THE POVERTY RIGHT FOR FOREIGNERS IN THE NON-CONTENTIOUS PROCEEDINGS IN FRONT OF THE COURTS OF THE REPUBLIC OF MACEDONIA¹

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ABSTRACT

The poverty right, as a reflecting principle of the rule of law and the legal state, is a particularly important institution with whom the right to equal access to justice and justice in general gets full affirmation and promotion. Effective protection of human rights and freedoms is the highest priority for each state. The introduction of the institute of the poverty right is in this direction. The subject of this paper is a normative analysis of the poverty right in the Republic of Macedonia legal system from the aspect of the foreign citizens and stateless persons. The aim of this paper is to determine how the use of the poverty right by foreigners in relation to Macedonian citizens is established and how it should be developed and supplemented in the future.

Keywords: poverty law, court proceedings, foreigners.

INTRODUCTION

The right of access to court is a fundamental right for the individuals’ rights and freedoms protection. This right is practically a reflection of the principle of the rule of law in the broader sense of the word. The right of access to court basically implies that the individual has the right to independent, impartial and legitimate protection of the rights before the courts within a reasonable time, in the proceedings in which he has a process legitimation, and the right to appeal.

¹ review scientific paper
In this regard, the right of access to court is determined in the provision of Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms:

**Right to a fair trial**

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

   (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
   (b) to have adequate time and facilities for the preparation of his defence;
   (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;
   (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;
   (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court."

The right of access to court also is a constitutionally guaranteed right in modern democratic states, including the Republic of Macedonia. Accordingly, each individual has the right to institute proceedings before the courts, if he considers that his / her right is endangered or not respected. However, judicial protection of individual rights and freedoms is not unconditional. The actions of judicial authorities in one state are inextricably linked to certain costs, which are compensated by both the state and the individual. In order to ensure equal access of individuals to courts, as part of the principle of equal access to justice, the law of each democratic state provides the institute of a poverty right, which allows the parties to seek judicial protection of their rights even when they have no material conditions for reimbursement of the estimated legal costs. The availability of the
poverty right for foreigners in front of the courts of our country is regulated by the norms of civil procedural law and private international law.

LEGAL FRAMEWORK OF THE POVERTY RIGHT FOR FOREIGNERS IN THE REPUBLIC OF MACEDONIA

According to the provision of Article 98 of the Law on Private International Law of the Republic of Macedonia, the following is determined:

1) Foreign nationals are entitled to exemption from payment of litigation costs under conditions of mutuality.

2) In the case of suspicion of existence of a mutuality, with respect to the exemption from paying the litigation expenses, an explanation shall be given by the state administrative body competent for the affairs of justice.

The mutuality referred to in paragraph (1) of this Article shall not constitute a condition for exercising the right to exemption from paying the litigation costs if the foreign citizen has a domicile in the Republic of Macedonia.

4) The stateless person shall have the right to exemption from paying the litigation expenses if he has a place of domicile or residence in the Republic of Macedonia."

Accordingly, in the Republic of Macedonia, foreign nationals who have domicile and stateless persons who have at least a place of residence on the territory of our country have the opportunity to use the poverty right under the same conditions as domestic citizens, that is, they enjoy national treatment.

Foreigners who reside abroad have the right to exemption from paying the litigation costs under one additional condition - the existence of mutuality. In this regard, the provision of Article 10 of the Law on Court Fees is in the same line:

1) The Republic of Macedonia, the state bodies, the Organization of the Red Cross as well as foreign states, foreign nationals and international organizations shall be exempted from payment of the fee, if this is stipulated by an international agreement ratified in accordance with the Constitution of the Republic of Macedonia or under the condition of reciprocity.

2) In case of doubt about the existence of reciprocity, opinion is given by the Ministry of Justice.

Gavroska Poliksena, Deskoski Toni, Private International Law, Skopje, pp. 441, 2011.
The conditions, scope and manner of exemption from paying the costs of the litigation procedure are further regulated in detail by the provisions of Articles 163 to 169 of the Law on Litigation Procedure. These provisions are applicable to the following categories of persons: citizens of the Republic of Macedonia, foreign nationals who have domicile in the Republic of Macedonia and stateless persons who have at least a residence in the Republic of Macedonia.

