



## **STUDY AND RECOMMENDATION ON COURT FEES**

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## **Court Fees in Albania**

### **1. Introduction**

This study is prepared on the explicit request of the MoJ. The goal of the study is to find out, if the court fee system in Albania can and needs to be improved and in particular in how far court fees, which have not been changed since almost 10 years, could be raised without hampering the basic guarantee of access to justice. Additionally the question is, in how far the design of the court fee system could probably help preventing the phenomenon of so called “judge shopping” (i.e. filing a claim and withdrawing it when the lottery provides an unfavourable judge and subsequently filing a new claim until the lottery finally assigns a favourable judge).

In a first step the study analyses the current legal, budgetary and socioeconomic situation including the legal aid system and the political goals proclaimed by the current Albanian government regarding the design and function of the judiciary **(2)**. Then the study outlines the legal limits and restrictions for any court fee system under the European Convention on Human Rights, which in its Article 6 calls for an equal access to justice **(3)**. This is followed by an overview about basic types of court fee systems, which exist in European countries within this framework and which could provide guidance when creating or reshaping a court fee system **(4)**. Finally the study provides some conclusions and recommendations for the Albanian court fee system **(5)**.

### **2. The Present Situation**

#### **2.1. The legal background**

**2.1.1.** Initially the **Law for the Fee System in the Republic of Albania (1998)**<sup>1</sup> provided the base for levying court fees in Albania. Art. 2 Nr.10 of this law stipulated that “national

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<sup>1</sup> No.8435, dated 28.12.1998 , proclaimed by Presidential Decree No.2287, dated 31.12.1998 ([www.coe.int/t/e/legal\\_affairs/legal\\_cooperation/legal\\_professionals/enforcement\\_agents/3\\_information\\_from\\_member\\_states/Law%20on%20system%20of%20taxes%20received%20August%202003.pdf](http://www.coe.int/t/e/legal_affairs/legal_cooperation/legal_professionals/enforcement_agents/3_information_from_member_states/Law%20on%20system%20of%20taxes%20received%20August%202003.pdf) )

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fees” include (inter alia) “Fees for operations and services of the judicial administration of the Ministry of Justice”. According to Art.5 the “income deriving from national fees” was “deposited into the state budget”. The fees for the operations and services of the judicial administration of the Ministry of Justice were defined in appendix no.6 attached to this law and constituted an integral part of this law (see Art.6, gj ). The fees for the administrative, judicial, prosecutor and notary offices were “paid through stamps” and “collected through the body exercising the service” and were “deposited, one hundred percent, into the [state] budget”. A certain percentage of the levied fees however was granted to state authorities and public juridical persons. This amounted to 5% of the fees for the operations and services of the judicial administration office of the Ministry of Justice (see Art.8 A. Nr.7). The Ministry of Justice was in charge of levying the operations and services of judicial administration fees (Art.9 A. gj). In Art.10 the law lists up many specific cases in which citizens are exempt of paying stamp fees. But this list does not comprise court fees. By an order of the Council of Ministers about two years ago the courts were not allowed any longer to keep 5% of the court fees but from then on had to transfer the full 100% amount of the levied court fees directly into the state budget<sup>2</sup>.

According to an Ordinance of the Ministry of Finance (Nr.2 dated 14.5.1999) based on the Tax Law (No.8435) following court fees were levied:

#### For registrations, certificates and legalizations

|   |          |
|---|----------|
| -For the registration of physical or judicial bodies (Albanian citizen)   | 1000 Lek |
| -For the registration of physical or judicial bodies (Foreign citizen)  | 1000 Lek |
| -Issue of court certificate verifying that the individual does not have any criminal records and should be provided a National Passport | 100 Lek  |
| -For the legalization of the notary acts from the MoJ   | 100 Lek  |

#### For the Lawsuits presented in the court

|   |          |
|---|----------|
| -For food pensions                        | - free - |
| -For certification of facts               | 1500 Lek |
| -Divorce                                  | 1500 Lek |
| -Suit for invalidity of juridical actions | 1500 Lek |

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<sup>2</sup> This information is based on a personal talk with Ms. Laze, Director of the Office of the Administration of the Judicial Budget

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#### For the Lawsuits which are consequences of contractual

#### Relations and for causing of damages

|  |                 |
|--|-----------------|
| - with a value up to 100.000 Lek                         | 1500 Lek        |
| - with a value over 100.000 Lek                          | 1% of the value |
| - Lawsuit for the distribution of property (inheritance) | 1500 Lek        |
| - Lawsuit for the return to the working place            | - free -        |

So basically only two categories of cases were exempt from court fees for obvious social reasons: The labor law cases (lawsuit for returning to the working place) and the claims concerning food pensions. For all other civil law cases there was just one generally set fee of 1.500 Lek (~ 12,3 Euro) for values of up to 100.000 Lek. In case a sum of 100.000 was claimed this set fee would amount to 1,5% of this sum. For claims less than this sum, for example for a claim of just 10.000 Lek, this set fee of 1.500 Lek would have amounted to the much higher percentage of 15%. Besides this the court fee table determined a percentage fee of 1% for claim values exceeding 100.000 Lek (~ 820 Euro, which amounted at that time to roughly 10 times of the monthly average wages).

**2.1.2.** In 2008 the new **Law on the National Fees**<sup>3</sup> (in the further text referred to as “ the new tax law”) was enacted repealing the previous tax law (see Art.12 of the new law). It defines the term “national fee” in Art.2/2 and lists up the respective national fees in Art.3, which do not include court fees anymore but only “fees for acts and stamp” (Art.3/5), which according to Art.4/5 are determined by Appendix Nr.3. As Appendix Nr.3 shows, the fees for acts and stamp do not include the court fees but only fees for registration of citizenship, civil status, identity cards, marriage and changes of the surname. Regarding these fees for acts and stamp a 5% commission can be deducted by the tax agent (i.e. the institution which levies the fee – see Art.2 Nr.3). This commission does not need to be transferred into the national state budget (Art.8/1) but can be kept by the tax agent as remuneration of over-pay for difficult work, for new employees for tax collection and for mechanization, computerization and improvement of working conditions as well as for

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<sup>3</sup> No.9975, dated 28.7.2008, in effect since 19.8.2008

the expenses for the collection of fees (Art.8/2b, /3 a - c). The exemption rules in Art.9/3 apply to these fees for acts and stamp.

The court fees are covered by the new tax law only in Art.11ç. They are now called **Service Tariffs** (“Tariffs for actions and services of the judicial administration of the Ministry of Justice, the prosecutor’s office, the notary profession and the office of the registration of immovable properties”).

According to Art.11/2 the minimum level of the service tariffs mentioned in Art.11/1 are “determined by a joint order of the Minister of Finance and the respective institutions”. Regarding the service tariffs for court administration the respective institution would be the Ministry of Justice.

Such a joint order has meanwhile been issued by the Ministry of Finance and the Ministry of Justice ( “**Order on the Determination of Fees for the Actions of the Administration of the Courts, the Ministry of Justice, the Prosecutors, the Notaries and the Authority for the Registration of Immovable Property**”, No.13, dated 12.2.2009; in the following text this order will be referred to as the new “Fee Order”). The issuance of this order finally provided a legal base for the courts to charge court fees again which has not been legally possible anymore since the Law on National Taxes had come into effect on 19.8.2008.

The fees are charged for the actions and services according to the Appendix Nr.1. The term “fee” for court fees according to Appendix No.1, Part A. 8 is used in the same way as it is used in Art.156 of the Civil Procedure Code (see new Fee Order- Introduction No.5). Fees are levied by the authorities which perform the actions and provide the services. The authorities which charge the fees have to transfer them **directly to the state budget** (see new Fee Order - Introduction No.13) but are authorized to **keep a 10 % commission** of these fees for their own budget (see new Fee Order - Introduction No. 12). Fees have to be paid in form of court fee stamps when the respective action or service is requested. The stamps have to be attached to the respective documents by the claimant and have to be stamped. Paid **fees are not paid back** when the request for the action or services is withdrawn (see new Fee Order - Introduction No. 8). The court fee order came into effect immediately after it was issued (see new Fee Order - Introduction No.14).

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This new order on fees comprises three parts. Part A. regulates the fees for the actions of courts, part B. covers the fees for the actions of the enforcement service and part C. determines the fees for the actions of the public notary.

According to the **Appendix Part A.** a fee of 200 Lek is charged for following **administrative actions** of the courts:

|   |         |                   |
|---|---------|-------------------|
| -Issue of court certificate verifying that the individual does not have any criminal records and should be provided a National Passport | 200 Lek | (previously 100 ) |
| -Copy of a court decision or other document   | 200 Lek | (new)             |
| -Certificate on the criminal register of a person   | 200 Lek | (new)             |
| -Legalization of the notary acts by the MoJ   | 200 Lek | (previously 100 ) |
| -Certificate that no criminal case has been filed against a person by the prosecution   | 200 Lek | (new)             |
| -Certificate that no criminal case against a person is pending at the Court   | 200 Lek | (new)             |

Regarding the fees for filing claims with a court the structure has not changed but the fees have been increased by 100% from 1.500 Lek to 3000 Lek.

Following fees are charged for **filing lawsuits** with the court in following cases:

|  |                 |                    |
|--|-----------------|--------------------|
| -Lawsuit on food pensions  | - free -        | (like before)      |
| -Lawsuit on certification of facts   | 3000 Lek        | (previously 1.500) |
| -Lawsuit on divorce  | 3000 Lek        | (previously 1.500) |
| -Lawsuit for invalidity of juridical actions   | 3000 Lek        | (previously 1.500) |
| -Lawsuits which are consequences of contractual relations and for causing of damages |                 |                    |
| - with a value up to 100.000 Lek   | 3000 Lek        | (previously 1.500) |
| - with a value over 100.000 Lek  | 1% of the value | (like before)      |
| - Lawsuit for the distribution of property (inheritance)                             | 3000 Lek        | (previously 1.500) |
| - Lawsuit for the return to the working place  | - free -        | (like before)      |

Unlike the previous court fee regulation the new court fee order now foresees a fee for

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- Filing an appeal against a court decisions 200 Lek. (new)

In **Appendix No.1, Part B.** the court fee order now explicitly foresees certain fees for the **execution of decisions** and other titles according to following scheme:

- for the execution of a decision with an object which can not be measured by a certain amount of money 750 Lek
- for the execution of decision with a measurable value
  - a) in case the creditor is a natural person 3% of the claim value
  - b) in case the creditor is a juridical person 7% of the claim value
- for any other actions of the enforcement service and for serving documents 200 Lek
- for the issuing of documents by the enforcement service 200 Lek
- for the execution of alimony (maintenance) claims - free - .

Although this scheme does not deal with the fees charged for court services and court actions it shows that fee schemes can make a distinction according to the financial and social abilities to pay fees. In this case the execution fee scheme distinguishes between natural persons and juridical persons, which are charged to a greater extent, because they are regarded to be in general able to pay higher fees. On the other hand in alimony- (maintenance-, livelihood-) payment cases the creditors are generally assumed not to be able to pay fees at all.

