

May 2015

In focus: Law on Protection of the Right to a Trial within a Reasonable Term

On May 8th 2015, the National Assembly of the Republic of Serbia adopted the Law on Protection of the Right to a Trial within a Reasonable Term (hereinafter referred to as: the “**Law**”). The Law has been published in the “Official Gazette” of the Republic of Serbia no. 42/2015, and enters into force on January 1th 2016.

The reason for adoption of the Law is the necessity of creating effective legal remedies and a mechanism which will provide protection and the exercising of civil right to a trial within a reasonable term guaranteed by the Constitution, thereby decreasing the number of applications which Serbian citizens submit to the European Court of Human Rights due to the violation of this right.

I Holders of the right to a trial within a reasonable term

Pursuant to the Law, the right to a trial within a reasonable term shall have every party in all court proceedings, including investigation lead by the public prosecutor in a criminal proceeding, as well as the aggrieved party in a criminal proceeding, private prosecutor and aggrieved party as a prosecutor if they’ve filed a claim for

damages. As a party in criminal proceedings, a public prosecutor does not have the right to a trial within a reasonable term.

II Criteria for establishing violation of the right and legal remedies

As opposed to the Law on Organization of Courts which previously regulated this matter, the Law defines criteria for estimating the duration of a trial within a reasonable term based on which, along with all other circumstances of the particular case, it shall be decided on the existence of violation of the right to a trial within a reasonable term, as well as the amount of the prospective compensation for the party which suffered violation of that right.

The Law entitles parties who consider that they suffered violation of the right to a trial within a reasonable term to submit a **complaint** and **appeal** prior to completion of the court proceeding, thus influencing acceleration of the proceeding in progress, as well as the right to submit a **claim for just satisfaction** if previously established that their rights have been violated.

III Proceeding for protection of the right to a trial within a reasonable term

The Law regulates in detail the proceeding, deadlines and mandatory elements which a complaint, appeal and claim on just satisfaction must contain.

The proceeding for protection of the right to a trial within a reasonable term is free of charge for every party. This proceeding is urgent and has priority in decision making.

A president of the court, before which the proceeding is held, conducts and decides in a complaint proceeding and, under the conditions established by the Law, may appoint one or more judges to conduct and decide on complaints by an annual work schedule.

The decision adopting the complaint and establishing violation of the right to a trial within a reasonable term indicates to the judge or public prosecutor the reasons why a party's right has been violated, and if the right was violated by the judge, he/or she is required to undertake procedural actions which efficiently accelerate the proceeding and determine the deadline by which the acting judge is obliged to undertake ordered procedural actions and submit a report on their undertaking. The decision which establishes a public prosecutor's violation of the right to a trial within a reasonable term shall be delivered to the immediate higher instance public prosecutor who is obliged to render mandatory instructions which order the public prosecutor who committed the violation to undertake efficient procedural actions and determine the deadline for acting and reporting.

The Law also establishes the right of parties to file a new complaint after deciding on the previous, upon expiry of the deadlines prescribed by the Law, however these limitations do not apply to proceedings in which detention or temporary measures were suggested or determined, in enforcement proceedings and proceedings against minors.

A party has the right to an appeal when the complaint was rejected or if the president of the court fails to decide on the complaint within two months from the day of its receipt. An appeal can also be submitted when the complaint was adopted, but the immediate higher instance prosecutor failed to render mandatory instructions within the prescribed time limit, when the president of the court or immediate higher instance prosecutor failed to order the judge or public prosecutor to undertake procedural actions which efficiently accelerate the proceeding or if the judge/public prosecutor fails to undertake ordered procedural actions within the prescribed deadline. The president of the immediate higher instance court decides on the appeal, by applying criteria for estimating the duration of a trial within a reasonable term.

IV Claim for just satisfaction

A party acquires the right to submit a claim for just satisfaction when the court, acting on the complaint, i.e. appeal, establishes violation of the right to a trial within a reasonable term.

The Law provides for three types of just satisfaction:

- the right to payment of monetary compensation for non-property damage due to violation of the right to a trial within a reasonable term;
- the right to the publishing of a written statement by the State Attorney's Office which establishes that the party suffered violation of the right to a trial within a reasonable term;
- the right to the publishing of the verdict which establishes that the party suffered violation of the right to a trial within a reasonable term.

A party has the right to submit to the State Attorney's Office a proposal for settlement within 6 months from the day of acquiring the right to just satisfaction, by which he/she states the preferred type of just satisfaction – payment of monetary compensation for non-property damage or the publishing of a written statement by the State Attorney's Office which establishes violation, or both types.

Depending on the gravity of violation of the right to a trial within a reasonable term, the State Attorney's Office can propose to the party, instead of payment of monetary compensation, the rendering and publishing of a written statement which establishes violation of the right. In case of a serious violation of the right to a trial within a reasonable term, the State Attorney's Office can, at the party's request, render and publish the written statement and pay the monetary compensation to the party.

Instead of submitting the proposal for settlement to the State Attorney's Office, a party can, within a year from the day of acquiring the right to just satisfaction, submit a lawsuit against the Republic of Serbia for monetary compensation for non-property damage, as well as a lawsuit for compensation of property damage caused by violation of the right to a trial within a reasonable term.

In case of a serious violation of the right to a trial within a reasonable term, the court can, at the party's request, render and publish the written verdict in the "Official gazette of the Republic of Serbia" which establishes that the party's right was violated, as well as award the party monetary compensation.

Monetary compensation for non-property damage due to violation of the right to a trial within a reasonable term shall be recognized to a party in the amount from 300,00 to 3.000,00 Euros payable in RSD counter value according to the middle exchange rate of the National Bank of Serbia on the day of payment, regardless if the monetary compensation was established by a verdict or settlement with the State Attorney's office.

Monetary compensation, as well as compensation of property damage, shall be paid by the court, i.e. public prosecutor who has violated the right to a trial within a reasonable term, out of budget funds.

V Transitional and final provisions of the Law

By entering into force of the Law, the provisions of the Law on Organization of Courts which regulate protection of the right to a trial within a reasonable term shall cease to be in effect, as well as the provision of the Law on the Constitutional Court which determines the right to submitting a constitutional appeal due to violation of the right to a trial within a reasonable term even before exhausting all legal remedies.

Persons who filed an application to the European Court of Human Rights because they consider that they have suffered violation of the right to a trial within a reasonable term, regarding which a decision on admissibility or groundedness has not been rendered, can submit a proposal for settlement to the State Attorney's Office within six months from the day of entering into force of the Law. Instead of the proposal for settlement or after he/she withdraws from the attempt for settlement, a party can file a lawsuit against the Republic of Serbia for monetary compensation to the court competent by the Law, within a year from the day of entering into force of the Law.

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