ruled on the basis of the file and the hearing.

It should be noted that if someone only states that he *can* prove something, this does not qualify as a sufficiently substantiated contestation either; he must also make it clear what he can prove and why and how. Any documentary evidence must be submitted by him simultaneously with his briefs.

Hearing witnesses must be earned.

In many cases, the parties submit all their evidence with their briefs: documentary evidence, written witness statements, expert's opinions, emails. This will basically provide the judge with everything he needs to rule, especially if he additionally questions the parties at a hearing.

In these instances there is no additional production of evidence, by which I mean: no witnesses are heard and no experts are appointed. The judge rules directly.

It's important to note that the Dutch courts handle the vast majority of cases in this way. In only a few cases (about 5%) does the court instruct the hearing of witnesses. But of course the judge has talked to and interrogated the parties and has read all their documents.

<u>This brings me to the third phase of the fact-finding: the actual ruling on evidence.</u>

In the third phase of the fact-finding the judge focuses on those facts that are disputed by the opposite party and that cannot be considered as established on the basis of a quasi-ruling on evidence, or may be rejected.

Let's take the case of the horse as example again: the one party argues, supported with evidence, that the parties had agreed a purchase price of 10,000 Euros; the other party, on the other hand, argues that the parties had agreed a discount if the purchase price was paid in cash. Who should the judge believe?

This fact is crucial for a ruling in the case. Both parties have clarified their arguments. This is the moment when the judge orders the provision of evidence: what was agreed in respect of the price? The parties may have witnesses heard who are able to testify on the matter.

The judge collects the evidence and will rule on the disputed fact on the basis thereof. In the Dutch system it is very important that the judge clearly states *on which* party rests the burden of producing evidence for the fact concerned. This must also be clearly stated in the judgment.

This is important because the party on whom the burden of proof rests is the party that runs the risk of having his evidence rejected. This means that if that party fails to demonstrate the truth of the disputed fact, this fact will not have been established. If the buyer of the horse fails to prove his argument that it was agreed that he would be offered a discount on the purchase price if he paid in cash, the discount is not established. The judge will rule that no discount was promised and that the buyer must pay the full price.

The debate is consequently also structured by the division of the burden of proof, which to a certain extent already anticipates the outcome: if the party on which the burden of proof rests fails to produce the evidence, this will be held against that party.

I have now arrived at the moment when the judge orders one of the parties to provide evidence and evidence is produced.

Evidence is typically provided by hearing witnesses, but may also be provided by appointing an expert. A third possibility is that the judge examines the situation at the scene of the dispute, for instance in the event of a dispute between neighbours.

Once the evidence is produced, we enter the fourth fact-finding phase. I will refer to this fourth phase as the assessment of the evidence.

The judge investigates all the evidence that has been produced – especially the statements of the witnesses and assesses the evidence. The real ruling on evidence is the decision in which the judge rules on the additionally produced evidence and on whether the party that was ordered to provide evidence has or has not succeeded in doing so.

How does the judge assess the evidence?

Starting point is the principle of judicial discretion in weighing evidence. This applies in the Netherlands, and also here in Bosnia, if I am not mistaken. What this means is that the law does not prescribe what value to attach to certain forms of evidence. This is at the judge's own discretion.

In terms of theory of knowledge, assessment of evidence by a judge is not that special. It is nothing more than an inductive reasoning, which means that a reasoned conclusion is drawn about a certain hypothesis on certain factual data. The hypothesis is the order to provide evidence, for instance, for the argument: 'a 10% discount will be offered on the purchase price for the horse if payment is made in cash.'

We have to realise that the judge will never be able to establish with certainty whether this was actually agreed. The judge was not present at the transaction and must use information provided afterwards.

By definition, the ruling on evidence is consequently wrought with uncertainty. However, this should not deter us, as this is inherent to any inductive reasoning. Doctors and scientists are also never 100% sure of their conclusions, which does not mean that these conclusions are less worthy or worthless. It is important to correctly determine all the facts and make a reasoned conclusion based on them. This is where the quality is found.

To gain more insight in the judge's ruling on evidence – the reasoned conclusion drawn from the collected evidence – it may be useful to compare a judge's ruling with a doctor's diagnosis. A doctor's diagnosis really is also a reasoned conclusion based on collected data: blood pressure, pain, fever, etc. In this respect there is no certainty, although a doctor will of course do everything in his power to reach the correct diagnosis. Likewise, a judge will try and arrive at a faithful judgment and assessment of the evidence resulting in establishing the facts that come as close as possible to what really happened. Nothing is more frustrating for the parties than to lose a case because of incorrect fact-finding.

It is good to bear this in mind: we can never be certain, but we do everything in our power to get everything straight.

To begin with, the judge takes stock of all produced evidence. Just like a doctor collects as much information about the patient as possible. In the fourth phase of establishing facts this will be in the form of witness statements. This is followed by an assessment. Which criteria may the judge use in this respect?

The 1st criterion: relevance of the statement

Does the witness statement mention anything about the argument to be proven? If not, the witness statement may be disregarded.

The judge may confine himself/herself by finding that Ms Z's statement is silent on whether the seller offered any discount. The statement is consequently irrelevant and may be ignored and does not need to be discussed. The statement does not add any weight to the ruling on evidence.

In practice, a considerable number of witness statements never even succeed in taking this hurdle. They keep silent on the key issue. The judge is not obliged to consider them in detail.

