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	2012			√
To allow easier access to case files to parties in the proceedings, and their representatives	2023			√
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.	2023			√
Remove the limitation of appeal ground in small value disputes, and through amendments and additions to the Law on Civil Procedure, allow the possibility of filing an appeal in this type of disputes based on incorrect or incomplete determination of facts, as in regular type of proceedings.	2023			√

CURRENT SITUATION

The amendment to the Constitution of the Republic of Serbia conducted through a constitutional referendum in 2022 represents a step forward in the reform of the judiciary in the Republic of Serbia. These changes aim to supress the politicization of the judiciary and signify important progress. However, 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.

The amendments to the Constitution were implemented through the adoption of a new set of laws in the field of judiciary - the Law on the Organization of Courts, the Law on Judges, the Law on the High Judicial Council, as well as in the field of public prosecution - the Law on Public Prosecution and the Law on the High Prosecutorial Council.

The most significant change in the procedure for the election of judges is the exclusion of the National Assembly's involvement. Now, the High Judicial Council is responsible for conducting the process of selection and appointment of all judges, including those who are being elected for the first time to a judicial function. As for the general and specific qualifications for the selection of judges, there have not been any significant changes.

The new Law on Judges started to be applied from the date of the constitution of the High Judicial Council, i.e. 10 May 2023. With the beginning of the implementation of this law, Article 10, paragraph 3, and Article 383, paragraph 7 of the Law on Civil Procedure ("Official Gazette of RS", no. 72/2011, 49/2013 - decision of the Constitutional Court, 74/2013 - decision of the Constitutional Court, 55/2014, 87/2018, 18/2020, and 10/2023 - other law), as well as Article 16 of the Law on Enforcement and Security ("Official Gazette of RS", no. 106/2015, 106/2016 - authentic interpretation, 113/2017 - authentic interpretation, 54/2019, 9/2020 - authentic interpretation, and 10/2023 - other law) have ceased to be valid. The mentioned articles of the law pertain to disciplinary liability of judges in case of exceeding the time frame of a proceeding. The reason for the mentioned is the circumstance that disciplinary liability of judges can now be regulated exclusively by the Law on Judges.

The external organization and jurisdiction of courts have remained largely unchanged, with the exception of renaming of the Supreme Court of Cassation to Supreme Court. The number of courts, as determined by the Law on the Seats and Territorial Jurisdictions of Courts and Public Prosecutors ("Official Gazette of the Republic of Serbia" No. 101/2013), as of 1 January 2014, remains unchanged, therefore there are 66 basic courts, 44 misdemeanour courts, 25 higher courts, 16 commercial courts, and 4 appellate courts.

The Law on the Protection of the Right to a Trial within a Reasonable Time, which came into force on 1 January 2016, is being increasingly applied in practice, considering that the courts are still burdened with a large number of court cases (which has become a chronic issue in the judiciary).

In February 2021, the Unified Program for Resolving Old Cases in the Republic of Serbia for the period 2021-2025 was adopted, aiming to reduce the total number of unresolved cases in the courts. Regarding the statistics for the year 2023, the annual report on the work of the courts showed that the basic courts in the Republic of Serbia still had a high number of unresolved cases at the end of the reporting period, specifically 319,239. The total number of unresolved cases in all courts in the country amounted to 1,095,479. This data indicates an evident overload of the courts, which has an undeniable negative impact on the efficiency of the judiciary, despite the fact that the number of unresolved cases is significantly lower than the previous year.

In 2021, the Work Group for Amendments to the Law on Civil Procedure presented a draft of a new law. However, criticism from certain segments of the general public and expert community regarding certain proposed legal solutions led to the draft being sent back for further refinement by the Work Group, whose work is still ongoing.

As for the Law on Public Prosecution, the most significant change is the abolition of the monocratic organization of public prosecution. Now, the Supreme Public Prosecutor, Principal Public Prosecutor, and Public Prosecutor are in a hierarchical relationship. The Principal Public Prosecutor is responsible for the work of the public prosecution and reports to both the Supreme Public Prosecutor and to the higher-level Principal Prosecutor. The Republican Public Prosecution has changed its name to the Supreme State Prosecution, and the State Council of Prosecutors has become the High Council of Prosecutors.

Dispute Resolution

Although many solutions of the Law on Civil Procedure came across a positive reaction from judicial authorities and parties, such as using electronic mail for summoning or notifying parties and the court, utilizing audio and video equipment, or transcribing proceedings, they have not come to life in practice.