The fees for the **actions and services of notaries** as regulated in **Appendix No.1, Part C.** regularly amount to 200 Lek for all kinds of different actions. In cases however which are related to the sale of movable property a higher fee of 700 Lek is charged (see C. 7) and for cases related to the sale of immovable property the fee even amounts to 1000

Lek (see C. 8). For notary acts related to the drafting of a testament the fee is 450 Lek (see C.1).

This fee structure again shows that fees can be different depending on the value of the object of the requested action and the generally assumed economic ability of the claimant to pay a fee.

**2.1.3. The Civil Procedure Code (CPC)** in Art.102 – 110 deals with the responsibility of the parties for “expenses” during the process. The judicial expenses consist of “fees on acts, expenses for acts that are performed and other necessary expenses of the trial”. For bringing a lawsuit a fee on acts is paid in the cases and amount set according to the law (Art.102 CPC). The fee on acts is fixed on the basis of the value of the lawsuit, which may be determined by the court in cases, in which it is unclear. The court may assess the value approximately (Art.104). When the object of the lawsuit is reduced, the fee on acts paid for the lawsuit is not reduced, while when the object of the lawsuit is increased, a fee for the added part is taken (Art.103 CPC). Explicit prepayment requirements only exist for expenses for witnesses, experts and examinations at the request of one party (Art.105 CPC). Exemption rules only apply as long as the provisions on the fee on acts call for exemption (Art.105/b CPC). In case the defendant loses the case he will be charged with the fees on acts and expenses which have been paid in advance by the plaintiff (Art.106).

**2.1.4. A Law on Legal Aid** was approved on 22.12.2008 by the Albanian Parliament unanimously and -as far as it is known to EURALIUS - without changes from the filed draft. According to this law a State Commission for Legal Aid (SCLA) still needs to be set up and a budget proposal for the legal aid state budget needs to be drafted and submitted by the MoJ (Art.4c and Art.6). The funds are provided by the state budget but also by “other legitimate sources” (Art.22), which could especially be non-profit-organizations that cooperate with the SCLA (Art.19). Legal aid is delivered in the form of secondary legal aid by the provision of legal consulting, representation and defense in criminal and civil court proceedings (Art.11/1). Representation and protection of the interests of the individuals will be granted in civil and administrative cases (Art. 12e). Entitled to receive legal aid are persons who are in need of it but do not have the

financial means to pay for such services and can prove that they are included in the social protection programs or satisfy the requirements to be included in such programs (Art.13/1b). Legal aid can be requested and granted before, during or after the trial proceedings (Art.13/3). In case the SCLA has covered court expenses the legal aid beneficiary has to reimburse the SCLA these expenses, if in the conclusion of the trial, he benefits the reimbursement of the prepaid court expenses (Art.14). This regulation shows that citizens entitled to receive legal aid are not exempted from paying court expenses (including service tariffs, i.e. court fees). **A waiver for court fees does not exist.** There is no regulation as well about a partial exemption from court fees or a reduction of court fees or about payment of court fees in installments<sup>4</sup>.

Although the new law is now enacted it has to be stated, that up to date this legal aid system is not yet operational and functional. Criteria for granting legal aid and conditions are still unclear.

## 2.2. The Budgetary Background

The **judicial budget** in Albania calculated per one judge appears to be one of the lowest among European countries. Slight increases of the judicial budget could be observed in 2004 and 2005 but in 2006 the budget has been decreased again<sup>5</sup>. The state budget expenses for the Ministry of Justice have been increased for 2009 by 8.1% compared with 2008 and now amount to 0.54% of the Gross Domestic Product (GDP). For the Judiciary (courts) the budget was increased by 24% in 2009<sup>6</sup>.

In general there was a steady increase of the court budget since 2001. Expenditures on the **court budget** during these years amounted to following figures<sup>7</sup>:

2001 - 894.958.000 Lek (~ 7.27 Mio Euro)

2002 - 980.246.000 Lek (~ 7.96 Mio Euro)

2003 - 1.033.729.000 Lek (~ 8.40 Mio Euro)

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<sup>4</sup> For further detailed proposals on how the Law on Legal Aid could be improved see: EURALIUS, Comments on the Draft Law on Legal Aid.

<sup>5</sup> See EURALIUS, Recommendation on an Increase of the Judicial Budget Aiming to Reduce the Corruption Degree based on European Countries Experiences, 5.4.2006, page 1

<sup>6</sup> Ilir Rusmali, Chairman of the Committee on Legal Issues, Public Administration and Human Rights of the National Assembly of Albania, Report on the "Draft Law on the State Budget for 2009", pages 2 and 4.

<sup>7</sup> Statistics provided by the Office for the Judicial Budget

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|      |   |
|------|---|
| 2004 | – 1.279.920.000 Lek (~ 10.49 Mio Euro)  |
| 2005 | – 1.340.000.000 Lek (~ 10.89 Mio Euro)  |
| 2006 | – 1.244.000.000 Lek (~ 10.11 Mio Euro)  |
| 2007 | – 1.278.000.000 Lek (~ 10.39 Mio Euro)  |
| 2008 | - 1.315.500.000 Lek (~ 10.69 Mio Euro)  |
| 2009 | - 1.625.000.000 Lek (~ 13.21 Mio Euro). |

In 2009 the general state budget of Albania amounts to 259.003 million Lek<sup>8</sup> (~2.5 Billion Lek = 2.088.733.870 Euro). Out of that 1.638.350.000 Lek (~13.212.500 Euro) are foreseen for the **court budget**<sup>9</sup>, which is only **0,6 % of the total state budget**.

In 2004 Albania spent 10.486.065 Euro on the courts (without the prosecution and legal aid), which amounted to 0,18% of the per capita GDP and to 0,14% of the annual gross average salary per inhabitant. The annual gross average salary in 2004 was 2440 Euro and the state expenditures on the courts of Albania per each inhabitant amounted to 3,4 Euro. In 2003 the public state budget allocated to all courts was 7.949.276 Euro<sup>10</sup>.

130.550 Euro were spent in 2004 from the public state budget on **legal aid**, which amounted to a legal aid expenditure of 0,043 Euro per inhabitant. This was equivalent to an annual public legal aid budget of 0,002% of the per capita GDP or 0.002% of the annual gross average salary<sup>11</sup>. For 2006 unfortunately no such data at all has been reported by Albania to the Council of Europe<sup>12</sup>.

A **court fee income** was generated by the courts by levying stamp fees and taxes, which amounted

in 2008 to 119.361.442 lek (~978.372 Euro) (= 9.15% of the court budget)

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<sup>8</sup> See Law on the State Budget for 2009, No. 10025 dated 27.11.2008

<sup>9</sup> See statistics provided by the Office for the Judicial Budget (there is a slight difference of the two budget figures for the court budget in 2009 which may be explained by one of the figures just being a draft).

<sup>10</sup> European Commission for the Efficiency of Justice (CEPEJ), Pilot Scheme for Evaluating Judicial Systems, Country Answers, Albania 2004, page 7

([www.coe.int/t/dg1/legalcooperation/cepej/evaluation/2002Albanie.pdf](http://www.coe.int/t/dg1/legalcooperation/cepej/evaluation/2002Albanie.pdf))

<sup>11</sup> See for all these figures on the court budget expenditures: Council of Europe, European Commission for the Efficiency of Justice (CEPEJ), European Judicial Systems, Edition 2006, based on data of 2004, pages 14 and 20 – 37 ([www.coe.int/t/dg1/legalcooperation/cepej/evaluation/2006/CEPEJ\\_2006\\_eng.pdf](http://www.coe.int/t/dg1/legalcooperation/cepej/evaluation/2006/CEPEJ_2006_eng.pdf))

<sup>12</sup> Council of Europe, European Commission for the Efficiency of Justice (CEPEJ), European Judicial Systems, Edition 2008, based on data of 2006, pages 15 ([www.coe.int/t/dg1/legalcooperation/cepej/evaluation/default\\_en.asp](http://www.coe.int/t/dg1/legalcooperation/cepej/evaluation/default_en.asp))

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in 2007 to of 155.253.509 lek (~1.272.569 Euro)<sup>13</sup> (=12,24% of the court budget<sup>14</sup>).

This statistical budgetary overview shows, that the Albanian state only spends a very small share (0.6%) of its total budget on the courts and even less so on the legal aid although there is a clear obligation of every state to provide sufficient means to deliver justice in a proper way. It would be desirable that the expenditures on the courts in the future reach a level of around 1% of the total state budget. Interestingly an amount equivalent of around **10 % of the court budget has been recovered by the court fee income**, which however does not go directly into the court budget, which is administered by the Office for the Judicial Budget but goes directly by 100% into the general state budget. This could be changed in the future as well.

### 2.3. Socioeconomic Background

Reliable data for Albania are difficult to obtain. But the following data at least provide some basic information which give a more or less clear picture of the situation:

- Below the national **poverty line**<sup>15</sup> lived

in 2002 around 25,5% of the Albanian population and

in 2005 around 18.5% of the population.

- The annual per **capita GDP** was .

in 1998 721 Euro ; in 1999 951 Euro<sup>16</sup>; in 2000 1290 Euro;

in 2001 1482 Euro; in 2002 1525 Euro; in 2003 1627 Euro

in 2004 1920 Euro<sup>17</sup> ;in 2005 2093 Euro; in 2006 2299 Euro<sup>18</sup>

in 2007 3290 USD<sup>19</sup>(=2819 Euro). This is a growth of 400 % in 9 years.

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<sup>13</sup> These figures were provided by the Office of the Administration of the Judicial Budget

<sup>14</sup> Lower figure for 2008 because court fees have not been charged anymore since the new tax law

<sup>15</sup> See: World Bank, Country Brief 2008 ([www.worldbank.org/al](http://www.worldbank.org/al) click on "overview" >country brief)

<sup>16</sup> 951 Eur/annually~ 80 Eur/month, which was at this time equal to 13.261 Lek

<sup>17</sup> CEPEJ - 10.9.2006, Answers to the Revised Scheme for Evaluating Judicial Systems, 2004 Data, Answers by Albania, page 2

([www.coe.int/t/dg1/legalcooperation/cepej/evaluation/2006/Albania.PDF](http://www.coe.int/t/dg1/legalcooperation/cepej/evaluation/2006/Albania.PDF))

<sup>18</sup> See for all the years from 1998 – 2006: Commission of the European Communities, Brussels 5.11.2008 – SEC (2008) 2692 final, Albania 2008 Progress Report, page 51

([www.delalb.ec.europa.eu/files/albania\\_progress\\_report\\_2008.pdf](http://www.delalb.ec.europa.eu/files/albania_progress_report_2008.pdf))

<sup>19</sup> World Bank, Albania at a Glance, 24.9.2008 ([http://devdata.worldbank.org/AAG/alb\\_aag.pdf](http://devdata.worldbank.org/AAG/alb_aag.pdf))

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- The **gross annual average salary** was

in 2003 2040 Euro (~170 Euro/month)<sup>20</sup>.

In 2004 this salary in the public sector was 2440 Euro (~ 200 Euro/month)<sup>21</sup>.