The aforementioned provisions of the Law on Litigation Procedure are also applied in the non-contentious procedure in accordance with the provision of Article 33 paragraph 1 of the Law on Non-contentious Proceedings: „The provisions of the Law on Litigation Procedure shall apply mutatis mutandis to non-contentious proceedings, unless otherwise provided by this or other law. “

Accordingly, the law regulating the litigation procedure is the subsidiary source of the non-contentious procedure law.³

The exemption from paying the costs in the procedure shall include:

a) exemption from paying fees;

b) exemption from down payment of the costs for witnesses, expert witnesses, for inspection and for court announcements and

c) exemption from paying the costs and the reward for the assigned attorney-in-fact.

According to this Law, the court shall exempt from payment of costs in the procedure, the party that according to its general material condition is not able to cover these costs without harming its necessary support and the necessary support of its family. The court can exempt the party only from paying fees, if the payment of fees would significantly decrease the funds whereby the party and the members of its family are being supported. When adopting a decision on exemption from paying the procedure costs, the court shall carefully assess all the circumstance and it shall particularly consider the value of the subject of the dispute, the number of persons the party supports and the revenues of the party and the members of its family. “

THE IMPLEMENTATION OF THE POVERTY RIGHT PROCEDURE FOR THE FOREIGNERS IN THE REPUBLIC OF MACEDONIA

The procedure for the implementation of the poverty right is initiated in accordance with the principle of disposition, that is, foreign citizens who

have a domicile and the stateless persons who have at least a residence in the Republic of Macedonia are obliged to submit a proposal for exemption from the costs of the procedure to the first instance court. Accordingly, this procedure can not be initiated ex officio by the court. The party shall be obliged to attach to the proposal a certificate from a competent body of the state administration in regard to its material condition. The certificate for the material condition has to state the tax amount paid by the household and by separate members of the household, as well as other sources of their revenues and in general the material condition of the party being issued the certificate. When necessary the court itself can ex officio obtain the necessary data and notifications on the material condition of the party requesting exemption, and it can thereon hear the opposing party as well. Similarly it is determined by the provision from article 13 paragraph 4 of the Law on court fees:

"The party shall attach to the proposal an evidence issued by a competent authority on the assets that is determined on the basis of the income data on all grounds of that person, as well as the members of his household with whom he lives and a declaration of his material and social situation for the period of six months before the submission of the proposal."

On the basis of the submitted proposal for exemption from the costs of the procedure and the submitted evidence, the court may adopt a positive decision, which accepts the proposal for exemption from the costs or a negative decision, rejecting the proposal for exemption from the costs. The foreigner may be acquitted in part or in full from the payment of the costs of the proceedings by the court. An appeal is not allowed against the determination of the court adopting the proposal of the party. Partial exemption practically constitutes exemption only from the payment of fees. In this context, the court can adopt three types of decisions regarding the submitted proposal for exemption of the costs of the procedure: a decision for exemption from paying a fee, a decision for postponing the payment of a fee and a payment decision in installments. The mentioned types of decisions are passed by the court within 5 days from the day of the submitted proposal. The full exemption from paying the cost of the procedure practically covers all three types of abovementioned costs. These costs are reimbursed by the court funds. The determination on exemption from paying the costs and for assigning an attorney-in fact can be abolished by the court of first instance during the procedure, should it establish that the party is able to cover the procedure costs. Thus, the court shall decide whether the party shall completely or partially compensate the costs and fees it has been previously exempted
from, as well as the costs and the reward for the assigned attorney-in-fact. The amount paid from the court’s funds shall be the compensated first.

CONCLUSION

The institute of the poverty right, i.e. the exemption from paying the cost of the procedure for foreigners, as a party in the non-contentious procedure in front of the courts in the Republic of Macedonia is a comprehensively determined and it is a reflection of a socially responsible state. According to the positive regulations in our country, foreign nationals who have domicile in the Republic of Macedonia, as well as stateless persons who have domicile or residence in the Republic of Macedonia, have equal treatment as the Macedonian citizens with regard to the exemption from paying the cost of the procedure. Consequently, our legislator in the foreground had the social status, that is, the material possibilities of individuals in the protection of their rights and obligations, before their citizenship. In this way, the rule of law and equal access to justice for all individuals, regardless of their citizenship or material status, are strengthened. Foreign nationals who do not have a residence in the Republic of Macedonia may use this right, with additional condition - factual reciprocity. In this regard, the Republic of Macedonia has concluded bilateral agreements with other countries that regulate the poverty right. The effective protection of human rights and freedoms represents the basic of any democratic state. Enabling foreigners who do not have sufficient financial means to protect their rights, to be exempted from paying the court costs is an additional impetus and guarantee of respect for the principles of equity and equality of all individuals.

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