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**Agjencia për Ndihmë Juridike Falas
Agencija za Besplatnu Pravnu Pomoć
Agency for Free Legal Aid**

Kosovo Legal Aid Practitioner's Manual – Civil, Family, and Property Law-Related Cases

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Kosovo Legal Aid Practitioner's Manual – Civil, Family, and Property Law-Related Cases

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Dear reader,

The Constitution of the Republic of Kosovo defines legal aid as a constitutional category, and Article 31 paragraph 6 defines that "Free legal aid shall be provided to those who do not have sufficient financial resources, if such aid is necessary, to ensure effective access to justice."

The Free Legal Aid Agency is the most important institution in the integrated legal aid system in terms of providing free legal aid. The number and variety of requests for legal aid beneficiaries indicate the need and sustainability of this institution.

The Law on Free Legal Aid regulates the establishment of a functional system of free legal aid in civil, criminal, administrative and minor offenses proceedings, through which efficient access to justice is provided for citizens who do not have sufficient financial resources.

The Kosovo Legal Aid Practitioner's Manual – Civil, Family and Property Law – Related Cases developed with the support of USAID's Justice Activity Project in Kosovo, is a practical tool which helps free legal aid providers to be more productive, to counter challenges in practice and inspires them to come up with the correct solutions. This manual aims to facilitate the working process and to serve as a guide for free legal aid officers. Undoubtedly, these procedures and practices included in the manual will evolve over time. The practices offered are not intended to serve as a legal authority. We are privileged that you have chosen to use this manual which aims to help you resolve challenging situations in your practice, believing that this manual will contribute to keeping your work unified and your professionalism on a high standard.

The manual was developed by a working group comprised of representatives from the Free Legal Aid Agency, civil society representatives and worked in close cooperation with the Kosovo Academy of Justice, where each of them contributed by offering their professional experiences.

Special thanks goes to USAID's Justice Activity in Kosovo for publishing this manual, which will undoubtedly add value to all free legal aid providers, as well as to Mr. Mark Williams, international expert on legal aid, who provided best practices for the effective provision of free legal aid.

Therefore, we express our most sincere recognition and gratitude to all members of the working group who consistently showed a positive spirit of cooperation in finalizing the manual.

Our joint path is long, but thanks to mutual commitment, moral and professional responsibility, and uninterrupted cooperation, I am convinced that it will bring us all closer to the needs of citizens.

I wish you success in your work!

Anita Alaj Kalanderi
Executive Director
Free Legal Aid Agency

Acronyms Used

- AVL: Audio-Visual Link
- CGTJ: Court with General Territorial Jurisdiction
- CMS: Case Management System
- CSW: Centers for Social Work
- CVC: Crime Victim Compensation
- ECHR/ECtHR: European Court of Human Rights
- EULEX: European Union Rule of Law Mission Kosovo
- FC: Family Code
- FLAA: Free Legal Aid Agency
- KCCP: Kosovo Code of Criminal Procedure
- KJC: Kosovo Judicial Council
- KPC: Kosovo Prosecutorial Council
- LAIS: Legal Aid Information System
- LAPD: Law on Access to Public Documents
- LCP: Law of Contested Procedure
- LI: Law on Inheritance
- LM: Law on Mediation
- LOR: Law of Obligational Relationships
- LPORR: Law of Property and Other Real Rights
- MOU: Memorandum of Understanding
- NGO: Non-Governmental Organization
- OSCE: Organization for Security and Cooperation in Europe
- PICSI: Periodic Individualized Client Satisfaction Instrument

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1. Introduction to the Kosovo Legal Aid Practitioner's Manual

The Legal Aid Practitioners' Manual is designed to serve as a tool to legal aid practitioners to increase their efficiency and effectiveness as well as increase the quality and "client-focused" aspects of the services provided. The Manual is intended to be applied to all legal aid practitioners that work on civil cases (applying family, civil, and property law) in Kosovo, namely, legal aid officers from the Free Legal Aid Agency (FLAA), FLAA-contracted private attorneys that work on cases involving court representation, and NGO legal aid providers, particularly those that are in partnership with or contracted by FLAA.

In Section 2, this Manual will turn to the development of standards, namely, detailing articulations of the legal aid ethical, client-centered, and technical services and principles that together define "quality" in legal aid provision, including information, legal advice and orientation, limited representation (i.e., preparation of pleadings and administrative letters), and full representation in court. Among other things, these standards provide guidance regarding how to provide client- or beneficiary-centered services (including interviewing, communicating with, and prioritizing the needs and desires of beneficiaries).

Given all these prioritized types of cases fall under the same procedural law (the Law of Contested Procedures or LCP), Section 3 of the Manual contains a general section regarding the LCP and flow charts of how civil, family, and property law cases pass through the courts, followed by a discussion of evidentiary matters and the types of evidence that the legal aid practitioner should seek to obtain in particular types of cases. Section 3 also contains a discussion of how to apply the Theory of the Case Methodology, an important international best practice. Section 3 will examine how to apply many of the legal aid standards in certain specified civil law cases in the family (divorce, alimony, child visitation, and child support), personal injury or other damages (damage compensation), and property (verification of possession inheritance) law areas.

Section 4 describes how to plan for and execute strategic/public interest litigation under the law of Kosovo, which is a critical tool for providing access to justice and legal aid benefits to larger groups of beneficiaries than just providing services or representation in isolated individual cases.

Guidelines to using the Kosovo Legal Aid Practitioner's Manual: The Legal Aid Manual is intended to be a fluid, living document that changes as necessary to ensure that it is continually supporting legal aid practitioners in providing high quality legal aid services to eligible beneficiaries. The Manual can serve both as a tool to induct new legal aid practitioners as well as to measure and evaluate performance of staff and or contracted (case by case) private attorneys by FLAA, or by other legal aid providers in Kosovo. The legal aid standards are aimed as providing as high of quality of services as possible, given the limitations in terms of resources confronted by most legal aid practitioners in Kosovo (and in much of the rest of the world, for that matter). The standards recognize that an organization's institutional structure and funding will affect how a particular Standard might apply to it. Some legal aid practitioners will not be able to meet certain Standards for legal, practical, or institutional reasons.

This Legal Aid Manual should be used to determine procedures under which applications for legal aid are administered, the systems and methods whereby legal aid is delivered,

procedures relevant to private legal practitioners and administrative matters which are necessary for the effective functioning of Legal Aid South Africa.

It should be read in conjunction with the Free Legal Aid Law of 2012 and similar laws and regulations, as well as with the substantive and procedural laws referred to in the Manual. The legal aid practitioner should be cognizant of the fact that these laws and regulations are frequently amended over time, thereby requiring legal research to make sure all citations are up to date.

The templates from FLAA set forth in the annex are given as mere examples of how to prepare key pleadings, petitions and other documents in certain civil, family, and property-law related cases that are often handled by legal aid practitioners. They are in no way intended to be of mandatory use. To the contrary, if templates are to be used to facilitate the work of a legal aid practitioner, they will virtually always need to be adjusted to the specific parameters and facts of particular cases.

2. Quality Standards of Legal Aid Provision in Kosovo (the Legal Aid Standards)

a. Introduction to the Legal Aid Standards

The Legal Aid Standards fill an important gap. They recommend procedures and otherwise furnish guidance that is not available elsewhere and are designed to foster and ensure fair trials in local courts, more people-centered justice, improved quality of legal aid, and increased access to justice, particularly for vulnerable and marginalized populations. They are aimed at all practitioners providing legal aid in Kosovo, including FLAA legal aid officers (who generally only provide information, advice, and limited representation in the drafting of pleadings and other instruments), private lawyers contracted by FLAA to provide court representation services, and NGO legal aid providers (who provide the whole gambit of legal aid services).

The Legal Aid Standards do not reflect any new substantive legal doctrines. They are not mandatory, but purely discretionary in application by legal aid practitioners with a view towards improving the quality and efficiency of legal aid services. They suggest a variety of approaches but recognize that ultimately the legal aid practitioner must exercise his or her discretion in light of the circumstances, and nothing in these Standards limits that discretion. They were developed to serve as a resource for legal aid officers and attorneys when confronted with the recurring issues that they address.

Quality assurance is the process of ensuring that legal aid services meet quality expectations. Like the quality mandate itself, “the importance of quality assurance” is stressed by international instruments. Guideline 16 of the *UN Principles and Guidelines on Legal Aid in Criminal Justice Systems*, for example, calls upon governments to “set quality standards” for legal aid; “to establish monitoring and evaluation mechanisms to ensure the quality of legal aid services, in particular, those provided at no cost”; and “[t]o work with all legal aid service providers to increase outreach, quality and impact...” of such services.”

When standards are well-crafted, they mandate activities that in turn produce outputs that are both measurable and predictable. Well-crafted standards should be both ambitious and realistic. Because they are specific and prescriptive, they are ideally suited to serve as the basis for legal aid provider training, ongoing consultation, and guidance. As the name indicates,

standards are intended to *standardize* the process of providing legal aid services – they are, in that sense, “the key to uniform quality... [U]niform application of standards at the state or national level is an important means of limiting arbitrary disparities in the quality of representation based solely on the location in which a prosecution is brought, or legal aid services are provided.

Finally, standards should be authoritative – that is, while they should be adapted to the laws and procedures in each jurisdiction where they are used, performance standards should be rooted in international consensus. Comparison of legal aid performance standards that have been developed around the world reveals striking similarities.

Standard 1: Legal aid practitioners in Kosovo should apply the Legal Aid Quality Standards set forth in this Manual to increase efficiency and quality of legal aid services in the civil law area. These Standards:

- 1.1 Are applicable to all providers of legal aid in the civil area in Kosovo, including FLAA legal officers, contracted private lawyers through the Kosovo Chamber of Advocates, and NGO legal aid providers, particularly those that partner with or are licensed or contracted directly by FLAA;**
- 1.2 Should inform how the FLAA Monitoring Unit monitors the delivery and quality of legal aid work of both its agents and its contracted private attorneys; and**
- 1.3 Could and should form part of the FLAA legal aid representation service provision contracts with the Kosovo Chambers of Advocates private attorneys.**

b. Ethical Standards and Principles for Legal Aid Practitioners

Respecting ethical aspects while providing legal services is critical to high quality and effective services as well as to garner more confidence on the part of beneficiaries. The standards and principles set forth below are based on best international practices and principles and are aimed at establishing a generally accepted framework to serve as a basis on which codes of conduct or behavior may be established and to promote and foster the ideals of members of the legal profession that provide legal aid. These standards and principles are not intended in any way to replace or limit a practitioner’s obligation under applicable laws or rules of professional conduct in Kosovo. Nor are they to be used as criteria for imposing liability, sanctions, or disciplinary measures of any kind. These standards build upon and detail many of the “working principles and ethics” related responsibilities set forth in the Guide on Intake Case Processing currently in effect in the FLAA and extended in this Manual to contracted private attorneys as well. To summarize:

Working Principles, Ethics, and Conflict of Interest of FLAA

Based on the general working principles, code of ethics and conflict of interest set forth in the FLAA Case Intake Manual, FLAA legal officers must respect the following principles:

- 1) Legality** – The officer shall exercise his/her function in compliance with the law;
- 2) Transparency** – The officer must, in performing his function, act with transparency and by respecting the rights of representative bodies and citizens to be informed about

- his/her actions as a public figure;
- 3) **Publicity** – Every person has the right to know the reasons that have led to a certain decision or action of the administration, if he/she is damaged by them;
 - 4) **Responsibility/accountability** – The officer shall be held personally liable for his/her actions in performing the function in which he/she was appointed or elected by the institution or the citizens;
 - 5) **Efficiency** – Officers must ensure that their performance is successful in achieving goals and solving problems;
 - 6) **Cost efficiency** – The officer must not use or allow the use of official assets of the employing institution, including official documents, for any other purpose that is not compliant with the exercise of a public duty;
 - 7) **Professional impartiality** – Officers should not influence the decision of any officer or body for reasons of unfair benefit for themselves or another natural or legal person;
 - 8) **Non-discrimination** – In exercising his/her duty, the officer must not discriminate on political or partisan bases or commit any other form of discrimination;
 - 9) **Confidentiality/privacy** – Every officer shall be obliged to keep the secrecy of his/her beneficiary's information and details, which he/she shall learn while providing legal aid;
 - 10) **Proof of legal and general culture** – The officer must do his job with honesty, conscience, impartiality and maintain the authority of the officer and the institution and, through his work, strengthen citizens' trust in institutions;
 - 11) **Prevention of conflict of interest** – The officer should avoid conflict of interest, regardless of whether it is real, potential or perceived;
 - 12) **Protection of the public interest** – In exercising his/her public function, the officer must act in defense of the public interest and has no right to put his private interest before the public interest.
 - 13) **Avoiding real, potential or perceived conflict of interest between the parties** – If both litigants in the same case apply for free legal aid, two different officers shall evaluate the criteria and provide free legal aid.
 - 14) For issues and situations that may arise during the work of the [FLAA] officer and that are not regulated by this Guide, the officer must consult the Code of Conduct for Civil Servants.

The FLAA Guide correctly states that FLAA officers are bound by the Code of Conduct for Civil Services. In this Manual, it is suggested that the FLAA legal officers as well as the FLAA-contracted private attorneys and other NGO legal aid practitioners (that are in partnership with or contracted by FLAA) adopt and apply the following non-binding ethical principles as well, many of which have the effect of improving relationships and trust levels with clients, thereby increasing the quality of the legal aid services provided and access to justice in general.

Standard 2.1: The legal aid practitioner should exercise with professional and technical independence.

A legal aid practitioner shall maintain independence and be afforded the protection such independence offers in giving beneficiaries unbiased advice and representation. A lawyer shall exercise independent, unbiased professional judgment in advising a beneficiary,

including as to the likelihood of success of the beneficiary's case. The source of financing of the lawyer's salary or compensation, if any (i.e., from the Government of Kosovo), should in no way affect this professional or technical independence.

Standard 2.2: The legal aid practitioner should act with honesty, integrity, and fairness in providing services.

A legal aid practitioner shall at all times maintain the highest standards of honesty, integrity and fairness towards his or her beneficiaries, the court, colleagues and all those with whom the lawyer comes into professional contact.

Honesty and truthfulness. The legal aid practitioner offering services or representation in any form has an obligation to inquire fully into the facts and their truthfulness particular to the beneficiary's situation and apply the law with a full understanding of those facts. If limited service is being offered based solely on an interview or conversation with the beneficiary, the legal aid practitioner should assure that the interview probes appropriately into the facts so to obtain as complete and accurate a picture as possible and to identify detrimental details that may not be presented in the beneficiary's initial recitation of the facts (as is often the case). This inquiry is especially important, for example, for any letters written or claims drafted on behalf of the beneficiary based on a single conversation without any opportunity for independent verification, where the legal aid practitioner must still comply with the ethical obligation to present truthful statements. Legal aid practitioners or legal aid organizations that offer legal information in printed materials on websites, or through form-completing document assembly tools must regularly review these materials to ensure that all information

is accurate and represents the current state of the law.

Common examples of conflicts of interest include:

- A lawyer acts for both parties in a matter (i.e., a lawyer acts for two or more people who have been co-jointly charged with criminal law offences and the co-accused have conflicting accounts, or representing both parties in a divorce proceeding);
- A lawyer acts against a former client having previously acted for that party in a related matter; or
- A lawyer's own interest is involved (i.e., a lawyer acts in a transaction in which they have an economic or other interest).

Providers of free legal aid must be familiar with the relevant substantive and procedural laws to be up to date regarding amendments and their compliance at different stages. They must also follow the applicable case law and jurisprudence in order to be accurate in all their functioning.

Standard 2.3: The legal aid practitioner should avoid conflicts of interest and appearances of conflict of interests when providing legal aid or representing clients.

Legal aid lawyers, like all other lawyers, must generally comply with all conflict-of-interest obligations. A conflict of interest is where someone in a position of trust is serving or attempting to serve two or more interests and it would be difficult for that person to fulfill their duties impartially. These obligations generally prohibit a lawyer from accepting a case if the lawyer's own interests might affect the lawyer's professional judgment or it would likely involve the lawyer in representing differing interests. This obligation generally applies to real conflicts or interests or perceived improprieties or conflicts of interests. While the Free Legal Aid Law is silent on conflicts of interest, the Law on Contentious Procedures provides that a lawyer can represent one beneficiary of free legal aid, or two or more beneficiaries who have the same issue.

How to Determine Whether There is a Conflict of Interest that Would Prevent A Legal Aid Practitioner from Acting on Behalf of or representing a Beneficiary

First, determine if there is a real or perceived conflict of interest.

PART 1

Is there a conflict of interest?

Step 1
Determine who the “client” or “beneficiary” is.

Step 2
Consider the nature of the retainer and the duties to the beneficiary arising from your retainer.

Step 3
Determine whether the duties that are owed to current clients, former clients and any third persons might affect the duties owed to the client. Similarly, determine whether the legal aid practitioner has any personal interests that might affect the duties owed to your client.

Step 4
Determine if there is a substantial risk that the legal aid practitioner’s duty of loyalty to the client or the representation of the client would be materially and adversely affected by his or her’s own interest or your duties to another client (current, former or joint clients) or a third person.

If so, there a conflict of interest

PART 2

If there is a Real, Potential, or Perceived Conflict of Interest, can the Legal Aid Practitioner Act Despite such a Conflict of Interest?

Step 5
Determine if the legal aid practitioner is being asked to represent both sides of a dispute.

Step 6
If the practitioner is not being asked to represent both sides of a dispute, he or she should determine whether he or she reasonably believes that he/she is able to represent each client without having a material adverse effect on the duties owed to the other client.

Step 7
If the legal aid practitioner does not reasonably believe that he/she is able to represent each client without having a material adverse effect on the duties owed to the other client, then he/she cannot take the case.

Step 8
Alternatively, if the practitioner reasonably believes that he/she is able to represent each client without having a material adverse effect on the duties owed to the other client, then he/she may act if there is written consent from all of the affected clients. This consent must be fully informed and voluntary after full disclosure to all of the affected clients.

If so, the legal aid practitioner cannot act or continue to act

It should be noted that international standards generally consider it a conflict of interest if **any** lawyer or agent in the same law firm, organization, or agency (such as FLAA) has a conflict of interest with any potential client. For this reason, it is a common practice to carry out “conflict of interest” checks before agreeing to provide services to or represent a client.

In many countries, however, given the paucity of legal aid service providers and the great need for the same, it is a common practice to create an “ethical” or “Chinese” wall within the firm or organization to avoid disqualification for real or apparent conflict of interests. “Ethical Wall” means the screening method implemented in order to protect a beneficiary from a conflict of interest. An Ethical Wall generally includes, but is not limited to, the following elements: (1) prohibit the conflicted person from having any connection with the matter; (2) ban discussions with or the transfer of documents to or from the conflicted person; (3) restrict access to files; and (4) educate all members of the firm, corporation, or entity as to the separation of the conflicted person (both organizationally and physically) from the pending matter. This is the policy that the FLAA has adopted and legal aid officers are expected to be able to represent both sides of a conflict, taking the appropriate precautions to avoid conflicts of interest.

It should also be noted that potential conflicts of interests may be addressed differently in service provision systems such as hotlines, advice clinics, and counseling organizations where there is a high volume of interaction and usually only one relatively brief contact (i.e., to give legal advice or information) with the client. In these high-volume, brief contact situations, it is often not feasible to screen systematically for conflicts of interest and the person giving the advice would not, in fact, have access to information from or about the other party. Best international practices generally free a lawyer from rigid application of rules governing conflicts where the lawyer, under the auspices of an organization sponsored by a nonprofit organization or court, provides short-term limited legal services to a beneficiary without expectation by either the lawyer or the beneficiary that the lawyer will provide continuing representation in the matter.

Standard 2.4: The legal aid practitioner should communicate frequently and effectively with his or her beneficiary, to the extent possible, throughout the course of the provision of services or legal representation.

Effective communication is the key to any successful client-lawyer (beneficiary) relationship, and it is an ethical imperative. While the details of effective communication throughout the case will be detailed as a technical and strategic matter in Standard 3 below, the general and ethical obligations will be discussed here.

Legal aid practitioners in Kosovo face unique challenges regarding effective communication. Clients may be transient, lack access to mobile phones or computers, or may disappear for periods of time or permanently during the course of the provision of services or representation. A legal aid practitioner must therefore seek at least one alternative way to get in touch with their clients. This could be through a family member, neighbor, church, or local official, depending on the circumstances. It is recommended to keep this information in an automated case management, on a register of cases, and/or on the case docket/file.

A further challenge is encountered because high-volume legal practice puts pressure on legal aid practitioners (or organizations) to not spend sufficient time or resources that may be necessary to ensure effective beneficiary communication. Practitioners must account for language barriers and the time needed for effective interpretation and translation. For all circumstances, the volume of need may lead an organization to offer information and advice that is more generic than specific to the beneficiary's individual circumstances.

Many organizations or agencies, such as FLAA and some NGOs in Kosovo, offer limited advice or brief consultations with clients in a large percentage of their cases. Clients should not, however, be given advice that they are unlikely to be able to follow. For a beneficiary to act on legal advice, it is essential that the individual understand the advice and the steps that need to be taken. Advice that may seem simple to a practitioner may be confusing to a beneficiary who is unfamiliar with the law and is apt to be anxious about the circumstances that gave rise to the legal problem. Reducing the key points of the advice to writing in the form of a letter, brochure, or prepared form may help to assure clear communication. Written advice must use plain language, checklists, and other simple tools so that the beneficiary can understand what he or she needs to do if representation is not being provided. Translation of written materials should be available to clients who speak different languages.

It will not always, however, be appropriate for a practitioner to give the advice to the beneficiary in writing. Circumstances in which it would not be appropriate to send a follow-up letter or otherwise communicate in writing with a beneficiary include when a beneficiary, who as a victim of domestic violence, would be vulnerable to dangerous, possibly life-threatening retaliation if written advice were intercepted. Similarly, circumstances may be present that require advice to be acted on before it could be provided to the beneficiary in writing. Some beneficiaries may have no practical way to receive the writing by mail or other means.

Standard 2.5: Once an attorney-client relationship is formed, the legal aid practitioner is obliged to maintain confidentiality/professional secrecy with his or her beneficiaries.

A legal aid practitioner shall at all times maintain and be afforded protection of confidentiality regarding the affairs of present or former clients or beneficiaries, unless otherwise allowed or required by the law of Kosovo and/or applicable rules of professional conduct.

Informing and explaining to the beneficiary about the lawyer's obligation to maintain confidentiality/professional secrecy is very important in securing the trust of the beneficiary, which, in turn is indispensable to provide the highest quality of service. If a client or beneficiary does not trust his or her lawyer, this could affect the amount of information that the beneficiary gives to the lawyer and limit the possibility of providing the highest quality services.

A legal practitioner must not disclose confidential information relating to representation of a beneficiary except as authorized by the beneficiary or by pertinent ethical rules and laws. He or she must take reasonable steps to prevent inadvertent or unauthorized disclosure and inadvertent or unauthorized access to such information and should have policies in place to respond to a breach of security, including informing clients/beneficiaries, funders and individuals impacted by the breach. In many jurisdictions, this obligation is only nullified if the lawyer finds out the beneficiary is planning to seriously injure him or herself or a third party.

A persistent consideration in negotiating the different modes of service delivery is whether, in any particular instance, the legal aid practitioner has entered into an attorney-client (beneficiary) relationship. Whether an attorney-client relationship has been formed depends upon the nature of the interchange between the legal aid practitioner and the person seeking assistance. The crucial distinction is whether the individual receives advice about how to proceed that is based on individual information and is tailored to the person's circumstances. If specific advice is offered, generally an attorney-client relationship exists and has been created.

It is important to note that the establishment of an attorney-client relationship may be implied from the circumstances of the interaction with the individual seeking assistance regardless of the intent of the practitioner in offering the assistance. The expectation or reasonable belief of the person being assisted that the organization is providing representation may be deemed to create an attorney-client relationship, even if the petitioner intends otherwise. If any ambiguity is present regarding whether an attorney-client relationship exists, the potential beneficiary's understanding of the relationship is likely to prevail.

This situation has practical implications where the mode of service delivery involves a lawyer interacting with a beneficiary in person, even of a general nature. The fact that participants are in the presence of a lawyer who is explaining the law may give rise to the potential beneficiaries' belief that the lawyer is providing legal advice tailored specifically for them. The fact that assistance is provided in a group setting does not preclude the establishment from an attorney-client relationship. In some cases, no individual interaction will occur at all between the recipient of the information and the persons providing it, and a participant would generally not reasonably believe that an attorney-client relationship has been formed. Public seminars and presentations to groups that are intended as community legal education, however, can sometimes be less clear. Participants in such events may press questions particular to their situation. The organization should be sure that practitioners leading such events are aware that answering inquiries about specific situations may inadvertently result in providing a response based on specific facts of the inquirer that may be deemed to be legal advice.

Web-based systems that offer general information explaining how a user should proceed substantively and procedurally generally *do not* establish an attorney-client relationship if an attorney has not provided advice based on the input of the user. This is true even if the web-based system produces a pleading based on the user filling in blanks or responding to computer generated inquiries. On the other hand, e-mail responses to an inquiry posted to a bulletin board or e-mailed to a particular user might well establish an attorney-client relationship, if the advice offered is tailored to the specific facts presented by the inquirer. Legal aid practitioners need to be aware of ethical duties to prospective clients that require information obtained during the course of intake not to be treated as disclosed and required to be kept confidential.

Standard 2.6: A legal aid practitioner should zealously and competently represent his or her beneficiary's interests in a timely manner.

A lawyer shall treat beneficiary interests as paramount, subject always to there being no conflict with the lawyer's duties to the court and the interests of justice, to observe the law, and to maintain ethical standards. Zealously representing a beneficiary means doing everything within the borders of the ethical rules and the confines of law that a lawyer can do

to best represent the beneficiary. This can mean going to the edge of one's ethical obligations, but it does not mean either lying on behalf of a beneficiary or presenting any knowingly false evidence in court or on behalf of the beneficiary. Competent and zealous representation means taking an active role in the investigation of the case and not relying on others, such as the police in criminal cases or the court or even the beneficiary in civil cases, to do the investigation in the case. Some lawyers in Kosovo are reluctant to take an active role during the pre-trial stages of criminal or civil proceedings and often do not independently investigate the facts of cases, or interview any witnesses, relying on the police or the judge to carry out all the investigation that is necessary. This puts the defense in criminal cases or the lawyer for the claimant or for the respondent in civil cases at a severe disadvantage, since they will not be in a position to meaningfully challenge evidence put forth by the opposing party at trial.

"Limited" representation (preparation of pleadings, administrative letters, etc. on behalf of the beneficiary) does not in any way mean low-quality representation. An agreement to limit the scope of representation does not exempt the legal aid practitioner from the duty to provide competent representation and to protect the beneficiary's interests. The legal aid practitioner must be diligent about responding to the beneficiary's needs and interests, which includes a responsibility for assuring beneficiaries can make reasonable use of the advice that is offered. Limited representation can be provided and for this a brief telephone consultation can be appropriate for a common and typically uncomplicated legal problem, but that such a limitation would not be reasonable if the time allotted was not sufficient to yield advice on which the beneficiary could rely.

Zealous and competent representation is discussed further in Section 3 below.

Standard 2.7: A legal aid lawyer should effectively manage beneficiary's expectations and honor any agreed-upon undertaking.

A lawyer shall honour any undertaking given in the course of the lawyer's practice in a timely manner, until the undertaking is performed, released or excused. Undertakings promised to the beneficiary should be clearly stated in the retainer agreement, the terms of which should be explained to the client.

POSSIBLE METRICS: Retainer agreement in the file. Recording explanatory session with beneficiary in the communications log of the legal aid practitioner.

Standard 2.8: A legal aid practitioner should respect his or her clients' freedom and strategic-decision making as a part of the lawyer-client relationship.

A lawyer shall respect the freedom of clients to be represented by the lawyer of their choice. Unless prevented by professional conduct rules or by law, a lawyer shall be free to take on or reject a case.

An essential ethical aspect of the attorney-client relationship and in undertaking effective communication is providing sufficient information and orientation to the client/beneficiary to be able to make the key strategic decisions in his or her case. While the legal aid practitioner can and usually does make many of the technical and legal decisions in how to best carry out the litigation of a case, in general, however, the beneficiary should make the key strategic decisions in the case. These include (at least) setting the objectives of the case and deciding whether to settle the case. Evidently, beneficiaries are usually not, and should not be expected

to be experts in the technical aspects of the law. This is the domain of the trained legal officer or lawyer. Overall strategic direction, however, to the extent possible, should be undertaken with strong inputs from the beneficiary.

Setting the Objectives of the Case: The beneficiary should set the goals of the matter. For instance, if a beneficiary comes to the legal aid practitioner and explains that her objective is to bequeath all of her property equally to her children, including a child who has embezzled from the client, the legal aid practitioner does not have any authority to change the objective of the representation. It is the beneficiary's choice. Similarly, if the beneficiary informs the lawyer that her goal in litigation is to refuse any settlement and litigate to death then, the practitioner must abide by that stated objective (within the bounds of other ethical rules such as exercising truthfulness and candor to the court, not making frivolous motions, and not hindering any on-going investigation).

Settlement: No matter how strongly the legal aid practitioner feels that a settlement offer is the best outcome that the beneficiary could achieve, and that it is likely to trump any possible recovery at trial, it is the beneficiary's right to refuse. The practitioner simply may not accept an offer without the beneficiary's consent. When the beneficiary wants to make a settlement offer, that offer is also within the beneficiary's discretion. The legal aid practitioner may counsel a beneficiary on both accepting and making offers, but it is not the lawyer's decision to make.

POSSIBLE METRICS: Existence of memorandum to file or other notation regarding beneficiary's stated objectives regarding the case. Recording explanatory sessions with beneficiary regarding strategic objectives in the communications log of the legal aid practitioner.

Standard 2.9: The legal aid practitioner must ensure "language justice" for all clients, including language assistance that incorporates different tools and strategies (e.g., a bilingual staff, interpretation, translation, signage, and outreach).

This can and should be done in coordination and with the support of the funding or referring agency (FLAA, Chamber of Advocates, etc.).

POSSIBLE METRIC: Noting need for and compliance with obligation to provide an interpreter in the case file or database.

Standard 2.10: A legal aid practitioner shall properly account for and adequately separate the property of clients and third parties in his or her possession.

A lawyer shall account promptly and faithfully for and prudently hold any property of clients or third parties that comes into the lawyer's trust, and shall keep it separate from the lawyer's own property. This should be done through a signed receipt of such property. Any funds that are received by the lawyer from the beneficiary should not be co-mingled with the lawyer's personal funds.

c. GENERAL STANDARDS REGARDING RELATIONS WITH CLIENTS IN CIVIL, FAMILY, AND PROPERTY CASES

Procedural Justice and Legal Aid:

There are four key principles of “procedural justice”: voice, neutrality, respect and trust. Adherence to these principles by justice sector actors, including legal aid practitioners, is linked to improved compliance with judicial orders and positive outcomes in both criminal and civil cases. Service users have stressed the importance of their relationships with individual practitioners, stating that they value officers who are respectful, non-judgmental, consistent, fair and accountable. Justice service users tend to report that they value being listened to, making sure that they have a chance to ‘tell their story’. Research has found that the way in which supervision is experienced by service users will likely have an impact on the outcome of their probation, for example, in criminal cases. According to procedural justice theory, if people feel they are treated in a procedurally fair and just way, starting from the very first contact, they will view those in authority as more legitimate and respect them more. They are more likely to comply and engage, even when the outcomes of the decisions or processes are unfavorable or inconvenient. The following chart illustrates the four key principles of procedural justice:



people-centered methodology called “procedural justice.” See the text box below for more information.

3.3. Inform the beneficiary that they are responsible for the strategic conduct (i.e., setting the objectives) of the case. See also Ethical Standard 2.8 above.

3.4. Provide his or her contact details to the beneficiary.

3.5. Communicate with the beneficiary in a way that is easy for him or her to understand considering their personal circumstances and factors that may reduce their understanding (such as age, cognitive abilities, level of education, proficiency in Albanian or Serbian). See text box below for tips on conducting initial interviews

Standard 3: When providing services to a client, including representation in court, the legal aid practitioner, including lawyers, advocates and FLAA agents, must: 1. Represent the beneficiary in an efficient and effective manner to achieve the best possible outcome for the client. This will be the subject of the Standards and metrics set forth in Section III below regarding advise, information, limited representation, and representation for litigation under the LCP.

3.2. Treat the beneficiary with dignity and respect and act in a courteous and professional manner in all dealings with the client. Proper treatment of persons seeking and receiving assistance requires staff who can interact effectively with those seeking legal assistance and who can competently relate in a manner reflecting the values of racial equity, cross-cultural sensitivity, and cultural humility. It also calls for systems, such as intake, to be accessible and efficient and to not inadvertently demonstrate a lack of regard for applicants’ and clients’ time or unique circumstances or barriers. This, along with many of the other standards in this section regarding dealings with clients form part of the application of a

as well as Standard 5 on dealing with priority clients with mental health and other cognitive problems.

3.6. Consider what the beneficiary needs to enable them to understand the process, provide strategic instructions, participate in proceedings, make informed decisions and understand the next steps to take in their case and tailor communication with the beneficiary to achieve this. This should be set forth in the retainer agreement to be signed with the client. It is also a good practice to include information regarding the attorney-client relationship and the obligation to respect confidentiality and professional secrets. At the time of signing, the legal aid practitioner should explain the contents of the retainer agreement and clarify any questions regarding such agreement.