In 2006 the Gross Average Annual Salary or Wages for various labor categories according to the World Bank<sup>22</sup> amounted to:

13.538 USD (~ 1132 USD/month= 956 Euro) for management work,

8.123 USD (~676,9 USD/month = 570 Euro) for professional work,

6.497 USD (~ 541 USD/month= 456 Euro) for technical work,

3.569 USD (~297 USD/month= 250 Euro) for skilled labor and

2.215 USD (~184 USD/month = 155 Euro)<sup>20</sup> for unskilled labor.

In 2007 the average per capita income was around 22% of the EU27-average<sup>23</sup>.

That means the average salary grew since 2003 by 47%.

- The **National Minimum Wage** was fixed by a decree of the Council of Ministers<sup>24</sup>

for 2004 on 10.800 lek/month

for 2005 on 11.800 lek/month

for 2006 on 14.000 lek/month<sup>25</sup>

for 2008 on 17.000 lek/month (~139 Euro/month)<sup>26</sup>.

So since 2004 the minimum wages were increased by 57%.

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<sup>20</sup> European Commission for the Efficiency of Justice (CEPEJ), Pilot Scheme for Evaluating Judicial Systems, Country Answers, Albania 2004, page 2

([www.coe.int/t/dg1/legalcooperation/cepej/evaluation/2002Albanie.pdf](http://www.coe.int/t/dg1/legalcooperation/cepej/evaluation/2002Albanie.pdf))

<sup>21</sup> See above footnote Nr.11

<sup>22</sup> World Bank, Albania- Urban Growth, Migration and Poverty Reduction – A Poverty Assessment, 3. December 2007, Chapter 1: Growth Poverty and Inequality, page 4, 1.9

([www.worldbank.org.al](http://www.worldbank.org.al) > publication and reports )

<sup>23</sup> See: Commission of the European Communities, Brussels 5.11.2008 – SEC (2008) 2692 final, Albania 2008 Progress Report, page 19 ([www.delalb.ec.europa.eu/files/albania\\_progress\\_report\\_2008.pdf](http://www.delalb.ec.europa.eu/files/albania_progress_report_2008.pdf))

<sup>24</sup> See: NATLEX information on Albania,

([www.ilo.org/dyn/natlex/natlex\\_browse.details?p\\_lang=en&p\\_country=ALB&p\\_classification=12.02&p\\_origin=COUNTRY&p\\_sortby=SORTBY\\_COUNTRY](http://www.ilo.org/dyn/natlex/natlex_browse.details?p_lang=en&p_country=ALB&p_classification=12.02&p_origin=COUNTRY&p_sortby=SORTBY_COUNTRY))

<sup>25</sup> See: ILO, Minimum Wages,

([www.ilo.org/travail/database/servlet/minimumwages?pageClass=org.ilo.legislation.work.web.CategorySearchPage](http://www.ilo.org/travail/database/servlet/minimumwages?pageClass=org.ilo.legislation.work.web.CategorySearchPage))

<sup>26</sup> See: Vendim Nr.235, dated 27.2.2008, find by typing the date into the search mask on:

[www.km.gov.al/?fg=brenda&m=news&lid=8678](http://www.km.gov.al/?fg=brenda&m=news&lid=8678)

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- The **standard of living** developed as follows<sup>27</sup>:

Measured by the number of passenger cars per 1000 inhabitants:

1998 (27,1); 1999 (27,3); 2000 (37,4); 2001 (43,6); 2002 (48,2);  
2003 (56,4); 2004 (60,9); 2005 (62,2); 2006 (71,4). This amounts to an  
increase by 163%

Measured by subscriptions to mobile phone services per 1000 inhabitants:

2001 (120,8); 2002 (259,4); 2003 (370,6); 2004 (403,6); 2005 (488,0);  
2006 (561,7). That is an increase by 364%.

- The **inflation rate** ranged around 3% in the years between 2001 and 2007<sup>28</sup>.

1998 – (8.7 %); 1999 – ( 1,0%); 2000 – (4,2 %); 2001 – (3,5%)  
2002 – (1,7%); 2003 – (3,3 %); 2004 – (2,2%); 2005 – (2,0%);  
2006 – (2,5 %); 2007 – ( 3,1%).

So since the end of 1998 prices went up by 23,5%.

These figures show that Albania is still a very poor country with a high percentage of people living in poverty. However minimum wages and average salaries have steadily grown and the inflation rate of around 3% runs on a relatively low and stable level. The standard of living has obviously grown at least for some significant parts of society.

- **Economic sectors, employment, productivity**

The statistical unemployment rate is around 13%. Around one third of Albanians want to emigrate according to the latest survey, because they obviously do not see prospects for a good economical future in their country. Two fifths (42%) of Albanians already have relatives and family members living abroad<sup>29</sup>. Due to this fact large scale remittances inflows amount to 12% of the Albanian GDP. Public investments concentrated on road construction and on the energy sector. The agriculture sector remains the biggest

<sup>27</sup> See: Commission of the European Communities, Brussels 5.11.2008 – SEC (2008) 2692 final, Albania 2008 Progress Report, page 51 ([www.delalb.ec.europa.eu/files/albania\\_progress\\_report\\_2008.pdf](http://www.delalb.ec.europa.eu/files/albania_progress_report_2008.pdf))

<sup>28</sup> See: -World Bank, Country Brief 2008 ([www.worldbank.org/al](http://www.worldbank.org/al) click on "overview" >country brief)  
-World Bank, Albania at a Glance, 24.9.2008 ([http://devdata.worldbank.org/AAG/alb\\_aag.pdf](http://devdata.worldbank.org/AAG/alb_aag.pdf))  
and in detail for the named years: Commission of the European Communities, Brussels 5.11.2008 – SEC (2008) 2692 final, Albania 2008 Progress Report, page 51  
([www.delalb.ec.europa.eu/files/albania\\_progress\\_report\\_2008.pdf](http://www.delalb.ec.europa.eu/files/albania_progress_report_2008.pdf))

<sup>29</sup> See Gallup, Balkan Monitor – Insights and Perceptions: Voices of the Balkans, 2008, Analytical Report, pages 51, 53 ([www.balkan-monitor.eu/files/BalkanMonitor-2008\\_Analytical\\_Report.pdf](http://www.balkan-monitor.eu/files/BalkanMonitor-2008_Analytical_Report.pdf))

employer, with 58% of the total employed, but contributing only 20.7 % of the GDP. The industrial sector is very small just producing a 9.7 % share of the total GDP. The construction sector however provides 14.3% of the GDP and the biggest part (55.3%) of the GDP is contributed by the service sector (including telecommunications and banking etc.)<sup>30</sup>.

Although this shows, that a majority of the Albanians work in the less productive agricultural sector and the degree of industrialization is very low with a respectively low number of industrial workers, this overview also shows, that some sectors like construction or services do exist, which contribute strongly to the economy. Especially in urban areas like Tirana and Durres with more than 30 % of all Albanians living there, enterprises and economic activity like construction, services etc. do exist, that provide stronger economic input. Construction activities fueled by remittances and foreign aid as well but also commercial activities like trade and banking as well as communications seem to be sectors that are developed and economically sound enough that actors can be considered to be generally able to afford paying court fees in case legal disputes arise in these fields. Especially immovable property disputes but also commercial disputes seem to be such legal fields.

#### 2.4. Publicly declared Political Goals

The Albanian Government has publicly declared its commitment to launch all the essential reforms to guarantee a fair legal process for each citizen, “**easy access to justice**”, and “justice and equality before the law for all citizen” as part of some of the most fundamental guarantees it wants to ensure. Furthermore it has declared the strengthening of the self administration of the judiciary and the “**improvement of the working conditions and of the facilities of the judiciary**” to be one of its important political goals<sup>31</sup>.

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<sup>30</sup> Commission of the European Communities, Brussels 5.11.2008 – SEC (2008) 2692 final, Albania 2008 Progress Report, pages 19,20,33,24 and statistical annex ([www.delalb.ec.europa.eu/files/albania\\_progress\\_report\\_2008.pdf](http://www.delalb.ec.europa.eu/files/albania_progress_report_2008.pdf))

<sup>31</sup> See Government Program for 2005 – 2009, presented to the Albanian Parliament on 8.9.2005, pages 8,9 and 13 (<http://mfa.gov.al/web/pub/programien2100.pdf>)

An “Orientation Document on Issues of Strategic Reforms in the Judiciary”<sup>32</sup>, which was presented to the Albanian Parliament in April 2007 by the former Albanian President (Moisiu) as Chairman of the High Council of Justice calls the creation of a legal aid system one of its main goals of judicial reform<sup>33</sup>, to enable “those, who do not have the economic possibilities or are in social, cultural, family and health circumstances making it impossible for them to afford the expenses of a judicial proceeding” and who feel “unequal in relation to others” in the right to seek and obtain a fair trial. Additionally these Strategic Reform Plans for the Judiciary emphasize the importance of an **independent budget for the judiciary** and the self-administration of that budget by the judiciary<sup>34</sup>.

These different topics already show that a reform of the court fee system can not be treated as an isolated topic. Court fees and legal aid are both intertwined. On the one hand court fees could be considerably high as long as a well functioning legal aid system still enables the poor to afford these high fees if their right to equal access to justice shall not be hampered compared with their financially well off co-citizens. On the other hand in a basically poor country, with a high percentage of people, who cannot afford court fees, these fees should itself not be too high, because only that way an overburdening of the limited legal aid structures with too high a number of applicants can be avoided. In other words the need to grant legal aid should normally be an exception and not the rule.

### **3. Limitations to a Court Fee System set by the Guarantee of Access to Justice (Art.6 ECHR)**

#### **3.1 The Principle of Access to Justice in General**

The guarantee of access to justice simply means that the existing barriers for filing a claim with a court shall never be so high that someone, who truly has a legitimate interest, refrains from exercising his right to file a claim and seek the help of the state courts to realize his rights and lawful claims. The doors to justice shall not be closed in particular for the poor, the disabled, the uninformed, minors, or the members of discriminated minorities.

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<sup>32</sup> Translated by EURALIUS in April 2007 EURALIUS, Recommendation on Improving inter-institutional dialogue within the Albanian Justice System, page 3

[www.euralius.org.al/reccomendations/eng/Microsoft Word Rec on Inter Inst Dialogue Eng.pd](http://www.euralius.org.al/reccomendations/eng/Microsoft Word Rec on Inter Inst Dialogue Eng.pd)

<sup>33</sup> See footnote 25, part XII.3 ë, page 72 of the document

<sup>34</sup> See footnote 25, Part IX pages 49 - 52

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Regarding this **accessibility** there are **different factors**, which make it more easy or more difficult to open the door to justice and thus influence the decision of citizens to initiate a legal proceeding at a court or not.

One is, how urgent legal help by the courts is needed, that means what is at stake for the potential claimant. Another factor is, how informed the citizens are about the legal proceedings and how transparent the justice system and in particular the court fee system is for them. The decision to go to court is also influenced by the foreseeable length of the proceedings. And of course one of the most decisive factors is how much it will cost to have a legal proceeding initiated, run and concluded at the court. This cost factor depends on the one hand on the question, whether legal representation by a lawyer is prescribed by the law and on the lawyers fees, which are usually far higher than the court fees and on the lawyer fee structure (for example the question, if contingency fees are allowed by a law system or not). On the other hand the court fees of course have a major influence. In this context it is also a decisive issue, how these costs could probably be avoided or at least mitigated for example by a legal aid scheme or by a litigation insurance. Finally the question arises, if apart from filing a claim at the court there are any other ways offered to solve the legal conflict, like alternative dispute resolution institutions, free legal advice and/or mediation by legal clinics, pro bono activities of lawyers, NGOs or public interest lawyering for example by consumer protection organizations<sup>35</sup>.

