JUDICIAL PROCEEDINGS 1.00

WHITE BOOK BALANCE SCORE CARD

Recommendations:	Introduced in the WB:	Significant progress	Certain progress	No progress
Additional education and specialization of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions.	2012			√
Improve and justify the even allocation of cases among courts and judges.	2011			√
Enactment of new amendments to the Law on Civil Procedure to assure flexibility of the timeframe and deadlines for certain actions.	2011			√
Concepts that allow for delay of procedure, such as postponement and restitutio in integrum, have to be restrictively interpreted and implemented.	2016			√
Consensus on the cases arising under Article 204 of the Law on Civil Procedure.	2018			√

CURRENT SITUATION

During 2021 the legal framework for judicial proceedings was not significantly changed, nor were there important legislative reforms that would affect judicial proceedings in the Republic of Serbia. Important institutions and changes in the legal system, such as public bailiffs, notaries public, a new organizational scheme of courts, and the regulation of the right to a trial within a reasonable time, have already been legally established and are functioning on a stable basis.

The latest amendments to the Law on Civil Procedure, from 2020, only concerned inclusion of para. 3 to Article 355 of the Law on Civil Procedure (the article that regulates verdict's obligatory elements), while other provisions of the Law on Civil Procedure were not amended in any way. The Law on Enforcement and Security (RS Official Gazette No 106/2015 and 106/2016 - authentic interpretation, 113/2017 – authentic interpretation and 54/2019) was not significantly changed.

The number of courts established by the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutor's Offices (RS Official Gazette No 101/2013) from 1 January 2014 remains unchanged, so there are 66 basic, 44 misdemeanour, 25 high, 16 commercial and 4 appellate courts.

The Law on the Protection of the Right to Trial within a Reasonable Time (RS Official Gazette No 40/2015), which entered into force on 1 January 2016, is increasingly applied, given that courts are still overburdened with cases (which is already a chronic problem of justice), especially in civil litigation, which often leads to adjudication deadlines breaches.

In February 2021, the Unified Program for solving old cases in the Republic of Serbia for the period 2021-2025 was adopted (measures, recommendations, implementation and monitoring) (RS Official Gazette No. 101/2020), which aims to reduce the total number of pending cases in front of the courts of the Republic of Serbia of 1,510,472 (which is about 570 pending cases per judge) that remained at the end of 2020, to 1,000,000, which is about 330 cases per judge. This would reduce the share of old cases in the total number of pending cases to 2,61%.

The Working Group for Amendments to the Law on Civil Procedure presented a draft of a new Law in May 2021. Although the draft made a positive step forward in certain areas (relief of courts in mass proceedings, electronic submission of submissions etc.), criticism of a certain part of the general and professional public regarding certain proposed legal solutions, led to the draft being returned for revision by the Working Group whose work is still in progress (this primarily refers to the provisions on payment of court fees prescribing that all submissions for which fees are not duly paid are considered withdrawn and the provision stipulating that the law will be applied retroactively and that it will be applied to all ongoing proceedings).

At the beginning of 2022, a referendum was held on changing the Constitution of the Republic of Serbia in the area of judiciary, which led to the adoption of the proposed amendments and, among other things, the adoption of a change in the method of electing judges who are now to be elected by the High Court Council in order to further strengthen the independence of the judiciary and judges.

Dispute Resolution

Some Law on Civil Procedure provisions, such as simplified rules on the service of court documents, shortening of the evidence-producing procedure, equal treatment of the parties (i.e. setting the same deadline for the submission of and response to the legal remedy), expansion of the parties' representatives circle in proceedings, and reduction of the threshold for the submission of a review, were all met with positive reactions from courts and parties, and their application in practice is widespread. Some of the solutions envisaged by this law were not applied in practice even after several years of implementation. Thus, subpoenas and other information are still not delivered by email, and the use of audio and video equipment in hearings is rare because courts are not adequately equipped.

Appellate courts do not comply with the deadlines for deciding on appeals. The new law requires setting a deadline to complete the main hearing (a concept aimed at ensuring that evidence is produced in a time-efficient manner), but in practice judges either fail to comply with the set timeframes or set unreasonably long ones of two or more years.