3.7. Set expectations with the beneficiary early about how they will communicate with them and the frequency of this communication as well as regarding the scope and duration of the representation. This should be set forth in the retainer agreement referred above in Standard 3.6 to be signed with the client.

3.8. Always follow through on undertakings made to the beneficiary (this is related to Ethical Standard 2.7 above);

3.9. Meet with the beneficiary as early in the process as possible and reasonable; and

3.9.1. Obtain a personal history from the beneficiary to ensure that the lawyer is aware of all relevant issues that may affect the beneficiary's legal problem or needs for resolution or referral. This should be done in a client-centric manner (see text box below regarding initial interviewing of client); and

3.9.2. Provide an overview of the applicable legal principles, the legal process and enough specific information about their case so the clients know the next steps in their matter, can make informed decisions, participate in the definition and execution of the strategy or theory of the case, and clearly understand what is expected of them to assist their case

Carrying Out Client-Centric Initial Interviews

Conducting a great client interview is critical to an effective client intake process, and it's an important initial step to providing a client-centered experience. The key is to prepare: Asking the right attorney-client interview questions that can quickly and effectively let you know what your clients need. At the same time, the right questions will also help establish clear communication and expectations on both sides. During a client-centric initial interview, which aligns with the objectives of procedural justice, the legal aid practitioner should:

1. Make the client feel comfortable Pursuing a legal issue can be stressful, draining, and even scary for clients. With this in mind, the legal practitioner should do his or her best to be emotionally sensitive and make them feel as at ease as possible. Whether the meeting is in person or virtually over video conference, the setting should be professional, clean, and comfortable. Also, the lawyer-client interview is not the time for the lawyer to try to impress the client with complicated legal/judicial

language. The practitioner should avoid using legal jargon and overly technical language. Unnecessary jargon can alienate the client and make them feel overwhelmed and even talked down to. This is the opposite of a positive client-centered experience.

2. Observe non-verbal communication When the practitioner is asking lawyer-client interview questions, is the client fidgeting, or do they look like they have something to add? Attention should be paid to non-verbal cues. Clients may be nervous or intimidated, but non-verbal communication can help the practitioner determine if it is necessary to ask more specific questions to get them to share more. It's also a good idea to be aware of one's own non-verbal communication—if the lawyer appears disinterested, the client will almost certainly pick up on that.

3. Actively listen during the initial interview The best thing that a legal aid practitioner can do when asking questions during the initial interview is to just listen. This is the time when the client should be doing most of the talking. Follow client communication best practices and try to avoid cutting them off or filling in pauses. However, this doesn't mean that the legal aid practitioner should be silent. They should listen but also circle back and ask the client to clarify details when necessary (also known as active listening).

4. Integrate interview with case management software and reporting requirements Keep in mind that the client interview is part of the client intake process. That's why it's important to keep tasks related to the interview as simple and streamlined as possible. Look for opportunities to integrate tasks—like pre-interview contact information collection—with practice management software or other record keeping requirements. This way, you can eliminate duplicate data entry for clients (i.e. they only have to fill out their information once) and legal aid providing organization. Client-centric interviewing, however, does not include inputting information into the case management system during the interview itself.

5. Ask about their preferred mode of communication If the legal aid practitioner is committed to delivering an exceptional client experience, it's important to make an effort to communicate with clients the way they want to be communicated with. After asking the initial lawyer-client interview questions, the practitioner should ask the client how they want to be communicated with and note this mechanism in the file, whether it be by videoconference, telephone, text messaging, or in person.

6. Carefully manage client expectations The legal aid practitioner should not over-promise to a client. Clients appreciate honesty and a realistic vision of what they can expect.

7. Communicate clearly Clear communication goes hand-in-hand with effectively managing client expectations, so the legal aid practitioner should be open and honest when communicating with his or her client. No matter how the interview goes, make sure the client knows what the next steps are so they can make informed decisions and aren't unsure of what to do next.

Examples of Client-Centric Questions

Could I confirm your details? Starting with a simple easy-to-answer question can help ease the client into the conversation while letting the legal aid practitioner confirm important details.

I see you're having an issue with X. Can you tell me more about that? It's important to establish that the legal aid practitioner has done his or her research and has an understanding of what the issue confronting the client is. But it's also essential to also allow the client to tell the lawyer in his or her own words what the problem is. One shouldn't make assumptions and should listen to what the client says. If they are vague or unclear about certain things, the legal aid practitioner can always follow up for more details.

Have you worked with a lawyer before? Have you worked with another lawyer on this specific matter already? If the client has worked with another lawyer (whether on this case or a previous matter), the way that they answer this question can provide insights into their expectations of a lawyer. This way, the practitioner can gauge if he or she will be able to meet them. This can also help the practitioner know how familiar (or unfamiliar) the client is with the legal system and its processes. Additionally, if they have worked with another lawyer on this matter, it will be important to know why they're coming to a lawyer again now.

Can you share why you want to pursue this matter? To put the beneficiary's experience first, one needs to know why the client is pursuing a matter, how serious they are about taking it on, and how they feel about it. The practitioner should let them share their reasons and feelings about the case.

How can I help you? Be direct. By asking this open-ended question, one can get a better understanding of what the beneficiary's expectations of you will be. At the same time, one is prioritizing the beneficiary's needs.

Could you walk me through your case? Instead of asking detailed questions at this point, the practitioner should ask the client to walk him or her through the facts of their case. This can help to identify what's most important to them and get a general picture of the issue.

What are you most concerned about? As an experienced attorney, one may need to focus on certain elements of a case. But the beneficiary lawyer-client interview is the time to learn what worries or most concerns the potential client. This could be the case's outcome or it could be the cost of legal services. Knowing this can help the practitioner proceed in a way that will best serve the client.

What are the goals for your case? While the practitioner may have already formed ideas for how to handle a case, it's important to clarify what result the client wants to see as setting the objectives for the case is a critical function for the client, and not the lawyer, to carry out (as per Standard XX above).

Do you have any additional information or documents that I should have? One never knows what one doesn't know or what one might have missed. This type of simple, open-ended question lets clients bring up any points that the legal aid practitioner may not be aware of.

What answers to client questions should legal aid practitioners prepare for? The initial interview isn't just about interviewing a potential client—the client will have questions for the legal aid practitioner. Being prepared for the common questions that clients have is key to creating confidence and trust. Here are three common questions that the legal aid practitioner should be prepared to answer:

What should I do next? Seeking a legal aid professional, beneficiaries are looking for expertise and guidance. The legal aid practitioner needs to provide clear next steps (for example, when they can expect to be contacted) to give clients confidence in the legal aid practitioner as a lawyer;

What are the specific procedures for my case? While the legal aid practitioner may not be able to predict specifics, he or she should be prepared to lay out the general process and approximate timelines for the client. This way, they will have a better idea of what to expect. A good practice is to give clients a brochure regarding the procedural aspects of their case in an easy-to-understand format.

Can I get more information about my case? The legal aid practitioner should set realistic expectations for timelines and frequency of communication updates. For example, the beneficiary may think he or she will be called with daily updates. But if that's not practical for the legal aid practitioners (and it usually isn't), this should be discussed to try to find a solution that works for both attorney and legal aid beneficiary.

3.10. Consider whether the beneficiary has capacity to instruct and, if unsure, consult appropriate experts to make this determination, and consider whether it is appropriate for a substitute decision-maker or guardian to be appointed (see also Standard 5 below).

3.11. Communicate with the beneficiary in a timely and informative manner about:

3.11.1. The progress of their matter, including both before and after key events, developments and milestones occur, noting each such communications in a register (which could be a part of the case file or done through an automated case tracking system);

3.11.2. The prospects of their matter;

3.11.3. The consequences of the beneficiary's instructions regarding the matter.

Beneficiaries should receive full and timely information on developments in their case. Because legal aid practitioners are familiar with law and legal procedure, they may feel confident about the progress of a case. Clients do not have that experience, however, and are apt to feel anxious unless kept informed of the current status of their case and of future expectations. The beneficiary should know how the practitioner will communicate with them, what platforms and technology the beneficiary and practitioner will use to communicate and boundaries related to the communications, and any potential risks of using those tools or platforms. Clients should be informed immediately of any major developments, particularly if they require decisions about new or revised strategies. Clients generally should be provided copies of major correspondence and pleadings. When a case is inactive for a long time, the practitioner should maintain in contact with the beneficiary through simple phone calls, texts, or letters to ease the beneficiary's anxiety and to maintain confidence and trust in the practitioner. The practitioner should respond promptly to reasonable requests from the beneficiary for information about the case.

POSSIBLE METRIC: Score on the Periodic Individualized Client Satisfaction Instrument – or PICS (This PICS should be individualized – and not anonymous – and be applied every 3-6 months. It should contain only a few questions, such as – “From 1-10 how would you rate your **satisfaction** with: (1) the communication you have had with your lawyer?; (2) the way he or she has explained your case to you?; (3) the way he or she has involved you in the key decisions of the case? and (4) his or her overall treatment of you as a client?”.

Standard 3.12: A legal aid practitioner should have the awareness, attitude, skills, knowledge, and resources necessary to provide assistance in a culturally competent manner and in order to be responsive to, and aligned with, the interests of those people most affected by poverty, racism, discrimination, and other forms of oppression.

This awareness, attitude, skills, and knowledge could be acquired through on-going cultural and sensitivity training as well as through the engagement (with temporary or permanent) of social work and other professionals to assist in these matters.

POSSIBLE METRIC: Score on Question 4 of the PICS.

3.13. Not interview a beneficiary or potential beneficiary:

3.13.1. In the presence of a child unless there are exceptional circumstances; or

3.13.2. In the presence of a spouse or partner if there are concerns about domestic or family violence; and

3.13.3 In conditions that do not respect the privacy of the client, to the extent possible given the circumstances.

3.14. Ensure the beneficiary is adequately represented at all court events. If an agent (substitute attorney) is required to attend a court event, ensure they are eligible to undertake legal aid work and meet the relevant quality requirements, and notify the beneficiary of the agent's attendance before any court event.

POSSIBLE METRIC: Score on Question 2 of the PICS.

3.15. Obtain instructions from the beneficiary before presenting their case in court, and where possible, speak with the beneficiary immediately preceding and following important court events, including clients in preventative custody. These critical communications should be registered in the CMS, in manual ledgers, or even on the file docket.

POSSIBLE METRICS: % of court events in a particular case in which the lawyer communicated with the beneficiary both before and after the event as indicated in communication registers. Overall score on PICS.

3.16. At the conclusion of a matter, provide the beneficiary with a written explanation of the outcome of the matter, including (as relevant):

3.17.1. A copy of the final orders or the written judgment;

3.17.2. Any subsequent action that the beneficiary is to take; and

3.17.3. Any rights to appeal along with the relevant time limits.

POSSIBLE METRIC: Existence of copy of closing letter in case file.

3.17. Maintain “vertical” continuity of representation, that is, use the same lawyer from the start of the case throughout its trial (and appeal) or resolution, where possible. This encourages the development of more trust on the part of the client, which in turn allow for a better quality of legal representation.

In the “vertical representation” model, the assigned legal aid provider enters a given case at the earliest possible stage, and the same provider represents the beneficiary at every stage until the completion of the case (including appeals). This model frees the beneficiary from the trouble of having to readjust to a new provider at each stage and retelling his or her story. To the contrary, this model allows for the provider and the beneficiary to build trust and plan legal strategies together over time. The model also permits the legal aid practitioner to profoundly know the facts of the case, which are critically important for success at the trial stage.

The FLAA legal officers are usually the first providers to have contact with the client, before contracting the case out for representation if such strategy is chosen. Given this fact, to the extent that the legal aid officer can stay involved in the case as a liaison and/or as a support to the litigating attorney (i.e. adopt a team approach as many FLAA legal officers already do), outcomes will likely be improved and beneficiary satisfaction will improve.

POSSIBLE METRICS: Percentage of court appearances in which the originally assigned lawyer personally appeared. The non-existence of any changes of counsel from case initiation through resolution.

3.18: The legal aid practitioner shall refer the beneficiary to relevant support services (such as medical, psycho-social, financial services) and other legal services, including referrals to other specialized legal aid services, as may be required.

Psycho-social services can be particularly useful in complex family cases, which can produce emotional stress.

POSSIBLE METRIC: Number of external references facilitated or made for the client.

d. DEALING WITH PRIORITY CLIENTS

Priority clients are clients that have high levels of vulnerability and disadvantage and low levels of legal capability (i.e. with a low ability to resolve legal problems independently).

4a. Clients in Custody or Detention

Standard 4. When working with a beneficiary in custody or detention, the legal aid practitioner must:

- 4.1. Take instructions on whether the beneficiary wants to attend court events in person or via an audio-visual link (AVL);**
- 4.2. Conduct beneficiary conferences about evidence and case strategy in person where possible and prior to the court date; and**
- 4.3. Set expectations with the beneficiary early about how you will communicate with them and the frequency of this communication and explain the restrictions and limitations of communication with clients in detention or custody.** See also Standards 3.7 and 3.9, noting that adjustments may need to be made based on the circumstances (and realizing that calling from jail or prison is substantially more complicated than for a beneficiary in liberty).

4b. Clients with an acute mental illness, intellectual disability or cognitive impairment

Standard 5. When working with a beneficiary who has a mental illness, intellectual disability, or cognitive impairment, the legal aid practitioner must:

- 5.1. Approach the matter on the assumption the beneficiary is competent and has the capacity to provide instructions and make informed decisions**
- 5.2. Where it is obvious the beneficiary cannot give instructions, consider:**
 - 5.2.1. What supports the beneficiary needs to make a decision, including assistance from any third party; and
 - 5.2.2. Whether it is appropriate and in the beneficiary's interests to have a supported or substitute decision maker appointed.
- 5.3. Conduct the matter in a way that draws on the beneficiary's strengths, seeks their direct involvement, ensures their participation and reduces beneficiary anxiety and stress, as reasonably practicable.**
- 5.4. Conduct the matter in way that does not unnecessarily:**

5.4.1. Cause or increase the beneficiary's distrust towards or damage the beneficiary's therapeutic relationships with clinicians and/or medical professionals; or

5.4.2. Cause or increase the beneficiary's distrust towards family members or care givers.

Representation of minors or persons who suffer an impairment that impedes their ability to make sound judgments or who are otherwise incapacitated presents special responsibilities to the practitioner. The practitioner should be aware of pertinent ethical and legal obligations in the jurisdiction where the individual practices and should abide by them.

The legal aid practitioner should seek to maintain a normal attorney-client relationship with all clients, but should be alert to the degree to which a beneficiary's circumstance affects the individual's capability to make legally binding decisions or to make sufficiently well-considered decisions related to the case at hand, including representation. The legal aid practitioner may seek the assistance of family members or other specialized support to help communicate with the client. It is important, however, that to the degree possible, the practitioner defer to the wishes of the beneficiary and not to a family member or other person who is assisting the client.

A practitioner who perceives a risk of substantial physical, financial, or other harm to the beneficiary and who cannot adequately protect the beneficiary's interests may take reasonable steps to protect the beneficiary (notwithstanding the obligation to maintain confidentiality if the risks are serious), including consulting with others who can protect the beneficiary and, if necessary, seeking the appointment of a guardian *ad litem*, conservator, or guardian.

e. Technical Practice Standards in Civil Cases (Generally)

Standard 6: The legal aid practitioner should strive both to achieve clients' objectives and positive, demonstrable results, as well as to accomplish lasting results that respond to the beneficiary communities' most compelling legal and access to justice needs.

The objective of any strategy chosen to assist legal aid clients, whether offering full representation, limited scope representation, or legal information, should be to help the individuals served resolve their legal problems favorably and with positive, demonstrable results. While numbers are important (i.e., approximately 7,000 clients provided with legal aid services by FLAA in 2020), positive results in individual cases can be even more important, especially when applying client-centered approaches. The material in Section 3 below are included in the Manual to help legal aid practitioners best achieve the beneficiary's objectives and get the best results possible in a selected number of civil, family, and property law cases. Legal aid practitioners should have instruments to be able to effectively register (so that, for example, FLAA can collect and monitor the information) positive results in cases. These could include, for example, amounts awarded in damages in compensation cases, amounts awarded (i.e. per year) in alimony and child support, reduction of bills and debts in administrative cases, divorces granted, or amounts awarded in inheritance proceedings.

This standard also acknowledges there are often broad issues that affect large numbers of beneficiary community members that can most effectively be addressed through systemic legal work that seeks to create lasting results for the beneficiary community overall. Given

this, the Manual, in Section 4 below, provides a brief description of strategic or public interest litigation and how this could be done in Kosovo.

Some of the assistance offered by a legal aid practitioner should and will involve nonrepresentational assistance, such as community legal education and dissemination of legal information to help individuals avoid legal problems and take steps on their own to address their situations. In all cases, this standard seeks that the legal aid practitioners or organization should undertake the activity with commitment to high quality. It also suggests that strategies should be deliberately chosen and evaluated periodically to determine if they are successful in achieving their intended result.

Standard 7: A legal aid practitioner should deploy his or her legal resources strategically to deliver effective and efficient legal services to individuals and communities, including in rural and marginalized communities, and to create positive change in the systems that impact those communities.

Efficient delivery: Given the limited funding faced by legal aid practitioners and both civil and State legal aid organizations, a central consideration of effective service provision is efficiency - getting the most impact out of the available resources. Strategic decisions around efficiency can take many forms. Deploying large amounts of staff time to individual cases means that fewer people may be served as clients, but those resources may be needed to achieve outcomes that impact a broad sector of the organization's target community. Provision of limited-scope advice and referral through a helpline may serve many people, but also may, in the longer term, result in less-effective outcomes. Efficient service delivery does not simply mean talking to more people or taking more cases. Instead, strategic efficiency means using a range of deliberate strategies to create the greatest positive impact for constituent communities within the organization's means.

The legal aid practitioner or organization must ensure that there are systems in place to promote the efficient delivery of services. For individual representation, systems must ensure timely and equitable screening and intake of new clients, assignment to advocates, and initiation of legal assistance, especially for time-sensitive legal matters. Legal aid practitioners and organizations must deploy technologies to promote easy and efficient case management and supervision. Systems must be in place for effective communication both within the agency and with clients and community partners. Technology is also a central method of efficient delivery and outreach to constituent communities, through websites and social media. Legal aid practitioners and organizations must stay abreast of new developments in technologies to support their work and assure efficient use of resources. While technology can be expensive to acquire and maintain, outdated and ineffective systems ultimately cost more to such practitioners or organizations in lost time and wasted effort.

Effective Delivery: Whatever the scope of service that is being offered, the legal aid practitioner or organization must focus on delivering effective legal service. Effective legal assistance can mean many things: the beneficiary "won" the case; a negative outcome was averted; the beneficiary received information to improve the ability to self-advocate; the agency provided assistance to historically underserved groups; a supportive law was enacted or a harmful policy removed; or a community's resources were enhanced and its members empowered to improve their lives. To maximize the effectiveness of its resources, a legal aid practitioner or organization must identify those legal issues for which it will offer full representation and which can be provided by other delivery methods, including limited representation, information and referral, community outreach and education, and advocacy in various

arenas. A legal aid practitioner or organization must identify individuals and beneficiary communities for whom limited representation would not be appropriate because of barriers related to language, culture, ability, lack of access to technology or transportation, family and work barriers, or similar factors. The legal aid practitioners or organization similarly must identify legal issues where individual representation may have less impact than various types of short-term service or systemic advocacy.

Legal aid practitioners should utilize all available means of technology to ensure equitable access to effective legal services within a territory. See text box below. For example, rural areas should not be limited to phone representation or limited representation because of the cost or time associated with travel. The ability to conduct meetings and hearings remotely should be encouraged by practitioners so that they can more efficiently and effectively provide the full scope of service to clients. See text box below:

Rural Legal Aid Provision

Legal aid practitioners should consider a variety of means to provide effective services in rural areas and should explore new opportunities for use of technology and other developments that may facilitate access for rural clients. A number of techniques, noted below, are available and more are likely to evolve with advances in information technology:

- Centralized intake and the provision of legal advice and limited intervention remotely can increase the organization's capacity to reach otherwise isolated clients. Advances in technology can help overcome some of the limitations of serving clients remotely by telephone and online, particularly with regard to the creation, review, and sharing of transfer of documents important to a case and opportunities to appear in court remotely via phone or video.
- Private attorneys in local communities who are willing to represent eligible clients for no or limited compensation can substantially improve an organization's capacity to make services available where clients live. The organization should address how matters will be handled when there are conflicts of interest or substantive issues with which the local attorneys are unfamiliar.
- Use of circuit-riding and mobile vans can provide periodic, temporary presence in local communities. Appropriate use of technology may ameliorate the potential loss of efficiency resulting from practitioners' travel time and their lack of ready access to items such as client files and legal research materials. Remote work preparedness can also alleviate these burdens.
- Organizations could consider partnering with others engaged in similar efforts, particularly courts and other non-profits—if there are no conflicts in the mission or diminution in the advocacy role of the organization, and no potential issues with ethical duties (privacy) or other funder restrictions.
- Local paralegals and lay advocates working in satellite offices can provide intake and refer cases to a fully staffed office for representation, when necessary. They can also provide advice, under the remote supervision of a lawyer, and represent clients directly in circumstances where non-attorney assistance to clients is permitted by law.
- Community legal education offered through websites, apps, and other means that are designed to be mobile-first may be used to advise clients of their rights and responsibilities and provide them legal information, as well as self-help legal form preparation tools to help them to avoid incurring problems or to respond without direct representation.

Some isolated rural clients can be served through remote service platforms that include secure video conferencing, document sharing, scheduling, and online communication. If not directly available to the client, computers and other necessary equipment can be located at local entities, such as social service agencies, churches, and libraries. Courts may also conduct online hearings and provide online self-help. As technology and rural internet access improves, such approaches are likely to increase in effectiveness. The legal aid practitioner or organization needs to be aware of digital equity in its service area and make sure that courts and other agencies are not leaving the client community behind, ensuring that clients who cannot appear remotely are still given an opportunity to do so in person.

Standard 8. A legal aid provider should counsel the beneficiary thoroughly and empower the beneficiary to make all of the important strategic decisions in the case.

Client-centered advocacy is similar to Ethical Standard 2.8 and the Client Standard 3.3. This standard, however, requires that the legal aid practitioner apply the concept as a technical matter throughout the representation of the beneficiary and actually empower the beneficiary to make key decisions in the litigation. To a certain extent, the legal aid practitioner should play an educational role with the beneficiary as the case progresses.

POSSIBLE METRIC: Score on Question 3 of the PICSI.

Standard 9: A legal aid practitioner, beginning with the initial interview with the client, should carry out a thorough independent investigation of the facts regarding the beneficiary's claim (or the claim of the plaintiff if the practitioner is representing the respondent), assisting in procuring the required evidence/proof or leads to evidence necessary for filing a detailed claim pursuant to Article 253 of the LCP or defending one.

Technically and strategically, this is one of the most important standards and is probably the one that is the least followed in Kosovo at the time of writing of the Manual. Without doing an independent investigation of the facts regarding family, civil, and property claims, the legal aid

practitioner is either relying on third parties, such as police, judges, external experts, or even just the beneficiary him or herself (which often is biased regarding some of the facts, particularly the ones that are contrary to his or her interests but which are critical for the

practitioner to know to be able to address). It is simply not recommendable to present a skeletal Article 253 claim and expect the court to investigate and “put the meat” on it throughout the trial. Although several appeals court opinions suggest that judges have some responsibility to investigate (ordering witnesses, etc.), the LCP itself puts no responsibility on courts to investigate claims and it is not a good practice to rely on the judge to do the work for the beneficiary and the practitioner. Furthermore, presenting a bare boned claim will likely delay the process and any possible settlement even more, neither of which are in the best interests of the plaintiff beneficiary.

The experience of legal aid providers in both developed and developing countries that have embraced independent fact investigations, as well as the findings of researchers examining the impact of investigation, show that investigation can make a meaningful difference in the outcomes of cases. The consensus of existing legal aid performance standards mandates independent defense investigation in criminal cases or of the facts related to claims (or defense of claims) in civil, family, and property cases, whether the practitioner is representing the plaintiff or the respondent.

POSSIBLE METRIC: Existence in case history/final closing report of documented acts of independent investigation of the claim on behalf of the client.

Standard 10: The legal aid provider should develop coherent, creative, and comprehensive case plans, and strategies, and prepare carefully and thoroughly for every court hearing.

Practitioners who develop comprehensive strategies and who use court hearings and filings tactically to advance those strategies, position themselves optimally to advocate for fairness and achieve strong results for their clients. This proposition is also broadly accepted in legal aid standards internationally. A particularly useful good international practice and methodology is called the Theory of the Case methodology.

Definition and Use of the Theory of the Case Methodology: Developing a theory of the case could very well be the single most important thing that a legal aid practitioner can do to achieve better outcomes in a particular case. This theory of the case must be developed early in the process (and can be modified throughout the case if new information becomes available), and will serve as the blueprint from which the case will be constructed. As the legal aid practitioner prepares for trial, he or she will face a myriad of decisions, from which witnesses to call to how to make the most persuasive arguments before the judge. None of these decisions can be made intelligently unless the legal aid practitioner has a clear picture of the strengths and weaknesses of the case and how it can be proved. Thus, the development of a viable theory is the first order of business.

A trial is not a presentation of every fact and every remotely possible legal argument. Dumping all the facts and law into the judge’s lap will simply overwhelm him or her and obfuscate the important matters. It is your job to sort the information before trial, organize it, simplify it and present it to the judge in a simple, straight forward way that explains what happened and why the beneficiary is entitled to a favorable outcome. This is the goal of your theory of the case. You must decide what evidence and arguments to ignore as well as which ones to emphasize. The final product should be a cohesive, logical view of the merits of the case that is consistent with common everyday experience, that builds on the strengths of the case, and that finds ways to compensate for the weaknesses.

A good practice is to map or draw out the theory of case, listing all the legal elements of the claim (i.e. negligence, violation of contract, divorce, entitlement to property, entitlement to child support, etc.) to be proved at trial and exactly what evidence will be used to prove these elements. It is not uncommon at the beginning of the investigation to have some blanks in the mapping regarding evidentiary matters, as these can be filled in with information collected during the investigation process. It is recommendable to do this mapping exercise at the time of filing the claim, so that key evidence expected to be collected can be mentioned in (or even attached to in the case of key documents, etc.) to the claim itself, always remembering that the judge can issue a summary judgment under LCP Article on the basis of the claim and the reply without having to hold a full trial.

A good theory of the case contains the following elements:

- **Factual narrative.** First and foremost, a theory of the case is about the facts because they are what should be most important to the judge. Judges decide cases based on both the facts and the law as applied to those facts, but overall, the facts are usually more important in securing positive outcomes. Because a good theory is prepared from a reasonable person's point of view, the heart of it will be the narrative of what happened before, during and after the event. The central story that is told should be rich and detailed, not a bare outline. Who did what to whom, why did they do it, what led up to it, what were the consequences, who helped and who hindered the investigation, how do we know key witnesses are being truthful, what makes other witnesses wrong, and what character strengths and flaws played a role? The factual part of the theory of the case must be fully consistent with the beneficiary's version of what happened and the weight of the other relevant, admissible, and plausible evidence. A good factual theory avoids evidence that might be ruled inadmissible, seems inconsistent with the weight of other evidence, may be confusing to the judge, or is simply unimportant and runs the risk of confusing the key issues.
- **Identifying the key facts.** If the legal aid practitioner does a good job developing the factual narrative, it could end up being several pages long. Not all facts will be of equal importance. When, like a fictional detective, the practitioner make his or her arguments before the court at the end of the trial to "reveal the true culprit," the practitioner will point out the key facts that lead to the desired conclusion. The theory should identify these key facts so that the practitioner can emphasize them from the beginning of and throughout the entire trial. A key piece of advice is to not get hung up on facts that are not relevant to the theory of case. They only confuse the trier of fact and weaken the presentation of the case.
- **Motives.** People do things for reasons and they act in ways that are consistent with their motives. Why did a defendant attack the victim -- was it from anger, fear, insanity, jealousy, or desperate need for money? Why do some witnesses give testimony that incriminates your beneficiary -- are they mistaken because they were not paying attention or have poor eyesight, or are they lying to protect someone else or exact revenge for some past wrong? Part of the theory of the case must assign plausible motives to the important actors and witnesses. This step also must be based on the evidence -- before one attributes behavior to jealousy or anger, it is important to have some evidence that the person had a reason to be jealous or angry, for example.
- **Legal foundation.** The theory of the case must also contain a clear statement of what should be the proper legal outcome of the case. What verdict should the judge reach,

and why? And based on what legal foundation? One cannot afford to waffle here – one can't, for example, tell the judge that the beneficiary didn't shoot the victim, but if he did, it was done in self-defense. There are almost always multiple legal arguments to be made, and the practitioner must decide which one is the strongest and the most likely to be successful. This is an extremely pragmatic inquiry in which the practitioner asks what outcome is supported by the evidence and consistent with common sense. You should avoid the trap of wishfully thinking that just maybe the judge will give you an even better outcome by finding in your favor on a weak issue. For example, a respondent in a damage compensation case could argue that there was no negligence, there was no proximate cause, that plaintiff suffered only minimal damages, that the accident was unavoidable, or that it was 50% plaintiff's own fault, but can't very well argue all of these legal theories at the same time. If the legal aid practitioner is representing a defendant who, at the time of an accident, was drunk, speeding, driving in the wrong lane, and did not have a license, he or she would have to be delusional to even consider a theory of the case that the beneficiary was not negligent, that his behavior was not a proximate cause of the ensuing wreck, or that the accident was unavoidable. If the plaintiff suffered only whiplash injuries that cannot be medically verified, and was not wearing her seatbelt, the theory of the case can more comfortably rest on an argument that the provable damages are small and that the plaintiff was contributorily negligent. One may have to concede that the beneficiary is going to have to pay some damages, but this is far better than making the unreasonable argument that he should get off scot-free.

- **Emotions.** A good theory of the case also looks at the emotional content of the case. If a judge is on your side emotionally and wants to return a verdict for your client, he or she will usually find a way to do so. Has an injustice been committed? Is your beneficiary entitled to sympathy? Will your case arouse nostalgia, sentimentality, a sense of community spirit, patriotism, or righteous indignation? Are children and pets involved? There will usually be at least some aspects of your case that will generate positive emotional reactions. Even if you represent a heinous criminal, you may be able to generate some sympathy if he had a tough childhood or was abused. The flip side of this examination of emotional content is that you must anticipate and be prepared to deal with emotions that will be aroused against you. Will the judge dislike your beneficiary or your case? Will racist or sexist attitudes be triggered by the facts of the case? Will you have to deal with negative stereotypes because your beneficiary is young, old, tattooed, obese, unemployed, or an ex-felon? A good theory of the case takes account of all these emotional issues and develops a strategy for emphasizing the positive ones and minimizing the negative.
- **Weaknesses.** A practitioner must recognize, acknowledge, and have a reasonable, coherent explanation for weaknesses in the beneficiary's case. By weaknesses, we mean inherent problems in the case that arise regardless of what the opposing party does or says, not disputes that arise from conflicts in the evidence. A weakness is a gap, inconsistency, improbability, or flaw in the theory of the case. They arise when key facts cannot be proved, are uncorroborated, come from witnesses with credibility problems, or are remembered differently by two of the beneficiary's own witnesses, for example. Other kinds of weaknesses include character flaws in important witnesses, the need to rely on legal technicalities, unfavorable associations, and places where the case is inconsistent with common sense. Part of the planning process is to decide whether a weakness is important enough to acknowledge it in the case, and if so, how to reduce its negative effect.

- **Anticipate the opponent's case.** Remember that there is a lawyer on the other side who will be trying to convince the judge of a story that contradicts the beneficiary's. In the trial to come, the legal aid practitioner will have to play defense as well as offense. If both sides do competent jobs, the judge will have to choose between two competing versions of events, and the more the legal aid practitioner can demonstrate the implausibility of the opponent's case, the more likely it is the judge will accept the beneficiary's version. One should analyze the opponent's case to determine where the disputes will arise and where the opponent is strong and weak. One should use this information to decide where to attack the other side. A good strategist emphasizes his or her own strengths and attacks the other side's weaknesses. This part of the theory of the case is critical, because it is counterproductive to try to attack the other side's strengths. Such attacks usually fail, and if you fail often enough, it makes the opponent's case look invincible.
- **Short summary.** Finally, a legal aid practitioner's theory of the case needs a good three- or four-sentence summary that wraps up the case and tries to capture in a few words all the key elements of the theory of the case: Who did what to whom and why did they do it? What was the result? What are the legal and moral reasons this requires a verdict in your favor? What is your single most important item of evidence, and your best response to the other side's case? It is a good practice to write the summary of the theory of the case on the outer part of the case file and/or in any automated case management system to keep it continually present.

POSSIBLE METRIC: Theory of the Case, with its factual, legal, and evidentiary elements, set forth and briefly documented in the case record/final report.

Standard 11. A legal aid practitioner should consider engaging expert consultants and witnesses wherever appropriate and possible, whether the beneficiary's case is in court or not.