So the influence of court fees on the access to justice can not be considered without taking these other factor into account.

In the end it turns out that designing a court fee system has inevitably to balance the private benefits with the public benefits of providing a court system to solve conflicts between citizens. On the one side the state allocates public budget means to the courts and subsidizes the court system because the state is benefiting from the social peace it

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<sup>35</sup> For a detailed comparative study on these factors with a worldwide scope see the interesting in depth analysis: Ugo Mattei, Access to Justice – A Renewed Global Issue ?, vol. 11.3 Electronic Journal of Comparative Law, December 2007 ( [www.ejcl.org/113/article113-14.pdf](http://www.ejcl.org/113/article113-14.pdf) ).

For further reading on these factors and especially on the legal aid schemes in different European countries: European Commission for the Efficiency (CEPEJ), Study No. 9, Access to Justice in Europe, especially pages 21, 23, 30, 56 – 81, 97 ( [www.coe.int/t/dg1/legalcooperation/cepej/series/Etudes9Acces\\_en.pdf](http://www.coe.int/t/dg1/legalcooperation/cepej/series/Etudes9Acces_en.pdf) ).

For a European analysis of the above named factors on the decision of citizens to go to court: European Commission, Eurobarometer 195, Die Buerger der Europaeischen Union und der Zugang zur Justiz, October 2004, pages 13, 14, 20 (only in German Language), ([http://ec.europa.eu/consumers/redress/reports\\_studies/execsum\\_11-04\\_de.pdf](http://ec.europa.eu/consumers/redress/reports_studies/execsum_11-04_de.pdf))

restores. On the other side there is the private interest of the plaintiff, who to a certain degree can and needs to be asked to contribute to the court system by paying court fees, thus allowing the state to fully or partly recover the costs for running the court system.

### 3.2. Judicature on Court Fees and the Guarantee of Access to Justice

When designing a court fee system all these factors and deliberations have to be taken into account. But there still remains a **wide margin of discretion for the lawmaker** or the respective national organization, which finally determines the court fee schedules. Looking into the jurisdiction of the German and of the European Court of Human Rights provides a clearer picture of what this means in detail:

The **German Constitutional Court**<sup>36</sup> for example has ruled continuously that a court fee system must respect the principle of equal justice under law and of proportionality and therefore has to stagger the different fees according to the different extent of action provided by the court and according to the different value of the claim at stake. But apart from that it is at the discretion of the lawmaker to determine the details of such a system.

But the obligation of the lawmaker to respect the principles of equality and of proportionality finds its limits in the principles of practicability, feasibility and economic efficiency. This means distinctions do not have to be made beyond a meaningful degree. Furthermore the lawmaker can decide, that the court fee system shall achieve a full or partial cost recovery. Additionally the court fee system may pursue the goal to steer the behaviour of plaintiffs to a certain extent, for example to prevent plaintiffs to address the second tier of the courts although the sum at stake is of only small value.

The reason for this significant degree of discretion is, that the general guarantee of equal access to justice does only provide some very basic guidelines and limitations. This basic principle does not in detail prescribe what court fee system to choose out of a whole variety of different imaginable systems.

Therefore the **European Court of Human Rights** has only in a few extreme cases ever decided, that a certain national court fee was so excessively high, that it amounted to a

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<sup>36</sup> German Constitutional Court, Decision 1 BvL 9/98, dated 25.8.1999, [www.bundesverfassungsgericht.de/entscheidungen/lk19990825\\_1bvl000998.html](http://www.bundesverfassungsgericht.de/entscheidungen/lk19990825_1bvl000998.html)

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violation of the guarantee of access to justice as enshrined in Art.6 of the European Convention on Human Rights (ECHR), because it actually rendered it impossible for the affected citizen to achieve access to the court proceedings. Case law examples for that jurisdiction are briefly reported in the following text.

In general the European Court of Human Rights<sup>37</sup> has reiterated continuously that, the “right to a court” enshrined in Art.6 ECHR is not absolute. It may be subject to limitations permitted by implication because the right of access by its very nature calls for regulation by the state. Guaranteeing the effective right of access Art.6/1 ECHR leaves the state a free choice of the means to be used towards this end, while the Council of Europe member states enjoy a certain margin of appreciation in that respect, the ultimate decision as to the observance of the Convention’s requirements rests with the European Court of Human Rights. In this respect the Court has ruled that a restriction placed on access to a court will not be compatible with Art.6/1 ECHR unless it pursues a legitimate aim and there is a reasonable relationship of proportionality between the means employed and the legitimate aim sought to be achieved. A financial limitation may for example be imposed in the interests of a fair administration of justice. In the past the Court has held that the mere requirement to pay court fees to civil courts cannot be regarded to be incompatible per se with Art.6/1 ECHR if they are levied in connection with the claims which the courts are asked to determine.

However the amount of the fees must be assessed in the light of the particular circumstances of a given case. The applicants ability to pay the fees and the phase of the proceedings in which that restriction has been imposed, are factors which are material in assessing whether or not a person enjoyed the right of access<sup>38</sup>.

The Court held, that it constituted in particular an excessive burden on the applicants that they were denied legal aid although the court fee required was four times as high as the monthly minimum wage and they did have no income. It ruled that the mere fact that the applicants were represented by a lawyer could not have been interpreted by the national courts as a proof that they on the contrary had money, because it was undisputed, that the lawyer had an agreement, that he would work for free for them and

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<sup>37</sup> Find the respective decisions quoted in the text below the Courts homepage at the HUDOC Database: [www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/](http://www.echr.coe.int/ECHR/EN/Header/Case-Law/HUDOC/HUDOC+database/)

<sup>38</sup> Judgement, 17.7.2007, Section II, No.99, Application No.52658/99 (Mehmet and Suna YIGIT vs. Turkey

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that only in case of a success he would be paid a certain percentage of the acquired compensations sum at the end of the proceeding<sup>39</sup>.

The European Court of Human Rights has called it a legitimate goal to levy court fees to protect the legal system against being used to pursue unfounded claims. But the court ruled, that it amounts to an excessive burden violating the access to justice to ask plaintiffs to pay court fees to initiate the legal proceeding, which are twice as high as the monthly minimum wage, although they did not have any money and had been refused legal aid based merely on the fact, that they were represented by a lawyer<sup>40</sup>.

In another decision the court ruled, that it is not legitimate, if a court fee system follows only interests of a purely financial nature unrelated to the merits of the claim or the prospect of its success. So it is not a legitimate interest if the state levies court fees for the sole interest to generate an income for the state budget. The blunt refusal of court fee exemption without taking into account the insolvency of the plaintiff cannot be justified. When deciding about a court fee exemption it is arbitrary to look only into the earnings of the plaintiff without looking into his debts and expenditures as well. Merely hypothetical assumptions instead of facts are not sufficient to support the view that the plaintiff can afford to pay the court fees, but a verification of this assumption by the state can be claimed<sup>41</sup>.

The court also held that it is a legitimate aim to levy court fees for funding the judicial system and to deter frivolous claims. For the purpose to simplify the proceedings court fees can be imposed in form of a certain percentage of the part of the claim that has finally been dismissed by the court decision. In this case the court fees are not levied in advance as a prerequisite for the initiation of the court proceeding but subsequently after the court decision has been made. Nevertheless it amounts to an excessive burden, which violates the right of access to justice if such a court fee in effect consumes the sum granted to the plaintiff by the court decision. In such a case the right to a court would be not practical and effective any more, because it is paradox if the state by imposing taxes takes away with one hand what it has awarded with the other hand by the court decision.

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<sup>39</sup> See footnote above (Yigit case)

<sup>40</sup> Judgement, 12.7.2007, Section II, Application No.50939/99 (Bakan vs. Turkey).

<sup>41</sup> Judgement, 31.7.2007, Section II, Application No. 38736/04 (Mretebi vs. Georgia)

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In this decided case a fixed and inflexible court fee regulation on just a fixed percentage was in place that left no discretion to the courts which imposed the fees thus rendering them unable to take into consideration the nature of the claim and the potential outcome of the awarded sum after the deduction of the fees. A percentage of 4% of the claim was assessed by the court as “relatively high”<sup>42</sup>.

The imposition of an obligation to pay the expenses in order to have an already positively delivered judgment enforced constituted a restriction of a purely financial nature and therefore called for a particularly rigorous scrutiny from the point of view of the interest of justice. Therefore it constitutes an excessive burden and illegitimate restriction to the right of access to a court which impairs the very essence of this right, if the state asks for preliminary advance payment of the expenses for the enforcement of a judgment without taking into account the financial situation of the creditor and his proven inability to bear these advance costs, if he on the other hand is prepared to pay the fee after enforcement (7% of the recovered sum)<sup>43</sup>.

The obligation to pay a court fee can constitute an excessive burden, which violates the access to justice granted by Art.6 ECHR, if this court fee is imposed on the plaintiff at an initial stage of the proceeding and the fee is fixed as a set percentage of the filed claim (1,09% in the decided case) without leaving any flexibility or discretion to the court to lower it under certain circumstances. This is the case when the amount of the fee is so high, that an ordinary litigant is not able to pay it in advance and is therefore implicitly forced to abandon his claim he had envisaged to file with the court. In the given case the plaintiff had to refrain from filing a claim for damages (3.000.000 Euro) because he could not afford the payment of 1,0 % of that sum in advance (30.000 Euro) and was not granted an exemption, a reduction or a payment by installments although the Stamp Duty Act provided such mitigations of the burden. The court held that court fees can be in general proportional to the amounts claimed, but that in the given case the state had not struck a fair balance between, on the one hand, the state's right to recover procedural costs and, on the other, the interest of the plaintiff in having his claim examined by the court<sup>44</sup>.

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<sup>42</sup> Judgement 12.7.2007, Section V, Application No. 68490/01, (Stankov vs. Bulgaria)

<sup>43</sup> Judgement 28.11.2006, Section II, Application No. 40765/02 (Apostol vs. Georgia)

<sup>44</sup> Judgement 24.5.2006, Section III, Application No. 63945/00 (Weissman and others vs. Romania)

If a court fee is required in advance and amounts to four times the monthly earnings of the claimant the refusal to grant an exemption or reduction of the fee violates Art.6 as this is a disproportionate restriction of the access to court<sup>45</sup>.

The same is true even more so, if the amount of the claimed court fee is equal to the average annual salary and the refusal of an exemption from the court fees or a reduction of these fees is only based on the mere assumption, that the plaintiff is a businessman and should have foreseen the possible need of litigation and secured in advance sufficient funds for court fees when conducting business. The court held that in this case the state should have taken into account that the plaintiff lived only on his savings, had already lost significant sums and proved that he did not have the means to pay the court fees (the claim was 5.850 Billion Polish Zloty, the usual court fee would have been 308 Mio. Polish Zloty and had already been reduced to 100 Mio. Polish Zloty but was still regarded as being too high, because that amounted to an average annual income)<sup>46</sup>.