The 2nd criterion: consistency of the statement

A second criterion the judge may apply is whether a statement from a witness is consistent. In other words: whether it contains any discrepancies. This refers first of all to the consistency of the statement itself: does it contain any inherent discrepancies, because first one thing is stated, followed by something that contradicts this.

Furthermore, *the consistency between* several statements must be considered. Is what witness A states consistent with what witness B has stated? In general, the judge will consider contradictory statements to be less reliable.

On the other hand, statements that are completely identical should sometimes be mistrusted as well, as this may be an indication that the witnesses agreed on their story and discussed what to say. Especially if such statements are identical in details this renders them improbable. If statements of different witnesses correspond overall but differ in details, this usually is a sign that they are truthful.

Third, consistency between the statement of a witness and other evidence in the file. Is the statement in line with a certain email? This is an important factor in practice as well. When ruling on evidence the judge must not only consider what the witnesses have stated, but also verify what the parties argued on the matter in their case files. It is a positive sign for the truthfulness of a statement if it corroborates a party's arguments.

If the judge encounters any difficulties in this regard, he must make clear to the witness during the hearing of the witness what strikes him in the file. "You state so and so, but in a letter of 8 October 2016 I read… How do you explain this?"

The witness must be able to give a satisfying response.

In any event, it is important that the judge asks follow-up questions, not only to the parties but also to the witnesses. If something strikes the judge as peculiar, or he does not understand something, or what is stated cannot be reconciled with other statements or documents, the judge should ask about this. Of course, he should take care not to be angling for a specific answer; the questions may not be leading.

The 3rd criterion: quality of the evidence

Witness statements vary. If the buyer had brought a friend along to the stable and this friend had overheard what was said, it will be more convincing, will have more value, than the statement of someone who was not present.

Also, the statement of a witness who has no direct interest in the outcome of the dispute will be more convincing than that of someone who does, for instance a spouse or an employee. The statement of a bystander, who has no relationship to any of the parties, may consequently be much more convincing. It depends on the position of the witness and on whether he states something based on his own observations.

This really is a matter of objectivity, which adds to the reliability.

An expert's statement can have more weight, because he has more expertise or special qualities. If the buyer of the horse complains that the horse has defects and he brings a veterinarian along to the hearing to testify on these defects, that testimony will generally have more weight than that of some acquaintance. The veterinarian is supposed to be an expert and to be able to make a well-informed statement about the horse. The judge may consequently add more weight to such statement.

It is sometimes also considered that the more detailed the statement, the higher the quality.

While this may be true in some instances, it can also be a trap. Not everyone is able to make an elaborate, coherent statement. Witnesses often confine themselves to making a brief statement, also because they are sometimes nervous, and their statement only becomes more lucid after the judge draws them out with follow-up questions.

Lastly, the 4th criterion: coherence of the statement

A witness statement must be coherent.

This means not only that it has to be consistent and may not contain contradictions. Coherence is more than that. It also means: comprehensible. The statement must be comprehensible and coherent, and logical, with an introduction, a body, and a conclusion.

Of course, the judge should not set aside a statement because it is deficient in this regard. Some people find it harder to express their thoughts in a comprehensible, coherent manner than others. In such cases the judge must ask follow-up questions.

But if a statement is still incomprehensible, or contains gaps, or defies logic, even if after the judge has asked follow-up questions, this is generally a sign that the statement is not reliable.

We may consider the statement as a narrative (a story), and there must be some order in a narrative, both chronologically and logically, between the events: a plot. The principal characters must play a comprehensible part in the story.

The key term is consequently: *narrative coherence.* Just as we need this to understand the world around us, the statement must have this narrative coherence to convince the judge of its truth, to accept the statement as reliable.

But again: no two witnesses are alike. Some witnesses are highly skilled in making beautiful, convincing, coherent statements, which later turn out to be spun from lies. Other witnesses may be unable to make sentences containing more than three words, and have almost no clue as to what is

asked, let alone that they will be able to convince the judges. Yet, they may be speaking the truth all the same. The matter is never that clear-cut.

Still, in the end, all that the judge has at his disposal are the criteria I have discussed of relevance, consistency, quality and coherence to assess the witness statements.

Is there any room, in addition to all this, for the judge's intuition? For a feeling in his bones?

No. That is to say, not if the judge is unable to link this feeling to a more objective doubt based on the discussed criteria.

Psychological studies consistently show that people are unable to say if someone tells the truth on the basis of external characteristics. Perspiration, stammering, blushing, looking away: it does not mean a thing. Thus, the judge cannot use these types of observations as a basis for a decision whether a witness speaks the truth. It simply does not work that way. The judge has to confine himself to objectifiable clues, based on the aforementioned criteria. The judge will consider the witness statements based on these criteria and decide what they tell him. Thereupon, a reasoned conclusion may be drawn as to whether the party has complied with the order to provide evidence.

Finally: how high is the bar? When can it be said that sufficient evidence has been produced to declare that a party has complied with the order to provide evidence?

Frankly, this bar is not set that high. It is different from criminal law, where the criterion is: beyond reasonable doubt. In criminal law it must be beyond reasonable doubt that a party is guilty of the crime with which he is charged, in order to convict him of it.

In civil law that bar is set much lower. The criterion in civil law is: it is more probable than not; if, on the basis of the evidence, it is more probable than not that the disputed fact has occurred, the civil judge may consider the fact proven.

ATTACHMENT S. 'WHAT MAKES A GOOD JUDGEMENT?'

Introduction

Quality as a concept is not easy to define. It is hard to get a grip on. This is not any different when we try to decide the quality of judicial decisions.