In accordance with the Legal Practitioners Law, the Bar Academy was introduced as a special body established by the Bar Association of Serbia, responsible for the professional education and specialization of attorneys and graduate lawyers, but its work so far has not been noteworthy. Since its establishment the Bar Academy organized seminars only sporadically, but in the past year it has intensified its activities, primarily by organizing lectures and professional trainings for lawyers and law graduates, and today we can say that the situation has significantly improved.

POSITIVE DEVELOPMENTS

All courts in Serbia established online databases with status of ongoing cases, facilitating access to this information. The databases are regularly updated, so in most situations it is possible to obtain this information promptly. From 2014, when the Commissioner for Information of Public Interest and Personal Data Protection banned any processing of data contrary to the Law on Personal Data Protection, database search by personal/business names of parties is no longer possible, and there are no signs that it will be introduced again.

Compliance of the number of judges with the scope and structure of their workload

The Government of the Republic of Serbia adopted the Strategy of Human Resources in the Judiciary for the period 2022-2026 ("RS Official Gazette" No. 133/2022), whose implementation should result in an unbiased and transparent procedure for managing human resources in the judiciary of the Republic of Serbia in order to strengthen the rule of law and legal certainty.

Some problems that this strategy seeks to solve are the unnecessarily long duration of court proceedings due to a lack of staff and the establishment of a judge evaluation system that, at the moment, does not recognize the connection between the uniform workload of judges in relation to the complexity of the case, the actual time spent on solving the cases depending on their complexity, and additional professional development and training.

Dispute Resolution

The Law on Civil Procedure was last substantially amended in 2014, when significant developments were introduced, such as the expansion of the possibility of filing a revision request as an extraordinary legal remedy by prescribing new situations where a revision is always allowed, as well as by reducing the threshold to EUR 40,000; i.e. up to EUR 100,000 for commercial disputes (amounts calculated according to the median exchange rate of the National Bank of Serbia (NBS) on the lawsuit filing date).

Enforcement

The authentic interpretation of the Law on Enforcement and Security, Article 48, issued by the National Assembly at the end of 2017, was a last significant development in this Law's application. According to the interpretation, Article 48 should be understood to encompass the assignment of a claim or obligation within the legal term "transfer" of a claim or obligation. The "transfer" of a claim or obligation has a general meaning and includes all sorts of successions of claims or obligations, irrespective of when the succession took place, during the legal entity's existence or after it has ceased to exist. Therefore, the "transfer" of a claim or obligation should be proven by a public or certified document, or, if this is not possible, a binding or final decision rendered in civil, misdemeanour or administrative proceedings.

Electronic auction

Starting in 2020, public auctions in the enforcement process are conducted electronically only, via website of the Ministry of Justice. The system is quite simple and intui-

tive, and all that is needed is a qualified electronic signature. The system should improve transparency and prevent abuse. All participants are anonymous.

Payment of court fees

During 2021, the Ministry of Justice enabled the payment of court fees through the e-Payment portal. Payment is made by payment and credit cards, and the court automatically receives information about the fees paid, so it is not necessary to submit proof of payment.

Submitting submissions electronically

Many courts in Serbia have accepted the option of sending and receiving submissions electronically and have created special email addresses for this purpose. This has made the work of lawyers easier and sped up the proceedings, especially when submissions are to be sent to a court located outside of the lawyer's seat.

REMAINING ISSUES

Education of judges and better mechanisms for the liability of judges in wrongful decisions

The specialization of the judges' portfolio should be introduced in an efficient and definitive manner. Also, case files should be made more accessible to all interested parties and the use of electronic means for recording or photographing the case file should be facilitated to save the courts' and parties' resources. The hearings should be set in shorter time periods, and the length of appellate proceedings in practice should be aligned with legal provisions.