This jurisdiction of the European Court of Human Rights shows, that court fees are especially questionable, if they are asked for in advance, if they amount to considerable high sums (several times the monthly minimum wage or even an average annual salary), if the claimant is in fact unable to pay them in advance and if an exemption, reduction or installment payment is not granted at all or if a refusal of such a decision is only based on vague theoretical assumptions without taking into account the real situation.

In general, though, court fees as such do not constitute a violation of the granted right of access to justice. The court fee system can follow legitimate goals such as seeking cost recovery for the state budget, deterring frivolous or illfounded claims. The pursuance of mere financial goals however is not sufficient to justify a court fee system.

## **4. Overview on different European Court Fee Systems and Models**

### **4.1. Court Fee Systems in General: Cost Recovery at various Degrees**

Within the limits drawn by the guarantee of access to justice (Art.6 ECHR) a wide range of different models exists in the various member states of the Council of Europe.

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<sup>45</sup> Judgement 6.9.2007, Section II, Application No. 73002/01 (Kijewska vs. Poland)

<sup>46</sup> Judgement 19.6.2001, Section I, Application 28249/95, (Kreuz vs. Poland).

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Only a few countries do not levy court fees at all (France, Spain, Luxembourg, Montenegro, Monaco and in the past the Ukraine as well)<sup>47</sup>.

All the other countries do have court fee systems requiring litigants to pay court fees or a tax to initiate a proceeding for other than criminal cases. The income acquired by the court fees usually contributes to the state budget and tends to provide at least a partial recovery of the costs of the court system. In the majority of states however, where court fees are applied, the income is not “earmarked” for the payment of the costs related to the operation of courts but is defined as general income for the state or regional budget<sup>48</sup>. In some countries the level of the fees is directly related and connected to the operational costs of the court proceedings (for example in the UK). In some other countries (like for example Italy and the Netherlands) a substantial amount of the court fee revenue is received from fees paid to initiate proceedings, which requires that the level of the fee itself must not be too high in order to avoid problems with the access to justice<sup>49</sup>.

The extent to which the acquired court fees contribute to the court budget is however quite different. There are some countries in which the share of court fees or court taxes amounts to a considerable percentage of the budget allocated by the state to the courts<sup>50</sup>. Austria has an even higher revenue of court fees than expenditures for its courts (107 %). Economically weak formerly communist countries show the highest degree of cost recovery by court fees amounting to more than 60% (Moldova: 69,6%; Romania: 67,2%). Countries as different as Serbia and Germany do recover more than 40% of their expenditures for the court budget (Turkey: 53,4%; Serbia: 47,1%; Germany: 45,6 %; Macedonia: 40,1%; UK-England/Wales: 44,6 %). The percentage of cost recovery runs around 30 % in some other countries (Bosnia/Herzegovina: 36,3%; Bulgaria: 34,3%; Latvia: 28,5%; Poland: 30%; Slovakia: 34,1%; Denmark: 28%; Slovenia: 25,8%). The recovery rate ranges between 10% and 20 % in quite a number of states (Croatia:11,4%, Estonia: 14,25%; Finland:14,9%; Georgia: 13,4%; Ireland: 11,3 %; Norway:11,3%; Portugal: 17,5%; Switzerland:13,2% and Scotland:19,8%). Only in a

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<sup>47</sup> Council of Europe, European Commission for the Efficiency of Justice (CEPEJ): European Judicial Systems, Edition 2008 (data 2006), page 59 (<https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=1041073&SecMode=1&DocId=1314568&Usage=2>)

<sup>48</sup> See footnote above page 54,55

<sup>49</sup> See footnote above page 59

<sup>50</sup> See footnote 47 page 58, 59

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few countries the percentage is lower than 10% (UK-Northern-Ireland:8,1%; Sweden:0,8%; Lithuania:7,0%; Italy: 8,3%; Czech Republic: 1,0%; Belgium: 3,8% and Azerbaijan:2,0%).

The high degree of cost recovery can in some countries (e.g. Austria) be explained by the fact that the courts do run the business- and also the land registers and fees levied in that context are usually high due to the high commercial values of such registration objects as business companies or immovable property. The high degree of costs recovery can in some cases additionally be explained with certain circumstances, which enable the courts to keep costs low. Court systems are able to reduce costs, if they show a high degree of specialization and large numbers of standardized cases (like family law matters, payment orders, enforcement orders etc.), which can be handled by specialized court clerks (“Rechtspfleger”)<sup>51</sup>.

While in 25 European countries litigation insurance does exist, it does not exist in 21 other European countries. Especially a lot of former communist states do not have a private system of litigation expense insurance enabling individuals to finance court proceedings (Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, Czech Republic, Latvia, Moldova, Montenegro, Poland, Romania, Russian Federation, Serbia, Slovakia, Macedonia, Ukraine). But other states like Greece, Turkey, Malta and Monaco as well do not have such insurances<sup>52</sup>.

Nearly all countries grant legal aid in criminal matters. Only a slightly smaller number of states grants legal aid in non-criminal cases too. The amount of money spent on the legal aid system varies significantly as well as the conditions for being granted this type of state subsidized help<sup>53</sup>.

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<sup>51</sup> See footnote 47 page 57, 58

<sup>52</sup> See footnote 47, pages 54 – 57. For an overview on litigation insurance systems throughout the world see as well Ugo Mattei, Access to Justice ?, ([www.ejcl.org/113/article113-14.pdf](http://www.ejcl.org/113/article113-14.pdf)): pages 12, 13, showing that such insurances are very popular and broadly used in Germany, Netherlands and Sweden.

For further information on such insurance issues see European Commission, Eurobarometer 195, Die Bürger der Europäischen Union und der Zugang zur Justiz, October 2004, pages 13, 14, 20 (only in German Language), page 15 ([http://ec.europa.eu/consumers/redress/reports\\_studies/execsum\\_11-04\\_de.pdf](http://ec.europa.eu/consumers/redress/reports_studies/execsum_11-04_de.pdf)) : Around 30% of the citizen in Luxembourg, Austria, Netherlands, Sweden, Germany, Denmark and Finland do have an insurance covering litigation costs in case of legal disputes on malfunctioning, maldelivery of goods and services, while more than 90% of the Italians, Irish, Spanish, Greek and Portuguese do not have such an insurance.

<sup>53</sup> See footnote 47, pages 48 - 53 , For a detailed overview on different legal aid systems throughout the world see as well Ugo Mattei, Access to Justice ?, see above footnote 33, pages 13, 14, 20 - 24

### 4.2. Basic Types and Structural Characteristics of European Court Fee Systems

As data and facts are difficult to obtain it is not possible to describe in detail all the different court fee systems of those European countries which levy court fees. Some details of court fee systems for different European countries however can be found on the website of the Council of Europe: European Judicial Network in Civil and Commercial Matters<sup>54</sup>, which for each country provides answers on a lot of questions, a potential litigant might have, such as for example, whether legal aid is granted and under what conditions or how a case or a small claim is to be brought to court. A short overview on the court fees in 9 different countries in case of a claim against a state for damages under state responsibility can be found in one of the European Court of Human Rights decisions on access to justice<sup>55</sup>. And finally there is a comparative in-depth study by a research team of a Dutch university, which shows the various topics being taken into account by different European court fee systems and the main characteristics of these systems<sup>56</sup>.

The Dutch study has carved out some of the basic structural characteristics and has listed up a set of features, one can have a look at, when comparing different court fee systems. These features are<sup>57</sup>:

- **Goals of the court fee system:**

Full cost recovery, reallocation of means,

The way a court fee system is used as an instrument of judicial policy by promoting or discouraging procedural choices.

- **Basis on which court fee rates are fixed:**

-Type of filed claim

-Quality of litigation party (type of claimant)

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<sup>54</sup> [http://ec.europa.eu/civiljustice/index\\_en.htm](http://ec.europa.eu/civiljustice/index_en.htm)

<sup>55</sup> Judgement 12.7.2007, Section V, Application No. 68490/01, (Stankov vs. Bulgaria), part III, A. –I.

<sup>56</sup> Faure / Moerland, Law Faculty University Maastricht: Court Fees – A Comparative Description of Court Fee Systems in Some Member States of the European Union, 2006, (in Dutch language but with an English Language Summary and Questionnaire), (<http://english.wodc.nl/onderzoeksdatabase/rechtsvergelijkend-onderzoek-griffierechten.aspx>). The complete text of the text in Dutch language including the English summary and questionnaire can be found at <http://wodc.nl/onderzoeksdatabase/rechtsvergelijkend-onderzoek-griffierechten.aspx> > see here under "Bijlagen" > "ob volledige text"

<sup>57</sup> See the Dutch study, footnote 56, page 137, 138

- Value of the claim
- Cost of the judicial service provided
- Pluriformity or uniformity in respect of different kinds of procedures
  
- **The stage of the proceeding at which the fee is charged**
  - The moment the court fee is imposed (for example when filing the form, when commencing the proceedings, or a layered charging [building up of the fee as the case evolves – “pay as you go”-model] )
  - The procedural sanctions related to non-payment of the court fee
  - The ways rates are fixed in case of interim judgements or appeals
  
- **The party which is charged with the court fee**
  - The plaintiff is charged
  - The way how counterclaims, increases or reductions of the claim are treated
  - The relation between court fees and financial situation of the parties
  - The way undue hardship is dealt with (exemption, reduction, waiver, installment payment, after decision payment)

For the purpose of this study the most interesting feature is the basis on which the court fees are fixed. The study has examined 18 EU-member-states and shows the court fees for a “legal shopping basket”, which includes 4 different types of cases: a personal injury claim with a 50.000 Euro claim, a divorce case, a labour case involving dismissal and a claim for payment of wages and an administrative procedure concerning a complaint about a building license<sup>58</sup>:

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<sup>58</sup> See the Dutch study, footnote 56, page 136

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**Table s1 Court fee table in euros (2005)**

| Country          | Claim       |      |                            |                     |                  |
|------------------|-------------|------|----------------------------|---------------------|------------------|
|                  | € 50.000    | DIV  | DISM+<br>€ 3000 pm         | Building<br>licence | Exchange<br>rate |
| Netherlands      | 1,100+1,100 | 192  | 192                        | 141                 |                  |
| Belgium          | 82+5        | 82   | 35                         |                     |                  |
| Denmark          | 620         | 0    | 101 + 1,2%<br>of the claim | 0                   | 0.1334           |
| Germany          | 1,368       | 242  | 543                        | 121                 |                  |
| England & Wales  | 574+292     | 190  |                            | 73+263              | 1.4721           |
| Estonia          | 2,428       | 19   | 0                          | 1                   | 0.0639           |
| Finland          | 130         | 65   | 130                        | 80                  |                  |
| France           | 0           | 0    | 0                          | 0                   |                  |
| Greece           |             |      |                            | 50                  |                  |
| Italy            | 340         | 0    | 340                        | 340                 |                  |
| Latvia           | 422         | 14   | 0                          | 3                   | 0.2896           |
| Luxemburg        | 0           | 0    | 0                          | 0                   |                  |
| Northern Ireland | 204         | 226  | 204                        | 172                 | 1.4721           |
| Austria          | 1,082       | 79   |                            | 79                  |                  |
| Portugal         | 624         | <200 |                            | 0                   |                  |
| Scotland         | <1,000      | <500 | <1000                      | <500                | 1.4721           |
| Spain            | 0           | 0    | 0                          | 0                   |                  |
| Sweden           | 53          | 40   | 53                         | 0                   | 0.1054           |

This table shows, that distinctions are made between different types of cases. For case types with an obvious relation to social needs like the divorce cases and the labour cases in many countries court fees are not at all levied or only to a lower degree. This seems to be true in administrative cases as well.