What may be considered a strong example of legal insight by one judge, may be far too theoretical to another. What one judge thinks as a practical solution another judge sees as a wrong appliance of law. But the discussion about quality is not only for judges. The question presents itself what litigants and their lawyers will consider a good judgment. What is important for them? Or do they only care about winning the case? And third what is the quality for the public? When we think about the different readers of judicial decisions, the different aspects discussing quality can be very confusing.

I myself do think it is possible to talk about quality, and even that we must. It is important that judges discuss the quality of their decisions among themselves in a well-structured manner. And in this discussion we have to pay attention to the different readers of our decisions. However, this is only possible if we share the same view on what makes a good judicial decision.

Once judges share more or less the same view on what makes good judgments, we may start thinking about how we can improve judicial decisions. Sometimes we might find that things are only done in a certain way because they were always done that way, because we were taught to do them in that way. Perhaps if we look more critically, we might decide to no longer do certain things, or decide to do them differently. Maybe this can result in more efficiency, or in improving our work in another way, or result in a better understanding of the decision by the parties.

Besides, what was considered a good judgment 30 years ago, may no longer be the case. Our perception of quality is subject to change. Changing insights in society, new technologies, a hugely increased amount of information, things moving at an incredibly faster pace.

Factors like these make perhaps that what worked in the past no longer works today, or not as well.

Quality is an on-going process, without end. So this is the same for discussing quality. It is an on-going discussion.

I have developed a model to discuss the quality of judgements in a more structured way. That model looks like this. The quality of decisions is expressed in three elements:

1. craftsmanship
2. fairness
3. effectiveness.

Craftsmanship refers to the way in which the judgment is arrived at and the way the draft of the judgment is composed. This is our main theme for today.

Fairness refers to the outcome of the procedure; the moral dimension of the judgment: does the judgment satisfy our sense of justice? The judge will specifically have to consider the notions of fairness that are the foundations of law, such as protection of the weak, human rights and the principles of equality of arms and legal certainty. These principles offer a guiding line for what should be a justified outcome of a dispute.

I will not discuss this today. Only one remark: we have to realise that when the public discusses the quality of our work, the fairness of the outcome is mostly the one and only point of view for assessing a judgment. All other criteria or elements for quality are rather unimportant for the public. So we should never ignore or forget the importance of this moral quality of our decisions. We have to keep this in mind.

Effectiveness, finally, relates to the practical enforceability of the judgment. Is it even possible for the party in whose favour the judge found to benefit from the judgment? Does it serve the parties' purposes? Does the judgment do what it is supposed to do? One important aspect in this regard is the timeliness of the decision. I will not discuss this element today either.

I will now consider the quality of a civil judgment in terms of craftsmanship.

This comprises the following elements:

- proper investigation of the facts,
- full oral hearing,
- correct application of the law,
- solid and convincing reasoning.

The 1st aspect of craftsmanship: proper investigation of the facts

What holds for all judicial decisions is that they must be based on a proper finding of the facts. If this is not the case, a judge is not really able to reach a good judgment. The facts are the basis, the foundation for the decision.

If the facts are wrong or incomplete, the decision is based on quicksand. One might even argue that a case decided by a judge on this basis is a fictitious one, comparable to a case study for students. It has no bearing on reality.

I believe it is precisely this aspect, a careful finding of the facts, which has an enormous impact on the parties' perception of the judgment. It is extremely frustrating for the parties if the judge got the facts wrong in his judgment, or if the judgment omits to mention important facts. It is said in that event that the judge has failed to grasp the case, or has not read the file properly.

I realise, of course, that it is sometimes difficult to get all the facts straight. The judge is presented with contradictory information and parties sometimes do not hesitate to tell outright lies. This can make it exceedingly hard to establish what has actually happened. We have talked about this yesterday.

The point is that a judge should always take great care at establishing the facts. Establishing the truth is the goal, as all international literature and judicial guidelines emphasise. In fact, establishing the truth is becoming increasingly important.

In today's complex society, judges find themselves increasingly confronted with highly complicated cases. Often, traditional areas of law like civil law, administrative law, and criminal law are no longer strictly separated but overlap. Furthermore, there is a hierarchy to the legal order, whereby national laws are topped by international regulations of the European Court of Justice, which the judge must also take into account. Then again, there are organisations and institutions that have adopted their own codes of conduct or disciplinary rules that may impact the normal rules of civil law. Finally, the cases themselves are often highly complex, for instance because of the highly specialised subject-matter. This has made the law much more complicated than it used to be.

Precisely because of these developments, it is vital to establish the truth; it is the sole way to deal with 'the challenge of complexity', as Richard Posner, an American judge, calls it.

One might add: specifically in a time in which fact and fiction are becoming interwoven, in which we are confronted with an information overload (a post-fact society, as it is sometimes called), the civil judge should be a beacon of tranquillity and reliability in respect of fact-finding. People should be able to trust that the judge will not let himself get carried away by the mood of the day, but tries to separate facts from fiction and establishes the truth.

There are several examples, in the Netherlands as well, of people who turned to the civil court with the sole aim of getting at the truth of something. There was a case some time ago in the Dutch of a fireworks factory located in a residential neighbourhood that exploded, resulting in various casualties and large-scale devastation. Had any errors been made in the management of that company? Had the fire been intentionally started? Was the company's permit in order? Despite numerous government investigations it proved to be very difficult to get answers to these and other questions. It was the civil court that had to provide the answers.

Yesterday, I discussed which methods a judge applies to establish the facts. I will let this subject rest.