The production of high-quality evidence in favor of one's beneficiary is key to success, either at getting a favorable settlement or at trial. As such, the practitioner, particularly in complex cases involving, for example, psychological issues (child custody, visitation, and virtually any case involving determining the "best interests" of a child or children), scientific ones (product liability or compensation for damages) or archaic cadaster or property matters, should do everything possible to consult with independent experts to help navigate these cases and to help secure positive evidence.

The use of experts as witnesses is discussed further in Section 3 below.

As in most of the rest of the world, most legal aid practitioners or organizations in Kosovo do not have sufficient funds to pay for the accompaniment or advice of experts in their cases. As such, the practitioner needs to be creative in procuring this important multi-disciplinary and expert support. A good international practice is to sign memorandums of understanding (MOUs) with local universities through their psychology, biology, chemistry, or medical faculties to provide expert accompaniment and advise through students in their final years of study or as part of internship processes. While these persons may be less able to actually provide testimony at trial than certified professionals given their relative lack of experience, they can nevertheless provide invaluable insight, assistance, and accompaniment in understanding the issues that are often beyond the knowledge base of the legal aid

practitioner. A good international practice for legal aid/public defense offices is to have at least one psychologist or social worker on full-time staff to assist in family law and other cases.

POSSIBLE METRIC: Number of independent experts consulted with formally or informally during case.

Standard 12: A legal aid practitioner in court representation cases should timely file and argue all pretrial pleadings or motions that may be advantageous for the beneficiary under the LCP, applying the substantive and procedural law with skill and expertise. This includes carefully tracking procedural time limits.

The LCP provides for a large number of pre-trial “motions” that parties may make before the court. Many of these could positively benefit clients (whether the beneficiary is a plaintiff or respondent). These include motions or “petitions” to, among other things:

- Request for exemption from paying court costs (LCP Art. 468);
- Recuse the judge (LCP Art. 68) for bias, conflict of interest, or other reason;
- Dismiss the case because of lack of subject matter, territorial or personal jurisdiction of the court (LCP Art. 391);
- Dismiss the case because of a prior settlement (LCP Art. 391);
- Request the declaration of one of the parties at trial (LCP Art. 373);
- Request the production (“insurance”) of evidence before trial if it is likely to disappear or to be difficult to obtain at trial (if it is “very relevant” to the matter)(LCP Art. 379.1);
- Request “expertises” to be ordered by the court (LCP Arts. 356-358, 407);
- Disqualify or “expel” experts after receiving the report with their opinion (LCP Art. 360);
- Request a settlement conference (LCP Art. 411);
- Request mediation; or
- Request for damages caused by disrespect of the judge in a proceeding (LCP Art. 288.2).

While not specifically in the LCP (and in some of the substantive law or in the regulations emitted pursuant to the 2018 Law on Courts), judges are required to place certain cases, such as those involving a danger to children or others, on a fast-track basis. As such, it is important that the legal aid practitioner examine any and all facts relating to any need for urgent and/or temporary relief and any consequences that may result if such relief is not provided, and place such information in the claim or reply in civil, family, or property cases, with a view towards convincing the court to take the case on a fast-track basis. These motions for urgency or for temporary measures are submitted by letter to the President of the Basic Court, but a copy (with the index number) should be provided to the judge assigned to the case as well.

Controlling procedural time frames set forth within the LCP: The LCP establishes clear time standards for each procedural step toward the resolution of civil claims. These include:

- A judge must send the plaintiff’s claim and related documents to the respondent within 15 days of receipt by the court (LCP Art. 394);
- A defendant must provide an answer to the claim within 15 days of receipt of the court’s notification (LCP Art. 395.1);

- As a rule, a judge must hold a preparatory hearing within 30 days of receipt of the respondent's answer to the claim (LCP Art. 400.4);
- As a rule, a judge must hold the main hearing within 30 days of the preparatory hearing (LCP Art. 420.2); and
- A judge must issue a judgment in the case within 15 days of completion of the main hearing; any delay in the issuance of the judgment must be reported to the President Judge (LCP Art. 153).

The LCP impliedly allows for reasonable adjustment of some deadlines and timeframes, but in general it contemplates active involvement by judges to keep the adjudication process within specified time standards. For example, the LCP provides that “as a rule” the preparatory session and the main hearing must happen within 30 days of the prior event—suggesting that judges have some flexibility when necessary. However, a plain reading of the statutory language does not permit indefinite or unjustified postponements (see, for example, LCP Arts. 441.1 and 441.2) and the President Judge must monitor all postponements of main hearings (see LCP Art. 441.3).

While in practice it is widely known that many, many judges in cases in the courts in Kosovo, particularly in the larger cities, do not meet all of these procedural time limits in every case, in part because of their large backlogs, it is nevertheless crucial that the legal aid lawyer be fully aware of and track these time limits in every cases, taking appropriate actions (such as bringing motions or writing letters) to the court in the event of non-compliance.

POSSIBLE METRICS: Number of pre-trial motions, petitions, and notices filed with court or prepared and given to beneficiary in the cases of partial representation. Score on case docket evaluation, which could be carried out at the closing of a case by supervisors.

Standard 13: A legal aid practitioner should carefully explore the options for settlement or mediation of any dispute to determine whether these would be in the best interests of the client.

Fully litigating civil, family, and property cases can be lengthy, costly (both in terms of time and resources), and complicated matters and highly frustrating for clients. Taking consideration appeals and possibly dilatory tactics by the other party, cases can often take several years to complete. As such, settlement of appropriate cases before a full trial, depending on the terms of the settlement, can often be in the best interests of the client. Legal aid practitioners should therefore explore the options for settlement of the claim with the opposing party (either directly with the opposing party, or with the opposing party's lawyer if he or she is known to be represented by counsel).

Relatively few lawsuits should go through the full range of procedures and all the way to the main hearing. In an ideal world, only the most controverted cases should actually go to a full trial, which often a lengthy, costly, and frustrating process for the parties. In many countries around the world, the vast majority of civil cases are settled by mutual agreement between the parties. A dispute in Kosovo and elsewhere can be settled even before a suit is filed. Once

a suit is filed, it can be settled before the trial begins and up through the end of the main hearing, or on appeal (LCP Art. 411.2). The judge can help the parties reach a settlement (but often do not have time to do so). In Kosovo, the LCP (Article 41) allows the judge (if it is seen as “necessary”) or the parties to refer the case for an “intermediation” or settlement process, although unfortunately in practice the rate of settlement of civil cases is relatively low.

A settlement does not usually state that either party was right or wrong in the case, nor does it necessarily have to settle the whole case (LCP Art. 414). Part of a dispute can be settled, with the remaining issues left to be resolved by the judge. Settlement agreements should contain language regarding execution of the agreement and what happens in the event of non-compliance. Attorney and court fees can also be part of the settlement agreement (LCP Art. 416)

Settlements should be carefully drafted and as complete as is practicable under the circumstances. Attorneys should use precise language and avoid ambiguities. Although it is often helpful to review and sometimes even incorporate language from prior settlements, this should not be done without careful consideration of the applicability of the language to the instant case. Also, negotiated language in prior agreements will seldom be appropriate for use in proposed agreements. Attorneys should keep a file of their initial settlement proposals for use when a model is needed in drafting a new agreement. Drafting resolution documents should never be treated as a routine task, regardless of the apparent simplicity of what the parties consider the essential provisions.

Regardless of whether or not a case settles, legal aid practitioners should complete a settlement negotiation/offer memo for the file setting forth the efforts made by the attorney to explore settlement, the terms of any proposed settlement offers along with the details of their presentation or discussion with the client, and, if rejected by the beneficiary and the reasons. A good practice is for the attorneys to prepare and include a letter to the beneficiary with the details of any settlement offer and the attorney’s recommendations regarding the same. This is particularly important if the beneficiary loses at trial or is awarded a lower amount than set forth in the settlement offer.

Tips on how to Prepare for a Successful Settlement Negotiation:

- **Conduct a thorough investigation.** The legal aid practitioner should still carry out the full investigation (also known as “discovery” in some jurisdictions) process as if he or she were planning and preparing to proceed to trial. This will provide substantial ammunition in the settlement negotiation. He or she should look for witnesses, depose them or have them draft affidavits, pore through documents to find good evidence, and consult with expert witnesses on their opinions of the evidence.
- **Know the case.** The legal aid practitioner should know everything about the case law, statute, facts of the case, evidence, and witness testimony. This will make the legal aid practitioner appear extremely prepared and may intimidate the other side.
- **Craft a powerful story.** At every trial, attorneys try to weave powerful and convincing stories during opening statements in order to shape the jury’s mind about what happened before they even hear any evidence. The legal aid practitioner will want to do the same at the negotiation in order to try to convince the opposing party that his or her beneficiary’s story is the right version of what happened.
- **Know the negotiation goals and the beneficiary’s lower limits.** In order to negotiate settlement figures, the legal aid practitioner, in consultation with the client, will need to know the lowest amount the client is willing to accept, as well as what is the goal amount. In a damages case, the bare minimum is usually equal to out-of-pocket costs, such as attorneys’ fees and medical expenses. The goal amount will include loss of quality of life, emotional distress, lost wages, and more.
- **Anticipate the other side’s arguments and prepare counter-arguments.** One never knows what exactly will happen in the negotiation room, but the good legal aid practitioner should be prepared for anything. He or she should come up with various strategies for different situations. This will enable him or her to argue his or her way to a successful settlement agreement.

Tips for a Successful Opening Argument:

Use a strong opening statement and a theme, which will carry throughout the trial. The theme should be catchy and easy to remember (i.e. "this child custody case is a case of the wicked stepmother").

Ensure credibility. The legal aid practitioner should try to catch the judge's attention with the opening statement. A good opening statement demonstrates sincerity, knowledge of the facts, confidence and likeability all at the same time. One shouldn't over-promise or under-deliver in the opening statement.

Tackle any unfavorable facts head-on. Most cases involve a certain measure of "bad" facts about the client. These should be tackled directly instead of having the information coming from opposing counsel in a more unfavorable light.

Offer the judge a road map of the case, using the theory of the case. Some lawyers use PowerPoints or white boards to give opening statements. One should frame the issues, keep it simple and tell a compelling story.

Stick to the script. Tell the judge what the evidence will show or prove. And don't go off script.

POSSIBLE METRIC: Existence of a settlement negotiation or offer memo in the file. Score on case docket evaluation, which could be carried out at the closing of a case by supervisors.

Standard 14: A legal aid provider should present clear, focused, forceful, and well-prepared arguments at the main hearing that deploy both law and facts effectively in support of a compelling theory of the case and conduct skilled direct- and cross-examinations of all witnesses (unless no damage is done on direct examination).

The LCP says little about the details of the actual carrying out of the main hearing. As such, it varies from judge to judge. The legal aid practitioner should try to make opening and closing arguments based on the applicable law and facts and should carry out a "direct examination" of the witnesses in favor of the beneficiary's position, including the beneficiary him or herself if the strategic decision is made for the beneficiary to testify,

and a "cross-examination" of the witnesses, including the respondent, for witnesses that testify or are expected to testify against the interests of the plaintiff. With the exception of questions that "suggest" the answer (LCP Art. 433.2), questions that have or not relevant and already been asked and answered (LCP Art. 433.3), or questions that tend to insult or disturb (LCP Art. 433.4), the LCP does not provide many details regarding the form of questions that can be asked, leaving this up to the parties. The legal aid practitioner should also be prepared to "object" to the judge regarding the form of questions asked opposing counsel and insist that the judge include such objections in the official record of the main hearing.

While effective trial practice could be (and often is) the subject of an entire book or separate manual, some key tips for the legal aid practitioner to remember including the following. Many of the following tips and best practices regarding trial advocacy are equally applicable to civil as well as criminal trials. In Kosovo, the extent to which parties can and do question witnesses and experts during civil trials varies considerably according to the judge and his or her style, but legal aid practitioners should be aware that it is usually in the best interests of the beneficiary of legal aid to have his or her lawyer actively asking questions, both through direct and cross-examination, as well as making objections, where appropriate.

Opening Argument: The opening argument sets the stage for the judge and lets him or her know what the beneficiary's theory of the case is, including its legal and factual elements, and how the legal aid practitioner will prove it. The practitioner should not mention things that he or she will not be able to prove during the main hearing/trial.

Direct Examinations: Direct examinations should be executed more as a story than a line or series of long and detailed questions from the lawyer. The witness should do most of the talking and questions should generally be open to solicit long yet descriptive and narrative responses from the witness. Open questions include those that begin with the 5Ws: “what,” “why,” “who,” “where,” “when” and or questions such as “what happened next.”

Cross-Examinations: The legal aid practitioner should carry out a cross-examination for witnesses of the opposing party or hostile witnesses. The key to a successful cross-examination is to make key points to challenge the credibility of the witness or his or her testimony and not to get a story as it the case with direct examination. Although “suggestive” questions cannot be asked, closed questions can be. Closed questions are question that seek specific elements of proof and not narratives or stories.

Tips for Carrying out an Effective “Direct” Examination:

- Prepare witnesses before the trial (without telling them what to say)
- Don’t let the witness lose his or her path towards the key points
- Use appropriate and understandable language
- Allow the witness to explain (avoiding general conclusions) and then follow-up on missing details
- Observe and listen to the witness and take notes regarding key testimony
- Generally organize testimony in chronological order, although starting and ending with the strongest points could be another organizing technique
- Bring out any known weaknesses in the witness or his or her testimony in his or her own words
- Use visual supports (charts, diagrams, maps, photos, etc.) given that “a picture is better than a thousand words.”
- Ask open questions, questions that call for a narrative, and follow-up questions
- Get the witness to describe scenes first (set the stage) then the actions that happened
- Maintain visual contact with the witness
- Use silence and pauses for dramatic effect
- Have the witness explain with demonstrations
- Set the foundation for experts (experience, knowledge, methodology, etc.) and then ask their opinion

It is important to decide whether to undertake the cross-examination of a particular witness. In order to decide this, one should ask:

- Was the witness important?
- Was the witness credible?
- Did he or she say less than was expected?
- How risky would it be to cross-examine the witness?
- What are the crucial points to the beneficiary’s theory of the case and were they affected by the testimony of the witness.

Objections:

The only objections to questioning of witnesses based on the express provisions of the LCP would include, as per LCP Article 433:

- Lack of relevance;
- Is repetitive (asked and answered);
- Is suggestive;
- Is insulting; or
- Is or intends to disturb.

Tips for a Successful Cross-Examination

- Should be broadly based on what witness said during direct examination and relevant
- Prepare themes (credibility, bias, impartiality, financial interest, lack of clarity, motive to lie, contradictions in the testimony with former statements, poor capacity or no possibility to observe or perceive, poor memory, etc.) to address that support the theory of the case, rather than written out questions
- Don't use open-ended questions as you generally will not like the answer. Only use open questions to solicit positive testimony from the witness, if there is any, or on collateral issues.
- Use closed sentences seeking specific answers (avoiding suggestive ones) to not let the witness take control. Never, ever ask the witness a question that starts "why."
- Use a firm tone of voice (without being disruptive or insulting)
- Don't repeat aspects of the direct examination, especially if they are negative for the client
- Know when to stop and don't ask the "final question" (i.e. the question that confirms the point trying to be made in the questioning – i.e. that the witness is lying or is biased). The final question gives the witness an opportunity to explain. Rather, use inference in closing arguments to answer the final questions in your own words.
- Do not ask a question if you do not know the answer.

Good practices regarding objections in other jurisdictions that may be able to be used in Kosovo, include the following. To the extent possible, the legal aid practitioner could and should try to classify many of these objections into the broad categories of "insulting," "intended to disturb" or "not relevant."

- Trick or capricious question intending to confuse the witness (i.e. when you hit your children did they cry?)
- Hearsay (a statement made by a third party out of court available for cross-examination that is being set forth to prove the truth of the matter asserted by the witnesses)
- Breach of attorney-client or other privilege

- Calls for expert or opinion testimony when the witness is not an expert
- Vague or ambiguous
- Calls for speculation
- Asks for confidential information
- Asks for information discussed in mediation
- Complex (such as two questions in one)
- Assumes facts not in evidence

Closing Argument: The closing arguments sum up the beneficiary's case and are the last things the judge will hear before making his or her decision. Generally, closing arguments should include: (1) a summary of the evidence produced at trial; (2) any reasonable inferences that can be drawn from the evidence; (3) an attack on any holes or weaknesses in the other side's case; (4) a summary of the relevant law and the theory of the case; and (5) a concrete plea to the judge to take a specific action or find in a particular way.

POSSIBLE METRICS: An overall positive result at trial (damages awarded, etc.). Score on trial performance evaluation instrument (that could be applied by FLAA officer or other court monitor).

Standard 15: A legal aid practitioner should proactively avoid any unnecessary delay in the case.

Given that justice delayed is often justice denied, it is the duty of every legal aid practitioner acting on behalf of the FLAA and other legal aid providers in civil, family, and property cases to ensure that the matter is dealt with as efficiently and speedily as possible, recognizing that frequently this is out of the control due to court backlogs and delays. This means that:

- Every effort must be made to avoid any delay or postponement in proceeding with a civil, family, or property case.
- Postponements should be avoided, unless absolutely necessary, bearing in mind the right of an accused to a withdrawal of the charge, or to have the trial proceeded with.

POSSIBLE METRIC: Case processing time from filing of claim to resolution (taking into account delays out of the control of the legal aid practitioner).

Standard 16: A legal aid practitioner should establish and maintain an electronic file in a case management system or a hard-copy file for each of his or her cases, which records all material facts and transactions, provides a detailed chronological record of work done, and

Tips for a Successful Closing Argument:

Begin with a strong introduction. As with opening statements, the best closing statements begin with a powerful – and memorable – introduction. And the best closing statements repeat, in the introduction, the *theory of the case or theme* that was used in the opening statement.

Ensure continuity and cohesion throughout the presentation of the case. By following the same structure in the opening and closing (e.g., repeating the theory of the case and the theme).

Show emotion and passion. Never deliver closing arguments in a monotone or disinterested manner. Show appropriate emotion. Argue with passion.

Never read the closing. Your goal during the closing should be to relate to the judge. Remember that an excellent closing argument is as much about *performance* as it is about *substance*.

Address the weaknesses in the case. Before delivering your closing, put yourself in the judge's shoes. What questions would you have about the merits of your case? What weaknesses would you identify? When you identify such questions and weaknesses, *address them in the closing*.

Discuss the evidence in detail but do so in a manner that tells a story. The best attorneys know how to tell a compelling story at trial. They highlight favorable facts and explain away unfavorable facts. And in the closing, the best attorneys use the testimony elicited at trial to complete their story and make a passionate case for a judicial ruling in their beneficiary's favor. The best attorneys also know what *not* to do: never merely summarize the evidence.

Use non-verbal techniques. To establish relatability, you should use strategic movements. Vary your tone and voice projection. Maintain an open stance, with your feet shoulder-width apart. Use facial expressions and hand gestures to emphasize important points. Your goal is to be authentic, not rehearsed, and convincing, not contrived. And most importantly, be confident, because confidence is everything.

End powerfully. Make your last words your best and most memorable. Your objective is to

sets forth a planned course of action. In addition, a legal aid provider should respect all relevant policies regarding retention of beneficiary files and information data.

Electronic (database, such as FLAA's Legal Aid Information System or LAIS, or similar case management system) or hard-copy case files should organize critical elements of a case in a logical, chronological, and coherent fashion. Each file should contain the following essential information:

- An indication of the options available to and selected by the client, a statement of the beneficiary's objectives, and the 3-4 sentence summary of the Theory of the Case;
- A full chronological record of beneficiary interviews and other communications with the beneficiary (phone calls, etc.); adversary contacts; third-party and expert witness interviews; field investigations; and records searches, including dates, names of persons contacted, important facts ascertained and important statements, and concessions and allegations made;
- A chronological history of all key investigatory, judicial, and similar activities with dates (to be able to measure time periods);
- An indication of the primary language for clients whose preferred language is not Albanian, interpreters and translators used, and copies of translated materials;
- Copies of all written correspondence, pleadings, legal memoranda, legal research, and other documents representing work done on the case, organized systematically for ready reference;
- Either a hardcopy or an electronic version of electronic correspondence exchanged;
- A specific plan with a clear delineation of tasks and a timetable with deadlines for completion of each task, including any relevant statute of limitations, consistent with the complexity of the case;
- A complete record of time spent on the case adequate to support any request for attorneys' fees, if appropriate, and to meet the organization's management needs as well as any requirements imposed by FLAA or other funding sources; and
- A closing memorandum (along with the close-out letter) that summarizes the work done for the beneficiary and the results achieved for the beneficiary in closed cases.

A legal aid practitioner or organization may wish to develop and use case protocols, templates, benchmarks, and checklists to guide practitioners in handling repetitive, routine legal problems.

Templates are pre-established forms in a word processing document with spaces to be able to easily fill in case-specific information and can be very useful and time saving on repetitive tasks. They are particularly useful for documents, such as retainer agreements, routine motions in court, closing letters to clients, settlement memos, and similar documents that have standardized language. A set of templates used by FLAA is attached in the Annex. These templates include:

- [Complaint to Labour Inspectorate](#)
- [Court Claim for Payment of Jubilee Retirement Benefits](#)
- [Complaint to Pension Department of the Ministry of Labour and Social Welfare regarding Appeal of Denial of Pension Payment](#)
- [Complaint to Pension Administration Department of the Ministry of Labour and Social Welfare regarding Appeal of Denial of Disability Determination](#)
- [Power of Attorney \(FLAA\)](#)

- Legal Action (FLAA) Cover Sheet
- [Declaration of Medical Expert regarding Client's Disability](#)
- [Evidence of Legal Actions Register \(FLAA\)](#)
- [Request for Tax Exemption to Court \(FLAA\)](#)
- [*Appeal for Protection of Legality in Criminal Cases](#)
- [*Objection to Evidence and Request for Dismissal of Indictment](#)
- [Married Couple's Written Agreement on Children Protection, Education and Care](#)
- [Referral to Kosovo Chambers of Advocates Private Lawyer \(FLAA\)](#)
- [Claim in Basic Court for Damages under Law on Obligational Relationships](#)
- [Appeal to Basic Court for Denial of Compensation for Paraplegic or Tetraplegic Persons by Ministry of Labour and Social Welfare](#)
- [Claim to Basic Court for Child Entrusting and Alimony](#)
- [Claim to Basic Court for Contact with Children \(Visitation\)](#)
- [Appeal to Basic Court for Denial of Pension for War Invalids and Civilian Victims by Ministry of Labour and Social Welfare](#)
- [Claim to Basic Court for Verification of Ownership of Property](#)
- [Claim to Basic Court for Marriage Dissolution \(Divorce\)](#)
- [Response to Appeal of Damage Compensation Case](#)
- [Debtor's Objection in Basic Court to Creditor's Proposal for Enforcement](#)
- [Motion in Basic Court for Execution of Judgment](#)
- [Motion in Basic Court for Entrusting Children by Agreement](#)
- [Motion to Supreme Court for Revision of Judgement on the Grounds of Erroneous Application of Substantive Law](#)
- [Motion to Supreme Court regarding Case Acceleration Urgency](#)
- [FLAA Decision to Accept Client's Request for Legal Aid](#)

Protocols set forth the basic issues to be addressed and the essential steps to be taken in routine cases. While helpful, protocols should only be used by the practitioner as a road map to evaluate the beneficiary's particular objectives in a positive and creative way, given the circumstances in the case, and to test for new and unique issues. Protocols may also be designed to draw attention to common fact situations or legal issues, so that the organization may consider such problems in the priority setting process and direct the allocation of its resources to the efficient and economic resolution of such recurring problems.

Benchmarks set out expected, realistic outcomes that should be achieved in addressing commonly recurring legal issues. Benchmarks may vary among offices, given the law and practice in each jurisdiction. Many of the performance standards set forth in this Manual have "proposed metrics" which are a sort of benchmark for performance evaluation and to facilitate higher levels of quality.

Checklists can be helpful in ensuring that all steps have been taken and all required documents have been prepared, submitted, and included in the beneficiary's file. Many checklists are included below in this Manual.

3. General Aspects Regarding the Law of Contested Procedures (LCP):

- a. **Overview:** The LCP is the key procedural law of concern to the civil legal aid agent and practitioner, equally governing civil, family, and property cases. It applies to all cases that are subject to the coverage of this Manual and as such will be discussed at some length. Particular attention will be given to aspects to investigate and

evidentiary issues, particularly regarding the prioritized civil, family, and property law cases.

b. Procedural Stages within the LCP:

To ensure efficiency and a timely, fair disposition of civil lawsuits, the LCP prescribes a series of specific steps, each of which is designed to prepare cases for eventual resolution or disposition by trial. The intermediate steps involve oversight of the parties, especially with regard to their obligation to produce relevant, admissible evidence supporting their claims and defenses within specific deadlines and timeframes. The LCP provides for the following steps in the adjudication of a claim:

Claim Submission. The adjudication of any civil lawsuit begins with a petitioner's filing of a written evidence-based claim against the respondent(s) that meets the procedural requirements of the LCP.

Initial Screening of the Claim. A judge must perform (or oversee the performance of) an initial screening of the plaintiff's claim and direct the plaintiff to correct or supplement his/her submission—or, if the plaintiff fails to comply with such directives on or before relevant deadlines, reject the claim.

The timely assignment of a judge to preside over the case is necessary so that the court does not fail to meet mandatory deadlines set by the LCP. For example, it is mandatory for the court to notify the respondent about the claim (and to direct the respondent to submit a reply to the claim) within 15 days of the claim's filing. Consequently, the initial screening and any necessary correction or supplementation of the claim must be completed during that 15-day period.

The judge must screen the claim regarding conflicts of interest or other unfairness, territorial jurisdiction of the case and personal jurisdiction over the respondent, and that there is procedural compliance.

Avoidance of conflicts of interest or unfairness: To avoid conflicts of interest or the appearance of impropriety on the part of judges, the LCP provides that judges should be recused from a particular case under the following circumstances, namely if he or she, pursuant to LCP Article 67:

- Is a party, a legal representative, an authorized representative, a co-creditor or co-debtor or is obliged to re-pay a debt, or if he/she has been a witness or acted as an expert, in the matter;
- Is the spouse, extramarital partner, a relation by blood in a direct line to any degree, a relation in a collateral line to the fourth-degree, or a relation by marriage to the second-degree to a party, or his/her legal representative or authorized representative;
- Is a legal guardian, ward, adopted child, adoptive parent, foster parent or foster child of a party, or his/her legal representative or authorized representative;
- Has taken part in rendering a decision of a lower court or any other body or has taken part in a mediation procedure regarding the same case;
- Has taken part in a matter that was resolved by judicial settlement and

- the claim that has been filed seeks annulment of the judicial settlement;
- Is a shareholder or a member of the commercial association that is a party to the matter; or
- Presents circumstances that give an appearance of having the potential for challenging his/her impartiality.

Furthermore, a party may make a motion to recuse a judge under the following circumstances (see LCP Art. 68):

- A party must request disqualification of a judge from a matter as soon as he/she learns of the existence of grounds for disqualification, and no sooner than before the conclusion of the main hearing or – if there is no main hearing – until the judge issues a decision in the matter;
- A party involved in an appeal may request disqualification of a judge on the same grounds or circumstances described in Article 67;
- A party may only request disqualification of the judge assigned to the case of the President Judge who is to decide the request for disqualification;
- A party who appeals a decision on a request for disqualification of a judge must specify the legal grounds for disqualification;
- A judge must suspend all proceedings in the relevant matter after learning of a request for disqualification or as soon as the judge determines that any of the conditions for disqualification listed in Article 67 exist, and then immediately inform the Court President about the situation. However, when a party's request is based upon Article 67(g) (alleging circumstances that may raise questions about the judge's impartiality), the judge must notify the Court President and may continue proceedings on matters that are in danger of postponement;
- If the exclusion of the Court President is required, then he/she must appoint a replacement judge from the judges of the appropriate subject matter – if this is not possible, then he/she must act in accordance with Article 63;
- A party's request for disqualification of a judge cannot be approved: (a) if the request seeks exclusion of all judges who are eligible to preside over the dispute; (b) if the subject matter of the request was previously decided; or, (c) if there is no justification for the grounds on which exclusion is requested;
- The Court President must resolve a request for disqualification of a judge. If a party requests disqualification of the Court President, the decision on exclusion must be made by the President of a higher court;
- The judge must make a statement and other examinations may be conducted before a decision on disqualification can be made.

While these rules of judicial recusal are very detailed, it is important that the legal aid practitioner be fully aware of them and make sure none of them apply in the matter at hand, and if they do, proceed to make the appropriate motion before the appropriate court to recuse the judge to avoid any unfairness or prejudice to his or her client.

Ensuring jurisdiction of the court over the subject matter, the claim, and the respondent: In order to proceed, the court must have jurisdiction over the claim (legal "subject matter" jurisdiction),

over the object of the dispute (“territorial jurisdiction” or “venue”) and over the respondent (“personal jurisdiction”). The legal aid practitioner, in order to properly file a claim as well as to defend one, must understand the rules related to subject matter, territorial, and personal jurisdiction, and make the appropriate motions if it is determined that the court does not have all three types of jurisdictions. Subject matter jurisdiction problems generally occur if, for example, a criminal case is filed in a civil court.

Territorial jurisdiction or venue generally lies in Kosovo:

- In the territory of the last marital residence, the residence of the respondent, or the court with general territorial jurisdiction (CGTJ) in divorce cases (LCP Art. 44, 56);
- In the CGTJ or the territory where a child resides in paternity disputes (LLP Art. 45);
- In the CGTJ or the territory where a claimant has his/her residence in child support cases (LCP Art. 46);
- In the CGTJ or the territory where the damage was caused or manifested itself, in non-contractual damages cases (LCP Art. 47.1);
- In the CGTJ or the territory where the claimant resides in cases involving damages caused by death or severe body injury (LCP Art. 47.2);
- In the CGTJ or the territory where the labor has or should have taken place or in the territory where the labor relationship was allegedly established in labor disputes (LCP Art. 49);
- In the CGTJ or the territory where the payment was made in matters involving bills of exchange or checks (LCP Art. 50);
- In the CGTJ or territory where a legal person is located in matters

With regard to personal jurisdiction over the respondent, this generally lies when the respondent was properly served at his or her last known address. Challenging jurisdiction on this ground is generally done by claiming that the respondent did not receive the claim.

Notification of the Respondent and Screening of the Reply. The assigned judge/court must provide (serve) the respondent with a copy of the claim (and the supporting documents) within 15 days of the petitioner’s submission of the claim to the court, together with a direction from the judge that the respondent must submit an evidence-based reply to the court within 15 days of receipt of the materials if he/she disputes the

claim and a notice of the consequences of a failure to submit a reply (answer) to the claim.

In a case involving a respondent for whom the respondent did not provide a current address, the judge may appoint a temporary legal representative to protect the respondent’s rights and minimize delays in the proceedings. As with the claim, the judge must perform (or oversee the performance of) an initial screening of the respondent’s reply and direct the respondent to correct or supplement his/her submission—or, if the respondent fails to comply with such directives on or before relevant deadlines, take appropriate measures.

If the respondent fails to submit a reply within the specified deadline, the judge has the discretion to issue a default judgment unless the law and circumstances allow otherwise.

Preliminary Review of the Case. After determining that the petitioner’s evidence-based claim is procedurally valid and the respondent has submitted an evidence-based reply (or a properly-served respondent has failed to submit a reply within the 15-day deadline), the judge must perform a preliminary review of the case to assess whether the dispute can be disposed on the merits of the claim or defense without holding a trial—or take steps to ensure that the correct defendant has been named in the lawsuit.

For example: (1) a judge may issue a **summary judgment** without a trial after making a determination that there is no dispute between the parties regarding the material facts; (2) a judge may dismiss the plaintiff's claim after determining that the evidence submitted by the plaintiff does not support the claim under applicable legal provisions; and, (3) a judge may issue a **summary judgment** in favor of the plaintiff without a trial if the respondent's reply admits material facts that support the petitioner's claim. See LCP Art. 399.1 (granting a judge discretion to dismiss the claim as unfounded after considering the claim, the reply and supporting evidence); Art. 399.2 (granting a judge discretion to dismiss the claim after considering the claim, the reply and supporting evidence, and determining that the evidence contradicts the plaintiff's allegations); Art. 399.1 (granting a judge discretion to dismiss the claim as unfounded after considering the claim, the reply and supporting evidence). See also Art. 152 (providing that if the judge determines after reviewing the defendant's reply that the defendant has admitted material facts that support the plaintiff's claim, the judge may issue a decision resolving the dispute if there are no other reasons to continue the proceedings).

The fact that a judge can order summary judgment on the basis of the claim itself has important implications for the legal aid practitioner preparing the claim. Namely, it means that the legal aid practitioner should, after a thorough investigation (not relying only on the beneficiary to get information) put a substantial amount of detail in the claim itself, so the judge will fully understand the issues presented. It should also anticipate the known arguments of the opposing party and mention evidence to contradict such arguments, without strengthening, in any way, the contents of the reply of the opposing party.

Preparatory Session. If the judge determines after reviewing the plaintiff's claim and the defendant's reply that there is a dispute requiring a trial, the judge must "as a rule" schedule a preparatory session within 30 days of receipt of the defendant's answer, but it appears that judges have the discretion to schedule a preparatory session for a time beyond the 30-day deadline (by means of a decision scheduling a specific date for the preparatory session that contains a reasonable explanation for the deadline extension). A preparatory session is mandatory, except when the judge determines that there is no dispute between the parties about the material facts or that the dispute is not complicated (LCD Art. 401). Briefly, a preparatory session has two main purposes.

