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**In focus: Law on Litigation Procedure**

The new Law on Litigation Procedure (hereinafter referred to as: the "**Law**") has been published in the "Official Gazette of the Republic of Serbia" no. 72/2011, dated September 28th, 2011 and shall enter into force on February 1st, 2012.

The innovations of the new Law mostly aim to create a normative frame for efficient and economical court procedure and protection of the right of litigants to trial in a reasonable deadline, and hence the realization of their rights guaranteed by the Constitution and other regulations of the Republic of Serbia, as well as international regulations.

Amongst the most significant novelties which the new Law brings, we single out the following:

1. The Law introduces rules on the time frame for undertaking actions in a litigation procedure. The litigants are obliged to propose the time frame at the very commencement of the procedure – at the preliminary hearing, i.e. at the first hearing for the main argument, if the preliminary hearing is not mandatory, and the time frame is to be decided by the court in a decision that especially contains: the number of hearings, the scheduled time of hearings, the schedule of execution and presentation of evidence at hearings and undertaking other actions in the litigation procedure, court deadlines, as well as the total duration of the main argument.

2. The court generally schedules one hearing for the main argument, to present and execute all evidence. The court will exceptionally schedule more than one hearing if it judges that it is necessary for the execution of evidence, while these hearings will be scheduled in the shortest time interval, minding the concentration of the main argument.

   The court may, exceptionally, postpone a hearing, if it is necessary to present and execute evidence or due to the incapacity of the judge. When postponing a hearing, the court will always set a new time frame, which cannot be longer than one third of the initially determined time frame.

   The Law expressly prescribes the duty of the court to respect the previously determined time frame, as well as to prevent any attempt of arbitrary delay of hearings, as well as to sanction any breach or abuse of procedural rights and violation of procedural discipline.

3. One of the solutions foreseen by the new Law pertains to the service of documents and is aimed to contribute to the trial in a reasonable deadline and prevent abuse of procedural rights of the litigants and prolonging of the procedure.

   Specifically, the Law prescribes that if the person to whom a writ must be served in person (lawsuit, decision on payment order, verdict, decision against which a separate appeal is allowed and legal remedy are to be delivered to the litigant, i.e. its legal representative or representative by power of attorney in person) is not found at the place where service of documents is to be made, under the condition the address is correct, the deliverer will leave a notification that the writ may be received at the court within 30 days from the attempted service. In this case, a copy of the writ is to be posted on the notice board of the court. After expiration of the stated 30-day deadline, it will be considered that the writ has been served.

4. Additionally, one of the novelties which the Law brings regarding the efficient and economical conduction of the court procedure and respecting the procedural discipline by the litigants, is the rule forbidding subsequent presentation of new facts and evidence at a later point in the course of the procedure, unless the litigants make it seem probable that they were unable to present such facts and evidence, through no fault of their own, at the preliminary hearing, i.e. at the hearing for the main argument if the preliminary hearing is not mandatory.

   The court will disregard facts and evidence presented contrary to the above stated rule, in which manner the procedural rules on the duty of presenting factual material by the litigants have been made stricter in comparison to the previous law which foresaw the prohibition of presenting new facts and evidence in the appeal.

5. The litigants may undertake actions in the procedure personally or be represented solely by an attorney-at-law, except in the case when a legal entity has a legal representative who has passed the bar exam and who is permanently employed by the stated legal entity.

   In the procedure based on extraordinary legal remedies, the litigants must be represented by attorneys-at-law, except when the litigant himself is an attorney-at-law. An attorney-at-law may be substituted in representation by a trainee that he/she employs if the litigant has so determined in the power of attorney, except in the procedure based on legal remedies.

6. For the first time, the Law allows the possibility of delivering petitions to the court and writs to the litigants electronically, in accordance with special regulations, as well as the possibility of using audio and video recording devices at hearings, and photographing the files in a court case, which enables using of the advantages

of modern technology in the litigation procedure.

7. In addition, litigants will be allowed to deliver writs to each other directly, but they will have to submit proof of delivery to the court.

8. The Law brings forth amendments regarding the obtaining of evidence from witness statements and by expert testimony.

   The Law provides the possibility that a witness examination may be conducted by way of reading his/hers written statement which must be certified by the court or person performing public authorities. It is also prescribed that the court may decide to examine a witness by a conference call, using audio and video recording devices.

   Concerning expert testimony, one of the novelties the Law brings is the possibility for a litigant to submit to the court written findings and opinions of an expert witnesses, which are then delivered to the other litigant to express views of the same. The court may determine that evidence by expert testimony may be performed by reading the written findings and opinions submitted by one litigant, after the other litigant has expressed his views and comments on it.

   Furthermore, it is prescribed that a litigant may engage an expert i.e. expert witness registered in the registry of judicial expert witnesses, who will make observations and remarks of the already delivered findings and opinions, or who will give new findings and opinions in written form. These documents may be read at the hearing for the main argument, and the expert witness may be allowed to participate in the argument by posing questions and providing explanations.

9. The new Law introduces an exception from the suspensive effect of an appeal. An appeal of a first-instance verdict which obliges a natural person to pay a claim, the principal amount of which does not exceed the amount of EUR 300 in RSD counter value according to the middle exchange rate of the National Bank of Serbia on the day when the decision is brought forth, as well as a verdict which obliges an entrepreneur or a legal entity to pay a claim, the principal amount of which does not exceed EUR 1,000 in RSD counter value according to the middle exchange rate of the National Bank of Serbia on the day when the decision is brought forth, does not delay the execution of the verdict. If the verdict determines only the refunding of trial expenses in an amount not exceeding the above stated amounts, an appeal of the decision to refund trial expenses does not delay its execution.

10. The Law foresees the following extraordinary legal remedies: **petition for review** (the direct review foreseen by the previous Law on Litigation Procedure has been abolished), **petition for retrial of the case** and **request for**

**reconsideration of a final and binding verdict**, which has replaced the request for protection of legality, and may be submitted solely by the Republic's public attorney (not by a litigant), against a verdict which breaches the law at the expense of public interests.

11. The Law introduces two new special procedures – the procedure in consumer disputes and the procedure to protect the collective rights and interests of citizens.

12. The final provisions of the Law prescribe that all procedures commenced prior to entry into force of the new Law, shall be carried out and completed according to the provisions of the currently valid Law on Litigation Procedure ("Official Gazette of the Republic of Serbia" no. 125/04 and 111/09), unless in the case when, after the new Law enters into force, a verdict or a decision ending the procedure is abolished and the case is to be retried, when the new trial will be performed according to the provisions of the new Law.

Aside from the above stated, the Law contains other amendments as well, made principally to harmonize Serbian legislation with European standards and to create conditions for a more efficient procedural protection of the rights and interests of citizens, the realization of which is possible only with a complete and consistent application of the legal provisions in the practice of domestic courts.