I return to

the 2nd aspect of craftsmanship

Full oral hearing. Let me say a few things on this subject.

The hearing serves several purposes. First, it provides an opportunity for the parties to express their views. The parties have a right to be heard by the court. But the hearing is also an opportunity for the judge. The hearing allows the judge to gain a better insight in the facts, and to ask questions about them. It will give the judge an idea what the parties agree and disagree on. It will save the judge a lot of time when writing the judgment if he is able to put the hearing to good use. Besides, it creates trust if the judge asks follow-up questions at the hearing; it shows that the judge has properly studied the file. It makes the parties feel that the judge is taking their case seriously, which makes them more inclined to entrust the case to the court.

At the same time, the judge should use the hearing to define the legal debate: to get a clear picture of the parties' real concerns. These are the arguments to which the judge must pay special attention when reasoning the judgment and writing out the arguments.

It is not unusual for a lawyer to advance, say, six arguments, of which only four are to be taken seriously and the other two are rather far-fetched. By asking follow-up questions this usually becomes clear.

These far-fetched arguments do not merit as much attention when reasoning the judgment as the serious ones. If the judge manages to separate the serious from the far-fetched arguments at the hearing, it will make his work that much easier when writing the judgment.

The 3rd aspect of craftsmanship: correct application of the law

It goes without saying that a judge must apply the law properly. This requires no further discussion.

The 4th aspect of craftsmanship: solid and convincing arguments for the decision / reasoning

The fourth aspect of craftsmanship is that the judge must properly reason his judgement. The obligation of reasoning the judgment is considered a very important aspect these days. The CCEJ (Consultative Council of European Judges) considers this one of the principal quality aspects of the judicial decision.

'The quality of a judicial decision depends principally on the quality of its reasoning'.

It states:

It is internationally recognised that judicial decisions need to be properly reasoned. We see it, for example, in the case law of the European Court of Human Rights. But why exactly is properly reasoning important for the quality of the judgment?

A brief history:

In the 18th century civil judgments were not reasoned. On the contrary, it was *forbidden*: reasoning the judicial decision would only have an adverse effect. It would sow the seeds for new conflicts and it would encourage the parties to appeal the decision if they were able to find out *why* the court had made a specific decision. This was considered undesirable. Better to impose the judicial authority on the parties, without explanation, and without reasons. Thus, no reasoning.

Things have changed since then. These days we consider it the duty of judges to provide their reasoning for the judgment.

I will now consider the obligation to provide a reasoning for the judgment, first from a theoretical point of view, followed by a practical approach.

First, the theory of legal reasoning.

Based on the legal literature, five objectives can be discerned for reasoning the judicial decision. These objectives are not always clear-cut; one depends on the other.

Nor will each of the five objectives be equally prominent in each case; this depends on the type of the case.

1 Accountability function

The reasoning must enable the reader of the judgment to understand the decision. Why was this decision arrived at and not another? What are the reasons for the judge to find for one party and not for the other? This must be clear from the reasoning of the judgment.

The readers who must understand the decision and for whom it must be clear are first of all the parties and their lawyers. Second, it is the higher court that must verify whether the lower court made the correct decision. And lastly: any other parties reading the judgement.

In my view, this objective of reasoning the judicial decision is principally aimed at rendering account of the choices the judge made. After all, each judicial decision is a matter of making choices; it never is a mathematical reasoning.

Each time a judge makes a decision, he will be aware that he has made a number of choices. The judge will have to make it clear in his reasoning of the judgment a) which were these choices, and b) why these choices were made.

The judge will have to make it clear, for example, why a party did or did not succeed in meeting the standard of proof and why a specific rule of law is or is not applicable. Or the judge must explain why he interpreted a rule of law the way he did.

The reasoning of the decision must contain the answers to these questions. According to modern criteria, rendering account of the choices the judge has made is necessary to make the decision acceptable for the parties. The parties will not accept a simple yes or no; they want to know why the judge found for or against them.

Reasoning is directly related to the trust put in the court.

2. Verification function

The reasoning of the judgment makes it possible for the readers of the judgment to verify the decision. What steps did the judge take to arrive at his decision? Was the law properly applied, and were all relevant facts considered in the decision? Was anything of importance neglected? Did the judge consider all arguments?

It must be possible for the reader of the judgment to verify this on the basis of the reasoning. Again, this is important for the parties and their lawyers, as well as for the higher court, since verification of the reasoning offers it an instrument for reviewing the judicial decision.

In contrast to the explication function, which concentrates on the substantive choices made by the judge, the verification function emphasises the legal convincingness of the decision.

This requires, in the specific instance, that the reasoning includes all legal steps leading to the application of a specific legal rule. Thus, this objective of reasoning focuses especially on a verification of the craftsmanship of the decision. Did the judge acquit himself well of his tasks? By reasoning the decision the judge renders account of this in each individual case.

The verification function is also important for parties other than the litigants and the higher court. It allows third parties, other lawyers, judges, attorneys, but normal citizens as well, to infer from it the state of the law. Based on the reasoning of the decision they are able to determine how the judge interprets the law, which facts he considers important for the application of a specific rule of law. In this way reasoning the judgment increases the legal certainty.

Furthermore, verification shows when the judge decides on a different approach, and makes developments in law clear. This is another important purpose of reasoning judgments: allowing public verification of the decision.

3. Response function

This function is closely related to the verification function. The response function serves to make it clear whether the judge has taken note of and considered all relevant arguments of the parties. The reasoning must to all possible extent be based on the arguments advanced by the parties: the reasoning is a response to these arguments. It is not so much a matter of verifying whether they are legally sound, but especially to show that the judge has addressed what *the parties* consider important.

