We would like to thank you for the opportunity to comment on the proposed amendments to the law on civil lawsuits.

Targets for the Length of Proceedings

The most important novelty in the proposed amendments would be several deadlines for individual phases and the total duration of civil lawsuits.

The amendments would require that the courts complete certain phases and the overall procedure in civil cases within a reasonable time, whereas this should not take longer than some orientational deadlines. The Ministry claims that the introduction of similar deadlines in the field of labour law has accelerated the completion of cases, but it has not provided the relevant statistics. And even if the duration of the proceedings in this area has indeed been shortened, it would still be necessary to determine how much other factors, such as increased resources might have influenced this outcome.

We would like to note that for correctly setting these deadlines one would need to know the length of time of such proceedings in the recent years. Moreover, one would need to know not only the average duration of each procedure but also their distribution. This would make it possible to set reasonable deadlines and possibly prescribe their gradual reduction in the future. However, currently, no such statistics are publically available.

We invite the Government, therefore, to publish data for the last few years on the duration of individual phases and the total proceedings for which the amended law would set the deadlines. If the government is currently not in possession of such data, we would like to encourage it to start collecting and publishing this data as soon as possible.

We would also like to remind the Government of our previous recommendation that the relevant ministry should prepare a new draft ordinance on the court statistics as soon as possible and submit it for public debate.

The Purpose of Deadlines and Measures that the Courts Need to Take if They Exceeded Deadlines

The amendments correctly require that all the courts must complete proceedings within a reasonable time. However, the question arises about the purpose of setting the proposed deadlines given that they are at least twice as long as what could be considered reasonable.

For example, the court of the first instance would have to conclude civil proceedings “within less than three years from the date of the filing of the suit.” The courts of the second instance would have to decide on appeals "certainly within less than a year of the receipt of the appeal." The Supreme Court of the Republic of Croatia would be obliged to issue a decision on the proposal for permitting a revision “certainly within six months of the receipt of the proposal,” and would be obliged to decide on the revision itself "certainly within a period of less than two years." The proceedings in low-value disputes at the court of first instance would have to be concluded "certainly within a year of the filing of the complaint," while the court of the second instance would have to rule on the appeal “within six months of receipt.”

Setting such long deadlines would make sense only if their exceedance would automatically trigger a process of identifying causes and responsibilities. The proposal amendments however do not envisage any action after the courts have exceeded the deadlines.

In this context, we would like to point out that the annual inflow of new civil disputes into Croatian courts cannot explain a large number of outstanding cases, contrary to what has often been claimed publically. Statistics from the EU show that the annual number of newly initiated civil disputes in Croatia, relative to the number of judges, is significantly lower than the average of the EU Member States.[1] This suggests that the problem is not in the number of new cases entering the court system, but in the effectiveness of the court system in resolving them.

Therefore, we propose that the amendments prescribe that in case of exceeding the deadlines, the president of the competent court must submit a report to the Minister and the President of the Croatian Supreme Court assessing whether there are reasons for initiating disciplinary proceedings, and if not, what other causes need to be addressed to achieve trials within a reasonable time in the future.

The presidents of courts should also submit such reports after all the disputes that the Republic of Croatia has lost due to violations of the right to a fair trial within a reasonable time. Currently, the government loses many such cases, as confirmed by the courts themselves. This damages the reputation of the state and creates budget costs, a situation that should not be acceptable. We propose therefore that the amendments prescribe that after every such lost case, the judicial authorities should report on the causes and establish responsibilities.

Revision of Procedural Rules

A comprehensive revision of procedural rules, even those recently amended, should be an integral part of efforts to shorten the length of court proceedings. This should include the laws on enforcement of court rulings, Bankruptcy Law, Law on Criminal Proceedings Act, Law on Misdemeanour Offenses, and Law on Civil Case Procedures.

In this regard, we suggest that the Ministry engages a much wider team of experts, consisting of practitioners, judges, lawyers, academics, and experts from the Ministry, to come up with the proposals for revising procedural laws to increase their functionality and simplify them while respecting fundamental procedural rights.

Procedures for Adjudicating Cases of Violation of the Principle of Fair Trial within Reasonable Time

In the context of the debate on the proposed amendments, we would like to remind that the European Court of Human Rights in recent judgments (see e.g. KIRINCIC and OTHERS against CROATIA from 2020) established that the Croatian legal provisions governing the procedure for suing about the violations of the principle of a fair trial within a reasonable time are not in line with the international convention signed by Croatia. The same was reiterated by the Constitutional Court of

[1] https://ec.europa.eu/info/sites/default/files/2020_eu_justice_scoreboard_quantitative_data_factsheet.pdf. See data in Tables 3 and 35. While the number of new litigations in relation to the population in Croatia is somewhat higher than the average in the EU, relative to the number of judges it is half less than in other Member States. This is due to the fact that the number of judges relative to the population in Croatia is twice as high compared to the average in Member States.

the Republic of Croatia in its report No.: U-X-4090/2020 Zagreb, 23rd. February 2021, which also called on the Government to introduce the necessary changes.

Since the government has not so far stated its position on this issue, nor in recent proposals for amendments to the Law on Courts, nor in the proposed Strategy for the Development of Judiciary until 2027, we suggest that it addresses the issue when it proposes finally amendments to this law.

Old Cases

The new proposal introduces the obligation to quickly resolve the old cases: “In all proceedings initiated before 1 April 2013, where no first instance judgment has been rendered before the entry into force of this Act, the court shall, within six months of the entry into force of this Act, hold a preparatory hearing at which it shall conclude the preparatory hearing and hold the main hearing at the same occasion.”

It is not clear how the government has chosen the cut-off date, nor has it explained how this will now become possible when it was not possible thus far.

Therefore, we invite the government to explain its proposal and to specify measures that could credibly ensure that the courts will achieve this target.

Management Plan, Recording of Hearings, and Delivery of Documents

We support the amendments on the introduction of a procedural management plan (process calendar), for the mandatory sound recording of the hearings, and delivery of court documents.

Please note, however, that the abandonment of the minutes and introduction of sound recording are only steps towards integrated electronic management of civil cases and for abandoning the paper form of court files. The published draft of the Strategy for the Development of Judiciary until 2027 as well as other recent legislative proposals have not foreseen systematic steps in this direction. Therefore, we suggest that the government declare its opinion on such reform.

Proposals Regarding “Distance” Hearing

While commercial platforms have been used recently for distance hearings and were found to be reliable, the new proposal envisages the use of an 'appropriate technological platform' to be introduced based on a special ordinance to be adopted in the future by the Minister of Justice.

In order not to backtrack in the use of distance hearings, the amended law should retain the use of commercial platforms until the new one is developed based on regulations set by the Ministry.

Centre for Democracy and Law Miko Tripalo