

## REPUBLIKA SRPSKA: Dispute resolution

### Law on Amendments to Law on Civil Procedure – An attempt to accelerate court proceedings

Amendments to the Law on Civil Procedure of Republika Srpska<sup>1</sup>, applicable as of 27 July 2013, introduce significant novelties. The intention of the legislator behind many of the changes was to increase efficiency of proceedings.

#### Adversarial process

Traditionally investigative proceedings have acquired adversarial traits. Prior to the amendments, the judge had a duty to take evidence which he/she thought could contribute to finding of the truth, even if the evidence was not proposed by any of the parties. The amendments now stipulate that the court may not take evidence which is not introduced by a party, except where public policy is involved or there is an express statutory authorization in this respect, such as in the case of a reasonable doubt that a party abuses its procedural rights. It is also stipulated that the court may not base its decision on the facts which the parties were not allowed to address during the proceedings.

#### Statement of claim

The law now prescribes mandatory elements of a statement of claim in the absence of which the statement of claim will be rejected without prejudice. Furthermore, it is provided that the plaintiff may amend the statement of claim with respect to the remedy sought based on new circumstances arising after the filing of the claim, if the new remedy is based on the same factual basis. Consent of defendant is not required in this case.

#### Consolidation of proceedings

The court is granted the authority to merge several pending litigations involving the same parties, even if the subject-matters of the respective proceedings are unrelated.

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<sup>1</sup> Zakon o izmenama i dopunama Zakona o parničnom postupku, “Official Gazette of Republika Srpska” no. 61/13 dated 19 July 2013

## Court settlement

The parties are allowed to reach a court settlement agreement even after the issuance of the first instance judgement, for as long as the judgment does not become final.

In order to reduce the length of court hearing, the judge may, upon a party's request or *ex officio*, decide to make an audio recording of the hearings. The court is obliged to prepare verbatim transcript of the hearing within eight days from the hearing.

## Service of process

The parties to the dispute may conclude an agreement on the service of process prior to the initiation of the proceedings. The plaintiff may then file this agreement to the court together with the statement of claim. If process is not successfully served on the address indicated in the agreement, service shall be deemed to be validly made after the expiry of 15 days from the posting of the relevant document on the court's noticeboard, with the exception of the a statement of claim which, if not delivered personally, has to be published both on the court's notice board and in at least in one daily newspaper distributed in Republica Srpska in order to be deemed validly served.

## Exclusion of judges

The amendments distinguish between exemption and exclusion of judges. Exclusion is a new institute in the litigation procedure. The grounds for exclusion are set objectively and the judge shall be *ex officio* excluded from the process if any of the following reasons are present: (i) the judge is a party, or a legal representative or a proxy of a party to the dispute, (ii) the judge is a guardian, an adoptive parent or an adopted child of a party to the dispute, (iii) the judge is related to the party or the party's representative, (iv) the judge and the party to the dispute are parties to another litigation, (v) in the same proceedings, the judge has participated in the mediation procedure or in rendition of judicial settlement which is being challenged in the litigation, has made a decision which is being challenged by either party or if the judge has represented the party as its attorney, (vi) the judge participated in the bankruptcy proceeding giving rise to the litigation. Besides the above-mentioned grounds for exclusion, a judge may be recused from the case if there are any material reasons that may affect his/her impartiality.

## Grounds for appeal

A judgment rendered in the absence of a party cannot be appealed for incorrectly or incompletely determined facts. New facts may not be presented and new evidence may not be introduced on appeal unless the appellant credibly demonstrates that it was not able to present those facts/introduce those evidence in first instance proceedings without its fault. However, new facts may be presented and new evidence introduced if the judgement is appealed on ground that the claim was admitted or waived as a result of material misconception, coercion or fraud.

## Appellate procedure

The most significant novelties regarding the appeal are:

- The appellate court may remand the case for retrial only once. If after the remand the trial court makes the same decision and its decision is re-appealed, the appellate court must decide the case on its own.

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- If the appellate court fails to decide on the parts of the first-instance judgment which were challenged on the appeal, the appellant may require a supplemental judgment within 30 days from the receipt of the appellate judgment.
- Extraordinary remedy of revision can be filed if the value of the claim is 30,000 convertible marks (EUR 15,000) and in commercial disputes, if the value of the claim is 50,000 convertible marks (EUR 25,000). A request for revision can be filed regardless of the value of the claim if the decision in the case depends on a substantive or a procedural issue which is of significance for equal and unique application of the law.
- Party to the dispute may request from the court of first instance to reopen the case and amend the judgment if the European Court of Human Rights has determined a violation of the party's human right or fundamental freedom guaranteed by the Convention, within 90 days from the date when the judgment of the European Court of Human Rights has become final.

### Representation in the proceedings

In disputes involving a proprietary claim in excess of 50,000 convertible marks (EUR 25,000), party may be represented only by a person with a bar exam. In revision proceedings, party must be represented by a qualified attorney.

### Suspension and termination of proceedings

The amendments provide for two new institutes– suspension and termination of proceedings. However, the Law on Civil Procedure does not specify situations leading to suspension of proceedings but leaves this to other statutes. The amendments stipulate that the court shall terminate the proceeding when a party dies or ceases to exist and is not succeeded in the rights in dispute by a legal successor.

### Protection of Collective Rights and Interests

The proceedings for protection of collective rights and interests have been introduced for the first time. The new law prescribes that an association authorized by law may initiate proceedings for protection of collective interests and rights of citizens and request injunction on the infringing activities, *restitutio in integrum* or publishing of the judgment in mass media.

It is interesting to note that similar provisions in the neighbouring Serbia have been recently declared unconstitutional by the [Serbian Constitutional Court](#).

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