First, the judge must determine the relevance and admissibility of proposed evidence during the preparatory session—that is, if one is held (or during the main hearing if no preparatory session is held)—and issue an order that, among other things, will identify what evidence will be taken and what persons who will be called as witnesses at the main hearing. In terms of the subject matter of the trial, after the preparatory hearing, the judge must issue an order (LCP Art. 420.1) establishing, among other things: (1) the subject matter of the main session; (2) the evidence that will be admitted at the main hearing; and, (3) the persons who will be called as witnesses at the main hearing. A party's request for expert testimony is typically made during the preparatory session (LCD Art. 407) and, if the request is approved, the judge makes the appointment and sets a deadline within which the expert must submit a written opinion and conclusion, keeping in mind that the parties must be given the expert's submission at least seven (7) days before the main hearing session begins (see LCP Art. 407).

Second, the judge will assess at the preparatory session whether there is potential for settlement of the case without a trial. On the one hand, the judge will determine at the outset of a preparatory session whether the parties have come to the session with a settlement agreement, which would typically limit the scope of the session to the judge's

consideration and approval of a settlement agreement. On the other hand, parties who do not come to the preparatory session with an agreement to settle may consider settlement at the end of the session because the natural consequences of the judge's discussion of the relative merits of the claim and defense, as well as a discussion of the expenses of the litigation, would be a demonstration of the benefits of settlement. The preparatory session provides an excellent opportunity for the judge to attempt to facilitate to resolve the case through settlement, and judges have discretion to advise parties about how to reach a settlement under the circumstances of the case. The legal aid practitioner should take advantage of this opportunity to explore opportunities to settle the case in favor of the client. The LCP expects judges to encourage parties to settle disputes throughout the proceedings, but especially during the preparatory session, by means of an appropriate and fair judicial settlement (LCP Art. 431.1). And, in appropriate circumstances, judges have the discretion to recommend to parties during the preparatory session that they attempt to resolve the dispute through mediation (LCP Art. 411.1). If the judge approves (Art. 3.3), a settlement of the case would result in the judge's issuance of a **consent judgment**, which would terminate the lawsuit (LCP Art. 391.1e).

Mediation: Mediation is widely available as an alternative to trial and should be considered by the legal aid practitioner in all appropriate cases in which it may be in the best interests of the beneficiary to mediate. The provisions of the Law No. 06/L-009 on Mediation (LM) can be applied in contested proceedings regarding property, commercial, family, labor relations and other cases of ownership disputes such as rights related to acquiring ownership rights through contractual relations or rights acquired by virtue of inheritance, bankruptcy procedures, and other civil, administrative and criminal relations. (LM, Art. 2.1). Those criminal cases, with certain exceptions, with a penalty of up to three years in prison may be mediated as well (LM Art. 2.2).

It should also be noted that certain types of proceedings are subject to mandatory mediation before proceeding to trial in the civil court. These include, according to Article 9 of the LM, cases regarding family relations (such as alimony, custody, visitation, child support, and division of marital property) as well rights of servitudes and compensation of expropriated properties. Section 3, Standard 13 below discusses the possible roles of the legal aid practitioner with regard to the mediation process and making the decision regarding having the legal aid practitioner present at the same.

It is possible that a party's failure to attend the preparatory session after receiving proper notice may lead to a disposition of the claim without a trial. Unless the defendant objects, a judge must deem a properly summoned plaintiff's failure to appear at the preparatory session as a withdrawal of the claim (LCP Art. 409.1). A judge may hold a preparatory session in the absence of a properly summoned defendant and then issue a default judgment against the defendant if the facts presented by the plaintiff sufficiently support the claim - LCP Art. 151.1), unless prohibited by law. Despite the absence of a properly summoned defendant, the judge may dismiss the claim if the judge determines that the plaintiff's proposed evidence (even after an opportunity to cure the problem) does not support the claim (LCP Art. 151.4).

Trial. As a rule, the judge must hold the main hearing session within 30 days from the conclusion of the preparatory session (LCP Art. 420.2), although the judge has the discretion to hold the main hearing session immediately after the preparatory session (LCP Art. 420.3), although this not happen much in practice.

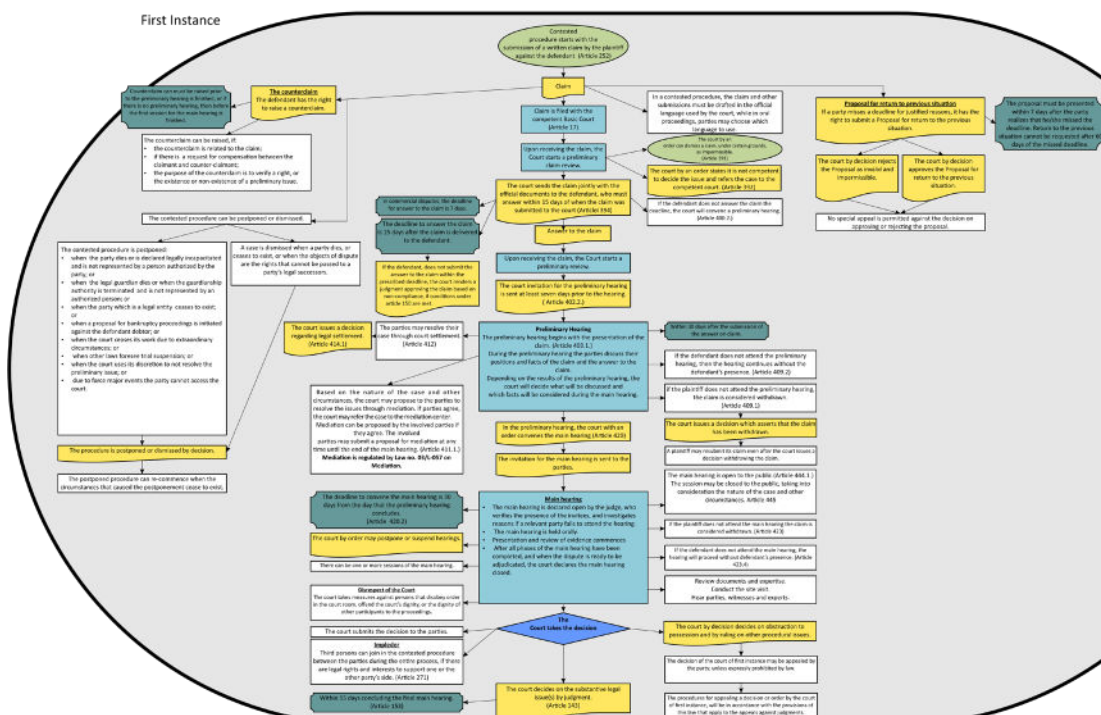
The trial involves the judge's supervision of the parties' efficient production (i.e. through testimony) and/or presentation of admissible, relevant evidence so that the judge can make determinations about the facts that are essential to the disposition of the claim. In performing this function, the judge relies upon witness testimony, expert testimony, authenticated documents, tangible exhibits, and/or information obtained during judicial site visits.

Written Judgment. The judge's application of relevant law to the material facts, which often involves the judge's reconciliation of conflicting evidence and resolution of credibility issues, in a written judgment that disposes of the claim and provides justification for the judge's findings. The judgment must be issued within 15 days of completion of the trial (LCP Art. 153.1), and the judge must report any failure to meet the deadline, as well as the reasons for the failure, to the Court President Judge (LCP. Art. 153.2).

The following chart shows the general flow of cases in court throughout contested civil procedures under the LCP, with the flow charts attached as Charts 1, 2, and 3, showing substantially more detail in how this case flow works. It is critical that the legal aid practitioner, whether FLAA agent or private contracted lawyer, fully understand these case flows to protect the interests of his or her client.

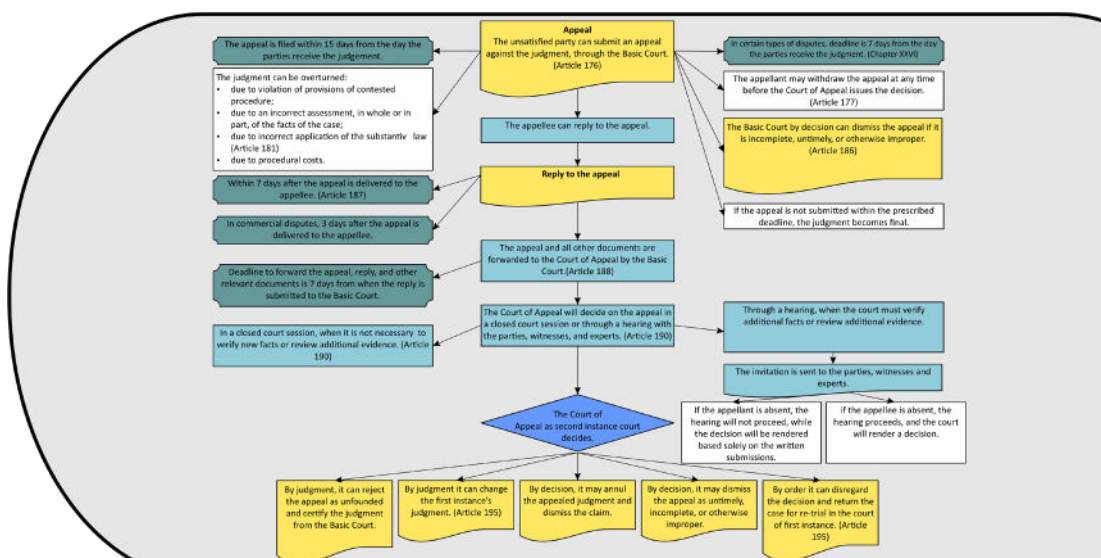


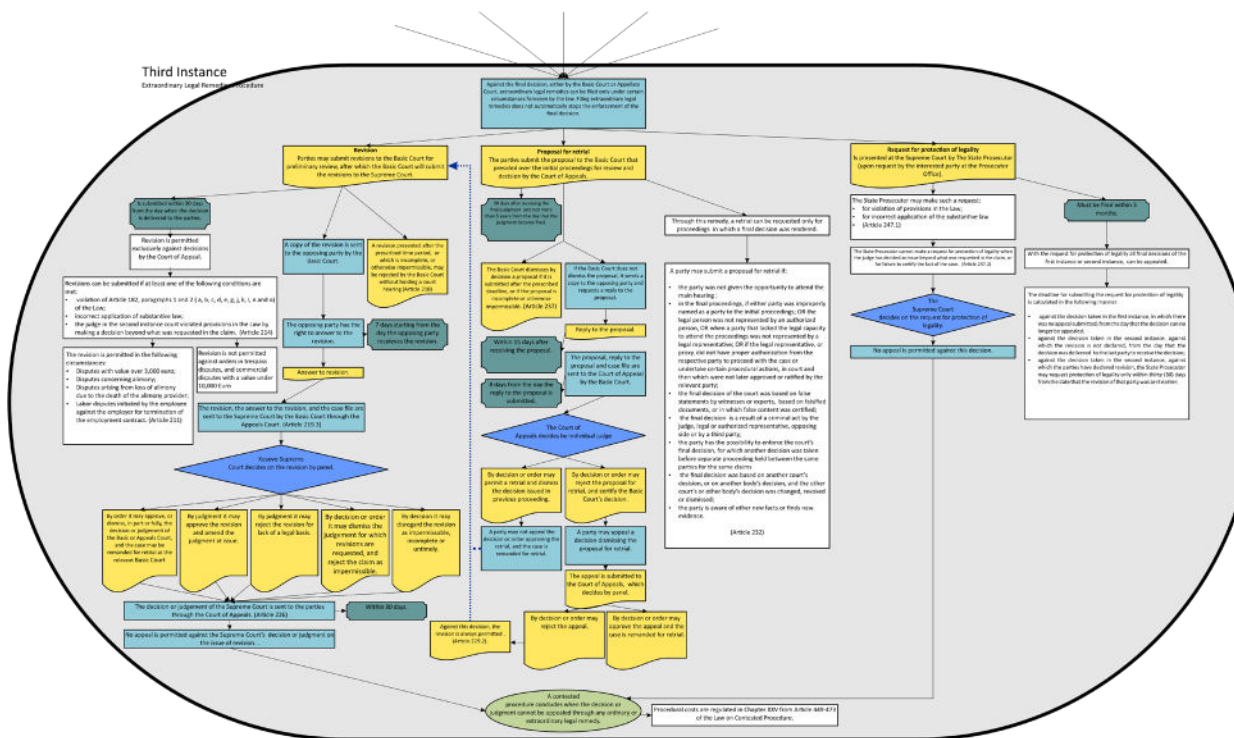
Process map of Law No. 03/L-006 on contested procedure



Second Instance

Second Appeal Procedure





c. Evidentiary Issues and Drafting of the Petition (Claim) in Contested Procedures under Civil Law:

Pleading and proving material facts using admissible evidence are some of the key functions of the litigating attorney in civil cases, and as such, will be treated with some detail in this Manual.

Drafting of the Claim: As stated above, both the claim and the reply are extremely important under the LCP, and, in fact, could form the basis of the final resolution of the case without having a trial, depending on their contents. As such, the drafting of the claim should not be taken lightly and should only be done, as suggested in Standard 9 above, after carrying out a thorough investigation of the facts set forth by the claimant, to the extent possible under the circumstances.

Burden of Proof: Regarding the **burden of proof** producing evidence at trial, according to the LCP, it lies exclusively with the litigation parties, and in particular the plaintiff trying to prove his or her claim. Contrary to what many believe, it is not the legal responsibility of the judge to gather evidence. A legal aid practitioner cannot just sit back and assume that the judge will proactively gather expert and other evidence to prove his or her beneficiary's case. Article 7, paragraph 1 provides that "Parties shall present all the facts on which they base their claim and propose evidence which establishes such facts." If the court is not offered all necessary evidence substantiating facts, there will be no possibility for the court to collect and examine such evidence, and render a ruling." As such, it is critical for a lawyer to fully investigate all aspects of the case and to anticipate and discredit the arguments that the opposing party is likely to make, both in the pleadings and at trial.

Types of Evidence: Evidence may be classified into two groups, that is, “substantial” and “random” evidence. **Substantial evidence** is that acquired from original sources, such as eyewitnesses, original or official documents, etc. **Random evidences** are those acquired from side or circumstantial sources, such as third-party witness testimonies who may have not seen the event themselves but heard it from others. While this “hearsay” evidence is not permitted in some jurisdictions (such as the United States and other common law jurisdiction subject to certain exceptions), it is allowed in Kosovo, but has much less probatory value than substantial evidence and during the trial or hearing, and the legal aid practitioner should clearly make this distinction.

Regarding the relation to a certain fact, evidence may be classified as “direct” or “indirect.” **Direct evidence** is that evidence which serves as means to directly ascertain a specific fact, such as testimonies of witnesses present when the claimant handed a specific item to the respondent. On the other hand, **indirect evidence** is indirectly linked to a certain fact, or is used to obtain an assumed conclusion regarding the existence of a certain fact. An indirect fact may, for example, be when a creditor submits a written certificate of a paid debt to the debtor, and the court accepts that as evidence to prove the payment.

A “witness” is a person legally different from litigating parties, and a witness is only bound to clearly and honestly testify to his/her own knowledge of the dispute at trial, and therefore by such statement, he/she may assist in legal addressing of the dispute. A witness shall be solely limited to his own sensory perceptions, refraining from voicing an opinion on the perceived fact.

d. The Use of Experts as Sources of Evidence at or before Trial

To clarify or validate a fact, it is often necessary to resort to people with professional capacities or knowledge not possessed by the Court, and therefore, the Court can order the obtaining of evidence at trial by “expertise.” “Experts” are persons with specific and sufficient knowledge in a certain area of knowledge, and who based on such knowledge, are capable of providing before the court a true description of a state of fact or reach an accurate conclusion of the outcomes of a certain state of fact. On the other hand, a process of expert study of objects rendered available to them to express an opinion on problems requiring special knowledge or experience, upon an assignment by the court, is called an “expertise.”

The giving of an “expertise” is a evidence-gathering or probative activity to validate disputed facts and is generally undertaken by an expert hired by the court itself (through a ruling), and results in an opinion submitted by the expert to the courts. The Law on Contested Procedure, in Articles 356 – 372, provides orientation on proving facts by expertise, whereby the experts provide their opinions and conclusions in their expertise.

An expert files his or her conclusions and final opinion in writing to the court before the main hearing session is held, unless the court decides otherwise. An expert opinion must always be justified and reasoned (Article 364.1, 2 of the LCP). The opposing party can ask questions to the expert during the main hearing to challenge the credibility of the witness and his or her “expertise.” Best international practices allow parties to challenge both the qualifications of the expert as well as the means or theories that the expert used to arrive at his or her opinion. Challenges based on qualifications could include education, specialized training, years of experience, or knowledge. Challenges based on the means to arrive at the opinion could include:

1. Whether the opinion was based on sufficient facts or data;
2. Whether reliable principles and methods were used in coming up with the opinion; and
3. Whether the principles and methods were applied in a manner that is reliable in the case at hand.
4. Whether the theory has been and can be tested;
5. Whether the method has been through the rigors of peer review and publication;
6. The error rate, if known, or the potential error rate, of the means;
7. Standards that exist for the method, as well as the maintenance of the standards during the testing at issue; and
8. Whether there is widespread acceptance in the scientific community of the means.

Article 360 provides that the expert can be “expulsed” from the case based upon due cause (i.e. the challenges above could be used to discredit experts), but this needs to be done before the main hearing by motion of the party opposing the expert. Both parties should get a copy of the expert’s written opinion at least eight (8) days before the main hearing (LCP Art. 367).

The parties can also question the expert witness during the main hearing (LCP Art. 371), as per the rules in LCP Article 348. Best international practices (particularly in common law countries) is to try to limit questioning (i.e. cross-examination) of witnesses contrary to one’s beneficiary to closed questions (i.e. questions with a yes or no answer) and to not ask questions of the witness if the lawyer does not already know the answer, avoiding surprises in the main hearing. To do this, the legal aid practitioner seeking to challenge an expert witness needs to do a thorough investigation once the written expert opinion is received, which could include consulting with other experts on complicated issues. If the party opposing the expert testimony can make out a sufficiently strong argument against the witness or the means, it may be strategically advantageous to make an Article 360 motion to expulse, as this could facilitate settlement discussions, which would probably not be the case if the witness is challenged during questioning during the main hearing.

Finally, it is important to note that if the plaintiff thinks or finds that the expertise is unprofessional or not based on professional arguments, the plaintiff or any of the parties may propose the issuance of evidence with “super expertise” (i.e., forming a commission of three experts professionally qualified in the field in which the expertise is required issue to investigate and to emit an opinion to the court) under the LCP.

e. Testimony of Parties during the Main Hearing (Trial)

Also, litigating parties, respectively petitioner or plaintiff and respondent may appear as evidentiary means themselves by testifying at trial in a contested proceeding.

Litigating parties are often the main and safest source of knowledge of the relevant facts of the matter under review. The parties know best the factual situation upon which they ground their claims. The parties remember their events, occurrences, conditions of item or people, important for establishing and developing a civil relationship.

With Article 373 of the new LCP, testimony of the parties as means of evidence has been put at the same level with other means of evidence, and therefore, it can be used as evidentiary means in any time, and to establish any fact. For a difference from the old law, which provided

that collection of evidence by hearing parties was left to the end of the procedure, the new Law, in its Article 425, paragraph 1, provides that the evidentiary proceeding begins precisely with hearing the declarations of the parties.

It is important to mention that also by filing a reply to the claim, the claimant shall learn the position of the respondent on the claim and claim suit, which also provides the claimant an opportunity to clarify or supplement his allegations or even prepare other eventual proof in the form of proposals, during the preparatory session or the main hearing, if such a preparatory session was not held. This allows the court to promptly and efficiently lead the proceedings towards holding and developing the preparatory session.

Filing a reply to the claim is a key moment in contested procedure, because the respondent elaborates his or her views to the contested matter and the judge can actually resolve the case on the pleadings (i.e. the claim and the reply) alone.

f. Role of Legal Aid Practitioner in Beneficiary's Mediation Proceedings:

The LM does not prohibit the presence of a lawyer at a mediation proceeding to assist his or her client or beneficiary. As such, clients can have their lawyers there, if needed. Generally, a lawyer's role in mediation is to assist clients, provide practical and legal advice on the process and on issues raised and offers made, and to assist in drafting terms and conditions of settlement as agreed. A lawyer's role will, however, vary greatly depending on the nature of the dispute and the mediation process.

As such, a party who chooses to resolve a dispute through mediation may or may not be represented by a lawyer at any point in the process. At the option of the party, for example, a party may:

1. Be represented by a lawyer from the moment that party's first pleading is filed;
2. Enter the case unrepresented, and secure representation at some point later in the case prior to or during the mediation process;
3. Complete the mediation process and consult a lawyer only to review the terms of the mediated agreement; or
4. Complete the mediation process and enter an agreement without a lawyer's assistance.

The traditional role of the lawyer in Kosovo has been to represent the interests of his or her client, by advising the beneficiary regarding procedure and substantive law, counseling the client, and managing the legal process for the client. While the lawyer will continue to perform each of these traditional functions in the mediation process as well, the manner and the context in which those functions are performed will be different. The vital distinction is that mediation is a *non-adversarial* process, through which each party is encouraged to take responsibility for resolving the dispute.

Various Roles a Lawyer Might Assume in Mediation Before Mediation: By assisting the party in making informed decisions about the mediation process before the process begins, the lawyer

encourages the party to take responsibility for resolving the dispute, which is very consistent with the general principles of mediation.

The lawyer explains to the party the nature of the mediation process, what to expect during mediation, the relevant law governing the mediation process, and how the mediation process complements the court procedures. The lawyer helps the party make an informed choice of a mediator based upon such factors as the nature of the party's case, the background and experience of the mediator, and the potential fees involved. The lawyer may review with the party the listings and profile sheets for certified mediators contained in the registry of mediators licensed by the Ministry of Justice.

The lawyer assists the party in determining whether timing is a factor in choosing mediation. For example, the lawyer may recommend mediation at the beginning of the case in order to explore settlement before positions become entrenched, or may recommend that mediation be deferred until completion of all or part of the discovery process.

The lawyer advises the party on the substantive law relevant to the case. This enables the party to understand the range of outcomes that are possible if the case is litigated and to formulate a range of acceptable outcomes for the mediation process. For example, in a personal injury case, the lawyer may advise the party on the range of outcomes regarding liability, the range of possibilities for a money judgment, and such options as structured settlements. Advice that helps the party understand that there may be more than one solution which meets that party's needs helps the party enter mediation willing to consider various options for settlement.

During Mediation: As before beginning the process, the lawyer continues to advise the party on the substantive law relevant to the case, helping the party understand what information might be important to share or to learn during the mediation, the options that might be available, the potential consequences of each option, and the possible outcomes to anticipate if agreement is not reached through mediation.

Throughout the mediation process the parties are encouraged to take responsibility for resolving the dispute. This responsibility includes participating actively in problem-solving discussions with the assistance of a trained neutral mediator. The lawyer's role is to assist the party in negotiating for himself or herself, bearing in mind the non-adversarial nature of mediation.

The lawyer guides the party in negotiating by encouraging the party to express thoughts and feelings, helping the party define interests, and helping the party gather necessary information, generate options, and examine consequences.

The lawyer can guide the party through settlement discussions whether the lawyer attends the mediation sessions or not. The lawyer may consult with and advise the party before and after the session(s). The lawyer might also advise the party of when it would be wise to request a break in mediation for the opportunity to consult the lawyer for additional information and advice. In some cases, the party and the lawyer may arrange for the lawyer to be available by telephone for consultation while the mediation is being conducted.

The lawyer manages the legal process for the party while mediation is being conducted, keeping the party informed of important dates, responding to and filing necessary pleadings, and conducting discovery.

The choice of whether the lawyer attends the session(s), as well as the extent of participation by the lawyer, ultimately belongs to the party. The party makes his or her choice after discussion with the lawyer and consideration of the lawyer's advice. Because the success of the mediation process depends, among other things, upon each party making informed decisions in resolving the dispute, the lawyer's task at this stage is to enable the party to make an informed decision about these issues.

Factors Affecting the Decision for the Lawyer to Attend: Since nothing about the mediation process itself suggests that a lawyer *must* attend the mediation session(s), the decision depends primarily upon the party's needs within the context of the mediation process. While some people attempt to generalize the role of lawyers according to case type (e.g., "You need a lawyer in a personal injury mediation, but not in a family law related one."), it is the needs of the parties (such as the information, resources, and the real and perceived bargaining power of each) that should drive the decision to have a lawyer present in mediation, not the case type.

Because mediation is a cooperative problem-solving process in which the mediator facilitates communication between the parties, the fundamental consideration is whether the party is capable of participating effectively in the process without the lawyer's presence. This consideration encompasses two distinct levels of inquiry: whether a party suffers from any personal impediments to effective communication, and whether the nature of the relationship between the parties impedes effective communication.

If the party can participate and communicate effectively in the mediation process without his or her lawyer present, the lawyer need not necessarily attend the mediation. If circumstances are such that the party cannot participate effectively in the process without the presence of the lawyer, despite the guidance of the mediator, it would certainly be in the party's best interests for his or her lawyer to attend the mediation session(s).

The second level of inquiry in determining whether the party can participate effectively in the mediation process without the presence of his or her lawyer focuses on the relationship between the parties. This inquiry can be framed as a "balance of power" question: does each party have reasonably comparable power in the relationship to engage effectively in the problem-solving process? If not, the presence of a lawyer would be more important.

g. Practice Tips Regarding Pleading in and Litigation of Particular Types of Family, Civil, and Property Cases

1. Entrusting Children (or Child Custody) Cases

Strategic issues to consider in child custody cases: When developing a litigation strategy (theory of the case), the legal aid practitioner should help his/her beneficiary gather evidence that is relevant to the overall "custody factors" listed below (that are common concerns of judges in family cases) and that effectively supports your pleadings. Some evidence can and should be attached to (or at least expressly referred to) in the pleadings.

- A parent's interest and active involvement in raising the child(ren);
- Current physical custody schedule;
- Living situation and standards, including free-time and child care arrangements;
- Willingness to co-parent;
- Mental/emotional instability;
- Evidence of domestic violence in the relationship or any violence against the child(ren);
- Substance Abuse (drugs or alcohol); and
- Any evidence of neglect of the child(ren) in the past.

It's imperative to start collecting evidence as early as possible before opportunities are lost and events are forgotten. The beneficiary should start a daily journal, documenting his or her involvement and daily activities with their child and any concerning incidences or behavior exhibited by the other parent.

Documents Required for Child Custody Cases

- Marriage certificate
- Children's birth certificates
- Income information for both parties
- In case of domestic violence, police and medical reports
- Documentation of any special needs of children
- Documentation of any physical or mental challenges of the parents
- Other relevant documents related to child custody and the best interests of the child(ren) issue

Types of Evidence in Child Custody Contested Proceedings: For evidence to be deemed admissible by the civil court, it must be material and relevant. If the evidence does not concern custody, the child's "best interests" or well-being, it is not relevant.

Keeping copies of communications and correspondence with the other parent is crucial for a client. The most common types of evidence offered in a child custody case include: witnesses (both eye-witness and expert); journals; emails; text messages; voicemails; letters; photographs; videos;

audio recordings; visitation and other schedules; and records such as financial, medical, school and police reports. The client, with the assistance of the legal aid agent/lawyer should diligently gather, document and file this information the moment that the beneficiary begins having concerns that child custody could be disputed.

Witnesses on the Stand: Witness testimony can assist the court in determining the legitimacy of said claims and allegations in a child custody case. The most influential testimonies come from unbiased witnesses that have personal or expert knowledge of both the child and the parents. A list of possible witnesses would include daycare providers, teachers, medical practitioners, co-workers, or neighbors. The more unbiased the witnesses are, the more likely they are to be believed by the trier of fact (the judge).

Child's "Best Interest" Standard: Evidence in child custody cases must demonstrate that award the beneficiary custody of the child is actually in the child's "best interest." The criteria civil court judges typically use when determining an appropriate custody arrangement is commonly referred to as the "Custody Factors." The Custody Factors express the most common concerns of civil courts in determining custody issues.

Documents Required for Child Support Cases

- Marriage certificate
- Child(ren)'s birth certificates
- Paternity tests if paternity is in question
- Income information for both parties
- Documentation of outstanding debts
- In case of domestic violence, police and medical reports
- Documentation of any special needs of children and related costs
- Documentation of any physical challenges of the parents
- Other relevant documents related to child support and the best interests of the child(ren) issue

2. Child Support (or Financial Maintenance of Children) Proceedings - Family Code (FC) Articles 289-296

Strategic issues to consider in child support proceedings: In child support proceedings (as with alimony) cases it is critical to get information as early as possible about the income and assets of the opposing party, as this gets more difficult once a contested proceeding is initiated. It

Types of evidence in child support proceedings: The evidence in child support proceedings focuses extensively on the incomes of the parents so as to be able to determine the amount of child support to be paid on behalf of the minor (under 15 years of age) children. It also should focus on any special needs of the children, which may have financial implications.

The Serious "Do's" and "Don'ts" of Texting that are Worth Considering during the Divorce Process.

DO'S.....

1. DO use your texts and instant messages to document the other persons actions, reactions or overall bad behavior toward you or the children.

2. DO use texts for very brief interactions for child pick-ups or drop offs or anything that can be communicated quickly without the need for a call. A text is often a great way to schedule a time to talk in person or over the telephone.

3. DO use text messaging very carefully with the complete understanding that "anything you say can and will be used against you!" If your client starts getting heated or the other person starts the text attack – BLOCK THE CALLER'S NUMBER for the rest of the day. Do not engage. RETREAT RETREAT!!!

DO NOT...

1. DO NOT text obscenity, profanities or anything that sounds threatening, stupid, crazy, mean or otherwise unnecessary.

3. Divorces and Alimony Proceedings - FC Articles 68-69

Divorce is relatively easy to procure, except when there are children involved, in Kosovo and is available on a wide variety of grounds, including, among others, "unbearable life of spouses, adultery, assassination against the life of the spouse, serious maltreatment, ill-intended and unjustifiable abandonment, incurable mental illness and continuous incapacity to act, unreasonable interruption of factual cohabitation for more than one year and divorce by mutual agreement." (FC Art. 69). If the objecting spouse does not specifically reject the grounds set forth in the claim he or she is deemed to be in mutual agreement for the divorce. FC Art. 68.4. Divorces are not available under the Family Code if the wife is pregnant (and until the joint child is at least one year old). FC Art. 70. Marital disputes are heard by a panel of one judge and three lay judges. FC Art. 73, after a mandatory attempt at reconciliation (before the Custodian Body - i.e. through Centers for Social Work or CSWs) if there are children involved). FC Art. 76. Unlike in many other countries, the court may deny a divorce if the interests of the child(ren) in exceptional circumstances that require that the marriage not be dissolved. FC Art. 70.3. To avoid the non-allowance of the dissolution of the marriage, the beneficiary must show an adequate plan (preferably prepared in coordination with the spouse

Here are five tips for improving the evidence in a case of divorce and related issues regarding alimony:

- *Written Communications:* If something important must be said between the client and his or her spouse during a contested divorce or alimony proceeding, everything it should be done and preserved in writing. Text messages and emails between spouses are vital pieces of evidence and are often used during divorce trials, especially when children are at issue. Even if your spouse is unwilling to communicate with you in writing, preserve your one-way attempts at written communication with your spouse.
- *Calendars:* Dates and the timing of events are often disputed at trial. If the client and his/her spouse kept a family calendar prior to filing for divorce, make sure that it is preserved. If not, the client should start calendaring daily events and other important exchanges with his or her spouse as soon as possible during divorce proceedings. While calendaring, he or she should be sure to note any missed parenting time by the opposing spouse, any work trips taken by such spouse, or any children's appointments or activities that your client has facilitated.
- *Social Media Postings:* Spouses often post inadvertently harmful information on social media sites, which can be used as evidence against them. Ensure that the client is in the process of divorce, that he or she carefully consider the information that is posted on social media. They should ask their friends who "tag" them in posts to do so, as well. Furthermore, a client should preserve his or her spouse's social media posts by either printing dated screen shots of their accounts or by downloading their posts (if the site allows).
- *Pictures:* A picture is worth a thousand words. Photographs should be taken and carefully dated to catalog property in your beneficiary's home or to evidence any physical harm committed against your client by his/her spouse.
- *Financial Statements:* Bank statements, tax returns, paystubs, retirement account statements, and credit card statements—all of these documents are freely exchanged between spouses during marriage, but they can become problematic or expensive to obtain from your spouse during divorce. If your client has access to these marital documents, they should be preserved (or copied and preserved) in a safe place.

that the beneficiary is seeking to divorce) to take care of the children once the marriage is dissolved.

Strategic and other issues to consider in divorce and alimony cases: Where the spouses seeking a divorce have minor children, the Family Law contemplates that the reconciliation procedure is to be conducted by the CSWs, who shall apply "social work and other professional methods" and shall utilize marriage and family counselors and other. The CSW shall assess the current "living and developing conditions" of the minor children, and shall "protect the children's interests" by taking "all necessary measures" to ensure that the "education, security and financial maintenance" are properly taken into account in any agreement between the spouses. Reconciliation procedures conducted by CSWs are not supposed to last more than three months, unless the spouses so agree. The CSW shall "without delay" submit a written report to the court "on the results of the reconciliation procedures."