The mentioned decision of the European Court<sup>59</sup> shows that in cases of claims against the state for damages under state responsibility the court fees are also considerably low or are not charged at all in order not to deter citizen from exercising their rights also in relations with the state authorities.

Regarding the absolute sum of the court fees charged for a regular civil case fees are very high in Scotland, England & Wales, Austria, Germany, Estonia and the Netherlands. In these countries the court fees amount to a percentage between 2 % and 3 % of the value of the filed claim (Netherlands: 2,2%; Germany: 2,7%; England &

<sup>59</sup> See footnote 55

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Wales: 1,6%;; Austria 2,1%; Scotland: 2%; Estonia with 4,8% is the exception). In the other countries the court fees are considerably lower. Some do charge fees that range around 1 % only (Denmark: 1,2%; Portugal: 1,2%) and some do charge fees with a percentage of the claimed value of less than 1 % (Northern Ireland: 0,4% ; Latvia: 0,8%; Italy: 0,68%; Finland:0,25%;).

The British Court fee tables give an example how this percentage can differ in relation with the absolute sum of the claimed value. The percentage ranges lower the higher the claimed value is. This flexible percentage rate ensures that fees do not at the end of the scale amount to absolute sums, which regular plaintiffs cannot afford to pay anymore.

The **German Court Fee Tariffs** for a regular civil claim for example show a higher percentage for lower claim values than for the higher ones. While the court fee for a claim of up to 300 Euro amounts to 25 Euro, which constitutes around 8% of the claim, the court fee for a claim of up to 500.000 Euro amounts to 2.956 Euro, which constitutes only 0,5% of the claim. (See the table next page with some exemplary percentage calculations for some claim values.)

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#### German Court Fee Table:

| <u>Value of the claim</u><br><u>up to Euro:</u> | <u>respective court fee</u><br><u>Euro:</u> | <u>Value of the claim</u><br><u>up to Euro:</u> | <u>respective court fee</u><br><u>in Euro:</u> |
|---|---|---|--|
| 300   | 25 (~8,3%)                                  | 40.000  | 398 (~0,9%)                                    |
| 600   | 35 (~5,8%)                                  | 45.000  | 427  |
| 900   | 45 (~5,0%)                                  | 50.000  | 456  |
| 1.200   | 55 (~4,5%)                                  | 65.000  | 556  |
| 1.500   | 65  | 80.000  | 656  |
| 2.000   | 73  | 95.000  | 756  |
| 2.500   | 81  | 110.000   | 856 (~0,7%)                                    |
| 3.000   | 89  | 125.000   | 956  |
| 3.500   | 97 (~2,7%)                                  | 140.000   | 1.056  |
| 4.000   | 105   | 155.000   | 1.156  |
| 4.500   | 113   | 170.000   | 1.256  |
| 5.000   | 121   | 185.000   | 1.356  |
| 6.000   | 136   | 200.000   | 1.456  |
| 7.000   | 151 (~2,1%)                                 | 230.000   | 1.606 (~0,69%)                                 |
| 8.000   | 166 (~2,0%)                                 | 260.000   | 1.756 (~0,6%)                                  |
| 9.000   | 181   | 290.000   | 1.906  |
| 10.000  | 196   | 320.000   | 2.056  |
| 13.000  | 219   | 350.000   | 2.206  |
| 16.000  | 242 (~1,5%)                                 | 380.000   | 2.356  |
| 19.000  | 265   | 410.000   | 2.506  |
| 22.000  | 288   | 440.000   | 2.656  |
| 25.000  | 311 (~1,2%)                                 | 470.000   | 2.806  |
| 30.000  | 340   | 500.000   | 2.956 (~0,5%)                                  |
| 35.000  | 369   |   |  |

According to the court fee system in Germany 1 court fee is claimed for initiating the proceeding and 1 for holding the trial and 1 for the final judgement. So regularly 3 fees are charged in advance. In case the claim is withdrawn or the proceedings end without trial and judgement but with an amicable agreement the number of court fees is respectively reduced and refunded. For preliminary injunctions or preliminary securing orders only ½ court fee is charged. So the tariffs reflect the amount of work done by the judiciary.

The **British Court Fee tables**<sup>60</sup> show a similar approach. Depending on the value of the claim there is no fixed percentage but a declining percentage for higher value claims.

<sup>60</sup> See Her Majesty's Court Service (hmcs), County Court Fees – from October 2007 ([www.unipol.leeds.ac.uk/Media/PDF/EX50.pdf](http://www.unipol.leeds.ac.uk/Media/PDF/EX50.pdf))

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The following table shows the fees that are charged for initiating a proceeding by filing a monetary claim. The percentages vary from 10% of the claim for the lowest claims value of up to 300 £ (~ 332,1 Euro) down to only 0,51% for the highest claim value of more than 300.000£ (~332.100 Euro). The exchange rate is presently 1.107 Euro for 1 £. So the absolute amount of fees to be paid ranges from 33,21 Euro to a maximum fee of 1.693 Euro.

|  |        |                |
|--|--------|----------------|
| up to £300   | £30    | = 10%          |
| £300.01 - £500   | £45    | = 15% - 9,0%   |
| £500.01 - £1,000   | £65    | = 13% - 6,5%   |
| £1,000.01 - £1,500   | £75    | = 7,5% - 5,0%  |
| £1,500.01 - £3,000   | £85    | = 5,6% - 2,8%  |
| £3,000.01 - £5,000   | £108   | = 3,6% - 2,1%  |
| £5,000.01 - £15,000  | £225   | = 3,6% - 2,8%  |
| £15,000.01 - £50,000   | £360   | = 4,5% - 1,5%  |
| £50,000.01 - £100,000  | £630   | = 2,4% - 0,7%  |
| £100,000.01 - £150,000   | £810   | = 1,2% - 0,6%  |
| £150,000.01 - £200,000   | £990   | = 0,6% - 0,4%  |
| £200,000.01 - £250,000   | £1,170 | = 0,5% - 0,4%  |
| £250,000.01 - £300,000   | £1,350 | = 0,54%- 0,45% |
| over £300,000 or for an unlimited amount   | £1,530 | = 0,51%        |
| To issue proceedings where your claim is for something other than money, including claims for possession | £150   |                |

The German Court fees as well as the British ones show, that in the lower part of the scale the steps between the different claim values are smaller than at the end of the scale. For example steps of 300 Euro each up to values of 1.500 Euro are followed by bigger steps of 500 Euro each up to values of 5000 Euro, while at the end steps go from 5000 Euro per next step up to 30.000 Euro for the last step. The more little steps are taken the more this benefits the plaintiffs with small claim values. While the percentage example of the British table shows that big steps show a significant difference of the percentage at the beginning and at the end of each step. For example for values between 500 £ and 1000£ the percentage ranges enormously from 13% to 6,5%.

The British Court Fee system then follows the principle of “Pay as you go”, which means, additionally to the initial fees further fees are charged according to the progress of the proceeding for the preparation of a hearing and for the hearing itself. The system also makes a distinction between small claim track cases and multi track cases, as well as fast track cases. To reward withdrawal of claims or outside court settlements of the conflict, in these cases fees are refunded to a varying degree depending on how many days in advance before the hearing the court is informed about this settlement and the discontinuation of the case. Additionally there are different fees for the appeals proceedings and for further activities of the court like copies of documents, enforcement orders, warrants etc. In family cases there are only fixed lump sums of court fees which are considerably low.

Court fee systems can be changed and court fees can be increased. The court fee systems in Denmark, England & Wales and Scotland for example have been changed in the last years<sup>61</sup>. Other countries have changed their systems too. An overview on the judicial systems in Europe shows, that for example Bosnia and Herzegovina has increased its court fees, Slovenia has modified court fees and Ukraine, which did not charge court fees so far, has introduced a draft law on court fees<sup>62</sup>. Any increase of court fees however bears the potential for a violation of Art.6 ECHR (access to justice) and can in specific cases cause a public outcry<sup>63</sup>. This has to be kept in mind, when thinking about an increase of court fees.

## 5. Conclusions and Recommendations for the Albanian Court Fee System

### 5.1. Initial Remarks

The previous court fee system in Albania, which has been abolished by the new tax law, was structured very simple, as it did not distinguish between many different case types or different types of judicial proceeding steps. The amount of court fees, which has

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<sup>61</sup> See the Dutch Study, footnote 56, page 136

<sup>62</sup> See CEPEJ (European Commission for the Efficiency of Justice), footnote 47, page 246, 247

<sup>63</sup> See for example on the drastic increase of court fees by up to 200% especially for claims and disputes that affect low income people most in England: “ Court fees increase for people struggling to pay council tax bills” ([www.dailymail.co.uk/news/article-1127116/Court-fees-increase-people-struggling-pay-council-tax-bills.html](http://www.dailymail.co.uk/news/article-1127116/Court-fees-increase-people-struggling-pay-council-tax-bills.html)).

See as well on the protest of four NGOs in Slovakia: “ Unreasonable high court fee – barrier in access to justice” ([www.viajuris.sk/english/view/clanok/unreasonably-high-court-fee-barrier-in-access-to-justice/](http://www.viajuris.sk/english/view/clanok/unreasonably-high-court-fee-barrier-in-access-to-justice/))

remained unchanged since 10 years from 1998 on, was quite moderate, generally comprising only one type of fee (1.500 lek) for all types of cases and set a percentage fee of 1% of the claim value only regarding civil claims with a value of more than 100.000 lek.. Obviously this system intended to keep the system cheap, simple, transparent and easy to understand and manage. It did not leave room for discretionary decisions of the courts on court fees and for subsequent legal disputes about the amount of the charged court fee. Finally it paid respect to the obvious fact that a significant majority of Albanian citizen need to be considered to be poor in general.

These structural characteristics of the court fee system should basically not be changed as the underlying ideas still seem to be true and reasonable today.

The new Fee Order (dated 12.2.2009) has not changed this structure but simply doubled the amount of the fees by determining that regularly 3000 Lek must be paid for filing a claim. For some cases this sum is not at all moderate any more but too high regarding the economic situation of many Albanian citizens. Additionally it should be considered to amend the new court order by introducing different court fees depending on the social and economic situation of the citizen who have to pay it and on their ability to pay fees.

## 5.2. Goals of a Court Fee Reform

As mentioned in the introduction part (1.) two goals of a court fee reform have to be considered. The one is to prevent “Judge Shopping”, the other is to increase the income generated by raising court fees.

### 5.2.1. Prevention of “Judge Shopping”<sup>64</sup>

It seems to be a widespread phenomenon in Albania that plaintiffs try to find the “suitable, most favourable” judge for their case and once the lottery assigns a judge, who does not meet these criteria, withdraw their claim just for the purpose to try their luck again with filing the same claim once again and to see if the lottery this time assigns a more suitable judge.