The reasoning of the decision cannot be separated from the debate between the parties. The reasoning must be linked to the debate between the parties, albeit not to the fullest extent, I hasten to add.

4. Internal function

A fourth function of reasoning is that it provides the judge with a tool to render account to himself of the decision he takes. I refer to this as the "internal function". Internal here means: the judge's own train of thought. By ticking off the arguments one by one and providing reasons for

them, it will become clear to the judge what decision he should make. This consequently touches on the fact-finding process.

In practice, the judge will form a *notion* of the direction he wishes the case to go, based on an overall weighing of arguments. Next, the reasoning must be written out. Maybe it than will become clear that the matter is not quite what it initially appeared to be. Ordinarily, the judge will revise the decision until the reasoning is convincingly set out in writing. Reasoning and writing down the arguments take place in an interaction between establishing the facts and the applicable law. Yesterday I spoke about the triangle of judicial decision making. This internal function of reasoning the judgment may also be called: *self-verification*.

The internal function of reasoning the judgment is also apparent if a decision is to be made by more than one judge. The judges will outline the arguments one by one until it is clear on what they agree and on what they disagree. Ultimately, they will have to come to a joint decision; naturally, it is essential that they discuss the various arguments in favour and against before they reach a certain decision.

This concludes the discussion of the various functions of the reasoning in judicial decisions. I will next discuss what this means for the reasoning of a decision in a specific instance.

First of all - and I believe this to be a very important principle - the reasoning must corroborate the decision. In other words, the reasoning must clarify and support the *decision*. Arguments or assertions that do not have any impact on the decision are irrelevant. This means it is very important that the judge has a clear idea, when preparing the reasoning, whether the arguments he wishes to include constitute essential elements of the legal reasoning. The applicable criterion is: does the argument affect the decision I am about to make. If so, the argument should be included in the reasoning, in view of the accountability and verification functions. After all, the readers require the argument in order to understand the judge's decision. The argument is a necessary link in the judge's reasoning.

On the other hand, if the argument has no meaning and is irrelevant for the legal reasoning, there is no need to include it for the purpose of accounting and verification. Still, it might be important to include it in view of the response function. After all, it was raised by one of the parties and the judge will want to show that he has taken note of it, even though it has not affected his ruling in any way. However in that event the judge may pay much less attention to the argument; all he needs to do is indicate that he has taken note of it.

In the Netherlands, the judges have developed various methods to briefly sum up such arguments. A judge might for instance find: "The parties additionally discussed in detail when, at what moment, the buyer indicated that he claimed the discount. However, this question is of no relevance for the outcome of the case, since it is already ruled that it has not been established that the discount was offered. The judge will consequently not consider this matter further." Or: "Given the foregoing, there is no need to establish at what time the buyer stated that he claimed the discount." Or: "This is not altered by the fact that the buyer immediately stated that he claimed the discount, as the buyer argued."

So by mentioning the argument shortly, the judge shows that he saw the argument, but the judges reasons that there is no need to discuss this particular argument in detail.

Sometimes, a party will put forward numerous irrelevant arguments, which the opposite party in turn starts to dissect at length. A party keeps saying how mean or cheating the other party was.

In that event the judge will for instance state at the end of his reasoning of his decision on the merits:

"Given this outcome, what was otherwise put forward by the parties may be left undecided/ need not be discussed."

In this way the judge gives the signal that he noted there were some other arguments put forward, but that he does not consider these relevant for his decision in the case. So he will let them rest.

The judge may adopt this method because these arguments will not impact the choices he has made for his decision. The judge can keep his own track. The judge is not the parties' servant, who is to meekly follow the parties on any byway they may wish to take. A judge is altogether justified in making a distinction between arguments that are essential for the decision, and arguments that are not. All that is required, it goes without saying, is that the judge always keeps an eye on the reasoning of the decision and on the legal steps he is to take to arrive at it.

One major reason why the judge is not obliged to let himself be side-tracked by the parties is that the *objective* of the procedure is to arrive at a decision. The judge should keep his eyes on this objective at all times. Whatever is needed to achieve this objective, must be done. What does not contribute towards it should be disregarded by all means.

Besides, the judge's time is limited. To discuss each and every argument *ad infinitum* takes up way too much time. There is no reason why the timetable should be set by the parties. That is something for the judge to decide.

Still, as I noted earlier, in the reasoning of the decision the judge must render account of the principal choices he made. These choices will have to be explained in the reasoning.

An instance of a principal choice is the decision following an order to provide evidence, the ruling on the evidence.

Yesterday, I discussed that in the Netherlands a ruling on the evidence is actually rather rare; in only about 5% of the cases do judges in the Netherlands allow the parties to have witnesses heard. In other cases a quasi-ruling on the evidence is given: the judge rules on the basis of what the parties have put forward, on the basis of the documentary evidence produced, on what the parties argued at the hearing, and on the facts that may be considered established facts.

Both the actual ruling on the evidence and the quasi-ruling are decisions on the facts. These are decisions that are material for the outcome of the case. They are clearly based on, a choice made by the judge on an issue that is fundamental for the decision: establishing a fact that is essential for the outcome of the case.

The judge will have to explain that choice.

What may this reasoning look like?

Yesterday, I discussed the criteria a judge may adopt when assessing witness statements. These criteria were: relevance, consistency, quality, and degree of coherence of the statement.