In practice, the CSWs, according to the OSCE, often take much longer than three months to carry out

their work and can substantially delay divorce proceedings, even those based on mutual agreement. As such it is important that the legal aid practitioner work closely with the CSWs to make sure the process goes smoothly and rapidly and that all meetings or interviews are timely set and attended.

Evidence: Divorce trials and other contested court hearings often hinge on which spouse can provide the best evidence to the court to support his or her arguments regarding whether a divorce can be granted and whether and how much alimony should be awarded.

4. Damage Compensation Cases

Damage compensation claims can arise from a variety of situations, including personal injury (slips and falls), medical malpractice, damages to victims from crimes, wrongful death,

automobile accidents, airplane or boating accidents, products liability, nursing home or hospital neglect or abuse, burns, spinal cord injuries, restaurant food poisoning, legal malpractice, animal or dog bites, workplace accidents, among others. The applicable substantive law for most damage compensation cases will be Chapter 2 of Law No. 04/L-077 on Obligational Relationships (LOR).

In all of these situations, the key to success, as in many other cases discussed in this Manual, is to develop a solid theory of the case and have extensive admissible, relevant damages to prove both the negligence and/or intentionality of the respondent (required by Article 140 of the LOR in all cases except for those related to inherently dangerous products or activities for which there is “strict liability” or “presumed causality” under LOR Art. 154), the causality (whether the negligence or intentionality of the respondent was the actual cause of the plaintiff's injury often referred to as “but-for” causation, meaning that, but for the defendant's actions, the plaintiff's injury would not have occurred), any “contributory” negligence (where plaintiff had any culpability for the damages caused), and probably most critically the amount of the damages caused, among other things. The legal aid practitioner should always anticipate the possible defenses to damage compensation claims, which include, among others:

- The lack of culpability (intentionality or act of negligence) of the respondent, where required for liability (LOR Art. 136.1);
- Respondent was a minor (absolute defense for minors under 7 years of age, and limited defense for minors aged 7 to 14 not capable of accounting for their actions)(LOR Art. 142);
- Respondent was not able to account for his or her actions because of “disturbances in mental development or mental health problems” (LOR Art. 141)
- Respondent who inflicted damage in a “temporary state of being of an unsound mind” (LOR Art. 141.2);
- Respondent inflicted the damage because of the fault of a third party (LOR Art. 141.3);
- Respondent acting in reasonable “self-defense” (LOR Art. 143);
- Respondent engaged in allowed “self-help” (LOR Art. 144);

Documents Required for Divorce and Alimony (Matrimonial Maintenance) Cases

- Marriage certificate or proof (leases, bills, etc.) of “open co-habitation” as a couple
- Child(ren)’s birth certificates
- Income information for both parties
- Documentation of outstanding debts
- Documents regarding property ownership (both family and extra-family)
- In case of domestic violence, police and medical reports
- Other relevant documents related to divorce and alimony

- There was “informed consent” of the plaintiff and the act was not prohibited by law (LOR Art. 145);

- Assumption of the risk by the plaintiff in strict liability cases involving dangerous activities of products (LOR Art. 158);

- Proper warnings on or other measures related to faulty products (LOR Art. 160).

The legal aid practitioner should be aware that the court has the power to award damages out of “just liability” (LOR Art. 151) even if the respondent is not liable in the interests of justice and taking the financial state of the injurer and the injured into account.

The legal aid practitioners should also be aware of any third parties that may be “jointly and severally” liable for the damages to join in the claim. These could include: parents of a minor

respondent (LOR Art. 150); employers or legal persons if the was working or otherwise engaged at the time of the injury (LOR Art. 152-153); guardians, teachers or other entities responsibly for the supervision of the injurer (LOR Art. 149) among others.

Tips regarding Calculation of “Net” Damages in Compensation Cases:

Before drafting the claim in a damage compensation case, the legal aid practitioner should have a very clear idea about how much the claim should request in damages. This is useful for both the substance of the claim as well as to set the objectives for a settlement negotiation. Article 137 of the LOR provides that “Damage comprises the diminution of property (ordinary damage), prevention of the appreciation of property (lost profits), the infliction of physical or mental distress or fear on another person, and encroachment upon the reputation of a legal person.” All damages requested must fit within these broad categories of damages.

1. Calculate “Ordinary Damage”

First, the legal aid practitioner should calculate special or “ordinary” damages resulting from the incident. Ordinary damages (also known as economic losses) are damages for which money is only a comparable substitute for what was lost. These are also known as |"out-of-pocket losses.". Ordinary damages can include:

- Lost wages (“lost profits”)
- Lost earning capacity (classified as “lost profits” under the LOR)
- Medical expenses (diminution of property, that is money)(LOR Art. 177)
- Funeral and burial expenses in wrongful death suits, (LOR Art. 177, 184) and
- Consequent property damage.

Past economic losses. Calculating special damages can be easy to do for past medical expenses and lost wages, as long as the beneficiary keeps thorough and detailed records of every doctor or physical therapist visit made, as well as all medication that he or she take as a result of the injury.

Future economic losses ("lost profits"). Figuring out special damages may be more difficult for future medical expenses and lost earning capacity. Calculating damages depends heavily on the facts of the particular case. If possible, the legal aid practitioner should engage an expert in medical treatment to testify with respect to the beneficiary’s future medical expenses, as well as an economics expert to perform an economic damage analysis when it comes to the impact of the injuries on future income and earning ability.

With respect to lost earning capacity, the damages suffered are usually measured by the difference in actual earnings from projected earnings, were it not for the respondent’s actions. So, the first step in calculating damages is to project revenue based upon life expectancy and retirement age of the client. Experts will rely on a multitude of factors, including income tax returns, the state of the economy, and state of the industry in which the beneficiary is engaged, as well as the salary of other people engaged in the same industry as the beneficiary with similar education and training.

Step Two: Calculate Non-Monetary or General Damages

Next, the legal aid practitioner should calculate “general” damages. General damages (or non-economic losses) are losses for which money is only a rough substitute. General damages can include:

- Physical pain and suffering;
- Humiliation and embarrassment;
- Shock and mental anguish;
- Loss of reputation (“encroachment upon the reputation of a legal person”, see LOR Art. 187)
- Loss of consortium
- Loss of society and companionship, and
- Emotional distress.

General damages can often be up to 1.5 to 5 times the amount of special damages, depending upon the severity of the injury and its impact.

Step Three: Adjust the Value of the Claim

Specific Laws Regarding Damage Compensation: It should be noted that there are important exceptions to the above rules on damages. One, in particular, applies to damages to victims of certain crime. These damages are paid by the State (after exhausting remedies against the criminal defendant) pursuant to Law No. 05/L-036 “On Crime Victim Compensation” (CVC). According to the CVC, damages for the covered crimes under Article 6 (that is, murder; trafficking in persons; rape; sexual abuse of children; and criminal offences which fall within the definition of domestic violence under the Law on Protection Against Domestic Violence) are subject to the following rules and limitations.

According to Article 8, the “material conditions” to be eligible for the right to compensation in national and national cross border situations, are met if the crime: is punishable with minimum one year of imprisonment; was committed within the territory of the Republic of Kosovo was detected and reported to the competent authority and dealt with as a criminal offence; was not committed negligently; resulted in death of the victim, serious bodily injury, serious impairment of health or serious disturbance to mental health of the victim; the victim incurred damage recognized by the CVC as a consequence of the crime. According to Article 12, the following damages can be compensated under the CVC: serious physical injuries or impairment of health; serious disturbance to mental health; loss of capacity to work and loss of maintenance; medical and hospitalization expenses; funeral expenses; damages for destroyed medical devices; and procedural expenses for filing an application. The maximum amounts of damages in the different categories (reducing amounts by a number of factors including victim responsibility in causing damage or involvement in organized crime) are:

- Physical pain or injury to health – up to 7,000 Euros for “extremely serious” injuries, 3,000 for “serious,” and 1,500 for “moderately serious” ones (Art. 13);
- “Serious disturbances” to mental health – up to 5,000 Euros (Art. 14);
- Loss of capacity to work – up to 150 Euros per month with a cap of 3,000 Euros (Art. 15);
- Medical expenses – up to 5,000 Euros (Art. 16); and
- Funeral expenses – up to 3,000 Euros (Art. 17).

Next, the legal aid practitioner should adjust the amount calculated above to reflect the following factors:

- **Liability.** Cases where liability is clearly established will lead to a higher settlement value than cases where liability is disputed. If the beneficiary was partly to blame for the accident, the possible settlement could decrease by some amount based on "contribution" of fault (i.e. contributory or comparative negligence or “shared liability” pursuant to LOR Article 176);

- **Multiple defendants.** Where there are multiple defendants, there may be an issue as to how much each one should pay;

- **Characteristics of**

the plaintiff. The characteristics of the beneficiary can influence the value of the settlement. For example, his or her age, occupation, likeability, and prior medical history could affect the settlement value;

- **Where the case would be tried.** Some venues are more conservative than others and have a tendency to award lower personal injury damages than juries in more populated, urban communities; and
- **Mitigating Damages.** Damages must be mitigated, or reduced, by the injured party if it is reasonably possible. For example, if the beneficiary decided not to seek treatment after his or her accident and, as a result, medical expenses are now higher because the injuries are more difficult to treat, the value of the claim may be reduced to reflect this failure to mitigate. Article 176 LOR.

Types of evidence in damage compensation proceedings: Evidence in damage compensation cases (on many of the above key elements of compensation-related issues, including breach of duty, causation, and forms and amount of damages) will generally come in form of witness testimony, expert opinions (doctors, employment specialists, etc.) documents, or physical evidence. When proving the facts related to the injury, for example, charts, graphs, maps, photos, and other visual evidence can be critical in making the case easier to understand and

sympathize with on the part of the judge. To the extent possible the amount, nature, and details of all types of damages claimed should be set forth in the claim.

Mediation or settlement: It is a good practice to seek mediation or amicable settlement of damage compensation cases as they are so complex and can take a long time to adjudicate. It is a good practice to send a demand letter before filing suit in Basic Court, setting out the amount of the claim and the desire to seek an amicable settlement before filing the claim.

5. Property Claims – Women’s Property Rights and “Verification” of Property Rights

The normative framework covering immovable property rights is complex, often unclearly drafted, and scattered throughout a variety of instruments. It is also supplemented by international human rights standards relating to the peaceful enjoyment of possessions and the right to a fair trial. The circumstances of Kosovo as a post-conflict and transitional society contribute to the legal complexity. Likewise, the historical practice of informal property transfers adds to the prevalence of court cases to confirm immovable property ownership. It is also complicated by the discriminatory legislation and practices implemented before 1999. As such, real property claims also tend to be extremely complex in Kosovo, in large part related to these problems as well as problems in recording and maintaining records in the cadaster.

Two of most common and important situations that the typical legal aid practitioner faces are advising women on their property rights as well as assisting clients in “verifying” their right to property.

Women’s Property Rights: The right to own property belongs to both women and men without distinction. The Kosovo Constitution, among other laws, guarantees: equality before the law; the right to own property; the right to legal remedies, to seek legal protection of one’s rights; and protection against discrimination. Notwithstanding the fact that Kosovo's laws grant equality among women and men in the enjoyment of these rights, there are still great inequalities. It is estimated, for example, that only 17% of Kosovar women own property. As such, this section will focus primarily of the property rights of women. The key substantive law regarding property and related rights is Law No. 03/L-154 on Property and Other Real Rights (LPORR)

In marriage spouses are equal in all of their rights. Kosovo law guarantees that none of the spouses can be deprived of her/his property without a legal basis. Marriage is a legally registered community of two persons of different sexes, through which they freely decide to live together with the goal of creating a family. Under conditions provided by law a factual relationship (non- registered marriage relationship) is a relationship between a husband and the wife “who live as a couple, characterized by a joint life that represents a character of stability and continuation.”

The rights of spouses in both legally registered and non-legally registered marriages is discussed below.

“Joint” spousal property is:

- Property acquired through work during the course of the marriage as well as income derived from such property; and

- Property acquired jointly through gambling games.

Spouses are owners in equal shares to “joint property” unless otherwise agreed.

“Separate” spousal property is:

- Property belonging to the spouse at the time of entering into marriage;
- Property acquired during marriage through inheritance or donation or other forms of legal acquisition defined in the law;
- Property belonging to the spouse based on their proportion of common property; and
- In some cases, art, intellectual work or intellectual property.

Each spouse independently administers and possesses her/his separate spousal property during the course of the marriage.

Division of Joint Property: At any time, spouses can divide their joint property, either by:

- Appropriation by agreement- whereby with written agreement spouses determine their shares in their joint property and become co-owners to the own determined shares. This is done before a notary (Law of Notary, Article 3.1.4.2). This is by far the best way to proceed in a case involving the division of joint property and the legal aid practitioner should take all reasonable measures to facilitate the reaching of such an agreement, albeit difficult in some cases;
- Appropriation by court order, where a court determines the property shares of spouses in accordance with legal criteria. The court must evaluate all circumstances and consider not only personal income and other assets of each spouse, but the contribution made by each spouse, such as child care; housework; care and maintenance of property; and any other form of work and co-operation related to the administration, maintenance and contribution to the acquisition of the joint property.

The law also recognizes and regulates the joint property of spouses in a traditional marriage where the marriage was not legally registered. According to law “a factual relationship” (non-registered marriage relationship) is equal to a legally registered marriage.” In sum, the rules relating to the division of joint property that apply to legally registered spouses apply as well to those in traditional non-registered marriages.

The law provides that “property created during marriage is registered in the public register as a joint property in the name of both partners” and that “[...] work of both partners through which joint property is created, is considered equal contribution for the creation of the joint property.” The joint registered property is administered jointly and may not be taken from

one spouse without the consent of both partners. As such, providing advice regarding the registration of properties in both spouses' names is very, very important.

Verification of Ownership and/or Possession of Property

One of the most common issues affecting clients, including returning refugees and internally displaced persons, of legal aid practitioners is the instability in their property rights (i.e. usually their home) as many do not have a clear title, official documents to establish property rights, or contracts related to their purchase, receipt, or on-going adverse possession of the property.

Documents required for legal-property disputes:

- Property possession list
- Real estate sale contract
- Utility or other bills, property tax payments, etc. in the name of the beneficiary to prove ownership or length of possession;
- Other documents that could be used as evidence of ownership or possession

The Law on Property and Other Real Rights (LOPORP) is the primary law determining the property rights and obligations while the Law on Immovable Property Tax, and Law on Allocation for Use and Exchange of Municipal Immovable Property also have sections addressing the issue of property rights. Furthermore, the Law on Enforcement Procedure is another key instrument that enables enforcement of the decisions, including property rights related decisions.

If the property rights or rights to possession of a beneficiary in or to his or her home or other property is not clear or is being questioned, the legal aid practitioner can help the beneficiary initiate a claim in the basic court to "verify" such rights. The claim should contain a detailed summary of the evidence to support the beneficiary's ownership rights or right to possession of a specific property.

As with damage compensation claims, it is a good practice to seek mediation or amicable settlement of these cases as they are so complex and take so long to adjudicate. As with damage compensation cases, it is a good practice to send a demand letter before filing suit.

6. Inheritance Claims

Inheritance is the transfer of a dead person's property based on the law or on the will (inheritance) of a dead person (decedent) to one or several persons (heirs) according to the law. The grounds for acquiring an inheritance are based on the law or the will. Each heir, under the same conditions, is equal in inheritance. The law makes no distinction between men or women. The share of the inheritance is based on one's relationship (wife, sister, brother, child, etc.) to the dead person. Women are often pressured in Kosovo by their families to renounce their shares of an estate.

The substantive law regarding inheritance is contained almost exclusively in Law Mo. on "Legal inheritance" (known as "intestate succession" in some jurisdictions) presents the transfer of property from a deceased person to one or more persons in accordance with rules determined by law (as opposed to transfer pursuant to a will or testament). According to the Law on Inheritance, legal heirs are defined as: the Testator's children, their adopted children and their descendants, marital and non-marital spouses, grandparents and their descendants. Legal inheritance is applied **only** when the decedent has not left a will or has left a will

regarding only a portion of his or her property, or when the will is fully or partly invalid. According to this provision of the Inheritance Law in Kosovo, the basis of will based legal inheritance is therefore stronger than the basis of legal inheritance.

According to legal norms, for a person to gain capacity of potential legal heir for "legal inheritance," the following requirements must be met at the moment of death of the *de-cujus*: 1) blood relation; 2) civil relation; and 3) marital status, as facts that give a person the capacity of a potential legal heir. These facts come by either blood relation by birth or adoption relation by legal act or marital bond. According to Article 11.1 of the Law on Inheritance, heirs at law are: "the decedent's children, his adoptees, and their descendants, spouse, parents, siblings and their descendants, grandfather and grandmother and their descendants." These are potential heirs at law based on the relation that they had with *de-cujus* at the moment of his or her death such as: the fact of bloodline, foster line, and marital union. The heirs at law are called on heritance in succession according to ranks set by legal norms. Ranking of heirs at law is done taking into consideration the legal system of inheritance.

There are three inheritance ranks under the Law No. 2004/26 on Inheritance (LI Arts. 12-21). The first rank of inheritance is the decedent's descendants (children, whether in or outside of wedlock or adopted or not) and spouse, all of whom get equal shares. The second rank of inheritance (i.e. if there are no children) is the decedent's parents and spouse. The parents receive 50% of the estate, while the spouse receives a full 50%. The third rack of inheritance is inheritance of deceased parents without other descendants, in which all the estate goes to the spouse. If a decedent does not have children, parents, or a spouse, the succession goes to the grandparents (half on the mother's side and half on the father's side). If the decedent has none of the above three ranks of family, the succession goes to the municipality of his or her last residence.

Non-marital spouses can only inherit from each other if they co-habitated together for over 10 years (or five years if there are children from the union)(LI Art. 28). Spouses may not inherit if: the decedent had filed a petition for divorce, and after his death the divorce is enforced with a final decision act; the marriage with the decedent is annulled with a final decision act, after the decedent's death, for reasons the surviving spouse knew about at the time of marriage; or the cohabitation with the decedent ceased to exist due to the surviving spouse's wrongdoings, or based on a written agreement with the decedent. LI Art. 27.

The Law on Inheritance adopts the concept of “compulsory” shares and heirs regarding which the decedent cannot dispose of. Compulsory heirs are the descendants, spouse and/or parents of the deceased. The compulsory heirs have the right to such part hereditary property over which the decedent cannot dispose, and which is called the compulsory share. The compulsory share of the descendants and of the spouse is half, and the compulsory share of

CALCULATING THE COMPULSORY SHARE Determining the value of the “hereditary” property

The value of the hereditary property, which is used as the basis for calculating the compulsory share, shall be calculated as follows (LI Art. 32):

First, all the assets the decedent had at the moment of his death shall be inventoried and evaluated, including all testamentary dispositions, and all debts owed to the decedent, even those owed by one of the heirs, except those debts obviously irrecoverable.

Second, the decedent’s liabilities, the cost of inventorying and evaluating the inheritance, and the expenses for the decedent’s funeral, shall then be subtracted from the value of the decedent’s assets so determined.

Third, to the remainder so determined shall be added the value of all gifts made by the decedent in any manner to a heir at law, including gifts made to heirs who have renounced to their inheritance, and those gifts that the decedent ordered not to count towards the heir’s inheritance share.

Fourth, to this sum shall be added the value of gifts that the decedent made to persons who are not heirs at law during the last year of his life, with the exception of ordinary gifts.

other compulsory heirs is one-third, of the share the compulsory heir would have obtained as heir at law according to the provisions on inheritance by rank. Pursuant to Article 114 of the LI, the decedent can only exclude from inheritance, in his or her will, an heir who has the right to the compulsory share:

- If he has committed a grave offence against the decedent by violating a legal or moral obligation;
- If he has deliberately committed a criminal act against the decedent, or his or her spouse, child, or parent;
- If he is dissipative, does not want to work, or is involved in amoral life.

Upon the person’s death the inheritance procedure is “opened.” The court is the competent authority to conduct the procedure and decide on inheritance rights. The legal aid practitioner must understand and to explain to clients that:

- The municipal body that maintains the death recording book is obliged-- within 15 days from the day the death is recorded, to send the death certificate to the court;
- The death certificate is very important for the inheritance procedure as it contains data on the dead person and the time of death; data on persons with the potential right to inherit; and information on the property belonging to the dead person;
- The death certificate is prepared (and it is important to ensure that it is prepared correctly given its importance throughout the rest of the inheritance process) based on data obtained from the dead person’s relatives; persons with whom the dead person used to live and other persons with relevant information needed to complete the death certificate;
- As soon as the court is notified that a person has died or is announced dead by a court judgement, (in missing person cases) the court starts the inheritance procedure.
- However, in practice, most of the time the inheritance procedure is initiated upon the filing of proposals by the interested parties and sometimes many years after the death of the person. As such, if the court does not start the inheritance procedure within the legal timeframe, the beneficiary might want to initiate the procedure him or herself. It is very important to have the inheritance court procedure completed as soon as

possible to avoid transfer of property and so that the heirs can make use of the property and its benefits.

Wills: The competent court decides on the inheritance share except in cases when there is a will prepared by the person before they die (in which case the deceased will have decided on the inheritance share in the will. A “will” (also known as a “testament”) is an expression of the final wishes of the dead person regarding how they want their property distributed after their death. The will is made in written form and must be witnessed by two adult persons or in the case of an illiterate person, by the court and two adult witnesses (LI Art. 75, 76) or by the court alone if the person is literate. However, in exceptional cases, a will may also be made verbally when the legal criteria is met, including the existence of “exceptional circumstances” in which it was not possible to make a written will and the presence of two witnesses (Art. 81 of the LI). Wills are executed by the court as well.

Renouncing inheritance rights: Every person can, but no one is obliged to, declare that they do not want (i.e. renounce) their inheritance share. If a person does not declare that they do not want their inheritance they are entitled to inherit their share of the inheritance. Both women and men may give up their inheritance rights under the law. However, this must be done voluntarily and not under any pressure. If an heir gives up their right to inheritance it cannot be acquired again and she/he will have no say with regard to the inheritance share ever again. Therefore, it is vital that the beneficiary decide on this freely and without any pressure. The beneficiary always has the right to keep his or her inheritance share and no one can force them to give it up.

Documents Required for Inheritance Cases

- Testator’s Death Letter of Attestation
- Testator’s Death Certificate
- Marriage certificate
- Heirs’ Birth Certificates
- Property possession list
- Other documents that could be used as evidence of intention of the testator

Strategic issues to consider in inheritance cases: Proper planning is critical for living clients in making wills. For heirs or potential heirs, it is important to bear in mind the legal presumption of the co-ownership by two spouses of property created during their marriage. For this, it is necessary for women to insist in registering property created during the marriage in the name of both spouses, as in practice it often

occurs that it is registered only in the husband’s name. This is particularly important if the couple is not legally married, given the limitations on inheritance for these spouses. It is also critical for legal aid practitioners to advise their clients, particularly women, of their rights in the inheritance process, and that they are not in any way obliged to renounce their inheritance shares (i.e., from their parents) just because they are women and their family expects that of them.

Types of evidence in inheritance claims: Evidence in inheritance cases is usually focused on the intentions of the deceased (in cases involving wills, including the will itself) and in showing the property and other items that form a part of the estate (i.e. the property possession list).

4. Strategic or Public Interest Litigation by Legal Aid Practitioners

WHAT IS STRATEGIC OR PUBLIC INTEREST LITIGATION?

Strategic or public interest litigation is much more than simply strategically presenting an individual case having to do with public interest before a judge. This section of the Legal Aid Practitioner's Manual introduces some of the broader goals of strategic or public interest litigation, as well as some of the more important considerations that should be addressed before entering the courtroom.

1. Goals, advantages and disadvantages of strategic litigation.

Strategic litigation, sometimes also called "impact" or "public interest" litigation in some countries, involves selecting and bringing cases to the courtroom with the goal of creating broader changes in society. People who bring strategic litigation want to use the law to leave a lasting mark beyond just winning the matter at hand. This means that strategic litigation cases are as much concerned with the effects that they will have on larger populations and governments as they are with the end result of the cases themselves.

Strategic litigation can, for example, be used to:

- Ensure proper interpretation of the law;
- Create jurisprudence, such as by the Constitutional Court, that can be pervasive in other cases;
- Strike down laws that are unconstitutional;
- Test implementation of laws;
- Engage government officials – trigger action/ reaction;
- Raise public awareness of issues; and
- Provide a focal point for public debate.

Strategic interest can have a huge impact on society. There can, however, be some down sides, which warrants that the trying of these cases must be undertaken with extreme caution and preparedness. Some of the disadvantages or risks of strategic litigation, for example, include:

- High cost of litigation;
- Uncertainty regarding outcomes, particularly in jurisdictions like Kosovo, where very few of these cases have been initiated;
- Potential for lengthy proceedings; and
- Effect of negative outcomes (i.e. losing the case and/or receiving a negative judgment).

Advocacy: Through filing lawsuits, advocates for social justice can use the courts to bring about legal and social change. This is often a part of an overall advocacy campaign designed to raise awareness on a particular issue or promote the rights of a disadvantaged population. Many groups or individuals who bring strategic litigation also seek to convince others as strategic partners to join their cause, or to influence the government to change its laws.

Results: When it is successfully used, strategic litigation can bring groundbreaking results. It can spring a government into action to provide basic care for its citizens, guarantee the equal rights of minorities, or halt an environmentally damaging activity. There are no set limits as to what strategic litigation can accomplish. Historically, strategic litigation has been the precursor of substantial changes in societies around the world to help marginalized and vulnerable populations.

Strategic or public interest litigation vs. legal services: It is, however, important to note that strategic litigation is very different from many more traditional ideas of legal services.

Traditional legal service organizations offer valuable services to individual clients and work diligently to represent and advise those clients in whatever matters they may bring through the door. But because traditional legal services are client-centered and limited by the resources of the providing organization, there is often no opportunity to look at cases in the bigger picture. Strategic litigation, on the other hand, is focused on changing policies and broader patterns of behavior. Because of this, strategic litigation is not designed to provide the best services to the largest number of people possible as traditional legal services would.

2. Considerations

Before one brings or helps someone else bring strategic litigation, there are many things to consider. One will need to look at what the legal issues are, determine what the goals of the litigation are, who can bring the case, when the case should be brought, where the case will be initiated, and how the case will be followed up on. These issues are discussed in more detail below.

WHEN TO BRING STRATEGIC OR PUBLIC INTEREST LITIGATION?

As with many other decisions, timing can be a critical element to success in strategic litigation. This section looks at when it would make sense to bring a case, what factors influence this decision, when results can be expected, and what sort of timeline the litigation might operate on.

1. When does it make sense to bring strategic litigation?

Not all cases make sense to file as strategic litigation, and it may not always be necessary to file a case to reach the determined goal or further a particular cause. In general, litigation can be a costly and time-consuming process. In some instances, it may make sense to reserve filing lawsuits only for people or governments who have been resistant to all other forms of change. There are many factors you might consider in making the decision whether or not to bring a case:

- Is there a legal issue involved that exemplifies or relates to a broader social or societal problem?
- Would a court decision be able to address that problem? Would the court decision have a widespread effect?
- Are your cause and the key issue in the case easy to understand for the media and the general public? How great is the potential for media coverage?
- Are other methods of accomplishing your goals possible? If so, how effective would they be compared with a strategic litigation approach?
- Are the courts in the jurisdiction you would file the case in independent from the other branches of government, well-regarded, and receptive or sympathetic to both your cause and strategic litigation in general?

Assessing the case: Because litigation can be so resource-intensive, it is wise to assess and investigate the possible case and the claims you wish to bring before filing a lawsuit. One

should thoroughly examine the facts, the evidence, the claims themselves, and the jurisdiction in which you are planning to bring the claim. One should ask oneself:

- What are the relevant laws to the claims? Are they generally enforced? How clear are the laws? How clearly are they written? How clearly are they interpreted? How clearly are they applied?
 - Note that clear laws are generally easier to work with and bring claims under, whereas unclear laws offer a greater chance to create new and groundbreaking precedent, but at a higher risk.
- How strong are the legal claims? How will they be regarded by the courts and legal system? How popular will they be in the local, state, and national community?
- How likely is it to receive a favorable decision from the courts in Kosovo on this particular issue?
- Would the court be able and likely to provide for any more innovative or non-traditional remedies in the case?

In some jurisdictions, courts may be able to order that the person, government, or organization being sued not only stop causing further harm, but actively work to remedy the damage they have caused and prevent such things from happening in the future. These bodies may be required to devise and put into place new systems and mechanisms to protect rights, provide care, or prevent abuses.

- Would there be any backlash or other political reactions or repercussions if the claims in court were actually successful? If they were unsuccessful?
- Is the theory behind the case clear, simple, and easy to understand? If the effort were successful, is the remedy requested clear, simple, and easy to implement?
- Is there another group or organization that might be better able to handle the case?

Examples:

1. India: M.C. Mehta v. State of Tamil Nadu and Others: In this case, Indian activist plaintiff M.C. Mehta sued the state of Tamil Nadu to improve the working conditions for children and to provide children rescued from hazardous labour with an education.
2. Paraguay: Niños en conflicto con la ley: Instituto de Reeducción del Menor v. Paraguay: In a case surrounding an overpopulated juvenile detention center in Paraguay, the Inter-American Court of Human Rights established minimum standards of care for young people in conflict with the law held in state custody.

International law considerations: If the strategic litigation involves claims based upon international human rights law or international law in general, the practitioner will need to carefully examine to what extent the particular international law or treaty has been applied or would be likely to be applied by the court (which in many cases will be the Constitutional Court in Kosovo, which has applied a wide variety of international law and treaties).

One of the best ways to do this is to look at how the government is applying existing national and international laws in the relevant areas. If the application of existing laws has been arbitrary or inconsistent, it may strengthen the case and provide an opportunity to give the local courts or authorities guidance. The legal aid practitioner should ask him or herself:

- How do the government and national courts interpret their own national civil, political, and human rights standards? Is this in line with the way the international community interprets those standards?
 - If standards have not been clearly established, there may be an opportunity through strategic litigation to work with governments and courts to figure out what the best practices should be.
- Would national or local government officials and authorities benefit from court guidance on how they can meet and operate under international human rights standards?
- Is there a reason to believe that the government isn't fully complying with either international standards or its own national standards? If so, is there any evidence that this might be open to a legal challenge?

Evidence: Providing a court with relevant and admissible evidence - information that clearly proves the case at hand - is key to success in strategic litigation. If there is no evidence to support the claims, it will be a difficult road ahead and the case will be tough to win at court. One should also be aware that although the practitioner may learn many things in the assessment, research, and investigation stage, there is a chance that a court might not accept all of the information as evidence when it examines the case.

Experts: Experts can be critical in providing and analyzing evidence. In many jurisdictions, relevant experts in the field may express opinions to the court in the way that lawyers and other representatives cannot. For this reason, it is worth exploring whether there would be well-respected and reliable expert witnesses or consultants in Kosovo willing to participate in your case.

Resources: In considering whether to bring strategic litigation, resources are critical. Litigation can go on for many years, even decades, and resources must be available to support your legal team and fully fund all activities necessary to continue with the case. Given the uncertain outcome at every stage of litigation, one should think long-term and be sure to consider the worst-case scenario.

2. What are the requirements and expectations about timing of the filing of strategic or public interest litigation?

Statute of limitations / prescriptive periods: A statute of limitations or prescriptive period is a law that sets out how long one has to file a lawsuit and is often thought of and discussed as a sort of countdown clock. Different types of claims or lawsuits usually have different time requirements, so it is important to know the nature of the claims in order to determine how long one will have to file them with the court. You should always check the statute of limitations or prescriptive period in the jurisdiction in which you hope to bring your suit before you file it. Because of the statute of limitations or prescriptive period, finding the best case to advance your cause or goal through strategic litigation may be difficult. You might want to research the time limits you will face as soon as you have an idea that strategic litigation could be a strategy worth pursuing.

Starting the clock: The clock usually starts running from when the actions over which one hopes to sue actually occurred, although in some cases there may be special extensions. These extensions often involve cases where the injured party was not aware of the damage being done at the time it was happening, as may be the case with things like fraud or exposure to

toxic and dangerous substances. In those instances, the clock may start running from when the injured party becomes aware of the harm.

Stopping the clock: "Tolling" the statute of limitations or prescriptive period is a legal term meaning that the clock has stopped running. The clock may stop running for any number of reasons, including if the person suffering the harm is temporarily disabled or the person causing the harm becomes involved in certain other legal proceedings.

Appeals: If one loses the case in a lower court or other judicial proceeding, one may be able to challenge this loss and ask for a higher court to take another look at the case. However, it is likely that if one is able to appeal, there will be a time limit on how long you have to ask the higher court to look at the lower court's order or decision. When a case is brought, one should analyze whether one is guaranteed an appeal, whether one can apply for an appeal but will not automatically be entitled to appeal, or whether the court's decision will be final. If you will be able to at least apply for an appeal, note the deadline to start the process, which usually begins by filing a legal request or otherwise contacting the court. Some jurisdictions may allow you to extend this deadline, but be sure to investigate this fully as extensions may not be automatic. Issues brought before the Constitutional Court in Kosovo, for example, have no right to appeals at the national level.