Flexibility of the timeframe and deadlines for certain actions

Electronic communication between the parties and the court is still not possible due to the lack of clear regulations and by-laws in this field, as well as the lack of funds necessary for the technological equipment for the courts. The timeframe, although potentially very promising for efficient completion of litigation, is not flexible enough, since litigation is often unpredictable, and legal possibilities for extending deadlines are insufficient. On the other hand, judges either fail to comply with the timeframe or set unreasonably long timeframes, of two or even more years, which contributes to the prolongation of proceedings and defeats the purpose of the concept of procedural timeframes. Some of the deadlines are unrealistically short, and the deadline for providing evidence is too strict, which may lead to abuse by parties.

Amendments to the Law on Civil Procedure enacted in 2020 fail to address the subject issues.

Consensus on cases arising under Article 204 of the Law on Civil Procedure

Article 204 of the Law on Civil Procedure prescribing the possibility to complete a litigation between the same parties if a party has disposed of an asset or right subject to litigation, has resulted in a progressive stance of the jurisprudence regarding the reversal of the claim by the assignor – respondent could be obliged to pay the assignee at the request of claimant. However, such reasoning is not uniformly accepted by the entire jurisprudence, leading to unequal treatment before the courts and legal uncertainty in terms of the rigid interpretation of the law, contrary to the jurisprudence in jurisdictions that have similar provisions in their legislation. Even though Article 204 was amended with the previous amendments of the Law on Civil Procedure, only time will show whether these amendments will lead to the resolution of the above-mentioned problem in the jurisprudence.

Restrictive interpretation of concepts that allow delay of procedure

The concept of restitutio in integrum has been restored to the enforcement procedure system. The legislature has foreseen that restitutio in integrum is allowed only in case of failure to comply with the deadline for submitting an objection or appeal in the procedure of contesting decision on enforcement based on a directly enforceable title. Although the scope of the application of this concept has been significantly narrowed, abuse of this concept can be reasonably expected. Also, it is not clear why the legislature has foreseen the application of this concept only in the enforcement procedure based on a directly enforceable title.

The Law on Enforcement and Security does not prescribe what happens with the paid advance costs where a creditor petitioning for enforcement based on an invoice or a promissory note has initiated litigation and lost. The current solution where the public bailiff keeps the entire amount of the advance, which in some cases may be extremely high, is not acceptable.

Although the new Law explicitly stipulates those extraordinary legal remedies may not be used in the enforcement procedure, the Law itself has in fact introduced an extraordinary remedy. Where the decision dismissing an appeal is based on the facts which are disputed between the parties and pertain to the claim itself, the enforcement debtor may initiate a litigation proceeding declaring the enforcement inadmissible within 30 days of receipt of this decision. Even though litigation will not postpone enforcement, it is a further procedural burden on the enforcement creditor.

The concept of postponement has been restored to the enforcement procedure. Although the postponement of enforcement upon the request of the enforcement debtor is possible only once, it opens the door for malpractice as the criteria for the assessment of legal grounds for postponement is too broad, and there is a possibility that, in theory, the postponement could last for a longer period of time, depending on the public bailiff's assessment.

Necessity of a non-resident bank account with a non-resident creditor when initiating enforcement proceedings

In 2021, the Commercial Court in Belgrade took the position that it is necessary to state the number of the non-resident bank account of the enforcement creditor when submitting a proposal for enforcement, even when the enforcement is being carried out on the entire assets of the enforcement debtor. The stated position is not in accordance with the Law on Enforcement and Security. In practice, this kind of court action led to a significant prolongation of the initiation of the enforcement procedure, because opening a non-resident bank account can take up to a few months, which opens a space for debtors to dispose of assets and creates additional costs for non-resident creditors, that are not necessary at the given moment.

FIC RECOMMENDATIONS

- Additional education and specialization of judges and the introduction of better mechanisms for the liability of judges in wrongful decisions.
- Improve and justify the even allocation of cases among courts and judges.
- Enactment of new amendments to the Law on Civil Procedure to assure flexibility of the timeframe and deadlines for certain actions.
- Concepts that allow for delay of procedure, such as postponement and restitutio in integrum, have to be restrictively interpreted and implemented.
- Consensus on the cases arising under Article 204 of the Law on Civil Procedure.