A judge may apply these criteria when reasoning his ruling on the evidence.

Usually, there is no need to include the witness statements in the judgment verbatim. What the judge may do is to summarise them, but this is rather time-consuming. The method which takes a minimum of time is copy-past only the crucial parts of the statements. What the judge might also do is include elements of the witness statements verbatim by copying them into the judgment, a convenient and fast method.

Typically, it is clearest to start with repeating the order to produce evidence.

Example: Party X was ordered to provide evidence that Y promised him a discount.

In compliance with the order to produce evidence, X had A, B, C, and D heard as witnesses.

To produce counter-evidence, Y had P, Q, and R heard as witnesses.

The court finds that X has succeeded in proving the evidence and rules as follows.

- The statements of witnesses A, B and C agree in crucial respects, to wit ...

(= *testing against the relevance and consistency criteria*).

- The court finds no reason to doubt the content of their statements and considers them convincing (= *testing against the coherence criterion*). The fact that B is X's brother is not sufficient argument (= *testing against quality, depending on what has been argued*).
- The statement of witness D will be disregarded, since it has no bearing on the matter concerned *(= testing against relevance*)
- Although it is true that the statements of witnesses P and R differ from that of A, B and C, the court attaches less value to these statements because these witnesses were not present at the conversation between buyer and seller (= *testing against quality*). Moreover, the statements are not consistent since they differ in material respects (= *testing against consistency*). The statements furthermore do not correspond with what appears from the letter of..., included in the case file *(= testing against consistency*).
- The court considers Q's statement not convincing either, since it is inherently inconsistent and it has furthermore not come to light that.... (= *testing against consistency and the coherence criterion*).

In this way it is possible to give a decision on the evidence in just a couple of sentences, with the judge explaining how he arrived at his ruling. Again, the purpose of this is to render account and to make verification possible. It is in response to what the parties brought forward and serves to aid the judge in his own train of thought. Thus, all four functions of the reasoning are addressed.

It is important that all witnesses are at least briefly mentioned, to show that the judge did not leave any statement out. But it is not necessary to discuss the statements of all witnesses at length. It is enough the judge shows that he saw them.

It is furthermore important to show that it is not the *number of witnesses* that decided the matter, but the force of their statements: quality above quantity.

It is for instance also conceivable that the judge finds as follows:

'Although it is true that party X introduced witnesses A, B, C and D, who all four testified in favour of the facts he is ordered to prove, since they all four made identical statements, the court finds in this a strong indication that they have harmonised their statements. The court consequently finds their statements not convincing." (= *testing against quality*)

Finally, it is important that the judge realises that he will never know for certain whether he is right. Each ruling on evidence will to some extent remain uncertain. For this reason there is little point in continuing reasoning the case *ad infinitum*. No fixed anchor-point will be reached offering solid ground for reliability or certainty; they will remain choices.

What the judge can do, however, is to objectify his choices as much as possible by mentioning why he attaches more importance to one statement than to another. This is really all that he is able to do. It provides the added value that the reasoning of the ruling on the evidence is based on the four criteria. It will also enable a better debate on or assessment of the ruling, for instance if the ruling is appealed or if judges must reach mutual agreement. It is not that the feeling of one judge matters more than that of the others; what matters is that an inter-subjective weighing of the arguments takes place as to why more value should be attached to the statement of one witness than to that of the other.

ATTACHMENT T. "LIST OF QUESTIONS OF THE MUNICIPAL COURT IN TUZLA"[26]

1. Q: Is there any document governing mutual cooperation between the first and second-instance courts in the Netherlands, and if so, what are the similarities/differences in relation to the Memorandum on Cooperation in civil law field concluded between the Tuzla Municipal Court and the Tuzla Cantonal Court?

A: No, the Amsterdam first instance and second instance courts don't have a similar formal agreement. Nor do other courts and courts of appeal as far as we know. The cooperation is of an informal nature. Periodically meetings between presidents and department heads of the two courts are being held in which topics of a general nature are being discussed. Of course there is never discussion about individual matters or decisions, but information is exchanged about procedural and administrative matters, similar to what is being exchanged in Tuzla.

2. Q: Do courts of first instance in the Netherlands have a document similar to the Civil Procedure Guidelines of the Tuzla Municipal Court, and if so, what are the similarities/differences in relation to the Guidelines adopted within the framework of this Project between the working groups of the Municipal and the Cantonal Court in Tuzla, regarding the issues regulated by the Guidelines?

A: Yes, the courts of first instance in civil cases have adopted procedural regulations which are applied by all courts of first instance. They describe the use of discretionary judicial powers on a range of topics. The guidelines currently in the Blueprint are not too dissimilar to some of the guidelines set down in these rules. The Dutch version is well established and now covers a far wider range of topics than the current guidelines being adopted in BiH. We can bring a copy of our 'procesreglement' with us for our upcoming visit so we can answer any further questions you may have. Actually we started with separate regulations for each court, but as that confused the lawyers who met different ways of doing in each court, nation-wide rules were established in 2000. It contains rules on for instance:

- submission of documents (timely and orderly fashion)
- rules on the planning of court sessions and in which circumstances postponement can be asked
- payment of court fees.

3. Q: Do first instance courts in the Netherlands use the Checklist for the preliminary examination of the complaint and the Preliminary Hearing Plan, and are there any significant differences in relation to the Checklist adopted within the framework of this project and what are the differences and what corrections could possibly be made?

A: Yes we do have and use similar products. Administrative checklists obviously are different depending on the type of procedure and applicable laws. The preliminary hearing plan is similar to what is used to prepare cases in the Netherlands.