Exhaustion of remedies: In order to have a case heard by some international, regional or higher national courts, the party must have exhausted his or her remedies. This means that the party must first go through other judicial channels available before the new court will hear the claim.

In terms of international or regional tribunals, this may mean that one will be required to go through the national courts of the jurisdiction in which one would file the claim until there is no longer any opportunity to appeal, known as exhaustion of remedies. Once one has done this, there may be a time limit on how long one has to bring the claim to a higher court, or else the last court's opinion or order may stand. Many international tribunals set this limit at six months.

Exceptions: There may be exceptions made both for the exhaustion of remedies requirement and for any time limits set. For example, if one can prove that the courts in the jurisdiction you would file your claim in are corrupt, one may not be required to pursue a remedy in those courts. Or if one can show why you could not bring your case within the expected time limit, one may be given an extension.

Time frame expectations: Because litigation necessarily involves other people, organizations, or governments and must be overseen by a judicial body, it is often difficult to predict how long it will take before getting a final decision. Any number of factors may influence how long a lawsuit takes, but in general litigation will go on for longer periods of time the more complex the case, the more parties who are involved, the less willing the parties are to resolve matters, and the busier the court's schedule. In the best of worlds, cases may be resolved in a matter of months. In some instances, it can take years, or even decades to get a final decision. This may also vary widely both across and within jurisdictions.

Before one files a strategic litigation-focused case, one should try to estimate how long the litigation process might take. One can never be able to pinpoint exactly when one will get a resolution, but one may come up with a range of time during which one might hope to hear

back from the court. Based on this range, one can allocate time and resources appropriately and set the expectations of all parties involved.

Provisional measures: In some courts or tribunals, one may be able to apply for provisional measures (also called provisional remedies), interim measures, interim injunctions, and preliminary injunctions to preserve the status quo (or avoid further damage during the course of the litigation). In Kosovo, for example, LPC Articles 296-318 provides that the court may take provisional measures to “insure the claim.” These provisional measures are designed to prevent any further harm to the parties while the case is being decided, so the court or tribunal may order the defendants to cease certain actions at the outset of the case or prevent a potentially harmful law or policy from going into effect. Once a final judgment has been issued, the provisional measures may become permanent, be modified, or be lifted entirely.

WHO CAN BRING STRATEGIC OR PUBLIC INTEREST LITIGATION?

Not just anyone can bring a case to the courts. In strategic or public interest litigation, as in all kinds of lawsuits, determining who the players are is critical to success. This section will help identify who should file the lawsuit, who they will sue, and whether or how people or organizations not named as parties in the lawsuit could intervene or otherwise get involved.

1. Who will file the lawsuit?

Standing: Most jurisdictions, including Kosovo, still require what is known as “standing” of a party to get into court. Standing is just another way to figure out who has the potential to bring a lawsuit. For example, in some countries, in order to have standing to bring a lawsuit, one must have been directly damaged or victimised by the person, organization, or government that is being sued. It is important to look at whether one’s jurisdiction or any other jurisdiction in which the case is being contemplated requires standing, and – if so – what limits that places on who can bring a lawsuit. Some jurisdictions may relax the standing requirement for cases filed in the “public interest,” (i.e. Rwanda, India, South Africa, and other countries), which often include cases involving human rights violations.

Organization vs. individual: Standing requirements usually make clear whether an organization may file a complaint on behalf of people who have suffered wrongs, or if those people must file their cases directly. If one has a choice between the two, note that a case filed in a group’s name will likely generate much more publicity for the group than if the group’s name were not directly involved. Kosovo allows organizations to bring lawsuits in their names on behalf of clients.

Third parties: Standing will also determine whether interested third parties are allowed to directly intervene or join (LCP Article in a case that has already been filed. These third parties might be people or organizations who were not directly damaged by actions or the behavior of the person, organization, or government that one is suing, but retain a strong interest in the outcome of the litigation.

- Legally oriented NGOs might want to intervene in a case for numerous reasons. They might see the key issues in the case as central to their mission, feel that their resources would be of necessary or genuine assistance to the case, or see the case as an opportunity for good publicity.
- If third parties are not allowed to directly intervene or join in a case, they may still assist in the litigation by making their opinions known as *amicus curiae*. Amicus

curiae means "friend of the court", and many jurisdictions permit interested organizations to prepare and file legal papers in support of one of the parties in the case. Both the Kosovo Supreme Court and Constitutional Court have allowed *amicus curiae* briefs on different occasions.

Group action lawsuits: A group action lawsuit, also known as a "class action," collective action, or group litigation, may be a possibility in some jurisdictions, although it is not yet possible in Kosovo. Under the collective or class action model, a small group of people or a representative organization sues on behalf of a much larger group. Filing a group action lawsuit usually requires approval from the court. Courts may want to examine the people who are hoping to bring the lawsuit, their claims, and the other people in the class that they are hoping to represent, so it would be wise to consider each of these if you wish to pursue a group action suit.

Example:

1. United States: The American Civil Liberties Union successfully brought a class action suit against a school district that had been discriminating against Native American students. This case was Antoine et. al, vs. Winner School District.
2. 2. *How do you select the right plaintiffs?*

Finding and recruiting plaintiffs: Not all strategic litigation cases are carefully selected from the outset, but given the nature of strategic litigation, one may find oneself in a position of looking for the right people to bring a case that supports the determined cause or goal. If you have such a case in mind, there are many ways you can search for and identify people who can file their claims with the courts. These people are usually known as plaintiffs, but may also be called complainants, claimants, or petitioners. Before one starts looking for plaintiffs in any manner, be sure to look at local laws and practices to determine whether and how it is permissible to recruit or solicit clients. Bear in mind that the rules may differ for paying and non-paying clients or beneficiaries. Regardless of whether one expects plaintiffs to pay for legal services in connection with the case, it is important to remember that one is often seeking to advance one's own or one's organization's cause when one speaks with potential plaintiffs. Be sure to be upfront about this goal.

With this in mind, below is a list of common ways to find or recruit plaintiffs for strategic or public interest litigation:

- Field visits/interviews;
- Referrals from legal aid or other law-oriented client-based services;
- Referrals from NGOs;
- Existing channels for complaints, like local groups or organizations, community centers, and trade or labor unions;
- Setting up new channels or points to receive complaints with the assistance of local and national advocates, willing and interested lawyers, law students, and other volunteers;
- Keeping consultation or office hours;
- Training programs;
- Journals, newsletters, casework bulletins and other publications;

- Print or online advertisements; and
- Meetings or conferences with interested advocates and legal practitioners.

It is important to keep in mind that an agency like the FLAA is in an extraordinarily advantageous position to find plaintiffs for strategic litigation given the large numbers of clients that pass through its doors. Strategic litigation often involves addressing systemic problems that affect large numbers of persons.

Evaluating potential plaintiffs: Once potential plaintiffs that could advance the case in a meaningful way have been identified, their particular circumstances and individual characteristics should be thoroughly investigated before the lawsuit is filed. Things that should be considered in this intensive evaluation include:

- The strengths and weaknesses of the potential plaintiff's claims, and the individual facts surrounding those claims;
 - Plaintiffs' claims may be more appealing if they stem from many incidents or involve multiple grounds. Plaintiffs should be as sympathetic as possible and not "carry a lot of baggage" from other cases or activities.
 - In some cases, it may be wise to stay within more traditional and established fields of law one is testing the powers of a new law or fighting system-wide discrimination. For example, one might want to bring straightforward employment discrimination claims rather than adopting a more creative or novel argument.
- The plaintiff's lifestyle, schedule, free time, and availability to meet and actively participate in the case;
- The plaintiff's interest in the cause;
- Personal characteristics like credibility, charisma, and the ability to communicate clearly and effectively; and
- The likelihood of success and the effects that success or failure might ultimately have on the plaintiff's existence.

Safety concerns – "Do No Harm" Approach: It is extremely important that the safety of potential or actual plaintiffs, as well as of any other people involved in the case, always be considered. A "Do No Harm" approach should be adopted regarding the involvement of plaintiffs in strategic litigation. Plaintiffs, lawyers, organizations and other persons assisting in the case, or even simply supporting the case, may face severe economic, social and personal consequences. It is critical to make sure those involved in the case feel safe and protected. If there is immediate backlash against the case when it is filed or the situation worsens down the line, you should ensure that all parties involved know whom they can contact should they ever feel that they are in danger. If a person or organization ultimately feels that they must discontinue their involvement in the case, one is certainly encouraged to discuss this decision with them, but must above all else respect their wishes.

Confidentiality: All communications between lawyers and potential or actual clients must be held in the strictest confidence. Even the fact that one is meeting with lawyers or thinking about filing a lawsuit is confidential. When one is interviewing potential plaintiffs in connection with a lawsuit, one should assure them that you intend to keep any information you learn in confidence unless they give you permission to share, broadcast, or otherwise use

that information. This should be the case regardless of whether they ultimately become a plaintiff or otherwise participate in your lawsuit.

3. How to choose the correct respondents to sue?

Determining and selecting from possible respondents: Just as important as finding people who will be bringing a lawsuit is figuring out who exactly they should sue. Once a case is filed, the party being sued is usually known as a defendant or may also be called a respondent, depending on the court and the type of case filed. In some instances, it will be very clear who the appropriate defendant or respondent for a lawsuit would be. Even so, there may be more options available than one thinks, and there are several things one might wish to consider:

Substance: The substance of the claim and the laws that one seeks to enforce may dictate or explicitly direct who the appropriate defendant or respondent would be.

Procedure: The laws that underlie the claim or the court in which one brings the claim may have procedural requirements that suggest or mandate selecting a particular defendant or respondent.

Success: The likelihood of success you might have in bringing your suit against potential defendants could also come into play. It might be easier to prove that one potential defendant was responsible for the harm your plaintiff suffered than another, so you might consider focusing your attention and resources on defendants against whom you have more evidence.

Remedies: Different defendants or respondents may be able to offer different solutions to remedy the harm your plaintiff suffered if one wins the case. For example, if one sues a company, they may be able to offer money, but will not be able to change a law. When selecting defendants, one should revisit the central goals in the case to figure out which defendants could offer the desired results. The defendant or respondent will be instrumental in bringing about the desired social change.

Multiple defendants or respondents: Just as it is possible to have multiple plaintiffs, it is possible to have multiple defendants. It may make sense to sue more than one party to get the relief that you are requesting, particularly if money is being sought. In some instances, one defendant may be required to pay for the wrongs that all other defendants have inflicted. This is called joint liability.

Common defendants in strategic litigation: There are a few sorts of defendants that are sued regularly in strategic litigation cases. Since the aim of strategic litigation is broader social change, the defendants are most often branches of government. Sometimes, however, it may be possible to sue public or private companies and corporations that are particularly influential or causing substantial harm. A list of the most common defendants in strategic litigation cases and things you might want to think over in bringing a lawsuit against them follows:

National governments: National governments have the broadest power to change the laws or practices on a large scale. They may also have the most resources to defend a suit and be the most resistant to change. Questions you might ask yourself before suing a national government include:

- What is the national government's likely position on the lawsuit? Will they be supportive, or will they vow to fight it? Why?
- If the national government is not supportive, is there any organized political opposition? Is that opposition public and vocal?
- If the national government as a whole is not supportive, are there individual national or local politicians who are or would be supportive?
- How many resources will the national government be able to devote to defending the case? How skilled are their lawyers? What will their strategy likely be?
- Are there any upcoming elections or other changes in power that might impact the national government's position?

Arms of the national government and lower levels of government: This category includes national and local authorities, government ministries or agencies, and certain institutions. Within a national jurisdiction, counties and municipalities or other political subdivisions may have their own governmental powers and be appropriate defendants. In a federal system, state governments may be similarly appropriate. As above, it will be important to ask yourself questions about the potential defendant's stance and resources, but suing a lower level of government comes with its own set of considerations as well:

- If the suit is successful, will the defending government body have the resources, funds, and infrastructure to supply the relief requested?
- Is there localised or community opposition? If so, are there feasible ways to overcome it?
- Will the lawsuit draw national attention? If this is likely, will national politics change the perception of the suit or otherwise influence the government body or community at large?

Corporations: Suing corporations may have a sizable global impact and set a strong precedent for business practices. However, corporations also have many legal resources, and lawsuits can be tricky given how many places and in what ways a sizable corporation does business.

- Publicly held corporations, which are listed on stock exchanges and tend to be larger in scope, can expect reactions to the lawsuit from many interested parties. These parties include the corporation's shareholders, management, workforce, creditors and competitors. The general financial markets and market regulators may also take interest. This will likely result in more people paying greater attention to your case, but bear in mind that this could work both for and against your lawsuit depending on what the interested parties have to say.

Examples:

1. National Government. Russia: Chelyabinsk/Mayak Nuclear Production Facility cases. Following one of the largest nuclear disasters in world history, children in affected areas were forced to assist in cleanup efforts and have suffered long-standing serious health problems. Many have successfully sued the government and now receive small support payments.
2. School boards. United States: Brown v. Board of Education of Topeka, Kansas. A group of parents sued on behalf of their children attending racially segregated schools. In a landmark decision, the US Supreme Court ordered that schools across the country integrate their student bodies.

3. Corporations. Nigeria: A collective action lawsuit was brought by the Nigerian government seeking compensation for the families of children harmed by pharmaceutical firm Pfizer's illegal testing of an unregistered drug on children.
4. Corporations. Cote d'Ivoire: A case was brought in United States courts against three large corporations (Nestlé, Archer Daniels Midland Co., and Cargill) on behalf of individuals who had been trafficked into slavery on cocoa farms as children.

5. *What role can NGOs and other players take in strategic litigation as partners?*

Unlike in most individual litigation, having partners in strategic litigation is critical as there are higher level issues at hand beyond the individual case.

NGOs: Many, if not most, NGOs are not fully equipped to run large scale strategic litigation cases without assistance. If a case is to be filed in a location beyond commuting distance from an NGO's headquarters or field office, it may be very difficult to bring that case without local representation. However, NGOs without the resources to bring their own cases can still be heavily involved in strategic litigation. They can identify potential plaintiffs and cases; manage, service, and advise on active lawsuits; publicize case progress and the eventual results; monitor enforcement of judicial decisions; and advocate for the cause behind the litigation in other ways.

Other interested organizations: The legal aid practitioner may want to think about getting people and organizations who are not directly involved in case, but have an interest in it, to participate. Think about who these people and organizations might be, and why they might want to get involved. If they are interested, one may be able to pool resources or work on the case together. For example, one can consult with legal advisers, local NGOs, or experts in the field the case addresses to help formulate the legal strategy, provide useful evidence, gather support in the community, or simply give general feedback and encouragement. Before and as one reaches out, do bear in mind that one may be dealing with sensitive or confidential information. One should be sure to first run any potential third party you hope to consult with by the other lawyers and the plaintiffs involved to ensure that one has their permission.

6. **Where should the case be filed?**

General: In thinking about where to file the strategic litigation, it is not just a matter of location. One's first thoughts may include the jurisdictions where the plaintiffs reside, where the defendants reside, and where the actions or violations about which one is suing occurred. However, these are not your only choices – there are both international tribunals and national courts in other jurisdictions that might be willing to hear your case.

After the full range of options has been mapped out, one should research the possible jurisdictions, courts, tribunals, and other judicial bodies before making the selection on where to file the case. A general list of places one might consider filing strategic cases, always taking into consideration the possible obligation to exhaust remedies, includes:

- Municipal, local, or state courts;
- National courts (i.e. Kosovo Constitutional Court);
- International courts, tribunals, or commissions; or
- United Nations treaty bodies.

Judges and legal professionals: The independence and integrity of judges and legal professionals working in the jurisdiction is crucial to your success. In order to ensure that your case is given a fair chance, judges, lawyers, and all judicial and legal personnel must have the means, opportunity and support to do their jobs well.

Judges: As judges and judicial employees will both oversee your case and write relevant orders and decisions, you will want to look for a system that offers a competent, well-trained, independent and impartial judiciary. Given the progressive nature of strategic litigation, you might also prefer more proactive judges. If judges in a certain jurisdiction are known to be prone to outside influence or otherwise partial, the goal of the case might not be to win, but to highlight this corruption and bring it to the attention of the international community.

Example:

Guatemala: Two NGOs jointly brought a case before the Inter-American Commission on Human Rights to challenge adoption proceedings where judges had allegedly been taking bribes to fast-track approval.

Lawyers: Good and competent lawyers are key to winning the case as they will be advocating in the courtroom on behalf of the plaintiffs. To be effective, lawyers must be able to work without being threatened, intimidated, harassed, or otherwise confronted with interference. They must be able to freely travel to meet their clients, experts, consultants, and other persons involved with the case both domestically and internationally. If they act within a jurisdiction or tribunal's codes of professional or ethical conduct, they must be able to rely on those codes and know that they will not be sanctioned or otherwise punished for their behaviour in connection with the case.

International law and tribunals - monist and dualist systems: In general, there are two ways jurisdictions approach treaties and other international agreements. In what are called monist systems, international laws and agreements can be enforced directly by national authorities and in national courts once a treaty or agreement has been signed, ratified, and entered into force. In dualist systems, however, treaties or agreements cannot be enforced by the authorities or in the courts until there are national laws passed to incorporate the principles behind those treaties or agreements. Because of this, if your lawsuit involves international matters, it may be in some ways easier to bring a case in a monist system, a jurisdiction that would apply the clear language of the treaty or agreement itself.

Laws and precedent: Different courts, even within the same jurisdiction, may have widely varying laws, rules and procedures. They will rely on different precedents in analysing the strategic litigation claims and the law itself, and one should be sure to figure out what each court or tribunal's likely outlook or predisposition towards the case might be. To begin, one should look to see if the court or tribunal in which one hopes to file has dealt with any similar cases before or any strategic litigation in general. If not, one might want to try to figure out how active a role judges and courts take in overseeing cases and what their general tendencies are. More conservative jurisdictions or tribunals may be less open to innovative claims or potentially groundbreaking activist litigation.

- If during the research it is found that a court or tribunal is currently addressing a case with very similar subject matter, one may want to contact the lawyers on that case about intervening (i.e. joinder of parties, or litispendence, pursuant to LCP Art. 264),

cooperating or pooling resources. One may also be able to file a separate case and then have the court or tribunal consider the two cases together (joinder of claims or cases, LCP Art. 408).

Remedies and impact: Depending on the court where the case is filed, the remedies that can be sought in the case may also be vastly different. Some courts may only be able to offer monetary compensation, whereas others will have broader powers. By the same token, the impact of a success or loss may be dramatically higher or lower depending on the court or tribunal that issues the order or decision. As a general rule, the higher the court or tribunal, the broader and more powerful the impact will be. One might want to choose a well-known or respected court whose judgments will be influential not only on a national level, but potentially on an international scale as well.

Appeals: Access to higher courts may be wholly or partially restricted to appeals, cases where a lower trial court has already made a determination and the losing party has asked a higher court to review that decision. Appeals can be key to strategic litigation, both in terms of ensuring that the case will be fairly heard and in terms of getting access to higher, more prominent courts to raise the profile of the case and offer a deeper impact. One should be sure to investigate the appeals procedure in the jurisdiction where one wants to file the case and figure out to which courts one could appeal a decision to (including relevant international tribunals) and how long the process might typically take at each step or level.

Timing: The impact of the case and the effectiveness of the remedies the courts could offer might also depend greatly on timing. Where the harm being done to the plaintiffs is severe and continuing, one may want the court to intervene early on to prevent further damage and ensure the plaintiffs' safety. If the damage has already been done, though, timing can be less crucial as the court may be able to offer little more than monetary compensation. Nevertheless, obtaining a quick, early win may still be able to help gather momentum and support behind your cause and lay the groundwork for other cases to succeed.

Civil vs. criminal options: In some instances, one may have the option to pursue both civil and criminal cases. Civil cases are generally brought by individuals or organizations seeking remedies from the court to cease or compensate for damage caused by the defendants. Criminal cases are usually filed by government or tribunal lawyers (often called prosecutors) to punish or otherwise sanction a defendant for breaking the jurisdiction's criminal laws or codes of conduct, although some jurisdictions may allow for privately filed criminal cases in certain circumstances.

Civil cases: Filing a civil case generally gives one more control over the proceedings as one is pursuing the claims directly before the court. With imprisonment and other criminal punishment off the table, there may also be more relaxed standards for evidence or proof which could make it easier to win the case. As the goal in civil cases is to remedy the wrongs that were done, they also generally provide more opportunities not only to force defendants to stop harmful actions, but also to seek compensation for damage already inflicted. However, civil cases are generally lengthier and more expensive to bring than criminal cases. This is especially true where separate criminal cases have been filed against the same defendants; in those instances, courts or government lawyers may suspend all civil cases until the criminal cases have been resolved.

Criminal cases: Criminal cases can be higher profile and more powerful than civil cases. Because of the penalties or punishments that criminal cases bring, they may also serve to warn

other people or organizations involved in similar activities to change their behavior. However, criminal cases may be both harder to bring and harder to win. The standards for evidence or proof could be higher, and the government lawyers might have more limited resources or be politically constrained. These factors may be worth considering before you encourage the government to press charges, pursue a private criminal lawsuit, or otherwise agree to participate in a criminal case.

Context: In addition to looking at the laws of the land, one must not forget about the context in which the lawsuit will be filed. You should think carefully about the levels of corruption in the jurisdiction; the general stance of the government as to human rights; and the physical or other dangers those involved with your lawsuit might face. If one has serious reservations about safety or fear of retaliation in a particular jurisdiction, it may be best to file and run the case from outside that jurisdiction.

Financial considerations: Bringing a public interest case or impact litigation can be very expensive, so it would be wise to investigate court costs, legal fees, bond or security requirements, and other financial commitments involved in every potential jurisdiction. Legal costs can be prohibitively expensive in some jurisdictions, so it may make more sense to file your case in a jurisdiction where your resources would go further. You should also investigate whether legal fees would be recoverable if you won, meaning that the losing defendants would have to pay for your lawyers and court costs. Some jurisdictions provide for this arrangement specifically in human rights or general public interest litigation.

How is the case proved and litigated?

Beginning the investigation: Thoroughly investigating the case is critical to figuring out the best strategy for success in the courtroom. As a first step, one should gather all publicly available documents and data relevant to the case. This includes newspaper, journal and magazine articles; media and academic reports; and statistics, studies or other scientific information. Once one has a good grasp on this background information, one should think about going out into the community to speak with people who have actual knowledge or experience with the events and occurrences that underlie the legal claim. Where it would not endanger the plaintiffs or harm your case, one should consider talking with plaintiffs' friends, family, and colleagues; government officials or authorities; other advocates or lawyers in the area; and anyone else who may have witnessed or known about things that happened in your case. Remember, though, that one can't learn everything, and one will have a chance to find out more through official channels once your case has been filed.

Confidentiality: As always, all communications between lawyers and potential or actual clients must be held in the strictest confidence. Bear this in mind when one is investigating the case as one does not want to place the plaintiffs or any other case in jeopardy, and should never reveal information about the case. Sometimes, even letting other people know that one is planning to file a lawsuit may violate confidentiality.

Keeping records: It is very important to create a paper trail of the investigation. Keep copies of all published or written information that is found. Take notes and pictures during any interviews or field visits that are conducted, and if possible, ask for permission to record them. Be sure to account for every piece of information that one learns during the investigation in some way. The more organised one is in gathering and storing information, the easier it will be to find and use it throughout the case.

Fact-finding: Most jurisdictions provide for a fact-finding or discovery period when you first file your case. During this period, one will have an opportunity to get documents and information from your adversaries, and they likewise have an opportunity to get documents and information from the client(s). As you find out more information from your opponents, you should continue investigating on the ground with more specific goals and questions to help your case further as it develops.

Proof: In order for the court to make its decision, one will need to submit evidence to prove the case. As discussed above, the rules of evidence vary widely across jurisdictions, and one should thoroughly understand them before the investigation is underway. With these rules in mind, one will want to bring the court's attention to many of the relevant things that are learned during the investigation.

Witnesses: People who know, saw, or otherwise experienced things that are relevant to the case may be able to serve as witnesses. Typically, one would arrange for a witness to come to court where the beneficiaries' lawyers, the defendants' lawyers, and the judge would all have an opportunity to ask questions. It may also be possible to meet and interview a witness on record outside the courtroom if the other parties in the case agree to this arrangement. Think about who could serve as a witness in the case and begin meeting with those people early on in the process – remember that one may very well want to ask the plaintiffs and defendants in your case to serve as witnesses. One should thoroughly prepare the questions that one hopes to ask witnesses and any documents or other evidence you might want them to discuss. Before bring witness is brought to court, or is otherwise asked questions, one should be sure that he or she understands how the process works and what he or she will be expected to talk about. It is always best to avoid surprises.

Evidence: If written or photographic documentation, scientific studies or surveys, voice or video recordings, or physical evidence is available, one may be able to submit this to the court directly. It may be possible or preferable to bring this evidence to the court's attention while one is questioning a witness whose role in the case relates to the evidence that one seeks to submit. Be aware that it will probably be necessary to bring the person who provided the evidence to the court so that the court can assess how reliable and credible the evidence is. This can also be more credible for the judge.

Experts: If the legal aid practitioner has consulted with any experts, those experts might submit reports to the court or appear before the judge as an expert witness to explain their views. As with any other witness, the practitioner will need to thoroughly prepare any experts for questioning before they come to court as they can be cross-examined by the opposing party.

Advocacy Strategy: Strategies and tactics on the road to and inside the courtroom will be central to any victory and will in large part be the responsibility of your lawyers. However, this is only one part of the overall strategy in your case. You should try to develop a comprehensive vision of advocacy that includes drawing international attention and gathering widespread support to your cause, and you may want to push for educating courts and legal professionals on the issues in your case locally, nationally, and globally. One will need to have a follow-up strategy for after the case has been decided, and you should certainly anticipate that your cause will have a much longer and broader struggle than one simple court decision, no matter how groundbreaking or symbolic it may be.

Settling: Often times, settling the case out of court may not be in line with the goals of strategic litigation as it does not typically offer an opportunity to set precedent or an example for future

cases. However, it may at times be the better option for strategic or practical reasons and should not be discarded offhand. If one does decide to settle the case, it is important to think about negotiating solutions and remedies that would extend beyond simply the plaintiff or plaintiffs involved in the suit. One can actively involve the defendants, the government, and the public. One should also seek to make the settlement public knowledge by filing the agreement with the court if permissible and discussing the terms with the media. Settlement can provide a valuable means to initiate advocacy and reform movements, and may also serve to prevent future harm or damage done in similar cases by defendants.

Losing: If one does not believe that the case will succeed in court, all is not lost. One can adopt different advocacy strategies from the outset or as soon as you realize that you are likely to lose. One may start calling for the courts to be monitored and reformed or begin an effort to overturn a decision outside the courtroom with the help of the local, state, or national government. If support is lacking in the jurisdiction in which the case was filed, one may want to take your advocacy outside its borders, such as to the European Court of Human Rights (ECtHR), under the European Convention of Human Rights, which, by virtue of Article 22 of the Constitution of Kosovo, has direct applicable effects in Kosovo as well as has acquired higher status over provisions of domestic laws. Equally, the purpose of Article 22 of constitution has been confirmed in several cases decided by Constitutional Court. Having said that, the position of the ECHR in domestic legal order is clearly highlighted in one of its decided cases:

"The European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols...were incorporated into the law of Kosovo at the Constitutional level, it being given priority over provisions of laws and other acts of public institutions. This Court must interpret the Constitution and the Convention in a complementary manner bearing in mind the necessity to protect the fundamental rights and freedoms enumerated in both. Many of the countries of Europe, which emerged from totalitarian rule over the last number of years, have adopted European standards for the protection of human rights. Kosovo has done the same. The constitutional system is one, like others, based on the pillars of democracy, human rights and the rule of law" (Case of Emailj Kurtisi, v. The Municipal Assembly of Prizren, 2009).

Similar interpretation was emphasized by a mixed panel of EULEX judges in the criminal case of Arben Krasniqi et al, (2011), when interpreting the Article 156 (2) of the Kosovo Code of Criminal Procedure (KCCP) in the light of ECHR, whereby the effect of this article is ought to be in conjunction with the ECHR provisions and the jurisprudence of ECtHR. Furthermore, the mixed panel of EULEX judges held:

"Art. 22 of the Constitution makes the ECHR directly applicable to the Kosovo domestic legal system. Furthermore, Art. 53 of the Kosovo Constitution requires that 'human rights and fundamental freedoms guaranteed by the Constitution are interpreted consistent with the court decisions of the European Court of Human Rights'... Therefore, the Trial Panel must interpret the KCCP Art.156 (2) 'opportunity to challenge' in line with the ECtHR's findings" (Arben Krasniqi et al, 2011).

Respectively it could be argued that not only the Constitutional Court of Kosovo is obliged to comply with ECHR provisions and with the ECtHR case law, but also the other courts in Kosovo can utilize the provisions of ECHR in an effort to provide a correct analysis of the ECHR and appropriate construing of provisions of native laws, i.e. Article 156 (2) of the KCCP. International pressure can be and often is instrumental in promoting social change.

4. How else can the case be supported?

Amicus curiae briefs: Some jurisdictions allow NGOs, governments, trade associations, corporations, or other interested parties to submit legal briefs as *amicus curiae*, papers written by "friends of the court" that take a position in support of either the plaintiff's or defendant's arguments. In cases before the Kosovo Constitutional Court, the Court may request certain actors or experts to file *amicus curiae* briefs in particular and has, in fact, done so in the past. In jurisdictions where these kinds of briefs are accepted, such as in Kosovo, one may want to recruit groups that support your cause to write and file papers with the court. One may find that there is a limit to the number of submissions that non-parties can make, in which case one will want to carefully select whom is invited or should be allowed to file supporting papers. One might want to consider potential contributors' profiles, reputations, institutional knowledge, prestige, general mission, motive for supporting your case, and the quality and importance of the work that they will be able to contribute.

Examples:

1. United States: With the assistance of a US law school, Human Rights Watch presented an *amicus curiae* brief in a case involving the deportation of immigrants following criminal convictions (before the Inter-American Commission for Human Rights).
2. Europe: The Commissioner for Human Rights at the Council of Europe can submit *amicus curiae* briefs in human rights cases.

Media: Strategic litigation can be an excellent way to get the media interested and involved. The media provide a platform to dramatically increase awareness surrounding both your case and your cause in general; if one manages the publicity for the case well, this awareness may in turn become very important public support for the case. Even if the case is unpopular locally or nationally, international media may foster widespread support beyond the jurisdiction's borders. When one first files the case or when any subsequent major steps are taken, one may want to write a press release or otherwise alert local, national, and international media outlets. In some cases, it may also make sense to contact politicians that would support efforts. As always, do bear in mind that the legal strategy and communications between lawyers and clients are privileged and confidential information.

NGOs, academics, and other human rights specialists: There is likely a wide range of groups and people willing to offer their help and support for the case. NGOs can provide invaluable assistance by campaigning for the case in the community, networking with other supporters, researching legal or factual issues, and gathering information on the ground. Academics have access to extensive research facilities and can write articles about the issues in the case, speak at meetings and conferences, or otherwise raise awareness in the legal and human rights communities. National human rights institutions may offer libraries, general advice, and a chance to link up with other interested groups, while individual human rights advocates and specialists can share their own experiences and offer friendly advice. And, of course, do not forget the invaluable messages of support you may receive from plaintiffs' families, friends, and communities.

5. *How does one follow up once the case has been decided?*

Enforcement/monitoring: Settling or winning a case before the court is only the beginning of the broader social change that strategic litigation seeks to bring about. In fact, enforcing court orders and settlement agreements has historically been one of the biggest challenges faced by those involved in strategic litigation. Remember that the goal of strategic litigation is lasting

reform, and you may well need to continually monitor compliance with judgments or agreements to ensure that they remain in force.

Sanctions: If there is a history, pattern, or practice of judgments or other court orders not being enforced in a jurisdiction or against a particular defendant, you may want to argue for a court order or decision that gives realistic and easily enforceable sanctions in the event that the losing parties do not comply with the judgment. These may include things like putting oversight and monitoring programs into place or awarding punitive money damages.

Assistance: It may often make sense to ask other interested organizations in the jurisdiction to assist in monitoring and enforcing the judgment. If they receive reports that governments or other defendants have not changed their behaviour in line with a court judgment, one might ask them to document these instances and refer the parties involved to the litigation team. Other groups may also offer to help proactively ensure that your judgment takes effect by providing services ordered by the court or interviewing members of the affected community to see whether they feel their positions have improved.

Continued advocacy: Without continued advocacy, any victory in the courtroom can be quickly forgotten or – worse yet – undone. Whether the case is won or not, post-litigation advocacy is essential to furthering the goals of strategic litigation, and one must not stop arguing for better government policies and improvements like more effective aid programs, education, and general community services in line with the selected causes. Connecting with grassroots organizations in the affected communities in particular and the jurisdiction overall can be vital to success in the long-term.