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<sup>64</sup> See in general for some insightful description of that phenomenon in the context of the American Judiciary: David C. Steelman, “Judge Shopping Memorandum”, 2003 ([www.ncsconline.org/WC/Publications/KIS\\_JudAgnMemoPub.pdf](http://www.ncsconline.org/WC/Publications/KIS_JudAgnMemoPub.pdf)).

See as well: John C. Eastman, “Judge Shopping by ...Judges?”, June 2002, ([www.ashbrook.org/publicat/oped/eastman/02/judges.html](http://www.ashbrook.org/publicat/oped/eastman/02/judges.html))

To tackle this phenomenon by special court fee regulations seems not to be very efficient. One could of course think of doubling the court fee for the second filing of an identical claim which has been withdrawn just previously. One could as well think about refusing a refund of the court fee in such cases for the withdrawal of the first claim. But in the end such punitive fees might never be high enough to serve a really prohibitive purpose in cases in which the claimant really wants to shop for the “right judge” and high claim values are at stake. So “judge shopping” should be rather tackled effectively by adjusting the rules on the assignment of judges to the cases.

This exactly has been done just lately by the High Council of Justice, which passed a decision “On the Procedures of Lot over Judicial Cases” (No. 238/1, dated 24.12.2008). This decision clearly states in its Article 5, that cases are excluded from the lot and are automatically assigned to the same judge again, for which the court has previously expressed itself with a non-final decision of cessation of adjudication or decision of return of acts such cases are assigned to the same judge again, when it is possible to identify from the content of the lawsuit that it is the same case.

#### **5.2.2. Increase the Income from Court Fees**

An increase of the court fees in Albania is undoubtedly justified. Increasing fees should however not be done at random or arbitrarily but must be well reasoned and follow some general principles which are shown in the following text.

##### **5.2.2.1 Send Court Fee Income directly into the Judicial Budget**

As shown above (3.2.) it is a legitimate goal to levy court fees for the purpose to fully or partly recover the expenses for running the court system. It is however not legitimate to levy court fees for the mere fiscal reason just to generate an income for the general state budget. So the income being levied by the court fees should by 100% and directly go to the budget of the Office for the Judicial Budget and not, as it was the practice until August 2008, only go into the general state budget, or as it is now prescribed by the new Fee Order go by 10% only to the judicial budget and by 90% to the state budget. This is the logical consequence of the fact, that Albania unlike other countries has an independent budget for the courts, which is independently administered by the Office for the Judicial Budget. Furthermore it clearly is a public policy goal in Albania (see above 2.4.) to strengthen the judiciary, support it by all means necessary and to keep it

independent. So all detours of financing the judicial budget by channeling the court fee income first to the state budget and then only in a second step from there to the Judicial Budget are not only unnecessary, but put at risk the only legitimate purpose for levying court fees, which is to achieve cost recovery for the court budget.

### **5.2.2.2. Court Budget should reach 1% of the State Budget**

Due to the fact, that the share of the state budget being spent on the court system in Albania amounts to only 0,6%, which is remarkably low, for sure there is a need to increase this amount by higher expenditures of the state budget to the courts. The courts, the court rooms, the salaries of judges, the computer equipment are widely in such a bad shape, that a material improvement is badly needed. This view is strongly supported by the abovementioned publicly declared policy goals. To spend at least 1% of the state budget on the judiciary would be a highly recommendable step for the future.

### **5.2.2.3. Raise the Cost Recovery Rate up to 20 – 25%**

Additionally there is a need as well to increase the court fees to achieve a higher degree of cost recovery. With regard to the degree of cost recovery it must be kept in mind that the high degrees of recovery which can be achieved in some European countries are only possible because the courts in the respective court systems are in charge of registration of business companies and of immovable property. Additionally they are able to keep expenditures low due to a system of standardized court activities and specialized court clerks. The Albanian court system however lacks these special characteristics. The courts in Albania do neither run the land registry<sup>65</sup> nor the company register<sup>66</sup> and they do not have the said possibilities to keep costs low. Therefore it is not possible to achieve such a high degree of cost recovery within the current Albanian judicial system. But as the current degree of cost recovery only amounts to 10% it seems to be fully legitimate to try to achieve a higher degree of cost recovery which could in the future for example amount to 20% or 25%. Such a goal would not be illegitimate and would be well within the framework of the practice of other European countries as mentioned above (4.1.).

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<sup>65</sup> This registration is under the competence of the Real Estate Registration Office (IPRO).

<sup>66</sup> This registration is under the competence of the National Registration Center (Law on the National Registration Center, No. 9723, dated 3.5.2007). This explains why the new Fee Order (A.) unlike the previous one (see old order A.1. and A.2) does not include fees for such registrations any more.

#### **5.2.2.4. Increase Court Fees at least for Inflationary Adjustment**

Regarding the specific amount of the court fees the critical issue is of course, that fees shall not be so high, that the access to justice is put at stake. This question however is inextricably linked with the economic situation, especially with the monthly minimum wage and the monthly average salary. Concerning the access of justice problem it has to be taken into account that in the specific case of Albania a functioning legal aid system, an Alternative Dispute Resolution (ADR) system and a well working Mediation system do not yet exist. Additionally there is no litigation insurance in Albania, which could ease the financial burden of going to court. So any barrier to the access to justice that is being erected by increasing court fees is not mitigated either by some other forms of conflict resolution which would make the way to court not the only way to justice or which would relieve the claimant by an insurance from the burden of court fees. This means that the amount of court fees charged is highly sensitive and still the most important factor regarding the access to justice. So any increase must be handled with care.

However regarding the socio-economic background there has been some significant improvement since the court fee system was enacted 10 years ago in 1998. It is not only that the prices went up by 23% since then due to a relatively moderate inflation but the minimum wages were increased by 57%, the average salary grew by 47% as well and the Gross Domestic Product (GDP) grew by 450%. The percentage of people living below the poverty line dropped to 18% in 2005. So it could be undoubtedly justified to increase the court fees in general by 23% just to balance the effect the inflation rate had on the court fee income during the time from 1998 until today. Therefore the standard court fee, which has been 1.500 lek, could be increased up to 1.900 lek (23% of 1.500 = 345 + 1.500 = 1845 = ~ 1.900). With regard to these deliberations the increase of the court fee by 100% in the new Fee Order which determines a general fee of 3000 Lek instead of previously only 1.500 Lek can not be justified as a mere inflationary adjustment.

#### **5.2.2.5. Special Exemption or Reduction of court fees for certain Types of Claims and for certain Types of Plaintiffs**

On the other hand some types of claims can be identified for which only very low court fees shall be charged or no court fees at all shall be due. These could be cases in which

the plaintiffs regularly are in a socially weak position like in regular labor law cases, family law and divorce cases (as long as no high assets of the splitting couple are involved), cases on social security and pension fund issues. An example for such distinctions is provided by the previous exemption from court fees for labor law disputes on loss of work and for lawsuits on food pensions (A.7 of the old court fee order) and by the exemption of execution fees in cases of alimony-(maintenance-, livelihood-) payments (B.5. of the new Fee Order).

Furthermore there should be in general a reduced fixed court fee for administrative disputes (except of claims regarding construction permits over a certain size), because citizens being subjected to state authorities decisions and orders should not be deterred by too high a court fee from claiming their lawful rights from state institutions and to file claims against the administrative bodies. The same is true for damage- and compensation claims against the state based on state liability, because in these cases the state shall not take with the one hand what it probably has to give with the other hand.

According to the types of plaintiffs some could be exempted from court fees right from the beginning. This could be people, who only receive the minimum wages, who receive only state pensions or social welfare subsidies and benefits and who can prove this by presenting the respective documents. Regarding this group of people some guidance may be sought from the exemption rules as provided by the new Law on National Fees (Art.9: work invalids, war veterans, blind persons). In these cases of course the respective privileged status must be proven by documentary evidence according to the respective social law.

#### **5.2.2.6. Court Fee Rate set as flexible decreasing Percentage of Claim Value**

At least in these cases if not in all regular civil law cases a court fee could be determined which not only amounts to a set and fixed percentage of 1% of the claimed value but shows a varying degree of percentage to make sure that not in the end regular plaintiffs could not financially afford any more to file claims for high amounts of money (see for example the British and German court fee tables). It could be reasonable to have a 5 % starting fee for a certain amount of claim value which is subsequently declining down to 0,5 % for the highest claim values. For regular civil cases not related to commercial disputes or to immovable property disputes there could be in any case a maximum court

fee limiting the amount of the court fee to a sum of not more than 3 monthly average salaries.

#### **5.2.2.7. Higher Court Fees for Types of Cases involving economically stronger plaintiffs**

Looking at the socioeconomic background (2.3.) it seems reasonable to charge higher court fees from plaintiffs who -unlike ordinary plaintiffs- could afford to pay higher court fees due to their economical situation. The regulations in Appendix No.1, Part B. 2.a) and 2.b) as well as in Part.C.7 and 8 of the new Fee Order which foresee higher executions fees for juridical persons than for natural persons and higher notary fees for sales cases and for immovable property cases provide an example of such a distinction which could as well be made in Part A. Commercial Cases as defined in Art.334 CPC involve by its very nature private business companies and registered entrepreneurs. These kinds of plaintiffs can regularly afford to pay court fees. In administrative cases on construction permits regularly higher sums are at stake and someone, who has enough money set aside for building a house or bigger structure, could also be asked to contribute a higher share to the court budget. To charge higher court fees for these type of cases would not infringe the constitutionally enshrined basic right of equal treatment. This right only ensures that persons in an equal situation must be treated in the same way but does not prohibit to treat plaintiffs differently according to their different economical strength. This distinction does not create a problem with the guarantee of access to justice. In case a plaintiff can prove that contrary to the general assumption he can not pay the court fee for a commercial dispute or an administrative dispute on a construction permit, he could apply for legal aid or possibly be exempted of the court fees or be granted a reduction or an installment payment (see below 5.2.2.10.)

#### **5.2.2.8. Possibility of an Exemption, Reduction, Installment in extraordinary Cases**

To avoid any problems the court fee system might run into regarding the guarantee of access to justice there should be a possibility to exempt plaintiffs from the court fee or to grant them a reduction of the court fee or to charge the court fee exceptionally not in advance but after the court proceeding has ended or to pay in installments. Respective regulations could be included in the Law on Legal Aid (which in its current form does not comprise any provision on court fees) or in the context of the abovementioned Civil

Procedure Code provisions (see above 2.1.3). Such a proceeding would require an application by the plaintiff and of course sufficient documentary evidence that no financial means are available to pay for the court fee. This should be regulated as an extraordinary exception. The extent of an exemption, waiver, reduction or installment payment should be in relation to the proved financial situation of the plaintiff. In any case it should be clear that a plaintiff who has been granted legal aid should be exempt of court fees or at least be granted a refund of already paid court fees. Otherwise the state would take with one hand what it later on would have to give again, which is unnecessary and would cause too much of bureaucratic trouble.

