

Marko **BRATKOVIĆ**, PhD, Associate Professor
University of Zagreb, Faculty of Law
marko.bratkovic@pravo.unizg.hr

Doris **GANIĆ**, Master of Laws
Attorney at Law, Zagreb
dorisganic@gmail.com

ASSESSMENT OF LITIGATION COSTS: A STRASBOURG PERSPECTIVE

Summary: *This paper analyses the case law of the European Court of Human Rights concerning litigation costs and their compatibility with the right of access to a court under Article 6 § 1 of the European Convention on Human Rights and the right to the peaceful enjoyment of possessions under Article 1 of Protocol No. 1.*

The case law of the Strasbourg Court demonstrates that a considerable financial burden imposed at the end of judicial proceedings may result in a violation of Convention rights. Although rules on litigation costs, including the “loser pays” principle, pursue legitimate aims such as ensuring the proper administration of justice and discouraging unfounded or excessively high claims, their application must remain proportionate in the circumstances of the individual case. The Court repeatedly emphasises that the right of access to a court must be practical and effective rather than theoretical or illusory, and that the very essence of that right may be impaired where litigation costs neutralise or substantially diminish the benefit obtained through judicial protection.

The paper further examines the Strasbourg Court’s approach under Article 1 of Protocol No. 1, according to which a claim sufficiently established by a final and enforceable judicial decision constitutes a “possession” protected by the Convention. Consequently, litigation costs that significantly reduce or effectively consume the awarded compensation may amount to an interference with the peaceful enjoyment of possessions.

Particular attention is devoted to the proportionality assessment developed in the Court’s case law. The paper analyses the circumstances considered relevant by the Strasbourg Court, including the claimant’s success regarding the basis of the claim, the predictability of the outcome of the proceedings, the possibility of reasonably assessing the amount of the claim, the existence or absence of settled domestic case law, the financial consequences of the costs order, the nature of the dispute, and the relationship between the parties, especially where the State appears as a litigant.

The paper also highlights the Court’s criticism of mechanical and excessively formalistic applications of procedural rules on litigation costs and emphasises the obligation of domestic courts to provide sufficient reasoning when deciding on costs. Through an analysis of the relevant Strasbourg case law, the paper seeks to identify principles that may contribute to a more Convention-compliant approach to the assessment of litigation costs.

Keywords: *litigation costs, right of access to a court, right to peaceful enjoyment of possessions, proportionality, European Court of Human Rights.*