STRATEGIC LITIGATION AS A TOOL FOR REFORM IN KOSOVO – Three Case Studies

Case 1: BIRN v. Kosovo Prosecutorial Council

○ Objective

- Establish precedent requiring KJC and KPC to disclose names of judges
- and prosecutors found guilty of misconduct
- Raise awareness of right to accountability in the justice system

○ Litigation Strategy

- Document a violation of Law on Access to Public Documents and Kosovo Constitution
- Complete quick administrative appeal
- Appeal administrative finding to Kosovo Supreme Court
- If necessary appeal further to Kosovo Constitutional Court

○ Identifying the Case

- Start with the issue

○ Choosing the Right Party

- Dependability/Public Face: trusted, independent media Company

- Standing: Establish through violation of Law no. 03/L-215 on Access to Public Documents (LAPD)
 - Choosing the Right Court
- Relatively quick path to Supreme Court verdict
- Clear appellate jurisdiction / exhaustion through administrative proceedings
- Possible appeal to Constitutional Court
 - Advocacy Strategy
- Traditional Media – guaranteed coverage in at least one prominent outlet
- Parallel advocacy through our Campaign and partners
- Friend of Court Briefs in Supreme Court if needed
 - Status
- Still awaiting decision
- Minister of Justice on record at Justice and the People Roundtable
- Continuing petitioning and advocacy

Case 2: Osmani v. Supreme Court of Kosovo

- Objective
 - Establish precedent clarifying constitutional limitations on pretrial detention.
 - Raise awareness on issue of extended pretrial detention in Kosovo
- Litigation Strategy
 - Identify model case of unjustified and extended pretrial detention
 - Complete appeal process through Kosovo Supreme Court
 - Appeal to Kosovo Constitutional Court
- Identifying the Case
 - Start with the issue
 - Work with NGOs to identify case (Kosovo Council for Protection of Human Rights and Freedoms)
- Choosing the Right Party
 - Standing/Jurisdiction: Case where accused party has challenged detention orders in Supreme Court
 - Dependability/Public Face: Violation is clear and striking, accused party has no record of misconduct during detention
 - Represented by credible counsel
- Choosing the Right Court

- Clear appellate jurisdiction in Constitutional Court
- ECtHR supplies clear and binding precedent
- Constitutional Court precedent is binding throughout Kosovo
 - Advocacy Strategy
- Traditional media
- Parallel advocacy through our Campaign and partners
- Friend of court briefs in Constitutional Court if needed
 - Disadvantages
- Risk of adverse outcome
 - Post-Decision Strategy
- Analyze likely reasons for outcome
- Find another case and try again
- Bring the same case again:
 - Challenge subsequent detention ruling on independent but related grounds
 - Focus litigation and advocacy on facts that can't reasonably be disputed
 - Don't alienate the court

Case 3: Kastrati v. Pristina Municipal Court, et al.

- Objective
 - Establish precedent establishing duty of justice system institutions to protect domestic violence victims from known threats of serious harm and responsibility for damages
 - Raise awareness of rights of domestic violence victims
- Litigation Strategy
 - Rely on binding precedent of ECtHR to clarify obligations of institutions under the Constitution of Kosovo
 - Use high profile case to raise public awareness about domestic violence
- Identifying the Case
 - Start with the facts of the case
- Choosing the Right Party
 - Standing: broad standing under ECHR can cover parents of victims
 - Dependability/Public Face: father committed to the cause, not just the case
- Choosing the Right Court

- Trial court decision could take many years
- Good argument that other avenues of relief did not exist
- Constitutional Court decisions are binding precedent on lower courts
- If ruled admissible, decision within about 1 year
 - Advocacy Strategy
- Use case as focal point for public discussion of domestic violence and victims' rights
- Raise public awareness
 - Status
- Petition granted by Constitutional Court (see attached decision)
- Decision should be binding on other courts or in future cases before Constitutional Court
 - Post-Decision Strategy
- Publicize and explain the decision
- Taking the case another step:
 - Possible criminal prosecution / represent parents as injured parties to illustrate victims' rights under Criminal Procedure Code
 - Possible challenge to limitations on damages against public institutions

5. ANNEXES



NDIHMA JURIDIKE • PRAVNA POMOC
LEGAL AID

To: Labour Inspectorate - Ministry of Labour and Social Welfare;

From: (party's name, surname and address)

Subject: Complaint

Date:

The Complainant (name and surname of the party), identified based on the ID with personal number _____ born on _____, has been in permanent employment relationship by contract from _____ to retirement at the Ministry of Health - University Clinical Center of Kosovo.

From the year of _____ to the month _____, he/she has worked as _____ in _____, with the salary grade of ____.

In the month of _____ of the year _____, he/she was assigned to the job position of _____. (if he/she was promoted over the years)

The Complainant has, from the moment of his/her appointment as Responsible, repeatedly requested that a decision on the change is made, but that has not happened until _____. By Decision Bo. Prot. _____ dated _____ the increase of the salary grade to _____ has been determined.

Evidence: DECISION No. Prot. _____ dated _____

Unsatisfied with the decision, Mr./Ms. _____, has on _____ filed a complaint in writing with the UCKK Complaints Review Commission, whereby he/she has requested that his/her salary be compensated as per salary raise from the time he was appointed as the Head of Shift at the Central Kitchen namely as of April 2011.

By Decision No. (Ref. _____ dated _____, received on _____, the UCKK Appeals Commission has rejected the filed complaint.

Evidence: DECISION No. (Ref. _____ dated _____

Upon the issuance of the Decision rejecting the complaint, the UCCK Appeals Commission has established the factual situation erroneously, for the Complainant had been holding the position of the Responsible since _____.

This is also confirmed by the reasoning to the Decision No. Prot. _____ dated _____, which expressly states that: "The Acting Head of UCCK Food and Catering Sector, by Letter No. _____ dated _____, notifies that Mr./Ms. _____, since the month of ____ of the year of ____ , been assigned to the position of the Head of Shift at the Central Kitchen and requests that the contract is corrected i.e. modified chef to the Head of Shift and that his/her grade is raised to 6.0".

In the light of the foregoing, we ask the Labour Inspectorate to accept the complaint as grounded and to order the Ministry of Health – University Clinical Center of Kosovo, to reimburse the Complaint Mr./Ms. _____ the remaining part of the salaries under grade 6.0 and that from the month of _____ of the year ____ to _____.

In Pristina

05.01.2016

Complainant

Tel:



NDIHMA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

BASIC COURT IN _____
General Department

CLAIMANT: (Claimant's name, surname and address)

RESPONDENT: (Respondent's name, surname and address)

CLAIM

for the payment of jubilee wages

_____ born on _____, was employed as _____ systematized in the workplace _____ in _____ in _____ according to the employment contract concluded with _____, Municipality of _____ No. _____ dated _____.

Based on Article 67 of the Labour Law has retired by the decision _____ of _____ and his employment is terminated on _____, according to the legal power due to the fulfilment of the conditions for the age of 65.

Evidence: *Employment contract concluded with _____, Municipality of _____ dated _____; Evidence: Decision _____ dated _____*

On _____ the party has addressed a written request to the Respondent to pay three accompanying salaries and three salaries for jubilee service, which belong to him on the basis of Collective Agreement for Pre-University Education of _____, which has been in force and effective as of _____. Article 36, items 9 and 10 of the contract stipulate that the Respondent should make the payments, but the request was not approved on the alleged ground that the implementation of the Collective Agreement falls on MEST.

Though the employer was obliged to pay jubilee salaries, as they belong to her according to article 90 of Law No. 03/L-212 ON LABOUR, article 4, paragraph 2, General Collective Agreement of 18.03.2014 and article 36, paragraph 9 of the Collective Agreement signed by _____ and _____ on _____.

However, the legal basis i.e. the Constitution of the Republic of Kosovo and the European Convention on Human Rights, the General Collective Agreement and the Contract signed by the _____, have created a legitimate expectation that jubilee and other salaries would be paid after the Claimant would retire.

LEGAL BASIS FOR THE PAYMENT OF JUBILEE SALARIES

The General Collective Agreement, from which the Collective Contract signed by _____ and _____ on _____ derives, has emphasized that according to Article 36 of the Collective Agreement the employees' right to jubilee salaries paid by the last employer and other rewards following the retirement should be recognised.

The Constitution of the Republic of Kosovo: Article 22 [Direct Applicability of International Agreements and Instruments]

Human rights and fundamental freedoms guaranteed by the following international agreements and instruments are guaranteed by this Constitution, are directly applicable in the

Republic of Kosovo and,
conflict, have priority over provisions of laws and

other acts of public
institutions:
[...]

Universal Declaration of Human Rights;

(2) European Convention for the Protection of Human Rights and Fundamental Freedoms
and its Protocols;

Constitution of the Republic of Kosovo Article 53 [Interpretation of Human Rights Provisions]

Human rights and fundamental freedoms guaranteed by this Constitution shall be interpreted
consistent
with the court decisions of the European Court of Human Rights.

Regarding a legitimate expectation the European Court of Human Rights in cases such as *Pine Valley Developments Ltd v Ireland* (1993) 16 EHRR 379; *Stretch v United Kingdom* (2003) 38 EHRR 196. *emphasizes that* :

In the case of lawful claims, a public authority is usually required to consider the existence of a legitimate expectation when reaching its decision and, if it decides to waive it, to give reasons for that decision.

Therefore, in case of a legitimate expectation, the public authority will be faced with a task not only to achieve the proper material results, but also this result from a due process.

This is a potentially difficult one imposed by the Human Rights Act in relation to Convention rights.

The basic features of the doctrine of legitimate expectation are well known. When the public authority represents (or by means of a promise expressed or implied in the past manner and practice) that it will do so, it must do so, and the public authority must produce the effects related to that expectation.

Such legitimate expectations are usually divided into lawful procedural expectations, where the expectation is of a procedural benefit, such as a notice or consultation before any change,

and substantial legitimate expectations, where the hope is that the public authority will act in accordance with its representation, as a matter of substance.

In our concrete case, the Collective Contract signed by _____ has regulated the relations between employers and employees in the education sector in the best way possible.

Therefore, we hereby motion to the Basic Court to render, based on the evidence provided and the legal basis, by reserving the right to provide additional evidence during the adjudication upon the case, in the light of the foregoing and following the examination and review of the evidence referred to herein, the following:

JUDGEMENT

Claimant's claim and summary claim for the **payment of jubilee wages is APPROVED.**

The Respondent is **OBLIGED** to pay the amount set by the court with legal interest as well as all the costs of court proceedings related to this case, all within 15 days from the day when the present Judgement will become final and under the warning of forced execution.

In _____, on _____

Claimant

(name and surname)

Tel

Attached documents:

1. _____
2. _____
3. _____
4. _____



NDIHMJA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

**TO THE BASIC COURT IN PRISTINA
Department of Administrative Affairs**

CLAIMANT: (party's name, surname and address) K. Pristina, in possession of an identity card of the Republic of Kosovo with personal no. _____.

RESPONDENT: Ministry of Labour and Social Welfare, GADRK - Pristina.

CLAIM

FOR ANULMENT OF DECISION No. _____ dated: _____

Against the Decision of the Ministry of Labour and Social Welfare (hereinafter MLSW) - Pension Department, no. _____ dated _____ received on _____.

On _____ Mr/Mrs. _____ has submitted a request with prot. no. _____ for the recognition of the right to compensation for paraplegic and tetraplegic persons.

After reviewing the request, the MLSW Pension Department, on _____ issues a decision **approving** the request of (party's name) for the recognition of the right to compensation for paraplegic and tetraplegic persons of the second group, as the requirements stipulated under Article 1.1, Article 3 and item 1 of article 7 of Law 05/L-067 have been met, namely the evaluation of the medical commission of _____ according to which she meets the legal requirements to be compensated as a **Second Group**.

Evidence: *Decision no. _____ dated _____*

Unsatisfied with the above decision, the Claimant addressed the Complaints Council at the MLSW GD with a complaint.

The Complaints Council at the MLSW GD, on 10.12.2018, while reviewing the complaint, has failed to review with a full reasoning Complainant's case files and leaves the decision of the first instance authority in force without any research or in-depth examination.

Evidence: *Decision no. _____ of _____*

In rendering the Decision, the first instance authority has violated the legal provisions, namely Article 8, paragraphs 1 and 2 of Law 05/L-067, as well as Regulation No. 07/2017, article 5

par. 1.2 and 1.3, and Article 6, par. 1.2 on compensation for paraplegic and tetraplegic persons. [...] because the request in the first group was not approved.

1. The beneficiaries of this law are entitled to have a personal guardian, based on the assessment by the evaluation committee, with the aim of providing the necessary care and daily services, and who shall be compensated in the same amount as the beneficiaries of this law.

2. The beneficiaries of this law are entitled to choose their guardian.

The reasoning is in contradiction with the Law on Persons with Paraplegia and Tetraplegia, paragraph 1 of Article 8 of which decisively states that the beneficiaries of the law are entitled to a personal guardian, based on the evaluation by the evaluation commission, in order to provide the necessary daily care and services, which are compensated in the same amount as the beneficiaries of the law.

In rendering the present Decision, the first instance authority i.e. the evaluation commission has erroneously established the factual situation, which consists in the fact that, according to all medical reports but also according to the real factual situation, the applicant was found a person with permanent and complete consequences, specifically utter loss of limb sensitivity, which is in accordance with Law 05/L-067 and the above mentioned articles, because she has been suffering from the disease for a long time now – see the attached Medical Report.

Evidence: Discharge list dated _____, Discharge list dated _____.

Based on the above, we are hereby asking that the companion is (name and surname of the companion), who will accompany her during various trips, will provide for clothing, medical visits or anything related to her escort in various places as need be.

A **statement** between the Claimant and her daughter in law has been complied for this care and escort.

Evidence: Statement dated _____

The claimant considers that the contested decision of the respondent Ministry was taken based on an erroneous determination of the factual situation and legal provisions in force in force, and that in view of Article 10 of the Law on Administrative Conflicts, it is clear that the ruling consists in formal and legal deficiencies, which is why she proposes to the Court to take, after reviewing the case and evidence attached thereto, the following:

JUDGEMENT

The claim of (name and surname of the party) for the annulment of the Ruling **No . _____ dated _____** of the Ministry of Labour and Social Welfare, Pension Department in _____ as unlawful is **approved** as grounded and the Court **approves the request** of the Claimant for the recognition of the right to a paraplegic and tetraplegic pension in **the first group**, and that from the day of the submission of the request.

Attached documents:

1. Decisions no .____ dated_____ and dated_____
2. Discharge lists dated _____ and _____
3. Statement dated_____
4. Decision on Allowing Free Legal Aid A. no.
5. Request for court tax exemption A. no.

In _____

Claimant:

Date: _____

Tel: _____



NDIHMJA JURIDIKE • PRAVNA POMOC
LEGAL AID

PENSION ADMINISTRATION DEPARTMENT OF R. OF KOSOVO
File No. _____ REGIONAL OFFICE in Pristina

To

PENSION ADMINISTRATION DEPARTMENT
"COMPLAINTS COUNCIL"
PRISTINA

_____ with permanent residence in _____ who possesses the identity card of R. Kosovo with personal no. _____, against the Decision of the Pension Administration Department, File No. _____, within the legal deadline, files the following:

COMPLAINT

against the Decision of the Kosovo Pension Administration Department No. _____ dated _____ received on: _____ on grounds of:

- erroneous determination of factual situation and
- erroneous application of substantive law.

REASONING

The Decision of Pension Administration Department for the pension of persons with disabilities, File No. _____ dated _____ has rejected the request for the recognition of the right to a pension after the Medical Commission found that the Applicant has no complete and permanent disability.

In rendering the decision, the first instance authority has erroneously established the factual situation, which consists in the fact that, according to all medical reports but also according to the real factual situation, the applicant for disability pension has been ascertained as a person with limited complete and permanent disability, as he/she has been suffering from the disease for a long time now.

Evidence: *Medical Reports*

The challenged decision is meaningless. It has followed the request and the medical evidence attached to the request. The same authority has ascertained applicant's full ability, whereas,

based on applicant's medical reports, the disability is permanent and can be easily ascertained based on medical reports.

The first instance authority has, without a more profound research or qualitative examination and without examining the medical reports at all, decided to reject the recognition of the right to pension for persons with disabilities.

The erroneous application of the substantive law consists in the fact that, precisely because of the erroneous determination of the factual situation, the first instance authority has erroneously applied the legal provisions.

The Medical Commission has disregarded the provisions of the law ---- respectively Article -, paragraph (a), and Article 9 of Law No. 004/L-131 on state funded pension schemes (Official Gazette of the Republic of Kosovo/No. 35/05, June 2014) for pensions of persons with disabilities in Kosovo, and with other rights provided by the Constitution of R. of Kosovo, because, based on his/her health and physical condition, he/she is completely limited in his ability to work.

In the light of the foregoing, I request from the second instance authority to take, after reviewing this complaint and medical reports, one of the decisions proposed below:

DECISION

The complaint is **APPROVED** as grounded.

The Decision of the Pension Administration Department, File No. _____ dated _____, is **MODIFIED** so that _____ is acknowledged the right to a pension as a person with limited capabilities.

or

The Decision of the Pension Administration Department, File No. _____ dated _____ is **ANNULLED** and the case is sent back for reconsideration.

Pristina, dated

Complainant:

(name and surname)

Tel:



NDIHMJA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

POWER OF ATTORNEY

The Regional Free Legal Aid Office in (place of regional office) hereby authorizes (lawyer's name, surname and address) to represent the free legal aid beneficiary, whose case was registered in the RFLAO with number _____, dated _____.

The free legal aid beneficiary _____ from _____, _____, with ID No. _____, issued by MIA, represented by lawyer. _____ in the civil field

Case: _____

This Power of Attorney will be valid pending the completion of the case and cannot be used for other matters.

In _____
On _____

Authorizer

Free Legal Aid Regional Office
Free Legal Aid Officer

Party: (Party's name and surname)

(signature) _____



NDIHMA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

Legal action

Party:

Subject:

Case number:

Date:

Officer's name and surname
Free Legal Aid Officer
Free Legal Aid Regional Office

Pristina



TO THE BASIC COURT IN PRISTINA

Department of Administrative Affairs

CLAIMANT: (claimant's name, surname and address)

RESPONDENT: Ministry of Labour and Social Welfare – Pristina, Department for Families of Martyrs, **War Invalids** and Civilian Victims

CLAIM

FOR ANULMENT OF DECISION No. _____ dated _____

The Claimant is a citizen of the Republic of Kosovo and lives in _____.

Since the Claimant is a person with a health disability who has been a beneficiary of a material pension for persons with disabilities, the same has requested that his the right to pension under War Invalid Scheme is **extended**.

By Ministry's Decision No. _____ dated _____ received on _____, his request was rejected with the claim that the Claimant is not a person with limited and permanent disability required for a war invalid.

Evidence: *Ruling no. _____ dated _____*

Unsatisfied with the decision of the first instance, the party has filed an appeal with the second instance authority, which has rejected his appeal on the grounds that it does not meet the legal requirements for the right to be recognized in compliance with the provisions of Article 5, paragraph 1.2.1, as well as articles 9 and 10 of Law No. 04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosova Liberation Army, Civilian Victims of War and their Families.

Therefore, the second instance authority has issued an arbitrary decision without dwelling at all on establishing the factual situation and the review of the attached evidence.

What we pointed out above indicates clearly it that there is all valid evidence, facts and proofs are available to recognize the right to the status and rights of the families of martyrs, veterans and members of the KLA and the families of civilian victims of war. Because the same, based on Attestation No. _____ dated _____ and medical diagnosis is not able to respond to personal needs.

Evidence: *Attestation dated ._____, medical reports and MLSW case files.*

The failure of the medical commission to examine the party has created a wrong impression of the party (*erroneous determination of factual situation*).

The erroneous application of the substantive law consists in the fact that, precisely because of the erroneous determination of the factual situation, the the first instance authority has erroneously applied the legal provisions. In the light of all the foregoing, the decision challenged by this claim seriously violates the rights provided by Law No.04/L-054 on the Status and the Rights of the Martyrs, Invalids, Veterans, Members of Kosova Liberation Army, Civilian Victims of War and their Families and other rights enshrined in the Constitution of R. of Kosovo.

The second instance administrative body has ignored all the evidence and proof, has failed to check on the person in question completely, has failed to give a reasoning as to why they were not taken into account at all and has rejected the appeal on the generic ground of absence of evidence.

Evidence: *Reports from the medical consultation*

Such shortcomings amount to substantial violation of the provisions of the Law on Administrative Procedure, articles 47 and 48 of which provide that the administrative act, which in this case implies the challenged decision, must contain indispensably, inter alia, a summary of factual findings based on the evidence presented during the administrative proceeding or the facts provided by the administration, a groundless statement.

The Claimant considers that the contested decision of the respondent Ministry was taken based on an erroneous determination of the factual situation and legal provisions in force. In view of Article 10 of the Law on Administrative Conflicts, it is clear that the ruling consists in formal and legal deficiencies, which is why he proposes to the Court to take, after reviewing the case and evidence attached thereto, the following:

JUDGEMENT

The claim filed by _____ **IS APPROVED.**

and

Decision No. _____ dated _____ of the Ministry of Labour and Social Welfare, in Pristina is **ANULLED** as unlawful and the Court approves the request of the Claimant for the recognition of the right to pension as member of KLA and families of civilian victims of war and **war invalid**, from the day of the filing of the present claim.

In Pristina

Claimant

On

(name and surname)



FREE LEGAL AID AGENCY
Free Legal Aid Regional Office Pristina

Referral to the Lawyer.

Evidence of legal actions for the case: Case number and date:

No.	Lawyer	Legal action	Date of action	Date of receipt	Value	Signature
1.						
2.						
3.						
4.						
5.						
6.						
7.						
8.						
9.						
10.						

(Officer's name and surname)
 Legal Officer



NDIHMJA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

TO THE BASIC COURT IN PRISTINA

-General Department-

SUBJECT: Request for tax exemption

(party's name, surname, address and personal number), issued by the MIA, is a free legal aid beneficiary.

Evidence: Decision issued by the Free Legal Aid Agency, Regional Free Legal Aid Office in Pristina, with (case number) of (date).

The party is a free legal aid beneficiary, and is not able to pay the court fee, because its existence is directly endangered. Therefore, we request from you to exempt the same, pursuant to Article 8, paragraphs 8.1 and 8.3, item 8.3.2 of Administrative Instruction no. 01/2017 on the Unification of Court Fees, from the costs of court proceedings.

Pristina, 03.12.2019

(Officer's name and surname)

Free Legal Aid Officer
Free Legal Aid Regional Office

Applicant:
(Party's name and surname)



P.no . _____

**TO THE BASIC COURT IN PRISTINA
GENERAL DEPARTMENT**

To:

**THE SUPREME COURT OF THE REPUBLIC
OF KOSOVO IN PRISTINA**

Party: The convicted person _____ from _____

Case: Convicted person's request for protection of legality

In _____ on _____.

By Judgement P.no . _____ dated _____ of the Basic Court in _____ (name and surname of the party) he/she was found guilty of a the criminal offence failure to report or falsely reporting property, revenue/income, gifts, other material benefits or financial obligations under Article 437 paragraph 1. of the CCRK. And was fined 1000 (one thousand) € and a suspended sentence of (four) months, to be executed within a period of one year from the date when the judgement will become final, if the accused will not commit another criminal offence. The party has filed the appeal _____ against the judgement with the Court of Appeals in Pristina, but the same has, by Judgement _____ dated _____, rejected the appeal, and confirmed Judgement P. no . _____ dated _____ of the Basic Court in Pristina, as a court of first instance, now a final judgement. Pursuant to Article 452, paragraph 1. of the CPCK, as a convicted person, I am hereby filing the following:

REQUEST

for protection of legality.

against Judgement _____ dated: _____ of the Court of Appeals in Kosovo, as a court of second instance. The convicted person files a request for protection of legality and requests from the Supreme Court of Kosovo to annul the Judgement _____ dated. _____ of the Basic Court in _____, and the Judgement _____ dated _____ of the Court of Appeals in Kosovo and return the case for retrial to the Basic Court in _____ on the following grounds:

Taking into account that the prosecution has sought sentencing _____ and the court agreed with the request, the court erroneously applied the legal provisions of the CCRK as well as articles of criminal procedure _____ and _____

1. Both the court of first instance and the court of second instance, as far as sentence _____ is concerned, have erroneously applied the legal provisions, because Article _____ of the CCRK provides mitigating circumstances for persons who plead guilty, and the convicted persons was not aware that such an act was in violation of legal transaction legal order.
2. The Judgement rendered by the court of first instance as well and the judgement rendered upon the appeal at the second instance have failed to take into account the financial and family status as a mitigating circumstance, because the convicted person is unemployed, as well as the fact that the convicted has never breached the law in his entire life and activity.

Based on all these, I am filing this request with a proposal to be approved as grounded and establish the alleged violations.

In _____,
On _____

Filed by

(name and surname)



NDIHMA JURIDIKE • PRAVNA POMOC
LEGAL AID

P.no. ____

**TO THE BASIC COURT IN _____
General Department**

In the criminal case against the accused _____, the son of _____, according to the indictment of the Basic Prosecution Office in _____ - General Department, number _____, dated _____, suspected of having committed the criminal offence of _____ under Article _____ par.____ in conjunction with article _____ of the CCRK, pursuant to Article _____ and Article _____ of Code No. 04/L-123 of Criminal Procedure of Kosovo (*hereinafter referred to as CPCK*), submit this:

**OBJECTION OF EVIDENCE AND REQUEST FOR THE DISMISSAL OF THE
INDICTMENT
INTRODUCTION**

Party, _____, son to father _____, born on _____ in _____, with ID no. _____, is an honest and valued citizen in the social circle of his municipality.

But, on _____ and indictment was filed against him for the commission of the criminal offence of _____ under Article _____, par.1, in conjunction with Article _____ of the CCRK.

The Prosecutor claims that the party was guilty of the case for which he is charged.

ELABORATION ON THE REQUEST

Based on indictment _____ dated _____ filed by the prosecutor, we can see that some of the circumstances of the case have been assessed erroneously and that the prosecutor has not made a proper and bilateral assessment as obliged by law.

Initially, before we dwell on the qualification of the criminal offence, we must emphasize that _____ he/she was not at the location when the case has occurred and that the same was involved in that moment so that he could help _____, who was stabbed in the case in question. He has also helped him and accompanied him to the hospital, where he was given first aid. The same declares with moral and criminal responsibility that _____ has always harassed and provoked them by insulting them with the most basic words, actions that he _____ has done time after time. Secondly, the offence with which the party is charged, in the charge filed by the prosecutor is wrongly qualified, because the figure of the described criminal offence and the figure of the qualified criminal offence no longer match each other, which amounts to a sufficient ground to dismiss the indictment referred to in Article _____.

Thirdly, the offence alleged by the prosecutor is an offence that is committed only intentionally, while the party has not acted intentionally, but was driven by various domestic circumstances, such as damage to property and personality, a fact that does not constitute intent in its full meaning.

It is worth mentioning that the prosecutor of the case has not fulfilled his obligations under Article _____ of the CPCRK regarding the provision of materials which are provided to the defendant once the indictment is filed, except for the indictment and a record, while the other evidence collected was not has provided to the party, forcing him to fulfil his obligations under Article _____ of the CPCRK.

Finally, we must mention that the party is in a difficult economic situation as breadwinner and has never been convicted or charged with a similar criminal offence, a fact that suggests that the party is a devoted and responsible citizen.

Therefore, based on the facts and circumstances presented above as well as the legal provisions, we file the following:

MOTION

Objected evidence to be separated from the case file as inadmissible, *and* prosecution's Indictment **PP. no.** _____ **dated** _____ to be **dismissed** as ungrounded.

Date: _____

Filed by:

(name and surname)



NDIHMA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

MARRIED COUPLE WRITTEN AGREEMENT ON CHILDREN PROTECTION, EDUCATION AND CARE

Concluded pursuant to Article 70, par. 2 of the Kosovo Law on Marriage and Family Relations between:

1. Name and Surname _____, from _____, with personal number _____

2. Name and Surname _____, from _____, with personal number _____

The extramarital couple agreed as follows:

1. The signatories of the present Agreement have decided to end the cohabitation, because their relationship has long and seriously been disrupted. The extramarital couple agree to end cohabitation by agreement, and, as far as the child is concerned, they have agreed to do this as follows.

a. The extramarital couple declare that they have cohabited, and they have two children from this cohabitation:

- (name and surname of the child) born on _____, and
- (name and surname of the child) born on _____, in _____

1. The extramarital couple agrees that the child should remain under the care, education and support of the mother/father (name and surname).

2. The **spouses** agree that the father/mother (name and surname) pays the amount of _____ € from his/her personal income as a child support to satisfy their needs and requirements for the development of minor children every month and that by: The 5th of the following month

3. The extramarital couple with whom the children will remain will enable the father/mother (name and surname of the parent) to keep in touch with his/her child, and the visit will be free.

4. The father/mother (name and surname) agrees that the ex-spouse can take the children _____ born on _____, and _____ born on _____ outside the territory of the Republic of Kosovo.

5. This agreement has been drafted in 4 copies, one of which belongs to them together, and one belongs to the competent Court adjudication on the dissolution of the marriage.

In _____

Extramarital spouses

1. Name and surname _____

2. Name and surname _____



FREE LEGAL AID AGENCY (FLAA)
Free Legal Aid Regional Office - _____

Notification

Dear lawyer, _____

_____, _____ Str., Municipality of _____, with ID no. _____ in accordance with Law No. 04/L-017 on Free Legal Aid, is a free legal aid beneficiary.

We request that you accept the party referred to you, based on:

- Law No. 03/L-117 on Advocacy, pursuant to Article 14, item 1, and
- Cooperation and Understanding Agreement between the KBA and the FLAA.

For the actions taken and completion of the case for payment we refer to the FLAA **fee** and the documents referred to in the following, and for lawyers who are hired by the Free Legal Aid Agency for the first time and who are not registered as suppliers, the following documents are required:

- Legal actions (original stamped by the court)
- Original invoice (must contain: invoice number, account number, unique identification number)
- ID card (copy)
- Confirmation letter from the bank on behalf of the business (not with a trade name)
- Unique Identification Number

For lawyers who have previously been hired by the Free Legal Aid Agency and are registered as suppliers in the treasury, the following documents are required:

- Legal actions (original stamped by the court)
- Original invoice (must contain: invoice number, account number, unique identification number)

We ask you to notify us of any changes to the documentation.

Note: If the case is not completed by the lawyer according to the above referral, it will not be accepted by the Regional Free Legal Aid Office officers in _____.

Dear lawyer, if you do not accept the referred party, we ask you to send us the reasons for the refusal in writing.

For additional information, please contact us at toll free number: - 0800 - 11 - 777

Free Legal Aid Officer

Lawyer

Date: _____



NDIHMJA JURIDIKE • PRAVNA POMOC
LEGAL AID

BASIC COURT IN PRISTINA
General Department

CLAIMANT: (Claimant's name, surname and address)

RESPONDENT: (Respondent's name, surname and address)

CLAIM

for damages

Dispute value: _____ €

The respondent has on _____ around _____ through authorized workers, while working on the replacement of the power meter no. _____ in the Claimant's house, while connecting the electricity to the power meter, mixed the connections of electrical conductors, damaging the electro-technical equipment in the house of the Claimant.

Evidence: Record no. _____ dated _____

When they have caused the damage, Respondent's authorized employees have instructed the Claimant to inform and file a request with _____, so that the Respondent could identify and compensate the damage.

Evidence: Request no. _____ dated _____

Upon the request of the Claimant, Respondent's relevant commission has come to the Claimant's house on _____ and ascertained and entered the damage caused by the authorized workers in the record.

Evidence: Record no. _____ dated _____

As it is mentioned in the above processes, the Claimant has addressed the Respondent several times to properly resolve the issue of compensation of damages, but the respondent in this case has failing to respond to the request in writing and its officers in charge have ignored the Claimant.

Since the Respondent did not want to settle the issue of compensation for the damage caused by him/her outside the court, the Claimant is obliged to resolve this issue through this court and seeks compensation for the following damages:

- The amount of _____ € for material damages
- The amount of _____ € for satisfaction (psychic suffering)

The realization of the right to compensation of material and non-material damages from the Respondent is based on the following legal basis:

Article 136 par 1, item 1 of the LOR: "Any person that inflicts damage on another shall be obliged to reimburse it, unless it is proved that the damage was incurred without the culpability of the former."

Article 137 of the LOR: "Damage comprises the diminution of property (ordinary damage), prevention of the appreciation of property (lost profits), the infliction of physical or mental distress or fear (non-material damage)."

Article 8, par 1, item 1 of the LOR: "Participants in an obligational relationship shall be obliged to perform their obligations and shall be liable for the performance thereof."

Article 169, par 1, item 3 of the LOR: "If the re-establishment of the previous situation is impossible or if the court is of the opinion that it is not necessary for the liable person to do such, the court shall order the liable person to pay appropriate monetary compensation to the injured party."

Article 174 of the LOR: "When considering the circumstances arising after the infliction of damage the court shall award the injured party compensation in the amount necessary to restore the injured party's financial situation to what it would have been without the damaging act of omission."

Article 183, par 1, item 2 of the LOR: "Upon the decision on the request for the compensation of immaterial damage, as well as for the amount of the compensation, the court shall evaluate the importance of the violation of goods and the purpose to which this compensation shall serve, also in order not to support the tendencies that are not compatible with the nature and the social purpose thereof."

Article 323 of the LCP: "If it is determined that a party should be compensated by a lump sum payment or any other substitute, and the sum of money can not be specified or the quantity of substitutes, the court will decide based on free evaluation."