4. Q: Whether in the courts in the Netherlands it happens that a qualified attorney does not supply a power of attorney, even though in the complaint it is stated that he/she is an

[26] The list of questions was compiled by judges of the Civil Department of the Municipal Court in Tuzla, in order to prepare for one of the meetings under the IJQ project, to exchange information with the Expert Team on similarities and differences in the conduct of civil proceedings in BiH and the Netherlands. The answers to the questions were provided by the members of the Expert Team: Katja Rombouts, Tjepco van Voorst Vader and Mirjam van der Kaay, judges of the District Court in Amsterdam.

attorney of the plaintiff, and whether in such situations the complaint is either dismissed or a power of attorney requested – meaning that a procedural decision is made requesting that the complaint be made orderly, failing which it shall be dismissed, that is deemed withdrawn?

A: This is, fortunately, not something a Dutch judge has to concern himself with. All attorneys that are admitted to the bar are believed on their word, so we do not have to investigate whether they are telling the truth when they say they represent a party. They are by law authorised to legally act for their clients in the procedure.

5. Q: Party's litigation capacity (whether and if so how is this regulated by the Netherlands procedural legislation)?

A: This is not generally an issue in Dutch proceedings. The general rule is that all adults and legal entities have the capacity to litigate. Exceptions are possible for instance for people with debts or people that may be mentally incapacitated. The courts don't assume such exceptions unless legal procedures have been conducted to make these people wards of the court. Once those proceedings have established that the persons have no capacity to act themselves, litigation can only be conducted through their appointed guardians.

6. Q: How is the service of court documents to the parties residing abroad organised in the Netherlands, how effective are the authorities of other countries, and what is the cooperation like with institutions of other countries when it comes to service of court documents, both to individuals who are the nationals of the other country, and to the nationals of the Netherlands residing in the other country?

A: The service of documents is not the responsibility of the court. In general, the parties must arrange that themselves through the service of bailiffs or otherwise. Therefore we don't have any experience on these topics. There are treaties in place which deal with service of documents internationally. Notification may then be via the ministry of foreign affairs and may be time consuming. We only see the results and our administrative staff checks whether proper service has been given so that the procedures may proceed. Only in exceptional cases do we need to look into this ourselves in civil cases.

7. Q: Do all writs, including the complaint and the summons for the hearing, have to be delivered to the party personally, and is there a situation where the postman returns the writs undelivered and makes the note that service was attempted, the party has been notified to take over the letter in the post office, but fails to do so, how you treat such service, if something like that exists?

A: Yes there are legal requirements for delivering official documents. However, the court is not responsible for the delivery of such documents in most types of proceedings. If proper notice has been given, default judgments may be rendered. The defendant may initiate opposition proceedings once he becomes aware of the judgment. Court clerks check whether proper delivery of the complaint has taken place before a default judgment is rendered. In principle writs must be delivered personally, but in circumstances delivery at the proper address or publication in public media may suffice.

8. Q: Is the party required to indicate and propose all pieces evidence in its initial document or can it do so later at the hearing (preliminary hearing), as is the case here.

A: Our system works differently, we don't have a preliminary and main hearing, except in very complicated cases. Parties submit the complaint including written evidence and the defence statement including written evidence prior to the hearing. Parties may submit additional evidence

ultimately ten days before the hearing. This may be necessary where the defendant denies facts assumed in the statement of claim. At the moment a party makes certain statements it needs to ensure such statement is supported by sufficient and relevant evidence. Our civil procedure code requires parties to submit full statements in their first submission to the court. This does not always happen and we can be lenient, but ultimately, if a party does not provide evidence of relevant statements before the hearing this will be held against such party (statements insufficiently supported). Additional supportive evidence can be submitted at a later stage to the extent required (see below). Judges can also ask parties to submit evidence consisting of certain documents at our own initiative or on proposal of a party. *(Is that something you can also do?)*

9. Q: When it comes to the order of presentation of evidence at the main hearing, do judges allow a different order other than that prescribed by the Civil Procedure Code (hearing of litigants ...), in what situations, can a party request that an expert witness prepares the findings and the report after the parties and witnesses are heard, where the records of these hearings would also be used in making findings and opinions.

A: There is no formal order prescribed for by Dutch law, except that we must first hear the parties. We usually require written evidence to be provided first. Only in exceptional cases will we hear witnesses or instruct the provision of an expert report. If the court appoints an expert witness, the expert will be given all relevant information from the court case, including the statements of all parties. We have guidelines instructing the expert to use the information from both parties and to ask them for any information he otherwise deems relevant. The expert is required to provide a draft of his report to both parties who may give their comments to the expert. The expert then amends his report or does not do so taking into account such comments and explaining why he does or does not amend it in view of those questions. This usually means that no further information from the exert is needed at the hearing.

Parties may also provide expert reports with their documents at their own initiative. For obvious reasons we attach more value to reports that are prepared with the input of all parties involved.

10. Q: Do judges in the Netherlands face the situations where an administrative authority fails to provide them with the requested information, which is the case with the Pension Fund in our country, and as a consequence the hearing has to be delayed?

A: No, they don't. Not that we know. But we rarely require information from an authority. It usually is the parties' responsibility to provide information and then also their risk if they do not provide it.

11. Q: When postponing or adjourning the hearing, are there any deadlines, be it legal or court deadlines, in which the parties must file a motion for postponement or adjournment, and whether the law specifies the grounds for the postponement or adjournment of the hearing or is it regulated by a separate document?