#### **5.2.2.9. Court Fees according to Amount of Work involved for the Court**

Finally there could be a distinction according to the type of work involved for the court. Preliminary injunctions and simple requests should be cheaper than full hearing cases. Furthermore a difference could be made between appeal and first instance court proceedings, if there is a fee for appeal proceedings like it is now determined in Appendix No.1, Part A.9 of the new Fee Order.

#### **5.3. Imaginable Court Fee Table**

Taking into account all the deliberations discussed above the following table of court fees could be imaginable for the Albanian Judicial System. This is of course just one option, which shall only serve as an example. As discussed above there is a wide margin of discretion for the lawmaker or the respective state organ which determines the court fee structure. But this model could show what distinctions could be made and what structures could be chosen to establish a court fee system which is in line with the abovementioned standards and in particular compatible with Art.6 ECHR.

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| Court Fee is charged for:   | Fee in Lek:  |
|---|--------------|
| <b>1. Administrative Acts performed by the Courts</b>   |              |
| -Issue of criminal record certificate<br>-Legalization of notary acts by the Ministry of Justice<br>-etc. (see Appendix No.1, Part A.1 – 7 new Fee Order)                               | <b>200</b>   |
| Other fees for copies made by the court, for notifications could be added here  | <b>200</b>   |
| <b>2. Filing a claim with the Court</b>   |              |
| <b>2.1. Types of Plaintiffs who are in general exempt of paying court fees</b> (on presentation of documentary evidence, that they enjoy this status according to the respective laws): | <b>free</b>  |
| - Invalids (proven inability to work)   |              |
| - Social Welfare Benefit Recipients   |              |
| - Blind Persons<br>- War Veterans   |              |
| <b>2.1. Types of Cases which are exempt of court fees (no fee is charged for filing a claim for following cases):</b>   | <b>free</b>  |
| - Labour Law Cases  |              |
| - Family Law Cases (except divorce cases)   |              |
| - Social Security Cases<br>(Food Pensions, Social Welfare/Benefits Payments)  |              |
| <b>2.3. Types of Cases with a reduced fixed general fee:</b>  | <b>1.900</b> |
| - Divorce Cases   |              |
| - Administrative Law Cases<br>(-including claims for Damages/ Compensation based on State Liability<br>- but not including administrative cases on construction permits)                |              |

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| Type of Case:<br>Type of court activity the claimant asks for:   | 2.4.1.<br>Regular Civil Law Cases                  | 2.4.2.<br>-Commercial Cases <sup>67</sup><br>-Administrative Cases on Construction Permits |  |   |
|--|--|--|--|---|
| <b>A) Judgement on:</b><br><br>- a claim that requires a complete procedure including a court hearing of the parties | Claim Value up to Lek:                             | Fee (Lek):   | Claim Value up to Lek (or price of construction)   | Fee (Lek):  |
|  | - 10.000 (=80 Eur)                                 | 700 (~7%) (~ 5,6 Eur)  | - 124.000 Lek (=1.000 Euro)                        | 6.200 Lek (~6%) (=60 Eur)   |
|  | - 22.000 (=177 Eur)                                | 1.320 (~6%) (~10,6 Eur)  | - 372.000 Lek (=3.000 Euro)                        | 18.600 Lek (~5,0%) (=150 Eur)   |
|  | <b>35.000</b> (=282 Eur)                           | <b>1.900</b> (~5,0%) (=15,3 Eur)   | - 620.000 Lek (=5.000 Euro)                        | <b>23.560 Lek</b> (~3,8%) (=190 Eur)  |
|  | - 60.000   | 2.700 (~4,5%)  | - 1,86 Mio Lek (=15.000 Euro)                      | 46.500 Lek (~2,5%) (=375 Eur)   |
|  | - 85.000   | 3.400 (~4,0%)  | - 6,2 Mio Lek (=50.000 Euro)                       | 105.400 Lek (~1,7%) (=850 Eur)  |
|  | - 110.000  | 3.850 (~3,5%)  | - 12,4 Mio Lek (=100.000 Euro)                     | 124.000 Lek (~1,0%) (=1.000 Eur)  |
|  | - 140.000  | 4.340 (~3,1%)  | - 18,6 Mio Lek (=150.000 Euro)                     | 167.400 Lek (~0,9%) (=1.350 Eur)  |
|  | - 180.000  | 4.860 (~2,7%)  | - 31,00 Mio Lek (=250.000 Euro)                    | 186.000 Lek (~0, 6%) (=1.500 Eur)   |
|  | - 215.000  | 4.950 (~2,3%)  | - up to 62,00 Mio Lek and more Lek (=500.000 Euro) | 248.000 Lek (~0,4 %) (=2000 Eur), not more, no matter how high further claim may be |
|  | - 255.000  | 5.100 (~2,0%)  |  |   |
|  | - 300.000  | 5.160 (~1,7%)  |  |   |
|  | - 350.000 (=2.822 Eur)                             | <b>5.250</b> (~1,5%) (=42,3 Eur)   |  |   |
|  | - 1,24 Mio Lek (=10.000 Eur)                       | 16.120 Lek (~1,3%) (=130 Eur)  |  |   |
|  | - 6,2 Mio Lek (=50.000 Eur)                        | 49.600 Lek (~0,8 %) (= 400 Eur)  |  |   |
|  | - 13,64 Mio Lek (=110.000 Eur)                     | 81.840 Lek (~0,6 %) (= 660 Eur)  |  |   |
|  | - 22,32 Mio Lek (=180.000 Eur)                     | 111.600 Lek (~0,5%) (= 900 Eur)  |  |   |
| - up to 33,24 Mio Lek (=260.000 Eur) and more  | <b>128.960 Lek</b> (~0,4%) (=1.040 Eur), not more, |  |  |   |
| <b>B) Court Decision (order) on :</b><br>- simple requests<br>(- preliminary injunctions,<br>- securing orders)      | <b>only 1/2 of the sum shown under A)</b>          |  |  |   |

<sup>67</sup> This means all cases involving on both sides private commercial companies or registered trader/ entrepreneurs/ businessmen. See the definition in Art.334 Civil Proceedings Code in combination with the Law on Entrepreneurs and Companies, May 2008)

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The old court fee table did only show one set fee of 1.500 Lek without distinction for all claim values up to 100.000 Lek. The new Fee Order has not changed this but just increased the fee from 1.500 to 3000 Lek. That amounted in cases of a claim value of 100.000 to a percentage of 1.5% according to the old fee order and to 3 % according to the new Fee Order. But for lower claim values like for example for a claim of only 10.000 Lek the same set fee of 1.500 Lek amounted to a percentage of 15% according to the old court fee order or even up to 30% according to the new Fee Order, which is **too high** regarding the principles of equality but also of proportionality and of **access to justice**. So the abovementioned imaginable new court fee table tries to tackle this by giving up this fixed fee and setting a fee which is considerably lower for the low claim values.

For the claim values higher than 100.000 Lek there was and is only a fixed percentage of 1% no matter how far the claim value exceeded this amount. This could lead to court fee sums which in the end in absolute figures amounted to sums which were very high. For example for a claim value of 260.000 Euro the court fee of 1% would have been 2.600 Euro. So the proposed table tackles this by a decreasing percentage according to the British and German model which leads for the said amount of a claim value of 260.000 Euro to only a fee of 0,4% = 1.040 Euro. As there is no further increase no matter how high the claim value is, this leads to a maximum fee which never exceeds three times as much as the average monthly income.

For a claim value of roughly a monthly average income (35.000 Lek ~280 Euro ) (as highlighted in the table) the fee amounts to 5% (1.900 Lek ~ 15 Euro), which can be justified and does not seem to be unreasonably or an excessive burden. If a plaintiff could not afford this and can prove this, there still would be the chance to grant legal aid and thereby an exemption of the court fees.

The former court fee table of 1999 showed a fee of 1.500 Lek for a claim value of up to 100.000 Lek. That was a percentage of more then 1,5% of the claim value. 100.000 Lek at this time was around 10 times as much as the average monthly salary<sup>68</sup>. So it is reasonable to use this percentage of 1,5% and determine the size of the court fee by applying this percentage on a claim value of 350.000 Lek, which is around 10 times as

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<sup>68</sup> In 1999 the annual per capita GDP was 951 Euro, which amounted to a monthly per capita GDP of 79,- Euro (~80 Euro) which would be roughly the same like the monthly average salary. So 10 times of this was 800 Euro. At the 1.12.1999 a sum of 100.000 Lek was equal to 741,- Euro (see currency converter [www.oanda.com/convert/classic](http://www.oanda.com/convert/classic) )

much as the present monthly average salary. As shown and highlighted in the table, for 350.000 Lek a fee of 5.250 Lek (~1,5%) would be charged.

For the commercial cases and construction permits a different staggering of the claim values provides higher court fees which are still within Art.6 ECHR limits as they all in all do not exceed absolute sums which are not affordable any longer or would constitute an excessive burden.

## 6. Summary

The new Fee Order has filled the gap that opened up since August 2008 when the new Law on National Taxes came into effect. But it should be amended in some respects according to the above recommendations.

The previous court fee system which was simple, transparent and easy to handle as well as the new Fee Order could be basically kept but needs some adjustments not only to balance the inflation rate but also to avoid problems with the guarantee of an equal access to justice. The general fee of 3000 Lek even for lower claim values raises significant concerns about the right of equal access to justice for the majority of poor Albanian citizens in these cases.

EURALIUS therefore recommends in general the following steps which should be considered when passing an ammended court fee regulation based on the new Law on National Fees by a respective decree of the Minister of Justice and the Minister of Finance:

- **Following goals should/could be pursued in the future:**

**Step by step the share of the State Budget expenditures for the Albanian courts should be increased up to 1%.**

**Up to 20 % of the Costs of the Court System could be recovered by levying Court Fees.**

- **The income from levying court fees should be sent directly and by 100% to the Judicial Budget.**

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- **The previous Court Fees of the court fee table dated 1999 could at least be increased for Inflationary Adjustment (around 23%) but should not be increased by 100% in general as it is now the case according to the new Fee Order.**
- **The Court Fees should differ according to the involved Amount of Work for the Court. So there could be reduced fees for preliminary court decisions.**
- **The Court Fees should be determined not just by an inflexibly set amount or set percentage but by a decreasing percentage in relation with the claim value to avoid unaffordable high fees.**  
**At least for claim values up to 35.000 Lek (which is roughly the average monthly income) a general fee of 3000 Lek (which is roughly an average income of three workdays) seems to be too high and raises concerns as to the compatibility with the right of equal access to justice.**
- **For certain Types of Claims (Commercial disputes, administrative disputes on construction permits) the court fees could be considerably higher due to the stronger economic positions involved.**
- **The Court Fee System should provide special Exemptions or Reductions of Court Fees for certain Types of Claims and certain Types of Plaintiffs to guarantee equal access to justice for the economically weak and socially needy people.**
- **The Court Fee Regulation should provide the possibility of Exemption, Reduction or Installment Payment in extraordinary Cases.**

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## **EURALIUS Mission**

European Assistance Mission to the Justice System in Albania

Tirana, 17 March 2009

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**To: Mr. Viktor Gumi, Vice Minister of Justice**

This Study and Recommendation will also be published on the EURALIUS Mission website:

Web: [www.euralius.org.al](http://www.euralius.org.al)