On the other hand, despite the Law on Civil Procedure foreseeing the mandatory setting of a timeframe for the main hearing, in practice, judges often fail to adhere to the established timeframes or set unjustifiably lengthy periods for adjudication. The aforementioned particularly comes to light due to the increasing application of the Law on Protection of the Right to Trial within a Reasonable Time.

Additionally, there is a challenge of uneven workload distribution among courts and judges in Serbia, with a noticeably higher number of cases being resolved in courts in Belgrade. The concentration of a large number of cases in specific courts can lead to judges' overload and prolongation of the timeframes for case resolution.

POSITIVE DEVELOPMENTS

In all courts within the territory of the Republic of Serbia, electronic verification of the case status is now available, thereby greatly facilitating the access to information about specific cases. Data about cases is regularly updated, enabling timely information on the status of the case in most instances. Additionally, on the website of the Portal of Serbian Courts, it is possible to follow the course of cases before a public bailiff.

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 ("Official Gazette of RS" No. 133/2022). 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.

Enforcement

The authentic interpretation of the Law on Enforcement and Security, Article 48, issued by the National Assembly in 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, i.e. 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.

Payment of court fees

During 2021, the Ministry of Justice enabled the payment of court fees through the e-Payment portal, so that 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, especially when submissions are to be sent to a court located outside of the lawyer's seat.

REMAINING ISSUES

Training and specialization of judges

One of the most important goals should be the improvement of the quality of the judiciary through enhanced training of judges. Likewise, the specialization in specific areas of work for judges should be finally introduced.

Access to case files

Efforts should be made to increase the accessibility of case files to parties in the proceedings and their representatives, allowing access to these documents without the need for specific court approval. Moreover, emphasis should be placed on facilitating the use of electronic devices for recording or photographing case files, which would save resources for both the court and the parties involved.

Flexibility of the timeframe and deadlines for certain actions

The timeframe, although potentially a good concept for efficient case resolution, is not flexible enough because the course of the litigation process is often unpredictable, and the legal possibilities for its extension are not sufficient. On the other hand, judges either do not adhere to the established timeframe or set unnecessarily lengthy timeframe which contributes to the prolongation of court proceedings and undermines the effectiveness of this concept. Some of the deadlines are unrealistically short, and the deadline for submitting evidence is too strict, which may lead to abuse by the parties.

Hearings should be scheduled in shorter time periods, and the duration of the appeal process in practice should be brought in line with the legal provisions at the very least.

The latest amendments to the Law on Civil Procedure have not addressed the mentioned 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 a legal remedy in the procedure of contesting decision on enforcement. Although the scope of the application of this concept has been significantly narrowed, abuse of this concept can be reasonably expected.

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, 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 who is a non-resident 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.

Limited ground for appeal in small value disputes

Article 479, paragraph 1 of the Law on Civil Procedure, stipulates that a judgment or a resolution that concludes a dispute in the small value proceeding may only be challenged on the grounds of a significant violation of provisions of the civil procedure from Article 374, paragraph 2 of this law and due to an incorrect application of substantive law. Thus, the law limits the appeal reasons by which a judgement or a resolution can be challenged, and there is no possibility to appeal the decision in small value disputes based on incorrect or incomplete determination of facts. This solution is unclear because, unlike other specific features related to small value disputes (starting from shorter procedural deadlines), it does not contribute to a faster or higher quality resolution of disputes of this kind. Moreover, deprivation of the possibility to challenge the decision in small claims disputes due to incorrect or incomplete determination of facts is contrary to the purpose of filing a legal remedy, and the second instance review of the court decision in the appeal process. Especially considering that the accurate and complete determination of facts is of utmost importance for making a correct and legally grounded decision, so it is unclear why the monetary threshold of a particular dispute should take precedence over a party's right to have the second instance court examine whether the factual circumstances were properly and fully determined in the first instance proceedings. The fact that a certain dispute is qualified as a small value dispute does not imply the infallibility of the first instance court in determining essential facts. This limitation significantly and unjustifiably restricts the rights of parties to the litigation and the second instance court's ability to fully assess the correctness of the appealed decision.

FIC RECOMMENDATIONS

- Additional education and specialization of judges.
- To allow easier access to case files to parties in the proceedings, and their representatives.
- 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.
- Remove the limitation of appeal ground in small value disputes, and through amendments and additions to the Law on Civil Procedure, allow the possibility of filing an appeal in this type of disputes based on incorrect or incomplete determination of facts, as in regular type of proceedings.