A: This is regulated by our guidelines. These provide that if a hearing has been set without consultation with the parties, the parties may within two weeks from receipt of notice of the hearing request another date. With such request they must submit availability dates of all parties concerned. If the court sets a hearing taking into account the availability dates provided by the parties, no rescheduling is done if the date is set within two weeks from the provision of the availability dates. Except in cases of force majeure or imperative prevention no other postponements are allowed.

12. Q: When it comes to the representation of the parties, whether the legal system of the Netherlands allows the parties - natural persons to represent themselves in proceedings

before the court of first instance, on appeal and in cases involving extraordinary legal remedies, and what are the requirements for the representation of legal persons by an attorney – an employee of the legal person - whether this matter is regulated in the same way as it is in the Civil Procedure Code of FBiH?

A: This depends on the type of proceedings. In smaller civil law matters (up to EUR 25.000,-) persons are allowed to represent themselves in person. Also in certain specific proceedings such as insolvency proceedings for natural persons legal representation is not required. On appeal legal representation is required on all types of cases. Where representation is required, the attorney needs to be registered in the bar register. A legal entity has to be represented at court hearings by a managing director registered with the commercial register as duly authorised or by a person with a power of attorney. When there is doubt that the representative is duly authorised, evidence may be requested.

13. Q: Is there a possibility provided for by the law or any other act for the court to decide to not accept the presentation of large amount of evidence corroborating the same circumstance - proving the same factual allegations, and if so, what the court will be guided by in rejecting the motion to admit certain pieces of evidence?

A: Yes it does, the court may reject proposed evidence and quite often does so. Parties as a rule offer witness evidence of whatever they have stated, but we hardly ever give them the opportunity to bring their witnesses forward. Other than the representatives of the parties who we hear – sometimes extensively – at the hearing. With paper evidence we act less formal then you seem to do. Parties usually provide written evidence as they deem fit. If we lack certain documents that seem relevant to the decision we ask for them. Documents that we do not deem relevant for the decision we just disregard and in our judgement we include a statement that other matters (than those discussed in our judgment) brought forward by the parties are not relevant for the decision. Parties may also submit expert reports prepared at their own individual or joint initiatives.

We ask the parties themselves and their lawyers the questions that we deem relevant at the hearing to establish which relevant facts are or are not disputed. Specific evidence that the court needs to decide on is usually limited to the hearing of witnesses or the instruction of an expert report. The court only grants parties the possibility to provide such evidence in relation to disputed facts that are necessary to reach a decision in view of applicable law. And provided that the party bringing forward the evidence has sufficiently explained why the evidence is relevant and about which facts the witnesses could declare. We say: Evidence provision must be earned. If the proposed evidence is too vague or it is too vague what the evidence would prove, it will be denied. In our judgment we will then say something along the lines that the evidence offered if provided would not be sufficient to have influence on the judgment. Evidence submission is not a fact finding or fishing exercise. Usually we first render a written interim judgment that rules on everything that can be decided on without such evidence and explaining why certain matters must be proven before a decision can be reached. And also describing what the decision will be if the party with the burden of proof succeeds and also what the judgment will be if proof is not successful. Then the court gives a specific instruction on which facts must be proven.

14. Q: What possibilities judges have in terms of communication with parties when attempting to settle the dispute? Can they communicate with one party without the presence of the other, whether the law allows this or is it "implied" and how it works in practice?

A: No it is not possible for us to talk with only one party without the presence of the other, based on the law and the general principles of a fair trial and equality of arms (also based on the European Treaty for Human Rights). We can only discuss matters in presence of all parties. We never

sit in a court room with any one of the parties and do not like it even if one party drags its feet when the other has already left the court room. We do quite often send parties out of the court room to discuss with each other how they could settle. When they come back in the court room they are free to tell what they discussed (if both parties agree to disclose their discussions) or not to do so. If one party wants to consult with its lawyer outside the court room we always send both parties out.

At our court hearings we normally take some time to see if the parties want to settle their matter. Usually we do that after having discussed all the facts that are relevant to our decision and after the parties have been able to argue their case.

During that part of the hearing we often tell the parties our 'preliminary judgment', i.e. how we expect that our judgment will be. Of course only to the extent we are able to do that immediately. Usually that is to a large extent, as we have prepared ourselves well before the hearing and know before the hearing what we need to know in order to decide the case. Only if we have heard unexpected new information or the case is very complicated, we may not be able to give a 'preliminary judgment' and decide to first give it a further thought. Personally I never give a preliminary judgment directly, but only after have sent the parties out of the courtroom for at least five minutes to give myself the time to think it all over and prepare a short statement on the matters that have to be mentioned. We also make clear to the parties that it is only our preliminary judgment and that we may render judgment differently after further thought (how much we emphasise this may depend on our certainty on the case). If we deliver our preliminary judgement to the parties we tell them that we want them to take that into consideration and to go out of the court room again to discuss it with their own lawyers and subsequently with the other party or parties, to see if with the help of our views they are now able to settle the matter. The preliminary judgment may have taken away unsound expectations that either or both parties may have had about their chances and position. The giving of a 'preliminary judgment' has also the advantage that we can explain our reasoning well to the parties. We never allow the parties to comment on our 'preliminary judgement'. They have had their opportunity in the prior part of the meeting. They can like it or dislike it, but it is what it is for the purpose of the hearing.

If it does not help the parties to settle at least it makes our judgement writing easier, as we have already made up our mind on the essential elements and our reasoning.

28 September 2019