Therefore, based on the evidence provided and the legal basis i.e. Articles 136 and 137, par 1, Article 8, par 1, item 1, Article 169, par 1, item 3, and Article 183, par 1, item 2 of the LOR, as well as Article 323 of the LCP, reserving the right to provide witnesses and other additional evidence, during the review of the case, and in the light of the foregoing, we motion to the Basic Court in _____ to render the following:

JUDGEMENT

Respondent's claim and summary is **APPROVED**.

The _____ is **OBLIGED** to reimburse, within 15 days from the day when the present Judgement shall become final and under warning of forced enforcement, the Claimant _____ the amount of _____ € for the material damage and the amount of _____ € for satisfaction (mental suffering) as well as the costs of court proceedings related to this case. All this with interest which is paid by local banks as savings deposits with a term beyond one year and without a specific destination, starting from the date then the claim was filed to the final payment.

The decision on the costs of proceedings is based on article 449 of the LCP:

Pristina, on _____

Claimant

(name and surname)

Tel:

Attached documents:

5. Record no. _____ dated _____
6. Request no. _____ dated _____
7. Record no. _____ dated _____.



NDIHMA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

STATEMENT

I _____ born on _____, in K. _____ with permanent residence in _____ with ID card no. _____ issued by the MIA, in my moral and criminal responsibility:

STATE

That (the person the statement is made for) _____, born on _____, residing in _____ K. _____, with personal no. _____ of the identity card issued by the MIA of R. of Kosovo, is ill with utter loss of limb sensitivity (paraplegic and tetraplegic category) and] is unable to take care of himself/herself, so he/she is under my care and escort.

This statement will be served to the Pension Department, where the issue of pensions for persons with paraplegia and tetraplegia will be regulated, based on Law No. 05/L-067.

In Pristina

Statement made by:

Date: _____



NDIHMA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

TO THE BASIC COURT IN PRISTINA

General Department – Civil Division

CLAIMANT: (Claimant's name, surname and address)

RESPONDENT: (Respondent's name, surname and address)

CLAIM

to

child entrusting and alimony

The litigants have created extramarital unions from _____ to _____, when the extramarital union has suffered a factual separation.

Relations between the litigants were good at first, but they have deteriorated over time, so that the extramarital union has broken down irreparably.

Evidence: *Hearing of the parties*

The child _____, who is under the exclusive care of the mother/father, the Claimant _____, who provides parental care, support and education to him/her, was born from this extramarital union.

From the time of separation from the marital union, the respondent has not expressed any interest at all in raising the education and maintenance of the minor child _____, disregard of the legal obligation deriving from the law on family by the respondent

Evidence: Assertion of litigants, child birth certificates no. (Ref. _____ no. _____ dated _____)

Since the litigants have dissolved the extramarital/marital union for more than _____ years de facto and now live using separate beds and tables, the Claimant and her child live in the above-mentioned address in an extremely difficult financial situation, with difficulties in supporting and educating the child and taking into account the interest of the child, the Claimant **PROPOSES** to the court to render, following the examination of the proposed

evidence and the completion of the main trial within the meaning of the provisions of Article 8 of the LCP and Article 69 of the Family Law, the following:

JUDGEMENT

The claim of the Claimant is hereby approved as grounded and it is decided as follows:

- The custody and upbringing and parental support and care for the extramarital children _____ is assigned and entrusted to the mother/father _____.

Contact with his child twice a month exclusively at the premises of the Centre for Social Work in _____, under the supervision of centre staff, is assigned to the mother/father.

- The Respondent is obliged to pay 1/3 of the personal income for food, contribution to child custody and satisfaction of child's needs and development every month and that by the: the 5th of the following month.
- The civil status office in the municipality of _____ is obliged to enable the Claimant to provide the minor _____ with identification documents without the consent of the Respondent.

This obligation must be fulfilled from the date when the claim has been filed with the Court.

The Respondent is obliged to pay the costs of contested procedure according to the Court's calculation.

All this within 15 days from the day of rendering of the judgement, under warning of forced enforcement.

In Pristina

CLAIMANT

Date: _____

Tel: _____



NDIHMJA JURIDIKE • PRAVNA POMOC
LEGAL AID

TO THE BASIC COURT IN PRISTINA

-General Department-

CLAIMANT: (Claimant's name, surname and address)

RESPONDENT: (Respondent's name, surname and address)

CLAIM

for contact with children

The litigants have been living in an extramarital union from _____ to _____, and as a result of this factual union they have two children: (name and surname of the child), born on _____ and (name and surname of the child) born on _____.

Evidence: *Birth certificates from the Central Civil Status Registry*
L _____; L _____.

At the beginning of the marital life, the relations between the spouses were good and in complete harmony, but in the meantime these relations have deteriorated to such an extent that the joint life between the litigants has become unbearable, because of different personalities and views. As a result of the deteriorating relationship, there has been a de facto dissolution of the marital union. Now the litigants live apart, have terminated all marital contact and return to the marital union is unlikely.

Evidence: *Hearing of the parties.*

The minor children _____ and _____ have been under the care, custody, support and upbringing of the Respondent from the moment of the dissolution of the factual union, and I am living with my parents at the above-mentioned address. Since the socio-economic situation of my family of origin is poor, I have not given up from keeping my children, but due to the difficult socio-economic situation and housing conditions and considering the best interest of the children, I consider it necessary for the children to live with the Respondent for a while, until I find a solution.

After the separation, the contacts with the children have taken place through the Centre for Social Work in _____, but the same are denying me this right and the Respondent is preventing me from contacting the children by denying me my parental right to personal contact (Article 145 of the Family Law).

Given her interest in arranging the manner of keeping personal contacts, the Claimant **PROPOSES** to the Court to take, following the examination of the proposed evidence and the completion of the main trial and within the meaning of the provisions of Article 8 of the LCP and Article 140, par. 3, and Article 145, par. 1 and 2 of the Family Law, the following:

JUDGEMENT

It is hereby specifically **decided** that the Claimant may keep personal contact _____ with her children: _____ born on _____, and _____ born on _____, at the premises of the Centre for Social Work (CSW) at _____, on the Wednesday of the first week and the third week of the month from 13:00 to 14:30; on the second day of state, religious or family holidays; during the school break of the first semester (December-January) to stay with the mother for 5 days, while during the spring break (short school break in April) to stay with the mother for 3 days; and for 10 days at summer vacations.

The Respondent **is required** to pay the costs of proceedings.

All this within 15 days from the day of rendering of the Judgement, under warning of forced enforcement.

In Pristina

CLAIMANT

Date: _____

Tel: _____



NDIHMJA JURIDIKE • PRAVNA POMOC
LEGAL AID

**MINISTRY OF LABOUR AND SOCIAL WELFARE; R. OF KOSOVO - PENSION
DEPARTMENT - Regional Office - Pristina**

PENSION DEPARTMENT "COMPLAINTS COUNCIL" - Pristina

_____ residing in _____ K. _____ in possession of an the identity card of the Republic of Kosovo with personal no. _____, within the legal deadline, files the following:

COMPLAINT

Against the Decision of the Ministry of Labour and Social Welfare (hereinafter MLSW) - Pension Department, no. _____ dated _____ received on _____.

REASONING

On _____ Mr. _____ has submitted a request with prot. no. _____ for the recognition of the right to compensation for paraplegic and tetraplegic persons.

After reviewing the request, the MLSW Pension Department, on _____ issues a decision by which **rejecting** the request of Mr. _____ for the recognition of the right to compensation for paraplegic and tetraplegic persons, as it is not in accordance with item 2 of article 7 and item 1 of article 8 of Law 05/L-067, respectively the assessment of the medical commission according to which it does not meet the legal requirements for compensation.

Evidence: Decision no. _____ dated _____ 18

With the issuance of this Decision, the first instance authority has violated the legal provisions, namely Article 7, paragraph. 2 and Article 8, paragraphs 1 and 2 of Law 05/L-067 as well as Article 5 paragraphs 1.2, and 1.3 and Article 6, paragraph 1.2 of Regulation No. 07/2017 on the recognition of the status and rights of paraplegic and tetraplegic persons. [...]

7. (1) *The beneficiaries of this law, receive compensation from the state budget in a certain degree, based on the minimum salary in Kosovo, and is determined by secondary legislation issued by the Government according to the proposal of MLSW..*

7. (2) *The beneficiaries of this law, based on the assessment by the evaluation committee, who continuously have permanent and full consequences, use medicaments on daily basis, have*

complete loss of sensitivity of extremities and in order to prevent decubital injuries receive an additional amount of fifty percent (50%) of compensation from paragraph 1. of this Article.

8. (1). *The beneficiaries of this law are entitled to have a personal guardian, based on the assessment by the evaluation committee, with the aim of providing the necessary care and daily services, and who shall be compensated in the same amount as the beneficiaries of this law.*

8. (2.) *The beneficiaries of this law are entitled to choose their guardian.*

The reasoning is in contradiction with the Law on Persons with Paraplegia and Tetraplegia, which decisively states that the beneficiaries of the law receive an additional amount of fifty percent (50%) of the compensation and are entitled to a personal guardian, based on the evaluation by the evaluation commission, in order to provide the necessary daily care and services, which are compensated in the same amount as the beneficiaries of the law.

In rendering the present Decision, the first instance authority i.e. the evaluation commission has erroneously established the factual situation, which consists in the fact that, according to all medical reports but also according to the real factual situation, the applicant was found a person with permanent and complete consequences and utter loss of limb sensitivity, which is in accordance with Law 05/L-067 and the above mentioned articles, because he has been suffering from the disease for a long time now – see the attached Medical Report.

Evidence: Council Report, Consultation Report

It is hereby requested that the complainant is compensated as a result of permanent illness, and his/her personal guardian will be _____, who will provide for necessary daily services, such as clothing, medical visits, and accompany him/her in various trips or anything related to his/her escort as need be. For the escort between the Complainant and _____ **an escort statement** has also been compiled.

In the light of the foregoing, I request from the second instance authority to take, after reviewing this complaint, one of the decisions proposed below:

DECISION

The complaint is **APPROVED** as grounded.

The Decision of the Pension Department with Prot. No. _____ dated _____ **IS MODIFIED** so that _____ is acknowledged the right to a pension and personal guardian.

The Decision of the Pension Department with Prot. no. _____ dated _____ is **ANNULLED** and the case is returned for reconsideration.

Attached:

Decision no. _____ dated _____
Council Report
Consultation report

Pristina,

Complainant

Tel:



NDIHMJA JURIDIKE • PRAVNA POMOC
LEGAL AID

TO THE BASIC COURT IN PRISTINA

General Department – Civil Division

CLAIMANT: (Claimant's name, surname and address)

RESPONDENT: (Respondent's name, surname and address)

CLAIM

Dispute value: Verification of ownership

Tax value: _____€.

The Claimants have for a while, due to their lack of housing settlement, lived and stayed in the house of _____ in _____. Seeing the bad situation in which we lived here, the Respondent, since he was employed in _____, decided to meet our late father _____ to talk about an apartment in _____ and find an optimal solution for all as a Claimants to stay and live in that apartment, so that it would not be left as a further burden to _____ in _____, who was not doing so good financially. Our late father, _____ after a long conversation with this Respondent _____, came to the conclusion that both of them would contribute to the purchase of the apartment, in order to resolve the housing issue. The late father _____ said he was in contact with _____, who had an apartment for sale in _____. Following consultations between our late father _____ and the Respondent _____, in which conversation my father, our older brother and I were present, the Respondent agreed to buy _____'s flat and for the flat will belong to our little brother _____, the Complainant.

Following an agreement between the Respondent _____ and our late father _____, the Respondent returned to _____ to request a small loan, since the vast majority of the money for the purchase of this apartment was paid by our father _____, while some of the money was obtained from the sale of a car, but that money was not enough to buy the flat, and, upon his good will, our uncle _____ expressed his desire to help and enable us to buy the flat.

Lawyer's expenses for the completion of the documentation were paid by my late father _____

Since the respondent, as the elder brother, the father stated that the flat should be bought in the name of _____ to better manage the immovable property, since our brother _____, for whom the purchase of the apartment was intended, was a minor, as in 2000 he was only 12 years old, and the father, afraid that the young _____ would not be able to manage the immovable property in the best way, declared that this apartment should be

bought first in the name of Respondent's older brother _____, so that when the Claimant_____ would reach the age of maturity, then the immovable property (flat) in _____ would be transferred to his name. The Respondent has also agreed for the flat to be transferred to the name of Claimant _____ when the flat was purchased.

But, in reality, the opposite happened. When the Respondent created his close family and got married, he immediately addressed us with threatening words and said that he wanted to evict us from the apartment and that when he would come back from _____ he would like to stay alone with his wife there.

The Respondent is Claimants' brother. On the other hand, _____, who was _____ years of age in _____, since she was the eldest child, was forced to take care of other Claimants and took on the role of mother, and, from that moment to the present, the Claimant has provided for the upbringing, support to and education of these other Claimants.

Evidence: *It is not contentious, if necessary to hear the witness _____, address _____*

Since, the flat as a subject matter was not bought only with the money of the Respondent, who is our _____, but also bought with the money of _____, and also with the contribution of _____ when it was purchased, taking into account the fact that the flat was purchased and dedicated to our younger brother _____, but could not be transferred to the name of _____, because _____ was a minor when the flat was purchased, we ask the Court not to allow the Respondent to evict us from the flat in any way whatsoever, because the flat is not his and that flat was dedicated to Claimant _____ ever since it was purchased.

Also, the fact that these Claimant have owned and used the subject matter flat ever since the sales contract for the flat was concluded in _____ and that they have possessed and used it ever since and posses and use the flat even nowadays.

Evidence: *It is not contentious. If need be, witnesses should be heard.*

All the costs arising from the possession and use of the flat, including payments for electricity, property tax and all other utilities are recorded in the name of the Claimant _____, and the same were, from _____ onwards - incessantly and continuously paid by the Claimant _____ - which is also physical evidence that these Claimants are in incessant possession and use of the property.

Evidence: *Documentation on payments.*

Given that the Respondent, as _____ wants to misuse the property which at the very moment of its purchase was intended for the Claimant _____, and the same is trying to evict us from the apartment by all means, then all of us Claimants request to have co-ownership in equal parts over the subject-matter flat, because the Claimant _____ agrees with this because all of us Claimants have been possessing and using the flat in good faith, so we have the right to be co-owners of the subject-matter flat, because we have been possessing and using the same for for more than 18 years now. Therefore, the legal requirements are met, since we have been possessing the property in good faith for more than 18 years now, then the maximum profit limit by statutory limitations is reached as per Article 40 of the Law on Ownership and other Real Rights – Law No. 03/L-154.

In the light of the foregoing, the Claimants motion to the Court to schedule a main hearing and take, after the administration of evidence, the following:

JUDGEMENT

I. The summary claim of Claimants' _____, all from _____, IS APPROVED AS GROUNDED, and the RESPONSIBLE _____, residing in _____, and with occasional residence in _____, is required to acknowledge Claimants' right of co-ownership over the flat located in _____ and _____ that _____ for all of them the co-ownership of _____ of the case subject-matter flat, and to allow the same to be registered as co-owners in the cadastral records of the Municipality of _____ for _____ subject-matter flat, all of this within 15 days from the day of the receipt of the judgement under warning of forced enforcement.

II. The Respondent is obliged to reimburse the Claimants for the costs of the contested procedure in the amount approved by the Court.

Since there is a risk of alienation of the subject-matter property by the Respondent and should such a thing happen, the Claimants will be left out in the street and under no one's mercy, the Claimants propose to the Court that, pursuant to the provision of Article 297 of the LCP, a measure of insurance is ordered, for, if such a measure is not ordered, the Respondent, as an opposing party, can significantly prevent or impede the realization of the claim, especially by alienating the property, hiding it or in any other way that can alter the current state of affairs and thus adversely affect the rights of the Claimants.

Therefore, within the meaning of the provision of Article 297, in conjunction with Article 300 of the LCP, the Claimants propose to the Court to take the following:

RULING

1. The measure of insurance is ordered, whereby, the Respondent _____ is **PROHIBITED** to : Sell of the apartment located in _____, hide or encumber the same in any other way, put it under mortgage or encumber it with any other encumbrance pending the final decision on the case issued by the Court.

Kosovo Chamber of Notaries and the Municipal Directorate of Geodesy in _____ must be notified of the present Ruling and disallow its sale, encumbrance with any lien or mortgage and transfer of the immovable property to a third person.

Claimants:
(name and surname)

Tel: _____

In _____
Date: _____



NDIHMJA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

TO THE BASIC COURT IN PRISTINA

-General Department-

CLAIMANT: (Claimant's name, surname and address)

RESPONDENT: (Respondent's name, surname and address)

CLAIM

for marriage dissolution

The litigants have married each other on _____ at the civil status office in the Municipality of _____.

Evidence: *Extract from the registry book of the married, Marriage Certificate No. _____ issued on _____*

Spouses have two children from their married life, _____ born on _____ and _____ born on _____

Evidence: *Children birth certificates*

Spouses have lived in marital union from _____ to _____ and married at the Civil Registry Office in _____. At the beginning of the marital life, the relations between the spouses were good and in full harmony, but in the meantime these marital relations have deteriorated to such an extent that the common life of the litigants has become unbearable due to different personalities and views for the cohabitation. The de facto separation of the marital union has come as a result of the deteriorating relationship. They have been living separately for approximately 1 month. The litigants have terminated any marital contact and there is no chance of return of the marital union.

Evidence: *Hearing of the parties.*

Since the litigants have ended the marital union for almost 1 (one) month, de facto and hardly communicate with each other at all, the Claimant with her children lives at her parents. Claimant's life has become unbearable because of situation that has been created and now they use separate beds and tables. The Claimant has a legal interest to dissolve the marriage, so I **MOTION** to the court to render, following the administration of the proposed evidence and the conclusion of the main hearing and pursuant to the provisions of Article 8 of the LCP and Article 69 of the Family Law, the following:

JUDGEMENT

- The marriage concluded on and with number _____ at the civil status office in the Municipality of _____, between the Claimant (Claimant's name and surname) and (Respondent's name and surname) is hereby **DISSOLVED**.
- Children born from the marriage, (the name of the child born on _____ and the name of the child born on _____) is hereby assigned to and entrusted for custody and education, support and parental care to (name and surname of the parent to whom the child is entrusted).
- (name and surname of the parent) is assigned contact with his child twice a month exclusively at the premises of the Centre for Social Work in _____, under the supervision of centre staff.
- The Respondent (name and surname of the parent) is obliged to pay 1/3 of the personal income for child support and satisfaction of children's needs and development requirements every month and that by the: 5th of the following month.

This obligation must be fulfilled from the date when the claim has been filed with the Court.

The Respondent is obliged to pay the costs of contested procedure according to the Court's calculation.

All this within 15 days from the day of rendering of the judgement, under warning of forced enforcement.

Pristina, on _____

Claimant:
(name and surname)

Tel:

Annex:

1. Marriage Certificate No. _____ issued on _____
2. Birth certificates of children _____ and _____
3. Request for court tax exemption _____ dated _____
4. Decision on Allowing Free Legal Aid _____ dated _____
5. Copy of ID card



NDHMA JURIDIKE • PRAVNA POMOC
LEGAL AID

BASIC COURT IN _____ - BRANCH IN _____
to
THE BASIC COURT IN PRISTINA

CLAIMANT: (Claimant's name, surname and address)

RESPONDENT: (Respondent's name, surname and address)

Pursuant to the provision of Article 187.1 of the Law on Contested Procedure, upon the complaint of the respondents _____ from _____, Municipality of _____, filed against the judgement of the Basic Court in _____, Branch in _____ C.no . _____, within the legal timeline of 7 (seven) days, files the following:

RESPONSE TO COMPLAINT

_____ motioning to the
the Court of Appeals in Pristina to reject in its entirety, in the procedure upon the complaint, the complaint of the respondent _____, filed on _____ against the judgement of the Basic Court in Pristina, Department of Economic Affairs _____ dated _____ as *ungrounded* and *confirm* the Judgement of the Basic Court in Pristina, Department of Economic Affairs _____ dated _____.

REASONING

By Judgement _____ dated _____, Basic Court in Pristina , Department of Economic Affairs, has partially approved the claim of the Claimant, and obliged the Respondent _____ from _____, to pay the Claimant the total amount of _____ €, including the interest rate in the amount of _____, which will be calculated from _____ until the final payment, within 7 days from the date of when the judgement would become final, which includes _____ the _____ following _____ compensation:

1.1. for the material damage to the injured party _____ the amount of _____ Euro,
1.2 for the unrealized profit (missing profit) the amount of _____ Euro.

Whereas, in the other part, the claim of the Claimant was rejected as ungrounded.

The respondent has filed a complaint against the Judgement on grounds of violation of the provisions of the contested procedure; erroneous and incomplete determination of factual situation, erroneous application of substantive law and the decision on interest.

The complaint of the Respondent is UNGROUNDED, because:

The judgement challenged by the respondent – does not consist in any substantial violation of the provisions of the contested procedure and there are no grounds on which the judgement was challenged, nor any grounds that the Court adjudicates upon ex officio.

The court of first instance has correctly and completely established the factual situation and on the basis of a just and complete establishment of the factual situation has correctly applied the substantive law i.e. the substantive law has been applied by supporting each ground of Claimant's claim with a relevant provision for both the approved and the rejected parts of the claim.

The challenged judgement does not consist in any violation of the provisions of the contested procedure, and there are no grounds on which the judgement was challenged, nor grounds which the court should examine ex officio. It is because of these reasons that Respondent's complaint should be rejected as ungrounded, and the impugned judgement should be **CONFIRMED** (Article 200 of the Law on Contested Procedure).

In the light of the foregoing, the authorized representative of the Claimant proposes as in the response to the complaint

In Pristina

Claimant:

Date: _____

Tel: _____

P.no. _____



NDIHMA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

Through Private Enforcement Agent/Office _____

to

TO THE BASIC COURT IN PRISTINA

General Department

Creditor: Creditor's name, surname and address

Debtor: Debtor's name, surname and address

DEBTOR'S OBJECTION

Dispute value: _____

Against the decision on enforcement rendered by _____ and dated _____, the Debtor, within the legal timeline, files the following:

OBJECTION

Creditor proposal for enforcement - via private enforcement agent/office _____ appointed to the Basic Court in Pristina on ordering the enforcement proposed at the Basic Court in _____, Company _____ dated _____ is ungrounded and as should be dismissed as such.

Reasoning

In the proposal for enforcement, the Creditor states that for the use of _____, it charges the Debtor to pay the amount of _____ **EUR**. The Debtor challenges the Ruling claiming that the Creditor has not proven the invoices based on which the enforcement was permitted and which were submitted to the Debtor. There is no evidence that the invoices were submitted in due process and that _____ was used in the amount appearing in Debtor's invoices.

Accordingly, pursuant to Article 58 of the LEP, I hereby present the present objection to the statutory limitation _____. The debt refers to an undefined period, and the proposal for enforcement through private enforcement agent has been filed on _____. All invoices

received after one year according to the law are considered statute barred, and the debt has become subject of statutory limitation pursuant to the provisions of LOR, NO. 04/L-077 (Article 360, par. 1.1)

The Debtor denies the debt charged on him, because the billing was registered as a lump sum, and the aggravated socio-economic and health status do not enable him to fulfil the service obligations to the above mentioned company.

The Creditor has provided no argument indicating on which contract concluded with the Debtor has it based the invoices.

The Debtor is not aware of the content of the invoices that are subject to enforcement permission, as they have were not submitted to the debtor without a legal basis, so the legal requirements are met for the Court to render, in due process, the following:

RULING

The objection of Debtor _____ is **approved**, and Creditor _____'s **proposal** for enforcement is **abrogated**. All actions taken are **annulled and suspended** as unlawful, or the Court should schedule a court hearing.

In Pristina,

Debtor:

Date: _____

Name and surname



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LEGAL AID

_.no. _____

TO THE BASIC COURT IN PRISTINA

-General Department-

PROPOSER: (Proposer's name, surname and address)

COUNTER PROPOSER: (Counter proposer's name, surname and address)

MOTION

For the execution of Judgement No. _____ dated _____

By the final Judgment of the Basic Court in _____ No. _____ dated _____, the claim of _____, which he filed against the respondent _____, on the basis of which he has requested _____ dated _____, was **APPROVED** as grounded, and the decision of the Respondent _____, dated _____, on the basis of which the case is returned to the Respondent for reconsideration and retrial, was **ANULLED**.

Evidence: *The Final Judgement of the Basic Court*
in _____ with number .no. _____ on _____

The Proposer does not earn enough income and is in poor health. Since the Respondent has not correctly assessed the factual situation in this case and the same has rejected Claimant's complaint, with the reasoning that _____. The Respondent has also failed to apply the Judgement of the Basic Court in _____ to rectify the above mentioned shortcomings in accordance with the remarks made in the Judgement, so I request this Court to allow the execution of Judgement with number .no. _____ dated _____

Given the difficult economic situation of the proposer, I motion to the Basic Court in _____ to render the following:

JUDGEMENT

The execution of the final Judgement of the Basic Court in _____ No. _____ dated _____ is **ALLOWED**.

The Counter-proposer _____ is **obliged** to act in accordance with the remarks made in this Judgement during the retrial and, after correcting the said shortcomings, to take a just decision, based on the law and according to the determination made in Judgement number __. no. _____ dated _____

Execution costs shall be borne by the Counter-Proposer.

In Pristina,

Proposer

Date: _____



NDIHMA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

TO THE BASIC COURT IN PRISTINA

-General Department-

MOTION

for entrusting the children by agreement

(party's name, surname and address)

(party's name, surname and address)

The parties have established extramarital union since _____ and have lived in _____. From the marriage they have given birth to children, _____, born on _____, and _____, born on _____ in _____.

Evidence: *Birth certificate of children - Civil Status Office, Municipality of Pristina.*

At first, the marital relationship was good, but over time, the couple have noticed that they had different views about life, vices, traits, habits and opposite attitudes, which have made the married life unbearable over time.

In the course of time, the spouses have tried to change these traits, but those attempts were unsuccessful, so the spouses have actually separated from each other and live separately now, Child entrustment (name and surname of the child), born on _____, and (name and surname) born on 24.08.2017 in Pristina, according to the agreement between the spouses, is entrusted for custody, care and education to the mother/father (**name and surname of the parent**)

Evidence: *The agreement of the parties dated. _____.*

Hearing of the parties.

As this extramarital union has failed and is no longer likely to be restored, the proposers have a legal interest to dissolve it formally, so they propose to this Court to render, following the examination of the proposed evidence and conclusion of the main hearing pursuant to the provisions of Article 8 of the LCP and Article 69 of the Family Law, the following:

JUDGEMENT

- The children (name and surname of the child), born on _____, and (name and surname of the child) born on _____ in _____, are entrusted to the mother/father (**name and surname of the parent**)
- **The spouses** agree that the father/mother pays the amount of 100.00 € (one hundred Euro) from his/her personal income for minor child food, support, needs and development requirements every month and that by the: 5th of the following month. The amount of 100.00 € (one hundred Euro) may increase according to the cost of living in Kosovo and the material and financial capacity of the proposers.

This obligation has to be fulfilled from the date of the submission of the proposal to the present Court.

- **Contact** between the child _____ and _____ remains open, all this according to the agreement between the proposers.

If the Court approves our proposal, we waive eventual **complaint**.
Each party will pay for its own procedural costs.

PROPOSERS

(name and surname of the proposer)

(name and surname of the proposer)

In Pristina, on _____

Annex:

1. Child birth certificate of _____, born on _____,
2. Child birth certificate of _____, born on _____,
3. Copy of _____ ID card
4. Copy of _____ ID card
5. Request for court tax exemption _____ dated _____
6. Decision on Allowing Free Legal Aid _____, _____



NDIHMA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

Binder C.no. _____ and A.no. _____

TO THE BASIC COURT IN PRISTINA

to

THE SUPREME COURT OF THE REPUBLIC OF KOSOVO IN PRISTINA

CLAIMANT: (Claimant's name, surname and address)

RESPONDENT: (Respondent's name, surname and address)

Against the judgement _____ of the Court of Appeals in _____ dated _____, with which the complaint of the Respondent filed against Judgement C. no. _____ of the Basic Court in Pristina, Department of Economic Affairs, was rejected, within the stipulated timeline, the Respondent files the following:

REVISION

- on grounds of erroneous application of substantive law.

With the judgement of the Basic Court, Department of Economic Affairs, in Pristina C.no. _____ dated _____ the enforcement permission decision _____ dated _____ was **repealed**, and the claim filed by Claimant _____ from _____ was **approved** and the Respondent _____ from _____ was pay back to the debt to the Claimant the amount of _____ euro, with interest rates of _____ per year, starting from the day when the claim was filed i.e. from _____ to the completion of the final debt payment, including the amount of _____ Euro for the costs of contested procedure, all these within 7 days from the day of the rendering of the present judgement, under warning of forced enforcement.

The respondent filed a complaint against the judgement of the first instance with the Court of Appeals in Pristina, stating that the court of first instance has erroneously determined the factual situation and applied the substantive law, but the Court of Appeals has rejected the appeal of the respondent _____ from Pristina as ungrounded, and the judgement of _____ C. no. _____ dated _____ was confirmed.

Considering that the court of second instance has not admitted these statements and rejected the complaint, the respondent considers that the Court of Appeals in Pristina has violated the legal provision under article _____ of the LOR, because the Claimant has filed the claim as the three-year timeline had expired as per the provision of Article _____ of the LOR, because the Claimant's invoice with number _____ dates back to _____ in the amount of _____ Euros, and the claim was filed on _____, which means that the three-year timeline has expired and that the Claimant's claim for the debt in the amount of _____ Euros is statute-barred, because from _____ to _____ is one year, from _____ to _____ are two years, and from _____ until _____ are three years, so the Claimant's claim is statute barred and the court was supposed to reject the Claimant's claim in its entirety

as ungrounded on grounds of statutory limitation of Claimant's claim as per Article _____ of the LOR.

On the other hand, the Claimant has filed the claim on _____, meaning after the expiration of the three-year period, and that _____ months and _____ days after the expiration of the three-year period.

Also, the Respondent has recalled the goods from invoice number _____ dated _____ in the amount of _____, which goods were included in the invoice and the same was in the Kosovo Customs Zone in Fushë Kosovë/Kosovo Polje for more than three years and the same goods have never reached the Respondent because of the poor quality of the goods.

These goods was returned to the Claimant as agreed between the Customs Zone in _____ - _____ and the Claimant, with which agreement the Respondent has concurred and which is confirmed by the documentation issued by the Customs Zone in _____, dated _____, so even on this basis the Claimant has no legal right to seek the payment of the debt on behalf of the goods, because the same goods have been returned to the Claimant, and there are no financial obligations between the Claimant and the Respondent now.

Evidence: Documentation of the Customs Zone on _____, dated _____, on the return of the goods to the Claimant.

For these reasons, the Respondent proposes to the Supreme Court of Kosovo to approve this Revision by: modifying the *judgement* of the first and second instances and and *rejecting* Claimant's claim as ungrounded in its entirety, or approving the *revision* and annulling the above judgements in their entirety as ungrounded.

In _____

Claimant:

Date: _____

Tel: _____



NDIHMJA JURIDIKE • PRAVNA POMOĆ
LEGAL AID

C-IV-_____

SPECIAL CHAMBER OF THE SUPREME COURT

TO: Case Judge

FROM: (party's name, surname and address)

SUBJECT: Case acceleration urgency

A litigation for case _____ in the lawsuit of _____ is being conducted in this Court.

The party is _____ and old, in a grave health and economic condition, so I am asking the Special Chamber of the Supreme Court in _____ to review the case as a matter of priority and within a reasonable timeframe.

Accordingly, taking into account the nature of the problem and the long period of time since the Claimant has filed the complaint, we consider that the dispute must be solved and the complainant must to exercise his right to unpaid wages as soon as possible.

Due to the difficult situation in which he/she finds himself/herself, it a matter of urgency for the Party that the case is reviewed as soon as possible, so that he/she can exercise his/her right.

In the light of the foregoing, we are asking the Court to consider this request and give priority to this case.

In the light of the foregoing, we are asking that this request is taken into consideration and that this case is dealt with as a matter of priority.

In _____

Claimant:

Date: _____

Tel: _____



NDIHMJA JURIDIKE • PRAVNA POMOC
LEGAL AID

FREE LEGAL AID AGENCY

Free Legal Aid Regional Office, (regional office location)

(case number)

(date)

Pursuant to Article 32, items 1, 2, 3 and 4 of the Law on Free Legal Aid No. 04/-017, the Regional Free Legal Aid Office in Pristina, takes the following:

DECISION

The request for the permission of free legal aid for (name, surname, address of the party, which is the beneficiary of free legal aid, is **APPROVED**,

Justification

The party (party's name and surname) has filed a request for the provision of free legal aid. Having reviewed applicant's request, verified the fulfilment of the requirements under articles 7, 8 and 9 of the LFLA as well as the attached documentation, the Regional Free Legal Aid Office in Pristina found that the potential beneficiary of the free legal aid meets all the stipulated requirements, in accordance with the Law on Free Legal Aid No. 04/L-017.

Free Legal Aid Officer

(officer's name and surname)

Legal instruction: The dissatisfied party has the right to file a complaint against the present Decision within 8 days from the day of the receipt thereof. The complaint is submitted to the Complaints Commission of the Free Legal Aid Agency.