

## The Topic of the Issue

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### THE SERBS ARE A LITIGIOUS PEOPLE

PREDRAG TRIFUNOVIC *PRESIDENT OF THE CIVIL DEPARTMENT*

#### **All important property and life problems of citizens get their final epilogue in the Civil Department of the Supreme Court of Serbia.**

- This Department deals with disputes related to property, inheritance, economy, labor, intellectual property, family relations as well as disputes related to compensation for attack on honor and reputation in the media. This is a very broad field with a big number of cases, which engages also the biggest number of judges. Out of 2,400 judges throughout Serbia, some two thirds work on cases of civil law. However, not all cases reach the Supreme Court, because this court decides only in the third instance. Here are finalized only the most important and by value most difficult cases, i.e. cases with a value exceeding 500,000 dinars in civil matters and 2,500.000 dinars in economic matters, as well as cases of cessation of employment, disputes related to custody over and support of children, all big acquisition and housing disputes. Everything that is big, gets its epilogue in the third degree, in the Civil Department of the Supreme Court – says judge Predrag Trifunovic, President of the Civil Department of the Supreme Court of Serbia.

He says that Serbs are a people which traditionally likes to litigate, and almost all lawsuits start in municipal and commercial courts throughout Serbia, and then come in the second instance to the district courts and the High Commercial Court in Belgrade, and in the third instance they come to the Supreme Court.

#### **Eight thousand cases a year**

- In 2005 the Civil Department received some 8,000 new cases, and with unfinished cases from 2004 there were between 11,500 and 12,000 cases to deal with. The Department has 28 judges and in 2005 they completed close to 8,000 cases. All cases received during 2004 came before the chambers. The average is 30 cases per judge, which is considerably higher than the European average and is 50 percent above the minimum success by the criteria adopted by the Supreme Court. There is so much work, that judges work on weekends at home and dictate the judgments at night – says Trifunovic.

Because of transition and privatization many people in Serbia lost their jobs, becoming surplus workers. Therefore, the Civil Department of the Supreme Court had in the last year a significant rise in the number of labor related lawsuits. Apart from that, there are also many requests for protection of legality by citizens, because the new Civil Procedure Act, unlike the old one, enables also the citizens to file such a request. This law introduces one more new procedural institute – controversial legal issue. Namely, when the municipal courts have a big number of lawsuits with identical factual and legal problems - for instance the case of salaries in the Army, the distribution of dividends and other problems with shares, or the problem of redundancy payment in labor law - the Supreme Court of Serbia is called to give an opinion on the controversial prior legal issue. In 2005 the Civil Department gave its opinion in more than hundred such cases.

The Assembly of Serbia has during the last three years adopted more than two hundred new laws, and the majority of the new laws regulate exactly matters within the jurisdiction of the Civil Department. In the last four years were passed two labor related laws, there is a new Family Law, Civil Procedure Act, Law on Executive Procedure, Mortgage Law, Law on Privatization, Corporate Law and others. All these novelties are reflected on a daily basis in the work of the Civil Department.

- The new Civil Procedure Act should contribute to the acceleration of lawsuits and the strengthening of procedural discipline. One of the most important novelties is that the court in the second instance can only once annul the judgment of the court in the first instance, and the second time it must open hearings on the appeal and pronounce the judgment in the case. The former law envisaged that the judgment in the first instance can be annulled more than once – says Trifunovic. Besides, the judges of the Civil Department of the Supreme Court were included in the education of judges throughout Serbia with the aim to have a proper implementation of new laws, and they also took part in their drafting.

#### **Interest rates – a big problem**

As a big problem for the citizens and the judiciary Predrag Trifunovic points out particularly the way in

which the interests in Serbia are calculated.

In civil and economic matters the interests are a problem which creates unjust situations. In our circumstances the interests are high and the way in which they are calculated, in accordance with provisions related to interest on arrears, in my opinion is contrary to the provisions of contractual law, the principle of ban on anatocism – compound interest. Namely, interest consist of the inflation rate and the interests on arrears and this is calculated out each month. Thus they do considerably exceed inflation and we get into the position that creditors get incredibly rich in the case of a longer time limit for delay. The contractual interests are not limited by law, so that high interests on arrears, among others, influence the growth of contractual interests. Thus the entire system of compensation in contractual matters is undermined, and judges see these trials as a kind of an unjust implementation of the law. We wrote to the National Bank and the Ministry of Finance about this problem. In both the Ministry of Finance and the National Bank there were proposals for the change of the law, but work has not gone beyond the drafting version. We had the case that one municipality in west Serbia lost a flat and had to pay to the plaintiff in the lawsuit the amount equal to the price of four flats in Belgrade. In Belgrade it even happened that parents, because of extortionate interests, killed their two sons of the age of 20, and committed suicide because they could not find the way out from this problem. This is the known case of the family Gradiska from Zemun – says Trifunovic.

He stresses that such a system of the calculation of interests is abandoned in Europe and in countries in our surroundings. Only Serbia has such a system of calculating interests on arrears and it is reflected also upon contractual interests which are high and are among the highest in Europe.

- Our contractual law is fully harmonized with European standards in these matters and international conventions, except for interests.

Interests on arrears in Europe range from two to six percent annually, and here they are significantly higher. These are practically legalized extortionate interests. In relations among people there are tragic situations particularly in long lasting cases – says Trifunovic.

Yet another problem with which the Civil Department of the Supreme Court of Serbia is faced are demands for the so-called "war reparation".

- We respect requests for compensation filed by members of the army and the police who were damaged in armed conflicts and during the NATO bombing campaign. All those damaged get compensation, as well as refugees which our organs sent across the west border in 1995, but here the problem of expiration emerged. People are applying now, and the time limits were three and five years. Our advice is that the prosecutor as a state organ does not call upon expiration, or that the state by a special act compensates the refugees – says Trifunovic.

Although the proceedings in the Supreme Court are now much quicker brought to an end, judge Trifunovic says that we cannot be satisfied with the entire state of civil commercial trials in Serbia. The problem is, says he, that the judges are too young, the laws are not always implemented in a correct manner, the court practice is wavering, and parties and lawyers are continuing to try to prolong the proceedings.